A LEGAL DICTIONARY FOR CEYLON

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LIST OF ABBREVIATIONS.

A. C. R.	...	Appeal Court Reports
Bal.	...	Balasingham's Reports
B. N. C.	...	Balasingham's Notes of Cases
Br.	...	Browne's Reports
C. A. C.	...	Court of Appeal Cases
C. L. R.	...	Ceylon Law Reports
Cr. A. R.	...	Criminal Appeal Reports
Cur. L. R.	...	Current Law Reports
C. W. R.	...	Ceylon Weekly Reporter
Law Rec.	...	Ceylon Law Recorder
Lead.	...	Leader Law Reports
N. L. R.	...	New Law Reports
Ram.	...	Ramanathan's Reports
S. C. C.	...	Supreme Court Circular
S. C. D.	...	Supreme Court Decisions (Weerakoon's Reports)
S. C. R.	...	Supreme Court Reports
Tam.	...	Tambyah's Reports
Times	...	Times' Law Reports
Vand.	...	Vanderstraaten's Reports

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Abandonment. The relinquishment of one's interest in some person, thing or right. A servitude may be lost by abandonment but the abandonment must be deliberate and intentional. *24 N.L.R. 438.* It need not, however, be express but may be tacit. *14 N.L.R. at 102.* The mere ceasing to work a mine is not of itself such an act of abandonment as amouts to loss of possession. *21 N.L.R. at 132 ; 1 Law Rec. 38.*

Abatement. Under section 402 of the Civil Procedure Code if a period exceeding twelve months in the case of a District Court, or six months in a Court of Requests, elapses subsequently to the date of the last entry of an order or proceeding without the plaintiff taking any steps to prosecute the action where any such step is necessary, the Court may pass an order that the action shall abate. The Court may make such an order of abatement *ex mero motu. 18 N.L.R. 229 ; 6 S.C.D. 42 ; 3 N.L.R. 77 ; 4 A.C.R. 8,* but it cannot be validly entered unless a party fails to take a step required by law in the prosecution of an action. *14 Law Rec. 142 ; 13 Law Rec. 157 ; 36 N.L.R. 108.* An order that the case be struck off the roll is not an order of abatement. *2 C.L.R. 99.* An order of abatement amounts to a final order when upon application to set it aside the Court refuses to do so. The same effect may be claimed for it when a reasonable time has elapsed since the making of the order and no action has been taken to set it aside. *8 Law Rec. at 3 ;* See *2 N.L.R. 23.* An action which has abated and since been restored must be regarded as having commenced at the date of its first institution for the purposes of a plea of prescription. *7 Law Rec. 127.*

Criminal proceedings which are conducted by the Police do not abate on the death of a complainant. *32 N.L.R. 310.*

Abetment. See AIDING AND ABETTING.

Absence beyond the seas is absence beyond the limits of Ceylon. *3 Times 26 ; 6 Law Rec. 58.* This term in section 14 of the Prescription Ordinance does not pre-suppose a former presence in the Island. *24 N.L.R. 441,* nor does the appointment of an attorney to act in Ceylon remove the disability constituted by absence

beyond the seas. *9 N.L.R. 368; 10 N.L.R. at 101.* A Company which is registered in England but has a permanent office in Ceylon where it carries on business under a manager is not absent beyond the seas for the purposes of the Prescription Ordinance. *18 N.L.R. at 147 ; 7 Law Rec. 145.*

Abuse. Mere words of angry vulgar abuse are not defamatory and not actionable. *26 N.L.R. 84 ; 7 S.C.C. 154 ;* but see *18 N.L.R. 73.* Mere verbal abuse is not punishable under section 484 of the Penal Code. *2 Cr. A.R 49 ; 1 Times 47; 3 S.C.D. 80,* unless it appears from the circumstances, from the terms of the abuse itself and having regard to the person to whom it is addressed, that the accused intended or knew that it would be likely to cause him to break the peace or commit some other offence. *1 C.L.W. 343 ; 10 Law Rec. 160.*

Abuse of process. I am not prepared, per Middleton J., to accede to the proposition that the Court has not any inherent authority to prevent abuse of its process in cases where the Legislature has not distinctly provided for such contingencies. *14 N.L.R at 81.* See *4 S.C.D. 96.*

Acceptance is necessary to make a donation fully effectual. *6 N.L.R. 212; 6 N.L.R. 233; Voet 39. 5. 11.* Under the Roman Dutch law no particular form is required for the acceptance of a gift. It is in every case a question of fact whether or not there are sufficient indications of the acceptance by the donee. *3 C.A.C 80; 13 N.L.R. 259; 5 S C.D. 4;* But see *16 N.L.R. 413.* It is not essential that the acceptance of a deed of gift shall appear on the face of it but such acceptance may be inferred from circumstances. Possession, for example, by the donee of the property gifted leads to the inevitable inference that the deed of gift was accepted. *12 N.L.R. 1.* There is a natural presumption that a deed of gift is accepted and where a valuable gift has been offered and it is alleged that it has not been accepted some reason should be shown for the alleged non-acceptance of the gift. *3 C.A.C. 80.* The acceptance need not be by the donee himself. It may be by somebody duly authorized on his behalf. *Voet 39. 5. 11.* In the case of a minor, his parents or grand-parents, when not also the donors, may accept for him. *6 N.L.R. 212; 6 N.L.R. 233; 8 S.C.C. 189.* Where the donor is a parent acceptance can be made by someone who is legally competent to do so on the minor's behalf. *11 N.L.R. 161; 3 S.C.D. 28; 1 Lead 12.* It has been held that a grandmother is competent to accept on behalf of the minor. *8 S.C.C. 189.* So is a major brother. *13 N.L.R. 259; 3 Bal. 43,* but not an uncle, *11 N.L.R. 161; 4 Bal. 110; 3 A.C.R. 4.* or a cousin. *3 N.L.R. 6.* The law favours the acceptance of gifts in the case of minors and that acceptance will be presumed where there are circumstances to justify such a presumption.

2 N.L.R. 72. It has even been held that it is competent for the minor himself to accept a donation in his favour inasmuch as he is benefited thereby *11 N.L.R. 232.*

The acceptance must be made during the lifetime of the donor. *Voet 39. 5. 13.* Where, however, a gift really takes effect after the death of the donor it may be accepted even after his death. *17 N.L.R. 129; 16 N.L.R. 413.* But where the gift is a gift *in praesenti*, possession alone being postponed to the death of the donor, the acceptance cannot take place after his death. *21 N.L.R. 165.* If property is gifted to several persons jointly and one of them does not accept the gift his share does not accrue to the others but remains unaffected by the donation. *Voet 39. 5. 14.* In a case where the reversioners are the legitimate descendants of the donees, acceptance of the gift by the fiduciary donee is sufficient acceptance on behalf of the descendants and precludes the donor from revoking the gift. *17 N.L.R. 279 F.B.; 18 N.L.R. 222; 4 C.W.R. 182; 6 S.C.C. 138. 1 A.C.R. 53.*

The effect of non-acceptance of a gift is to entitle the donor to revoke the gift and make any other disposition of the property. *Voet 39. 5. 13: 21 N.L.R. 165.*

Acceptance is not necessary in the case of a gift by a Muslim father to his minor child. *14 N.L.R. 295.*

Acceptance of security tendered by an appellant under section 756 of the Civil Procedure Code is a judicial act and should be evidenced by an order of Court. *22 N.L.R. 381.*

Access. The word *access* in section 112 of the Evidence Ordinance is used in the sense of actual intercourse, not possibility of access. *25 N.L.R. 241 F.B ; 5 Law Rec. 142; 2 Times 107.* See also *3 N.L.R. 13; 5 N.L.R. 243; 6 N.L.R. 379.*

The word *access* in section 3 (2) of ordinance 17 of 1889 means legal access, that is access as of right or by the express or tacit license of the owner of the land and not such access as would constitute a trespass against the owner. *2 C.L.R. 6.*

Accomplice, an associate or participator in a crime. An accused who gives evidence against a co-accused is in the position of an accomplice. *10 Times 18.* See *4 Law Rec. 220.* An accomplice's evidence is always open to the gravest suspicion not because he has participated in a crime but because his expectation of pardon depends on the conviction of the accused. *3 N.L.R. 353.* A conviction based on the uncorroborated testimony of an accomplice is not bad. It is, however, generally unsafe to convict on such tainted

evidence. *20 N.L.R. 165; 11 N.L.R. 4; 5 N.L.R. 375.* But where the circumstances sworn to leave no reasonable doubt as to the guilt of the accused it is in the interests of justice that he should be convicted. *5 N.L.R. 375.*

Account stated. Where there have been mutual dealings and mutual transactions between parties and it is averred that accounts between them were settled, that constitutes an account stated. *2 C.L.W. at 119; 14 Law Rec. at 103; 2 Bal. at 117; 8 N. L.R. at 374.* To constitute an account stated there must be some antecedent liability or some previous transaction with reference to which an account is stated. *1 C.L.W. at 330.* A settlement of accounts between parties where, in respect of their dealings, one party remains always the debtor of the other and where there are no cross dealings may constitute an account stated. *14 Law Rec. 116; 36 N.L.R. 358.* An account stated may be settled orally. *6 N.L.R. 216; 35 N.L.R. 92,* and a plaintiff is entitled to sue on an account stated notwithstanding the absence of any written acknowledgment of the debt on the part of the defendant. *22 N.L.R. 91.*

Accused. An accused cannot be compelled to give evidence in his own behalf, *1 Bal. 44,* nor can he be called as a witness by others. *8 N.L.R. 70.* It is also irregular for a judge to invite an accused to give evidence when his Counsel does not call him. *4 Tam. 45.* But the failure of an accused to give evidence is a circumstance which Courts are entitled to take into account. *15 N.L.R. 197.* It is the right of every accused to be fully heard in his defence. If he tenders witnesses for examination at the trial they must be examined although their names had not been furnished to the Crown or to the complainant. *3 S.C.R. 62.*

Where in a summary trial the accused gives evidence the Court has the right to recall him under section 429 of the Criminal Procedure Code. *35 N.L.R. 213.*

See also Co-Accused.

Acknowledgment. The law is that there must be an acknowledgment of the debt in writing and a promise to pay the debt which promise is implied where the acknowledgment is not modified or qualified by words to the contrary. If there are words which amount to a refusal to pay there is no promise implied or expressed. If the words amount to a conditional promise to pay the condition should have been fulfilled. *32 N.L.R. at 324.* An acknowledgment of a debt coupled with a request for time which is not granted does not take the debt out of the operation of the

Prescription Ordinance. *34 N.L.R. 219; 12 Law Rec. 50.* The acknowledgment of a portion of a debt takes only such portion out of prescription. *1 Law Rec. 95.*

In a claim for goods sold and delivered the mere occurrence of an item of purchase within the period of limitation does not involve an acknowledgment that will keep the claim alive as to the older sales effected outside that period. *1 Bal. 36.*

Part payment by a stranger does not have the effect of an acknowledgment of the balance of the debt and a promise to pay it. *14 N.L.R. 1.* Nor by a widow. *5 S.C.D. 45; 4 Lead 154.*

Acquired property. Under Kandyan law acquired property is property to which a person becomes entitled otherwise than by inheritance. *28 N.L.R. at 465.* So property gifted to a person even by an ancestor is acquired and not paraveni. *31 N.L.R. at 30; 19 N.L.R. 63; 2 C.W.R. 117; 3 N.L.R 376; 10 Law Rec. 49; 6 Times 128.* Property coming by intestacy from a collateral is acquired property. *14 Law Rec. 114; 12 Times 71; 3 C.L.W. 22.*

Under the Kandyan law legitimate and illegitimate children share equally in the acquired property of their father. *8 N.L.R. 328.* The father does not inherit the acquired property of his illegitimate child. *2 C.W.R. 271; 19 N.L.R. 126; 4 C.A.C. 110,* but an illegitimate child is entitled to inherit the acquired lands of its father who dies intestate subject to the widow's life interest. But, *per Middleton, J.,* this right of illegitimate children depends on the caste of their mother and on the circumstances attendant on the relationship between the mother and the father. *10 N.L.R. 129 F.B.* The widow's life interest extends to the whole of her husband's acquired property to the exclusion of the husband's illegitimate children, *20 N.L.R. 186,* but the life interest of a widow, especially a childless widow, in the acquired property does not extend to the entirety of such property when there are children of the first bed. *20 N.L.R. at 13.*

When a Kandyan dies without issue leaving brothers and sisters, the brothers take the acquired property to the exclusion of the sisters. *28 N.L.R. 266; 8 Law Rec. 126; 4 Times 156.* A maternal uncle is entitled to the acquired property of an intestate in preference to the paternal half-brother of the intestate. *14 N.L. R. 510.*

Under the Tlhesavalamai property purchased after the date of marriage is presumed to be acquired property until the contrary is proved. *3 C. W. R. 41.* Money which a man has saved from

professional earnings which he has set aside and invested and which is not needed for his ordinary expenditure can be regarded as acquired property. *31 N.L.R. at 259.*

See also TEDIATATEM.

Acquittal. A trial is concluded when an accused is acquitted. *1 Br. 140.* An accused is entitled to an order of acquittal if at the close of the case for the prosecution the magistrate is of opinion that the accused is not guilty of the offence with which he is charged. *31 N.L.R. at 138.* The Court is under no duty to record the evidence offered by the defence before entering a verdict of acquittal if it disbelieves the evidence for the prosecution or if that evidence fails to establish the charge against the accused. *31 N.L.R. 314.*

Acrobatic performance. A wrestling match is not an acrobatic performance. *24 N.L.R. 148*; 1 *Times 44.*

Across. The legislature has not made it an offence to drive an elephant across a road. *1 Br. 163.*

Act. The word *act* in the Penal Code denotes as well a series of acts as a single act. *11 N.L.R. at 10.*

Actio conducti. The *actio conducti* lies when a lessee is not permitted to enjoy the thing leased. This action lies whether the obstruction to the enjoyment of the property is due to any act of the lessor or to the act of a third party and notwithstanding the fact that the lessor acted in good faith. *24 N.L.R. 42.*

Actio de pauperie. Where a man's brute animal does an injury to another person (such injury not being done through mere accident and not being provoked and caused by the wrongful act of the injured party and not being immediately caused by the wilful act of a third person), the owner is always liable. But the owner's liability is limited if the animal were not of a genus naturally savage and if also the individual animal were not of mischievous habits. The limit of the liability of such an innocent owner is this, the amount to be given for compensation must not exceed the value of the animal which did the injury. But if the animal were of a savage genus or if, though not of a savage genus, it were of mischievous habits whether the owner knew those habits or not, the owner must make full compensation for the injury done by the animal and cannot limit the damages to be assessed against him by the amount of the animal's value. 1860-62. *Ram at 70.* See also *1 Bal. 48; 20 N.L.R. 254.*

See also ANIMAL and DOG.

Actio doli under the Roman Dutch law is open to any person injured by the fraud of another. *17 N.L.R. at 182.* See *23 N.L.R. 279.*

Actio hypothecaria under the Roman Dutch law is no more than an action whereby a creditor follows up a pledge or hypothec bound to him expressly or by implication of law when satisfaction is not made to him by the debtor or any other person interested in the property pledged or mortgaged. The object of the action is to bind by an order for the sale of the property for the satisfaction of the amount advanced all those who have or claim to have an interest in the property acquired through the debtor. *17 N.L.R. at 16,* Under the Roman Dutch law a hypothecary action may be brought not only against a debtor himself and against a person who has mortgaged his party on behalf of a debtor but also against a third party in possession whether he is a *bona fide* or *mala fide* possessor and against a party who has fraudulently ceased to possess. The party in possession may be a party claiming adversely to the mortgagor. Before a mortgagee could succeed against such a person he has to prove the title of the mortgagor at the time of the mortgage. *14 Law Rec. 222.* Section 16 of the Mortgage Ordinance 21 of 1927 relieves the mortgagee from the necessity of combining with the personal action against the debtor the hypothecary action against the person in possession of the mortgaged property. The creditor can therefore elect with which of the actions he will first proceed. *31 N.L.R. at 308 ; 10 Law Rec. 167.* A hypothecary action does not lie against a mortgagor who has parted with all his interest in the mortgaged property previous to the action by the mortgagee. A personal action only lies against him for the money. *1 A.C.R. 72 F.B.* A hypothecary action is not properly constituted unless the mortgagor or his representative is a party. *1 Br. at 116 ; 4 N.L.R. 42.*

Under the Roman Dutch law a hypothecary action does not make the land *res litigiosa* and the mortgagor was not restrained from alienating it. *26 N.L R. at 391.*

See also MORTGAGE.

Actio injuriarum of the Roman Dutch law is much wider in its scope than the action for malicious prosecution known to English law. It lies wherever a person does an act *dolo malo* to the detriment of another. *22 N.L.R. at 234.* The *actio injuriarum* may be brought against a person who with the necessary intent puts the law in motion even though he may not himself institute proceedings in Court. *21 N.L.R. 436.*

See also MALICIOUS PROSECUTION and ACTIONABLE WRONG.

Actio pauliana. See PAULIAN ACTION

Actio redhibitoria lies on account of a defect of such a nature in the thing sold that the purchaser would not have purchased if he had known it whether the defect be in the principal subject or its accessories provided the defect is of a grave character and calculated to hinder the use of the thing sold and was present antecedent to the sale. *11 Times 4.*

Action is a proceeding for the prevention or *redress of a wrong* §5 C.P.C. The term is applicable *inter alia*, to proceedings to reduce the assessment of rates by the Municipal Council, *4 A.C.R. 131* ; for the definition of boundaries, *17 N.L.R. 65* ; for the appointment of a guardian *ad litem*, *7 N.L.R. 34* ; for partition *1 S.C.D. 31* : but not insolvency proceedings, *1 N.L.R. 197* ; *4 Law Rec. 215*. An application made to a Court in the course of, and incidental to, an action in summary procedure is regarded by the Code as being itself an action. *25 N.L.R. at 349*. So the proceeding to set aside a Fiscal's Sale held in execution of a decree is an action to which the purchaser is a party. *2 Times 154*.

The word *action* in section 406 of the Civil Procedure Code does not include an appeal. *11 N.L.R. at 111*.

An action is brought on the day the plaint is handed to the record keeper *31 N.L.R. at 219* ; *25 N.L.R. 197* ; *6 N.L.R. 338* ; *2 Times 30* ; *10 Law Rec. 83* ; *2 Law Rec. 23*. An action can be considered to be brought against a subsequent defendant only when he is actually included in the action. *5 Law Rec. at 195*. An action commenced against the wrong defendant cannot be put right by dropping that defendant and suing an entirely new person. A fresh action must be brought against the proper person *3 Law Rec. 73*. An action which has abated and which has been restored under section 403 of the Civil Procedure Code must be regarded as having commenced at the date of its original institution for the purposes of a plea of prescription. *4 Times 44*. An action cannot be prosecuted in an inferior Court with the direct object of setting aside a decree of a superior Court. *13 N.L.R. 371*.

The character of an action is to be determined by the issues raised and tried *23 N.L.R. at 66*.

See also CAUSE OF ACTION ; PLAINT.

Actionable wrong To procure to the prejudice of anyone maliciously and either by *expressio falsi* or *suppressio veri* the issue of legal process which was perfectly justifiable on the materials before the Court is an actionable wrong. *20 N.L.R. 7*.

If a man acts within the limits of his authority even though he may be inspired by mixed motives, even though his mind may be clouded by personal resentment, even though he may feel a personal satisfaction in being able to pay off a grudge against the man with whom he is dealing, nevertheless he has not committed an actionable wrong. *Per Bertram, C. J. 21 N.L.R. at 381 ; 7 C.W.R. at 150.*

See also ACTIO INJURIARUM ; MALICIOUS PROSECUTION.

Additional deputy fiscal has the same powers as a Deputy Fiscal under the proviso to section 286 of the Civil Procedure Code. *32 N.L.R. 66 ; 8 Times 5*.

See also DEPUTY FISCAL.

Adiation is the acceptance of an inheritance by the heir. A minor cannot adiate an inheritance and is not liable to be sued for the debts of the ancestor. *15 N.L.R. 323*. The mere massing of the joint estate of husband and wife for the purpose of a joint will does not by itself constitute adiation of inheritance under the will of either spouse. *18 N.L.R. 150*.

Adikhari. An adikhari is appointed by nomination by his predecessor or by sclection by the persons in the line of pupillary succession. By custom that right was generally determined by seniority. *26 N.L.R. at 271 ; 20 N.L.R. at 397*.

Adjourn. A District Judge has power to adjourn a sitting in order to hear a creditor who wishes to oppose but has failed to give the statutory notice in Insolvency proceedings. *31 N.L.R. 188*.

Section 342 of the Civil Procedure Code which gives the Fiscal power to adjourn a sale refers to a sale once commenced. Such an adjournment may be made for want of time or in order to have some question incidentally arising settled before the auction is concluded. *10 N.L.R. at 60*.

A Police Magistrate has no power to adjourn a summary case to enable the complainant to make inquiries and find out further evidence against the accused. *2 N.L.R. 180*.

Adjournment signifies the act of continuing the session or postponing the meeting to another time or place. *32 N.L.R. at 39*. The word *adjournment* generally means the appointment of another day for the continuation of that which has already commenced in contradistinction to *postponement* which means the putting off of that which has been appointed to be done on a specified day to a later day. *11 Law Rec. at 18*.

Apart from the consent of parties the Court has no power when granting an adjournment to order that, if costs be not paid before the adjourned hearing, judgment will be entered against the party failing to pay costs. *23 N.L.R. at 493. F.B.*

In Insolvency proceedings the Court has a reasonable discretion to adjourn meetings whether for the proof of debts or for the grant of a certificate in order to satisfy itself that the insolvent ought to be granted a certificate. *8 Law Rec. at 9.*

See also POSTPONEMENT.

Adjudication. An order of adjudication cannot be made merely on the petition and affidavit of the petitioning creditor. *35 N.L.R. 318 ; 13 Law Rec. 116 ;* see *4 Law Rec.* 24. An adjudication is not defective merely because it proceeds upon the affidavit furnished by the insolvent only. *30 N.L R. 474 ; 6 Times* 73. A second adjudication in insolvency cannot be obtained on a debt which has been proved in the first insolvency. *28 N.L.R. 319.*

The Court in insolvency proceedings has a general power to annul an adjudication in appropriate circumstance. *23 N.L.R. 315,* but there must be further material than that upon which the adjudication was made before it can be annulled. *10 Law Rec. 9.*

Adjustment of decree. No payment or adjustment of a decree will be recognized by any Court unless it has been certified in the manner provided in section 349 of the Civil Procedure Code. *24 N.L.R. 357 ; 5 Law Rec.* 19.

Administration. The administration of an intestate estate is not a mere matter of form or procedure but a matter of substance. *9 N.L.R* 90. Where a person is domiciled in Ceylon the grant of administration to his estate is governed by the law of Ceylon. *20 N.L.R.* 161. In the case of a stale application for letters of administration the Court will not grant them unless the necessity for administration is shown. *4 N.L.R.* 24.

In the case of a conflict of claims for letters of administration the claim of a widower or widow is to be preferred but the Court can pass over such claim for good reasons. *14 Law Rec. 88 F.B. ; 36 N.L.R. 281.* See *4 N.L.R. 257 ; 2 C.L.R. 179 ; 28 N.L.R. 286 ; 4 Times 31 ; 29 N.L.R. 357 ; 19 N.L.R. 149 ; 3 Bal. 59 ; 32 N.L.R. 43.* An undischarged bankrupt is not *ispo jure* disqualified for the office of administrator of a deceased person's estate. *11 N.L.R. 237.*

An administrator derives his authority from the letters issued to him. *29 N.L.R. 174.* He is entitled to sell the landed property of an intestate when the letters of administration contain no limitation of his powers as to such sales. *18 N.L.R. 496.* He must,

however, come to Court and show conclusively that the sale is necessary for the payment of debts and costs of administration. *5 N.L.R. at 164 ; 5 N.L.R. 247.*

An official administrator should not appeal against a judgment without the leave of Court. If he does so he is personally liable for costs, *2 N.L.R.* 289.

Administration of justice. It is important that the administration of justice should be free even from the suggestion of suspicion. *24 N.L.R. 377 ; 10 Law Rec. 14.* That justice should be believed by the public to be unbiassed is almost as important as that it should in fact be unbiassed. *Per Bonser, C. J. 1 N.L.R. at 374.* It is in the interests of justice that a case should be tried by a Magistrate who is not familiar with the antecedents of the accused, *3 Times* 25. See also *2 S.C.C. 56 ; 5 S.C.C. 210 ; 5 Tam 123 ; 36 N.L.R. 276.*

Admissible. A statement made by an accused person to a police officer is not admissible if it would have the effect of bringing the charge home to the accused or strengthening the case for the prosecution. *27 N.L.R. 267.* A statement to the Police made by an accused giving an account as to how he came by the property different to that given in Court is inadmissable. *27 N.L.R. 404.* A statement made by an accused person from the dock implicating a co-accused is not admissible against the latter. *26 N.L.R. 303.*

Evidence which is legally admissible does not cease to be admissible merely because that evidence was discovered by an Excise officer who did not comply with the requirements of section Ordinance when searching the premises without a warrant. *9 Law Rec.* 78.

See also ADMISSION AND CONFESSION.

Admission. An admission which is not a confession does not become obnoxious to section 25 of the Evidence Ordinance if it is found to be at conflict with a defence later set up. *28 N.L.R. at 82 ; 7 Law Rec. 151.*

An admission by Counsel contrary to his client's pleading and evidence must be shown to have been made with special authority before it can bind his client. *1 Mat. 207.*

The mere admission of a right which is asserted by the plaintiff but which has no existence in law is not sufficient to entitle the plaintiff to a judgment establishing the right. *18 N.L.R. at 450.*

In certain circumstance the failure to reply to a letter written in the course of business negotiations amounts to an admission of a claim made therein. *1 Times* 292.

Adoption. In order to constitute a valid adoption under Kandyan law no particular formalities or ceremonies are required ; but it is necessary that the parties should be of the same caste and that the adoption should be public and formally and openly declared and acknowledged and it must also clearly appear that the adoption is for the purpose of inheriting the property of the adopting parents. *10 N.L.R. 100 ; 2 C.L.R. 53 ; 3 Lead 3.* This fact must be proclaimed by the adopting parent with a degree of publicity which may vary according to circumstances. Neither adoption as a *protege* nor a private assertion of an intention to adopt for the purpose of inheritance will suffice. *2 Bal. at 147 ; 3 C.W.R. 173.* This declaration need not, however, be made at the time of the original adoption. It may be made at any time provided it is sufficient to show the character of the adoption. *1 C.W.R. at 2.*

Ad pios usus. By the law of this Colony deeds of gift *ad pios usus* are valid. *1843-55 Ram. 132.*

Adulterated milk. A person cannot be convicted of selling adulterated milk when the sample sent to the analyst was not thoroughly mixed up before it was sent. *14 Law Rec. 180.*

Adulterine children. Adulterine bastards are not prevented under our law from taking by inheritance from their mother. *11 N.L.R. 171 ; 1 S.C.D. 56*—See *2 A.C.R. 179 ; 1 Lead 37*—, or by gift or bequest from their father. *15 N.L.R. 348 ; 6 Lead 85 ; 3 Lead 55.*

The Kandyan law does not distinguish between illegitimate children born in adultery and merely natural children, *7 N.L.R. 364* a child born in adultery is not disqualified from succeeding to his father's property. *22 N.L.R. 145 ; 6 C.W.R. 45.*

Adultery. To establish adultery it is not necessary to prove the direct fact of adultery nor is it necessary to prove a fact of adultery in time and place. The fact may be inferred from circumstances which lead to it by a fair inference as a necessary conclusion. *22 N.L.R. 310.* The stain of adultery, *per Sampayo J*, cannot be obliterated by reform nor can a wife be expected to overlook the fact when regulating her own life. Adultery strikes at the root of the marriage relation and its consequences both legal and social continue. *6 Law Rec. 117.*

According to the law of Ceylon parties who have lived in adultery are not incapacitated from marrying one another or taking testamentary gifts from one another. *12 N.L.R. 81 P.C., 14 N.L.R. 202 ; 5 Lead 48.*

There is no rule of Kandyan law under which a woman who during the subsistence of a valid marriage commits adultery with a man of low caste forfeits her rights to ancestral property. *35 N.L.R. 337.*

The words ' living in adultery ' in section 9 of the Maintenance Ordinance mean a continuance of a life of adultery with some ascertained person or a life of prostitution. *3 C.W.R. at 296.*

See also CONDONATION.

Adverse inference. No adverse inference against an accused can be drawn for not calling witnesses as there is no duty on the accused to call any but an inference against the prosecution can be drawn because it is the duty of the prosecution to place the available evidence before the Court or show a reason why an adverse inference should not be drawn. *Per Ennis, J. 4 C.W.R. at 133.*

Adverse interest. The expression *adverse interest* refers only to cases where two persons claim interests traceable to the same origin. *16 N.L.R. at 440.*

Adverse possession. Possession is never considered adverse if it can be referred to a lawful title. *15 N.L.R. at 78 P.C.* Among co-heirs the strongest evidence, therefore, of adverse possession should be given. *3 N.L.R. at 138.*

A Court may presume from lapse of time in conjunction with other circumstances that the possession of a usufructuary mortgagee has become adverse. *31 N.L.R. 478.* An intending purchaser who is given possession with an agreement that the vendors would convey the land to him when they had perfected their own title possesses adversely to his vendors. *15 N.L.R. at 361 ; 32 N.L.R. 289 ; 8 Times 57.* A vendor who after sale remains in possession holds adversely to the vendee. *21 N.L.R. 321 F.B.* The possession of a judgment debtor after the Fiscal's sale where the conveyance is delayed may be adverse. *15 N.L.R. 305.* Possession which commenced before the accrual of a fidei commissary's right is not adverse against him. *28 N.L.R. 92.* Adverse possession in order to create prescriptive title does not begin to operate on the termination of a disability such as that of minority if by that date another disability such as absence beyond the seas has supervened *6 Lead 89.* See also *17 N.L.R. 123 ; 6 N.L.R. 197 ; 1 N.L.R. 288 ; 7 N.L.R. 91 P.C.*

See also OUSTER and PRESCRIPTION.

Advocate is one who pleads the cause of another in a Court of law or other judicial tribunal. " The profession of an Advocate consists in general in advising upon all legal questions ; in settling

and signing all petitions ; in drawing the pleadings which must be filed on record by the attorney ; in drawing and signing all documents ; in pleading orally in Court ; and, moreover, in using all legal means by which the case of the client may best be furthered ". *Van der Linden Institutes* 3, 2, 4. An Advocate cannot decline a fee capriciously. *4 N.L.R. 209.* The rules of the Roman Dutch law have no application to local Advocates. They cannot sue or be sued by, a client in respect of fees due to them or paid to them. *27 N.L.R. 76 ; 3 Times 110 ; 6 Law Rec. 156.*

An advocate cannot bind his client in a criminal case by the admission of any material part of the case for the prosecution. *Per Wood Renton J. obiter 12 N.L.R. 273.*

As a general rule the practice of the same person acting as both advocate and witness is unseemly and mischievous and where the judgment has been to any extent founded on such evidence the Supreme Court may, in the exercise of its general powers to ensure the due administration of justice, direct the case to be tried again. *Vand. at 14.*

See also ADMISSION and COUNSEL.

Affecting land. A judgment affecting land for the purposes of the Registration Ordinance must be understood to be a judgment which by its operation invests a person with an interest in the land such, for example, as a partition decree or a judgment which imposes or creates some charge, interest or liability. *17 N.L.R. at 422 ; 4 C.A.C. 30.*

Affidavit means a solemn assurance of a fact known to the person who states it and sworn to as his statement before some person in authority such as a Justice of the Peace. Affidavits may not be sworn before a person who is a proctor in the suit. *1 Br. 170 ; 4 N.L.R. 299.*

The affidavit of an insolvent is not sufficient to enable the Court to determine as to the reasons and causes of his insolvency. *2 Bal. 85.*

Affray. The element of hurt is not a necessary ingredient in the offence of affray. The essence of an affray is fighting which is a disturbance of the public peace. *17 N.L.R. at 224. See 6 Tam. 19.* Affray is an offence which one person cannot commit alone. Intention to commit the offence is not a necessary element and the gist of the offence is not the assault but the effect produced by the joint action of the combatants, namely the disturbing of the public peace, the interference with the tranquility of the public. The two or more persons involved, therefore, commit one and the same offence by reason of the effect of this joint action. *30 N.L.R. at*

35. Members of two opposing factions charged with affray may be tried together. *33 N.L.R. 245 F.B. ; 1 C.L.W. 218 ; 12 Law Rec. 6 ; 11 Law Rec. 85.*

Age of discretion. In matters of Habeas Corpus the age of discretion is 16 years in the case of girls and 14 years in that of boys. *31 N.L.R. at 133.*

Agency. When one person, whether authorized or not by another, represents that other in a transaction in such a manner as to create a legally binding obligation upon the person for whom he acts, the relationship between the parties is known as agency. *Nathan § 939.* Agency should be antecedently given or subsequently adopted to subject the principal to the act of the agent. An authority may also be implied from circumstances. *31 N.L.R. 467 ; 7 Times 155.* It is clear law that where a power is conferred upon two agents it is presumed to be conferred upon them jointly and an act by one purporting to be an execution of that power is not a good execution. *24 N.L.R. at 583 ; 14 Law Rec 213.*

Agreement. The terms of an agreement must be strictly construed. *22 N.L.R. at 438 ; 3 Law Rec. at 20.* Under the Roman Dutch law an agreement is not void for want of consideration provided there be a lawful cause or origin for it. *10 N.L.R. 158.*

See also CAUSA.

Agreement to reconvey must be proved by a notarially executed document. The fact that payment was made is immaterial. *32 N.L.R. at 27.* Such an agreement does not constitute a trust but is a pure contract for the purchase and sale of immovable property. *17 N.L.R. at 489.*

See also JUS RETRACTUS and OPTION TO REPURCHASE.

Aiding and abetting. To constitute abetment there must be participation of some sort in the act. *2 Cr. A.R. 43.* In order to convict a person of abetting the offence of instituting a false charge the bare evidence that he gave evidence in support of the false charge is insufficient. It must be shown that, prior to this evidence being given by him, there was a conspiracy to give false evidence in support of the charge. *2 C.W.R. 221 ; 19 N.L.R. 52.* A person charged with abetting another in the commission of theft cannot be convicted as a principal offender of the offence of retaining stolen property. *31 N.L.R. 457.*

Alien enemy is incapable of maintaining an action in a Court of law. *18 N.L.R. at 3.* But if he is residing in Ceylon with the permission of the Governor he may sue in the Courts of this Island as if he were a British subject. *18 N.L.R. 157.*

Alienation is the transfer or conveyance of some right, title or property from one person to another. A lease for a term of years is a *pro tanto* alienation and the lessee has during the continuance of the term all the rights practically of the owner. *7 Tam. at 130 : 1 N.L.R. 217 ; 2 B.N.C. at 32.* See however *1 C.W.R. at 57.* A lease for a term of years under § 42 of the Buddhist Temporalities Ordinance 8 of 1905 is an alienation. *28 N.L.R. at 90.* It is a well-established principle that the alienation *pendente lite* of the interests of one of the parties to an action will not be allowed to prejudice the rights of the other party. *6 N.L.R. at 267.*

Alienation by an executor. In the absence of collusion or special circumstances the legatees cannot sue for the recovery of assets which have been legally alienated by the executor. *15 N.L.R. at 435.*

Alienation in fraud of creditor are not *ipso jure* void but may be set aside. *2 Bal 41.* A donation made by a person in insolvent circumstances must be presumed to have been made with the intention of defrauding his creditors. *5 Times 134.* A creditor is not entitled to a declaration that a deed of transfer made by his debtor is fraudulent and void until all the rest of the property of the debtor not included in the impeached deed has been exhausted by process of execution. *1 Mat. 285.*

See also PAULIAN ACTION.

Alienation pending partition, is void and not merely voidable. *3 Bal. 100 ; 6 N.L.R. 108.* The date after which an alienation is void is the filing of the plaint. *4 Law Rec. 135*, and the prohibition is limited to owners who are parties to the proceedings. *9 S.C.C. 141.* See *6 N.L.R. 108 F.B.* The alienation which is prohibited is a voluntary alienation and not a necessary alienation such as a Fiscal's sale, *9 N.L.R. 217 F.B*, but where, pending a partition suit, the plaintiff's share was sold by the Fiscal and the purchaser at such sale who was not made a party to the suit sold it to a third party the sale was held to be void. *10 N.L.R. 221.* The prohibition against an alienation created by section 17 of the Partition Ordinance commences to operate when a proceeding for partition has been instituted and continues, in cases where partition has been entered, till the decree for partition and, where a sale has been decreed, until the issue of a certificate of sale. *4 Times 82 ; 26 N.L.R. 204 ; 6 Law Rec. 1.* An alienation pending partition of the entirety of the subject matter of the action is not obnoxious to section 17 of the Partition Ordinance, *2 C.A.C. 166*, nor is the alienation of a specific lot to be allotted in the final decree. *10 N.L.R 196 ; 28 N.L.R. 33.* But it can be only read as an agreement to convey and cannot prevail against the rights of a third party who has obtained a real right in the property by process of law,

28 N.L.R. at 295. See *29 N.L.R. 509.* A lease made during the pendency of a partition action is not an alienation within the meaning of section 17 of the Ordinance, *23 N.L.R. 272 ; 23 N.L.R. 415 ; 1 Times 20 ;* Contra *6 Lead 13 ;* nor is a revocation of a deed of gift in respect of a share, *5 Times 96 ;* nor the assignment of a mortgage of undivided shares, *2 Times 90.*

Alimony. There is no provision in the Civil Procedure Code for the enhancement of alimony on the application of a wife. *22 N.L.R. 201 ; 4 Law Rec. 76.* A wife sued by her husband in a divorce suit cannot maintain a separate action for alimony *pendente lite* but must apply in the divorce suit. *6 S.C.C. 136.* Under a writ in execution of a decree requiring a husband to secure alimony to his wife it is irregular to arrest him. *2 N.L.R. 140.*

Along. The word *along* in section 86 of the Thoroughfares Ordinance 10 of 1861 does not mean *on* but has the sense of *alongside. 5 A.C.R. 66.* A building which is only two or three feet from a road would be along a thoroughfare within section 86 of that Ordinance. The presence of a few trees between the road and the building would not prevent its being so considered. *3 Times at 154 ;* See *3 S.C.D. 62.*

Allow. A person can be said to allow a thing only when he has the right or power to prevent it. *9 Law Rec. 21 ; 29 N.L.R. at 200 ; 7 N.L.R. at 132 ; 15 N.L.R. 385* and there is knowledge or connivance or carelessness on his part. *28 N.L.R. 472 ; 2 Bal. at 16.* The owner of a car, for example, merely because he is the owner cannot be said to have permitted or suffered his car to be used for hire at any time without evidence of knowledge or connivance on his part. *8 Law Rec. 164.* Where a penalty is imposed upon anyone who allows or permits or suffers a prohibited act to be done this implies knowledge of the nature of the act. *2 C.W.R. at 282.*

Allowance of certificate of insolvency is the order of the Court declaring the insolvent entitled to a certificate and directing its issue. *28 N.L.R. at 408 ; 2 Times 177.*

Alteration. Replacing a cadjan roof by a tiled roof is an alteration within the meaning of section 6 of the Housing and Town Improvement Ordinance 19 of 1915. *6 C.W.R. 320.*

Amending ordinance. The function of an amending ordinance is by alteration, addition or both alteration and addition or substitution to improve an existing ordinance and make it more effective for the purpose it is intended to serve. *Per Garvin, J. 3 Cr. A.R. at 29.*

Amendment of a decree. Quite apart from the provisions of the Civil Procedure Code the Supreme Court has power to amend its decrees so as to bring them in accordance with its intention as expressed in its judgment. But it is another matter after the decree has passed the seal to supply an omission which has occurred through inadvertence. *15 N.L.R 39 ; 6 Lead 8.* Section 189 of the Code does not prescribe a time limit for the amendment of a decree, *15 N.L.R. 319* and the amendment of a decree has the same conclusive effect as the rest of the decree. *31 N.L.R. at 195.* A party is entitled as of right to have the decree drawn up so as to effectuate the order made at the trial regardless of any rights that other people may have attempted to acquire under the decree erroneously drawn up. *5 C.W.R. 76.*

See also DECREE.

Amunam. The extent of land in Ceylon is defined by the quantity of seed required to sow it computed at the amunam measure and its sub-divisions. An amunam varies according to the fertility of the soil and is roughly equal to two and a half acres. An amunam is equal to 4 pelas or 40 Kurunies.

Ancestral property in Kandyan law when the line of descent is broken goes to the next nearest line issuing from the common ancestral rooftree, *17 N.L.R. at 205 ; 1 S.C.C. 3.*

See also PARAVENI.

Anda or **Ande** cultivation is cultivation under an agreement the consideration for which is a share of the crop raised by the cultivator. *16 N.L.R. at 67.* An ande cultivator is only a cultivator under a man in possession, *23 N.L.R. at 444*, and the share of the produce is usually one half. *2 Grenier pt. 11. 41.* The ordinary incidents of an agreement for ande cultivation are that the cultivator himself reaps the crop and that he is bound to deliver to the landowner the agreed ground share and take for himself the balance crop. The right of the landowner is then to ask the cultivator for the ground share in terms of the contract and, in case of default, to sue him for its value. He does not become the owner of the ground share until it is specifically delivered to him and, in the meantime, he has only the right to enforce the cultivator's right to deliver. This being so, the mere sale of the land itself by or against the owner does not pass to the purchaser any right to a share of the crop. This can only happen if the purchaser in addition to the conveyance for the land obtains an assignment of the right arising out of the contract with the cultivator. *Per Sampayo, J. 1 C.W.R. at 135.*

Animal. Under the Roman Dutch law the owner of an animal is liable for damages caused by it even in the absence of any negligence on the part of the owner. *2 C.W.R. 61.*

An elk is not an animal within the meaning of section 3 of Ordinance 13 of 1907. *24 N.L.R. 202.*

Animus injuriandi. In an action for damages for malicious institution of an action and malicious and wrongful seizure of property in execution of a decree the *animus injuriandi* which the plaintiff must prove does not mean ill-will. The intention to injure need not be express. It is sufficient to prove such reckless action on the part of the defendant that he must be held responsible for the consequences. *7 C.W.R. 30.*

Annual value. The actual rent received by the landlord, in the absence of evidence of bad faith on the part of the landlord or tenant, is, generally speaking, a fair test to go by in estimating the annual value provided it has not been fixed in view of special circumstances applicable to any particular case. *3 Bal. 163.* See also *1 Times 7 ; 4 A.C.R. 149 ; 9 S.C.C. 129.*

Annuity. A person to whom an annuity has been granted by a testator has a tacit hypothee on the residuary estate of the testator. *1 Bal. 130.*

Ante-nuptial contracts. Under the Roman Dutch law ante-nuptial contracts were strictly interpreted and unless the document expressly renounced the *communis quaestuum*, property acquired during the subsistence of the marriage was deemed to be held in community. *19 N.L.R. 38.*

Ante-nuptial contracts regulating succession to property entered into between Muslims are valid. *19 N.L.R. 175.*

Any. The word *any* when used in Statutes excludes limitation or qualification of any kind whatsoever. *26 N.L.R. 436.*

The term *any land* in rule 2 (a) framed under section 44 of Ordinance 1 of 1885 includes not only the land on which the trees are felled but every land to which they have been carried and any house in which they are stacked. *5 N.L.R. 343.*

The words *any Councillor* in section 33 of the Municipal Council Ordinance includes both elected and nominated members of the Council. *11 Law Rec. 33.*

Any other act in the Prescription Ordinance must be read *eiusdem generis* with payment of rent or produce or performance of service or duty and as meaning an act which indicate that the possession is not adverse but is acknowledged to be subordinate to the right of another to possession of the land. *32 N.L.R. at 204.*

Appeal. It is a well-established principle of law that an appeal never lies to a party to a legal proceeding from an order made in it unless that right is expressly given by statute. *16 N.L.R. 312 ; 33 N.L.R. at 196 ; 1 C.L.W. 112.* An appeal should refer only to matters on record or matters coming to the knowledge of the appellant after trial and proved by affidavit as a ground for re-hearing. *Vand 56.* It is necessary for the proper constitution of an appeal that all parties who may be prejudicially affected by the result of the appeal should be made parties and, unless they are, the appeal should be rejected. *19 N.L.R. 289 F.B. ; 5 Times 9 ; 8 Law Rec. 172.* Every party to a case desirous of appealing must file a separate petition of appeal. *14 Law Rec. 31.* A petition of appeal must be stamped before it is presented and no Court has authority to allow it to be stamped after the appealable time has expired. *3 Lead 54 ; 12 N.L.R. 379 F.B. ; 1 C.W.R. 289.* An appeal cannot be admitted where the stamps for the certificate of appeal have not been tendered simultaneously with the appeal. *2 C.L.W. 410 ; 14 Law Rec. 24 ; 21 N.L.R. 93.* The petition of appeal must contain a plain and concise statement of the grounds of objection and a sufficient statement of the facts of the case and the judgment. *7 N.L.R. 304.* The omission of the name of the appellant in the caption where it is obviously a clerical error can be amended by the insertion of his name *19 N.L.R. 79.* A petition of appeal signed by an Advocate is good, *2 C.L.R. 86 F.B. ; 1 S.C.R. 221 ; 10 N.L.R. 378,* but a petition of appeal signed by a proctor other than the one who holds a proxy is irregular although the irregularity does not justify the dismissal of an appeal. *3 Lead 3 ; 4 S.C.C. 61 ; 4 C.W.R. 390 ; 6 N.L.R. 223.* The Secretary of the District Court cannot draw up a petition of appeal *6 N.L.R. 161,* but a draft petition of appeal signed by the appellant himself in the presence of the Secretary and certified by the latter as such is valid. *3 C.L.R. 39 F.B.* If the petition of appeal is in order and purports to be signed by the appellant's proctor it should be received by the Secretary. It is not necessary for the proctor himself to hand it personally to the Secretary. *7 N.L R. 286.* The respondent in appeal is entitled to support the judgment on any other grounds than those on which the judgment is based. *2 A.C.R. 156,* but any objection to any defect in the constitution of an appeal should be taken in the lower Court. *1 Law Rec. 34.*

An appeal lies from any order subsequent to the stage of the decree which determines rights and which can never come under review by the Appellate Court in an appeal from the decree in the case or any other final judgment. *14 Law Rec. 14.* No appeal lies from an order of a Court allowing or disallowing a claim to property seized in execution, *9 S.C.C. 134 F.B.,* or from an order as to costs in such a claim inquiry. *4 N.L.R. 199.* No appeal lies from an order entering up judgment in terms of an award made upon a

voluntary reference in a pending suit even when the party aggrieved wishes not to attack the award on its merits but to question its validity on legal grounds. *2 C.L.R. 69.* See *5 N.L.R. 178.* There is no appeal from an order fixing a case for trial, *2 C.L.R. 21 ;* or refusing to vacate a previous order entered of consent. *4 Times 98 ;* or based upon an agreement to abide by the Judge's decision after inspection, *30 N.L.R. 481 ; 24 N.L.R. 190 ;* or disallowing a motion with liberty to renew it at some future time. *2 C.L.R. 180.* An appeal on a pure question of costs will not generally be entertained. *2 Br. 212 ; 13 N.L.R. 341 F.B.*

There is no law regulating appeals in insolvency proceedings. *34 N.L.R. 195 ; 2 C.L.W. 138 ; 10 Law Rec. 138.* There is no appeal from the determination of an election judge as to the validity of an election. *33 N.L.R. 193 F.B. ; 1 C.L.W. 159.*

Court of Requests. In the case of an appeal from a judgement of a Court of Requests the petition must be presented to the Court below within the period fixed by the Civil Procedure Code whether the appeal be as of right or with the leave of Court. *2 N.L.R. 222.* When an appeal lies on a matter of law only such matter of law must be stated in the petition of appeal and no matter of law not so stated can be argued at the hearing of the appeal. *9 N.L.R. 302.* An appeal lies from an order of a Commissioner of Requests confirming a sale and directing the issue of a Fiscal's conveyance *26 N.L.R. 65,* but there is no appeal from an interlocutory order *8 N.L.R. 307 ; 10 Law Rec. 91 ;* except in a partition case *6 N.L.R. 101 ;* from an order as to costs, *7 N.L.R. 19 ; 24 N.L.R. 190 ;* from an order setting aside an *ex parte* decree dismissing plaintiff's action *3 N.L.R. 108 ;* from an order under section 326 of the Civil Procedure Code *4 Law Rec. 71 ; 36 N.L.R. 201.*

Privy Council. The value of the subject matter in an appeal to the Privy Council is determined by the extent to which the judgment affects the interests of the party who is prejudiced by it and is seeking to relieve himself from it by appeal. *31 N.L.R. 165.* See also *18 N.L.R. 117 ; 5 Law Rec. 15 ; 30 N.L.R. 421 ;* Where an appeal involves a complicated question of law which has been the subject of conflicting decisions the Supreme Court may grant special leave to appeal. *29 N.L.R. 124.* There is no right of appeal from a judgment of the Supreme Court in insolvency proceedings *2 Br. 331 ; 32 N.L.R. 65.*

Criminal. The test of the right of appeal in a criminal case is the actual term of imprisonment which the appellant has to undergo. *5 Law Rec. 88 ; 11 Law Rec. 123,* See *4 N.L.R. 103.* A petition of appeal on a point of law only in a criminal case is inadmissible without the certificate required by section 340 (2) of the Criminal

Procedure Code. *6 N.L.R. 132.* The certificate must definitely state the point of law to be argued. *5 Times 71.* An accused who has pleaded guilty can appeal as a matter of law. *6 Times 150.* Where an appeal lies on a matter of law only the Court will not review the findings of fact in order to develop the point of law. *3 Br. 99.* A District Judge must forward an appeal to the Supreme Court in a criminal case whether the appeal has been filed in time or not. *10 Law Rec. 131.*

An appeal lies, *inter alia*, from an order condemning a complainant in Crown costs where such order was made without jurisdiction under section 197 of the Criminal Procedure Code, *2 N.L.R. 299 ; 17 N.L.R. 265 ;* or an order awarding compensation under that section, *2 Bal. 69 ; 2 S.C.D. 78 ; 1 A.C.R. 29 ;* an order or discharge under section 191 of the Criminal Procedure Code. *2 Bal. 32 ;* an order to execute a bail bond to keep the peace, *6 N.L.R. 144 ; See 3 Law Rec. 37 ;* an order awarding damages for cattle trespass under the provisions of Ordinance 9 of 1876. *10 N.L.R. 353 ; See 4 N.L.R. 365 ;* an order absolute under section 109 of the Criminal Procedure Code to abate a public nuisance, *13 N.L.R. 119 ;* from an order under section 1 of Ordinance 12 of 1840. *3 C.A.C. 47 ;* but not from an order under section 88 of the Criminal Procedure Code requiring a person to execute a bond to be of good behaviour for a certain period, *2 Bal. 122 ;* from proceedings under section 80 of the Income Tax Ordinance, *2 C.L.W. 351 ; 35 N.L.R. 349 ; 13 Law Rec. 221 ;* from an order of discharge under section 157 (3) of the Criminal Procedure Code, *36 N.L.R. 89 ; 14 Law Rec. 38 ;* or, except with the sanction of the Attorney General, from an order under section 337 of the Criminal Procedure Code, *12 Law Rec. 183 ;* or an order referring parties to their civil remedy. *30 N.L.R. 381 ;* But see *4 C.W.R. 93.*

An appeal lies from an order declining to make an order for maintenance. *5 N.L.R. 334,* but not from an order cancelling a previous order for maintenance. *4 N.L.R. 194 ; 14 N.L.R. 244.*

See also SECURITY FOR COSTS.

Appeal notwithstanding lapse of time. The delay occasioned by the refusal of one's proctor to sign the petition of appeal is no ground for leave to appeal notwithstanding lapse of time, *3 N.L.R. 96* nor is a mistake or oversight on the part of the proctor. *10 N.L.R. 376 ; 11 N.L.R. 25 ; 3 A.C.R. 64.*

Appellate court has power to review a judgment of its own where it appears that fresh evidence has been discovered since such

judgment was pronounced. *2 N.L.R. 311.* It has power, in dismissing an action, to give the plaintiff liberty to bring a fresh action on the same cause of action. *10 N.L.R. 161 F.B.* In a criminal case if a Judge of the Appellate Court has any doubt that the conviction is a right one the accused should be discharged. *32 N.L.R. at 253.* An appellate Court ought to decide in favour of an appellant on a ground put forward for the first time in appeal if it is satisfied beyond doubt that it has before it all the facts bearing upon the new contention as completely as would have been the case if the controversy has arisen at the trial. *20 N.L.R. 340.*

Approbate and reprobate. Where one party is permitted to remove the blind which hides the real transaction the maxim applied that a man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief and insist upon its apparent character to prejudice his adversary. The maxim is founded not so much on any positive law as the broad and universally applicable principles of justice. *20 N.L.R. at 124.*

Appropriation. The Roman Dutch law on the subject of appropriation of payments is based on considerations of advantage to the debtor. *15 N.L.R. at 338.* See *3 N.L.R. 142.* An implied assent to an appropriation is good both under the English law and the Roman Dutch law. *9 N.L.R. 83.*

Appurtenances of a field are the houses and gardens of the landowners and his tenants, the threshing floor, the wooded lands surrounding the field and acting as a protecting belt or hedge ; also an extent of high land for chena cultivation proportionate to the extent of the field. Forests do not pass under a clause of appurtenances. *5 N.L.R. 284.* One field cannot be an appurtenance of another field. *6 Law Rec. at 113.*

Arbitration. The whole policy of the law as regards arbitration and awards is to give all finality that is possible to the decisions of the tribunal which the parties themselves constitute. *1 Br. at 195.* A reference to arbitration in the course of an action can only be made on the application of all the parties to it. *30 N.L.R. 144 ; 8 Law Rec. 83.* The application must be made in writing either by the parties or their proctors specially authorized in that behalf and the want of these formalities is not cured by the parties subsequently appearing before the arbitrator. *2 N.L.R. 319 ;* See *2 S.C.C. 85.* The reference can be made only by the Court itself in that suit. *21 N.L.R. 397,* and the provisions of the Civil Procedure Code in regard to arbitration are rigorously and literally to be complied with. *14 N.L.R. 73 ; 23 N.L.R. 500 ; 6 Law Rec. 25.* A Court has power to grant an arbitrator his costs of arbitration. An

application for such costs may be made by an arbitrator even where the award made no provision concerning them. *4 Law Rec. 23.*

Archbishop. See CORPORATION SOLE.

Arrack is an excisable article within the meaning of the excise Ordinance. *17 N.L.R. 177 ; 17 N.L.R 350 ; 1 Cr. A.R. 43.* Possession of arrack in less quantity than two quarts is not an offence under section 10 of Ordinance 10 of 1844. *15 N.L.R. 87.*

Arrack rents are not a creation of statute but have been customary in Ceylon for the last hundred years. They are the right to a monopoly of the sale by retail of arrack and toddy within certain specified districts, the Government making its excise revenue from the sale of the rents and not from an excise duty on the spirits itself. A rent gives no monopoly for a sale by wholesale in the district of the rent and although the conditions of sale give a right to the renter to apply for and obtain four separate licences within his district these are not any part of the rent itself but an anciliary privilege granted to the renter. *Per Shaw, J. 18 N.L.R. at 434.*

Arrears of rent. Rent which may subsequently accrue after the institution of the action does not come under the description of arrears of rent. *13 N.L.R. at 200.*

Arrest. To touch the body of a person is not necessary to constitute an arrest if the person arrested submits to being taken into custody. *2 N L.R. at 56.* No man, not even the Sovereign of the Empire, can arrest or imprison a British subject except under and by virtue of due process of law. *1 Bal. 13 ; 7 N.L.R. 290.* A headman, constable or peace officer upon apprehending an accused person must take him forthwith to the Police Court if it is sitting or to the usual place of detention for the Police Court if it is not sitting. *2 S.C.C. 120 F.B.*

Artificer is a man who makes something as distinguished from a man who only does something. *1 Cr. A.R. 9 ; 6 Lead 26.* A machine ruler in a printing office, for example, is an artificer. *3 C.L.R. 47,* while a tanner is not, *7 Tam 1,* nor a barber. *3 Bal. 235.*

Assault. Mere words do not amount to assault but if they are accompanied by a threatening attitude they may constitute an assault. *33 N.L.R. at 306.*

Assessment. The general principle on which the valuation of land compulsorily acquired by Government is based is to find the market value as near as it can be ascertained of the entire land and then to estimate the value of the portion of land taken at that rate

6 S.C.D. 36. In assessing land it is not the prospective value that has to be taken into consideration but its actual value in the state in which the assessing officer finds it. *2 Bal. 57.* The fact that premises have been already assessed does not mean that the assessment is finally fixed for the year regardless of what buildings might be erected on it thereafter. *31 N.L.R. at 229.*

Assignee of a bond can recover the full amount of the assigned instrument though it be more than he paid for the assignment except, perhaps, where the assignment is in the nature of a speculative or litigious transaction. *21 N.L.R. 215.* An assignee of a mortgage bond cannot claim to be substituted in place of the mortgagee under section 404 of the Civil Procedure Code where the assignment is subsequent to the entering of the decree. *7 Law Rec. 181.* The assignee of a decree is entitled to maintain an action on the decree against the judgment debtor. *11 N.L R. 177 ; 3 A.C.R. 156.* An assignee is not affected by any failure on the part of the assignor to comply with the provisions of the Registration of Business Names Ordinance. *13 Law Rec. 35.*

The power to reject an assignee in insolvency is a discretion vested in the District Court with which the Supreme Court will not interfere except in exceptional circumstances. *3 N.L.R. 92 ; see 4 Law Rec. 148.* An assignee in insolvency cannot delegate his duties to an attorney or other agent nor should his report be based on information received from outsiders. *19 N.L.R. 478.* The assignee can deal with the assets of the estate only in the way authorized by the Ordinance. He is not entitled to pick and choose the creditors to whom he will pay away the assets. He must declare a dividend and with the leave of Court pay the creditors in accordance with such dividend. *2 N.L.R. 1.* He is not responsible for irrecoverable debts. *5 N.L.R. 175.* It is not open to a defendant to a suit to question the right of an assignee to institute an action for the recovery of a debt due to the insolvents estate without previous sanction. *14 Law Rec. 125 ; 36 N.L.R. 313 F.B.* A Judge is not bound to act merely on the report of the assignee but must satisfy himself whether an insolvent is entitled to a certificate of conformity or not. *6 N.L.R. 270.* An assignee is entitled to reasonable remuneration. *4 Law Rec. 163.*

Assignment. The interest in a bill of exchange or promissory note can be assigned otherwise by endorsement. *16 N.L.R. at 432,* but before a plaintiff can sue upon a Promissory Note which has been assigned to him by the payee the defendant should have had notice of the assignment in writing. *17 N.L.R. 504 ; 10 Law Rec. 5.* Where an assignment purports to be by way of security, if the money secured is repaid by the assignor, the deed would have no further effec and no reconveyance to the assignor would be

required. *26 N.L.R. at 110.* Under the Roman Dutch law the assignment of the rights of a party in a pending action after *litis contestatio* is not illegal and void. *10 N.L.R. 252.* The assignment of a pending hypothecary action must be in writing duly executed before a Notary and two witnesses. *13 Law Rec. 138 ; 36 N.L.R. 110.* It is not necessary for the validity of the assignment of a decree that it should be sanctioned by Court. *35 N.L.R. 342 ; 13 Law Rec. 163.* It is lawful to assign a decree not yet in existence but until it comes into existence the procedure in section 339 of the Civil Procedure Code cannot be availed of. *3 C.L.W. 99.*

Assigns. The word *assigns* in a deed has no more force than *executors* or *administrators. 17 N.L.R. at 132.*

Assurance in section 1 of Ordinance 21 of 1870 cannot be restricted to a hypothecation. It includes a conveyance. *21 N.L.R. 203 ; 6 C.W.R. 125 ; 1 Law Rec. 10.*

Aswedumize. A person who is a cultivator of a field and as such aswedumizes a portion of the field on the strength of which he claims the portion aswedumized is not a possessor at all and is not entitled to compensation for improvements made by him. *2 Mat. 187.*

Attest does not necessarily mean that the witness is to write down anything in the document to the effect that he subscribes as a witness ; but if it is shown that in fact he did sign and did witness the signature which he is attesting that would be sufficient for attestation. *1 A.C.R. at 181.*

Attestation of a deed by a Notary is not complete when he has merely signed it without sealing it. *2 N.L.R 187.* An error in the attestation as to the date on which a deed was executed does not invalidate the deed. *5 Law Rec. 82.*

Attesting witness. In order to prove the execution of a deed it is not necessary to call the Notary and both the attesting witnesses. It may be proved by the evidence of only one witness. *2 N.L.R. 199.* The Notary is an attesting witness and is competent to prove the execution of a deed if the grantor was known to him. *6 C.W.R. at 213 ; 1 S.C.R. 216 ; 1 Law Rec 47.* Where the Notary and attesting witnesses are dead, on proof of the Notary's signature, his statement in the attestation clause with regard to his knowledge of the person executing the deed is admissible in evidence. *1 C.L.W. 350 ; 12 Law Rec. 69.* The attesting witness called to prove the execution of a deed should speak to the act of signature. *5 Law Rec. 82.*

Attesting witnesses to a will need not subscribe their names to the instrument in the presence of each other. *15 N.L.R. at 51. See 4 S.C.C. 119.*

Auction cheetu club. In an auction cheetu club an auction is held at the end of the period of distribution and the money is paid over to the member who makes the highest bid above the amount of the fund. The highest bidder, no doubt, has the benefit of the money before the others but he obtains that advantage not by chance but by open competition and the premium be pays for it is determined at his own free will. *22 N.L.R. at 96.*

Autrefois acquit. The principle upon which the plea of *autrefois acquit* is based is this, that the prisoner should not be punished twice or put in jeopardy twice for the same offence, *6 S.C.C. at 107.* The plea can only succeed when the accused is charged with the same offence or, upon the same facts, for an offence for which a different charge from the one made against him might have been made under section 181 of the Criminal Procedure Code or for which he might have been convicted. *29 N.L.R. at 210.* To set up such a plea there must have been some previous trial at which a final order has been made. *10 Times 1.* An acquittal for theft, for example, is a bar to a prosecution for criminal misappropriation of the same subject matter, *1 C.L.W. 29,* and a man acquitted of murder cannot afterwards be charged with abetment. *7 N.L.R. 97.*

Autrefois convict. A plea of autrefois convict will not avail unless the accused has received judgment of imprisonment or any other like sentence. *3 N.L.R. 50.*

Award is final between the parties unless it is challenged within the prescribed time. *3 Law Rec. 121.* An award by an arbitrator is invalid where all the parties have not signed the reference, *28 N.L.R. 391,* and is not binding even on those who have consented to it. *30 N.L.R. 144 ; 8 Law Rec. 83.* An award is not invalid by reason of its being unstamped as it can be stamped even after it has been filed in Court. *6 C.W.R. 66.* When the time for making the award has expired the Court may enlarge the time on cause shown. *4 N.L.R. 118 ; 3 N.L.R. 384,* but not after the arbitrator has filed his award in Court. *7 N.L.R. 351 ; 6 Law Rec. 23.*

Bagatelle is not a game of chance within the meaning of section 19 of Ordinance 4 of 1841. *8 S.C.C. 92.* The game of bagatelle sanctioned by Ordinance 17 of 1889 is not the game of Kurunegalle rouge et blanc. *1 N.L.R. 176.*

Bail. The effect of granting bail is not to set the accused free but to release him from the custody of the law and entrust him to the custody of his sureties who are bound to produce him at a specified time and place. *18 N.L.R. 443.* The Supreme Court has a discretion to admit accused persons to bail in all cases but, in the exercise of that discretion, the nature of the charge, the evidence by which it is supported and the sentence which by law may be passed in the event of a conviction are, in general, the most important ingredients for the guidance of the Court and, where these are weighty, a Court should not intefere. *12 N.L.R. 65.* The mere fact that the punishment for the offence with which the accused is charged is death should not, however, prevent the Supreme Court from exercising its power of allowing bail if, in the circumstances of the case before it, it is of opinion that bail should be allowed. *2 C.L.W. 246.* But where an accused charged with murder has been committed for trial special grounds must be adduced for the granting of bail where the Crown opposes the application. *33 N.L.R. 378; 1 C.L.W. 26.* An important consideration in an application for bail is whether the case is *prima facie* a strong or weak one against the accused. *13 Law Rec. 75.* Habitual criminals are not excluded from the privilege of being enlarged on bail pending an appeal. *2 Times 6; 5 Law Rec. 74.*

The liability of a surety on a bail bond is not terminated by the postponement of a criminal case. *3 Times 20,* but where the bail bond of a surety is once forfeited and the penalty exacted the bond is exhausted and the Court cannot exact a further penalty for a subsequent default of appearance on the part of the accused. *2 Law Rec. 104.* The postponement of a case *sine die* in which the accused by bail bond binds himself to attend court on a certain day to answer a criminal charge and to continue to attend until otherwise directed determines the bond. *3 N.L.R. 122.*

Bailment. In a bailment suit it is no defence that the lender had no right to the goods. *7 Tam. 41.*

Bakery. The business of carrying on a bakery or eating house is a legitimate and, *prima facie*, innocuous trade and any enactment curtailing the rights of a member of the public to carry it on must, in accordance with the general rules for the construction of Legislative enactments, be given the most limited construction that the language permits. *Per Shaw J. 4 C.W.R. at 325.* The place used as a bakery means the place actually so used. *12 N.L.R. 24.*

Balance used for testing a weight which is alleged to be a false one should itself be tested before it is applied as a test. *1 N.L.R. 223.*

Ballot. The rule of the secrecy of the ballot is strict and not even the Election Judge is entitled to know until a vote has been declared invalid for whom it was given. *33 N.L.R. at 171.*

Bank. The Roman Dutch law in the matter of the rights of mortgage and pledge does not give place to the English law when the mortgagee or pledgee is a bank. *33 N.L.R. 249; 1 C.L.W. 149; 12 Law Rec. 15.*

Banker. The legal relationship of banker and customer is that of debtor and creditor. *9 Law Rec. 109.*

Banking has been construed to embrace every transaction coming within the legitimate business of a banker. There is little doubt that the keeping of a current account between a bank and its customer is such a transaction and the law applicable is the English law. *16 N.L.R. 498.* The business of a forwarding and commission agent who advances monies at an agreed rate of interest against produce to be supplied is not a banking business. Such an agent is not entitled to charge compound interest as being a matter of trade usage. *11 Times 61.*

Barber. See ARTIFICER.

Bastards. See ADULTERINE CHILDREN.

Beaching boats. The right of beaching boats on private land at the mouth of a river is not a praedial or personal servitude but could form the subject of a public right if there is evidence of immemorial user. *2 Lead 54.*

Beef in section 21 of Ordinance 9 of 1893 includes the tail of a slaughtered animal. *3 S.C.D. 31.*

Believe in section 394 of the Penal Code involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property was stolen property. It is not sufficient to show in such a case that the accused was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. *30 N.L.R. at 508; 10 Law Rec. at 62.*

Beneficium ordinis sive excussionis. Where the plea of *beneficium excussionis* is pleaded against a creditor the creditor holds all securities given by the debtor in trust for the surety and the surety is discharged if the securities become valueless not only by the dilatoriness of the creditor but also by any act on his part. Such an act must not be merely a negligent act but must be a positive act on the creditor's part. *5 Law Rec. at 28.* A surety who has not renounced this *beneficium* can take the exception when sued. The exception is of the class of dilatory exceptions and only tends to put off the action of the creditor against the surety until after the time of discussion. The exception ought to be taken before *litis contestatio, 2 Bal. 153,* which may be regarded as taking place on the filing of the answer. *19 N.L.R. at 460.*

Bet. To be a bet the bet must be made and a bet cannot be made merely by handing money to a person for him to put it on the totalisator. *1 C.L.W. 44.*

Betel leaf is not a vegetable. *17 N.L.R. 275.*

Bharakaraya. There seems to be no doubt that this word is habitually used by Sinhalese Notaries as the equivalent of the English word *assigns* in collocation with *executors and administrators. Per Lascelles, C. J. 18 N.L.R. at 175.*

Bill of sale is unknown to the Roman Dutch law. It is the peculiar creation of English law but has been introduced into Ceylon. *33 N.L.R. at 75.* A deed of gift of the stock-in-trade and goodwill of a business is a bill of sale within the meaning of section 17 of the Registration of Documents Ordinance. *35 N.L.R. 329 ; 13 Law Rec. 108.*

Binna marriage is a marriage when the husband is brought to the house of the wife or her relations, the essential factor being his residence on property belonging to the wife's family, not necessarily that of her father. *Hayley 193.* A binna married widower is completely excluded from any rights to the landed estate of his deceased wife. *24 N.L.R. 257.* A binna married daughter does not forfeit her share in the paternal inheritance by leaving the *mulgedera* after the father's death. *34 N.L.R. 379 ; 12 Law Rec. 126.* A daughter married in *diga* can regain, even after her father's death, binna rights during the lifetime of her husband by maintaining a close and constant connection with the *mulgedera. 19 N.L.R. 353.* To establish, however, that a *diga* married daughter has regained *binna* rights it must be proved that the father in his lifetime or the family after his death had manifested an intention to admit her to *binna* rights either by express declaration or by conduct from which such an intention may be gathered. *35 N.L.R. 179 ; 24 N.L.R. 109 ; 10 Times 140 ; 12 Law Rec. 257.* The onus is on the wife to prove it. *7 Law Rec. 176.* Family forfeitures in the nature of a deprival of *binna* rights are capable of being waived. *6 Law Rec. 164.* A father's right to inherit the property of a child born of a *binna* marriage is not lost when there are only distant maternal relations. *27 N.L.R. at 365 ; 7 Law Rec. 31.*

See also DIGA.

Birth certificate. An entry of the date of birth in a birth certificate to *prima facie* proof of its correctness. *3 Bal. 27.* See *4 S.C.C. 80.*

Blank note. The date of issue of a blank Note is the date when it is invested with all the features of a promissory note. *31 N.L.R. at 375.* A blank Note subsequently filled up is not enforceable. *31 N.L.R. at 425.*

Boat. See BEACHING BOATS.

Boedelhouderschap is the continuation of the community of property which existed between the spouses between a surviving spouse and the heirs of the deceased spouse. The children enjoy half the profits that accrue to the estate after the death of the deceased parent but all losses are borne by the surviving parent. It is doubtful whether *Boedelhouderschap* has ever been introduced into Ceylon. *1 S.C.R. 147 ; 2 C.L.R. 59 ;* See *20 N.L.R. at 330.*

Bona fides. The principle that the jurisdiction of a Magisterial Court is ousted by a *bona fide* claim of title is not a principle of substantive criminal law. It is a principle of criminal procedure and may be legitimately received into our system under section 6 of the Criminal Procedure Code. It has been so received and, together with its necessary corollary that the title must not be a title impossible in law, has obtained the *imprimatur* of the Full Court. *23 N.L.R. at 39.* Before a person can be said to have a *bona fide* belief that property is his, it must be a belief of the existence of a right which could exist by law. *20 N.L.R. 447.* Where there is a *bona fide* mistake of fact there is a good defence to a criminal action. *4 C.W.R. 126.*

Bona fide possession. The presumption always is in favour of the *bona fides* of possession and therefore he who alleges *mala fides* in a possessor is bound to prove that he had knowledge that the property belonged to another. *22 N.L.R. at 287.*

Bona fide possessor is one who possesses in the honest belief that the property belongs to him. *2 Bal. at 150 ; 9 N.L.R. 98.* A *bona fide* possessor need not necessarily be the owner of the property possessed nor need he have a legal right to possess it. It is sufficient if his possession is the result of an honest conviction in his mind of a right to possess. *17 N.L.R. at 51.* See *4 A.C.R. 17.* A person who takes possession of land and executes improvements thereon in expectation of a formal title which in good faith he believes himself certain to obtain may be a *bona fide* possessor. *24 N.L.R. 37.* A person who has made improvements with the leave and license of the owner is entitled to all the rights of a *bona fide* possessor. *2 C.A.C. 86 ; 9 N.L.R. 98 ; 8 Times 58 ; 26 N.L.R. 73.* An improving co-owner is treated as a *bona fide* possessor and is entitled to *mesne* profits unless it can be shown that he is not *bona fide. 2 C.L.W. 444.* A planter who is admitted to be entitled to a planter's share has a sufficient interest in the land to constitute him a *bona fide* possessor in respect of improvements outside the actual planting. *19 N.L.R. 441 F.B. ; 1 Times 35.* A fiduciary is in the position of a *bona fide* possessor and so is a purchaser from him. *20 N.L.R. 89.* See however *18 N.L.R. 59 ; 18 N.L.R. 353 ; 19 N.L.R. 492.*

Bond, conditioned for the payment of money means an instrument by means of which one person binds himself to another for the purpose of securing the payment of money. *26 N.L.R. at 432.* A document notarially executed containing merely a promise to pay money is not a bond conditioned for the payment of money. The expression refers only to documents in which there is a condition that money is to be paid by way of security. *1 C.W.R. at 73.* See *2 N.L.R. 238.* A document setting out an agreement to convey land and providing for the payment of a sum as liquidated damages in the event of failure to convey is not a bond conditioned for the payment of money. *31 N.L.R. at 51 ; 7 Times 1.*

Where a notarially attested instrument recites that the defendant has borrowed a sum of money and, renouncing the benefit of pleading want of consideration, agrees to pay on demand the said sum together with interest, the instrument is a bond within the meaning of section 6 of Ordinance 22 of 1871. *2 C.W.R. 60.*

A lease is not a bond. *1 C.W.R. at 75.* A bond executed by order of Court hypothecating immovable property as security of costs of appeal need not be notarially attested. *1 Law Rec. 26.*

Book debt. The question of what is a book debt as the term is used in the Prescription Ordinance has been before the Court before and is not an easy question to decide. The term appears to have been first used, so far as I can ascertain, in Regulation 13 of 1822, section 7 of that Regulation being, with one slight addition, in practically the same terms as section 7 of Ordinance 22 of 1871. Regulation 13 of 1822 was repealed by Ordinance 8 of 1834 which was repealed by Ordinance 22 of 1871. In all these enactments it is to be noted that the term *book debt* is coupled with the term *shop bill.* In its general sense the term *book debt* is very much wider than the term *shop bill* but, having regard to the provisions of the previous sections and also to the wording of section 9, I am inclined to think that here the principle *noscitur a sociis* applies. If that is so, the meaning of the term must be limited by reference to the previous specific word which has been coupled with the term *book debt.* I appreciate the fact that this doctrine must be applied with caution since it implies a departure from the natural meaning of the words but it is clear from previous judgments of this Court that the term as used in section 9 has not been given its natural and general meaning ". *Per Dalton, J. 34 N.L.R. at 253.* A book debt is one arising in connection with a shop, trade or business and would not include a debt which consists of fees due to a professional man. *28 N.L.R. at 322 ; 8 Law Rec. 87.* A claim for money lent does not become a book debt merely because the transaction is entered in the books kept by the lender in the ordinary course of business. *35 N.L.R. 321 ; See 10 Law Rec. at 183.*

Borrow does not necessarily imply a promise to pay. *16 N.L.R. at 480.*

Bought and sold notes Parol evidence may be given to show that a broker's bought and sold notes do not constitute the record of a concluded agreement and do not contain the real agreement come to. *13 N.L.R. 11.*

Breach of contract. When the time for the performance of an obligation is fixed so that there can be a definite starting point for the running of prescription, the breach of contract occurs when the performance does not take place within the time so fixed. But when there is no fixed date for the performance but there is only an obligation to do any act within a reasonable interval after a given date, there is no breach unless there is a refusal either on demand or otherwise to perform the obligation or unless the person liable has in some way disabled himself from performing the contract. *22 N.L.R. 476.*

Breach of the peace involves some violent interference either with person of property or some violent act calculated to alarm the King's subjects. *27 N.L.R. 97.* The killing of a calf, for example, constitutes an offence involving a breach of the peace under section 80 (1) of the Criminal Procedure Code. *3 C.L.W. 132.* But persons who disturb the public tranquillity by their quarrelsome behaviour cannot be said to commit a breach of the peace. *3 Times 4.*

Breach of promise of marriage. No action lies for the recovery of damages for breach of promise of marriage unless the promise has been made in writing. *§ 21 of Ordinance 19 of 1907.* Secondary evidence of the written promise is admissible. *4 S.C.D. 53 ; 5 A.C.R. 123 ; 4 Lead 68 ;* and a refusal to marry may be gathered from the conduct of the defendant and the surrounding circumstances of the case. *15 N.L.R. 353.* Notice to the Registrar of marriage is not a written promise. *17 N.L.R. 425 ; 21 N.L.R. 443 ;* but the signing of a betrothal register before the parish priest is a valid promise. *30 N.L.R. 274.* So is the recital of an arranged marriage in a marriage settlement. *30 N.L.R. 310.* See also *9 N.L.R. 62.*

Bribery. The giving of a pecuniary facility to an active supporter on the eve of an election comes within the definition of bribery though the motive for it may be the desire to make sure of his continued support. *26 N.L.R. at 239.* Payment to a voter for canvassing is not of itself bribery though it is an illegal practice. Whether it is bribery is a question depending on whether the payment was made to influence the canvasser's vote. *33 N.L.R. at 30.*

Brick kiln in the Local Boards Ordinance of 1898 includes a tile kiln where tiles are manufactured. 2 *Times* 182.

Broker is a person making it a trade to find purchasers for those who wish to sell and vendors for those who wish to buy and to negotiate and superintend the making of a bargain between them. 9 *N.L.R. at 110.* A broker is not entitled to his commission till the purchase is concluded by a binding contract. 4 *S.C.D. 35 ; 30 N.L.R. 389.* To entitle himself to a commission in a negotiation that has fallen through he must either prove a direct default on the part of the vendor or a binding agreement by the vendee to buy the property. 21 *N.L.R. 79.* See also *30 N.L.R. 389 ; 13 N.L.R. 85 ; 4 N.L.R. 90.*

Brothel. "If it were necessary to define a brothel for the purposes of our own law I should feel inclined to give that term a meaning consistent with local ideas and conditions. Here we have no immoral women walking the street, picking up men and resorting to some house for the purpose of prostitution. I have always understood the commonly accepted meaning of brothel to be a house run by a man usually called a 'brothel keeper' to which men resorted for purposes of prostitution with women who were to be found in the house. I would hold that this is the meaning which our Legislature meant the word *brothel* to have in local Ordinances despite the fact that the language of our Ordinance appears to have been borrowed from the English Criminal Law Amendment Act and the words in sub-section 2 would appear to draw a distinction between a brothel and a place resorted to for the purposes of habitual prostitution". *Per Schneider, J. 6 C.W.R. at 167 ; 21 N.L.R. 119.* See also *1 N.L.R. 212.* The occupation of a house or room by a single prostitute may not constitute it a brothel. It is not necessary to make a house of ill fame a brothel that women should resort to it from outside. It is sufficient if prostitutes reside in the house and men visit them there for immoral purposes. *24 N.L.R. 26 ; 4 Law Rec. 177.* The occupation of the premises is the essence of the offence of brothel keeping, 22 *N.L.R. at 215,* and one single instance of prostitution is insufficient to render a house a brothel. *13 Law Rec. 204 ; 6 Times 124 ; 36 N.L.R. 300 ; 3 C.L.W. 105.* A person who manages a brothel cannot be dealt with under section 105 of the Criminal Procedure Code. 7 C.W.R. 34.

Buddhist temple is not a juristic person in whom property can be vested. *14 Law Rec. 18 ; 36 N.L.R. 422 ;* See *6 Lead 20 ; 20 N.L.R. 140.*

Buddhist Temporalities Ordinance is not intended to apply to premises that are private property. 22 *N.L.R. 236.* The object of the Ordinance is to prevent unduly prolonged alienation of the

properties devoted to religious use and a long lease, unless the Court is satisfied that there were good reasons for its being granted, would be scrutinized very closely by the Court before whom it is challenged." 22 *N.L.R. 321 P.C.*

Building. By the law of Ceylon the ownership of a building vests, by the rule of accession, in the owner of the soil. *14 N.L.R. at 270 ; 3 N.L.R. 160 ; 10 Law Rec. 20.*

The building contemplated in Section 86 of Ordinance 10 of 1861 is a building of a permanent character and a pandal is not such a building. *4 S.C.D 19 ; 13 N.L.R. 26*

An order for the demolition of a building under Section 13 (2) of the Housing and Town Improvement Ordinance of 1915 can be justified only if such building contravenes in any way the express provisions of the Ordinance. *3 Times 117.* Such an order should not be made if by some alteration the building can be made to comply with the law. *3 C.L.W. 122.* It is not obligatory on a Magistrate to allow an application to demolish a building erected without the permission of the Chairman. The Ordinance vests a discretion in him. *1 Law Rec. 121.*

Business has a wider signification than the word *trade* and includes any continuous and systematic enterprise of a commercial character. *Per Bertram, C. J. 5 C.W.R. 256.* The word *business* in section 9 of the Business Names Registration Ordinance means the aggregate of commercial transactions carried on by the partners. 22 *N.L.R. at 274 ; 8 C.W.R. at 104.*

The Supreme Court sitting in its Appellate jurisdiction at Hultsdorf is not a place of business or employment of an Advocate within the meaning of section 10 (a) of the Income Tax Ordinance. *14 Law Rec. 133 ; 36 N.L.R. 258.*

Business name. The true test as to what is the business name of a Chetty trader is the form of signature which his attorney adopts in formal documents. The custom is universally recognized that an agent denotes his signature as that of an agent by prefixing the *vilasam* of his principal to his own personal name. *29 N.L.R. at 230.*

A person who, without registering his business name, institutes an action to enforce his rights on a contract entered into while he was in default is not entitled to purge his default during the pendency of the action. *29 N.L.R. 225.*

See also ASSIGNEE.

Butcher. A servant employed by a licensed butcher need not hold a licence himself to slaughter animals for his master. *21 N.L.R. 184 ; 1 Law Rec. 67.*

By-Laws. Where by-laws are enacted by the Legislature as part of an Ordinance their legality cannot be canvassed in the Courts. *28 N.L.R. 205.* A by-law to be valid must contain adequate information as to what it requires or forbids to be done so that the person affected may be in no doubt as to what he is required to do or abstain from doing and as to the penalties for non-compliance. *2 Times 245.*

Calendar month does not necessarily mean only a month commencing from the first day ; it may consist of broken periods of two months. *21 N.L.R. at 194.*

Canal in section 94 of Ordinance 10 of 1861 cannot be deemed to include the side drain of a house. *Vand 1.*

Cancellation. A Court will grant a lessee relief against a provision in the lease giving the lessor a right to claim a cancellation in the event of a breach of a stipulation by the lessee if the breach thereof did not involve a notably grave and damnifying misuse of the property leased. *8 N.L.R. 118 ; 15 N.L.R. 313 ; 2 S.C.R. 35.* Negligent cultivation may, in any particular case, be a ground for cancellation. *24 N.L.R. 97 ; 2 Law Rec. 161 ; 5 Law Rec. 3.* So also failure to carry out an express stipulation in a lease. *1 Law Rec. 9.*

Under the Roman Dutch law in the event of an actual sale of land the purchaser cannot claim a cancellation of the contract owing to any defect of title in the seller but he has to satisfy himself with the possession and the liability of the vendor to warrant and defend his title in the event of an attempted ouster. *17 N.L.R. at 166.*

An action for the cancellation of a deed of gift by a husband on the ground that it was a fraud on the community does not lie with the administrator of the estate of the wife. Such an action might have been open to the wife herself as a personal action or possibly to her heirs after her death. *22 N.L.R. 494.*

It is not necessary that a person cancelling a stamp should with his own very fingers write on it the date of cancellation. The insertion of a date on a stamp is not always necessary provided the stamp is cancelled in such a manner as effectually to obliterate the same and so as not to admit of its been used again within the meaning of section 8 of the Stamp Ordinance. *21 N.L.R. at .32 F.B.* See *20 N.L.R. 135.* The stamp on a promissory note may be cancelled by the Court *nunc pro tunc.* *20 N.L.R. 183.*

An order for cancellation of maintenance cannot be made so that it may have a retrospective effect. *32 N.L.R. at 72.*

Canvass in Article 74 (d) of the Order in Council means a solicitation for votes or for support which solicitation may be made in various ways such as by personal requests to individuals, by speeches or by the distribution of leaflets exhorting people to vote for a particular candidate. *2 C.L.W. 60 ; 12 Law Rec. 189.*

Capital. When section 21 (4) of Ordinance 7 of 1840 speaks of capital it refers to the initial capital only and not to the amount that may stand as capital after additions or withdrawals at any time during the course of the business. *Per Sampayo, J. 19 N.L.R. 43.* Neither the stock in trade nor the assets of the partnership at any particular time necessarily represent the capital of the firm which is the actual cash and the value of the property contributed by the partners to the common property of the firm for the purpose of the joint business. It would appear that the value of the goodwill of a business, the property of one of the partners and contributed by him for the purposes of the joint venture may constitute part of the capital of the firm. *Per Shaw J. 2 C.W.R. at 155.*

See also *4 C.A.C. at 79 ; 4 C.A.C. 80.*

Cartway. The owner of a land which has access to the high road by a path cannot claim a cartway unless the actual necessity of the case demands it. *30 N.L.R. 56.*

Caste. The selection of certain castes to which candidates are to be confined is contrary to the provisions of section 18 of the Village Communities Ordinance 9 of 1924. *31 N.L.R. at 352.*

Causa denotes the ground, reason or object of a promise giving such promise a binding effect in law. It has a much wider meaning than the English term *consideration* and comprises the motive or reason for a promise and also purely moral consideration. *8 N.L.R. at 54.* According to the Roman Dutch law a promise deliberately made to discharge a moral duty or to do an act by generosity or benevolence can be enforced at law, the *justa causa debendi* sufficient to sustain a promise being far wider than what the English law treats as good consideration for a promise. *20 N.L.R. at 294 P.C.*

Cause of action. See section 5 Civil Procedure Code. The term *cause of action* as used in the Code ought not to be construed as if it were identical with the transaction out of which the right to relief arises. *4 B.N.C. at 90.* The term *cause of action* in sections 66 and 77 of the Courts Ordinance has a much wider signification than in the interpretation section of the Civil Procedure Code. *19 N.L.R. at 35.* The words *denial of a right* in section 5 of the Code do not mean the mere verbal denial of the right but a with-

holding of, or a refusal to allow, the exercise of a right. *16 N.L.R. 398 F.B.* A failure to perform a contract is a wrong within the definition of the expression *cause of action. 9 N.L.R. 316.* The point of time when the right to bring an action accrues is the time when the party has been interfered with in the enjoyment of his rights. *16 N.L.R. at 392.* For the purpose of determining whether or not two causes of action are the same one has to look not to the mere form in which the action is brought but to the grounds of the plaint and to the *media* on which the plaintiff asks for judgment. *13 N.L.R. at 63.* A great criterion of the identity of causes of action is that the same evidence will maintain both actions. *14 N.L.R. 262.* Where, after the institution of an action, the plaint is amended by the addition of an alternative count the new cause of action relates back to the date of original institution. *1 C.L.W. 207 ; 12 Law Rec. 20.* In the case of fraud the cause of action arises on the discovery of the fraud. *28 N.L.R. 97.* The cause of action in an action under section 247 of the Civil Procedure Code is the seizure which is the violation of the right of ownership and not the disallowance of the claim. *12 N.L.R. 196.*

Cause of death contemplated in section 32 (1) of the Evidence Ordinance is an external or physical cause accounting for the death. *5 Law Rec. at 12.*

Caveat. A person who lodges a *caveat* against the registration of an instrument affecting land in which he has no registrable interest is not liable in damages without proof of malice. *35 N.L.R. 145 ; 10 Times 179 ; 13 Law Rec. 42. Contra 29 N.L.R. 225.*

Caveat emptor. The doctrine of *caveat emptor* applies to all contracts for the sale of land in the Kandyan provinces and all purchasers for valuable consideration should be duly put upon inquiry as to this vendor's title to convey. *15 N.L.R. at 195.*

Certificate of insolvency. A court should act with great caution and circumspection before issuing a certificate of conformity which would enable a trader at once to re-commence his trade should be desire to do so. *6 N.L.R. 270.* A judge should not adjudicate on the question of a certificate without a report from the assignee. *1 N.L.R. at 322.* A certificate should not be refused to an insolvent on the ground that he has instituted a vexatious actions unless such action has been instituted within six months next preceding the filing of the petition. *6 Law Rec. 97.* The term of suspension of a certificate commences from the date of its award and not from the date of the confirmation of the award in appeal. *3 N.L.R. 114.*

Cessio bonorum under the Roman Dutch law was the giving up of a debtor's property to his creditors whereby he was released

from imprisonment and ceased to be liable for his debts. *Cessio bonorum* has been abolished in Ceylon by Ordinance 7 of 1853.

Champerty is the maintenance of legal proceedings by a person who has no direct concern in them with a view to sharing the proceeds of a suit. An agreement which is champertous is unlawful and cannot be enforced. *1 Lead 55 ; 1843-55 Ram 32.*

Character. It is competent for Courts of first instance to inquire, after the conviction of the accused persons before them, into the character and antecedents of the persons so convicted. Such inquiries must be held on oath. *14 N.L.R. 211 ; 14 N.L.R. 213 ; 36 N.L.R. 328.*

In all cases in which damages are claimed for injury to one's feelings and reputation evidence of character is relevant. *8 Law Rec. 32 ; 4 Times 111.*

Charge. The object of framing a charge and reading it to the accused is to inform him of the exact offence of which he is accused. *1 C.W.R. at 195.* See *1 C.W.R. 208.* The failure to frame a charge is an illegality that vitiates the whole proceedings. *5 Law Rec. at 53,* but a charge explained from the plaint is not necessarily a fatal irregularity. *3 B.N.C. 46.* A charge may be read from a warrant to an accused who surrenders before arrest if the warrant contains all the particulars of a formal charge. *2 Law Rec. 153.* When an accused is brought before the court otherwise than on a summons or warrant it is the duty of the Magistrate to frame a written charge against the accused. *1 S.C.D. 84.* The failure to do so is fatal to the conviction. *2 S.C.D. 53.* Where an accused is charged with an offence punishable with more than three months' imprisonment or a fine of fifty rupees the omission to frame a charge vitiates a conviction. *8 Law Rec. 148 ; 5 Times 11.* Such an irregularity is not covered by section 425 of the Criminal Procedure Code. *8 Law Rec. 168 ; 4 Law Rec. 31.* Where a charge is altered or amended in the course of a trial the accused should be asked to plead to the amended charge and that fact should appear on the record. The charge cannot be altered after the trial is over and the accused has been convicted on the original charge. *5 Times 9.*

The word *charge* in section 219 of the Penal Code is not restricted to a judicial charge formulated after recording evidence in Court. An arrest of a person by a duly authorized officer is *charging* within the meaning of this section. *1 C.L.W. 31.* See *7 C.W.R. 140.*

By the word *charge* in rule 12 (2) of the Order in Council is meant the various forms of misconduct coming under the description of corrupt and illegal practices. *33 N.L.R. at 67 ; 1 C.L.W. 12; 11 Law Rec. 118.*

Charged in section 219 of the Penal Code implies an imputation of the alleged offence as distinguished from the judicial charge formulated after the recording of evidence in Court. *31 N.L.R. at 148 ; 10 Law Rec. 109.*

Charitable trust. It is not the duty of a Court to direct charity property to be employed in such a manner as it thinks will be most beneficial for public purposes but to carry into effect the intentions expressed by the founders so far as those intentions are not inconsistent with any existing law. *7 Law Rec. 15.* A claim for declaration of title to property of a charitable trust cannot be barred by prescription. *30 N.L.R. 378 ; 10 Law Rec. 26 ; 6 Times 95.*

Charms. The practice of administering charms in order to effect cures, though very absurd, cannot be regarded as unlawful. *2 Grenier part I, 87.*

Chauffeur. A motor launch driver may be regarded as a chauffeur. *24 N.L.R. 381.*

Cheating. To constitute cheating it is not necessary that the deception should be by express words or visible representation. It may be equally practised by conduct employed in the transaction itself. *23 N.L.R. 286.* Before a charge of cheating can be maintained it must be shown that the person deceived suffered damage or harm in body, mind, reputation or property as a result of the alleged dishonest inducement. *10 Law Rec. 32 ; 6 Times 97.* To sustain a conviction on a charge of cheating it is essential that there should be evidence from which it may be inferred that at the time the accused induced the complainant to deliver property the accused had no intention of fulfilling his part of the contract. *4 S.C.D. 89 ; 12 Law Rec. 121.*

Cheetu club is an arrangement by which a number of persons join together and contribute money weekly or monthly to a fund which is distributed among the members in a certain manner. At the end of the week or month when all the subscriptions for that period have been paid in, there is a drawing among the members by lot and the whole sum is paid to the member who has drawn the winning ticket. This goes on until each of the members has in his turn got the amount of the weekly or monthly subscriptions those who have already drawn the money being obliged to continue to pay the agreed subscription until the list of members is exhausted. *22 N.L.R. at 95.* A cheetu club comes within the scope of the Lotteries Ordinance and no action can be maintained for the recovery of prizes won at the drawings of such club but contributions made by members may be recovered provided they have not been paid over to any one else in accordance with the rules of such club. *1 S.C.D. 26 ; 5 Tam. 135 ; 10 N.L.R. 5 F.B.* In ascertaining

the legality of a cheetu club it is necessary to consider the method by which the accumulated contributions are disposed of. Where the funds of a cheetu club are not disposed of by casting lots or by any other method of chance but paid to the member making the highest bid at an auction held periodically, such a club is not illegal and an action to enforce payment of subscriptions due from a member can be maintained. *6 C.W.R. 40.*

Chena land is understood to mean jungle land burnt and cleared at intervals of years and sown with fine grain and vegetables. *8 N.L.R., at 268.* See *5 N.L.R. 98 ; 3 Law Rec. 174 ; 1 Law Rec. at 165.* Land which was originally forest but has been subjected to chena cultivation for a series of years is chena and not forest within the meaning of section 6 of Ordinance 12 of 1840. *7 C.W.R. 260.* It is an essential of chena cultivation that it should take place with the ash of the burnt down growth and this can only happen after interval of several years because such intervals are necessary to enable the growth to arise. *21 N.L.R. at 357.* The character and quality of chena lands must be determined by the actual use of the land itself and not by its potential possibilities. Land that is chena cannot be taken out of the category merely by evidence to show that by another method of cultivation, by the application of other processes in other lands, it might be cultivated in a different way. *23 N.L.R. 150 P.C.* The word *chena* which is used in the Ordinance is a term adopted from the Sinhalese villager and its true significance must be sought for according to his use of the term. The villagers speak of high forest as *mukalana*. When the trees in a mukalana or a portion of one are felled and the land cleared whether for planting in rubber, tea or coconut or for cultivation with the ordinary chena products they will speak of the clearing as *hena*. They will continue to do so until the tea or rubber or coconut begins to yield when the land will be called *watte*. If chena cultivation is practised the chena will be cultivated at intervals of years which will range from seven to twenty years according to the nature of the soil or other circamstances. The land will be called chena although the jungle may be twenty years old. Such jungle is spoken of as a *lande*. If the land is abandoned for about forty or fifty years and the trees assume large proportions it will once again come to be called a mukalana. It is a fallacy to suppose that a land which was a chena loses its character as a chena immediately it is planted with a product such as tea or rubber. Once a chena it remains a chena until it is converted into a watte or reverts to a mukalana. *24 N.L.R. 112 ; 4 Law Rec. at 103.* See *23 N.L.R. 289.* Two modes of proving rights to chenas are under a grant with proof of identity and by such customary taxes or services as are lawfully due being rendered. *7 Tam. 131.* A person may acquire title to a chena by intermittent cultivation which is appropriate to a chena. *22 N.L.R. 406.* In the case of chena land in the Kandyan provinces title by prescription cannot be proved against the Crown. *15 N.L.R. 152 ; 1 Law Rec. 22 ; 21 N.L.R. 51 F.B.*

Cheque. Payment by cheque is only conditional payment and if the cheque is stopped before payment there is no payment. *30 N.L.R. at 347.* If the cheque is honoured that operates as payment from the date of the giving of the cheque. *19 N.L.R. 79.* A cheque is not invalid by reason of its being post-dated. An endorsee of a cheque who knew at the time of the endorsement that the cheque was post-dated may nevertheless maintained an action on it. *15 N.L.R. 243 ; 2 C.A.C. 11 ; 6 Lead 70.* Where a cheque is tendered in part payment and accepted in part payment it is a part payment within the meaning of section 4 (1) of the Sale of Goods Ordinance though it is dishonoured later. *21 N.L.R. 289 ; 1 Law Rec. 157.* If a cheque signed by the drawer but otherwise blank is stolen the drawer is not liable to a holder for value. *1 Br. 275.* If a cheque is an accommodation cheque notice of dishonour is dispensed with. *23 N.L.R. at 510 ; 4 Law Rec. 10.*

Chetty. It is the custom among the Nattukotta Chetties of South India who carry on trade in Ceylon to describe themselves by the names of the individuals who constitute the firm and to prefix to each name the initial letters of the firm. Their agents when signing for their principals usually sign their own names prefixing to them the initial letters of the firm for which they act. If an agent signs on his own account he signs his own name and prefixes to it the initial letters of his own patronymic. *6 N.L.R. 152.* Such an agent, in the absence of special directions, may by custom bind his firm by endorsing a promissory note with his own name prefixing to it the initials known as those of the firm. *4 S.C.C. 69.* But in order to bind the firm it must appear that such was the usual partnership signature under which the firm traded or that the signature had been affixed by a member of the partnership having authority to make it and with the intention of making it the signature of the firm. *6 S.C.C. 153 ;* See *7 S.C.C. 89.* The use by a Chetty of the initials of his firm in entering into a contract may have the effect of binding him personally. The nature of the contract will depend on the circumstances of each case. *5 S.C.D. 26.*

See also BUSINESS NAME and VILASAM.

Chidenam is the property given to a woman as a marriage gift in Tamil law. *2 C.W.R. at 265.*

Children means sons and daughters and does not include remote descendants. *5 S.C.D. 84 F.B. ; 5 Lead 33.* They do not include natural children unless the surrounding circumstances point to a

different conclusion. *17 N.L.R. at 362.* In a will the word must be interpreted as meaning legitimate children. *26 N.L.R. at 133.*

The evidence of a child is not admissible in criminal cases except on oath or affirmation. *1 B.N.C. 23 ; 5 S.C.C. 104 ; 1 Bal. 185 ; 1 C.L.W. 208.* Before a Court entertains the statement of a child of tender years as evidence the competency of the child to testify must first be ascertained. *12 Law Rec. 13.*

Chose in action is that of which a man has not the enjoyment, either actual or constructive, but which he has merely the right to recover by a suit or action at law. *3 Bal. at 167.* The idea of a chose in action as a form of property has not been so fully developed in the Roman Dutch law as in the English law but it has become definitely naturalized in Ceylon as part of our legal system. *23 N.L.R. at 262.* A right to recover a judgment is a chose in action. *6 Law Rec. 98 ;* so is a share in a partnership business. *1 Law Rec. 81.* The transfer of a chose in action under our law is not required to be in writing. *21 N.L.R. at 230.* In the case of a lease of a chose in action the requirement as to delivery of possession is fulfilled by the execution of the assignment. *24 N.L.R. 42.* A chose in action belonging to the estate of a deceased can be enforced only by his legal representative. *20 N.L.R. at 382.* A chose in action of a wife does not under the Thesavalamai vest in her husband. *8 N.L.R. 337.*

Civil right. The right of a congregation of a Mosque to select a chartered accountant to audit the accounts of the Mosque funds is a civil right. *33 N.L.R. 97.*

See also WORSHIP.

Civil servant holds office during the pleasure of the Crown. *1 Br. 405.*

Claim. A Fiscal who has received a claim which he has preferred to the Court has no right to proceed with the sale until it has been decided whether the seizure was legal or not. *6 N.L.R. 279.*

Claim inquiry. The procedure in the case of claims is of a special character. It is neither regular procedure nor summary procedure. *9 Law Rec. 82.* A claim inquiry should be made with notice to all the parties including the judgment creditor and judgment debtor. *2 C.L.R. 45.* It is the duty of the Court to fix a date and give notice to the parties. *31 N.L.R. 410.* The only question at a claim inquiry is whether the claimant was in possession at the time of seizure, not whether the claimant is the owner of the land. *5 N.L.R. at 303.* See *5 Law Rec. 48.* The order in a claim inquiry

being an order like a judgment should contain a concise statement of the case, the points for determination, the decision and the reasons. The claim or objection should be clearly denied and the facts on which the decision is based clearly found. *2 N.L.R. 166.* An order dismissing a claim may be vacated with the consent of parties. *6 S.C.D. 81.*

Claim in reconvention is in substance a cross action. *1 Mat. 248.* A claim in reconvention is not a creation of the Civil Procedure Code. It is a procedure recognized by the common law of Ceylon long before the Code. The Code when it gave directions as to the form and effect of a claim in reconvention must not be understood to have removed the limitation which existed under the common law. The rule of the Roman Dutch law is that the thing claimed in reconvention must be of the same right kind and quality as the matter claimed in convention because they are, as it were, set off and extinguished by compensation against each other which cannot take place in things that are in any way dissimilar. *17 N.L.R. at 209.* A claim in reconvention need not arise out of or be closely connected with the original claim. *1 Br. 303 ; 4 S.C.D. 73 ; 5 Bal. 47.* It may be made in respect of a cause of action that accrued at any time before the filing of the answer. It is not necessary that the cause of action should have arisen before the institution of the action. *17 N.L.R. 225.* The defendant in an action is not bound to make a claim in reconvention on a distinct and separate cause of action. *2 C.A.C. 26 ; 15 N.L.R. 438.* He may set up by way of counterclaim only claims against the plaintiff in the same character in which he sues himself and no other. *2 Law Rec. 52.*

Clear days must be taken to mean full days of twenty-four hours each. *2 Bal. at 102.* When *clear days* are provided for by any law for the doing of any act the rule is that the two terminal days should be excluded in the computation but in other cases such as where the act is to be done *within* so many clear days the last day should be counted unless it happens to fall on a Sunday. *4 C.W.R. at 219.* See *13 N.L.R. 99.*

Clock. A Seth Thomas clock is a good clock. *Per Sampayo, J. 7 C.W.R. at 299.*

Club is not a partnership neither is it a corporation capable of being sued through the representation of any officer or member of its body. *Wendt 309.*

Co-accused who comes into the witness box on his own behalf becomes a witness in every sense of the term. *15 N.L.R. at 103.*

See also ACCUSED and EVIDENCE.

Coconut. A growing coconut tree is immovable property. *1 Times 264 ; 5 Law Rec. at 79.*

Code. The essence of a Code is to be exhaustive on the matters in respect of which it declares the law and it is not within the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. *2 Mat. 104.* See *26 N.L.R. at 113 ; 21 N.L.R. at 372.* The spirit of the whole of the Civil Procedure Code indicates that the Court generally has power to prevent injustice and unfairness in the case of sales under its own order. *Per Sampayo, J. 1 Law Rec. at 154.*

Co-debtor. One of several co-debtors who are jointly and severally liable in respect of a debt may, upon paying more than his proportionate share, recover from his co-debtors their proportionate share of the excess whether the entire debt has been extinguished or not by such payment. *8 N.L.R. 34.* See *1 C.W.R. at 133 ; 13 N.L.R. 284.*

See also JOINT DEBTOR.

Codicil is not revoked by the revocation of the will. *3 B.N.C. 2.*

Cohabitation habit and repute. Marriage by cohabitation, habit and repute cannot be established in the absence of some evidence of a customary marriage ceremony. *1 C.L.W. 3.* See *9 Times 19.* Evidence of cohabitation, habit and repute merely gives rise to a presumption of marriage and this presumption can only be displaced by means of strong and cogent evidence to the contrary. *15 N.L.R. at 504 ; 33 N.L.R. 227 ; 4 N.L.R. 8 ; 2 N.L.R. 352 ; 2 N.L.R. 322 ; 8 Law Rec. 181.* The presumption is not rebutted by the mere fact that in the birth certificate of one of the children of such marriage the parents were described as unmarried. Such an entry means that the marriage of the parents was not registered. *1 Times 156.*

Co-heirs. There may be prescription among co-heirs when there is an overt act of ouster or something equivalent to ouster. But what might be acts of adverse possession against a stranger have, in questions arising between co-heirs, to be regarded from the standpoint of their common ownership. *19 N.L.R. 353.*

In order to avail himself of the provisions of article 27 of the schedule to the Stamp Ordinance, a Notary must show that the parties derive their title to the property which they exchange by inheritance. *8 C.W.R. at 185.*

Collation. It is common to testamentary and to intestate succession that a child or grandchild of the deceased must bring into account what has been advanced to him during the lifetime of the

deceased. This is called collation. *Lee 316.* The Roman Dutch law as to collation has been superseded by section 39 of Ordinance 15 of 1876. Under the section collation takes place only when a parent gives property to his children either on the occasion of their marriage or to advance or establish them in life. *17 N.L.R. at 28.* A *donatio simplex* is not generally liable to be collated. *Wendt 173 ; 5 S.C.C. 113 F.B.* The obligation to collate arises only on a division of the estate. *9 N.L.R. 353.* The principle of collation cannot be grafted into the Muslim lawof succession. *16 N.L.R. 378.*

Collusion means the joining together of two parties in a common trick. It carries with it the implication of something indirect and underhand. *23 N.L.R. at 147 ; 35 N.L.R. at 432 ; 4 Law Rec. at 59.* Mere knowledge does not amount to collusion. *2 Law Rec. at 10.*

Commence. To commence any building includes initiation of any form of building be it in the shape of laying the foundations or altering an existing erection by building. *5 Bal. at 106 ; 28 N.L.R. 57.* It does not apply to the effecting of minor alterations. *3 Cr.A.R. 106.* See *11 Law Rec. 68 ; 8 Times 1.*

Where a person goes over to a new employer within a year preceding the year of assessment but continues in the same kind of employment he does not commence to carry on an employment within the meaning of section 11 (4) of the Income Tax Ordinance. *35 N.L.R. 169 ; 13 Law Rec. 30.*

Commission. See BROKER.

Commission agent. The right of remuneration of a commission agent is a right to compensation for work and labour done independently of the contract and the agent can only sue for this remuneration if the carrying out of the contract has been rendered impossible by the act or default of his principal. *20 N.L.R. at 355.* An agent who has arranged to make a secret profit out of the transaction can recover nothing in the nature of a commission from his employer. *16 N.L.R. 373.* A commission agent acting for a foreign principal is himself the principal as between himself and the purchaser only where the foreign principal is undisclosed. *1 C.W.R. 125.*

Common gaming house is a house to which a large number of persons are invited habitually to congregate for the purpose of gaming. *1 Br. at 53.* It makes no difference that the house was not open to all persons who might be desirous of using it. *4 N.L.R. 12.* There are two essentials at least involved in the definition of a common gaming place, i.e. publicity and habituality. *5 Bal. 64.* If a man chooses to allow the public access to his house with or without payment to play with cards for money he uses it as a common

gaming house. But any number of a man's friends or acquaintances may play in his house every day with cards for money without an offence being committed under Ordinance 17 of 1889. *1 N.L.R. 216 ; 13 N.L.R. 286.* A place kept for cock-fighting is a common gaming place. *1 Cr. A.R. 34 ; 17 N.L.R. 114 ;* but the verandah of a boutique is not. *1 Times 107.* The presumption under section 10 of Ordinance 17 of 1889 as to a place being a common gaming place arises only when such place is entered under the Ordinance. An entry by a person armed with a warrant issued by a Magistrate without sufficient material to justify such issue is not an entry under the Ordinance. *3 N.L.R. 76 ; 3 N.L.R. 121.*

Common law. The Roman Dutch law is the common law of Ceylon. *12 Law Rec. at 139.* There is no doubt that the law adopted by the British Government in Ceylon in 1799 was practically the law which obtained in the Netherlands at the beginning of the nineteenth century. *34 N.L.R. at 285 P.C. ; 8 N.L.R. at 8 ; 2 C.L.W at 103 ;* See *35 N.L.R. at 81.*

Common property. A co-owner may use the common property in such a manner as is natural and necessary under the circumstances. *2 C.A.C. at 150 ; 21 N.L.R. at 133 ; 6 C.W.R. 78.* He can build on it without the consent of his co-owners. *17 N.L.R. 287.* See contra *6 N.L.R. 225 ; 6 N.L.R. 275 ; 1 Law Rec. 28 ; 6 Lead 88.* He may even eject any other co-owner who attempts to occupy his house without his permission. *21 N.L.R. 452.* He puts the common land to its legitimate use by taking carts across it to his house. *24 N.L.R. 157 ; 4 Law Rec. 197.* A co-owner can dig for plumbago on the common land but he must give the ground share to the others. *1 Law Rec. 38.* See *6 C.W.R. 31.* A co-owner cannot grant a right of servitude over the common property without the concurrence of the other co-owners. *14 Law Rec. 72.*

See also CO-OWNER.

Communio quaestuum. Mere general words which may be satisfied by reference to the *communio bonorum* will not avail to discharge the *communio quaestuum.* *20 N.L.R. at 329 P.C.*

Community of property. By the common law of Holland, in the absence of ante-nuptial contract, marriage creates *ipso jure* a community of property between the parties. Community of property has been abolished in Ceylon by section 8 of Ordinance 15 of 1876. Where community of goods exists all property is joint property between husband and wife. As a partner can give all his interest in the partnership property to his co-partner, so a husband can, since Ordinance 15 of 1876, give to his wife married in community of property all his interest in any of the common property. *14 N.L.R. at 29.* The Roman Dutch law allows a husband who is

married in community of property to make gifts of the common property. *13 N.L.R. 376.* A wife who lives apart from her husband by mutual consent cannot validly alienate property belonging to the marriage community. *1 N.L.R. 228.* A widow married in community of property can create a valid mortgage upon the common estate for paying her husband's debt and the debt so contracted is not her own but is chargeable upon the common estate. *2 N.L.R. 26.* See *3.S.C.R. 164.* She cannot, however, give a valid discharge for debts due to the deceased husband. *21 N.L.R. 76.* The immediate effect of the death of one of the spouses is to put an end to the community of property and of profit and loss. But all debts contracted by the husband during the marriage will remain the liability of the joint estate. *28 N.L.R. 360.*

Under the Thesavalamai community of goods is restricted to acquisitions during marriage. The husband is the manager of the common property. He can freely sell and mortgage the common property without the consent of the wife. But he cannot donate more than one half. *23 N.L.R. 97 F.B.*

Compensation is the reciprocal extinguishment of debts between the same parties. It differs materially from set-off as it is known to the English law and the Civil Procedure Code. *28 N.L.R. 353 ; 8 Law Rec. at 75.*

Under the Kandyan law the rule requiring payment of campensation is only to apply when the gift is made to a stranger or other person who is not an heir-at-law. *30 N.L.R. at 438.*

Compensation due from an allotment in a partition decree is a first charge on that allotment. *34 N. L. R 157.* An order for compensation for the purpose of equalizing shares in a partition action gives, however, merely a right of preference to the party entitled to it and does not create a tacit hypothec over the lots decreed to the person ordered to pay compensation which attaches to these lots until it is discharged. *13 Law Rec. 261 ; 36 N. L. R. 191.*

The damage contemplated for the purpose of the determination of compensation under the Land Acquisition Ordinance is the damage which is sustained by reason of the acquisition injuriously affecting other property at the time of awarding compensation. *13 Law. Rec. 133.* In estimating such compensation the Court may take into consideration the purpose of the acquisition. *2 Law Rec. 205.* Where a Municipality acquires land in respect of which street lines have been laid down by it the depreciation in value caused by the laying down of street lines may not be taken into consideration in awarding compensation for the land. *35 N. L. R. 119 ; 10 Times 151 ; 12 Law Rec. 264.*

Before a complainant is ordered to pay compensation for groundlessly giving in charge under section 253 of the Criminal Procedure Code he should be given an opportunity to show cause against the order. *3 Times 40.* Such an order cannot be made unless there was an arrest by a peace officer. *31 N.L.R. 455.* A magistrate cannot award compensation to an accused in a non-summary case. *1 Times 215.* An order for the payment of compensation to an accused person under section 197 of the Criminal Procedure Code is an appealable order. *1 A.C.R. 29.*

A party injured by the exercise of statutory powers is confined to the remedy which the statute has created. *9 N.L.R. at 229.*

Compensation for improvements. It is a principle of the Roman Dutch Law that a person who has the *possessio civilis* has an absolute right to be compensated for improvements and a right to retain possession, where his possession was *bona fide*, until compensated. *17 N.L.R. 279 F.B. ; 28 N.L.R. 140.* He has this right even where the Crown is the owner of the property improved. *4 Bal. 126.* A purchaser of land stands in the same position as his vendor in regard to any claim for compensation for improvements made by the vendor. *14 N.L.R. 193.* The amount to which a *bona fide* possessor is entitled is either the improved value of the land or the costs that he incurred in affecting the improvements whichever is less. *22 N.L.R. 286.* He is not liable to have set off against the cost of improvements effected by him the fruits of such improvement which he has enjoyed. *6 Times 100 ; 2 Mat 52.* In certain cases a person may have executed improvements that, though he is not technically speaking a *bona fide* possessor, he ought to have the rights of a *bona fide* possessor. *2 Times at 126.* A *mala fide* possessor is not entitled to compensation for improvements. *6 N.L.R. 350 ; 3 A.C.R. 13 ; 3 Br. 192*, except where he has improved the land with the acquiescence of the owner. *8 Times 58.* A *mala fide* possessor cannot claim compensation for useful as distinguished from necessary improvements. *5 Tam 13 ; 2 Bal. 149 ; 18 N.L.R. 59.* "In this Colony at any rate, per Lascelles C. J., it is not desirable to encourage persons to occupy property which they know is not their own". *9 N.L.R. 98.*

A lessee is not restricted in his right to recover compensation by the terms of his covenant. His right is a general one. He is entitled to recover compensation in respect of improvements which were acquiesced in by his lessor. *26 N.L.R. at 101 ; 13 N.L.R. 193 ; 4 Times 58.* If there was no acquiescence or consent he is entitled to nothing. *13 N.L.R. 193.* A lessee cannot succeed on a claim for compensation where the improvements are not of a kind which will permanently enhance the value of the land. *6 C.W.R. 7.* A lessee who has made improvements in terms of his lease is not entitled to

claim compensation for those improvements against a person who establishes a superior title to the land to that of the lessor. *7 Law Rec. 117 ; 4 Times 46.* A tenant at will cannot claim compensation for improvements as against his landlord unless the improvements were effected with the landlord's consent. *1 Cur. L.R. 253.*

The rights of co-owners to compensation rests on quite a different footing to the rights of persons who have improved another person's property and are regulated by the Partition Ordinance. *20 N.L.R. 218.* The improvements referred to in sections 2 and 5 of that Ordinance are improvements for which compensation is payable under the common law of Ceylon. *9 N.L.R. at 120.* A claim by a co-owner can be made only in a properly constituted partition action. *28 N.L.R. at 284 ; 5 C.W.R. 146 ; 4 Times 69 ; 7 Law Rec. 170.* The compensation to be paid to a co-owner who has effected improvements is the present value of the improvements or the cost of effecting the improvements whichever is less. *21 N.L.R. 33 F.B.* The fruits of the improvement itself, consumed before the date of assessment, are not to be set off in calculating the amount of the compensation due to a co-owner for improvements effected by him. *21 N.L.R. 415 ; 7 C.W.R. 13 ; 14 N.L.R. 230.*

See also ASWEDUMIZE AND PLANTER.

Competency of witnesses. The principle of our law with regard to the competency of witnesses or with regard to any particular class of evidence are now formulated in chapter eleven of the Evidence Ordinance. That formulation is to be considered exhaustive and there is no occasion to have recourse to the English law under section 100 of the Ordinance. *25 N.L.R. at 248.* The wife of an accused who is tried jointly with others is not a competent witness for the prosecution even against the accused other than her husband. *11 N.L.R. 29.*

Complainant means the person who makes the complaint. *2 Br. at 17.*

Compound interest is interest upon interest. It is not allowed under the Roman Dutch law even though expressly stipulated for. *16 N.L.R. at 498 ; 36 N.L.R. at 336 ; 2 C.L.W. at 351 ; 31 N.L.R. at 337 ; 13 Law Rec. 225 ; 23 N.L.R. 342 ; 4 Law Rec. 77.*

See also BANKING.

Compromise to be recorded and embodied in a decree need not necessarily be confined to the relief originally prayed for. *20 N.L.R. at 42.* A compromise is not binding on minors unless the attention of the Court has been expressly directed to the fact of minority and

the Court has approved. *10 Times 6 ; 2 Law Rec. 168 ; 10 N.L.R. 193.* Nor on a Muslim widow under twenty-one years of age. *5 Times 166.*

Compulsory acquisition. Enactments for the compulsory acquisition of land have to be strictly construed and applied. *31 N.L.R. at 115.*

Computation of time. In calculating a period within which an act is required to be done, the day from or after which such period is to be commenced is excluded and the last day of such period included. *1 N.L.R. 178.* Sundays and public holidays are never excluded unless there is a special mention of the fact. *33 N.L.R. at 112.* In computing the time limit of twenty one days for filing an election petition Sundays should be included. *11 Law Rec. 114.* In calculating the fourteen days within which an action under section 247 of the Civil Procedure Code may be brought, Sundays and public holidays are not excluded and where the last of such fourteen days falls on a Sunday or public holiday the action cannot be instituted on the next working day. *1 S.C.R. 131 ; 9 S.C.C. 182 F.B.* The ten days within which an appeal may be presented under section 754 of the Civil Procedure Code are ten clear days according to the established practice for over a third of a century. *6 Times 150 F.B.* In reckoning the period of five days within which an appeal should be preferred under the Small Tenements Ordinance the appellant is not entitled to exclude both the date of the judgment and the date on which the appeal is filed. *27 N.L.R. 58 ; 3 Times 101.* The seven days within which a headman must report a birth or death occurring within his jurisdiction must be computed from the date of the receipt by him of the information of such birth or death. *1 Br. 104.*

Concealed fraud. In the case of concealed fraud an action is available from time to time of the discovery of the fraud or from the time the party defrauded might by due diligence have come to know of it. *22 N.L.R. 279 ; 33 N.L.R. 1 ; 4 Law Rec. 12.* To enable the defence of concealed fraud to be relied on as giving a new cause of action the fraud must be shown to be the fraud either of the defendant himself or of some one for whose action in the matter in question he has assumed responsibility. *20 N.L.R. at 213 P.C. ; 18 N.L.R. 133 F.B.*

Conclusive in sections 9 and 11 of the Buddhist Temporalities Ordinance means absolutely conclusive and not *prima facie* conclusive. *14 N.L.R. at 151.*

Concurrence. The Civil Procedure Code has superseded the Roman Dutch law on the subject of concurrent claims of creditors

upon the execution proceeds of a common debtor's property. *18 N.L.R. 310 F.B. ; 9 S.C.C. 203 F.B.* The right to concurrence is limited to the proceeds in execution against property. *12 N.L.R. 193.* Under section 350 of the Civil Procedure Code the right to share in the assets realized must be restricted to creditors who had writs in the hands of the Fiscal at the date of realization. *27 N.L.R. at 427.*

Concurrent jurisdiction. A District Judge has no right to dismiss an action because the Court of Requests has concurrent jurisdiction. *1 Br. 289.*

Condictio indebiti. The action known as *condictio indebiti* is an action for the recovery of money which was not due but which was voluntarily paid under mistake. *2 Times at 87.* The action for money had and received is, according to the law of England, in its nature one of *assumpsit* founded on implied or imputed contract and depends on a waiver of any tort committed and on the correlative affirmance of a contractual relation. *20 N.L.R. at 210 P.C.* Under the Roman Dutch Law the principle on which the *condictio indebiti* is granted to a person who pays money under a mistake of fact is that no one is to be enriched at the expense, or to the prejudice, of another. *29 N.L.R. at 271.* Money paid though not due can only be recovered if it is paid under a mistake or if an unequivocal protest or objection was lodged at the time of payment. *23 N.L.R. 342.* Under the Roman Dutch law there is a conflict of opinion whether money paid under a mistake of law is recoverable but the tendency in South Africa appears to be to hold that money paid under a mistake of law is not recoverable unless there are special circumstances; that, in other words, there must be a natural equity on the side of him who claims the *condictio indebiti. 15 N.L.R. 440 ; 6 Lead 81.* Where a person with full knowledge of facts pays money which he is not in law bound to pay and in circumstances showing that he is paying it voluntarily he is not entitled to recover it. *36 N.L.R. 169.* If a public officer, whether in good faith or bad, seeks to enforce a claim against any person by the unlawful detention either of his person or his goods, money paid under this pressure may be recovered. *25 N.L.R. 321.*

Conditional sale having the effect of passing title on the fulfilment of the conditions is well known to the Roman Dutch Law. *16 N.L.R. at 147*

Condonation implies an undertaking not to commit any marital offence in the future. Where there is a breach of such undertaking the cause of action for the original adultery revives. *4 Lead 66.*

See also ADULTERY,

Confession. A statement amounting to a confession is inadmissible in evidence unless it is proved affirmatively by the prosecution that the statement was not made under the influence of an improper inducement. *1 N.L.R. 209.* A confession to a mudaliyar of a district who arrested the accused is inadmissible. *22 N.L.R. 412,* or to a ratemahatmaya under threat of imprisonment. *7 Tam. 150.* A confession by a servant to his head servant upon an inducement is inadmissible. *3 N.L.R. 167.* A confession made to an excise officer is admissible. *1 Cr. A R. 79.*

Confirmation of sale is part of the execution proceedings and a sale is not complete until it is confirmed. *23 N.L.R. 301 F.B. ; 4 Law Rec. 13.* A Court has no jurisdiction to take this step if the decree no longer exists. *7 N.L.R. at 278.* The mere fact that a fresh offer of an enhanced sum is made after the close of the sale by auction is not of itself enough to justify the Court in refusing to confirm the sale. *31 N.L.R. at 286 ; 10 Law Rec. 174.* The Court has no general discretion to refuse to confirm a sale merely because of the inadequacy of the price realized or because hardship has been caused. *11 Times 1.*

Confiscation. In the absence of specific statutory provision a Court has no jurisdiction to make an order of confiscation of property used for the commission of a statutory offence. *14 Law Rec. 120 ; 3 C.L.W. 45.* See *28 N.L.R. at 349.* Under section 413 of the Criminal Procedure Code no order of confiscation can be made unless an offence has been committed. *8 Law Rec. 9.* Before confiscation of an vehicle used for transporting an excisable article without a permit is ordered the owner should be given an opportunity of being heard against the order. Where the owner himself is not convicted of the offence no order should be made against him unless he is complicated in the offence which renders the thing liable to confiscation. *1 C.L.W. 249 ; 12 Law Rec. 54 ; 2 Times 185; 9 Times 148.*

Conform is to consent to and assist in the conduct of insolvency proceedings. *31 N.L.R. 7.*

Confusio. The extinction of servitudes by confusio takes place when the servient and dominant land meet in the same hand but there is no such *confusio* unless the interests of the proprietor in both tenements are identical. *4 Law Rec. 132.*

Consent is not mere submission. It involves something more than mere submission. There can be no consent where there is no proper knowledge of the nature of the act. Consent cannot be implied unless the conscious mind had considered the nature and consequences of the act and had then submitted to it. Immaturity

of understanding due to youth may render the person incapable of consenting. *Per Schneider J. 6 C.W.R. 142 ; 1 Law Rec. 4.*

Consent to judgment which has been entered can only be withdrawn if that consent had been given under some misapprehension or in consequence of mistake. *2 C.W.R. 175.*

Consideration is some *quid pro quo* agreed upon showing that the promise is not gratuitous. It may be described as any act forbearance or the promise thereof which is lawful and is made done or forborne by one party to a contract in exchange for the promise of the other party and is of value in the eye of the law. Where a grant is made in pursuance of a contract the consideration for the grant is one of its essential terms. *21 N.L.R. at 41.* Past consideration is no consideration at all unless it was moved by a previous request or unless it was rendered under such circumstances that a request is implied. *21 N.L.R. 410.* Whenever in one of our statutes the term *consideration* occurs there is a strong presumption that it must be given the meaning it has in English law. *34 N.L.R. at 272; 2 C.L.W. 35 ; 10 Times 67* : as for example, in the Land Registration Ordinance. *6 C.W.R. 1.* The compromise of a claim may be good consideration for a promissory note. *30 N.L.R. 164.* An offer to abandon a claim against a Bank of which the defendant was the principal shareholder was held to be sufficient consideration for a promissory note given by the defendant to the plaintiff. *10 Law Rec. 93.* A future marriage is good consideration for a contract but a past marriage is no consideration at all. *Vand 192 ;* Contra *4 Tam. 176.* Consideration given for compounding a criminal case is illegal. *15 N.L.R. 94 ; 5 Lead 117.*

Construction in section 6 (2) (*a*) of Housing and Town Improvement Ordinance 19 of 1915 means the construction of the framework of the roof. *31 N.L.R. 1 ; 6 Times 127.* In subsection (e) of the same section it includes the reconstruction of a partition wall. *31 N.L.R. 187.*

It is a sound principle of construction that, in all cases open to doubt, the intention which is most agreeable to convenience and established legal principle should be presumed to be the true one. *15 N.L.R. at 116.*

Constructive trust is one which arises when a stranger to a trust already constituted is held by the Court to be bound in good faith and in conscience by the trust in consequence of his conduct and behaviour. *21 N.L.R. 389.*

Consultant. If a doctor attends at the request of another doctor even though the regular attendant may not be present, the

doctor so called in must considered to be a consultant and entitled to his fees as such. *17 N.L.R. 198.*

Consultation as used in schedule III to the Civil Procedure Code does not refer to the meeting of one advocate with a proctor. *17 N.L.R. 216 ; 35 N.L.R. at 21.* It signifies the meeting of two or more Council with a proctor. *12 Law Rec. 272.*

Contempt of Court is committed when anyone says, does or exhibits any acts, words or behaviour in disrespect of the authority of the Court such as to have the effect, or are calculated to have the effect, first of preventing or disturbing the orderly course and seemly conduct of the public business of the Court or, secondly, of obstructing, hindering or preventing the impartial action of the Court in the administration of justice. *Wendt at 114 ; 1 S.S.C. 62.* The law of contempt by scandalizing the Court is in force in Ceylon. *18 N L.R. 33.* The law of contempt does not, however, exist for the glorification of the Bench. It exists, and exists solely, for the protection of the public. *Per Wood Renton J. 11 N.L.R. at 201.* So a person who enters a Court with a shawl on his shoulder commits no contempt. *18 N.L.R. 180.* A District Court has no power to punish offences of contempt not committed in its presence. *1 C.W.R. 195.* The giving of false evidence does not necessarily amount to contempt of Court unless the evidence is so transparently false as to give rise to a reasonable suspicion of an attempt on the part of a witness to trifle with the Court. *16 N.L.R 458 ;* See *15 N.L.R. 406.* A Magistrate has no power to punish summarily as for contempt of Court a witness for making two contradictory statements. *13 N.L.R. 289.* In order to find a person guilty of contempt for disobeying an order of Court it is necessary that such order should have been duly drawn up by the Court. *1 N.L.R. 220.* Disobedience of an injunction granted by a competent Court is contempt of Court. *4 N.L.R. 178 ; 1 C.L.W. 141 ; 9 Times 72.* But the refusal to yield possession of lands under a decree of Court is not contempt. *2 S.C.R. 145 ;* nor is the obstruction referred to in section 326 of the Civil Procedure Code. *1 Law Rec. 54 ;* nor the disobedience of a judgment debtor of an order made under section 219 of that Code. *1 N.L.R. 49 ; 8 N.L.R. 162 ; 2 Br. 191.* It is doubtful whether a District Judge has power to punish a witness for disobedience to a summons of his Court as for contempt of Court. *7 N.L.R. 373.*

Contiguous is section 91 (5) of the Road Ordinance should be given its ordinary meaning of touching or in contact with. *22 N.L.R. 149.*

Contingent interest. It may be that a transfer of a contingent interest is effective to put the transferee *in loco procuratoris. 22 N.L.R. at 394.*

Continuation. In order to be a continuation what is necessary to be established is only physical continuity. *35 N.L.R. at 118.*

Continuing damages may also be claimed in a Court of Requests but judgment should be restricted to the monetary jurisdiction of the Court. *21 N.L.R. 86.* Where an action involves a mere money claim such as an action sounding in damages only, the continuing damages are not incidental but are part of the cause of action and must be reckoned in determining the monetary jurisdiction of the Court. 21 N.L R. 279 F.B.

Contract is a communicated agreement between two or more parties as to future conduct which has a legal operation and on which, if properly proved, an action will lie. A contract is concluded when in the mind of each contracting party there is a *consensus ad idem.* A modification of a contract requires a like *consensus. 6 Law Rec.* 169 P.C. A written contract may be contained in several documents. *19 N.L.R. at 496.* The law of the place where a contract is to be fulfilled is the law to which recourse must be had for all that concerns the discharge of the obligation as well as probably for the means and forms by which the creditor can compel the debtor to pay the debt. *3 N.L.R. at* 187. It is clear law that terms offered and representations made during the negotiations of a contract which are not contained in the final agreement are excluded from the contract. An additional stipulation cannot be introduced. *30 N.L.R. at 252.* If there is a contract containing a time stipulation which is of the essence of the contract but that stipulation is waived and on the expiration of the time the contract is treated as being still open, the party liable on the stipulation is entitled, if the other party commits a breach which is fundamental to the contract, himself to rescind the contract and to claim damages for the breach ; while, on the other hand, the party who was originally entitled to claim enforcement of the time stipulation is no longer entitled on his part to claim damages for breach of the stipulation. *22 N.L.R. at 456.* Where there is a c. i. f. contract of sale, delivery of the goods is not perfected unless accompanied by delivery of a policy insurance. *25 N.L.R. at 368.* Under the Roman Dutch law it is not necessary that all parties to contract should join in an action for damages arising out of a breach of it. *4 Lead* 2. A minor's contract is neither void nor voidable in the sense in which those words are understood in the English law. According to the Roman Dutch law, a minor's contract is such that it does not bind the minor unless he ratified it on attaining majority while it binds the other party to it. *Per Schneider J.* 19 N.L.R. 193. A contract to marry is not enforceable against a Kandyan minor. *29 N.L.R. 408.*

Contract of service. A notice of intention to determine a contract of service begins to run from the date on which the notice is received by the employer. *5 Bal. 4.*

Contradictior statements. A Magistrate cannot punish a witness under section 440 of the Criminal Procedure Code for making two contradictory statements. *13 N.L.R. 289 ; 22 N.L.R. 501.*

Contributory negligence is not available as a plea in criminal law. *33 N.L.R. at 84.*

Conversion. An action for conversion is barred within two years. *20 N.L.R. at 212.*

Conveyance of land includes everything on it and below it unless something is expressly excluded but I am not aware that there is any authority in support of a converse proposition. *Per Pereira J. 16 N.L.R. at 44.* A conveyance is not invalid for want of description of land by metes and bounds. Its identification and limits are provable by parol evidence. *1 N.L.R. 348.* A notarial conveyance of land is not void because the person who purported to sign it for his principal was not authorized thereto by a notarial power of attorney. *4 N.L.R.* 229. A conveyance in favour of a purchaser who is already dead at the date of the transfer passes no title and in this respect there is no distinction between a private sale and one carried out by the Fiscal. *2 A.C.R. 127 ; 5 Lead 97 F.B.; 4 Tam 129 ; 14 N.L.R. 437 F.B.* There is no presumption that a conveyance to a plurality of persons means a conveyance to them in equal shares. *6 Lead 78.* The execution of a conveyance by the Fiscal is an essential ingredient of a sale of land in execution. *1 A.C.R. at 22 ; 14 N.L.R. 219.* Mere lapse of time does not deprive a purchaser at a Fiscal's sale of the right to ask for a conveyance. *18 N.L.R. 29,* but this right is not available to a purchaser from such purchaser. *29 N.L.R. 193.*

The written consent of a husband is not necessary to a deed of conveyance of immovable property by the wife in the husband's favour. *14 N.L.R. 35.* The concurrence of a Muslim husband to his wife's conveyance is not necessary to make it valid. *4 N.L.R. at 69.*

Conviction. It is essential to a conviction under chapter 19 of the Criminal Procedure Code that the Magistrate should have called upon the accused to plead to the charge and should have recorded the plea. *8 S.C.C. 78.* The Penal Code does not provide for a conviction in the alternative. *1 N.L.R. 248.* A person who claims to be tried and is convicted ought not to be placed in a worse position than one who pleads guilty. *2 N.L.R. 212.* If a conviction is to be based upon an admission of guilt that admission should proceed from the lips of the accused. *8 Law Rec. 171.* A conviction resting upon an admission of the charge by the accused's proctor is irregular. *4 N.L.R. 154.* A conviction may be based upon evidence

admittedly the result of an illegal procedure. *31 N.L.R. at 251.* It cannot however, be based on a statement of a witness made to a police officer or other persons which he admits is true but which is inconsistent with his evidence given in Court. *28 N.L.R. at 127.* A conviction cannot be based on the uncorroborated evidence of a decoy. *1 C.L.W. 310.* A person charged under section 13 (i) (c) of the Housing and Town Improvement Ordinance who pleads guilty and is warned is deemed to have been convicted under section 13 (2). *7 Law Rec. 139 ; 4 Times 61.*

Co-owner. The rights of co-owners of landed property in Ceylon are governed by the Roman Dutch law and not the English law. *6 N.L.R. 275.* A person who has no interest in the soil but only in a building on the land is not a co-owner of the common property. *24 N.L.R. 143 ; 4 Law Rec. 162.* There is no rule of law that a co-owner cannot maintain an action against another co-owner without joining all the co-owners of the land. *19 N.L.R. 235. F.B.*

See also COMMON PROPERTY ; CO-HEIRS ; OUSTER.

Coral. A Government Agent has no power to prohibit the removal of coral from the bed of the sea. *30 N.L.R. 439.*

Corporation. A trustee appointed under the Buddhist Temporalities Ordinance is not a corporation. *35 N.L.R. 157.* An action against a corporation for injury is recognized both under English law and Roman Dutch law and is maintainable in Ceylon. *1 A.C.R. 90.*

Corporation sole must be the creation of the Legislature itself. *5 S.C.D. 65 ; 5 Lead 13.* The Archbishop of Colombo is not a corporation sole with perpetual succession. *8 N.L.R. at 99.*

Corroboration must be extraneous to the accomplice, that is to say, it must be the evidence of some person not the accomplice in some way implicating the accused and thus corroborating the accomplice. *34 N.L.R. at 333.* The corroboration of an accomplice cannot be supplied by another accomplice. It may however, be given by direct or circumstantial evidence. *33 N.L.R. 157 ; 1 C.L.W. 375.* The previous statements of a co-accused are insufficient corroboration of his evidence at the trial implicating his co-accused. *12 Law Rec. 96.* A witness cannot be corroborated in advance under section 157 of the Evidence Ordinance. *6 Times 69.* Corroboration under the Maintenance Ordinance of the mother's evidence is necessary only on the question of paternity. *5 N.L.R. 123 ; 15 N.L.R. 309 ; 1 C.L.W. 88.* There is no fixed rule as to the amount of corroboration which may be accepted as sufficient by a Magistrate for the purposes of a maintenance action. *10 Law Rec.*

142 ; 5 Times 83. All that the Ordinance requires is that the applicant's story should be corroborated in some material particular which might, for example, be by documentary evidence and not the evidence of some other individual given on oath. *9 Law Rec. 59.* It might be supplied by circumstantial evidence. *27 N.L.R. 282.* An admission by the respondent that he had registered the birth of the child is corroboration. *4 S.C.D. 60.* Evidence of mere opportunity for intimacy is not. *27 N.L.R. 481.* See however. *3 Cr. A.R. 99.* Nor is the statement made by the mother of an illegitimate child as regards the paternity after the cessation of sexual relations. *33 N.L.R. 165 ; 14 Law Rec. 65 ; 11 Law Rec. 203 ; 9 Times 53.* It may be a question whether section 157 of the Evidence Ordinance has any bearing on section 7 of the Maintenance Ordinance which requires the evidence of the mother to be corroborated in some material particular by other evidence. *10 Times 22 ; 12 Law Rec. 91.* In a maintenance case where the applicant's evidence is corroborated by the evidence of her mother, such corroborating evidence should not be rejected merely on the ground that the applicant's mother is a highly interested party for it is the mother who would most likely receive the confidence of her daughter and have the best opportunity of giving evidence as to her associates and actions. *8 Law Rec. 34.* The evidence of the mother that the defendant maintained the child within twelve months after its birth need not be corroborated. *15 N.L.R. 325.*

In an action for seduction, corroboration of plaintiff evidence must be in some material particular. *31 N.L.R. 85.*

Co-sharers. See CO-OWNER.

Costs. A party is *prima facie* entitled to the cost of proceedings which have ended in his favour. *10 Law Rec. 179 ; 6 S.C.C. 101 ; 7 Times 97.* The Court however, has a discretion to refuse costs to a successful party. *31 N.L.R. 375.* A plaintiff who exaggerates his claim and puts the defendant to unnecessary expenditure in the way of stamps makes himself liable to repay to the defendant such costs. *5 N.L.R. 242.* A successful party is entitled to recover from the opposite party not only the expenses of witnesses who have been actually called at the hearing but also the expenses of all material witnesses whom it was necessary to bring. Whether such witnesses were material or not must be decided by the taxing officer. *10 N.L.R. 67.* A substituted party is personally liable to pay the costs of action to a successful opponent. *14 N.L.R. 462.* As between the parties to an action an executor or administrator is personally liable for costs which he is ordered to pay. *14 N.L.R. 327 ; 2 N.L.R. 242.* The Supreme Court would not interfere in appeal with the exercise of the discretion of a District Judge in making an order as to costs unless it is clear that a manifest injustice has been caused

by its exercise. *13 N.L.R. 341 F.B.* Costs are a joint and several debt. *13 N.L.R. 97.* The criterion of liability to a party in whose favour the order for costs is made is the liability of that party to his proctor. *15 N.L.R. at 160.* The general principles laid down in England are that any special agreement as to costs is regarded with jealousy. A special agreement between a solicitor and a person in the position of a trustee where the burden of the agreement falls not upon the trustee but upon the *cestui que trust* is regarded with special jealousy. *20 N.L.R. at 427.* Where the other side consists of several persons they are jointly entitled to costs and payment to one is payment to all. *20 N.L.R. 20 ; 4 C.W.R. 278 ; 4 Law Rec. 109.* An undertaking to pay costs *simpliciter* does not imply payment into Court. *26 N.L.R. at 410 ; 6 Law Rec. 99.* There is nothing in the law empowering a Court to dismiss an action for non-payment of costs. *24 N.L.R. 183.* Costs should be taxed in the class in which the action is instituted and decided. *16. N.L.R. 453.* Prospective costs may be included in a writ of execution. *4 Bal. 29.* See *2 N.L.R. 223.* There is nothing in the Civil Procecure Code which prevents a subsequent application for execution for costs if the amount has not been ascertained at the first application. *19 N.L.R. 157.* In several places our Civil Procedure Code makes allusions to the proctor's lien for costs. Wherever these allusions occur the word *costs* must be interpreted by the definition contained in section 208 which is entirely in accordance with the English rules governing the matter. *Per Bertram C. J. 22 N.L.R. at 259 ; 8 C.W.R. 41.* Costs in a partition suit are in the discretion of the Court and it is not obligatory to order costs *pro rata* or, indeed, costs at all if they should not be given. *8 C.W.R. 40.* Such costs are not a first charge on the land to be partitioned or on the divided portions after partition but they are payable by the individuals taking part in the partition action. *26 N.L.R. 223 : 2 Times 181.*

Councillor in section 33 of Ordinance 6 of 1910 includes a nominated member. *32 N.L.R. 7 ; 3 Cr. A.R. 94.*

Counsel must retained by the proctor and not by the client. *27 N.L.R. at 79.* Counsel appearing for a party has full authority as to all matters relating to the conduct of the action and its settlement. *1 Times 232.* The object of Counsel appearing in Courts of Justice is to render assistance to judges. It is their duty when they see a judge making a palpable error to point it out to him. *7 N.L.R. 42.* They must refer the Court to all decisions relevant to a point under discussion. *27 N.L.R. at 69.* Counsel has no right to withdraw from a case without the consent of the judge. *3 Bal. 197.* There is no rule of evidence which prevents Counsel from giving evidence on behalf of his clients. *9 N.L.R. 276 ; 10 N.L.R. 321 ; 12 N.L.R. 147 P.C.* but Counsel in a case should not afterwards be judge in it. *Vand 190.*

Court means the place where the judge is empowered to act judicially and is in fact so acting. *1 N.L.R. 377.* The Courts of Ceylon are Courts of Equity. *20 N.L.R. at 315.*

Court of Requests is a Court from which all technicalities should be banished. *1 N.L.R. at 293.* Every facility should be allowed to litigants to have their disputes fully and effectually determined. *5 S.C.D. 75.*

Credit. Section 272 of the Civil Procedure Code under which an order allowing the Fiscal to give credit is made provides that the Court may subsequently, if it thinks fit, allow the purchase money and the debt to be set off the one against the other. Until that order has been made the Fiscal is in the position of a creditor of the purchaser for the purchase money *2 Br. at 2.*

Creditor in its ordinary and proper acceptation of the term does not include a person having a claim for unliquidated damages and such a person would not become a creditor until after the right to recover and the amount to which he is entitled are determined by action. *26 N.L.R. at 297.*

Creditor and debtor. The rule of English law is that a man should seek out and pay his creditor. *21 N.L.R. 494 ; 6 C.W.R. 151.* The English law with regard to the sale of goods is in force in Ceylon and part of that law is the obligation of the debtor to seek out and pay his creditor. *20 N.L.R. at 339 ; 5 C.W.R. at 221.*

Crime. It is not the nature of the wound but the intention of the accused which is decisive as to the nature of the crime committed. *4 N.L.R. 47 ; 5 N.L.R. 236.* See however *6 N.L.R. at 19.*

Criminal breach of trust. Mere deficiency in the quantity of goods entrusted to a servant is not of itself sufficient proof of criminal breach of trust. *24 N.L.R. 251 ; 12 N.L.R. 63 ; 1 Times 23 ; 3 N.L.R. 198.* In a charge of criminal breach of trust it is not enough for the prosecution merely to prove that the accused has not accounted for all the money that he has received and for which he was bound to account for there may be other explanations of the deficiency besides dishonesty and the prosecution must prove circumstances from which dishonesty can be inferred. Such a circumstance is an explanation given by the acccused which would apparently have been easily capable of proof but which is not proved and which the Court does not believe. *2 S.C.D. at 58.* See *15 Law Rec. 57.* An indictment for criminal breach of trust is not bad because it does not state what the trust was in respect of which the breach is alleged to have been committed. *1 A.C.R. 34.*

Criminal intimidation. In a prosecution for criminal intimidation the nature of the threat and of the intent should be specified in the charge. *1 S.C.R. 254.*

Criminal misappropriation under section 387 of the Penal Code must be something more than the mere temporary retention of property. *2 C.W.R. 157.* The gist of the offence is taking or converting to one's use some movable property belonging to another person. *21 N.L.R. at 208.* In order to maintain a charge of criminal misappropriation the prosecution must show that the property which the accused is alleged to have misappropriated belonged to some person other than the accused. *7 C.W.R. 144.*

Criminal trespass. In order to constitute the offence of criminal trespass there must, in the first instance, be a trespass. Lawful entry is not trespass whatever ulterior motive may partly actuate the party in exercising the right of entry. *2 C.W.R. 6.* A person trespassing on premises in the occupation of another does not commit the offence of criminal trespass unless an intention to insult, intimidate or annoy any person thereon or an intention to commit an offence is substantially present to his mind. *5 C.W.R. 196; 1 S.C.R. 76.* The intention is an essential ingredient, *18 N.L.R. 78,* and must be proved. *7 S.C.C. 35; 35 N.L.R. 244.* Mere knowledge of the possibility of annoyance is not sufficient. *6 S.C.D. 23.* An unlawful act of trespass committed with the intention to intimidate or annoy is criminal trespass even if the trespasser had some ulterior object in committing it. Intention to intimidate or annoy will be presumed from foreknowledge that intimidation or annoyance will be the natural result of an act. *Per Wood Renton J. 14 N.L.R. 475.* The offence of criminal trespass can be committed notwithstanding the fact that the entry was made in the assertion of a bona fide claim of right. It is a question depending upon the circumstances of each case whether such claim of right is sufficient justifcation for the entry. *3 C.W.R. 42; 3 Cr. A.R. 67; 7 Times 140; 11 Times 83. But see 2 S.C.D. 17; 2 S.C.D. 42; 3 Times 156; 6 Times 95.* An entry by a landlord into his garden let to a tenant with intent to commit an offence or to annoy him would be criminal trespass. *4 N.L.R. 176.* Re-entry upon land from which a person has been ejected by civil process is not criminal unless the intent to commit an offence, insult or annoy some person is conclusively proved. *26 N.L.R. 353; 6 Law Rec. 64.* In a charge of criminal trespass it is not sufficient to state that the accused intended to commit an offence. The offence must be specified. *1 C.W.R. 124; 3 C.W.R. 292; 2 S.C.D. 55.*

Cross examination. A judge has the right to control cross examination in regard both to its direction and to its volume.

This right, however, must be exercised with the utmost discretion. *19 N.L.R. 346.* A Magistrate has no power to impose a time limit either on cross examination or on the remarks of pleaders. *24 N.L.R. 456; 1 Times 43; 4 Law Rec. 131.*

Cross objections. Section 772 of the Civil Procedure Code is not available to a respondent who wishes to question the decree in favour of other respondents. He must appeal. *31 N.L.R. 60; 10 Law Rec. 118.* Neither the provisions of Section 772 of the Code nor clause (e) of section 758 requires the respondent who objects at the hearing of the appeal to a part of the decree of the Court below to furnish to the Supreme Court a statement of the grounds of objection in duly numbered paragraphs. *7 N.L.R. 348 F.B.*

Crown is not bound by any statute if it is not expressly made to be so bound. *Wendt at 154.* In regard to obligations attaching to the ownership of land the Crown is in no better position than a private individual. *17 N.L.R. at 492.*

Crown costs. There is no appeal from a fine by way of crown costs. *15 N.L.R. at 333,* except where the order is not duly made under section 197 of the Criminal Procedure Code. *17 N.L.R. 265.* A Magistrate has no power to make an order for crown costs in a non-summary inquiry or where proceedings are commenced on a report under section 148 (1) (b) of the Criminal Procedure Code. *4 Law Rec. 43.* Where a prosecution is withdrawn with the consent of the magistrate it is improper to order the complainant to pay crown costs. *2 N.L.R. 300.* A Commissioner in civil cases has no right to condemn a party in crown costs. *2 C.W.R. 273.*

Crown grant by itself conveys no presumption of the title of the Crown to the land which it conveys. *15 N.L.R. 132; 3 N.L.R. 61; 6 S.C.D. 84; 8 N.L.R. 358; 1 Bal. 145.* Contra. *7 N.L.R. 330.* A Crown grant in favour of a deceased person is void. *15 N.L.R. 311; 3 Bal. 209; 3 Times 32; 6 Law Rec. 72; 6 Law Rec. 151.* The issue of a Crown grant to a co-owner is not regarded as either terminating or interfering with the co-ownership. *4 B.N.C. 40.* A certificate that the Crown has no claim to a land described in the certificate does not amount to a Crown grant. *5 C.W.R. at 48.*

Cruelty. The communication of venereal disease by a husband to a wife will, if wilful, constitute cruelty. *16 N.L.R. at 84.*

As to what is legal cruelty see *9 N.L.R. 43.*

Curator. The powers of a curator must be ascertained from the terms of his appointment. *31 N.L.R. 65.* A curator cannot lease property without the sanction of Court, *6 Times 61*, or bring an action on behalf of the minor without the authority of Court to appear as *next friend*. *6 N.L.R. 148.* Under section 585 of the Civil Procedure Code a mother who has married a second time may be appointed curatrix over the property of her minor children by the first bed. *5 N.L.R. 183.* A District Court has no power to appoint a curator over the estate of a minor who is not resident within its jurisdiction even though the minor may be entitled to property situate within its jurisdiction. *2 N.L.R. 249 ; 9 N.L.R. 190 F.B.*

Cursus curiae of long standing and the rights which have grown up under its sanctions should not be lightly disturbed. *9 N.L.R. 168.* But no *cursus curiae* which is in contravention of the law can justify a Court in construing an act of the Legislature in a manner contrary to its plain wording. *27 N.L.R. at 142.*

Custodia legis. The construction of our Civil Procedure Code does not recognize any change of the rights of parties after the subject matter has once become *in custodia legis*. *7 N.L.R. at 197.*

Custody of bail on arrest is not custody within the meaning of the Insolvency Ordinance, at least so long as the bail permits the person to be at large. *30 N.L.R. at 477 ; 10 Law Rec. 18.*

The general law in regard to the custody of children is that the father has the right. But it is subject to exceptions where such exceptions are shown to be for the benefit of the child. This is not only the ordinary law of the country but also of the law applied to Muslims. *5 Times 24 ; 29 N.L.R. at 137.* A mother may be deprived of the custody of her children where the Court by reason of her conduct thinks that it is detrimental to the interests of the children that they should remain in her charge. *34 N.L.R. 204*, as for example, where the mother has contracted a second marriage. *11 Law Rec. 55.* The *cursus curiae* in Ceylon has been in favour of giving the custody of infant children of Muslim parents to the mother and maternal relatives in preference to the father. *14 N.L.R. 225 ; 34 N.L.R. 141 ; 2 C.L.W. 83 ; 12 Law Rec. 251.* But see *9 S.C.C. 42 F.B.*

Custom. Certainty and invariability as to nature and extent are necessary for a binding custom. *1 C.W.R. at 97.*

The custom which permits a landowner to cross over into his neighbour's land for screening his fence with *olas* whenever his fence gets out of repair is an inveterate one in the Jaffna district and has the force of law. *13 N.L.R. 157.*

Damages. A right to recover damages must be based on a breach of a legal duty. *30 N.L.R. at 13.* The assessment of damages is primarily a question for a jury or for a Judge who is acting as a jury. *13 N.L.R. at 217.* The broad principle governing the question of measurement of damages actually sustained is set out thus. One who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been performed. If one party who is legally bound to carry out a contract fails to do so the other party may do it for him and charge him for the reasonable expense incurred in so doing. *36 N.L.R. at 7.* Where there is default in delivery of goods within the contract period and no subsequent request on the part of the vendor to extend the time of delivery, the measure of damages is the difference between the contract price and the market price at the time when the goods ought to have been delivered. *5 C.W.R. 232.* A party to a contract is not bound to make speculative attempts to reduce the damages. *9 Law Rec. 131 ; 29 N.L.R. at 480 ; 6 Times 1.* A person who causes damage is not exempt from civil liability because when he did the act he believed he was authorized to do so by law. *34 N.L.R. at 81.* Where a judgment creditor procures the seizure of property belonging to a third party against whom there is no writ or warrant he is liable in damages whether he acted maliciously or not. It is not defence that he acted under a mistake. *12 N.L.R. 353 ; 8 Times 89 ; 3 S.C.D. 74 ; 11 Law Rec. 75.*

A husband is entitled to damages for the loss of his wife occasioned by the tortious acts of a third party. *10 N.L.R. 263.*

A plaintiff who sells the property in dispute during the pendency of an action can still maintain his right to recover damages for injury inflicted when he was owner of the land. *14 N.L.R. at 118.*

It is not competent for a plaintiff in a partition suit to join in such a suit a claim for damages arising from a wrongful act committed by one of the co-owners. *9 N.L.R. 110.*

Damage feasant. A landowner who seizes trespassing cattle *demage feasant* may detain them till the damage is paid. *4 S.C.D. 13 ; 4 Lead 9 ; 5 S.C.C. 60 F.B.* He is not liable for the loss of the cattle if he has adopted all reasonable precautions to prevent their being stolen. *2 Bal. 176.*

Damage by fire. The Roman Dutch law on the subject must govern the rights of the parties and there must be proof of some negligence on the part of the person lighting the fire before he can be east in damages. *25 N.L.R. at 497.* The onus of proving negligence is on the plaintiff and it cannot be inferred from the circumstance that scorching took place alone. *5 Times 135.*

Dangerous driving. Exceeding the speed limit is not dangerous driving unless it is accompanied by circumstances which render it otherwise dangerous. *36 N.L.R. 306.*

Date of a will does not give it any special virtue or effect. *31 N.L.R. at 17.*

Day in civil transactions begins and ends at midnight. *32 N.L.R. at 40.*

Deadly weapon. A stone or club is a deadly weapon because it could be used with a deadly purpose. *6 Tam 29.* See contra *6 Tam 50 ; 6 Tam 54.*

Deaf and dumb person can make a valid contract when capable of understanding the nature of the act. *17 N.L.R. at 148.* Where a person is held to be incapable of making a defence by reason of his being deaf and dumb he is held to be not of sane mind and he is treated exactly as a person of unsound mind would be treated. *5 Times at 102.*

Deal by wholesale in section 18 of Ordinance 10 of 1844 refers to the selling of arrack by wholesale even if it is only in one instance. *1 Bal. 199.*

Dealer is one who carries on a trade. *1 C.W.R. at 153 ; 18 N.L.R. at 453.*

Death bed marriage has no legal effect beyond preventing the re-marriage of either of the parties. It has no effect on the civil status of the parties or of their children. *14 N.L.R. 147.*

Debentures are bonds for the purposes of the Stamp Ordinance. *12 N.LR. at 285.*

Debt is saleable property within the meaning of section 218 of the Civil Procedure Code and it does not cease to be saleable immediately an action is instituted for its recovery. *9 Law Rec. 50.* A decree for costs is a debt which may be seized in execution under section 229 of the Code. *9 S.C.C. 122.* A claim for damages is not a debt. *26 N.L.R. at 296 ; 36 N.L.R. at 190.* An unpaid call is not a debt due to a company until a call has been made. *32 N.L.R. 206.* The term *debts and encumbrances* in section 17 (1) (b) of the Estate Duty Ordinance refers to such debts ard encumbrances as have been incurred or created within this Island. *24 N.L.R. 231 ; 4 Law Rec. 188 ; 1 Times 129.*

Deceased wife's sister. By the law of this Colony there is no objection to a man marrying his deceased wife's sister. *4 N.L.R. 8.*

Decisory oath. See OATH.

Declaration of title. See REI VINDICATIO.

Decoy. In a charge of selling arrack without a license it would be unsafe to convict on the uncorroborated testimony of a decoy. *31 N.L.R. 444 ; 11 Law Rec. 168 ; 6 Times 123.* See *3 Times 36.* The evidence of a decoy need not be corroborated in every material particular. *32 N.L.R. 230.* Where the decoy contradicts the evidence for the prosecution the charge may be proved by other evidence provided it is sufficient to establish beyond reasonable doubt that a sale in fact took place. *35 N.L.R. 206 ; 13 Law Rec. 130.*

Decree. A judge must enter a formal decree in accordance with his judgment and the decree must contain on the face of it all the information necessary to enable the Fiscal to execute it. *2 S.C.C. 183.* The decree must be properly formulated and signed. *4 S.C.C. 124.* The entering up of a decree is a purely ministerial act, *2 N.L.R. 206 ; 19 N.L.R. at 294 ;* and a judge has no power to delay the entering up of a decree once judgment has been pronounced. *24 N.L.R. 210 ; 1 Times 88.* Nothing in section 188 of the Civil Procedure Code disqualifies a judge of a District Court from drawing up and signing a decree according to a judgment pronounced by his predecessor in office. *5 N.L.R. 289.* The decree relates back to the judgment. *35 N.L.R. 390 ; 13 Law Rec. 115 ; 11 Times 55.* A Court has no power to vacate its own decree, *35 N.L.R. at 6 ; 10 Times 145* , or alter it, *14 Law Rec. at 184* ; even when it has been surprised into the making of it by fraud, collusion or mistake of fact. *1 Cur. L.R. 226.* But a Court may set aside its own decree on the application of a party who has not been served with summons. *14 Law Rec. 189 ; 36 N.L.R. 442.* The decree of a lower Court which is affirmed in appeal becomes the decree of the Supreme Court and the lower Court has no jurisdiction to amend it. *5 S.C.D. 27 ; 13 N.L.R. 297.* A decree so affirmed becomes final as from its own date. *1 Times 104 ; 4 Law Rec. 225.* As long as a decree is on the record without a record to the effect that it has been adjusted or satisfied the Court is not put upon an inquiry as to whether it has been satisfied or adjusted. *1 Times 176.* A decree purporting to assign interests to persons already dead must be considered good until it is set aside and the rights assigned to the deceased persons must be considered as having devolved upon those who are in law their representatives in interest. *26 N.L.R. at 131.* Where a decree is reversed in appeal the successful party is entitled to restitution of money paid in process of execution of the erroneous decree of the trial Court. *35 N.L.R. 28.* It is not

open to a person who has obtained a decree of a competent Court to maintain a separate action on such decree. *9 N.L.R. 133* ; *2 Law Rec. 214.*

When a Judge records and signs a plain and distinct order that he dismisses the plaintiff's action, the order is a sufficient formal expression of his adjudication upon the right claimed and is a decree within the meaning of sections 206 and 207 of the Civil Procedure Code. *17 N.L.R 300.* A decree includes a decree *nisi*, *5 C.W R. 187* ; an interlocutory order for partition, *6 S.C.D. 91* ; *6 Lead 29 F.B.* ; an order dismissing an action under section 109 of the Code for failure to answer interrogatories, *1 Cur. L.R. 249* ; but not a suspensory order nor an order striking a case off the roll. *4 S.C.D. 38.* The word *decree* in sections 223 to 230 of the Civil Procedure Code when used alone should be held to include an order *18 N.L.R. at 166.*

Decree in rem. A decree for judicial settlement is not one made in the exercise of the Court's probate jurisdiction and is not a decree *in rem* within the meaning of section 41 of Ordinance 14 of 1895. *2 S.C.D. 4.*

Decree for sale to which a conclusive effect is given under section 9 of the Partition Ordinance is the decree under section 4. *19 N.L.R. 1 F.B.*

Decree obtained by fraud. A separate action to set aside a decree on the ground that it was obtained by fraud cannot be maintained where relief could have been had in the action in which the decree was entered. *30 N.L.R. 61* ; *9 Law Rec. 113.*

Dedication otherwise than by deed as a mode of conferring rights on the public is not recognized by the Roman Dutch law. *25 N.L.R. at 147.* It is doubtful whether the principle of dedication which appears to be a purely English notion is applicable to Ceylon. Under the English law a public right of way may be created by statute or by dedication to the public. *21 N.L R. at 243.* If land is dedicated to the public the owner still has all the rights in the land which are not inconsistent with the dedication. *28 N.L.R. at 73.* Dedication would be presumed in the case of a temple whose origin is lost in the dim past *22 N.L.R. at 242.*

Deed. A notarially attested deed is effective to pass title unless and until it has been declared inoperative in proper proceedings. *2 B.N.C. 48.* Delivery is not essential to the validity of a deed. *3 C.A.C. 52.* The failure on the part of a Notary to state correctly in his attestation the date of the execution of a deed does

not effect the validity of the deed itself. *1 Times 242* ; nor his failure to have the deed executed in duplicate. *21 N.L.R. 286* ; *1 Law Rec. 93.* All the terms of a deed must be taken into consideration when construing it. *2 C.L.W. at 104.* Where a deed is on the face of it regular, it will be presumed that all the formalities of the law have been complied with. *1 Br. at 135* ; *4 N.L.R. 65* ; *4 N.L.R.314.* It would require very cogent evidence to rebut that presumption especially where the deed has been acted upon for several years. *1 Br. 138.* It is a general rule that where the words of a deed have double intendment and the one intendment is consistent with truth and right but the other is wrongful, the intendment which is consistent with truth and right shall be taken. *Vand 209.* In a case in which there is an adequate description with convenient certainty of what is intended to pass by a particular instrument, a subsequent erroneous addition will not vitiate it. *2 Mat. 111.* Where a deed is over thirty years old and is produced from proper custody there must be strong evidence in support of an allegation that it is forged. *3 Lead 33* ; *3 S.C.D. 68.*

Deed of gift. See DONATION.

Deemed has not an invariable meaning. Sometimes it signifies *presumed* and at other times it means *shall be taken conclusively to be. 18 N.L.R. at 154.* In section 289 of the Criminal Procedure Code it is not the same as *taken conclusively to be* but merely creates a presumption which is capable of being rebutted by evidence. *5 S.C.D. 15.*

Deer in section 19 (3) of Ordinance 1 of 1909 does not apply to all deer whatsoever found in Ceylon but only to animals not indigenous to Ceylon. *1 Times at 119.*

De facto trustee of a temple is not as such entitled to the possession of its temporalities. *27 N.L.R. at 20.*

Defamation is the publication of false and defamatory statements respecting another person without lawful justification. It may be by words written or spoken or by action. A defamatory statement is one which has the tendency to injure the reputation of the person to whom it refers. *18 N.L.R. 73.* Publication is necessary to an action for defamation. *Pereira 715.* In an action for defamation where the words are libellous *per se* no innuendo need be alleged or proved ; where in such a case an innuendo is alleged but the innuendo so alleged is bad in law the plaintiff is entitled to rely on the defamatory meaning of the words themselves in support of his action. But where the words are not defamatory in themselves and the plaintiff has attached to them a particular meaning by innuendoes and fails to substantiate his innuendoes, his suit must fail. *12 N.L.R. 225.*

Default is a purely relative term just like negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances—not doing something which you ought to do having regard to the relations which you occupy towards the other persons interested in the transaction. *17 N.L.R. at 403.*

Defence. A pleader for the defence when opening his case may not only expound the evidence he proposes to lead for the defence but may also comment on the evidence led for the prosecution. *24 N.L.R. 456.*

Definition of boundaries. An action is provided for by the Roman Dutch law where the boundaries of lands belonging to different owners have become uncertain whether accidentally or through the act of the owners or some third person. *17 N.L.R. at 66.*

De jure trustee under the Buddhist Temporalities Ordinance 8 of 1905 may maintain an action for an injunction to restrain persons who interfere with him. *28 N.L.R. 239.*

Delegatus non potest delegare. This maxim must be strictly applied wherever the agency involves a trust or discretion in the agent for the exercise of which he is personally selected. *9 N.L.R. 323.*

Delict. See MINORITY ; TORT.

Delivery means voluntary transfer of possession from one person to another. It may be actual or constructive. Delivery is constructive when it is effected without any change in the actual possession of the thing delivered as in the case of delivery by attornment or symbolic delivery. *32 N.L.R. at 359. Traditio* whether actual or symbolic is no longer necessary for the consummation of a sale of immovable property and has been replaced by delivery of the deed. *21 N.L.R. at 265.* Delivery of the deed is a constructive as well as an effective delivery of possession of the land, *21 N.L.R. 84 ; 1 Law Rec. 61 ;* but see *2 Mat. 137 ;* and confers *dominium* on the purchaser. *27 N.L.R. at 441.* Delivery of a deed of lease is not, however, delivery of possession of the property leased. *3 Bal. 36 ; 1 A.C.R. 9.* The payment of rent by the donor as tenant of the subject matter of a gift to the guardian of the minor donees is sufficient delivery of the property according to the Muslim law. *1 C.L.W. 192.*

Delivery of possession. An order for delivery of possession cannot be made in favour of a person who has bought under a decree for sale under the Partition Ordinance, *28 N.L.R. 492 F.B.; 5 Times 29; 3 Times 28 ;* nor of a purchaser of property sold under

a mortgage decree except as against a defendant in the mortgage action. *31 N.L.R. 426.* A Court, however, has an interest power to direct delivery of possession to a purchaser and render a sale affectual. *15 N.L.R. 347.*

Dental operation does not cover an operation done on an incomplete set of false teeth in order to make them fit the person but only covers an operation done upon the living person. *Per Akbar J. 2 C.L.W. at 355.*

Dental service would include the making of artificial teeth and actually fixing them. *2 C.L.W. 354 ; 26 N.L.R. 205.*

Deposit. Money of the purchaser lying in the hands of the vendor and not given as a deposit cannot be regarded as a deposit earnest or *arrha* given on the occasion of the agreement to purchase and cannot therefore be forfeited if the sale falls through owing to the default of the purchaser. *25 N.L R. 209.*

Deposition. Under our law the deposition of a witness at the Police Court inquiry is not admissible in evidence against the accused unless such deposition comes within section 33 of the Evidence Ordinance of section 400 of the Criminal Procedure Code. The consent of accused's Counsel is immaterial. *2 Law Rec. 192.*

Depot is a place where things are deposited. *4 C.W.R. at 152.*

Deputy Fiscal can assign a bond given in favour of the Fiscal. *24 N.L.R. 90 ; 30 N.L.R. 426 ;* See *3 Bal. 95.* A Deputy Fiscal has no power under section 286 of the Civil Procedure Code to license a surveyor to prepare a map to be annexed to a Fiscal's conveyance. *8 N.L.R. 348.*

Descendants includes all descendants both male and female and their offspring *ad infinitum. 34 N.L.R. at 200.* It would indicate a devolution to the children *per capita* and the grandchildren *per stirpes* at least to the fourth generation according to the rules of intestate succession. *12 N.L.R. at 244 ; 1 C.L.W. 322.*

Description. It is settled law that the mere use of a descriptive term cannot affect the reality of a transaction. *26 N.L.R. at 197 P.C.; 6 Law Rec. 1.* The word *description* refers to something written, not something depicted. *34 N.L.R. at 260.*

Desertion to be a ground for divorce must be malicious, that is to say, it must be a deliberate and unconscientious, definite and final repudiation of the obligations of the marriage state. It must be *sine animo revertendi.* Divorce should only be granted if the desertion complained of was a repeated desertion and the offending

spouse refused to return to the married life. *26 N.L.R. 113.* Refusal to consummate a marriage amounts in law to desertion and entitles a wife to obtain a dissolution of marriage. *25 N.L.R. 222.* Desertion is a continuing offence. It is continuing course of conduct. *9 Law Rec. 60 ; 29 N.L.R. at 325.*

See also MALICIOUS DESERTION.

Deterrent sentence. Where it is difficult to secure a conviction in a class of crime which is of frequent occurrence in a district the imposition of a heavy sentence in the nature of a deterrent is justified. *28 N.L.R. 383*

Detinue. The English doctrine of *detinue* is inconsistent with section 320 and 321 of the Civil Procedure Code. *1 N.L.R. 114.*

Devise. It is a well recognised distinction in conveyancing that *devise* is the appropriate verb for a legacy of immovable property and *bequeath* for that of movables. *24 N.L.R. at 228 ; 4 Law Rec. 227; 1 Times at 97.*

Dies non. The ordinary inference from the fact that a day is a *dies non* is that proceedings of Courts ought not to be taken on that day but it does not make the proceedings void, *5 C.W.R. at 310,* where it does not involve the compulsory attendance of any party affected. *20 N.L.R. at 474.*

Diga. The going out of a woman in *diga* operates to forfeit the right to paternal inheritance, *2 C.L.R. 54,* although the association with the man to whom she has been given in *diga* is not a legal marriage for want of registration. *32 N.L.R. at 42 ; 11 Law Rec. 41.* The leaving of the parental house seems to be the important point in these matters. *7 Law Rec. 176 ; 3 Law Rec. 115.* The fact that the man was already married seems hardly to affect the question. *3 Bal. at 124.* Where a marriage is described as *diga* in the register of marriages its character is not altered by the fact that husband and wife continued to live in the wife's parental home after the marriage. The only consequence is that in such a case the forfeiture of her rights of parental inheritance does not take place. *10 Times 33 ; 3 Law Rec. 147.* A *diga* marriage ceremony does not of itself work a forfeiture irrespective of the subsequent action of the parties. *24 N.L.R. 129 ; 3 Law Rec. 115.* A woman who marries in *diga* after her father's death does not forfeit her rights to the paternal inheritance by reason of her marriage. *4 Bal. 165 ; 13 N.L.R. 176.* Where property inherited is sold by a Kandyan woman who then marries in *diga*, the marriage does not deprive the purchaser of his rights to the land. *27 N.L.R. 52.* A Kandyan woman does not by marriage in *diga* forfeit her right to inheritance from her mother if the father also has an independent estate. *5 C.W.R. 175 ; 28 N.L.R. 190.* A *diga* married sister is precluded by her *diga* marriage from inheriting the *paravani* property of her deceased sister. *17 N.L.R. 307.*

The widower of a *diga* marriage has a life interest in the acquired property of his deceased wife, *18 N.L.R. 105,* even though she may have left children. *3 Bal. 18.* A *diga* husband is heir to his child born in a *diga* connection in respect of landed property inherited through its mother in virtue of the re-acquisition of *binna* rights. *12 Law Rec. 98.*

See also BINNA.

Disability is some obstacle which stands in the way of a person enforcing by action some right which he possesses. *Per Wendt J. 9 N.L.R. at 272.*

Discharge under section 191 of the Criminal Procedure Code is not an acquittal and is not a bar to a further prosecution for the same offence. *3 Bal. 206 ; 1 Lead 49 ; 11 Law Rec. 36.* But the Magistrate has no power to re-open the proceedings in the same case. *19 N.L.R. at 58.* The word *discharge* in section 202 of the Criminal Procedure Code does not import an acquittal. *2 A.C.R. 1 ; 10 N.L.R. at 200.* There is no appeal from an order of discharge made by a Magistrate under section 157 of the Criminal Procedure Code. *34 N.L.R. 160.*

Discovery of documents. The Court has a discretion to refuse discovery of documents where it can see that no good is reasonably to be expected from ordering it. Whether any good is to be expected can be ascertained by looking at the pleadings. *22 N.L.R. 87.*

Discretion. Where a Judge exercises his discretion in a judicial manner that discretion ought not to be reversed by a higher tribunal exercising its powers of revision. *3 C.W.R. at 10.*

Diseased in Ordinance 3 of 1897 means only one who is actually diseased and not one merely infected ; and *patient* means one actually suffering from some disease. *3 N.L.R. 365.*

Dishonesty. The intention to cause wrongful loss or wrongful gain must not be merely a casual or incidental feature of the act but to constitute dishonesty it must be the dominant motive. *9 Law Rec. 35.* The mere shortage of a small sum of money is not of itself evidence of dishonesty. *5 N.L.R. at 317.*

Dishonest life. Proof that a person is leading persistently a dishonest or criminal life within the meaning of section 10 of Ordinance 2 of 1926 must show either that he is getting his living by criminal means or that he is a habitual associate of criminals so as to raise the inference that he is earning his livelihood by dishonest or criminal means. *10 Times 21.*

Dishonest retention of stolen property does not necessarily imply an honest receipt in the first instance. *23 N.L.R. 190.* Contra *2 N.L.R. at 5 ; 3 N.L.R. 267.* Evidence which would establish a charge of dishonest receipt may, although no charge of dishonest receiving is preferred, be used to show the dishonesty of the retention. *7 N.L.R. 327.*

Disinherison. No particular form is required for disinheriting an heir so long as there appears in the deed language which discloses an intention to disinherit. *28 N.L.R. 329.* Where an heir has been disinherited by a will and no specific devise or bequest has been made of the property to others, the disinheriting clause is not valid. *21 N.L.R. 91.* A clause of disinherison is necessary only when all the *paraveni* lands are gifted. *15 N.L.R. 371.*

Disorderly behaviour. The mere use of abusive and obscene language may be disorderly behaviour, *1877 Ram 61 ; 1873 Grenier 93; 1863-68 Ram 184 ;* but where two or more persons are guilty of disorderly conduct by fighting in a public place and so disturbing the public peace the offence falls under section 156 of the Penal Code and not under the antiquated Ordinance 4 of 1841. *6 Tam 2.* A person who is drunk and behaves in a violent and disorderly manner in a public street commits an act or series of acts which involve a breach of the peace. *2 S.C.D. 26 ; 4 A.C.R. 166 ;* Contra *3 Law Rec. 44.* The terms of section 23 of Ordinance 12 of 1891 make it essential that the accused should be drunk while he behaved in a disorderly manner. *1 S.C.D. 4.* A police officer has no power to arrest and detain a person whom he finds drunk and disorderly in a public street except when he refuses to give his name and residence. *2 N.L.R. 149 ;* Contra *4 S.C.D. 23.*

Disposal. When we speak of a thing being at a man's disposal we do not mean merely that the man can sell or gift the thing; we mean also that he has entire control of it so that he may take it or send it from place to place or do anything else with it as he may please. *Per Sampayo J. 19 N.L.R. at 187.*

Land bought by the Crown for default of payment of grain tax is land at the disposal of the Crown within the meaning of Ordinance 16 of 1907. *14 N.L.R. 159.*

Disposal in Chapter 40 of the Criminal Procedure Code does not include confiscation or forfeiture as a provision of adjectival law cannot authorize an encroachment on the legal rights of the owner of the property. *8 Law Rec. 98.* An order for the disposal of property seized under a search warrant can be made only after due notice to both complainant and accused. *13 Law Rec. 73.*

Dispose. When a man takes liquor from his store and removes or gets it removed to some other place, whatever may be the purpose to which he applies it, he disposes of it within the meaning of section 14 (i) of Ordinance 10 of 1844. *12 N.L.R. 30.*

Disposed of does not mean *conveyed good title. 6 C.W.R. 181.*

Dispossession. A seizure of land by the Fiscal amounts to dispossession in law. *14 N.L.R. at 443 ; 3 N.L.R. 303 ; 5 Lead 95.*

See also OUSTER.

Distress can be made only on movable property capable of seizure. *14 Law Rec. at 205.*

Distribute. To publish a paper is to distribute it. *17 N.L.R. 476.*

District Court is a Court of unlimited primary jurisdiction. It has power to determine questions as to the validity of a marriage or the legitimacy of children just as much as it has power to wind up a deceased's estate or try an action for goods sold and delivered. *14 Law Rec. at 24.*

Disturbed. Possession is disturbed either by an action intended to remove the possessor from the land or by acts which prevent the possessor from enjoying the free and full use of the land of which he is in the course of acquiring the *dominium* and which converts his continuous a disconnected and divided user. *Per Withers J. 1 N.L.R. at 291.*

Possession is not to be taken as disturbed by mere actions but an action in which a person is condemned to pay for his possession deprives his possession of that particular character that it is necessary it should have in order to give rise to prescriptive rights. *2 Mat. 87.*

Divel. The origin of this tenure is traceable back to remote times. Headmen were according to immemorial custom remunerated for their services by grants of land to be held free of duty and the land descended on male heirs under the condition of service but reverted to the Crown on a total failure of male heirs in the direct or collateral line. By the Proclamation of 1801, however, all obligation to serve on tenure of lands was finally abolished and it was enacted that all lands held duty free at that time on account of service should pay to Government a tenth share of the produce in the case of high lands and a fifth share in the case of low lands. *Per Sampayo J. 18 N.L.R. 472.*

Diverticulum maris means a creek or arm of the sea with definite metes and bound so that it can be regarded as something distinct from its main waters though connected therewith. 22 *N.L.R. at 266 ; 8 C.W.R. 300 ; 2 Law Rec. at 217.*

Dividend after it is declared is a debt due by the Company to the shareholders and may be recovered by action and there is nothing in the Company law to prevent the shareholder from assigning to a third party his right to past and future dividends. *6 C.W.R. at 108.*

Divi sittu is a document handed under oath. *2 Bal. at 79.*

Divorce is a dissolution of marriage during the lifetime of the parties by the judgment of a competent Court. The judgment should be founded either on the ground of adultery subsequent to marriage, or of malicious desertion, or of incurable impotency at the time of marriage. Jurisdiction to grant a divorce *a vinculo matrimonii* depends upon the domicile of the husband. *33 N.L.R. at 199 ; 1 C.L.W. 168. See 1 N.L.R. at 175 P.C.; 3 S.C.R. 12.* A divorce *a vinculo* cannot be granted upon admissions in the pleadings. *4 S.C.C. 107.* He who seeks to be free from the matrimonial tie must himself be free from matrimonial offence. *29 N.L.R. 97.* Where the plaintiff has been proved to have been guilty of adultery it is not enough that the adultery of the plaintiff was more or less pardonable or capable of excuse but the Court must find as a fact that the misconduct of the plaintiff was caused directly by the matrimonial offences of the respondent before it will exercise its discretion in favour of the plaintiff. *6 S.C.D. 50.* Where the plaintiff has connived at the adultery of the defendant the action must be dismissed. *1 Lead 62.* A decree *nisi* granting a divorce may be made absolute while an order with respect to a settlement on the aggrieved party is under appeal. *29 N.L.R. 378.* A husband is liable to pay his wife's costs. *8 N.L.R. 280 ; 12 N.L.R. 95 ; 1 S.C.R. at 6.*

It is a recognized principle of Muslim law that a husband is free to divorce his wife without assigning a cause. *26 N.L.R. at 333.* The competent judge for Muslim divorces in so far as these require a judicial decree is the District Judge. *3 Times 48 ; 6 Law Rec. at 81.*

See also DESERTION ; MALICIOUS DESERTION.

Doctor. The term *doctor* is generally used in this Island to describe persons qualified to practise medicine or surgery by modern scientific methods. *32 N.L.R. at 88.* A Government apothecary is not a doctor. *8 Times 12.*

Doctrine of relation back. The fiction that upon the confirmation of the sale and the execution of the Fiscal's conveyance the title is deemed to vest from the date of sale has for its object the protection of the purchaser at a sale in execution against the consequences of alienation of the property by the judgment debtor in the interval. It does not affect the rights of persons claiming adversely to the judgment debtor nor does it interfere with the operation of the law of prescription. *30 N.L.R. 468.*

I know of no principle which enables a purchaser under a mortgage who claims on a conveyance made on a date specified therein to claim that his conveyance shall be deemed to date as from the date of the mortgage bond referred to in the hypothecary decree under which he purchased. *Per Garvin J. 2 Times at 106.*

Document in section 104 of the Civil Procedure Code means a writing or a matter which is recorded by writing or in any other method. *2 C.L.W. at 52 ; 10 Times at 57.* A will comes within the meaning of a document as defined in the Evidence Ordinance. *1 Bal. 46 ; 7 N.L.R. 360.* It is the duty of the judge to decide upon the meaning and construction of all documents given in evidence at the trial. *2 C.L.W. 77 ; 10 Times 87.* In construing it he should have less regard to its letter than to its general sense and intention. *2 Law Rec. 11.* In the construction of a document words in later clauses must be read with the special powers given in the earlier clauses and cannot be construed so as to enlarge the restricted powers mentioned therein. *2 C.L.W. 89.* To prove a document, whether notarially attested or otherwise, it must be proved that the signature of the signatory is in his handwriting. *1 Cur. L.R. 256.* Where objection is taken to a document at the trial it is the duty of the judge to rule at once admitting or rejecting the document. He should not admit it provisionally. *4 Law Rec. 41.* In a Court of Requests a document may be rejected on the ground that it has not been listed even though it may have been tendered without objection in the course of cross-examination of a witness of the opposite party. *32 N.L.R. 237.* It is entirely within the discretion of a Court to accede to or refuse an application for the discovery of documents. *2 Law Rec. 71.* An order for the production and inspection of documents is available to a party to a suit only where reference is made to such documents in the pleadings and the entries recorded in the documents relate to the matter in question in the action. *12 Law Rec. 143.* The Court has a discretion as to the dismissal of an action for failure to comply with an order for the production of documents. *2 Law Rec. 173.*

An extract from a Dutch *thombu* is not a document that should be registered under Ordinance 6 of 1866. *1 Law Rec. 64.* It was not the intention of the Legislature that section 7 of Ordinance 6 of

1866 should be given any wider or more extended interpretation nor is there reason for supposing that these documents are not to be admitted for purposes other than those expressly specified. *29 N.L.R. at 312.*

Document tendered in evidence. A plaint does not answer to this description of document. *17 N.L.R. at 175.* Nor does a document under the provisions of section 50 of the Civil Procedure Code and filed with the plaint. *29 N.L.R. at 328.*

Dog. To have a savage dog not under proper control on one's own premises is not in itself a culpable act. It becomes so if the dog attacks a person or animal being lawfully on the premises. *2 N.L.R. 253 ; 2 N.L.R. 115 ;* See *1 Times 216.* When it is not shown that the dog was particularly vicious or that its vice was known to its master no charge can be maintained against him unless he had neglected to take the ordinary precautions employed by everyone who uses such an animal. *5 Lead 80.*

See also ACTIO DE PAUPERIE.

Dolus malus. The mere absence of reasonable and probable cause or even the presence of positive recklessness in the defendant's conduct is not sufficient to establish *dolus malus* unless these elements show conclusively that the defendant acted in bad faith. *8 N.L.R. 368.*

A person who having actual notice of the existence of an instrument attempts to get priority over it through the medium of the Registration Ordinance is guilty of *dolus malus. 5 A.C.R. 126.*

See also FRAUD.

Domicil. Nothing but a Ceylon domicil can be acquired in this country. *9 S.C.C. 199 ; 26 N.L.R. at 326.* A party who gives evidence of his intention to change his domicil of origin should, generally speaking, be believed unless there is some good ground for disbelieving him on the material question. *6 Law Rec. 148.*

Donation is a contract, *6 N.L.R. 233 ; 26 N.L.R. at 150 ;* but see *3 N.L.R. 271,* whereby a person out of mere liberality and under no compulsion of law gives or promises to give something to another with no intention that the property should ever revert to him. *Voet 39. 5. 1; 6 N.L.R. at 334.* The intention to make a donation must be clearly proved for, in cases of doubt, the presumption is against the donation as long as a different inference can be drawn. *Voet 39. 5. 5.* A donation is complete if it is given out of sheer liberality with the intention that the property should vest immediately in the donee and should in no case revert to the donor. *Voet 39. 5. 3.* It is incomplete if the right to it is postponed to the

happening of some event or if it is to vest at once in the donee but revert to the donor on the fulfilment or breach of some condition. *Voet 39. 5. 3.* Anything may be gifted which is *in commercio* and capable of being the subject of private ownership whether movables, immovables or incorporeal things. A gift may consist not only of a single article but even of a *universitas rerum* such as an inheritance which has accrued to the donor. *Voet 39. 5. 10.* A donor may gift all his property both present and future. *Voet 39. 5. 10.* But see *Cens. For. 1. 4. 12. 13.* A mere chance or possibility of obtaining something cannot, however, be the subject matter of a donation. *9 Law Rec. at 75 ; 5 Times at 95.* A donor cannot donate the property of a third person without the consent of the owner. *Voet 39. 5. 10.* A donation may be unconditional or subject to a condition precedent or a subsequent limitation. *Cens. For. 1. 4. 12. 17.* A donation is said to be made *inter vivos* if it is not conditional upon the death of the donor. *Voet 39. 5. 4.* The mere fact that the donation is to take effect after the death of the donor does not make it any the less a donation *inter vivos. 3 Bal. 24 ; 5 S.C.D. 56 ; 1 Law Rec. 66 ; 21 N.L.R. 114 ; 32 N.L.R. 69.* A donation which is to take effect after the death of the donor and which is accepted by the donee is irrevocable and cannot be treated as a testamentary disposition which must be admitted to probate. *10 N.L.R. 347 ; 4 N.L.R. 288.* Under the Roman Dutch law a promise to give unaccompanied by delivery is none the less a donation and *causa* not amounting to consideration under the English law is sufficient to support a promise. *29 N.L.R. at 294.* A donation *inter vivos* does not necessarily pass the *dominium* in the subject of the donation. Where the donation is perfected by tradition the *dominium* passes. But if the donation has been effected by contract alone the donee must by appropriate action obtain delivery and clothe himself with the *dominium. 33 N.L.R. at 275.* See *21 N.L.R. 114.*

A donation may be made by anyone who has the free disposition of his property and the power of alienation and it may be made to anyone who is not prohibited from taking it and does not repudiate the gift. *Voet 39. 5. 6. ;* See *19 N.L.R. 314.* For a gift to a unborn person see *Voet 39. 5. 12. ; 2 N.L.R. 233.* A father under our law may make a gift to an adulterine bastard. *15 N.L.R. 348.* Donations between husband and wife are now governed by section 13 of Ordinance 15 of 1876. *14 N.L.R. 26.* A gift by one spouse to another will, however, be subject to the debts and engagements existing at the time of the donation but not to future debts. *18 N.L.R. 161.* See *17 N.L.R. 397.* A donation to prostitutes and concubines is not prohibited by law, *3 N.L.R. 271 ; 13 N.L.R. 237 ;* but a gift in contemplation of the continuance of concubinage may be set aside. *2 N.L.R. 276.*

Under the Roman Dutch law gifts *inter vivos* are, as a rule,

irrevocable, *Voet* 39. 5. 4, except for such causes as ingratitude, *17 N.L.R. 507* ; but see *26 N.L.R. 426*, and even then the revocation must be effected by decree of Court. *13 N.L.R. 166*. But a donor may expressly reserve a power of revocation and exercise it himself without obtaining a decree of Court. *23 N.L.R. 235; 11 N.L.R.; 151*; *11 N.L.R. 17*. A donation may also be revoked by the subsequent birth of children, *28 N.L.R. 397*, but the right of revocation is lost if such children die during the lifetime of the donor and before revocation. *3 Bal. 43*.

A deed of gift conveying landed property under the Kandyan law is revocable, *7 S.C.C. 117* ; *27 N.L.R. 449* ; See *36 N.L.R. 122* ; except where it contains a clause expressly renouncing the right of revocation. *4 Times 146*. Even so it is revocable if the donee fails to observe any stipulation subject to which the gift was made. *5 Lead 100*. A donation made in contemplation of marriage is revocable, *9 N.L.R. 131*; See *4 Times 65*; unless there is an express renunciation of revocation, *8 Law Rec. 91*. A gift in consideration of past services containing a clause renouncing the right of revocation is irrevocable. *9 N.L.R. 202* ; *6 Lead 52* ; *7 Law Rec. 111* ; *8 Law Rec. 93*; *12 N.L.R. 74 F.B.* ; *1 Law Rec. 48* ; *1 S.C.C. 47*. A gift in consideration of future services to be rendered by the donees is not rendered irrevocable by the use of the words "for ever". *13 Law Rec 253*.

Donation by Muslims are regulated by Muslim law. *21 N.L.R. at 285*. Three conditions are requisite for a valid donation in Muslim law. They are a manifestation of a wish to give on the part of the donor, the acceptance of the donee either impliedly or expressly and the taking possession of the subject matter of the gift by the donee either actually or constructively. *34 N.L.R. at 59* ; *14 N.L.R. 295* ; *2 C.L.W. 212* ; *6 Law Rec. 135* ; *35 N.L.R. at 81* ; It is not necessary to the validity of a deed of gift that the donor should vacate the property so that the donee may take possession. *3 Times at 100* ; See *32 N.L.R. at 186*. A gift by Muslim parents to children reserving a life interest is invalid. *31 N.L.R. 237*. A gift by a father to his minor child of property in the parent's possession is complete on his declaration that a gift has been made. *28 N.L.R. 136* ; See *4 Times 132* ; *9 Times 98*. A deed of gift by a Muslim which recites that the donation is absolute and irrevocable cannot be revoked by the donor. *1 C.L.W. 103* ; *12 Law Rec. 11* ; *11 Law Rec. 183*. A donation cannot be revoked after the death of the donee. *28 N.L.R. 316*.

See also ACCEPTANCE.

Donatio propter nuptias is not a mere gift made on the occasion of a marriage but a contract made as an inducement to marry. *23 N.L.R. 235*. Acceptance is necessary for the validity of such a donation. Where it has been accepted at the time of its execution

the subsequent marriage of the donees may amount to acceptance. *27 N.L.R. 203* ; *3 Times 136*. A donation made in contemplation of marriage must be returned in case the marriage does not take place, *24 N L.R. 277*, and it is immaterial which party was in default. *4 Law Rec. 208*. In an action to recover a gift made in contemplation of marriage the plaintiff must prove that the motive for the gift was defendant's promise of marriage or that the gift was conditional on marriage taking place. *35 N.L.R. 124* ; *10 Times 153* ; *12 Law Rec. 254*.

Dowry deed even though it is executed in pursuance of marriage and in consideration of marriage is, in fact, in substance a gift by the parent to the daughter. *27 N.L.R. at 63*. It is, however, a deed for valuable consideration and gains priority by prior registration, *12 N.L.R. 364*, but it has to be stamped as a deed of gift. *3 Law Rec. 198* ; *23 N.L.R. 67*. Fraud or collusion in obtaining the dowry deed or in securing registration would vitiate it. *5 Tam 94*.

"I have never understood dowry under the Thesavalamai, *per Sampayo*, J., to mean the same thing as a marriage settlement. It is undoubtedly the duty of the father or the mother to settle their daughters in marriage and to give a dowry in that connection. But I do not know that the customary law prevents the parents from determining beforehand what they shall give to the daughters as dowry and from gifting to them the destined property even though a marriage may not be actually in view". *1 C.W.R. at 122*. A husband can after his wife's death allocate to the daughters by way of dowry all the property of the deceased wife to the exclusion of the sons. The property may be so allocated even though a marriage is not actually in view, *18 N.L.R. 348* ; *14 N.L.R. 60*. A women dowried by her brother after the death of her father loses her rights to the paternal estate. *31 N L.R. 356*.

Under the Kandyan law a deed of gift given by parents in pursuance of a promise before marriage as dowry before or at the time of the marriage or even after marriage is one for valuable consideration and is irrevocable. In such a case the donees are not bound to prove that the deed operated as an inducement to contract the marriage. *27 N.L.R. 433*.

A dowry deed promising to gift something in the future is valid in Muslim Law. *14 Law Rec. 130* ; *3 C.L.W. 47*.

Drum. A *dola* is not a drum within the meaning of section 90 of the Police Ordinance 16 of 1865. *18 N.L.R. 415*. A *rabana* comes within the description. *14 N.L.R. 426*.

Due. The question whether a train is due at any particular spot on the railway within the meaning of section 36 (2) of Ordinance 9 of 1902 must be determined in the light of the precautions necessary for protecting the public against accidents. When a train is due at a railway station from one direction it must be taken to be due at a level crossing in the opposite direction about thirty yards from the end of the platform. 7 *C.W.R. 146.*

Dugong is an animal within the meaning of the Prevention of Cruelty to Animals Ordinance. *17 N.L.R. 302.*

Duly stamped means that the grant of letters has been impressed with the proper and full stamp duty referred to in section 20 of the Stamp Ordinance. *10 N.L.R. at 78.* The expression must be construed with reference to the date of issue of the letters of administration. *10 N.L.R. 119 ; 1 A.C.R. at 64.*

Duplicate cannot be treated as a copy of the original deed. It is in all respects an original deed. *17 N.L.R. 11.*

Duty. An instrument is chargeable with duty when it falls within the character which it purports to have apart from any questions as to whether or not it is effective for the purpose. *19 N.L.R. at 174.*

Dwelling house. A tea boutique is not a dwelling house within the meaning of section 34 of the Excise Ordinance. 36 *N.L.R. 420.*

Dying declaration is one made by a person after he had sustained the injuries which caused his death with regard to circumstances in which the injuries were inflicted. *5 Times 34 F.B.* Under the Evidence Ordinance a dying declaration is admissible not only in a case where the death of the deceased is the subject of the charge but also in a case where, whatever the nature of the proceedings may be, the death of the person who made the statement comes into question. *25 N.L.R. at 4.* The declaration of a dying person whose death did not form the subject of inquiry at the trial is not admissible without proof that the declarant was in actual danger of death and had given up all hope of recovery and that the death of the declarant and the person whose death was being investigated were all due to one and the same transaction. *Per Bonser C. J. 1 N.L.R. 75.*

Earnest money is money paid in part payment of the purchase and may be recovered by the party even though he makes default in carrying out the terms of the agreement. *28 N.L.R. 278 ; 8 Law Rec. 112.*

Eiusden generis. The rule of *eiusden generis* is a rule of construction which is usually applicable when a series of particular and specific words indicative of a class is followed by general words. In such a case the general words are ordinarily construed subject to the limitation imported by the class to which the specified instances belong. *29 N.L.R. at 8.* This rule is a rule of common sense rather than of law. But if it is a rule it is only applicable when the context shows such to have been the intention of the Legislature. *7 N.L.R. at 128.*

Election. A case of election can only arise when it is clear from the will itself that the testator intended to dispose of property which did not belong to him. *6 C.W.R. 171.*

Election proceeding is not a civil proceeding but has rather the character of a criminal or quasi-criminal proceeding. *1 C.L.W. 81; 11 Law Rec. 155.*

Electric current is not movable property and cannot be made the subject of theft. *28 N.L.R. 467 F.B. ; 8 Law Rec. 131.* A claim for money due for electric current is prescribed in one year. *31 N.L.R 366.*

Elk is covered by the term *sambhur* and comes within the definition of game. *8 C.W.R 115.* Contra *21 N.L.R. 154.*

See also ANIMAL.

Emancipation of a minor by our law rests more on separation from the parental roof than on the fact that the minor trades on his own account. *3 Bal. at 7.* A minor may emancipate himself by trades even after the death of his parents. *19 N.L.R. 426.* The Roman Dutch law as to tacit emancipation does not apply to Muslims. *6 C.W.R. 89.*

Emphyteusis is a perpetual lease of immovable property passing by inheritance. An interest in the nature of emphyteusis may be acquired by prescription. *16 N.L.R. 481 ; 18 N.L.R. 269.* These rights may also be enlarged by prescription. *26 N.L.R. 87 ; 2 Times 80.* Such prescription may be established not only by direct possession but also by possession through a lessee. *5 Law Rec. 169.*

Employer is the chief person for the time being in charge of an estate and includes the superintendent within the meaning of the Indian Labour Ordinance. *15 N.L.R. 283.* It also includes the owner although he has taken no part in the engagement of labourers. *32 N.L.R. 214 ; 8 Times 88.*

Employment in section 11 (4) of the Income Tax Ordinance 2 of 1932 refers to occupations other than trades, businesses, professions or vocations and is not used in the sense of a particular contract of service. *2 C.L.W. 275 ; 11 Times 21.*

Encroachment. In the case of an encroachment by a person in the course of an erection of a building on the land of his neighbour there is no authority in the Roman Dutch law to support an order permitting the offending party to retain the encroachment paying compensation therefor. But the offending party may be given the option of buying the portion of land encroached upon paying an adequate price for it and damages. *18 N.L.R. 187.* See *2 B.N.C. 14.* Overhanging eaves are encroachments which a trespasser is bound to remove. *2 Mat 204.*

An encroachment made without fraud and in perfect good faith with the meaning of Ordinance 1 of 1844 means an encroachment made not only in ignorance of the true boundary but in spite of reasonable diligence in endeavouring to ascertain it. *2 S.C.C. 9.*

Encumbrance in the largest sense means any kind of burden on or diminution of title and in the narrower sense it is generally employed to indicate a mortgage or charge upon the property. *Per Sampayo J. 19 N.L.R. at 278.* A lease is an encumbrance on the land leased. *17 N.L.R. at 73 F.B.; 2 C.W.R. at 185; 19 N.L.R. 54;* except for the purposes of section 8 of the Partition Ordinance. *1 C.W.R. 127 F.B.; 18 N.L.R. 408 F.B.* It is doubtful whether a fidei commissum is an encumbrance. *22 N.L.R. at 431; 3 Law Rec. at 137.* Contra *19 N.L.R. 473.* A seizure under a writ may be fairly included in the term encumbrance in its ordinary etymological sense. *10 N.L.R. at 370;* Contra *6 S.C.D. 61.* A mortgage over movables is not an encumbrance which continues to be attached to the property after its sale. *10 N.L.R. at 176.*

Endorsee. A *mala fide* endorsee of a promissory note has the right to sue on it but his claim is subject to any defence that may be available against the endorser. *7 C.W.R. 125.*

Endorser of a negotiable instrument by his endorsement contracts with the endorsee that the maker of the instrument will, upon its being presented to him on the due date at the place indicated by the date or otherwise on the instrument, pay the endorsee the amount thereof and that, in default of the maker so doing, he, the endorser, will indemnify the endorsee; and by necessary implication the endorser further incidentally contracts with the endorsee that the maker of the instrument or some one on his behalf shall be on the due date at the indicated place ready and willing to make the payment. *2 S.C.C. 92.*

Endorsement in blank makes a note payable to bearer. Such a note is negotiated by delivery and when value has been given for it the holder is a holder for value against all parties except the person

from whom he receives it. *30 N.L.R. 164.* A person endorsing a Note by his attorney is liable on it. *7 Tam 107.*

The endorsement on the certificate of a driver of a motor car is in no sense a punishment but merely a record of a conviction and punishment. Such an endorsement is obligatory on the Court and where the Court by an oversight has omitted to make the endorsement it can do so thereafter. *30 N.L.R. 168.* Section 39 (1) of the Motor Car Ordinance requires a Magistrate to make an endorsement on a person's certificate of competence when he is convicted of any offence committed under the Motor Car Ordinance or of an offence against any other written law in connection with the driving of a motor car. *6 Times 50.*

The mere use of a rubber stamp without any further identification of its authority is not sufficient to constitute an endorsement of a warrant within the meaning of section 360 of the Civil Procedure Code. *4 C.W.R. 122.*

Enforceable. The words "the rights shall not be enforceable by action" mean that no action shall be brought to enforce the rights. The word *enforceable* has not the same legal signification as the word *maintainable. Per Bertram C. J. 8 C.W.R. at 101; 2 Law Rec. at 117.*

English statute. Where the provisions of a Colonial Statute are identical with those of an English Statute, the Colonial Courts should follow the decisions of the Court of Appeal on the Imperial Statute. *1 N.L.R. 51; 2 Times 233.*

Enormis laesio. See LAESIO ENORMIS.

Enter in section 22 (1) of Ordinance 1 of 1897 does not refer merely to the original entry but includes every entry subsequent to the publication of the notice prescribed by section 1 of the Ordinance. *12 N.L.R. 71.*

Equity. In this Island there are not two separate systems of Law and Equity. The Roman Dutch law gives effect to equitable considerations whenever it is necessary to do justice between the parties. *Per Bonser C. J. 2 N.L.R. at 44.*

Essential misdescription or misstatement means a misdescription or misstatement which induced the purchaser to purchase something that otherwise he would never have purchased at all as distinguished from one the only effect of which is to induce him to give a higher price than he would otherwise give. *4 C.W.R. at 412.*

See also ACTIO REDHIBITORIA.

Estate below the value of Rs. 1,000 in section 338 of the Civil Procedure Code means a nett estate after the deduction of secured debts. 22 *N.L.R. 184.*

Estate duty. The liability to deliver a statement is not imposed on every person accountable for estate duty but only on persons to whom a beneficial interest in the property passes on the death. *30 N.L.R. at 42.*

Estoppel. The doctrine of estoppel is not a rule of evidence but rather an irrebutable presumption. *1 C.W.R. at 79 ; 18 N.L.R. 489.* An estoppel will arise where the person who makes the representation so conducts himself that a reasonable man would take the representation to be true and believe that it was intended to be acted upon. *16 N.L.R. at 125 ; 25 N.L.R. at 206.* To establish an estoppel it must be proved that the action taken by the party seeking to establish the estoppel was directly connected with the false impression caused by the representation or conduct of the party sought to the estopped. The representation or the conduct must be, in effect, an invitation to the party affected by it to do a particular act. But it need not be proved that the party sought to be estopped knew the truth about the facts which he by his statement or his conduct misrepresented. *21 N.L.R.* 360. For the purposes of an estoppel the state of mind or the motive of the person making the representation is immaterial, the gist of the matter being the belief engendered by the representation in the mind of the person who acts on it. It may be that if the representation consists in silence when the person concerned ought to speak, ignorance of the truth may prevent the inference of a representation. *Per Sampayo J. 6 C.W.R. at 77.* See *2 Law Rec. 57 ; 1 Law Rec. 11 ; 1 Law Rec. 160 ; 18 N.L.R. at 462 ; 1 C.W.R. at 148 ; 6 C.W.R. 139.* Where, however, such person makes the representation or stands by knowingly, there arises the additional element of fraud and in such a case infancy does not relieve him from the consequences. *6 C.W.R. 147 ; 21 N.L.R. at 136.* See *14 N.L.R. at 152 ; 28 N.L.R. at 143.* But a party cannot by representation any more than by other means raise against himself an estoppel so as to create a state of things which he is under a legal disability from creating. *15 N.L.R. 241.* You cannot under the law of estoppel claim to estop a person only to the extent to which his implied representations have damnified you. Nor can a person against whom an estopyel is asserted claim to hvee his responsibility so limited. Estoppel means that a person has so acted that he shall not be allowed to show the truth at all. *23 N.L.R. at 133.* The doctrine of estoppel by notice cannot override the express provisions of the Ordinance requiring registration. *25 N.L.R. at 301.*

The English law of estoppel by deed does not apply to Ceylon. *11 N.L.R. 212.* Generally speaking estoppel by *res judicata* may

arise either where there is identity of cause of action or where there is identity of point in issue. *25 N.L.R. at 264.* The theory of estoppel is inapplicable in the case of a sale in execution. *31 N.L.R. at 246.* The principle that a judgment creditor is not concluded by estoppels against his debtor applies only to estoppels which arise from conduct and does not apply to an estoppel not brought about by the voluntary conduct of the debtor but by an adverse judgment against him. *20 N.L.R. at 146 ; 4 C.W.R. 356.*

Eviction is the recovery by judicial process of our property which the opponent has acquired by a *justus titulus*, i.e. a title by the transfer of ownership such as purchase or gift and the purchaser is not allowed *rem habere* ; or when the purchaser has been unsuccessful in an action against a possessor for vindication of the thing ; whenever, in short, the result of an action of any kind is that the purchaser is not permitted *habere rem* and is cut off from all hope of recovering it. *Voet 21. 2. 1 ; See 8 S.C.C. 197.* A purchaser who, having been given vacant possession, is subsequently evicted has a right of action against the vendor to recover the purchase price and damages. *Voet 21. 2. 25 ; See 6 C.W.R. 230.* It does not matter whether the whole thing has been evicted or only a part of it provided it is a part of the principal thing, *Voet 21. 2. 15*, such or a real servitude. *19 N.L.R. 277.* A person who makes a speculative purchase is not, however, entitled to damages. *22 N.L.R. 377 ; 3 Times 76.* No action lies against the vendor unless the purchaser has given him notice of the eviction and called on him to warrant and defend his title. The notice need not be in writing. *1 Cur. L.R. 216.* A mere service of summons in itself is not sutficient. *8 S.C.C. 197 ; 15 N.L.R. 97.* Nor can the purchaser ask the Court to issue notice on the vendor to warrant and defend. *3 Bal. 128.* Notice is not required where the purchaser can show that the vendor had no shadow of title to the property sold. *2 N.L.R. 309.* The object of notice is simply to notify the vendor that the title is in dispute. *22 N.L.R. 219.* He may then either make himself a party or in any other manner assist the proof of the title conveyed by him. *17 N.L.R. 93 ; 9 N.L.R. 289.* He can intervene even in a partition action *22 N.L.R. 219.* The purchaser in addition to giving notice to his vendor is bound to make a proper defence himself and do his best in the case *20 N.L.R. 158 16 N.L.R. 245.* See *17 N.L.R. 93.* Where the vendor has had notice of the action and has failed to warrant and defend title no duty lies on the purchaser to appeal. This duty lies on the vendor. *22 N.L.R. 254.* See *Voet 21. 2. 30* Where a vendor has given an express warranty of title it may be enforced without the preliminary condition of notice and ejectment. *19 N.L.R. 277 ; 33 N.L.R. 282.*

Eviction by title paramount. In an action for recovery of rent a tenant may plead eviction by title paramount subsequent to the commencement of the tenancy. *28 N.L.R. 186.*

Evidence must be taken on oath or affirmation. *1 C.L.W. 1.* It is the duty of the Judge to take a full note of the evidence given. *1 Lead 68.* A Judge cannot, even with the consent of parties, depart from the provisions of the law as to how evidence should be given and recorded and the judgment of the Court must be based upon facts declared by law to be relevant and duly proved. *3 N.L.R. 38.* In a criminal case it is irregular to import into it and consider as evidence the evidence taken and recorded in another case though the complainant therein were the accused in the former case. Consent thereto on the part of the parties to the counter case will not avail to render irregular proceedings regular. *19 N.L.R. 188 ; 1 N.L.R. at 126 ; 5 Tam 42 ; 1 S.C.D 29 ; 3 N.L.R. 45 ; 1 S.C.R. 120 ; 14 Law Rec. 202 ; 2 Bal 58.* Evidence for the purpose of determining the guilt of an accused includes everything which a prudent man would observe, note and act upon in ascertaining the truth. The absence of a document, the manner in which oral testimony is given, the sincerity of a witness, his carriage, his look, his hesitancy or promptitude and a thousand and one other matters which are neither oral nor documentary evidence. *25 N.L.R. at 398.* The Court has a discretion at any period in a case to allow further evidence to be called for its own satisfaction even though it is doubtful whether it is admissible on the request of the party desiring it as of right. *20 N.L.R. at 486.* A party accepting a Judge's ruling or opinion as regards the relevancy of evidence which he proposes to offer without making any effort to produce it takes the risk upon himself of losing the case for want of such evidence. If a Court refuses to take any evidence tendered, Counsel should not submit to such refusal but should either call the witnesses, propose the questions to be put to them and have the reasons for the Judge's refusal recorded or should ask him to record that he would not entertain any evidence on the point in question. *1 N.L.R. 31.* Counsel in a criminal case cannot read extracts from a book to the Jury unless the book has been produced in Court in the course of the case for the prosecution or by way of evidence. *6 N.L.R. 35.* Where a party to an action has been given time to produce certain evidence and fails to do so at the hearing the Court has no power to dismiss the action. *26 N.L.R. 376.* Under section 40 of the Courts Ordinance the Supreme Court has power to take new evidence at the hearing of an appeal. *10 N.L.R. 321 F.B.*

In maintenance cases the evidence of the mother as to the parentage of the child is rightly admitted. *25 N.L.R. at 248.* Evidence given by an accused person on his own behalf which implicates a co-accused can be taken into account as against the latter. *24 N.L.R. 327 F.B.*

Exceptio rei venditae et traditae. By the Roman Dutch law existing in Ceylon the English doctrine applies that where a grantor has purported to grant an interest in land which he did not at the time possess but subsequently acquires, the benefit of his subsequent

acquisition goes automatically to the benefit of the earlier grantee or, it is usually expressed, 'feeds the estoppel'. *21 N.L.R. at 497 P.C. ; 13 N.L.R. 112 ; 2 Law Rec. 35.* The doctrine of the Roman Dutch law which prevails in Ceylon is not, however, identical with that of the English law. The exception given by the Roman law required the double condition not only that the property should be sold but that it should be delivered though the delivery might be presumed by a fiction. *22 N.L.R. at 391.* Under the Roman Dutch law a purchaser in possession if he were evicted by his vendor had the right either to submit to eviction and sue the vendor for damages or he might meet the claim to evict him by the *exceptio rei venditae et traditae 15 N.L.R. at 469.* Under our law for the purpose of the assertion of this principle no distinction is to be drawn between the case of a person defending his possession and that of a person claiming possession of a property. *21 N.L.R. at 268 ; 3 Law Rec. 99.* See *2 Mat. 157.* The *exceptio rei venditae et traditae* is an equitable plea. *10 Times at 145 ; 12 Law Rec. 261.* It is not available to a party who has never been in possession, *1 C.A.C. at 81 ;* nor against a subsequent purchaser from the vendor. *2 C.A.C. 71 ; 2 Mat, 157.* It is not available where the subsequent title of the vendor is by virtue of a partition decree. *28 N.L.R. 412 ; 8 Law Rec. 140 ;* See *4 Times 177.* Subsequent acquisition of title by a judgment debtor does not enure to the benefit of a purchaser at an execution sale. *31 N.L.R. 241 ; 10 Law Rec. 155.*

Excisable article. The hemp plant is an excisable article. *10 Law Rec. 131.* So is a medicine containing a trace of ganja. *18 N.L.R. 184.*

Excise license issued under section 18 of the Excise Ordinance signed by the Office Assistant to the Assistant Government Agent is valid provided the Assistant Government Agent has expressly delegated his authority in terms of Excise Notification 117 of 5 November 1920. *3 Times 42.*

Excise officer. A Police Sergeant is an Excise officer competent to institute a prosecution under section 43 of the Excise Ordinance. *30 N.L.R. 464 ; 6 Times 98.* See *10 Law Rec. 30.* A Mudaliyar is an Excise officer with the meaning of section 49 (1) of that Ordinance. *2 Cr. A.R. 13.* So is a Police Inspector, *8 Law Rec. 117 ;* a Constable aratchi, *2 C.L.W. 335 ;* a headman, *1 B.N.C. 102 ;* a Police Vidane, *5 B.N.C. 4 ;* but not a Police constable. *2 Cr. A.R. 34.*

Exclusive possession. What is meant by exclusive possession is a question of the circumstances of each case and need not imply exclusive possession by one individual. *8 Law Rec. 115.*

Excussion. By excussion is intended a searching or sifting out of the assets of the debtor by process of law. *24 N.L.R. at 340.* A creditor when excussing the debtor is responsible for the results of dilatoriness in his proceedings and the subsequent protraction of excussion. *24 N.L.R. at 301.*

Execution of decrees. The provisions of the Civil Procedure Code providing for the execution of decrees was intended to be exhaustive and it is not competent to a party who has obtained a decree to enforce that decree by a separate action. *22 N.L.R. 190.* Where the law directs that a certain order shall be observed in the seizure and the sale of property in the execution of a judgment the provision is imperative and a sale under which that order is not observed is not a good sale. *1 Times at 52.* There is no time limit within which a first application for the execution of a decree may be granted. *4 S.C.D. 2 ; 12 N.L.R. 362 ; 1 C.W.R. 237 ; 3 Lead 45.* An application for the execution of a decree should not be allowed until the formal decree has been entered in the case and the Court is satisfied that the applicant has obtained a copy of the decree. *14 Law Rec. 105 ; 36 N.L.R. 287.* Where an appeal has been filed it prevents the Court which passed the decree from executing it pending such appeal unless there is provision in an Ordinance by which such power is expressly given. *14 Law Rec. 235.* A regular and perfect seizure by the Fiscal is an essential preliminary in the case of a sale in execution. *5 N.L.R. 165.* Execution proceedings are not terminated with the sale of the property and the issue of the Fiscal's conveyance but the Court should under section 287 of the Civil Procedure Code take steps to put the purchaser in effective possession. *3 Law Rec. 155.*

Execution proceedings. In execution proceedings the Court will look to the substance of the transaction and will not be disposed to set aside an execution upon merely technical grounds where the execution has been found to be substantially right. *28 N.L.R. 314 ; 4 Times 101.*

Executor in Ceylon is a different person from the executor under the Roman Dutch law who had no more power than the will gave him and did not represent the testator. An executor or administrator in Ceylon does represent the deceased for the purposes of administration and has the status and powers of a legal representative and by probate or letters and estate commensurate with those powers sufficient for administration or limited thereto passes to him. No assent of the executor or administrator is necessary to pass title to the heirs appointed by the will or the heirs at law for they have their title on the death of the testator or intestate subject to the suspension of enjoyment during administration and subject to the

limited estate or title of the executor or administrator. Such person's duties concluded, his powers and estate disappear and what remains after liquidation is left for the enjoyment by the heirs. *2 C.L.R. 72.* An executor has a discretion to abandon a debt due to an estate but where he abandons a mortgage debt he is bound to give some *prima facie* evidence in explanation of his action in abandoning the debt. *26 N.L.R. 472.* In a judicial settlement the executor may be charged with property which he has failed through negligence to sell and realize. *31 N.L.R. 233.*

"When we speak of the introduction into Ceylon of the English law of executors and administrators we refer to the general law alone—to the English conception of executorship and administratorship as contrasted with that of the heir under the Civil and the Roman Dutch law. It does not follow—and, in my opinion, it is not the case—that every English statute dealing with executors and administrators has been incorporated into the law of Ceylon. *Per Wood Renton J. 9 N.L.R. at 176.*

Executor de son tort is unknown in our common law. *32 N.L.R. at 113.* To be an executor *de son tort* does not necessarily imply that you have done anything morally wrong. It simply implies that you have been acting as executor of an estate without a legal right to that position and that, having so acted, you are liable as if you had been executor with a legal right to that position. *Per Macdonnel, C. J. 11 Times 107 ; 36 N.L.R. at 51.* The question whether a person is an executor *de son tort* is a question of fact. It depends on the circumstances of each case. *20 N.L.R. 62.* An executor *de son tort* is liable to be sued by a creditor or legatee as well as by the lawful executor or administrator but he cannot receive any assets of the estate or bring an action for the recovery thereof. *1 Law Rec. 7.* He is only liable for the amount of assets which have come into his hands. *2 C.L.W. 343.* He cannot give a valid discharge of a debt due to the estate, *21 N.L.R. 76,* but an alienation by him for the purpose of paying the debts of the deceased is valid and will pass the property so long as he is really acting as executor and the creditor has reason to believe that he is so acting. *19 N.L.R. 305.* In execution against an executor *de son tort* on such property of the deceased as is found in his possession can properly be seized and made liable in execution. *8 C.W.R. at 30.*

Ex parte order may be vacated by the Court which made it. *2 N.L.R. 27 ; 3 B.N.C. 31 ; 1 N.L.R. 25 ; 28 N.L.R. 58 ; 8 Law Rec. 56; 5 N.L.R. 75 ; 13 Law Rec. 215.* A person seeking to set aside an *ex parte* order must first apply to the Court which made it. *22 N.L.R. at 158 ; 9 N.L.R. 26.* An appeal lies from an *ex parte* order although such appeal is not to be encouraged and the Court may in its discretion refuse to entertain it. *18 N.L.R. 53.* On principle a Court of Appeal must not be called upon to decide on the merits where a case has only been heard *ex parte. 30 N.L.R. at 6.*

The Civil Procedure Code does not contemplate the postponement of the *ex parte* hearing of the plaintiff's case and consequently has made no provision for the case of the absence of the plaintiff on the day appointed for the hearing. *31 N.L.R. at 346.*

Expert. Under section 45 of the Evidence Ordinance no person is an expert unless he is specially skilled in the science, art, or kindred department of knowledge as to which he comes forward to testify. *10 N.L.R. at 362.* As a rule the opinions of experts are not receivable upon questions of construction of documents but it is otherwise in the case of local, provincial, foreign or technical terms and expressions. It is the province of the expert to say what is commonly intended by the use of a given expression. *16 N.L.R. 369.* An expert in handwriting should not be asked to say definitely that a particular handwriting should be assigned to a particular person. His function is to point out similarities or differences between two specimens of handwriting and leave the Court to come to its own conclusions. *3 Cr. A.R. at 103.* It is not safe to base a conviction solely on the evidence of an expert in handwriting. *31 N.L.R. 449*; *3 Cr. A.R. 100* ; *12 Law Rec. 44.* "I have known too many instances, *per Hutchinson, C. J.*, in which expert's opinions as to the identity of handwriting have been proved to be mistaken to accept them as anything more than a slight corroboration of a conclusion arrived at independently, never so strong as to turn the scale against a person charged with forgery if the other evidence is not conclusive." *10 N.L.R. 353.*

Express trust can only arise between the *cestui que trust* and his trustee. *21 N.L.R. 389.*

Fact. See QUESTION OF FACT.

Failed implies that a duty lay upon a person and he failed to discharge it. *22 N.L.R. at 225.*

Failure to reply to letter in certain circumstances amounts to an admission of a claim made therein. *25 N.L.R. 193.*

Falsa demonstratio non nocet. The maxim applies only where the words of an instrument exclusive of the *falsa demonstratio* are sufficient of themselves to describe the property intended to be dealt with. *15 N.L.R. at 322* ; See *9 Times 39.* Where S who was allotted a divided lot of land under a partition decree leased after the partition decree and undivided share of the land it was held that the lease was not invalid by the reason of the misdescription. *14 N.L.R. 412* ; *5 Lead 67.*

False charge. The words must be understood in their ordinary meaning of a false accusation made to any authority bound by law to investigate it or to take any steps in regard to it as giving information of it to superior authorities with a view to investigation or other proceedings and so setting the criminal law in motion. *28 N.L.R. at 448* ; *8 Law Rec. 152.*

False document. A person who enters a false entry in a book does not thereby make a false document. Something more is necessary. The document must have been made with the intention of making it to be believed that it was made by, or with the authority of, another. *7 N.L.R. at 61.*

False evidence. The offence of giving false evidence does not merely consist in making a false statement. It must be a statement which the person making it either knows or believes to be false or does not believe to be true. *1 C.W.R. 100* ; *21 N.L.R. at 409.* A witness can be convicted for giving false evidence only where he contradicts the evidence given by him previously on a material point. *29 N.L.R. 102.* A charge of giving false evidence should contain a distinct assertion with regard to each statement intended to be characterized as false ; that it was made ; that it was untrue in fact ; and that the accused knew it was so when he made it. *8 N.L.R. 216.* A person cannot be convicted summarily of giving false evidence under section 440 of the Criminal Procedure Code on uncorroborated testimony. *27 N.L.R. 417.* That section contemplates the case of the Court coming to the opinion that false evidence had been given upon the proceedings already had at the main trial and not upon new material produced *ad hoc.* *1 C.W.R. 115.*

False information. The giving of false information under section 180 of the Penal Code implies volunteering a statement to a public servant and does not cover a case when answers are given to questions put by some authority at the happening of some event. *6 Law Rec. 25.* See *6 Law Rec. 103.* To sustain a charge under this section it is not necessary that the public servant to whom the false information is given should be induced to do anything or omit to do anything in consequences of such information ; the gist of the offence being the intention or knowledge of person supplying the information and not what action may or may not be taken by the public servant to whom false information is given. *9 N.L.R. 291.*

False imprisonment. In the case of false imprisonment proof of special damage is unnecessary. *13 N.L.R. at 40* ; *4 S.C.D. 23.*

False statement. For a conviction for perjury it is not necessary that a false statement should be upon a material point in the case. *28 N.L.R. 215.*

False weights. It is not an offence under section 259 of the Penal Code to possess false weights unless such possession be with the intention of using them fraudulently. *5 S.C.D. 95* ; *6 S.C.D. 83.*

Fee. The *batta* paid to the driver of a car is not a fee or reward unles it can be shown that the owner who hired the car received any part of such *batta* as hire. *2 C.L.W. 442 ; 36 N.L.R. 293.*

It is not the practice to limit a junior Advocate to a brief fee only. *31 N.L.R. 117.*

A Commissioner in a partition action has ordinarily a right to recover the whole of his fees from the party on whose motion he was appointed even where, as between themselves, the parties have been ordered to pay those fees *pro rata*. *2 Cur. L R. 156.*

Fictitious note. A blank note is not a fictitious Note within the meaning of the Money Lending Ordinance. *7 Times 69.* A fictitious Note is not void. *27 N.L.R. at 344.* See *28 N.L R. 339 ; 8 Law Rec. 118 ; 35 N.L.R. 33.*

Fidei commissary. It is settled law that a fidei commissary is bound by a partition decree, *28 N.L.R. at 86*, but so long as the fiduciary is entitled to possession the fidei commissary has not that present interest in the property which enables him to bring a partition suit. *15 N.L.R. at 155.*

When fidei commissaries fail the last holder's fiduciary interest is enlarged into full ownership and any disposition by him by act *inter vivos* or last will is operative. *21 N.L.R. at 64.*

Fidei commissary interest during the lifetime of the fiduciary is an expectancy of succession by survivorship and not capable of seizure and sale. *2 C.A.C. 71 ; 6 Lead 86.*

But where the fidei commissum is created by deed of gift the right of the fidei commissary is an assured and certain interest by which he and his heirs are entitled to the property on the death of the fiduciary whenever that death occurs and is not such a right as is described in section 218 (k) of the Civil Procedure Code. *9 Law Rec. 56.*

Fidei commissum. No particular form of words is required to create a fidei commissum. The true test is the intention of the testator as evidenced by the language of the instrument. *16 N.L.R. at 7 ; 7 N.L.R 46 ; 14 N.L.R. at 309 ; 1 N.L.R. 311 ; 6 N.L.R. 344.* A fidei commissum should not, however, be lightly imposed and when the intention does not clearly appear the inheritance should not be burdened with it. *14 N.L.R. at 305 ; 6 N.L.R. 344.* An express prohibition is not necessary to create a fidei commissum. *20 N.L.R. at 465 ; 23 N.L.R. at 4.*

A mere prohibition against alienation does not create a fidei commissum, *1 Times 217 ; 7 S.C.C. 137 F.B. ; 4 Times 21*, but it is otherwise if the prohibition is against alienation outside the family. This is sufficient to create a fidei commissum in favour of the family. *12 Law Rec. at 62 ; 15 N.L.R. 323 ; 1 C.A.C. 23 ; 6 Lead 80.* The Roman Dutch law is that there is no fidei commissum unless the persons to be benefited are clearly designated. *21 N.L.R. at 448 ; 23 N.L.R. at 336 ; 6 N.L.R. 344 ; 4 Times 21 ; 34 N.L.R. at 77.*

The expression " heirs in perpetuity " is sufficient indication of the fidei commissaries to create a fidei commissum. *1 C.A.C. 104.* Where the intention of the donor is not clearly expressed in the language used by him in a part of the deed his intention must be gathered from a consideration of the deed as a whole. *10 Law Rec. 31.* Whether or not a fidei commissum is single or recurring is a question to be answered by reference to the terms of the will and the intention of the testator expressed therein and, in cases of doubt, will be decided in favour of the lesser burden of the property. *10 Law Rec. 25.*

The law of fidei commissum has not been altered by Ordinances 21 of 1844, 10 of 1863 and 7 of 1871. *2 N.L.R. 313 P.C.*

The difference between a fidei commissum created by will and one created by deed *inter vivos* is that in the former the testator can revoke at any time during his lifetime while in the latter if the donation is once accepted it cannot be revoked. *1 A.C.R. 53.* No person can become absolutely entitled to any property burdened with a fidei commissum so long as there exist either instituted or substituted heirs under the will. *7 N.L.R. at 46.* In order to be entitled to claim a fidei commissum it is not necessary that the persons claiming should have come into existence during the testator's lifetime. Fidei commissaries are ascertained at the time at which the conditions on which their right depends is fulfilled, namely the death of the fiduciary. *6 Lead 58.*

The ordinary rule is that the fiduciary retains the *dominium* until his death and there is no vested interest in the remainder man during that interval. Where the fidei commissary dies before the fiduciary the latter takes the property. *28 N.L.R. at 122 ; 8 Law Rec. at 20.* Although there is a presumption in the case of a fidei commissum that the testator intended the fidei commissary legatee to have no transmissible rights unless he survives the fiduciary legatee, such presumption would have to yield to other clear indications in the will of an intention to the contrary. *14 N.L.R. at 326 P.C.* In the case of a fidei commissum created by last will, if the fidei commissary dies before the fiduciary the latter takes the inheritance.

But in the case of a fidei commissum created by act *inter vivos* if the fidei commissary dies before the fiduciary he transmits the expectation of the fidei commissum to his heirs. *14 N.L.R. 193 F.B.*

A fidei commissum is not extinguished by partition. It remains attached to the property allotted in severalty to the fiduciary. *3 N.L.R. 200 ; 9 N.L.R. 251 ; 20 N.L R. 27.* The *bona fide* division of property subject to a fidei commissum among the fiduciaries is binding on the fidei commissaries. *28 N.L.R. 92.*

A fidei commissary gift to which Muslims are parties must be construed according to the principles of the Roman Dutch law. *29 N.L.R. 284.* Gifts in the nature of a fidei commissum are not contrary to the spirit of the Kandyan law. *23 N.L.R. 26.* See *11 Law Rec. 47 ; 5 Law Rec. 137 ;* Contra *1 Lead 67.*

Fiduciary by deed may purport to transfer absolute *dominium.* Such a transfer is not invalid but operates only to the extent of passing such interest as he is entitled to. *24 N.L.R. at 424.*

Final order has been variously interpreted. By some it is said to be a judgment by which the whole of the contest in the suit has been destroyed ; by others, one which determines the rights of the parties ; and again other judges have defined it to be a judgment in which no further steps are necessary to perfect the judgment. *Per Moncrieff J. 5 N.L.R. at 195.* In considering whether an order is a final order regard must be had to the effect of the order. *16 N.L.R. at 58.* An order is final only when it is made upon an application or other proceeding which must, whether such application fail or succeed, determine the action. *30 N.L.R. at 368 ; 2 Bal. 87 ; 9 Law Rec. 203.* An order which finally determines the rights of the parties though it does not completely dispose of the action in that it necessitates further proceedings upon the basis of the rights as determined by the judgment in appeal may be a final judgment. *33 N.L.R. at 382 ; 12 Law Rec. at 48 ;* See *13 Law Rec. 80.* A judgment or order which can be considered on appeal at a later stage of the proceeding, that is when the case is finally decided, does not fall within the term " final judgment ", but an order which can never be brought up on appeal is a final judgment. *27 N.L.R. 65 ;* See *1 C.L.W. 112.* Where an appeal lies, the finality of the decree, on such appeal being taken, is qualified by the appeal and the decree is not final in the sense that it will be *res judicata* as between the same parties. *33 N.L.R. at 43 P.C.* An order made by a Court not in the exercise of its jurisdiction over the subject matter of the action but merely amounting to a declaration that a condition of its exercise has not been complied with by the plaintiff as a result of which it is not able to exercise its jurisdiction over the action and its subject matter is not a final decree and will not operate as *res judicata. 34 N.L.R. at 389.*

An order in a testamentary suit adjudicating upon the rights of claimants to the estate is a final order. *27 N.L.R. 410.* So is a decree *nisi* for divorce, *5 Law Rec. 17 ; 1 S.C.R. 3 ;* an order confirming, *4 C.W.R. 95 ;* an order refusing intervention in a partition action. *35 N.L.R. 243 ; 13 Law Rec. 76 ;* the order of a Court of Requests adjudicating on an issue relating to the satisfaction of a decree, *29 N.L.R. 242 ;* but not an order setting aside an order of abatement. *32 N.L.R. 61.* An order under section 325 (1) of the Criminal Procedure Code is a final order. *31 N.L.R. 150 ; 6 Times 142.* An order of transfer to a Village Tribunal of a charge which that tribunal has no power to entertain is a final order within the meaning of section 338 of the Criminal Procedure Code. *1 C.A. C. 53.*

Fines should be regulated according to the circumstances of each case and not to general considerations of the state of crime in the district. *1 B.N.C. at 21 and 33.* Large fines are punishments which should seldom be inflicted on a Sinhalese villager. *Per Clarence J. 3 S.C.C. at 135.* The forfeiture of an article *in specie* does not fall within the definition of a fine. *14 N.L.R. at 338 ; 5 Lead 82.* Where a person is sentenced to pay a fine and in default to undergo imprisonment for a term and where he undergoes the prescribed term of imprisonment it is not competent to issue a warrant for the levy of the amount of the fine. *19 N.L.R. 312 F.B.*

Finger impressions. A conviction can be based upon the evidence of finger prints alone in the absence of a reasonable explanation of the prints by the accused. *2 C.L.W. 279 ; 1 C.L.W. 250 ; 12 Law Rec. 39 ; 9 Times 145.* A Court has power under section 73 of the Evidence Ordinance to compel an accused to give his finger impressions. *31 N L.R. 435 ; 11 Law Rec. 31 ; 3 Cr. A.R. 64.*

The system of identification by finger prints is now practically infallible. *Per Jayawardene A. J. 3 Cr. A.R. at 101.*

Fire. Under the Roman Dutch law a person who starts a fire on his own land is bound to use the utmost diligence to prevent it from spreading on to his neighbour's property and the plaintiff cannot recover damages without proof that the defendant has neglected to observe the diligence which law requires of him. *20 N.L.R. at 74; 6 Law Rec. 5 ; 1 Law Rec. 17 ; 25 N.L.R. 481 F.B.*

Firm. There is no such thing as an action by a firm and in the firm's name. Our law requires that every action shall be instituted by, and in the names of the person or persons by whom the right to maintain it is claimed. *33 N.L.R. at 18*

First offenders. The policy of the law is that first offenders should as far as possible, not be sent to jail. *25 N.L.R. 474* ; *See 14 Law Rec. at 124.*

Fiscal in section 5 of Ordinance 4 of 1867 includes a Deputy Fiscal. *1 Times 73.* The Fiscal is not a corporation sole with the right of perpetual succession and a successor in office of a Fiscal has no right to sue on a bond made in favour of his predecessor. *11 N.L.R. 33* ; *3 A.C.R. 46.*

The Fiscal is not the agent of a creditor and a creditor is not responsible for what the Fiscal does. *7 Tam. 35.* There is no duty on a Fiscal to take any positive or active measures for the preservation of property in his custody, *1 Times 73*, but he may be liable for any damage done to property while in his custody. *1 Mat. at 162.* The Fiscal has no legal power to stay a sale otherwise than upon an order of Court but he may adjourn the sale. *19 N.L.R. 468* ; *9 N.L.R. 56 F.B.* He is not bound to warrant and defend the title of a purchaser at a sale in execution. *Vand. 19.* A Fiscal has no right to enter upon a land sold in execution of a mortgage decree without a special order of Court. *10 Times 122.*

Fiscal's conveyance conveys no more than it purports to, viz. the right, title and interest of the judgment debtor in the property sold. *7 S.C.C. 37.* A Fiscal's transfer in favour of a dead person is void. *6 N.L.R. 361.* A purchaser from the original purchaser at a Fiscal's sale is not entitled to ask for a conveyance. *5 Times 65.* Where a purchaser at such sale conveys before he has obtained a Fiscal's transfer and subsequently obtains a transfer, the benefit of the transfer enures to the purchaser. *15 N.L.R. 302.*

Fiscal's officer. A surveyor employed to make the plan mentioned in clause 57 of the Fiscal's Ordinance, 4 of 1867, is not a Fiscal's officer within the meaning of clause 23. *1 S.C.C. 37.*

Fiscal's sale held under Chapter 22 of the Civil Procedure Code is not complete on the property being knocked down to the highest bidder. In the case of immovable property it is not complete until the conditions of sale are signed. *6 C.W.R. 286.* A Fiscal's sale held without excuse or authority does not pass title to the purchaser but is a nullity. *6 N.L.R. 279.* A purchaser at a Fiscal's sale is not bound to assure himself that the proceedings on which the judgment is based are free from error in law or in fact. *9 N.L.R 336*; *2 A.C.R. 68.* Where movable property is sold by the Fiscal the purchase money takes the place of the thing sold. *30 N.L.R. at 30.*

Fish includes dried fish (*karawadu*), *3 Br. 50*, but not dried prawns within the meaning of section 1 (8) of Ordinance 15 of 1862. *6 N.L.R. 360.*

Fishing. *Prima facie* all the king's subjects have a right to fish in the waters of the sea and in all tidal estuaries connected therewith, *22 N.L.R. at 265.* No right of exclusive fishing in any particular part of the sea or at any particular time can be acquired by any custom among fishermen regulating the times and places of fishing. *2 C.L.R. 205.* A person going out in a small canoe to fish is entitled to continue that fishing until the *madel* is brought ashore. It is necessary for him to move off only to permit the *madel* to proceed to shore. *1860-62 Ram. 34.* A custom which excludes all other modes of fishing except that with a *madel* is unreasonable. *8 N.L.R. at 162.*

Fishing boat is not an implement of trade within the meaning of section 218 of the Civil Procedure Code. *30 N.L.R. 128.*

Fixture has no precise legal meaning. A great deal depends on the circumstances of each case. The point to be considered is not only the degree of annexation but the object of annexation. *16 N.L.R. at 122.* There is no provision of our law which enables a vendor to remove from a house sold by him anything affixed to the building which is intended for the permanent use of the building and, as it were, a part of it. *7 N.L.R. at 89.*

Footprint. A court has no power to order an accused person to submit impressions of his foot for the purpose of allowing photograph of such impression to be used as evidence against him. Photographs of an impression taken at the police station without objection by the accused may, however, be led in evidence. *35 N.L.R. 401.*

Force in cases of trespass to land applies to any act whereby the ideal fence which the law places round each man's property is broken. But in order to punish criminally there must be proof that the criminal used force equivalent to the *atrox vis* of the Roman law which might occur by the threat as well as by the actual infliction of physical violence. *2 Gren. pt. 1. 3.*

Foreign. Although England and Ceylon owe allegiance to the same sovereign, they are, in respect of each other, foreign countries governed by their own separate systems of laws. *3 N.L.R at 291.*

Foreign judgment. In an action on a foreign judgment the jurisdiction of the foreign Court is presumed. *20 N.L.R. 129* ; *9 S.C.C. 131.*

Forest in the Waste Land Ordinance must not be interpreted to mean virgin primeval forest, *23 N.L.R. 289*, but jungle of fifteen years' growth is not forest. *1 Mat. 80.* Once the Crown has proved the fact that a clearing has been effected in a forest it rests with the accused to defeat that charge, if he can, by showing that it is a reserved or village forest. *12 N.L.R. at 305.*

Forfeiture. A clause of forfeiture in a lease for non-payment of rent is only intended as security for due payment of the rent and both under the English and the Roman Dutch law a lessee is entitled to relief against such forfeiture even where the lessor has regained peaceable possession without the assistance of any Court of law. *10 N.L.R. 230* ; *3 Bal. 215* ; See *4 Times 179.*

No statutory offence as distinct from an offence under the Penal Code would ever in the absence of express provision justify an order for forfeiture. *20 N.L.R. at 118.*

The adultery of a Kandyan woman with the man of low caste does not involve a forfeiture of her vested rights in property. *2 C.L.W. 327* ; *13 Law Rec. 144.*

Forgery. Traced signatures may under certain circumstances amount to positive evidence of forgery. *3 Law Rec. 1.* A witness who attests a document knowing that the signature of the maker of the document is a forgery is not guilty of forgery but may be guilty of an abetment of forgery. *2 N.L.R. 330.* In a case of forgery it is dangerous to convict on the uncorroborated evidence of an expert on handwriting only. *7 Times 158.*

Forthwith. Where an enactment directs that a thing shall be done *forthwith*, the word is to be construed as meaning *in a reasonable time.* What is reasonable must depend on the circumstances of each case. But the word " reasonable " is to be interpreted not as meaning reasonable from the point of view of its effect upon the person to whom or in relation to whom the act is to be done but reasonable from the point of view of the person who is called upon to do it. The person who is to do the act must do it as soon as he reasonably can. When the act is one which in its nature can be done without any delay and there are no special circumstances occasioning delay the act must be done at once. In such a case all that is necessary to inquire is whether the act was done without any delay that could possibly be avoided. This is particularly the case when the act to be done is closely connected with another act which follows it so that in the intention of the Legislature they are one continuous act. *22 N.L.R. 1* ; See *29 N.L.R. at 206* ; *9 Law Rec. 44* ; *5 N.L.R. 314* ; *26 N.L.R. 67.* It is not within the power of a Magistrate to attach a special meaning to the word *forthwith* by means of an endorsement making the warrant returnable on a particular day. *30 N.L.R. 342* ; *29 N.L.R. 204.*

Foul and dirty water. A person has a right to enjoy his premises free from all invasion of foul and dirty drainage water coming from the premises adjoining him. *9 Law Rec. at 53.*

Fraud is not to be presumed. *2 Bal. at 44.* A party alleging fraud must plead it. *3 Lead 56* ; *12 Law Rec. 73.* An issue of fraud

cannot be gone into incidentally in a partition action. *19 N.L.R. at 49.* Fraud is not a thing that can stand even when robed in a judgment. *23 N.L.R. at 435.* Mere collusion or lack of *bona fides* does necessarily amount to fraud. A person may take unfair advantage of a particular situation and act accordingly but his action may, nevertheless, not be fraudulent. *17 N.L.R. at 172* ; *4 C.A.C. at 23* ; See *23 N.L.R. at 147.*

It is a principle of Roman Dutch law that no one can be allowed to avail himself of his own fraud and of English law that a man cannot set up his own fraud to avoid his own deed. *7 N.L.R. at 232.* But it is not fraud within section 39 of Ordinance 8 of 1863 if, with notice of a conveyance already made for value, a second purchaser takes a conveyance also for value and registers it before the former conveyance. *1 S.C.C. 84* ; *14 N.L.R. 417 F.B.* ; *4 Tam. 147* ; *14 N.L.R. 284.* See contra *13 N.L.R. at 168.*

The mere non-performance of a contract to sign a writing is not a fraud within the meaning of the Statute of Frauds. *31 N.L.R. at 77* ; *10 Law Rec. 77.* The systematic evasion of service by a judgment debtor is fraud within the meaning of that term as used in the proviso to section 337 of the Civil Procedure Code as it prevents the expiry of the statutory time limit from operating as a bar to the re-issue of a writ. *18 N.L.R. 95.* A conviction of an attempt to cheat is not a conviction of fraud within the meaning of section 18 of Ordinance 9 of 1924. *2 C.L.W. 23* ; *10 Times 64.*

Fraud in conducting a sale includes any act of positive misrepresentation or illegal omission whereby a purchaser is induced to bid for and purchase the property to his prejudice. *21 N.L.R. at 139* ; *1 Law Rec. 15.*

Fraudulent deed is valid under the Roman Dutch law until it is set aside or cancelled and when it is cancelled the cancellation refers back to the date of the deed. *17 N.L.R. at 99* ; *3 A.C.R. 1.* A deed held to be fraudulent in a suit does not *ipso facto* become void as against those who were no parties to the suit. *2 S.C.R. 85.* The prompt and regular registration of a deed of gift is a circumstance which shows that the gift was not fraudulently made. *3 N.L.R. 278.*

Fraudulent grant. To enable a fraudulent confederate to retain property transferred to him in order to effect a fraud the contemplated fraud must, according to the authorities, be effected. Then and then alone does the fraudulent grantor lose the right to claim the aid of the law to recover the property he has parted with. *20 N.L.R. at 300.*

Fraudulently. When an act is done with intention to deceive and by means of the deceit to obtain an advantage it is done fraudulently. *18 N.L.R. 11 F.B.* ; *14 Law Rec. at 141.* In order to constitute

an act fraudulent the advantage gained by the person committing the fraud need not necessarily be assessable in terms of money. 2 *C.L.W. 160.*

Fraudulent preference is the preference by an insolvent debtor of a creditor in fraud of his other creditors and it is only a trustee who represents all the creditors who can ask a Court to declare such a transaction to be a fraudulent preference in order that the preferred creditor may be compelled to restore what he has unfairly acquired to the estate for equal distribution among all the creditors. 2 *N.L.R. 124.*

Frivolous or vexatious arrest can only be an arrest malicious in its nature or without substantial grounds of suspicion or upon a charge plainly not an offence in law. *1860—62 Ram at 89.*

A charge may be frivolous or vexatious without being wholly false. 2 *Law Rec. at 27.* But the fact that the Magistrate is unable to place reliance on the evidence called is not a sufficient ground for inflicting a fine under section 54 of the Police Ordinance for bringing a false and frivolous charge. *31 N.L.R. at 254.* A Magistrate is bound to hear all the evidence a complainant can offer in support of the prosecution before he can make an order for compensation and Crown costs on the ground of the complaint being frivolous and vexatious. 2 *C.L.R. 51.*

A defence which is disbelieved by the Court is not necessarily frivolous and vexatious within the meaning of section 151 (7) of the Insolvency Ordinance. *17 N.L.R. 246.* But a defence which is false to the knowledge of the person putting it forward is a vexatious one within the meaning of that section. *13 N.L.R. 254.*

From. In computing a period from a date the first terminal is excluded and the second is included. *1 C.W.R. at 23.*

Fugitive Offenders Act. To render a person liable to be apprehended under the Fugitive Offenders Act there must be an offence committed in some part of His Majesty's dominions and subsequent to the offence the offender must have left that part. *19 N.L.R. 334.*

Full bench. "A solemn and unanimous decision of the Supreme Court in its collective capacity on a question of law must be treated as a binding authority in all subsequent cases. Even if the Court as constituted at a later date is unanimously of opinion that the original decision was wrong it would be out of its power to alter the law as there laid down. That can only be done by the Privy Council altering such decision or by an enactment of the Legislative Council." *Per Bonser C. J.* 2 *N.L.R. 261.* See 5 *Tam. 58*; 6 *N.L.R*

at 28 ; 6 N.L.R. at 172 ; 2 Times at 104 ; 25 N.L.R. at 250. Where a case is argued before three Judges who are not unanimous the views of the majority determine the result and is as binding in point of authority as if all three Judges had concurred. *3 B.N.C. 20.*

Fully loaded. Under the provisions of the Motor Car Ordinance a lorry is fully loaded when it contains a weight of goods equivalent to the weight which it is licensed to carry. The expression has reference to weight and not to the cubic capacity of the lorry. *14 Law Rec. at 52.*

Functus officio. The rendering of a final account does not make an administrator *functus officio.* 3 *Bal, 57 ; 3 N.L.R. 350.*

A judgment written out by a Judge after he became *functus officio* and delivered by his successor in office with the consent of the parties is bad notwithstanding such consent. 7 *N.L.R. 337 ; 1 C.W.R. 68.*

Furniture. Bungalow furniture is not *prima facie* covered by a mortgage of dead stock on a estate. *Wendt 278.*

Gambling is not a *malum in se* ; it is some times even an innocent amusement. It is only the circumstances attending it which make it an offence of any degree of gravity. *Per Sampayo, J. 7 C.W.R. at 250.*

Game must be taken to mean the animals given in the definition of the Game Protection Ordinance which are *res nullius*, that is, which have not become the property of some person by domestication. *21 N.L.R. 154 ; 6 C.W.R. at 222.*

Gaming. The offence of gaming may be established by the evidence of *indicia* of guilt which create the statutory presumption under section 10 of the Gaming Ordinance provided that the *indicia* are corroborative of positive independent evidence. *34 N.L.R. 49.*

A knucklebone is not an instrument for gaming. 2 *N.L.R. 78.*

Ganja is not a plant or seed but is a diseased part of a particular species of hemp plant. 2 *Br. at 155.*

Ganja includes every part of the hemp plant. *31 N.L.R. at 213.*

Ganja is the flowering or fruit bearing tops of the female hemp plant. 7 *N.L.R. 205.*

Garnishee order cannot be made when the debt is disputed. *3 Lead 6.* A Court has no power to hold an inquiry in garnishee proceedings where there is a *bona fide* dispute as to the existence of the debt. *2 C.L.W. 358 ; 11 Times 153 ; 36 N.L.R. 269 ;* See *32 N.L.R. 25 ; 13 Law Rec. 233.* A garnishee order does not operate as a transfer of the debt which will make the garnishor creditor of the garnishee but merely creates a lien in favour of the garnishor which is subject to all prior equitable rights. *10 N.L.R. 382 ; 3 A.C.R. 15.* Money seized under a garnishee order is secured against an adjudication of insolvency only where the security has been realized, that is, by an actual receipt of the attached debt by the garnishor. *10 Law Rec. 136.*

Generation to generation. The fact that property is to pass from generation to generation does not necessarily imply that if the line of descent of any of the donees is exhausted before the expiry of the fidei commissum the share of that donee is to accrue to the other donee or their descendants. *26 N.L.R. at 160.*

Good and valid conveyance means a conveyance which is valid in law for transferring the interest which the parties intended to convey, namely, the unfettered ownership. *17 N.L.R. at 164.*

Goods in its ordinary signification means movable property except money. *7 N.L.R. at 36* and *38.* Mortgage bonds are not goods that can be distrained. *14 Law Rec. at 208.* The word *goods* in section 9 of Ordinance 22 of 1871 means movable property. *2 N.L.R. 218.*

Government in section 20 of Ordinance 7 of 1840 does not include a Provincial Road Committee constituted under section 23 of Ordinance 10 of 1861. *5 Times 93.*

Grain tax. The fact that a person's name was entered in the Grain Tax register would prove that such person did claim title to the land as owner and became subject to all its duties and obligations and further that he asserted it to such good effect that he convinced the Grain Tax Commissioners of his title to the land. *3 Times 164 ; 7 Law Rec. 45.*

Grandchildren. When a person dies leaving only grandchildren, such grandchildren take *per stirpes* and not *per capita. 12 N.L.R. 21.*

Gross negligence is greater negligence than the absence of that ordinary care which under the circumstances a prudent man ought to have taken. *19 N.L.R. at 134.*

Ground floor when used with reference to buildings means the whole room on the ground floor. *31 N.L.R. at 326 ; 3 Cr. A.R. at 35.*

Guardian. The mother is by the law the natural guardian of her infant children and is entitled to look after them and have the custody of them as against all other people after the death of the father. *22 N.L.R. at 152 ;* See *1 N.L.R. 140.* Contra *18 N.L.R. 353 ; 1 C.W.R. at 50.* Even a Moorish widow is so entitled. *7 S.C.C. 22.* Guardianship terminates with majority. *1 A.C.R. 156.* A guardian can sell immovable property of his ward only when a sale is necessary for payment of debts or for the maintenance of the ward or when a sale is clearly for the benefit of the ward but such a sale is not valid if not sanctioned by the Court. *6 N.L.R. 364.*

Guardian ad litem represents the minor for all the purposes of the action including the execution of the decree that may be passed by the Court. *7 N.L.R. at 274.* A guardian *ad litem* need not obtain a certificate of curatorship under section 582 of the Civil Procedure Code. *7 N.L.R. 345.* A Court is not, by the appointment of a guardian *ad litem* relieved completely from the duty of watching the interests of minor parties to actions. *30 N.L.R. at 108.*

Guide. The prosecution to prove an offence under section 8 of the Guides Ordinance is bound to prove that the accused offered his services as a guide for a reward, that the offer was accepted and that he acted as guide. *32 N.L.R. at 206 ; 8 Times 116 ; 3 Cr. A.R. 83.*

Gun though broken into pieces is still a gun for the purposes of Ordinance 6 of 1901. *4 Tam. 165.* The possessor of a gun is the person who has the actual control of it. *5 C.W.R. at 251.* What amounts to making use of a gun within the meaning of Section 22 (1) of Ordinance 33 of 1916 depends on the facts and circumstances of each case. *7 Law Rec. 159.*

Gun powder. Blasting powder of the same composition as ordinary gunpowder, that is, saltpetre, sulphur and charcoal, is gunpowder within the meaning of section 4 of the Explosives Ordinance. *6 C.W.R. 5.*

Habeas corpus. English principles regulate the issue of a mandate of *habeas corpus. 31 N.L.R. 132.* Every judge of the Supreme Court is bound to entertain an application for a writ of *habeas corpus* and determine the application on its merits notwithstanding the fact that another Judge has refused a similar application by the applicant. *31 N.L.R. 111.* The Supreme Court will not deprive a parent of the custody of a child for the reason only that it would be brought up better and have a better chance in life if given to another. The Court must be satisfied that it is essential to its safety or welfare that the rights of the parent should be superseded or interfered with. *34 N.L.R. 127 ;* See *34 N.L.R. 204.*

Habitual. Before a person can be convicted as habitually addicted to crime so as to make it lawful to impose on him a sentence of preventive detention it must be proved that he is leading persistently a dishonest or criminal life. *34 N.L.R. at 265.*

Having sufficient means in section 3 of the Maintenance Ordinance denotes a person who has a source of income or has wilfully abstained from earning an income. *36 N.L.R. 295.*

Hearing of a case. It is the duty of the Court to fix a day for the hearing of a case and not to await an application therefor by the plaintiff. The hearing of a case may be postponed for a fixed day and not generally. *2 N.L.R. 29.*

Heir is a person who succeeds by descent to an estate of inheritance. *12 N.L.R. at 243 ; See 20 N.L.R. at 42 ; 3 Law Rec. 80.* A widow is an heir or her husband under the statute law of the Island. *13 N.L.R. at 356 ; 14 N.L.R. 321 P.C. ; See 1 Times 4.* The word *heirs* is very often used specially in deeds attested by Sinhalese and Tamil notaries to mean "descendants". *24 N.L.R. at 64.* The word *heirs* in section 7 (1) of the Thesavalamai refers to persons who would be heirs if the owner should now die just as in England the eldest son of a person still living is commonly spoken of as his heir or heir-at-law. *21 N.L.R. at 328.* The pupil of a Buddhist priest is not his heir and has no right of succession *ab intestato* to the private property of the deceased over which he has a disposing power at the date of his death. *3 N.L.R. 380.*

On the death of a person his estate, in the absence of a will, passes at once by operation of law to his heirs and the *dominium* vests in them. Once it so vests they cannot be divested of it except by several well-known modes recognized by law. *10 N.L.R. at 242.* Such possession by heirs is however always a possession subject to the title of a legal representative if one should be appointed. *10 N.L.R. at 98.* The introduction of the English law relating to executors and administrators did not affect, much less destroy, the distinctive character, status and rights of the heir as the term is understood both in the Roman and Roman Dutch law. *2 A.C.R. 47.* Where a creditor sues the heirs of a deceased debtor the plaint must show that the defendants possessed themselves of the estate of the debtor in such a way as to make them responsible for the claim to the extent of the assets in their possession. *3 N.L.R. 79.*

Heirs, executors, administrators and assigns. These words form a group well known in conveyancing and regularly used for the purpose of including every person to whom property may pass by operation of law or by the act of the person to whom the property belonged. *24 N.L.R. at 295 ; See 4 Law Rec. at 175 ; 6 N.L.R. 173.*

34 N.L.R. at 84 ; 1 Times 160. The use of these words in the *habendum* will not of itself prevent a fidei commissum being established if the intention of the donor to create one otherwise sufficiently appears on the instrument. *2 C.W.R. at 151.* They may be nothing more than a means of vesting in the fiduciary the *plena proprietas* as a preliminary to imposing a fidei commissum on the property. *1 C.W.R. at 25.*

Heirs in perpetuity. These words contain a sufficient indication of the class in whose favour a fidei commissum is created. *2 C.A.C. 104.*

Hemp plant is an excisable article within the meaning of the Excise Ordinance. *31 N.L.R. 211 ; 7 Times 53.*

Highway in section 2 of the Motor Car Ordinance 20 of 1927, includes a private garden which intending passengers are allowed to enter in order to get into a bus. *3 Cr. A.R. 18.* The public, *per Koch, J.*, have a free and unfettered right to the use of the King's highway and are entitled to protection in the exercise of that right. *14 Law Rec. at 125.* But the civic right to the lawful use of a highway is limited and qualified by section 69 of the Police Ordinance. *7 Law Rec. 85.*

Hire. Payment of money is only one, though the most obvious way of proving that a car is used for carrying passengers for hire. *31 N.L.R. at 158.* But supplying petrol for the journey and giving a gratuity to the driver of a car does not amount to a hire. *11 Law Rec. 98.*

Hire purchase. On a hire purchase agreement the purchaser has only the option of becoming the owner of the vehicle hired on duly performing certain specified conditions. *12 Law Rec. 211.*

Hiring car. If a car stops on a stranger's signal and takes him at once the usual presumption is that it was being used for hiring purposes. The fact that no money was taken before the passenger got in does not in any way affect the presumption. *30 N.L.R. at 412.*

Holder. On the death of the holder of a Note his title to the Note and his right of action on it passes to his executor or administrator. *31 N.L.R. 118.*

Holder in due course. A payee who has given value in good faith is a holder in due course just as much as an endorsee. *17 N.L.R. at 25.*

Holiday. The execution of civil process equally with the arrest of the person is invalid if carried out on a public holiday. *9 S.C.C. 121 ; 7 N.L.R. at 130.* So are arbitration proceedings. *6 Law Rec. 125.*

Hotchpot. See COLLATION.

Hotel. In order to constitute a hotel under Ordinance 7 of 1873 the place must be one kept for accommodation of travellers where they are furnished not only with food and intoxicating liquor but also with lodgings. *4 S.C.C. 128.*

Housebreaking implement. Where an instrument commonly used for housebreaking is found in the possession of a person it is not necessary for the prosecution to prove that the instrument was intended to be used for housebreaking. *25 N.L.R. at 34.* But where the instrument is one which can be used for an innocent purpose the onus is on the prosecution to prove the intent on the part of the possessor to use it for housebreaking. The intent may be proved by circumstantial evidence. *1 C.L.W. 136.* See *3 S.C.D. 6.* An inference of criminal intent from an unsatisfactory explanation of an instrument ambiguous in character would be, or would be very like, a *petitio principii. 34 N.L.R. at 32.* A bunch of keys is capable of being a housebreaking implement. *16 N.L.R. 456.* So is a carpenter's gouge, *4 Bal. 112 ; 12 N.L.R. 198,* or dynamite. *4 B.N.C. 64.*

Husband and wife. The right of a wife to pledge her husband's credit for necessaries is not based on agency but is an incident which flows from the status of marriage. *14 Law Rec. 6 ; 36 N.L.R. 273.* See *14 Law Rec. 21*. A husband is liable for the debts of his wife though incurred as a *publica mercatrix. 1 C.A.C. 168.*

Both under the Roman Dutch law and the English law husbands have been held entitled to bring actions for damages against persons who maliciously or without just cause have enticed away their wives. In the Roman Dutch law no case can be found where a wife has been held to be entitled to bring a similar action. *2 Times at 28.*

Hypothecary action. See ACTIO HYPOTHECARIA.

Identification parade. The fact that at an identification parade the prisoner was identified can be established by the evidence of anyone present at the identification parade. *2 C.L.W. 116 ; 10 Times 114.*

Idol. A gift to an idol is not recognized by law. *4 Tam. 107.*

Illegality. A deed is not invalid on the ground of illegality because it is contrary to what may be termed the policy of an Ordinance. It would be invalid for illegality if it contravened some specific provision of the Ordinance. *16 N.L.R. 337 F.B.*

Illegal arrest. Malice is immaterial in an action for illegal arrest. *3 C.W.R. 128 ; 19 N.L.R. 264.*

Illegal consideration. A promissory note granted for compounding a criminal prosecution that is compoundable in law is not for illegal consideration. *3 C.A.C. 57.*

Illegitimate child. Children born of a union valid according to Kandyan custom but not registered as required by law are illegitimate for the purposes of inheritance. *1 Law Rec. 181.* Under the Kandyan law illegitimate children succeed to the acquired property of their father and to all the property of their mother whether *paraveni* or acquired. *25 N.L.R. at 7 ; 2 Law Rec. 191.* See *2 S.C.R. 142 ; 8 C.W.R. 209 ; 8 Law Rec. 136.* It is not, however, all offspring born in casual intercourse that are entitled to succeed but only those illegitimate children who have been publicly acknowledged by their father or born in his house under circumstances showing an act of open recognition of cohabitation with their mother. *7 N.L.R. 364.*

Although it is illegal under the Thesavalami for illegitimate children to inherit paternal property, no provision is made incapacitating them from taking property given under a will or a deed of their parents. *8 N.L.R. 174.*

Under the Roman Dutch law a mother succeeds to the estate of illegitimate child to the exclusion of his brothers and sisters. *4 N.L.R. 242.*

Illicit in section 7 (1) (a) of the Vagrants Ordinance means irregular and improper according to the ordinary standard of morals. *34 N.L.R. 56 ; 1 C.L.W. 262.*

Immemorial user means the suer of a right for a period extending beyond the memory of man. *25 N.L.R. at 143.* User for over sixty years would be sufficient. *1 C.L.W. 302 ; 12 Law Rec. 54.*

Implement means something which is actually handled for the purpose of carrying on a trade or business. *30 N.L.R. 128.*

Importation in both the Opium and Excise Ordinance means the actual landing of the article. *9 Law Rec. at 104 ; 10 Law Rec. 34 ; 6 Times 98.*

Imprisonment. This term standing alone is to mean simple imprisonment. *1 B.N.C. 32 ; 4 N.L.R. 221.*

The policy of the law now, *per Lawrie. J.*, is to discourage the incarceration of honest debtors who from misfortune and poverty cannot pay their debts and to confine the creditors' remedy of

imprisoning the debtor only, or at least mainly, to cases where the debtor is contumacious and will not pay or disclose for seizure funds ver which he has control. *1 N.L.R. at 372.*

See also FIRST OFFENDERS.

Improvement. Under the Partition Ordinance any improvement must be valued according to the expenditure in respect of the improvement if the improvement is less in value. *22 N.L.R. 223.* Where property sold under that Ordinance fetches at the sale more or less than the appraised value, the value of the improvements must first of all be deducted from the proceeds and the balance is then to be divided among the owners of the soil. *12 Law Rec. 62.*

Improving co-owner is treated as a *bona fide* possessor and is entitled to the *mesne* profits unless it can be shown that he is not *bona fide*. *28 N.L.R. at 403 ; 2 C.L.W. 444.*

Inadvertence is stated to be effect of inattention, an oversight, mistake or fault which proceeds from negligence of thought. *28 N.L.R. at 344 ; 34 N.L.R. at 18 ; 8 Law Rec. at 120 ; 9 Times 134 ; 12 Law Rec. 34.* This word in section 10 of the Money Lending Ordinance should be given the widest possible meaning and includes acts done without deliberate election, *2 C.L.W. 433*, and owing to ignorance of the law without any intention to evade its provisions. *14 Law Rec. 12 ; 36 N.L.R. at 80.* But the deliberate omission of a money lender to keep books is not inadvertence. *34 N.L.R. 313 ; 12 Law Rec. 223.*

Include. The words "shall include" in a definition clause mean "shall have the following meanings in addition to its proper meanings," *1 Br. at 52 ; 4 N.L.R. 12.*

Increased rate of interest. The rule which is acted upon by English Courts of Equity that the Courts will not enforce a stipulation for payment of an increased rate of interest in a case where the debtor is not punctual in paying the interest originally stipulated does not prevail in Ceylon. *2 Br. 87.*

Incumbency. The right to an incumbency is a legal right and not purely an ecclesiastical matter. *21 N.L.R. 255.* An action for declaration of such right is barred in three years. *28 N.L.R. 447.*

Incumbent. The office of incumbent of a temple need not be a single one and may be held by two priests officiating in alternate years. *29 N.L.R. 415 ; 9 Law Rec. 23.* An incumbent does not forfeit his right by living in another *pansala*, *1 Mat. 220.* An incumbent cannot maintain an action to recover possession of temple property, *34 N.L.R. 348 ; 10 Times 8 ; 12 Law Rec. 64*, but he may grant

a lease in the absence of a duly appointed trustee. *28 N.L.R. 88.* See *2 C.L.R. 42.*

See also SISYANU SISYA PARAMPARAWE.

Indemnity. At common law money due under a contract of indemnity could not be recovered until the debt in respect of which it was due was actually paid. But equity allowed an order directing a fund to be set apart in advance. *24 N.L.R. 321.*

Indictment. The object of an indictment is to give an accused person sufficient notice of the accusation he has to meet. *1 A.C.R. 34.* Where an indictment regular upon the face of it is presented a judge must try the accused. He cannot inquire into the legality of the indictment. *2 S.C.D. 15 ; 5 N.L.R. 236 ; 1 S.C.R. 198 ; 3 N.L.R. 43 ; 2 Br. 142.* The trial of an accused on two separate indictments at one trial is illegal and fatal to the conviction. *1 Cr. A.R. 25* The alteration of an indictment should be made on the face of the indictment and should be read and explained to the accused. *1 B.N.C. 65.* In a criminal case it is too late to quash the indictment after it has once been accepted by Court and the case for the prosecution is closed. *3 N.L.R. 101.* A trial on indictment before a District Court must proceed on evidence given in the trial Court. It is irregular merely to read the Police Court evidence of the witnesses and to tender them for cross-examination. *6 Times 117.*

Induce in section 16 of the Money Lending Ordinance should be construed in the light of the preceding words "by visiting the residence of a person". These words contemplate a visit in the absence and without the knowledge of the person who is the natural protector of a wife and a child and the whole provision is evidently intended to prevent a wife or child from being tempted to contract a debt. *22 N.L.R. at 410 ; 2 Law Rec. 84.*

Infamous crime ordinarily implies a crime which involves gross personal immorality. *28 N.L.R. at 244 ; 7 Law Rec. 121 ; 4 Times 47.*

In forma pauperis. Applications for leave to appeal *in forma pauperis* must be made within the time limited for the presentation of appeals. *3 C.W.R. 369.*

Information denotes the communication of any intelligence or knowledge of facts whether it is or is not in the nature of an accusation but it does not mean the suggestion of a possible clue to the discovery of a fact unknown. *31 N.L.R. 473 ; 3 Cr. A.R. 73.* The information spoken of in sections 81 to 83 of the Criminal Procedure Code need not be on oath or affirmation. *4 C.W.R. 70.* Giving information under section 180 of the Penal Code implies volunteering a statement to a public servant and does not cover a case where

answers are given to questions put by some authority at the happening of some event. *25 N.L.R. at 70.* The giving of information to a police officer of a cognizable offence against a specified person amounts to the institution of criminal proceedings within the meaning of section 208 of the Penal Code. *12 N.L.R. 137.*

Information book may not be used for testing the credibility of a witness by comparing his evidence with his statements to the Police. *29 N.L.R. 403 ; 26 N.L.R. 324 ; 4 C.W.R. 363.* Nor to enable a Magistrate to come to a decision in the case. *32 N.L.R. at 336 ; 1 C.L.W. 27.* If he wishes to use it he must call the Police officer who recorded the information. *33 N.L.R. 161.* Where a Magistrate after recording the evidence of the complainant referred to the information book and refused to issue process, it was held that the use of the information book was wrong : *1 C.L.W. 135 ; 11 Law Rec. 110.* But a Judge has right to make use of the information book within the limits set to it by the law. *28 N.L.R. at 84.* Entries in the information book may be used to assist the Court by suggesting means of further elucidating points that need clearing up but not as themselves evidence of any date, fact or statement contained therein *4 C.W.R. 363.* Where a Magistrate in examining the information book discovers fresh facts which have a bearing upon the case he should not act upon such material without calling for the necessary evidence to have those facts legally proved. *3 Cr. A.R. 138 ; 8 Times 59.*

Inhabitant of the province of Jaffna means a person who has acquired permanent residence in the nature of domicile in that province. *2 Cur. L R. 196.*

The word *inhabitants* in section 90 of the Police Ordinance of 1865 means the inhabitants of the quarter and not one individual of it only. *2 S.C.C. 165 ; 10 Law Rec. 63.*

Inheritance. Property which passes by will falls within the scope of the word " inheritance ". *9 N.L.R. 293.*

The broad principle underlying the Kandyan law of inheritance is that a man's landed property must remain in the family. If he leaves acquired property his widow is given the right to enjoy the produce thereof. She is only permitted to share in the produce of his *paraveni* property if there is no acquired property or if the profits of such property alone are insufficient for her maintenance. *30 N.L.R. at 186.*

Inherited property. See PARAVENI.

Injunction cannot be obtained for actionable wrongs for which damages are a proper remedy. *31 N.L.R. 33 ; 10 Law Rec. 53.* An application for an *interim* injunction may be made in the plaint of an action but it must be supported by an affidavit before a notice can issue on the party sought to be restrained. *9 Law Rec. 121.* An *ex parte* injunction should only be granted when the plaintiff applies for it promptly on learning of the threatened mischief and where it appears that the mischief is so urgent that it would be completed if notice were served on the defendant before the injunction could be obtained. *2 Br. at 79 ; 31 N.L.R. 33.* Before granting an injunction under section 87 (3) of the Courts Ordinance the Court should find on sufficient material not only that the defendant threatened or was about to dispose of the property but also that he had the intention to defraud the plaintiff thereby. *18 N.L.R. 486.* Where a plaintiff obtains an injunction on insufficient grounds he is liable in damages to the party affected by such injunction. In awarding such damages the real damage suffered ought to be ascertained. The plaintiff should not be punished for any breach of duty and no extraordinary presumption should be made against him. *10 N.L.R. 30.* There is no inherent power in the Supreme Court to grant injunctions. Its powers are restricted to cases referred to in section 22 of the Courts Ordinance. *2 N.L.R. 36.* A Court of Requests has power to punish disobedience to an injunction issued by it as for contempt of Court. *33 N.L.R. 285.*

Injuria. What are in English law called trespass to person and malicious prosecution come under the generic term *injuria* of the Roman Dutch law. And in an action for injury the burden is upon the plaintiff of proving that the act complained was done *animo injuriandi*, that is to say, with actual intention to injure or with such consciousness of wrong as amounts in law to that state of mind. *Per Sampayo, J. 3 C.W.R. at 8.* See *3 Bal. at 282.*

A threat of injury within the meaning of section 186 of the Penal Code must be of coming injury such as is likely to operate on the mind of a public servant and to cause him to do or forbear or delay doing any act connected with the exercise of his public functions. A mere effusion of passion unattended with any fixed purpose of doing harm is insufficient. *10 Times 5.*

Injury in section 43 of the Penal Code is wide enough to include a case of criminal breach of trust. *3 Cr. A.R. at 130.*

In solidum. When persons have joined in stipulating for the payment of a certain sum of money, each is ordinarily liable to pay a *quota* of that money and it is only when the intention of the parties is clearly expressed that each is severally bound for payment of the whole, that each person becomes liable *in solidum.* *7 N.L.R. at 18.*

Insolvency is a question which affects the interests of the Colony at large. It is not merely a question between the individual creditors and the debtor but one which affects the whole trading community. That the insolvency law should be properly administered is of the utmost importance. *Per Bonser, C.J. 2 N.L.R. at 106.*

Mere extravagance and recklessness in trading is not, however, a ground for entirely preventing a trader getting the benefit of the insolvency legislation unless it is such recklessness as amounts in effect to fraud. *8 C.W.R. at 205 ; 2 Law Rec. 179.* There is no provision in the law as it exists in Ceylon for winding up the estate of a deceased person in insolvency. *35 N.L.R. 255.* Personal earnings of an insolvent except to the extent necessary for the support of himself and his family vest in the assignee. *3 Times 43 ; 26 N.L.R. 360.*

The proof of plaintiff's claim in the insolvency proceedings of an agent is not a bar to an action against the undisclosed principal. *6 Law Rec. 131.*

Instalments. A decree for payment by instalments must be made in the first instance. *33 N.L.R. 358 ; 9 Times 145.* Payment by instalments may be decreed in an action under Chapter 53 of the Civil Procedure Code. *4 Times 1.* Such relief should not be denied to a debtor merely because the creditor is a bank. *28 N.L.R. 289.* A Court has power to order the payment by instalments of a decree in a mortgage action. *34 N.L.R. 346 ; 36 N.L.R. 445 ; 10 Times 185 ; 13 Law Rec. 1.* Contra *33 N.L.R. 358 ; 12 Law Rec. 26 ; 1 C.L.W. 379 ; 1 C.L.W. 255.*

Institution of an action. If a plaint is rejected and out put on the file of the Court it cannot be said to constitute the institution of an action. *1 N.L.R. at 20.*

See also ACTION.

Instructions to an agent. Where instructions to an agent are so worded as to be capable of two interpretations and where the agent fairly and honestly assumes it to bear one of those interpretations an acts on that assumption, the principal cannot be released from the contract on the ground that he intended it to bear the other and not only is the agent entitled to insist upon the authority conveyed but the other principal is also entitled to insist upon the contract. *22 N.L.R. at 461.*

Instrument. A bank pass book is not an instrument or contract in writing within the meaning of section 703 of the Civil Procedure Code. *1 Times 128.*

Insufficiently stamped. The time to take objection to an instrument on the ground that it is insufficiently stamped is when it is tendered in evidence. *2 N.L.R. 80.*

Insult to be an offence under section 484 of the Penal Code must be offered to a person's face or must be uttered in his presence or hearing. *10 Law Rec. 6 ; 6 Times 74.* In a prosecution under this section it is not necessary for a conviction that there should be affirmative evidence to the effect that the insult caused actual provocation. It is sufficient if the insult is clearly of a provocative character, of a character likely to produce a breach of the public peace on the part of the person towards whom it is directed ; and if the Court is satisfied from all the circumstances of the case that the accused must have intended to produce, or must have known that he would produce, that result. *14 N.L.R. 3 ; 4 S.C.D. 85 ; 4 Lead 99.*

Insurance is a contract of indemnity whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed against loss. *25 N L.R. at 334 ; 2 Times at 18 ; 5 Law Rec. at 132.* A party insured is entitled to be indemnified only up to the amount of his loss in respect of his interest in the article insured. *13 Law Rec. 200.* The law applicable to contracts of accident insurance in Ceylon is the Roman Dutch law. *2 C.L.W. 311 ; 35 N.L.R. 216 ; 13 Law Rec. 103.* To contracts of fire insurance the English law of debtor and creditor applies. *35 N.L.R. 413 ; 13 Law Rec. 223.*

Intention is not a momentary phase of the mind but a continuing one. *Per Drieberg, J. 30 N.L.R. at 120 ; 6 Times 49.* It is not necessary, and in most cases it is impossible, to prove intention by direct evidence. It is sufficient if circumstances are established from which a reasonable inference may be drawn. A man's intention must be collected from his acts. *24 N.L.R. 264.* In construing a deed the intention of the donor cannot be considered if the language used is clear. *25 N.L.R. 207.* Where a contract is in writing the intention of the parties must be gathered from a consideration of the terms of the writing and not from extrinsic circumstances. *27 N.L.R. at 457.* Where the intention of a donor is not clearly expressed in the language used by him in a part of the deed, his intention must be gathered from a consideration not of any particular form of words in any particular part of the deed but from a consideration of the deed as a whole. *30 N.L.R. at 245.*

Interest in the ordinary sense is not a penalty. It is the profit payable to the person who is entitled to the principal sum as compensation. *1 C.W.R. at 75 ; 18 N.L.R. at 402.* According to the Roman Dutch Law in force in Ceylon interest ceases to accumulate when the amount of interest equals the principal. But if a payment

or recovery of interest be afterwards made, interest will again begin to accumulate until the amount again equals the principal. *5 S.C.C. 16.* There is nothing in the laws of this Colony which restricts the rate of interest recoverable at law to 12 per cent. only. *7 S C.C. 182.* Interest is not recoverable in respect of the period prior to the date of action in the absence of agreement or of any provision of law. *3 C.L.W. 56 ; See 14 Law Rec. at 119 ; 7 Tam. 37.*

The " interest " contemplated in section 237 (1) of Ordinance 11 of 1920 must be in the contract itself and not merely an interest in the contractor or his business such as, for instance, an employee would have. *6 Times 10.*

Interest in land. An authority to enter on land and prospect for plumbago is an agreement creating an interest in land and must be notarially execute. *12 N.L.R. 87 ; 2 S.C.D. 81.* So is a lease of coconut trees for a period exceeding a year, *5 Law Rec. 78 ; 13 N.L.R. 291 ;* Contra *2 C.L.R. 183 ;* an agreement regarding the right to draw toddy from coconut trees, *4 S.C.D. 59 ;* a contract to permit cinchona to be harvested, *8 S.C.C. 21 ;* an agreement relating to *fructus industriales, 18 N.L.R. 82 ; See 3 N.L.R. 56 ;* an agreement for the cultivation of land in *ande, 8 S.C.C. 67 ; See 7 S.C.C. 71 ;* a planter's share, *2 C.L.R. 6 ;* but not an agreement to pay for labour expended in cutting cabook on a land. *10 Law Rec. 4.* A mortgage giving an interest in land should be treated by the Fiscal as immovable property. *Vand. 241.* Possession of trees standing on another's land is an interest in immovable property but when the nuts are picked the crop becomes movable property. *4. N.L.R. 225.* A person who *aswedumizes* a land does not acquire any interest in the land in the absence of a notarial instrument. *5 Bal. 6.* An action for rent only and not an action for declaration of title or ejectment and rent is not an action where an interest in land is in dispute. *16 N.L.R. 362.*

Interest in the estate in section 726 of the Civil Procedure Code means interest in the estate as a judicial entity. *1 C.W.R. 21.*

Interest in the property in section 404 of the Civil Procedure Code means interest in the property, the subject matter of the suit. *1 C.L.W. 313.* A person who has merely a decree against the judgment debtor at the time of the sale is not a person who has an interest in the property. *2 C.L.W. 31 ; 10 Times 46 ; See 3 S.C.R. at 42.* An heir to an estate has an interest in the property sold in execution of a judgment against the administrator of the estate within the meaning of section 282 of the Civil Procedure Code. *2 A.C.R. 173 ; 11 N.L.R. 230.*

Interlocutory appeal does not stay the proceedings in an action. *1 C.L.W. 318.*

Interlocutory order for costs is an order for the payment of money and is enforceable in like manner as a decree for money. *2 C.L.R. 82.*

An interlocutory order in a partition case may not be varied by the Judge as a result of further inquiry. *3 S.C.D. 93 ; 2 Cur. L R. 118 ;* Contra *2 S.C.D. at 39 ; 5 A.C.R. 1.* A party who has obtained an interlocutory decree in partition action is not bound to prove his title afresh against an intervenient who has failed to establish his right to intervene. *35 N.L.R. 404.* An interlocutory decree for partition, unless proceeded with, is useless for all purposes. It would not even support a plea of *res judicata. Per Bonser, C.J. 1 N.L.R. at 368.*

A party is not bound to appeal from every interlocutory order and has the right to exercise his right of appeal upon all points when the proceeding in the Court below is determined by a final judgment. *11 N.L.R. 309 ; 34 N.L R. at 361.*

Intermeddling with suitors. A person who draws up a plaint for a suitor at the suitor's request cannot be said to intermeddle within the meaning of section 5 of Ordinance 11 of 1894. *14 Law Rec. 20 ; See 11 Times 152 ; 36 N.L.R. 87.*

Interpretation. The rules of interpretation require that one should give to the language used the ordinary meaning which would be attached to these words. *31 N.L.R. at 106.* In the interpretation of wills resort must be had to the common law of the land. *31 N.L.R. at 25 ; 29 N.L.R. 89.*

Interruption of possession is a physical interruption. *2 N.L.R. at 269.* Possession of land is interrupted if the continuity of possession is broken by the disputant legitimately putting the possessor out of the land and keeping him out of it for a certain time if the possessor is occupying it ; or by occupying it himself for a certain time and using it for his own advantage if the party prescribing is not in occupation. *Per Withers, J. 1 N.L.R. at 291.* The registration of a deed cannot be regarded as an interruption of possession which is, as a matter of fact, continuous. *1 C.W.R. at 200 ; 18 N.L.R. 469.* Nor is an unsuccessful action by an owner of land against a person in possession. *19 N.L.R. 485 P.C.* An isolated act of destructive violence is not sufficient to interrupt prescriptive possession. *6 Times 120 ; 30 N.L.R. 413.* Where there has been interruption of the term of prescription by the plaintiff aginst two of the co-principal debtors prescription is considered as having been interrupted with respect to all the others. *10 Law Rec. 177.*

Intervention in a pending action can be permitted only under section 18 of the Civil Procedure Code since it came into operation. *2 C.L.R. 84.* An action for partition cannot be said to have been

brought as between the original parties and an intervenient until he has intervened and the plaintiff may count the period up to the intervention for the purposes of prescription as against the intervenient. *26 N.L.R. 41.*

Inter vivos. Instrument *inter vivos* must be interpreted strictly in accordance with their terms. *26 N.L.R. at 139.*

Intestate succession Succession to an intestate's estate devolves immediately upon his death and it is competent for the heirs-at-law to alienate the property pending the administration of the estate. Such alienation vests good title in the alienee subject only to be defeated by proper disposal of the property by the administrator in the due course of administration. *3 C.L.R. 70.*

See also HEIR.

Intimidation. The essence of intimidation is the holding out of some threat directly to the person concerned or with the intention of its being communicated to him. *Per Sampayo, J. 4 C.W.R. 231.* The performance of *huniam* ceremonies with the intention of putting persons in fear of their personal safety and so preventing them from entering a field and reaping a crop is criminal intimidation. *5 N.L.R. 223.*

Intoxication. Subject to certain qualifications the question whether an intoxicated person is guilty of murder depends upon whether he has formed a murderous intention. That is a question of fact. For the purpose of determining that question of fact the jury must attribute to him the knowledge of the nature and consequences of his act that would be attributed to the sober man. If they consider that the degree of intoxication was such that he could not have formed a murderous intention or any intention at all they must acquit him of murder and consider the question of culpable homicide. For the purpose of that question they must attribute to the accused the knowledge of a sober man. The law will not allow the accused to disclaim that knowledge and if they come to the conclusion that a sober man in the prisoner's position would have known that he was likely by his act to cause death they must convict him of culpable homicide. This is subject to the special case dealt with by paragraph "fourthly" of section 294 of the Penal Code and also subject to the four exceptions enumerated in that same section. *25 N.L.R. at 447.*

Invented word is allowed to be registered as a trade mark not as a reward of merit but because its registration deprives no member of the community of the right which he possesses to use the existing vocabulary as he pleases. *25 N.L.R. 75.*

I.O U. is no evidence of money lent. *31 N.L.R. 97 ; 6 Times 155*

Irregularities in criminal proceedings constitute no ground for the reversal or alteration of sentences on appeal unless there has been a failure of justice. *14 N.L.R. 186.* It is an irregularity which vitiates a conviction that the same person has acted as prosecutor and magistrate in the case. *14 Law Rec. 3.*

Under the common law the only irregularities on which an adjudication at a bidding may be set aside are material irregularities. The omission of what is described as a formal solemnity does no harm. *24 N.L.R. 361.* Section 382 of the Civil Procedure Code, as far as irregularity of procedure is concerned, is exhaustive. No irregularity of procedure which is not a material irregularity in publishing or conducting the sale is a good ground for setting the sale aside. *14 N.L.R. at 315 ; 6 S.C.D. 11 ; 5 Lead 63.* A sale in execution without any advertisement in the Government Gazette and publication of the sale at the Courthouse is irregular. *4 A.C.R. 157; 13 Law Rec. 258.* Where at a Fiscal's sale evidence is produced before the sale takes place that the plaintiff's claim has been satisfied and money is tendered for Fiscal's charges, the failure of the Fiscal to exercise his discretion and adjourn the sale is a material irregularity within the meaning of section 282 of the Code. *35 N.L.R. 183 ; 10 Times 183 ; 13 Law Rec. 47.* A judgment debtor who knows of an irregularity and allows execution to proceed without objection cannot thereafter raise the objection. *11 Law Rec. 13.*

Minute irregularities do not invalidates a sale under the Partition Ordinance. *25 N.L.R. 417.*

Issues. There is no necessity under our law to restrict the issue to the pleadings. *8 N.L.R. at 241.* Under our present system of pleadings any omission in the plaint or answer may be supplied by raising a relevant issue at the trial and an issue be stated at any time before judgment. *23 N.L.R. 241.* No doubt it is a matter within the discretion of the Judge whether he will allow fresh issues to be formulated after the case has commenced but he should do so when such a course appears to be in the interests of justice and it is certainly not a valid objection to such a course being taken that they do not arise on the pleadings. *24 N.L.R. at 107.* Issues of law may be tried first if the case can be disposed of on those issues. *2 N.L.R. 17.* Where an issue is once framed in a case the Court has no power to strike it out on the motion of either party. *16 N.L.R. 337.* The order of a District Judge adopting two sets of issues submitted by the parties is irregular and calculated to lead to a deal of confusion and embarassment. If the parties cannot agree to one set of issues the Judge should frame the issues himself. *17 N.L.R. at 93.* The framing of issues under section 146 of the Civil Procedure Code involves a judicial decision and the refusal

to frame an issue suggested is appealable. 2 A.C.R. 159 ; 10 N.L.R. 41 F.B. Where the determination of the issue depends on *viva voce* evidence the order of refusal under ordinary circumstances ought to be made the subject of an immediate interlocutory appeal. 14 N.L.R. 347. See 4 A.C.R. 125.

In a Court of Requests a plaintiff is entitled to frame issues which do not arise directly on the pleadings and no replication is necessary for the purpose. 1 Times 157.

Joinder of a party under section 18 of the Civil Procedure Code is discretionary with the Court. 26 N.L.R. 292.

Joint in English law is entirely different from that which the word implies in Roman Dutch Law. 13 N.L.R. at 285; 4 S.C.D. at 85.

Joint debts. According to our law, in joint obligations each debtor is liable only for his proportion of the debt. 4 N.L.R. at 352. Where the debt is a joint partnership debt judgment against one partner is a bar to a second action on the same debt against another partner. 10 Law Rec. 33.

Joint debtors. Where the liability of two debtors is joint and not joint and several the creditor must sue both the debtors together and the decree must be that they jointly pay the debt. If the creditor allows his action against one of the debtors to be prescribed he cannot recover from the other whom he has in the meantime sued alone by joining at a later stage of the action as added defendant the party whose debt is prescribed. 1 Cur. L.R. 134. The institution of an action against one of several debtors *in solido* interrupts the course of prescription against the others. 31 N.L.R. 353. No division of obligation exists in the case of a judgment obtained jointly against two persons. 8 Law Rec. 138. One of two mortgagors cannot be released from liability by bringing into Court half the amount due on the bond even though the bond does not state that the obligation is joint and several. 11 Law Rec. 54.

Joint contractors. In the case of a joint contract all the co-contractors should join in an action upon it. 19 N.L.R. at 112. Where there are joint contractors if judgment is signed against one the other is discharged. 30 N.L.R. at 233.

Joint family. The law of joint family has never obtained in Ceylon. 3 Bal. at 121.

Joint tort feasors. Contribution cannot be claimed as between joint tort feasors. 32 N.L.R. 111 ; 11 Law Rec. 69 ; 8 Times 6. Any judgment against a joint tort feasor for damages suffered by the plaintiff would operate as an accord and satisfaction and would discharge the other joint tort feasors from all liability. 33 N.L.R. at 182.

Joint will must be read as separate wills, the disposition of each spouse being treated as applicable to his or her share of the joint property. 21 N.L.R. at 92 ; 1 Law Rec. at 19. In the case of a joint will a survivor may repudiate it after the death of the first dying spouse and stand upon his or her legal rights as the surviving member of the community. But if the survivor adiates the will he or she is in equity at least not entitled to act inconsistently with that will. He cannot make a new will or dispose of the property by gift but the *dominium* over the share belonging to the survivor continues to be in him and he can pass title to a *bona fide* purchaser. 5 N.L.R. 317.

Joke is a serious thing and should, like an oath, be resorted to only in a great moral emergency. *Per Sampayo, J.* 3 C.W.R. at 138.

Judge. An inquiring magistrate is not a Judge. 1 Br. at 4.

A judge cannot act judicially except in Court. 3 N.L.R. 193. A judge is not bound to write down all that is asked by advocates and all that is said by witnesses. 1860-62 Ram. at 137.

Judgment which does not deal with the points in issue and does not pronounce a finding definitely on them is not a judicial pronouncement. 7 N.L.R. 337. A judgment is null and void and cannot be executed against a person who is not served with summons. 14 N.L.R. at 388.

The judgment of a criminal Court should specify the offence with which the accused is charged in terms of section 372 of the Criminal Procedure Code. 1 N.L.R. 73 ; 1 N.L.R. 194. "Judgment" in section 306 (4) of that Code includes the sentence passed on conviction of the accused and the Magistrate has no power to alter it. 6 C.W.R. 325. In the case of an acquittal the pronouncement of the fact is the judgment. In the case of a conviction the judgment must necessarily follow the conviction in a separate pronouncement. 3 C.W.R. at 46.

Judgment against a minor. It is far from clear that the Roman Dutch law regarded a judgment against a minor as *ipso jure* void without any steps being taken to declare it so. 1 C.W.R. at 83.

Judgment by consent even where that consent has been obtained by a concealment of material facts which is fraudulent cannot be set aside except by a fresh action for that purpose. 32 N.L.R. at 221. See 4 Law Rec. 28. Where the defendant in an action admits the jurisdiction of the Court by consenting to judgment he cannot thereafter question the legality of the decree in resisting execution. 32 N.L.R. 270.

Judgment by default against one of several joint makers of a promissory note does not prejudice the plaintiff's right to proceed with the action against the others. *15 N.L.R. 350.*

Judgment debtor in section 337 of the Civil Procedure Code in cases in which there are several persons answering to that description means all such persons collectively. *18 N.L.R. 316.*

Judgment in rem. Neither in England nor under section 41 of the Evidence Ordinance is the judgment of a criminal court a judgment *in rem*. *19 N.L.R. at 325.* A declaration made incidentally by a testamentary Court as to the lawful character of the persons before it has not the effect of a judgment *in rem*. *23 N.L.R. 228.* An order for sale authorized by the Entail and Settlement Ordinance is in the nature of a judgment *in rem* and valid as against all the world until it is set aside. *2 C.W.R. at 152.* A decree for judicial settlement of an estate is not a decree *in rem*. *2 S.C.D. 4.*

Judicial act relates back to the earliest moment of the day on which it is done. *1 Bal. 55.*

Judicial sale. With regard to the judicial sales the general principle is *caveat emptor*. *21 N.L.R. at 118.*

Judicial separation may be obtained on the same grounds as divorce. Perpetual quarrels and dissensions which render the living together of the spouses insupportable will justify a judicial separation. *2 Law Rec. at 49.*

Judicial settlement is a proceeding of a limited nature. Its scope is indicated by the provisions of the chapter and in particular by the provisions of section 739 of the Civil Procedure Code. It proceeds upon the footing that the inventory is a full and true inventory of the estate. *26 N.L.R. at 477.* The object of a judicial settlement is that all matters that may arise in the course of the administration of the estate between the accounting party and the beneficiary should be dealt with promptly and in an expeditious manner so that the whole estate may be finally wound up in these proceedings. *20 N.L.R. at 424.* The passing of a final account after notice to all the parties interested does not constitute a judicial settlement and does not supersede the procedure by way of judicial settlement. *35 N.L.R. 257.*

Judicially. The question whether a judge is acting judicially is not to be determined by the building in which he sits but by the capacity in which he purports to act. *20 N.L.R. at 475.*

Jurisdiction. The intention of the plaintiff cannot effect the jurisdiction of the Court. *23 N.L.R. 251; 3 Law Rec. 69.* It is not the relief actually prayed for but what is involved in the decision of the action which determines its monetary value. *10 Law Rec. 13;*

See 3 Law Rec 164. The jurisdiction of a Court cannot be questioned where the jurisdiction was such that it could have been waived by the parties. *6 Law Rec. 95; 2 Law Rec. 202.* The principle that parties cannot by consent give jurisdiction where none exists applies only where the law confers no jurisdiction. It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question of jurisdiction when that question depends on facts to be proved. *27 N.L.R. 70.*

The test of jurisdiction in an action for a declaration of a right of way is what the plaintiff who claims such a right would have to pay to the person who owns the land over which the right is claimed, *6 C.W.R. 153*; in an action for declaration that a land is free from servitude is the depreciation in value caused to the land by recognition of the servitude, *30 N.L.R. 462*; in an application for the appointment by Court of a guardian or curator of a minor is the residence of the minor, *30 N.L.R. 273*; in an action under section 247 of the Civil Procedure Code it is the amount of the decree or the value of the property seized, whichever is less. *5 Times 152*; *17 N.L.R. 348.* Where a lessee brings a suit to recover possession of the property leased to him the jurisdiction of the Court is determined not by the value of the land but by the value of the plaintiff's interest. *10 N.L.R. 351.* In an action for cancellation of a lease the value of the unexpired term of the lease is the test of jurisdiction. *2 S.C.D. 62*; *See 3 Law Rec. 217.* In a possessory action the test is the value of plaintiff's interest and not of the land. *1 S.C.D. 32.*

The test of jurisdiction in a land case in the Court of Requests is the value of the land or the interest in dispute irrespective of any damages or other relief claimed on the cause of action. Any claim for damages is only incidental and subsidiary and does not affect the question of the jurisdiction of the Court. *21 N.L.R. 279 F.B.; 1 Law Rec. 151.* The mere fact that incidentally the Court may have to go into other matters which involve disputes relating to lands and interests beyond the jurisdiction of the Court is not a sufficient reason for saying that the Court should not determine a claim which is clearly within its jurisdiction. *29 N.L.R. at 160.* The amount demanded and not the amount awarded is the test of jurisdiction in a Court of Requests. *1 A.C.R. at 125.* A Commissioner of Requests has jurisdiction to issue a writ for more than three hundred rupees and costs if it be in accordance with the decree entered previously. *21 N.L.R. 110.* A Court of Request has jurisdiction in respect of an action for enforcing a contract if the contract sought to be enforced was made within the local limits of its jurisdiction. *19 N.L.R. 33.* It has no jurisdiction to entertain an action for the reduction of assessment rates on the annual value of any premises where such rate exceeds one hundred rupees. *12 N.L.R. 129.*

A Police Court has no jurisdiction to try an offence under section 9 of the Forest Ordinance 16 of 1907. *14 N.L.R. 408.* The Court within the local limits of which an illegitimate child resides has jurisdiction to entertain an application for the maintenance of such child against its putative father although he may be resident outside the local limits of such Court. *11 N.L.R. 329;* See *4 Law Rec. 67.*

The jurisdiction of the Supreme Court extends, but is not confined to, the correction of errors made by the District Court. *1 Bal. 61.*

Jus accrescendi has no place in contracts. *26 N.L.R. at 150.* It does not apply to deeds *inter vivos* unless it can be gathered from the instrument in question that it was the intention of the donor to subject the property to one entire fidei commissum in favour of all the children and their descendants. *7 Law Rec. at 44 ;* See *4 C.W.R. 50; 3 Times at 162.* Where once the fiduciary heirs have entered on their respective shares of inheritance a separation of interests has taken place which prevents the operation of the *jus accrescendi* in favour of the survivor. *17 N.L.R. at 409.* The vesting of property in persons as fiduciaries cannot effect such rights of ownership as may belong to the fidei commissaries. If the intention of the author of the fidei commissum is that there should be a right of survivorship among the fidei commissaries, that right cannot be prejudiced by the fact that a fiduciary through whom a particular fidei commissary traces his title has previously entered into the enjoyment of his own interest as fiduciary. *20 N.L.R. at 233.*

Jus cloacae or the right of making a drain pass through another's property whereby a neighbour is bound to receive the drain of water on his property and so to allow a hollow channel to exist on his property through which sewage may flow is a servitude recognized in Ceylon. *1 A.C.R. 86.* The dominant owner cannot increase the volume of such matter or discharge it in a concentrated form to the prejudice of the owner of the servient tenement. *19 N.L.R. at 402.*

Jus fluminis. The servitude of *jus fluminis* can be claimed only when the lands are contiguous. *4 Tam. 82.* As a rule the *jus fluminis* is considered to mean clean water and therefore whoever has that right must take care that no filth is conducted through the water course. *1 Bal. at 159.* It is incumbent upon a lower proprietor to receive water flowing down from a higher ground by laws of natural gravitation and he is liable to an upper proprietor for damages if he obstructs the flow. *3 Bal. 202.* A lower proprietor is obliged only to receive such water as flows in the ordinary course of nature from the upper tenement. He is not bound to receive water which

the upper proprietor has discharged into his premises by any artificial means which alters the natural drainage of the land such as a ditch or channel. *15 N.L.R. at 508.* An upper proprietor who alters the natural drainage of his land and concentrates the water into specific channels and then discharges it on to his neighbour's land in a more forcible and destructive manner than it would otherwise have got there naturally is liable in damages though he may have made the alteration for the purpose of cultivating his land and though he may not be guilty of negligence. *12 N.L.R. 321.*

Jus retentionis or the right to retain possession of land until compensation is paid for improvements effected on it is a right known to our law and there are independent traces of it to be found in the authorities on Kandyan customary law. *1 S.C.R. 71.* The *jus retentionis* only arises in the case of a *bona fide* possessor and not in the case of a lessee or tenant, it being an incident of the *possessio civilis* of the Roman Dutch law. *15 N.L.R. at 84.* See *7 Law Rec. 165.* A co-owner who is entitled to compensation cannot be excluded from the benefit of the *jus retentionis. 15 N.L.R. at 82.* The *jus retentionis* passes in the sale from one *bona fide* possessor to another without special cession. *1 N.L.R. 228.* The loss of this right by a person who has effected improvements on landed property does not bar his right to compensation. *24 N.L.R. 31.*

Jus retractus. See OPTION TO RE-PURCHASE.

Justa causa debendi. See CAUSA.

Jus tertii. Where two parties are at issue on a question of prescription the claim of the person relying on the prescriptive title cannot be ousted by showing that the real title is in a stranger who is not a party to the action. *22 N.L.R. 406; 8 C.W.R. at 291; 2 Law Rec. 195.* See *3 C.A.C. at 22.*

Just valuation of a house standing on a land which has been ordered to be sold under the Partition Ordinance would be the valuation of the house considered as an improvement. Both the value of the materials and the value of the completed building in its relation to the land would have to be taken account of. *14 N.L.R. 282.*

Kaddutum or dowry deed is not an instrument on which title to land is founded within the meaning of section 2 of Ordinance 6 of 1866 so as to require registration to make it admissible in evidence. *1 Mat. at 178.* It forms a good starting point for adverse possession. *2 Mat. 114 ; 1 Cur. L.R. 77.*

Kaikuli is a marriage gift made to a bride by her parents and is handed to and remains in the charge of the husband during the subsistence of the marriage and may be claimed from him by the wife or her heirs. 2 C.W.R. *at 265*. See *31 N.L.R. 230* ; *10 Law Rec.. at* 164. It is held in trust by the husband for the wife and cannot be withheld on the ground that it has been spent for the sustenance of the marriage. It may perhaps be satisfied if the wife should willingly accept from the husband jewellery or any other thing in lieu of money. *21 N.L.R. 221*. The fact that a Muslim woman is living separately from her husband is no ground for refusing a claim by her for *kaikuli*. *1 Law Rec. 72*.

Kandyan is not a person of a different race from a low-country Sinhalese. *1 Times 85*. The children of a marriage between a Kandyan man and a Low-country Sinhalese woman are not to be regarded as Kandyans. *18 N.L.R. 294*. See *6 Law Rec. 40*. Nor are the children of a Low-country Sinhalese man who has permanently settled in the District of Kandy and a Kandyan woman married under the Kandyan marriage law. *13 N.L.R. 321* ; See *7 Tam. 97*. It is not possible for Europeans or Eurasians settle in Kandyan territory to acquire a Kandyan domicile as distinguished from a Ceylon domicile. *8 S.C.C. 36*.

Kandyan Convention. Article five of the Kandyan Convention does not invalidate the provisions of subsequent legislative enactments relating to processions and music. *18 N.L.R. 193*.

Kandyan law. The basis underlying the Kandyan law with reference to land held by members of the family is the right of the members of the family to support by the family so as to create customs and rights in the family itself and between members of the family alone. *27 N.L.R. at 55* ; *3 Times at 116*. Where a person dies unmarried, childless and intestate his acquired property devolves on his father to the exclusion of his brother. *12 N.L.R. 111*. On the death of a child intestate and without issue his mother succeeds to the estate. *10 Law Rec. 186*. In the case of maternal inheritance it is immaterial whether the mother married in *binna* or in *diga*. *8 Law Rec. at 110*.

Kapurala. Hereditary right is alone insufficient to entitle a person to act as *kapurala* in a *dewale*. He must also be appointed to the office by the Basnayake Nilame. *26 N.L.R. 283*.

Keeper of a tavern under section 27 of Ordinance 12 of 1891 is *de facto* keeper of it as distinguished from the man who holds a license. *3 N.L.R. 73*.

Keeping of petroleum under section 14 of Ordinance 6 of 1887 is the same as the *possessing* punishable under section 20. *2 N.L.R. 217*.

Under section 5 of the Opium Ordinance 5 of 1910 there is a distinction drawn between the act of having and keeping in possession and it is only the latter offence that is punishable under section 8. *36 N.L.R. 194*.

Khula divorce. In Muslim law a *Khula* divorce is one where the wife alone is desirous of having the marriage dissolved. Where the husband plays the principal part in obtaining a divorce to which the wife has no objection such a divorce is not a *Khula* divorce. *7 Times 77*.

Knife. A razor is not a knife within the meaning of section 20 of Ordinance 6 of 1896. *2 Br. 191*.

Koratuwa. It is not uncommon for co-owners to dispose of their interests by reference to particular portions or *Koratuwas* of which they have had possession. But if the real intention is to dispose of the interests of the persons in the entire land this Court has found no difficulty in giving a broad construction to such deeds and to deal with the rights of the parties on the original footing. *Per Sampayo, J. 6 C.W.R. a 65*.

Kraals or enclosures for fishing may be justified if they are proved to have been made and used in strict accordance with long established custom. *Vand. at 248*.

Kuli. Twelve kulis of paddy culture are equal to one lacham and 288 kulis to an acre. Sixteen kulis of varagu culture are equal to a lacham and 288 kulis to an acre.

Kuruni is one-fortieth of an amunam and is equal to ten perches.

Labour contemplated in the Prescription Ordinance is manual labour. *2 Br. 114*.

Labourer is one who earns his daily bread by personal manual labour or in occupations which require little or no skill or previous education. *30 N.L.R. at 96*. A kangany is a labourer within the meaning of the Labour Ordinance, *1 S.C.D. 28* ; but not a bandsman, *1 Cr. A.R. 9* : or a person employed to break metal on a public road, *1 Law Rec. 36*.

Lacham. The extent of the lacham varies according to the nature of the cultivation. One acre is equivalent to 24 lachams of paddy culture and 18 lachams of varagu culture.

Læsio enormis. In a claim for relief on the ground of *laesio enormis* the price which it is sought to challenge must be ascertained and certain. *9 Law Rec. 56.* A sale of land cannot be set aside on this ground where a part of the consideration for the sale was a promise by the vendee to support the vendor. *29 N.L.R. 381.* The principle is applicable to a lease as much as to a sale but for this purpose the difference in value should exist at the time of the lease and not thereafter. *20 N.L.R. at 93.* But a person who knows the value of his property is not entitled to recission of the sale merely by reason of the fact that the price at which he sold the property is less than half its true value. *15 N.L.R. 280.*

Land includes houses within the meaning of section 14 of Ordinance 1 of 1892. *5 N.L.R. 343.* Contra *1 S.C.C. 55.*

Land acquisition. Enactments for the compulsory acquisition of land have to be strictly construed and applied. *Per Fisher, C. J. 6 Times 61.*

Landlord's lien. See LIEN.

Lateral support. The right of lateral support is one of the natural incidents of ownership of land. It is not a right in the nature of a servitude or an easement but a natural right—a part of the right of property itself. *26 N.L.R. at 91.* Lateral support for a wall or building can only be acquired by prescription. *26 N.L.R.* at 93.

Lawful custody. Detention under a warrant issusd *per incuriam* is not lawful custody and escape therefrom is not an offence under section 2 of Ordinance 11 of 1857. *4 Lead. 121.*

Lawful power means a power which is vested in a public officer by virtue of his office. *15 N.L.R. at 123 ; 6 S.C.D. 38.* A public servant who is vested with special power which enables him to take independent action on information brought to him in a petition possesses lawful power within the meaning of section 180 of the Penal Code. *5 Lead. 114.*

Legal representative of an insolvent would include a purchaser from the assignee. *15 N.L.R. at 448.*

Legitimacy. Section 112 of the Evidence Ordinance on the face of it appears to apply to actions in which legitimacy comes into question and it does not, on the face of it, appear to have any application to proceedings under the Maintenance Ordinance. *23 N.L.R. 168.*

Lease. A notarially executed lease of land creates a real right in the land. *35 N.L.R. 352 ; 13 Law Rec. 124.* It is an implied term in the contract of letting and hiring that the lessor should put the lessee in possession of the property leased and a lessor who fails to implement the contract by so doing is liable in damages for breach of contract. *9 N.L.R. 366.* Under our law a lease to an owner of his own property is not valid and a person who possesses his own property under a lease from another does not possess under or on behalf of that other. *25 N.L.R. at 454.* A lease may be assigned without the lessor's consent unless there is an express provision in the lease to the contrary. *4 Law Rec. 133.* The validity of a lease is not affected by a subsequent sale in execution. *7 Law Rec. 26.* A lease of a minor's property by a curator without the sanction of Court is void. *3 Br. 150.*

Leave and license is an intensified form of acquiescence. *2 C.A.C. 86.*

Leave to appeal. A commissioner of Requests should grant leave to appeal on facts only when he has doubts as to the justice of his decision or, if not feeling a doubt himself, yet thinks that other persons might reasonably take a different view of the case. *4 N.L.R. 76.* Leave to appeal should not be given because the sum involved is large. *2 B.N.C. 33.* Where a Commissioner of Requests has once refused leave to appeal he is *functus officio* and cannot reconsider it and grant leave. *2 N.L.R. 366.*

Legacy. It is a principle of common law that a testator may bequeath as a legacy not only his own property but also property belonging to others. *29 N.L.R. at 93.* Under the Roman Dutch law a legatee may assert by action his claim to the legacy. Neither section 720 (b) of the Civil Procedure Code nor the provisions of the Court for judicial settlement of an executor's account have the effect of taking away the legatee's right to such action. *2 N.L.R. 41.*

Legal process. To procure to the prejudice of anyone maliciously and either by *expressio falsi* or *suppressio veri* the issue of legal process which was perfectly justifiable on the materials before the Court is an actionable wrong. *20 N.L.R. 7.*

Lessee has no *possessio civilis.* *28 N.L.R.* at *142.* In addition to the right to be put in possession he is also entitled to quiet enjoyment. *24 N.L.R. 42.* A lessee who has assigned his lease with the written consent of his lessor is not liable for rent. *35 N.L.R. 309 ; 13 Law Rec. 53.* A lessee cannot in an action against a trespasser for declaration of title join a claim for damages against the lessor. *13 N.L.R. 225 F.B.* A lessee on an informal lease must be regarded as a tenant from month to month and not a tenant at will, *2 Times 13 ; 4 Law Rec. 68; 5 Law Rec. 68,* and cannot be ejected except by process at law or after due notice. *2 Times 51.* It is sufficient if an action is brought against him a month after he has been noticed to leave. *10 Law Rec. 15.*

Lessor. In the case of joint lessors each can sue the lessee separately for his share of the rent. *1 N.L.R. 206; 13 Law Rec. 267; 6 Times 154*; *36 N.L.R. 139.* Notice to the tenant to quit where there is more than one landlord is defective unless it is served on behalf of the lessors acting jointly. *10 Law Rec. 69.*

Letter of attorney. A proxy filed by a proctor authorizing him to vote in the choice of an assignee is not a letter of attorney within the meaning of section 66 of the Insolvency Ordinance and does not require proof of execution before the proctor is allowed to vote. *10 N.L.R. 88.*

Letters of administration. Under the provisions of section 523 of the Civil Procedure Code the claim of a widow or widower to letters of administration is to be preferred but the Court has power to pass over such a claim in favour of other persons for good reasons. *14 Law Rec. 88 F.B.* The widow or widower has a preferent claim even though the spouse were living apart in terms of a deed of separation, *28 N.L.R. 286*, or the survivor is a lunatic, *32 N.L.R. 43*; *11 Law Rec. 61*, or a Muslim widow. *3 Bal. 59.* Preference may be claimed by the attorney of a widow who is absent from the Island. *29 N.L.R. 387.* The practice of granting letters of administration to an attorney is well recognised and established. *9 Law Rec. 86.*

Lien. A proctor's lien depends upon the principle that a proctor is entitled to a charge upon property recovered when meritorious services of the proctor result in such recovery or preservation. *15 N.L.R. at 54.* It is not destroyed by his death but may be enforced by his legal representative. *21 N.L.R. 81; 6 C.W.R. 68; 1 Law Rec. 2*, and it is not affected by a claim in reconvention or set-off. *2 A.C.R. 150; 6 S.C.D. 57.* A proctor can claim a lien only in so far as his client is entitled to the money in his hands. The lien can be exercised against the client only and it attaches to the property only to the extent of the client's interest therein. *1 C.L.W. 22*; *11 Law Rec. 89.* The property liable to a proctor's lien is property recovered or preserved by the proctor's professional exertions. It extends to all costs of recovering and preserving the property. *22 N.L.R. at 259.* It attaches to a fund brought into Court through his professional exertions and may be exercised in respect of disbursements for stamps and Counsel's fees. *8 C.W.R. 41.* A proctor has a lien over such of the costs which the other party is ordered to pay to the proctor's client as the proctor is entitled to recover from his own client. *11 N.L.R. at 2.*

Under the Roman Dutch law a landlord's lien on his tenant's property can only become effective by means of judicial process. *15 Law Rec. 30. F.B.* See *7 N.L.R. 15*; *17 N.L.R. at 192.* A landlord's lien made effective by seizure and sale cannot be defeated by a prior attachment in favour of a mortgage decree. *28 N.L.R. 449.*

A landlord's lien extends to the property of a third party where such property was deposited in the house of the tenant for the permanent use of the latter, *3 Br. 211*, such for example, as property obtained by the tenant under the hire purchase system. *27 N.L.R. 257; 7 Law Rec. 51.* A landlord cannot in the exercise of his lien enter upon the leased premises and exclude the tenant. *2 C.L.R. 94.*

Life interest. Under the law of Ceylon a sale may be made subject to the life interest of the vendor. *30 N.L.R. 225.*

The life interest of a Kandyan widow over the acquired property of her husband does not cease on her marrying a second time against the wishes of her late husband's family. *19 N.L.R. 260.*

Light and air. A right to the servitude of light and air can be acquired by prescription. *13 N.L.R. 264*; *14 N.L.R. 138*; *4 S.C.D. 70*; *5 S.C.C. 126 F.B.* The servitude of light and air is a reasonable servitude and one which a Court may provide for between co-owners in a partition action. *2 Times 232.*

Liquid claim. An action on a mortgage bond is not an action on a liquid claim. *2 C.L.R. 55.* In an action on a liquid claim under chapter 53 of the Civil Procedure Code the defendant has the right to appear and defend upon depositing in Court the amount of the claim even when the Court finds that no valid defence is disclosed. *31 N.L.R. 495.* A judge cannot dismiss a summary action on a liquid claim on the merits of the case before granting the defendant leave to defend. *3 C.L.W. 138.*

Liquidated damages. See PENALTY AND LIQUIDATED DAMAGES.

Lis. A mortgage action is a *lis* within the meaning of Ordinance 21 or 1918. *24 N.L.R. 121.* An action for specific performance is a *lis* to which the doctrine of *lis pendens* applies, *25 N.L.R. 501*; *2 Law Rec. 21*, but not an application to Court under the Entail and Settlement Ordinance. *22 N.L.R. at 22.*

Lis pendens. The doctrine of *lis pendens* is one that is common to both the English and the Roman Dutch law and the effect of it appears to be that an alienation made by a party to the suit *pendente lite* in favour of a person who has notice of the suit is inoperative against rights sought to be enforced in the suit by the opposite party. *Per Shaw, A.C.J. 3 C.W.R. at 163.* The principle of *lis pendens* means that from the commencement of the suit the subject becomes *litigiosa* and passes into quasi judicial custody. *26 N.L.R. at 391.* *Lis pendens* arises only upon service of summons so as to affect any dealing with the subject of litigation by the party defendant. *19 N.L.R. 461*; *F.B. 24*; *N.L.R. 121*; *25 N.L.R. at 263*; *4 Law Rec. 79*, and continues pending until the completion of execution. *25 N.L.R. 427*; *26 N.L.R. 385*; *6 Law Rec. 28.* See *17 N.L.R. at 464.* The Roman Dutch law draws no distinction between movable and immovable property in the application of the

doctrine of *lis pendens*, 9 *Law Rec.* 65; 29 *N.L.R.* 347; 5 *Times* 119, but under section 23 of Ordinance 29 of 1917 a *lis pendens* must be registered before it can bind immovable property. 3 *Law Rec.* 38. The doctrine of *lis pendens* is applicable to a sale in execution. 21 *N.L.R.* 501; 2 *Law Rec.* 21.

Litis contestatio in a partition case is marked by the filing of the contesting defendant's answer. 16 *N.L.R. at* 82.

Load. A vehicle carrying passengers is not to be regarded as a vehicle carrying a load. 2 *Bal.* 24.

Loafing is by no means synonymous with either "wandering abroad" or "lodging". 2 *Gren. pt.* 1 *p.* 27.

Loan of money in section 10 (1) of Ordinance 2 of 1918 covers the case of a promissory note given for an obligation already existing or that may arise. 1 *Times* 124. In the case of a contract of loan the lender is quite entitled to maintain an action independently of any writing which the debtor may have given. 21 *N.L.R. at* 235. A loan for the purpose of gambling or wagering is prohibited by the Roman Dutch law. 32 *N.L.R. at* 299.

Lottery is in essence a distribution of prizes by lot. 22 *N.L.R. at* 103; 7 *C.W.R.* 273; 2 *Law Rec.* 89. It is essential to a conviction under section 288 of the Penal Code for the publication of proposals relative to a lottery that the lottery in question should have been intended to be in a special place set aside for that purpose. The mere holding of a lottery on a single occasion in a place which is not officially appointed for that purpose will not justify a conviction under that section. 1 *A.C.R.* 142.

Lunatic. Under the Roman Dutch law a contract made by a lunatic is absolutely void. 19 *N.L.R.* 314.

Madam. A person appointed by Court under section 4 of Ordinance 7 of 1871 trustee of a *madam* may bring an action with respect to property which he claims as belonging to the *madam* without the sanction of the Attorney General. 14 *N.L.R.* 15.

Madela which is usually made of coir consists of three parts, viz., the main net, the *madehi* or pocket into which the encircled fish fall and two *mandas* or ropes one of which it is attached to the boat and the other to the shore. 21 *N.L.R. at* 122; 6 *C.W.R. at* 101.

Maggar or dower has been defined to be the property which it is incumbent on the husband either by reason of its being in the contract of marriage or by virtue of the contract itself to give in exchange for the usufruct of the wife. 26 *N.L.R. at* 279; 2 *Times at* 237. See also 14 *N.L.R. at* 277. Maggar remains in the husband's hands. 31 *N.L.R.* 230. When the marriage has been consummated the wife's right to maggar is confirmed and is not lost by her subsequent apostasy or adultery. 26 *N.L.R.* 277. The refusal of a wife to live with her husband does not affect the husband's liability to

pay maggar to her. 2 *Times* 236. The wife is entitled to half if the two parties separate without consummating the marriage unless the separation is due to *vices redhibitores* on her part. 15 *N.L.R.* 316. An agreement to pay maggar need not be in writing and may be proved by oral evidence. 5 *Tam.* 7. A Muslim woman may recover maggar at any time or her heirs may. 4 *Tam.* 100. She may sue for it although she was no party to the marriage *kuddutam.* 5 *Lead.* 45. In the absence of express agreement between the parties the maggar is not payable during the husband's lifetime unless a distinct demand is made for it by the wife. 9 *S.C.C.* 21. If a woman chooses to allow her maggar which she may have claimed immediately after the marriage to remain indefinitely with her husband she cannot be permitted to pursue her claim to the detriment of *bona fide* mortgagees whose money probably had been obtained for the purposes of both husband and wife. 1877 *Ram.* 66.

Mail bags are goods and not personal luggage. 34 *N.L.R. at* 106; 10 *Times at* 46.

Maiming means the deprivation of a member proper for defence in fight. 1 *S.C.D.* 6. To constitute maiming it is essential that permanent injury should be inflicted on an animal. 5 *N.L.R.* 23; 1 *C.L.R.* 48. The act of cutting off the tail of a cow is maiming within the meaning of section 411 of the Penal Code. 17 *N.L.R.* 252. Contra 11 *N.L.R.* 65; 11 *N.L.R.* 66; 3 *A.C.R* 58.

Maintain. The verb "to maintain" in pleadings has a distinct technical signification. It signifies to support what has already been brought into existence. 22 *N.L.R. at* 272; 8 *C.W.R. at* 102; 2 *Law Rec.* 118.

A child who is dependent on charity cannot be said to be able to maintain itself. 33 *N.L.R. at* 245.

Maintenance signifies maintenance in the station to which a wife is entitled and where the husband has the means he is bound to furnish his wife with those means and not make her chargeable to others for what are, to a delicately nurtured woman, necessaries. 2 *Gren. pt.* 1 *p* 105. See 1 *Cur. L.R.* 98. A husband's offer to maintain his wife must be an offer to provide her with lodgings sufficient for her position having regard to the husband's financial status, 1 *C.L.W.* 372; 12 *Law Rec.* 88, and where a husband who is sued by his wife for maintenance offers to maintain her on condition that she lives with him his offer must be tested to see if it is *bona fide.* 3 *Cr. A.R.* 43. A wife who refuses to live with her husband without sufficient cause is not entitled to claim maintenance for herself. 3 *Bal.* 253. The policy of the law is not to encourage wives to live apart from their husbands by allowing them maintenance unless their refusal to live with their husbands is reasonable. 6 *Law Rec.* 17. Where a husband and wife agree to live separately by mutual consent the wife may claim maintenance from the husband if she undertakes to return to him and live with him as his

wife and he refuses to take her back. *18 N.L.R. 69.* See *2 Times* 26. Contra *6 Lead. 55.* Before an order for maintenance is made the Magistrate should be satisfied that there is evidence of neglect or refusal on the part of the husband. *3 Law Rec. 31; 2 A.C.R. 14.* One act of adultery is not sufficient to prevent an application for maintenance being granted. Section 5 of the Maintenance Ordinance contemplates that the wife must be living in adultery. *5 S.C.D. 28.* A wife who is possessed of property from the income of which she is able to support herself is not entitled to maintenance from her husband. *9 Times 10.* The Maintenance Ordinance does not contemplate the settlement of a lump sum but of a monthly allowance. *3 Law Rec. 161;* See *2 Times 133:*

The mere fact of a married Muslim keeping an unmarried Muslim woman as his mistress is not good reason in law for his wife refusing to live with him and claiming separate maintenance. But the husband has no right to ask the wife to come and live in the concubine's house. *11 N.L.R.* 297; *2 Lead. 46; 1 S.C.D. 96.* But one wife cannot refuse to live with another wife. *3 Law Rec. 97.*

A mother can on behalf of her child compel by a civil action the performance by the father of his duty to maintain his illegitimate child. The Manitenance Ordinance only provides a simpler, speedier and less costly remedy. *Per Bonser, C.J. 4 N.L.R. at 123.* See however *22 N.L.R. at 290 ; 3 Law Rec. at 22.* In a maintenance action the test of jurisdiction is the residence of the child. *2 S.C.D. 13 ; 10 Law Rec. 51.* Neglect to maintain a child is a continuing offence. *Vand. 29.* The maintenance contemplated in section 3 of the Ordinance includes the cost of education. *33 N.L.R. 383; 1 C.L.W. 98; 11 Law Rec. 188.* Under the provisions of the Maintenance Ordinance the father of a child is bound to pay for its maintenance even where such child is being nursed by the mother and requires no other food than that which it derives from her. *10 N.L.R. 225.* Contra *2 N.L.R. 103.* If an application for the maintenance of an illegitimate child has been made by the mother and has been compromised by an arrangement between herself and the father the Court has still power to order the father to make provision for the maintenance of the child. *12 N.L.R. 70.* A claim for maintenance implies that the necessity for maintenance exists or has existed because the person claiming had no other means of maintenance or has not been maintained by other than the person from whom it is claimed. *29 N.L.R. at 252.* A parent is not bound to provide maintenance for minor children where the minors are possessed of property yielding an income. *6 Lead. 9.* An action for recovering past maintenance cannot be maintained by a wife against her husband nor by her child against its father where they have been maintaining themselves from their own earnings or property. *13 N.L.R. 21.* An application for the maintenance of

children may be made by other persons besides the mother. *23 N.L.R. 123.* It is a rule both of the Roman Dutch law and the English law that where minor children are possessed of property of their own upon the income derived from which they maintain themselves, the parents generally, and a *fortiori* the mother, may claim a reasonable proportion of such income for their maintenance. *2 Mat. 118.*

Maintenance proceedings are of a civil nature, *30 N. L. R.* at *451* ; *2 C.W.R. at 102* ; *20 N.L.R. 157* ; *6 N.L.R. 85* ; *6 Times 140*, and can rightly be decided on the balance of evidence, *9 Law Rec. 181*, and not on the footing that the innocence of the accused is to be presumed until the contrary is proved. *4 N.L.R. 4.* The applicant should be allowed to lead evidenee in rebuttal. *10 Law Rec. 73*; *7 Times 35.*

An incumbent is not entitled to claim past maintenance except in the form of reimbursement of expenses incurred in maintaining himself or the priesthood. *29 N.L.R. 249 ; 5 Times 97.* See *13 Law Rec. 140.*

Majority. By the common law of Ceylon marriage confers majority on a woman who is under twenty one years of age. *1 A.C.R. 135 ; 4 Tam. 152.* A Kandyan woman, however, does not attain majority by marriage, *10 N.L.R. 371 F.B. ; 1 Lead. 27* nor a Muslim. *21 N.L.R. 439.* According to the Muslim law the age of majority is attained at the completion of the sixteenth year. *1843-55 Ram. 133.*

Mala fide possessor is one who possesses well knowing that he has no right to do so inasmuch as the property possessed belongs to another. *2 Bal. at 150; 2 S.C.D. 54. A mala fide* possessor cannot claim compensation for useful as distinguished from necessary improvements. *5 Tam. 13.*

See also COMPENSATION FOR IMPROVEMENTS

Malapala as the word signifies was applied to lands which had reverted to the Crown through the failure of heirs. *13 Law Rec. 228 ; 11 Times 147* ; *36 N.L.R. 322.*

Malice does not mean ill-will. It has the import of *mala fides* an intention to cause wrongful injury or such reckless action that the party must be held responsible for the consequences. It is generally expressed as *animus injuriandi* but the intention need not be express. *21 N.L.R. 428* ; *1 Law Rec. 91.* See also *Vand. 124* ; *1 S.C.D. at 29.* Malice may be inferred from circumstances indicating an intention to commit the wrong. *18 N.L R. 73.* In regard to the Law of defamation the law distinguishes between two sorts of malice. One may be called implied malice or, as it is expressed in Roman Dutch law, *animus injuriandi*

and the other is express malice. *Animus injuriandi* may be presumed but express malice must be proved and the burden of proof of express malice lies upon the person alleging it. When once the circumstances are shown which *prima facie* indicate that the occasion on which the words were uttered or written was privileged it lies upon the other side to displace the privilege by positive proof of express malice. *21 N.L.R. at 10*; *6. C.W.R. at 15*. It is only in the event of an actual prosecution and not of mere information to the Police that malice need be averred and proved against the defendant. *16 N.L.R. at 75*. When it is sought to establish malice against a person who *prima facie* is acting in the performance of a public duty the evidence should establish something more than mere suspicions. *31. N.L.R. at 462*.

Malicious desertion must be of such a character as would justify the inference that the spouse who is alleged to have deserted the other did so deliberately and with the intention of repudiating the marriage state. *34 N.L.R. at 8* ; *13 Law Rec. at 58* ; see *26 N.L.R. 113*. In the absence of a deliberate intention to repudiate the marriage the refusal to return to the husband does not amount to malicious desertion *12 Law Rec. 40*. But where a woman leaves her husband finally against his will and without legal justification her desertion could in law be malicious. *35 N.L.R. 174*. Lapse of time is not the sole standard by which malicious desertion is determined. *2 B.R. 138*. Refusal to consummate a marriage amounts in law to desertion and entitles the wife to obtain a dissolution of marriage. *25 N.L.R. 222*. Desertion is a continuing offence. It is a continuing course of conduct. *29 N.L.R. at 325* ; *9 Law Rec. 60*.

Malicious prosecution. An action for malicious prosecution may be brought against anyone who with the necessary intent puts the law in motion and the fact that the formal complaint on the record was by the Police is immaterial. *2 Law Rec. 54*. There must be evidence to connect the defendant with the prosecution of the plaintiff. *3 Law Rec. 11* ; *3 Law Rec. 31*. An action does not lie where the Magistrate having gone through the preliminaries required by law refuses summons on the accused. *1 C.A.C. 151*. Strictly speaking an action grounded on the mere issue of a search warrant is not an action for malicious prosecution but both in England and in Ceylon such actions are treated as proceedings of a character similiar to, and as being governed by the same legal considerations as, actions for malicious prosecution. *8 N.L.R. 368*; *5 Tam. 28*. The principles of the Roman Dutch law and the English law on the subject of malicious prosecution are practically identical and the onus of proving the existence of malice rests on the plaintiff under both systems of law. *12 N.L.R. 147 P.C.* ; *2 Mat. 83* ; *1 Times 163* ; *9 Times 47*. The plaintiff must prove that the defendant acted maliciously. It is not sufficient to prove mere absence of reasonable and probable cause. *10 N.L.R. 321 F.B.* ;

1 C.L.W. 66. See *3 C.W.R. at 159*. The fact that the defendant pleaded guilty when he was charged under sections 180 and 208 of the Penal Code is, no doubt, an element against him but it is still open to him to prove that he had no malicious intent in instituting the criminal case against the plaintiff. *33 N.L.R. at 240* ; *9 Times 47*. Under no circumstances can the reasons for the acquittal or discharge of the accused be regarded as relevant or admissible in the subsequent action for malicious prosecution. *8 Law Rec, 32*.

Manager. The duly appointed manager of a Hindu temple is entitled in law to maintain an action for a declaration of his rights as such manager and for an injunction restraining a third party from interfering with the management of such temple. *10 N.L.R. 52 F.B.*

No such right as that of being manager of a temple can be acquired by prescription. *5 B.N.C. at 87*. The manager of a Hindu temple may be a woman. *12 N.L.R. 40*.

Mandamus is only granted to compel performance of a duty of a judicial character where there has been a refusal to perform it in any way and not where it has been done in one way rather than another even though the method pursued may have been erroneous. Still less will the Court take upon itself to upset what amounts to a judicial decision based upon evidence and to direct a public officer to come to an opposite decision upon evidence which was not before him. *30 N.L.R. at 84*. A mandamus will not be granted to correct an erroneous decision as to fact. *2 C.L.W. 14* : *10 Times 65* ; *12 Law Rec. 176*. The grant of a mandamus is a matter for the discretion of the Court. It is not a writ of right and is not issued as a matter of course. *1 C.L.W. 306*. It is a rule almost inflexible that a mandamus will not be allowed where there is an adequate alternative remedy. *17 N.L.R. at 318* ; *2 C.L.W. 330* ; *35 N.L.R. 225*.

The Court before issuing a writ of mandamus is entitled to take into consideration the consequences which the issue of the writ will entail. *34 N.L.R. 33*. A mandamus will not issue where it would be futile and could not be obeyed. *33 N.L.R. 257* ; *1 C.L.W. 109*, nor where its obedience by the officer to whom it is addressed will involve the violation by him of some other provisions of law. *9 Times 70*. A party applying for a mandamus must make out a legal right and a legal obligation. *1 N.L.R. at 35*.

Where a statutory election has taken place and an office is full the remedy of mandamus will not lie. *12 N.L.R. 8*. Nor will it be granted to restore a person to an office of which he has been temporarily deprived and to which he has been restored by the effluxion of time before the writ is issued. *28 N.L.R. 417*. But it

would lie to question the validity of an election when the election is void. *28 N.L.R. 323.* The decision of the Tea Export Controller given in a *quasi* judicial character cannot be questioned by a writ of mandamus. *35 N.L.R. 225.* Under section 337 of the Criminal Procedure Code a mandamus lies when the Magistrate has refused to exercise jurisdiction. If he has assumed jurisdiction and refused process the proper remedy is an appeal. *34 N.L.R. 334; 4 N.L.R. 85.*

Manufacture. A person who draws toddy and allows it to ferment may be said to manufacture fermented toddy. *28 N.L.R. 129 F.B.*

Marginal figures in a promissory note or bill of exchange are not an essential part of it. *3 N.L.R. 265.* Section 10 of the Money Lending Ordinance does not enact that the particulars must be set out in the body of the Note and in the marginal notes as well. *31 N.L.R. at 122.*

Marginal Note does not affect the construction of an enactment. It is merely a short *precis* of the contents of the section. *1 B.N.C. 101.*

Marital Compulsion. It is doubtful whether the doctrine of marital compulsion is in force in Ceylon. *12 N.L.R. 257; 1 Cur. L.R. 76.* Neither in the Indian Penal Code nor in our Penal Code is marital compulsion specifically stated as an exception to criminal liability on the part of the wife. *21 N.L.R. at 102.*

Mark A signature in Sinhalese set down by a process server in his affidavit is not a mark under section 439 of the Civil Procedure Code. *6 N.L.R. 25; 3 Br. 112 F.B.* All that section 159 of that Code requires is that the mark of a person which appears by the evidence in the case to have been written by the pen of another must be proved to have been so written by the authority of the person alleged to have made his mark and it is not necessary to prove expressly that the words adjacent to the mark explaining that it is the mark of the person who made it were made at the request of such person. *6 N.L.R. at 284.*

Market value. Of the several tests by which the market value of a land may be arrived at one of the truest and fairest is the actual amount paid for a similar allotment of land in the same vicinity about the time of the acquisition. *7 N.L.R. 313.* See *3 Br. 27; 3 N.L.R. 235; 3 C.A.C. at 75; 6 S.C.D. 36; 3 N.L.R. 335.*

An improvement scheme which an owner has no right to carry out is too speculative to be treated as a factor which will influence the market value of the land. *1 C.L.W. 339.* In considering the

question of the best use to which the property can be put the past history of the house and its neighbourhood will be of use. *3 N.L.R. 356.*

Marriage is a contract between two parties. *23 N.L.R. at 356.* See *5 Law Rec. 162.* According to the Roman Dutch law of Ceylon there is presumption in favour of marriage rather than concubinage. *2 N.L.R. 322 P.C.; 3 N.L.R. 10.* Under the provisions of Ordinance 2 of 1895 as amended by 10 of 1896 registration is not essential to the validity of a marriage. A valid marriage may be contracted according to the customary rites of the parties. *4 Law Rec. 90 F.B.; 23 N.L.R. at 358; 5 S.C.C. 9.* See *7 S.C.C. 56.*

A marriage solemnised by a Minister of the Christian religion does not become null and void for want of registration. *1 N.L.R. 228; 1 Br. 29: 4 N.L.R. 8.* A death bed marriage contracted under the provisions of section 4 of Ordinance 8 of 1865 is not a valid civil marriage unless the parties subsequently comply with the provisions of sucb-section 2 of that section. *5 Lead. 37.*

A husband's refusal to consummate a marriage does not amount to a tort giving rise to a claim for damages. *2 Times 27; 5 Law Rec. 162.*

In order to establish the validity of a marriage between Kandyans contracted before 1870 some proof, however slight, must be given of the observances of the laws, institutions and customs in force in Kandy at the time of the marriage. Mere proof of co-habitation, habit and repute is not sufficient. *7 C.W.R. 16.* The registration of a marriage among Kandyans has the effect of making the marriage date back to the actual native ceremonies performed for the purpose of constituting the marriage. *16 N.L.R. 61.* A Kandyan marriage cannot be dissolved except by an order of the provincial Registrar duly made under Ordinance 3 of 1870 and entered in the register of dissolution. *4 N.L.R. 257.* The Entry in a register is not conclusive evidence that a Kandyan marriage is *diga* or *binna*, *1 B N.C. 91*, but it is the best evidence of the intention of the parties. *1 Times 87.*

On a marriage between Tamils registration is not necessary for the purpose of effecting a lawful marriage if it had taken place according to customary Hindu rites. *2 Law Rec. 210.*

Marriage Brokage Contract is not enforceable at law, *3 C.A.C 64*; See *29 N.L.R. 417 F.B.* But the obligation of a father to pay money on the breach of promise to marry by the daughter does not involve any greater evil nor is it more contrary to the policy of the law than the obligation of the daughter herself to pay damages in the case of a personal breach by her. *15 N.L.R. at 93; 6 S.C.D. 65; 6 Lead. 11.*

Married woman. Under the Roman Dutch law a married woman becomes, as it were, a minor and is subject to the guardianship of her husband and consequently has no *locus standi in judicio* except with the consent and assistance of her husband who on the

other hand has the duty and right to represent her in Court in all actions brought against her on her behalf. 2 *Law Rec. 11.* The Roman Dutch law broadly stated is that the contract of a married woman made with the consent of or which has been ratified by her husband is good in law. *24 N.L.R. at 484; 10 N.L.R. at 85.*

Master and servant. Where the true character of the act of a servant is that it is an act of his own and in order to effect a purpose of his own the master is not liable. *5 Times 38.* A master is not generally criminally liable for the acts of his servant but such liability may be imposed by the Legislature. *15 N.L.R. 197; 9 S.C.C. 142; 1 C.L.R. 27.* Independently of any Ordinance the law empowers a master to discharge without notice a servant guilty of gross misconduct and the servant so discharged is not entitled to any wages that have not previously accrued due, *1860-62 Ram. 193,* but a master has no right to stop any portion of his servant's wages for misconduct. *1 C.L.R. 32.*

Material alteration is one which would alter the business effect of an instrument if used for a business purpose. *13 N.L.R. 248.* The effect of a material alteration of a promissory note is not to make the note absolutely void. Though the note is nullity it can be used as evidence in support of a claim put in some other way. *20 N.L.R. 340.* The signature of a new maker is a material alteration vitiating a note; *3 Bal. 156;* so is the addition of the signature of a witness. 2 A.C.R. 33. The insertion of a rate of interest in a note is a meterial alteration, *1 Bal. 182; 5 C.W.R. 252; 4 S.C.D. 8; 2 C.L.W. 344; 13 Law Rec. 153; 35 N.L.R. 340;* except where interest had been previously agreed upon. *14 N.L.R. 106; 4 S.C.D. 91.* An alteration in the date of a note is generally speaking a material alteration. But the note is not avoided against a party who has himself made or authorised or assented to the alteration. *17 N.L.R. 103.*

Matrimonial law applicable to British or European residents in Ceylon is the Roman Dutch law and not the English law. *9 N.L.R. 31.*

May. *Prima facie* the use of the word *may* would indicate that the provision is not imperative but merely permissive but in many cases it had been held that *may* when it is used in statutes imposing a duty or conferring power has a compulsory or obligatory force and is equivalent to *must. 26 N.L.R. 313.* Very good reason, however, should be required for so holding. *7 N.L.R. at 115.* The word *may* in section 13 (2) of the Housing and Town Improvement Ordinance has not the force of the word *shall* but is merely permissive. *7 C.W.R. 27.*

Measure of damages is the estimated loss directly and naturally resulting the ordinary course of events from the seller's breach of contract but where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods. *15 N.L.R. at 9; 16 N.L.R. at 402.*

Meat in the Butchers Ordinance includes all parts of an animal used as food for man and beast not excepting offal. *6 C.W.R. 185; 21 N.L.R. 69; 1 Law Rec. 43.*

Mechanic is not a public servant nor a labourer. *15 N.L.R. at 119.*

Medical officer does not include a Provincial Surgeon. 17 *N.L.R. 198.*

Medical practitioner. A *Vedarala* is not a medical practitioner within the meaning of section 55 of the Excise Ordinance. 17 *N.L.R. 321.* Contra *1 C.L.R. 90.* The use of a stethoscope by a native medical practitioner does not necessarily mean that he professes to practice medicine according to modern scientific methods. *1 Times 27; 4 Law Rec. 52.*

Memorandum. A subsequent letter written by a party or his proctor is a sufficient memorandum within the meaning of section 4 (1) of the Sale of goods Ordinance provided all the essential terms of the contract are embodied in it. *1 Law Rec. 157.*

Mens rea. The English law as to *mens rea* is not applicable in Ceylon. *1 Times 239; 1 Law Rec. 178.* For the doctrine of *mens rea* as it exists in our law we must look exclusively to sections 69 and 72 of the Penal Code. *23 N.L.R. at 42; 6 Tam. 4; 3 Law Rec. 181.* Unless the Legislature has indicated the contrary intention the infliction of penalties is to be presumed to be confined to cases where the offender has the *mens rea. 27 N.L.R. at 422.* Whether *mens rea* is required in the case of a breach of the rule prohibiting the clearing of Crown land is a matter for doubt *1 Cr. A.R. 76.*

Mental competency. The burden of proof of mental competency lies on the propounders of a will. But they are not bound to go further than this. They are not bound to show affirmatively that the testator's mind was free from any influence which the law considers undue. *22 N.L.R. at 6.*

Mesne profits are in the nature of prospective damages and the right to claim prospective damages accrues from the same cause of action—the same act or omission of the defendant for which compensation for ascertained loss is usually claimed. *17 N.L.R. at 9.* In order to maintain an action for *mesne* profits founded on unlawful possession of land the plaintiff must have at the date of the decree for *mesne* profits a present possessory title. *2 A.C.R. 175; 5 A.C.R. 5.*

Minor. A sale of land by a minor is not void but voidable at his option. *19 N.L.R. 426; 3 Times 124;* See *7 Law Rec. 162; 7 Tam. 110;* Contra *3 Br. at 13; 12 N.L R. 291;* See *5 S.C.D. 49.* A donation by a minor is null and void. *5 N.L.R. 273.* Restitution is not granted to a minor who has falsely represented himself to be a major. *29 N L R. 449; 13 N.L.R. 195; 5 Times 172.* Under the

Roman Dutch law a minor is liable for delicts. 2 *Law Rec. 124.* Contracts by minors under the Kandyan law are voidable only and not absolutely void. *12 N.L.R. 291; 5 A.C.R. 68.* A Muslim under twenty one years of age cannot validly incur liability by contract. *21 N.L.R. 439.*

Where a father by a notarial conveyance buys a land in the name of his minor child the title to the land vests in the minor though the father pays his own money for the land and himself accepts delivery of the deed of conveyance. *13 N.L.R. 65 F.B.*

Mischief. It is only where a person acts wantonly that he can be said to be guilty of mischief. 2 *C.A.C. at 165; 7 Law Rec. 157; 3 Law Rec. 18.* An act though wrongful in itself is not mischievous which is done in vindication of a right which is the subject matter of a dispute. *1 Cr. A.R. 21.* The fact that the accused acted in the *bona fide* belief that he was acting in the exercise of a legal right negatives any intention on his part to cause wrongful loss or any knowledge that he was likely by his act to cause such loss. *10 Law Rec. 153;* 2 *S.C.R. 66; 7 Times 67; 6 Times 9; 3 S.C.D. 91.* A person should not be convicted of mischief unless the facts and circumstances justify the inference of the presence of criminal intention or knowledge. *4 Law Rec. 182.* A person who, whatever may be his motive, destroys property in which no one else has any legal right cannot be convicted of mischief. *3 C.W.R. at 184.* It is mischief to infict wanton injury upon an animal the property of another merely because it is trespassing upon premises. *24 N.L.R. 65; 8 N.L.R. 309.* Contra *9 S.C.C. 109;* 2 *C.L.R. 176.* The offence of mischief by killing a cow is punishable under section 412 of the Penal Code and is not triable by a Police Court. *10 N.L.R. 203.* An act done in the exercise of a right to prevent prescription is not mischief. 2 *C.W.R. 99.* Mischief is an offence upon a conviction for which an accused may be bound over to keep the peace. *4 Lead. 26.*

Misconduct on the part of an arbitrator does not necessarily involve personal turpitude. The term does not really amount to much more than such a mishandling of the arbitration as is likely to amount to some substantial miscarriage of justice and one instance that may be given is where the arbitrator refuses to hear evidence upon a meterial issue. *24 N.L.R. 385; 5 Law Rec. 43.* The refusal of an arbitrator to allow an issue which is included within the terms of the reference is misconduct. *1 Times 170.* So is the hearing of a matter *ex parte, 1 Br. 63; 1 Br. 272; 4 N.L.R. 35; 4 N.L.R. 276;* or the receipt of fees from one of the parties before the completion of the award. 2 *C.A.C. 102; 16 N.L.R. 157.* But see *1 Law Rec. 31.* Whether or not there has been misconduct on the part of an arbitrator is a question of fact. Where the circumstances which are relied on to set aside an award do not show that the arbitrator was biassad in any way there is no misconduct. *6 C.W.R. 103.*

An allegation of misconduct in an action for divorce ought to specify the date and place of the act complained of. *4 N.L R 106.* Misconduct even though condoned is revived and may be taken into account on discovery of fresh instances of misconduct. *7 Tam. 114.*

Insolence to one whose duty it is to superintend an estate is misconduct in the service of the employer. *17 N.L.R. at 64.*

A proctor who studiously ignores a request to tax his bill made to his knowledge at the instance of the Court which is in the process of investigating charges against him is guilty of misconduct as an officer of the Court. *30 N.L.R. 65.*

Misdescription as regards a village will vitiate a registration. *29 N.L.R. at 183.*

Misjoinder of charges in a criminal case is not a mere curable irregularity. *1 B.N.C. 28; 14 Law Rec. 164.* It is irregular and would afford good ground for quashing a conviction to try two persons at one trial either for possession or sale of arrack contrary to the provisions of Ordinance 10 of 1844. *2 N.L.R. 161.* It is a misjoinder to charge an accused with the possession of opium and ganja. *14 Law Rec. 162.* Two persons who are drunk and disorderly cannot be charged together. *7 Law Rec. 173.*

An objection to misjoinder of parties and causes of action should be taken in the Court of first instance. 2 *A.C.R. 4.* It is too late if taken after the case is closed. *21 N.L.R. 94.* In deciding any question of misjoinder the plaintiff's case must be taken as put by him. *1 C.W.R. 140.* An action for damages for breach of contract should not be dismissed on the ground of misjoinder of a party as plaintiff. *4 S.C.D. 33: 1 N.L.R. 206.* But where the misjoinder is in respect of different causes of action the Court has no discretion to discharge one or some of the defendants and allow the plaintiff to proceed against others. *14 Law Rec. at 122.*

Mistake implies a positive and conscious conception which is, in fact, a misconception. *23 N.L.R. at 45.* The word "mistake" in section 72 of the Penal Code must be taken to include ignorance. *23 N.L.R. at 58.*

Modera is not a *diverticulum maris. 8 C.W.R. at 300.*

Money judgment cannot be given against a person who is subject only to a hypothecary obligation. *22 N.LR. at 484.*

Money lender. A person who supplements his income by money lending which is systematic and continuous is a money lender. *34 N.L.R. 313;* 2 *C.L.W. 185; 10 Times 128.* See *13 Law Rec. 89.*

Money Lending Ordinance does not apply to a promissory note given at a settlement of accounts in winding up a business. *10 Law Rec. 120*, or as security for an existing debt that is not based on a loan. *31 N.L.R. at 123; 10 Law Rec. 113;* See *7 Times 37*, or where the consideration consists of the advance of seed paddy. *2 Times 196*. A Court cannot grant relief under section 10 (2) of the Ordinance, where a false statement in regard to the capital sum borrowed on the note is the result of a deliberate act. *28 N.L.R. 339*. The power given to a Court to re-open a transaction under section 2 (1) cannot be exercised after decree in the action. *36 N.L.R. 367*.

Monthly tenancy. To terminate a monthly tenancy it is necessary to give the tenant a month's notice terminating at the end of a current month of the tenancy. *5 C.W.R. 281*.

See also NOTICE TO QUIT.

Moormen of Ceylon belong to the Shafei sect. *17 N.L.R. at 339*.

Mortgage is a *pactum* where by a *jus in re* is created in security of the debt due to the creditor but in which the possession is not transferred to the creditor. *14 Law Rec. at 224*. A mortgage is indivisible and a mortgagee has a right to realize the debt out of the whole or any part of the security without reference to the fact that the property has since been divided and passed into several hands. The result is the same if several things are mortgaged for the same debt and they subsequently come into the possession of several persons such as heirs or alienees of the mortgagor. In all such cases the person who pays the debt when the creditor has brought the hypothecary action may have recourse against the others for contribution. The mortgage being indivisible, all those to whom the mortgaged property comes are in the position of co-obligors. *19 N.L.R. 266*. An accessory obligation like a mortgage subsists only as long as the primary obligation, which is the debt, is alive and if the debt is paid or otherwise extinguished the mortgage is *ipso facto* extinguished also. *17 N.L.R. at 335*. The mortgage security is no higher or more extensive than the mortgagor's title to the property and if that title is by any legally effective means extinguished and not merely transmitted to another by contract or descent the mortgagee is affected equally with the mortgagor. *20 N.L.R. at 152*. Under the Roman Dutch law a person may mortgage property of which he is not the owner at the date of the mortgage whether the property consists of movables or immovables. When such a mortgage is effected it is preferential to any subsequent mortgage effected after the mortgagor acquires ownership, *14 N.L.R. 65*, but not a *bona fide* purchase from the mortgagor after he acquires title. *14 N.L.R. 90*. The principle of the Roman Dutch law which does not allow an agreement between debtor and creditor to the effect that if the debt is not paid within the specified time the property

mortgaged should become the property of the creditor is applicable in Ceylon. *34 N.L.R. 287; P.C.; 2 C.L.W. at 131; 10 Times 90; 12 Law Rec. 156*. Where a mortgagee of immovable property becomes the owner of the property mortgaged or any share of it, the mortgaged security is extinguished to that extent but the debt remains. *12 N.L.R. 300; 14 N.L.R. 177*. A partition or sale under the Partition Ordinance does not affect the right of a mortgagee whether the mortgage involves the whole land or only an undivided share of it. *6 Law Rec. 123*. A mortgagee's interest in the mortgage is a debt not secured by a negotiable instrument under section 229 of the Civil Procedure Code. *11 N.L R. at 38*. A mortgage debt is movable property. *4 Tam. 125*.

In view of section 16 of the Mortgage Ordinance of 1927 the creditor on a mortgage bond can elect with which of the actions open to him he will proceed, namely the personal action against the debtor or the hypothecary action against the person in possession of the mortgaged property. *7 Times 81; 31 N.L.R. at 308*. Where a mortgagee seeks to follow the property in the hands of a third party other than the mortgagor the burden of proving the existence of the debt due on the mortgage is on him. *2 Mat. 36; 31 N.L.R. 130*. The mortgagor, or someone rspresenting his estate, must always be a defendant in an action for the realization of the moneys secured on a mortgage under section 642 of the Code. *19 N.L.R. at 389*. A person who during the pendency of a hypothecary action purchases the property under mortgage in execution of a money decree may intervene under section 6 (3) of the Mortgage Ordinance but only before the distribuiion of the proceeds of sale under the mortgage decree. *35 N.L.R. 289; 13 Law Rec. 154*. There is no provision of the law that a limit as to price is required to be placed upon the mortgagee if he is to be allowed to bid and purchase. *35 N.L.R. 94; 13 Law Rec. at 18*.

Where a person who is not the owner of movable property mortgages it and subsequently acquires ownership the mortgage becomes valid. *20 N.L.R. 476*. A special mortgagee of movables is entitled to be preferred to all other creditors of the debtor in respect of the proceeds of sale of such movables. *4 N.L.R. 311;* See *6 Times 13*. A mortgagee of movables cannot follow them in the hands of a *bona fide* purchaser. *2 N.L.R. at 96*. The movable property of a judgment-debtor which has been mortgaged to a third party is liable to be sold under an unsecured creditor's writ whether the mortgage was constituted by bond or by delivery of the mortgaged property into the possession of the mortgagee. The mortgagee's rights are only to the proceeds sale and the proper course for him to pursue is to claim the proceeds sale in preference. *8 C.W.R. 118*.

Mortgage decree is a decree for money, *6 C.W.R. 94; 9 N.L.R. 166; 1 Times 240; 1 Law Rec. 13; 5 Law Rec. 41*, and is seizable under section 234 of the Civil Procedure Code. *25 N.L.R. 56;* See *3 Bal. 118; 21 N.L.R. 97; 32 N.L.R. 383.* It is a registrable instrument, *29 N.L.R. at 314*, and requires registration. *31 N.L.R. at 482.* The form of mortgage decree generally adopted since the Code has introduced nothing new but has substantially reproduced the Roman Dutch procedure. *20 N.L.R. at 128.* Where a mortgage decree does not contain directions in regard to the conduct and conditions of sale or fix the period within which the money due is to be paid the Court can subsequently give these direction. *14 Law Rec. 159.*

Mosque. See POSSESSORY ACTION.

Motion. It is an axiom in legal procedure that a motion can only be made either by consent of parties or, if it is opposed, by evidence adduced either oral or by affidavit. *1 Br. at 74.*

Motor car. A motor omnibus is a motor car. *27 N.L.R. 419; 4 Times 41.*

Motor vehicle. Registration is by no means conclusive of the ownership of a motor vehicle. *8 C.W.R. at 4.*

Mudusom means property devolving by descent. *22 N.L.R. at 204.*

Municipal Council Ordinance. Under section 143 of the Ordinance immovable property should not be sold for default of payment of taxes if there are movables available. A disregard of this rule renders the sale invalid. A certificate issued under sec. 143 is nothing more than *prima facie* evidence that the requirements of the law have been complied with. It is open to a party interested to rebut the presumption arising from the issue of a certificate. A certificate issued under this section has not the effect of wiping out a fidei commissum existing at the time. *22 N.L.R. 427.*

Muslims. Where Muslims in Ceylon go to a notary and enter into a contract which is valid according to the general law prevailing in the Island there should be unequivocal evidence of an inveterate custom before such a transaction could be pronounced by a Court of law to be invalid or inoperative because of such custom. A strong presumption arises in such a case that the parties intended to be bound by their contract solemnly entered into and that from long residence in the country they had learned to adopt the general law on the subject unless there was some definite and well reputed custom to the contrary. *Per Schneider, J. 19 N.L.R. at 185;* 3 C.W.R. *at 100.*

Muslim law is based on religion and is applicable to all the followers of Islam. It applies to Malay and to immigrants from India known as Coast Moormen. It is applicable not only in respect of movables and personal relations such as marriage but also with regard to immovable property situated in Ceylon. *16 N.L.R. 425.* Subject to the customary modifications of its provisions the Shafei law governs the status of the Muslims in Ceylon. *18 N.L.R. at 482; 1 C.W.R. at 222.* The Code of 1806 is not exhaustive of the Muslim law applicable to Ceylon. It has to be read in the light of the general principles of jurisprudence. *26 N.L.R. 330.* Where it contains no special provision the ordinary rules of Muslim law must be referred to. *1 C.W.R. at 110.* But see *3 N.L.R. 116.* The restriction imposed by Muslim law on the power of testamentary disposition is not in force in Ceylon. *5 Lead. 101;* 6 *Times 143.*

Muttettu lands. The cultivation of muttettu fields or high land is an obligation cast on *paraveni pangukarayas* or *paraveni nilakarayas* and they have no right or interest in such lands. *6 Law Rec. 26.*

Mutual will must be considered as the separate will of each of the spouses unless its language is such as to make it apply to the estate of the first only. *3 C.W.R. 303.*

Namptissement is an interlocutory decree or provincial sentence allowed by the Roman Dutch law to certain plaintiffs declaring on documents which are thought to import a *prima facie* assurance of the validity of plaintiff's claim an order to the defendant to pay the plaintiff's claim at once before the plaintiff's claim has been definitely adjudicated on or even, it may be, the defence fully disclosed. The defendant is ordered to pay the money at once and the plaintiff if he draws the money has to give security for its refund in case the final decree should be against him. 4 S.C.C. *at* 26.

Native. Indian Tamils resident in Ceylon, though they may not be domiciled, are natives within the meaning of section 28 of the Village Communities Ordinance, *17 N.L.R. 234* but not a Eurasian, *6 S.C.C. 95*, or a Police constable. *3 Law Rec. 87.*

Nattukotta Chettiars. It is a well-known practice among the Nattukotta Chettiars that when their agents sign any documents for their principals they always sign their own name prefixed by the initial letters of the firm on whose behalf they act; but when they sign on their own account they sign their own names and prefix thereto the initials of their own patronymics. *4 Bal. 146.*

See also VILASAM.

Necessary in section 402 of the Civil Procedure Code means rendered necessary by some positive requirement of the law. *11 N.L.R. at 204; 1 S.C.D. 63; 3 A.C.R. 171.*

Necessary party. The use of this expression in sectom 6 (1) of the Mortgage Ordinance of 1927 does not preclude theionrtgagee from joining any other person whom a mortgagee could join before the Ordinance was passed so as to get an effectual decree in the type of cases defined in section 2 as hypothecary actions. *14 Law Rec. at 226.* A subsequent encumbrancer under that section is a necessary party only where his instrument is duly registered and where, if the mortgage in suit is duly registered, he has also registered an address for service. *36 N.L.R. 137.*

Negligence. The law of negligence in this Island does not differ from the law of England on this point. *4 N.L.R. at 142.* What constitutes negligence is a question of circumstances and circumstances include surroundings. *21 N.L.R. at 75.* Where circumstances disclose *prima facie* evidence of negligence the burden of rebutting such evidence is on the defence. *14 Law Rec. 79.* There is a distinction between neglect and failure. Failure may be due to inevitable accident. Neglect is a culpable omission. *3 N.L.R. 208.*

A party must suffer for his proctor's negligence. *28 N.L.R. at 303.*

Negotiating can only mean doing something which can be done with a negotiable instrument. *9 Law Rec. at 64; 29 N.L.R. at 329.*

Next friend. A mother suing the maintenance on behalf of an illegitimate child is in the position of a next friend. *25 N.L.R. at 217.*

Nilakarayas. The primary obligation of the tenants of a *nindagama* was to attend at the *walauwa* of the owner. *5 N.L.R. at 145.* The *paraveni nilakarayas* of a *nindagama* are not now bound to cultivate fields which do not form part of the *nindagama* to which they are attached but they are bound to render personal services to the proprietor of the *nindagama* whenever he gives them notice of the time and place he requires their attendance. *3 N.L.R. 110.* Each *nilakaraya* is not liable for the whole of the services but only for so much as is due in respect of his holding. *1877 Ram. 133.* The rights of a *paravani nilakaraya* of a Buddhist temple are incompatible with a hereditary right to appoint the incumbent. *6 Law Rec. 45.*

Nindagama can in no case consist of *muttettu* fields only. *6 Law Rec. at 113.* The registration of a land as a *nindagama* is not conclusive proof of the existence of it as such. *6 Law Rec. 112.* Persons entitled to an undivided share in a *panguwa* in a *nindagama* are not entitled to bring a partition action. *1 Law Rec. 63; 19 N.L.R. 361.* In an action by the overlord of a *nindagama* to recover from his tenants the commuted value of services not performed he must establish his title to the *nindagama* where the same is traversed.

8 Times 135. Under the Service Tenures Ordinance a *ninda* lord has no rights in the timber growing on the land of the *paraveni nilakaraya. 3 Law Rec. 138.* In the absence of proof of any custom neither the landlord nor the tenant of a *nindagama* can gem on the land without the other's consent. *5 N.L.R. 326.*

Non-acceptance. The effect of non-acceptance of a gift by the donee is to entitle the donor to revoke the gift and make any other disposition of the property. *21 N.L.R. at 168.*

Non-joinder. An objection to non-joinder of parties should be taken at the earliest possible opportunity ; otherwise such objection will be considered to have been waived. *10 N.L.R. 351.* It is the duty of a defendant pleading non-joinder to state the name of the party to be joined so that the plaintiff may have an opportunity of amending his plaint. *4 N.L.R. 261.*

Notarially executed. An authority to execute an instrument which must be notarially executed may be given orally. *8 C.W.R 23 ; 22 N.L.R. 159 ; 2 Law Rec. 72.* Contra *8 S.C.C. 182.* An agreement by parties to an action under section 408 of the Civil Procedure Code need not be notarially executed. *31 N.L.R. 168.*

See also INTEREST IN LAND.

Notary. Where a notary follows a general practice and makes a mistake regarding the strict requirements of the law as to which there is a reasonable doubt or where he commits an error of judgment he is not guilty of such negligence as would make him liable in damages to his client. *18 N.L.R. 47.* It is the duty of a notary to number every deed consecutively according to the date of attestation and to enter it in his monthly list and the duplicate of the deed should be sent with such list to the Registrar of lands as required by section 26 of Ordinance 2 of 1877. *3 N.L.R. 208 ; 6 N.L.R. 138.* Unless a notary has personal knowledge of the state of the title it is his duty either to attend the registrar's office in person to search the register or to employ someone else to do it for him. *3 N.L.R. at 207.*

Not guilty. A person charged with an offence should not be penalised for putting the prosecution to the proof of the charge against him. *9 Law Rec. 116.*

Notice under section 5 of the Partition Ordinance must be notice to the public. *28 N.L.R. 502 F.B. ; 27 N.L.R. 260 ; 8 Law Rec. 134 : 7 Law Rec. 97 ; 4 Times 15 ; 4 Times 183.* The method of giving notice of a partition suit by affixing notices on the property sought to be partitioned can be adopted only when personal service cannot be effected and there is no person in physical occupation of

the property. *14 Law Rec. 138 ; 3 C.L.W. 67.* Where in a partition action the defendant on service of summons is absent on the day appointed for his appearance he is not entitled to receive notice of the day of trial. *36 N.L.R. 54.*

Unless there are special considerations a month's notice has been recognized as reasonable notice under our law. *26 N.L.R. at 210 ; 6 Law Rec. 145 ; 12 Law Rec. 84.* Where the salary is payable monthly a month's notice is sufficient. *34 N.L.R. 85.* Where there are indications that the contract was for an indefinite period six months was held to be reasonable. *14 Law Rec. 190.* A month's notice to an employee is not necessarily a calendar month's notice. *7 Law Rec. 92.* Even a licensee is entitled to reasonable notice. *9 Law Rec. at 126.* Due registration of an agreement to convey land is of itself notice under section 93 of the Trusts Ordinance to a person who acquires the land subsequent to such agreement. *8 Times 17 ; 20 N.L.R. at 305.*

Notice to quit. Where there are several lessors to a lease a notice to quit given by one is insufficient to terminate the tenancy. *30 N.L.R. 447.* A notice to quit should be a calendar month's notice, that is, a notice given before the first of the month to commence with the first day of the month and to terminate by the end of the month. *6 C.W.R. 193 ; 1 Law Rec. 33 ; 2 C.L.R. 134.* Notice given by a tenant on the first of a month that he is going to leave at the end of the month can be considered sufficient notice provided the rent is paid in respect of a full month from the date on which it is given. *1 C.L.W. at 357 ;* See *3 N.L.R. 141 ; 3 N.L.R. 340 ; 2 Times 44 ; 5 Law Rec. 138.* Where a tenant gives notice to quit and holds over without entering into a new contract the test of damages is the actual loss which the landlord had sustained as a direct and natural consequence of the default. *11 Law Rec. 177.*

Notification. In the absence of any disclosure in the charge or of proof in Court, the Court is not bound to assume the existence of the notification for the breach of which the accused is charged. *8 Law Rec. 116 ; 1 S.C.R. 247.* See *14 Law Rec. 121.*

Novation is the substitution of a new engagement or obligation by the same debtor to the effect of extinguishing the original debt. The substitution of a new debtor for the old with the consent of the creditor was delegation. *5 N.L.R. at 155.* A novation may be constituted by parol merely. *34 N.L.R. 160 ; 10 Times 42 ; 12 Law Rec. 112.* A novation may take place not only by express agreement but also tacitly and by implication, the consent of the parties to the novation being implied from the circumstances and the conduct of the parties. But in the latter event the inference must be so probable and conclusive as to make it quite clear that the parties

intended to recede from the original obligation and to replace it by another—in fact it must be a necessary inference, the new obligation being inconsistent and incompatible with the continued existence of the original obligation. *14 N.L.R. 486.*

Now in a will must be construed by reference to and along with the codicil. *31 N.L.R. at 27.*

Noxal action. The principle of noxal action does not apply to a mere capricious or unexpected act of an animal not of itself of a nature to cause damage. *22 N.L.R. 153 ; 2 Law Rec. 147.*

Nuisance. Any statutory authority to commit a nuisance must be strictly construed. *1 C.W.R. at 11.* Where an act constituting the nuisance is not done by the party sought to be made liable but by a third party over whom he had no control or whose acts he cannot foresee or guard against he is not legally responsible for the consequences. *18 N.L.R. at 390.* In a charge of committing a nuisance under Ordinance 15 of 1862 the defendant should be clearly informed what the charge against him is. *5 A.C.R. 19.*

Nullity of marriage. Fraudulent concealment of pregnancy is sufficient reason for declaring a nullity of marriage. *24 N.L.R. 89.*

Oath which purports to affect a third person is expressly forbidden by the Oaths Ordinance. *1 Br. 106.* Under that Ordinance it is open to a non-Christian who believes in God to swear rather than to affirm. *18 N.L.R. 120.* Failure to kiss the Bible is not a fatal irregularity. *4 B.N.C. 68.* An oath administered on an image of Buddha has no probative force. *7 S.C.C. 33.* The taking of an oath or affirmation does not render the person who takes it legally bound to state the truth unless there is some provision of law which requires him to make the statement on oath or affirmat on. *3 Cr. A.R. at 125.* Where a person agrees to take a specified oath the oath must be administered in the very terms in which it is worded. *2 Times at 9 ; 5 Law Rec. 57.* Under the Oaths Ordinance when parties to civil suits agree to be bound by an oath it is conclusive. *3 Times 45,* but it is not so in criminal proceedings, *2 N.L.R. 147 ; 11 Law Rec. 43 ; 3 Cr. A.R. 108,* nor in an action for maintenance in which the interests of an illegitimate child are concerned. *2 Times 1 ; 5 Law Rec. 58.* It does not matter whether the decisory oath is to be taken by a party to the action or by a witness. *7 Law Rec. 47.* A party who has challenged his opponent to take an oath cannot withdraw from his undertaking if the opponent consents to take the oath. *20 N.L.R. 157 ; 5 Lead. 51 ; 14 N.L.R. 397.* Where a party to a suit agrees to take the decisory oath and then changes his mind he is in the same position as a person who had

originally refused to do so. In such a case the Court should record the fact of the refusal to take the oath and any reason assigned for the refusal and then proceed to try the case in the ordinary course. *14 N.L.R. 410 ; 4 N.L.R. 78 ; 12 N.L.R. 206.* The failure on the part of the officer administering an oath to take and record contemporaneously the evidence of the persons sworn or affirmed is an irregularity which is fatal to the proceedings. 2 C.A.C. 37. See *2 Lead. 28.*

Obscenity is something which affects morals and not mere conventional manners. *3 C.W.R. 136.* An article is obscene when the tendency of its contents would be to deprave and corrupt the minds of those who peruse it. *33 N.L.R. 114 ; 8 N.L.R. 67 ;* See *8 Times 13.* A person who utters obscene words in a public place is guilty of an offence under section 287 of the Penal Code even if a single person was annoyed thereby, *14 N.L.R. 424 ; 6 S.C.D. 18,* but there must be evidence that someone was actually annoyed. *3 C.L.W. 70.* A charge under this section should set out the actual obscene words alleged to have been used. *30 N.L.R. 454 ; 6 S.C.D. 33 ; 6 Times 114.* It is doubtful whether the words "son of a whore" can be said to be obscene within the meaning of this section. *2 Law Rec. at 25.* Obscene papers fixed to the pillars of a private house so that the public could see them but could not read them from any place nearby to which the public had access are not exhibited within the meaning of section 285 of the Penal Code. *14 Law Rec. 59.*

Obstruction. The use of physical force is not essential to cause obstruction within the meaning of section 183 of the Penal Code. *28 N.L.R. 305 ; 8 Times 62.* See *8 Law Rec. 90 ; 1 C.L.W. 62 ; 11 Law Rec. 82.* A mere verbal refusal to allow a public servant to perform his duty does not cause voluntary obstruction. *16 N.L.R. 505 ; 1 C.A.C. 173.* Passing off a deception on a policeman in charge of a civil prisoner and so putting him on the wrong scent so that the prisoner escaped was held to be obstruction. *6 Tam. 33.* In the case of obstructing a public servant in the execution of his duty it should be proved beyond all doubt that the public servant had proper legal authority to the act in the doing of which he was obstructed. *4 C.A.C. 61.* See *2 S.C.R. 129.* Obstruction to a surveyor licensed by the Deputy Fiscal to prepare a map to be annexed to a Fiscal's conveyance is not punishable under this section. *8 N.L.R. 348 ; 4 N.L.R. 213.* But obstruction to a commissioner appointed in a partition action is so punishable. *8 N.L.R. 311.* The hindrance or obstruction for the purposes of section 328 of the Civil Procedure Code should be at the time of giving of possession or shortly thereafter. *23 N.L.R. 406.* The most obvious way to obstruct a sale would be by threatening bidders or would-be bidders with personal violence if they made bids. *1 Br. at 158*

Occupation. This word in section 427 of the Penal Code is something more than possession in the legal sense. It seems to imply physical possession by oneself or through an agent. *Per Sampayo, J. 2 C.W.R. 6 ; 19 N.L.R. 262.* See *1 B.N.C. 2.* Contra *1 S.C.D. 13 ; 7 Times 32 ; 10 Law Rec. 107.*

Occupier. An employé is not an occupier of the premises on which he works. *9 N.L.R. at 106.*

Offence in section 211 of the Penal Code should be construed in the light of the provisions of section 38 (b) which provide that for the purpose of proceedings under section 211 the word "offence" denotes a thing "punishable in Ceylon under this Code or under any other law". *4 C.W.R. at 223.* The words "any offence" in section 413 of the Criminal Procedure Code mean any offence which was either directly or indirectly the subject of the inquiry or trial. *20 N.L.R. 414.* The words "other offence" in clause 3 of section 138 of the Penal Code do not mean an offence *eiusdem generis* with those immediately preceding, viz., mischief and criminal trespass. *18 N.L.R. 321 and 322.*

Offensive has generally in practice always been construed as confined to things offensive to the sense of smell. It has been extended by the by-laws of the Municipal Council to plumbago curing businesses and this extension is perhaps legitimate. It has not, however, been extended to trades or businesses offensive to the ear. *Per Bertram, C.J. 5 C.W.R. at 257.* An offensive trade is a trade which from its very nature is necessarily offensive. *6 Law Rec. at 42.*

Offer opium for sale is to present or tender it for acceptance or rejection. *14 Law Rec. at 69 ; 12 Times 49.*

Omission contemplated in section 9 of the Partition Ordinance implies some element of wilfulness and intention to produce a prejudicial result. The omission must be of an act which one is bound to do. *24 N.L.R. 166 ; 4 Law Rec. 159.*

Omit in section 34 of the Civil Procedure Code includes accidental omissions as well as acts of deliberate relinquishment but a plaintiff cannot be said to have omitted to sue in respect of a part of his claim unless he was aware or informed of his claim at some time prior to his suit. *25 N.L.R. at 198 ; 2 Times 30.*

Omnia praesumuntur contra spoliatorem. If a man by his own tortious acts withholds the evidence by which the nature of his case would be manifested every presumption to his disadvantage will be adopted. *2 Mat. 122.*

Omnibus is bound by the regulations affecting omnibuses whether it is actually plying for hire at the time or not. *10 Times 84.* The driver of an omnibus is a person travelling in an omnibus for the purpose of regulation 26 of schedule 4 of the Motor Car Ordinance of 1927. *3 C.L.W. 139.*

Option to repurchase is not a personal right and may be seized by creditors. *34 N.L.R. at 138; 9 Times at 62.* It is an assignable instrument and the assignee is entitled to enforce it. *28 N.L.R. 175.* It passes to the heirs of the vendor and is not bad in law merely because it does not specify the time within which the option is to be exercised. *35 N.L.R. 372; 13 Law Rec. 56.*

Order to be treated as such must be formally drawn up and recorded as required by the Civil Procedure Code. *1 N.L.R. 245.* "Order" in section 75 of the Courts Ordinance means a formal expression of a decision of a judge. *8 Law Rec. 161.*

Order for costs is an order for payment of money. It is not a decree for payment of money but has the effect of a decree for payment of money and is enforceable in a like manner. *25 N.L.R. at 470.*

Order to his prejudice in section 345 of the Criminal Procedure Code means some order by which the respondent has to pay money or by which he suffers some damage and not an order of acquittal of the accused. *1 C.L.W. 336; 34 N.L.R. 304.*

Ottu. The payment of *ottu* is an obligation arising from the possession of land belonging to the *ganladde* and may be acquired by any person to whom the right is transferred. *27 N.L.R. at 49.*

Ouster. Among co-owners no physical disturbance of possession is necessary. It is sufficient if one co-owner to the knowledge of the others has taken the land for himself and begun to possess it as his own exclusively. This sole possession is often attributable to an express or tacit division of family property among the heirs and the adverse character of the exclusive possession may be inferred from circumstances. *1 C.W.R. 175.* See *14 Law Rec. 201; 10 Times 10; 3 Times 102; 13 Law Rec. 207; 12 Times 118; 1 Law Rec. 135; 5 Law Rec. 170; 10 Law Rec. 159.* A person who abstains from possession because he fears a beating cannot be said to have been ousted. *5 N.L.R. 210.*

Overhanging trees. A landowner cannot acquire a right to have his trees overhang his neighbour's land. *7 N.L.R. at 241.* The owner of the land over which the tree overhangs has a right to cut down the overhanging branches without paying compensation. *5 N.L.R. 83; 14 Law Rec. 167; 3 Law Rec. 53.* See *1 S.C.C. 103.*

Owelty is the payment of compensation for the purpose of equalizing shares in a partition action. *36 N.L.R. 191; 13 Law Rec. 261.*

Owner. A person who holds a power of attorney from a person absent in England and who manages the property of such person in the Island is an owner within the meaning of regulation 25 under Ordinance 3 of 1897. *10 N.L.R. 315.* The word *owner* in section 17 of Ordinance 10 of 1863 means an owner to the legal proceedings instituted under the Ordinance. *5 N.L.R. 190.* A registered owner of a motor car must be regarded as the person in possession unless there has been a transfer of possession or the license is cancelled. *14 Law Rec. 216.*

Palanquin. The use of palanquins being now obsolete except among the priests, the obligation on the part of *paraveni nilakarayas* to carry palanquins for the proprietor of the *nindagama* is not enforceable at law. *3 N.L.R. 110.*

Pandal is not a building within the meaning of section 86 of Ordinance 10 of 1861. *13 N.L.R. 26.*

Panguwa under the Service Tenures Ordinance does not belong to the *nindagama* proprietor but is a holding of the *nilakaraya* himself subject only to the performance of services and the *nilakaraya* becomes free even of this burden if the right of service is lost as for example, by non-performance of service for ten years. *4 C.A.C. 85.*

Parate execution. The principle of the process of parate execution was that, certain facts having been established to the satisfaction of the Court, the previous stages of an ordinary suit were dispensed with and ready execution without previous judgment issued the discretion of the Court that parate execution should issue being treated as a decree or judgment. *1 Bal. at 73.* The Civil Procedure Code has done away with any rights of parate execution which are not specifically provided for by that Code or by any other law of the Island. *5 C.W.R. at 149.*

Paraveni imports a right in perpetuity. *19 N.L.R. at 362.* *Paraveni* property is ancestral property which has descended by inheritance. *31 N.L.R. at 31; 15 N.L.R. at 374; 3 N.L.R. 376.* Under the Kandyan law ancestral property when the direct line of descent is broken goes over to the next nearest line issuing from the common ancestral roof tree. *1 S.C.C. 3 F.B.; 24 N.L.R. 257.* A widow is not entitled to succeed to her husband's *paraveni* property

if any relations of her husband are in existence but she is entitled to maintenance. *3 N.L.R. 145.* A husband is not entitled to any life interest in the *paraveni* property of his deceased wife. *2 C.L.R. 76.*

See also INHERITED PROPERTY.

Parol evidence is at all times admissible to establish a resulting or constructive trust where such a transaction is intended to effect a fraud. It is not necessary that there should be fraud at the very inception of the transaction. It is sufficient if it arises subsequently. *9 N.L.R. 183; 29 N.L.R. at 69.* It is admissible in the case of negotiable instruments to show not only that consideration for the contract has failed but also that what purports to be a complete contract has never come into operative existence. *7 N.L.R. 1.* Also to prove the existence of a partnership in order to adjust accounts as between the quondam partners. *16 N.L.R. at 442.* It is not admissible to supply the omission in a jurat, *28 N.L.R. 156; 8 Law Rec. 52,* or, in the absence of fraud or mistake, to establish an interest in land. *1 Br. 268.*

Parties in section 16 of the Civil Procedure Code was intended for *persons. 25 N.L.R. at 100.* The word *party* in section 215 means the actual party to the action and will not include his executor or administrator. *21 N.L.R. 347.* A party defendant in section 65 of the Courts Ordinance and section 9 (a) of the Code means any party defendant. *34 N.L.R. 238 F.B.; 12 Law Rec. 184; 2 C.L.W. 53.* An intervenient in a partition action is a party to a civil suit within the meaning of section 4 of the Ordinance. *35 N.L.R. 243.* A purchaser in execution is a party to the action within the meaning of section 344 of the Code. *1 Law Rec. 15.* Any person who is prejudicially affected by a judgment or order of the Supreme Court is a party to the action for the purpose of appealing to the Privy Council. *9 N.L.R. at 130.* The Solicitor-General is not a party to a case in which an Excise officer institutes proceedings for an offence under the Excise Ordinance. *4 Times 71.*

Partition. Though the partition of a land is now the subject of a statute the principles of the Roman Dutch law are still invoked in a case not expressly provided for. *22 N.L.R. at 134.* A partition suit may fairly be said to be a proceeding taken for the prevention or redress of a wrong within the meaning of section 3 of the Courts Ordinance. *3 C.W.R. 318.* In a partition action all the parties have the double capacity of plaintiff and defendant. *5 Law Rec. 192.* The primary object of partition proceedings is not to try and determine contested question of title, *3 N.L.R. 12; 32 N.L.R. at 341* and to obtain a decree of partition which is binding against all the world the Court should require parties to prove their title. *3 N.L.R. 129.* The Judge should take care that the inquiry in a partition suit is not a perfunctory one. It is only after he is reasonably satisfied that all the owners who can be found are parties to the action

using, if necessary for the purpose, the powers given him by section 18 of the Civil Procedure Code that he should make his decree declaring that parties are entitled to certain shares and directing a partition or sale as the case may be. *1 N.L.R. at 367.* See also *3 N.L.R. 221; 6 N.L.R. 246; 9 S.C.C. 64; 5 Tam. 49; 36 N.L.R. 38.* The Court has inherent power to postpone the trial if it is shown to be necessary to prevent an abuse of its process. *4 Lead. 112.* It has power and, in some cases, it is its duty even after the parties have closed their case to call for further evidence. But this must be done in a regular manner. *4 S.C.D. 86.* In a contested action the parties should be ready at the trial with all the documentary evidence in their possession. *1 Times 139.* A partition action should not be brought by a man not in possession whose title is disputed, *2 N.L.R. 370; 3 Br. 191:* Contra *6 N.L.R. 1.* See *35 N.L.R. 323,* nor in respect of a building alone, *5 Lead. 65,* or trees on the common property. *4 Tam. 49.* It is doubtful whether a Court can order a partition among the defendants to a partition action after it has dismissed plaintiff's action on the ground that he had no share in the land. *2 Mat. 75.* An undivided portion of a larger extent of land cannot be made the subject of a partition suit unless the co-owners of the whole corpus be made parties to it. *6 N.L.R. 321.* More than one land cannot be partitioned in the same proceedings except where the lands are held in common by the same set of co-owners in the same proportions. *35 N.L.R. 211; 23 N.L.R. 157.* Damages cannot be claimed in a partition action, *5 N.L.R. 379,* but claims for compensation for improvements by co-owners may appropriately be investigated and determined. *14 Law Rec. at 49.* Land which is subject to a fidei commissum may be partitioned or sold under the Ordinance. *4 S.C.D. 11; 12 N.L.R. 373.* A partition effected between fiduciaries whether by judicial decree or mutual agreement binds the fidei commissaries and cannot be re-opened by them when their rights accrue. *9 N.L.R. 251.* The partition referred to in section 27 of the Land Registration Ordinance 14 of 1891 may be effected by decree of Court or by act of parties and need not be made on the ground by visible marks. It is sufficient if the division is shown in the deed itself by the employment of separate boundaries. *4 C.W.R. 65; 18 N.L.R. 503.*

Partition decree does not bind the Crown where the Crown has not been a party to the action. *2 N.L.R. 369; 3 Law Rec. 174; 1 Law Rec. 163; 23 N.L.R. 150.* A partition decree creates a title which is good and conclusive for all purposes. It eliminates the title of a previous and true owner who is not a party to the proceedings but allows him an action for damages against the person by whose tortious act this was caused. *30 N.L.R. at 18; 1 C.W.R. at 85.* It is conclusive even as against a person owning an interest in the land partitioned whose title has by fraudulent contrivance been concealed from the Court. *8 Law Rec. at 141; 9 S.C.C. 198; 4 Law Rec. at 51.* It binds even minors. *9 N.L.R. 241 F.B.* It extinguishes all easements not especially provided for in the decree

whether such easements be claimed as between co-owners or by the owners of neighbouring lands over the land partitioned. *26 N.L.R. 374 ; 6 Law Rec. 54 ; 2 Times* 232. A partition decree entered without investigation into title but by mere consent of parties does not, however, have a conclusive effect as a decree under the Ordinance. *20 N.L.R.* 27. Where a decree under the Ordinance is pleaded as a basis of title it is open to the party against whom it is pleaded to show that it is not a decree "given as hereinbefore provided" and so has not the conclusive effect given to decrees under section 9. *6 Law Rec. 87.* A Court cannot vary a final decree even with the consent of parties, *2 C.L.W.* 252 ; *1 C.L.W. 370*, or where the procedure has been irregular. *2 C.L.W.* 267. The proposition that a District Court does not have the right to set aside an order of dismissal made by it is not only good law but necessary for the proper working of partition actions. *34 N.L.R. at 441.* A partition decree does not of itself interrupt the running of prescription in favour of a person claiming title. *5 Law Rec. 191.*

Partner. Under our procedure actions by partners are actions by them individually. They must sue in their own names and judgment must be entered in favour of them individually. *2 C.L.W. 139.* A retired partner ought, generally speaking, to join as a plaintiff or be joined as a defendant to every action to which, had he not retired, he would have been a necessary party. *19 N.L.R. 109.*

Partnership is essentially a relation resting in agreement. That agreement may be proved or established—if there be no evidentiary law to the contrary—by proof of an express agreement written or unwritten or by proof of such acting as raises the inference of an implied agreement; but a partnership, whether in course of performance or wholly spent, is still a matter of agreement though of agreement coupled with something more. If agreement once be negatived there is no partnership at all. *18 N.L.R. at 291 P.C.* On the death of one of two or more partners the right to sue on any partnership transaction survives to the surviving partner or partners and the legal representatives of the deceased partner are not necessary parties to such a suit. *11 N.L.R. 95.* Where the capital of a business exceeds a thousand rupees an agreement for establishing a partnership may be proved according to section 21 (4) of Ordinance 7 of 1840 only where the agreement is itself in writing. Proof that in documents the parties have described themselves as partners may corroborate the original agreement but such documents cannot be regarded as substitutes for the agreement in writing. *7 Law Rec. 35.* A writing to establish a partnership is valid if signed only by the party against whom it is sought to be enforced. *1 Law Rec. 81.* Where a partnership which is not notarially executed is admitted by the defendant in his pleadings the admission would entitle the plaintiff to an order for an account. *29 N.L.R. at 345 P.C.*

Part payment. In order to prevent prescription part payment must be made not by a third party but by a person directly or indirectly interested as his representative in interest. *1 Mat. 142.*

Part performance. The doctrine of part performance does not apply in Ceylon. *28 N.L.R. 1 ; 12 N.L.R. 87.* Contra *23 N.L.R. 199.*

Patrimonial loss is not loss to the deceased but lost to the estate and the two are not necessarily the same. *10 Law Rec. 16.* Where the wrongful loss has caused patrimonial loss and comes within the principles of the Lex Aquilia the action does not lapse with the death of the plaintiff before *litis contestatio* but enures to the benefit of his heirs. *29 N.L.R. at 248. 5 Times 88.* Loss of professional income of the deceased is not patrimonial loss. *30 N.L.R. 172.*

Passing off action can be maintained under our law. In such an action it is not necessary to prove actual fraud. All that is necessary is to show that the defendant has represented his goods to be the goods of the plaintiff. *20 N.L.R. 314.* The distinction between a passing off action and an action for infringement is that in an action for infringement the plaintiff can rely only upon the imitation of his registered mark while in an action for passing off he may rely on other things or on additional things which are connected with his trade or goods. *9 Law Rec. 201.*

Paulian action as it obtains in Ceylon has ceased to be a cumulative action and may be instituted without any obligation to await the adjudication of the debtor or even a declaration by him of insolvency ; nor is there any obligation to wait till the remainder of the property of the debtor has been exhausted by execution. In short, its only resemblance to the Actio Pauliana out of which it has grown is the *facta probanda* which remains the same, viz., that the alienation impeached was intended to defraud the claim of creditors, that it left the alienor without sufficient property to meet the claims of his creditors and that a creditor had been prevented by the alienation from recovering what was due. Whenever a creditor is in a position to establish these facts an action may successfully be maintained and is, in fact, most frequently met with where a creditor who has obtained a judgment and in execution seizes property as that of a debtor is opposed by a person who claims the property by virtue of a conveyance from the debtor. *Per Garvin, J. 33 N.L.R. at 6.* See *4 N.L.R. at 84.* A Paulian action is only competent to a judgment-creditor who can show that by reason of the alienation complained of the judgment-debtor has no assets on which execution can be levied or that assets on which it already has been levied are insufficient to satisfy the debt. *26 N.L.R. at 296.* An execution-creditor is not bound to discuss the property of all the joint and several debtors before seeking by this action to set aside a fraudulent deed executed by one of

them. *4 S.C.D. 6.* In a Paulian action it is necessary to allege and prove either absence of consideration for the transfer or actual fraud on the part of the purchaser and not merely fraud on the part of the debtor. *5 C.W.R. 258.* See also *5 Bal. 32 F.B.; 3 C.W.R. 11; 18 N.L.R. 161 F.B.; 1 Times 285; 5 Law Rec. 59; 9 Times 159; 4 A.C.R. 160.* The fact that consideration was given by the alienee does not afford him a complete defence where he has participated in a scheme to defraud creditors. *29 N.L.R. 84.* A Paulian action instituted after a claim inquiry cannot include a prayer that the property be declared liable to be sold in execution if the action is begun after the expiration of the fourteen days limited by section 247 of the Civil Procedure Code. *1 Cur. L.R. 70.* A Paulian action to set aside a deed made by an insolvent cannot be brought by his assignee. *10 Law Rec. 184.* A Paulian action is prescribed in three years. *1 Br. 179; 25 N.L.R. 185; 33 N.L.R. 1.* A decree in a Paulian action makes a fraudulent deed void only in so far as it is necessary to make the property available for execution. *30 N.L.R. 355.*

Pawnbroker. The Legislature did not intend to include in this term a person whose regular occupation being other than that of a pawnbroker is shown to have done no more than lend money on one occasion on the security of a pawn or pledge. *2 Bal. 30.* To constitute a person a pawnbroker under Ordinance 8 of 1893 it is *inter alia* necessary that the security of the pawn should be in respect of actual money paid by him to the pawnor. *8 N.L.R. 134.*

Payment. Under the Roman Dutch Law the obligation is cast on the creditor to seek out the debtor and ask for payment. The denial, if there is one, will be at the place of residence of the debtor. *32 N.L.R. 361.*

A written receipt acknowledging the payment of a sum of money and adding that it is in full discharge of a debt is not conclusive evidence of the discharge of the whole debt but only *prima facie* proof which may be rebutted by other evidence. *2 N.L.R. 304.*

Where a Bill or Note is given by way of payment there is a strong presumption that the payment is conditional so that the original debt revives if the Bill or Note is not realized. *15 N.L.R. at 163.*

Payment to one of several joint plaintiffs of a joint debt in respect of which an action is brought is payment to all. *7 S.C.C. 127.*

Payment for work done. Good faith by a contractor is essential to support a claim for payment for the work actually done under a contract which has not been fully executed. *23 N.L.R. 18.*

See also QUANTUM MERUIT.

Pays off. When a householder or a merchant says that he pays off a servant he means that he pays the man the wages due to him and discharges him. But that is not what a planter means. When a planter pays off a gang of coolies he means not merely that he pays them their wages but also that he has given a discharge for the amount of their advances. *7 Tam. 89.*

Peace officer includes a Police officer under section 3 of the Criminal Procedure Code, *15 N.L.R. at 224*, and also a Police Vidane appointed by the Government Agent. *7 N.L.R. 287.*

Pearl oysters are fish within the meaning of Section 1 (8) of Ordinance 15 of 1862. *7 N.L.R. 131.*

Pedigree. The fact that a particular pedigree has been accepted in previous cases should not weigh at all with the Court when it has to decide as to which of two pedigrees is correct. *2 Mat. 90.*

Pela is one-fourth of an amunam and is equal to two roods and twenty perches.

Penal provision must be construed strictly. *1 C.W.R. 84.* The imposition of a penalty does not necessarily stamp a contract with illegality where the Legislature has not prohibited the act which it has penalised. *2 C.A.C. at 22.*

Penalty and liquidated damages. The law in Ceylon has taken over the English distinction between penalty and liquidated damages. *28 N.L.R. at 432; 8 Law Rec. 95.* The question must always be whether the construction contended for renders the agreement unconscionable and extravagant and one which no Court ought to allow to be enforced. *15 N.L.R. 125 P.C.* If circumstances show that the amount stated in a document may reasonably be considered as what is described as a "pactional pre-estimate" then the amount is to be treated as liquidated damages even though in the document it may be described as a penalty. *21 N.L.R. at 163.* See *14 Law Rec. 108.* If by inserting a clause fixing the damages in a deed the parties intend that the sum should be held out *in terrorem* against any person committing a breach then clearly it is a penalty. *21 N.L.R. at 163.* Under our law even a penalty may be recovered if it is not too excessive or disproportionate to the circumstances of the case. *4 N.L.R. 285; 24 N.L.R. 281; 8 Times at 43.*

Pending the action means during the progress of the action and before final decree. *28 N.L.R. at 249; 2 N.L.R. 185; 4 Times 86.* See *1 Bal. 61; 22 N.L.R. 39.* A person who buys property pending an action buys it subject to the result of the action. *25 N.L.R. at 263.* The assignment of the rights of a party in a pending action after *litis contestatio* is not illegal in Ceylon. *27 N.L.R. at 148; 10 N.L.R. 252; 7 Law Rec. 10.*

Pension. In the absence of express legislation there is nothing to prevent the seizure on a writ of the pension of a pensioner of a Government other than the Government of Ceylon. *10 Law Rec. 72.*

Pepper is not produced within the meaning of Ordinance 9 of 1885. *15 N.L.R. 251 ; 6 Lead. 57.*

Per incuriam. The Supreme Court acting in rivision has power to vacate its own order made *per incuriam*. *23 N.L.R. 475 ; 4 Times 3 ; 8 Law Rec. 202 ; 12 Law Rec. 235.*

A District Court has power to recall process which it has issued improvidently. *34 N.L.R. 362; 2 C.L.W. 153; 12 Law Rec. 235.*

Perjury. A conviction for perjury cannot stand where the onus has been wrongly placed and explanations demanded from the accused where there was no occasion to give any. *33 N.L.R. 185 ; 9 Times 58 ; 12 Law Rec. 2.* An accused who gives evidence on his own behalf may be convicted of perjury if he gives false evidence. *2 N.L.R. 340 ; 2 Times 65.* Under section 440 of the Criminal Procedure Code an accused is not liable for making contradictory statements. *14 Law Rec. 220.* This section should be used only in glaring cases of perjury and then only with great caution. *3 C.L.W. 135.* An accused should not be convicted of perjury on the uncorroborated evidence of the prosecutor. *7 Law Rec. 7 ; 4 Times 73.* A Magistrate has no jurisdiction to punish perjury summarily as a contempt of Court. *2 S.C.C. 8.*

Permit. See ALLOW.

Permit for building. A Chairman of a Sanitary Board has the power to cancel a permit which he has granted for the building of a house. *7 Law Rec. 103.*

Person in section 15 of the prescription Ordinance includes a corporation. *27 N.L.R. 459.*

Person interested. A lessee is a person interested in the property sought to be acquired under the Land Acquisition Oridinance. *5 N.L.R. 281.* So is a mortgagee, *35 N.L.R. 31 ; 10 Times 127 ; 12 Law Rec. 252*, but not the owner of a reversionary lease. *5 N.L.R. 44 ; 2 Br. 23.*

Personally engaged. To constitute a person an agent or canvasser personally engaged by a candidate for election it is sufficient if such person acts as agent or canvasser with the candidate's knowledge and consent. *34 N.L.R. 369.*

Personally known. Much more than the knowledge of the name by which a person is known and the knowledge of him by sight is necessary for the purpose of section 8 (b) of Ordinance 21 of 1908. *21 N.L.R. 211.*

Petition of appeal should not plunge *in medias res* and state only the grounds of objection to the decree. *7 N.L.R. 304.* If a petition of appeal is in order and purports to be signed by the appellant's proctor it should be received by the secretary. *7 N.L.R. 286.* A petition of appeal signed by the appellant but not taken down by the secretary of the Court in terms of section 755 of the Civil Procedure Code is irregular. *34 N.L.R. 126.* A proctor or advocate may draw up and sign his own petition of appeal. *10 N.L.R. 378.* In criminal cases a petition of appeal should be signed by the appellant as well as his proctor. *1 Br. 59.* A petition of appeal by an officer of a Municipal Council is not exempt from stamp duty. *20 N.L.R. 312.* A petition of appeal in insolvency cases must bear a stamp of Rs. 2·50 at the time it is presented to Court. The Court has no power to allow it to be stamped after the time for appealing has expired. *12 N.L.R. 379 F.B.* A District Judge is not entitled under section 342 of the Criminal Procedure Code to refuse to forward a petition of appeal on the ground that it is filed out of time. *31 N.L.R. 224.* No point of law that is not contained in a petition of appeal preferred under section 340 (2) of the Criminal Procedure Code will be allowed to be argued in appeal. *4 N.L.R. 25.*

Plaint need do no more than set out the right on which the plaintiff claims, his cause of action against the defendant and the relief claimed. *9 Law Rec. 121.* Anything added to a plaint becomes part and parcel of the plaint itself. *17 N.L.R. at 105.* When a plaint is accepted and summons ordered the plaint cannot be rejected by the Judge, *14 N.L.R. 33 ; 2 C.L.W. 380 ; 13 Law Rec. 239*, or returned for amendment. *2 N.L.R. 40 ; 4 Times 134.* A plaint once accepted should not be amended until after the issues have been settled. The office of an amendment will generally at that stage be to square the plaint with the issues framed. *2 N.L R. 141 ; 3 Times 150.* Where a plaint is rejected and a fresh plaint has to be filed the institution of the action must be dated the day on which the new plaint is presented. *3 N.L.R. 97.*

Planter cannot claim under a non-notarial agreement any part of the trees or of the soil. He is in the same position as a man who, whether as tenant or otherwise, has been in possession under an agreement which has expired or is invalid and has made improvements under that agreement. He is not a *bone fide* or *mala fide* possessor. He is entitled to some compensation but not to retain possession until he his paid. *2 Mat. 30.*

Planter's share is the creation of custom in Ceylon which does not apply to the case of a co-owner whose rights must be adjudicated on by the Roman Dutch law as altered or amended by

the statute law of the Island. *14 N.L.R. at 333.* See *2 Mat. 88.* It is an acknowledged custom of the country that persons who have entered upon land with the consent of the owner and have actually planted it with coconuts are entitled to a share of the trees when they come into bearing. They may claim this by operation of law and not as a consequence of the terms of any agreement between them and the co-owners. *1860-62 Ram. 113.* See *2 S.C.C. 4.* In the absence of any agreement between a planter and the soil owner the former can only acquire title to a share in the soil by actually ousting the soil owner from the part and share of the land claimed. *2 Br. 129.* A planter who enters on a land under a planting agreement granted by a person who has no title to grant such an agreement acquires no rights under the planting agreement. *9 Times at 33.* Prescription with reference to a planter's share begins to run from the completion of the agreement when the planter has taken his share and begins to possess adversely to the owner of the land. *2 Mat. 45.* See *2 Mat 27 ; 2 Mat. 60.*

Pleadings. Strict pleadings are not now insisted upon. *1 Bal. 11.* An omission in the pleadings may be rectifed by an issue at any time before judgment. *23 N.L.R. 242.* Pleadings may be amended even after issues have been framed. *4 B.N.C. 8,* but they are not to be amended by the parties but by the Judge after hearing the parties. *5 N.L.R. 40.* Pleadings cannot be amended so as to alter entirely the nature of the action. *3 Law Rec. 87.* It is an unoffence for anyone who is not duly authorised as a proctor to draw for another person, for reward, pleadings which are intended to be used in any Court. *14 N.L.R. 43.*

Plea of guilt. A Magistrate should record the admission of an accused party as nearly as possible in the words used by him. *1. N.L.R. 194 ; 6 Lead. 24.* The statement "I am guilty" made by an accused person in answer to the charge is not necessarily an unqualifed admission of guilt within the meaning of section 188 (1) of the Criminal Procedure Code. *10 Times 14.* Where an accused pleads guilty and qualifies his plea it cannot be construed as a valid plea of guilt. *6 Times 150.* A Magistrate cannot prevent an accused from withdrawing his plea of guilt before a verdict has been recorded. *14 Law Rec. 214.* A Counsel should not use his discretion and plead guilty on behalf of an accused. *4 Bal. 120 ; 1 Cr. A. R. 6 ; 5 C.W.R. 222.* Where an accused has pleaded guilty it is not competent for a Court to record evidence. *10 Law Rec. 117.* An accused who claims to be tried and is convicted ought not to be placed in a worse position than one who pleads guilty. *2 N.L.R. 212.*

Plene administravit. With regard to the plea of *plene administravit* the English law applies and it is not obligatory on an administrator to obtain a formal judicial settlement under section 729 of the Civil Procedure Code as a preliminary to such a plea. *2 A.C.R. 90.*

Point of law. It is not competent to an appellant on the appeal to raise a point of law which depends on an issue of fact which ought to have been investigated in the Court below. *8 C.W.R. at 3.* An erroneous admission of Counsel on a point of law has no effect and does not preclude the party from claiming his legal rights in the Appellate Court. *23 N.L.R. 502 ; 4 Law Rec. 132.* That the sentence passed is excessive is not a point of law unless a statutory provision regarding such sentence has been violated. *7 Times 11.*

Police officer ordinarily means a member of an established police force. As used in section 25 of the Evidence Ordinance it may be legitimately applied to officers of Government who are authorised generally to act as police officers and are charged with the performance of the duties and armed with the powers of police officers. *9 Law Rec. 1.* The term applies to headmen of all grades. *7 Tam. 25.* See *3 Times 131.* A Sanitary Inspector is not a police officer within the meaning of the Evidence Ordinance. *8 C.W.R. 322.* A village aratchy is not a police officer within the meaning of Ordinance 16 of 1865, *1 B.N.C. 41,* nor is a police vidane. *12 N.L.R. 31 ; 2 S.C.D. 39 ; 2 Lead. 104.* A Mohandiram is not a police officer who has a right to arrest a person under section 2 of Ordinance 7 of 1889. *27 N.L.R. 340.* A peace officer is a police officer within the meaning of Ordinance 11 of 1868. *3 S.C.C. 122.* A police officer has the right to take into his custody without a warrant a person whom he finds behaving in a drunken and disorderly manner in a public place or thoroughfare. *13 N.L.R. 20.* Police constables though attached to certain police stations have the power to perform their duties over the whole Island. *5 N.L.R. 116.*

Police report. The only object of a police report is to assist the Magistrate in the investigation of the case. *21 N.L.R. at 412.*

Polygamy. A polygamous marriage between persons who are not Muslims is void in Ceylon even though it is valid by the law of the country in which the husband has his domicile. *14 N.L.R. at 506.*

Possess is very loosely used in wills in this country but it is generally associated not so much with the right of absolute ownership as with the right of personal exclusive enjoyment during the lifetime of the person to whom the property is gifted or devised. *Per Grenier, J. 14 N.L.R. at 42.* Possessing connotes keeping. *1 N.L.R. 58.* "I wish very much that District Judges, per *Bertram, C.J.,* when a witness says 'I possessed' or 'we possessed' or 'we took the produce' would not confine themselves merely to recording the words but would insist on those words being explained and exemplified. *21 N.L.R. at 326.* See also *1 S.C.C. 63 ; 3 S.C.C. 125 ; 4 S.C.C. 96.*

Possession is occupation either in person or by agent with the intention of holding the land as owner. *3 N.L.R. 213.* Possession is never considered adverse if it can be referred to a lawful title.

15 N.L.R. at 78 P.C. Possession is vested with a peculiar sanctity under the Roman Dutch law. A person who has been in possession of property for a year and a day is not allowed to be disturbed even by the rightful owner without proper process of law. *17 N.L.R. at 88.* The acquisition of possession as against the possessor without process of law constitutes an *injuria* for which reparation must be made in damages if such be proved. *11 N.L.R. at 110.* The planting of a part of a land is an overt act of possession of the whole. *2 Mat. 167.* See *2 Law Rec. 7.* A lessor retains the possession even when he has delivered the property to the lessee. *23 N.L.R. at 135.* The term *possession* when applied in legal language to a servitude is the exercise of a *jus in re* with the *animus* of using it has your own as of right, not by mere force or by stealth and not as a matter of favour *nec vi nec clam nec precario. 1860-62 Ram. at 78.* A person who is in possession of property though he may not have come by it legally can maintain trespass against all parsons but the true owner. *6 C. W.R. at 102.*

Where a person has physical control over a thing he must be presumed to have possession of it although he is unaware of the nature of the thing possessed. *1 Times 46.* But a servant who has the care of goods on his master's premises cannot as a general rule be said to be in possession of them. *19 N.L.R. at 507.* Possession to be criminal must be actual and exclusive for criminal liability does not attach to constructive possession. *6 C.W.R. at 255.* See also *8 Law Rec. at 116 ; 14 Law Rec. at 167 ; 2 Times 143. 2 Times 227 ; 12 Times 96.* Where property is found upon premises of which several people are in common occupation it cannot be said to be in the possession of any one of them unless there are facts pointing to the property being in the conscious control of that person. *32 N.L.R. 253 ; 7 C.W.R. at 142 ; 6 C.W.R. at 255 ; 1 Law Rec. 177 ; 6 Law Rec. 70.* A person travelling in a rickshaw cannot be said to be in possession necessarily of what is in the box under the seat. *9 Law Rec. 138 ; 5 Times 174.*

The possession referred to in section 22 of the Pawnbrokers Ordinance is an unlawful possession. *1 C.L.W. 395.* Under section 4 of the Protection of Produce Ordinance 38 of 1917 the mere fact of possession in the absence of suspicious circumstances is not sufficient to cast on the accused the duty of making a satisfactory account of his possession. *11 Law Rec. 62.* Possession in section 16 (1) of Ordinance 21 of 1908 means present possession and not possession at any time in the past. *3 C.W.R. 126.* Ownership subject to a life interest is possession within the meaning of section 10 (3) (i) of the Municipal Councils Ordinance. *2 Cr. A.R. 50.* In a charge under section 30 (1) of the Motor Car Ordinance of possessing a car without a license no proof is necessary of its user during the period when there was no licence in force. *36 N.L.R. 291,*

Possessory action. The Roman Dutch law requires the plaintiff in a possessory action to have had quiet and undisturbed possession for a year and a day and the requisites of possession are the power to deal with the property as he pleases to the exclusion of every other person and the *animus domini*, i.e., the intention of holding it as his own. *12 N.L.R. 330.* See also *13 N.L.R. 179; 4 S.C.D. 40 ; 4 N.L.R. 195 ; 5 N.L.R. 320 ; 5 A.C.R. 137 ; 2 Br. 337 ; 4 Lead. 51 ; 2 C.W.R. 170.* A plaintiff might take advantage of his predecessor's possession. *15 N.L.R. 297.* Under the Roman Dutch law a possessory action does not lie in respect of movables. *15 N.L.R. 11.* It is necessary to prove an absolute ouster from possession and not a mere trespass only. *5 S.C.C. 140.* A tenant at will may manitain a possessory action against the owner. *3 S.C.D. 32 ; 2 Lead. 195 ; 6 S.C.C. 61.* A usufructuary mortgagee can maintain such an action. *1 Mat. 68 ; 1 A.C.R. 82.* A co-owner of an undivided share of land can maintain it in respect of such share if he joins the other co-owners as parties. *13 N.L.R. 164 ; 3 S.C.D. 89 ;* Contra *4 N.L.R. at 227 ; 1 S.C.R. 329.* The trustee of a Muslim mosque is not entitled to maintain it. *3 Lead. 49 F.B. ; 12 N.L.R. 330 ; 5 Cur. L.R. 171 ; 14 N.L.R. 317,* nor a priest. *9 S.C.C. 4.* If the manager of a Hindu temple has the control of the fabric of the temple and of the property belonging to it, his possession is such as would entitle him to maintain a possessory action. *5 N.L.R. 270 ; 2 Br. 383.*

Postponement. The hearing of a case may under section 82 of the Civil Procedure Code be postponed for a fixed day but not generally. *2 N.L.R. 29 ; 3 C.L.W. 64.* But a magistrate is justifed in postponing a criminal case *sine die* for any reasonable cause under section 289 of the Criminal Procedure Code. *6 Law Rec. 57.* Where a material witness for the defence is prevented on reasonable grounds from attending Court on the day fixed for trial the Court should allow a postponement on the application of the accused. *3 Cr. A.R. 79.*

Potential value. In taking into account the potential value of land it is the probable use that has to be considered and not a mere possible shadowy use whilst the time within which such use would become effectual must also necessarily be considered. *9 Law Rec. 170.*

Power of attorney is substantially complied with if the attorney state specifically in the body of a deed that he is acting purely and simply as the attorney of the principal and if he signs the document with his own name adding that he does so as the principal's attorney. *21 N.L.R. 1.*

Practise simply means to pursue regularly a profession or calling. *1 Cur. L.R. at 15.*

Practising medicine for gain. Practise in the case of a medical practitioner is not limited to cases where a number of instances have been proved. *8 Law Rec. 44.* Even if a dispenser were to put up a notice at his dispensary 'advice gratis' and if, upon that advice for which no special charge was made, he sold medicines and made a profit out of the medicines so sold he would be practising for gain within the meaning of the Ordinance 2 of 1905. *21 N.L.R. 349.*

Pre-emption. The Law of pre-emption in Jaffna under the Thesavalamai has not been abolished by Ordinance 4 of 1895. *6 N.L.R. 356.* Under the Thesavalamai three classes are entitled to pre-emption (i) heirs (ii) partners or co-owners (iii) adjacent landowners who have a right of mortgage. There is no preference amongst these classes. *2 Law Rec. 1.* An adjacent owner who is not a mortgagee of the land in respect of which the right of pre-emption is claimed cannot claim that right. *4 N.L.R. 328; 1 Bal. 108 F.B.* A party having the right of pre-emption under the Thesavalamai cannot assert this right and claim to pay less than what has been realized at a *bona fide* sale on the ground that what he offers to pay represents the true market value of the land. *8 Times 49.* A co-owner who has no knowledge of the sale of a share by another co-owner to a stranger may subsequent to such sale bring the amount of the purchase money into Court and maintin an action to pre-empt the interest. *2 Law Rec. 95.* But the right of pre-emption imposes a serious fetter on an owner's right of free disposition of property and the facts have to be carefully scrutinized before a co-owner is allowed to set aside a sale on such ground. *2 Times 37.* A right of pre-emption is not barred by the decree in a partition suit. *30 N.L.R. 492; 6 Times 147.* See *29 N.L.R. 335; 5 Times 85.*

Preference. A mortgagee who proves his claim in insolvency and tenders his mortgage bond is not thereby deprived of his preference. *15 N.L.R. at 330.* When movable property is sold in execution of hypothecary decrees entered in pursuance of two mortgages effected under duly registered instruments in writing the prior mortgage-creditor has a preferent right to the proceeds of the sale. *30 N.L.R. 27.*

Preliminary decree in a partition action is binding on the parties to it and cannot be amended by the trial Judge. *13 N.L.R. 87 F.B.*

Preparation to commit an offence consists in devising and arranging the means or resources necessary for its commission; attempt is the direct movement towards the commission after preparation. *3 N.L.R. 316.*

Prescription. The foundation of prescription is that one man has the right to possession while another enjoys the possession without right. If the former having the right to interfere fails to

do so within the time limited by law, the latter acquires by prescription the right to that which he has so long without right enjoyed. *Per Wendt, J. 9 N.L.R. at 271.* There are two points regarding the law of prescription that should be always well-borne in mind; the first that a possessor is always presumed to hold in his own right and as proprietor until the contrary is established, the second that, the contrary being once established and it being shown that the possession commenced by virtue of some other title such as that of tenant or planter then the possessor is presumed to continue to hold on the same terms until he distinctly proves that his title has been changed. *1860-62 Ram. 145.* See *10 N.L.R. 183 F.B.*; *7 N.L.R. 91 P.C.* By ten years' prescriptive possession the possessor acquires not merely the right to continue holding the land against the person who had the *dominium* when that possession began but a title of which he can only be divested in one of the modes recognized by law. Once a prescriptive title is acquired the consideration whether the holder of it is or is not in possession is as immaterial as if the title was by deed. *7 N.L.R. at 175.* Prescription can be established not only by direct posssession but also by possession through a lessee. *26 N.L.R. 87.* In all cases of prescription there must be a denial of title, an exclusion of the contesting owner and an adverse possession. *6 C.W.R. at 225.* The Prescription Ordinance does not prevent a minor from obtaining title by prescription by agency. *9 N.L.R. 336.* Under the Roman Dutch law prescription runs even against the public at large so as to deprive it of portions of land forming a public road for, though the public cannot by mere non-use lose its right to a public road, it does not follow that the right may not be lost by adverse user. *13 N.L.R. 241.* Where prescriptive possession has once commenced to run against the owner of land it will not be interrupted by his death and the minority of his heirs. *6 N.L.R. 50; 18 N.L.R. 330.* Prescription does not begin to run against a fidei commissary until after the death of the fiduciary. *9 N.L.R. 126*; *28 N.L.R. 92.* So long as a fiduciary relationship continues a trustee cannot set up a plea of prescription in bar of a claim by a cestui que trust. *15 N.L.R. 398*; *22 N.L.R. at 182.* No length of possession avails against a charitable trust where it is sought to recover trust property taken with knowledge of the trust. *23 N.L.R. at 424.* Prescription does not run in favour of an executor so long as he remains an executor. *6 C.W.R. 244*, or against an administrator till the grant of letters of administration. *5 Law Rec. 119*; *9 N.L.R. 350.* The rule is well-established that prescription generally runs in cases of tort from the date of the tort and from the occurrence of the damage. But there is an exception to this where the original act itself was no wrong but becomes so by reason of subsequent damage. *3 C.W.R. at 84*; *19 N.L.R. at 139.* Where a debt is prescribed it is not extinguished. The bar may be waived by the debtor. *14 N.L.R. at 32.* Prescription may be pleaded to an action *ore tenus* at the trial subject to the payment of costs. *1 C.L.R. 77.* A plea of prescription cannot be raised for the first time in appeal. *5 Lead. 50*; *7 S.C.C 70*; *34 N.L.R. 219.*

See also ADVERSE POSSESSION.

Presumption. It is one of the first principles of the English law of evidence that presumptions may be drawn without definite proof from facts which in the nature of things justify such presumptions. A fact so presumed is treated as true until the contrary is proved. *25 N.L.R. at 389.* A presumption of law is not lightly to be repelled. It is not to be broken in upon or shaken by mere balance of probability. The evidence for the purpose of repelling it must be strong, distinct, satisfactory and conclusive. *30 N.L.R. at 223.* Where statutory conclusive presumptions arise all corroborative evidence is dispensed with and all opposing evidence is forbidden. *27 N.L.R. at 151.* A notarial document is entitled to the presumption in favour of the regularity of official acts, *3 Bal. 100,* and this can only be rebutted by very cogent evidence. *4 C.A.C. at 103.* Where a property is purchased by several persons and the deed does not specify what share is conveyed to each, the deed itself is *prima facie* evidence that they acquired title in equal shares. This inference may be rebutted by specific evidence as to the intention of the purchasers. *24 N.L.R. 428.* The presumption that arises where property is bought in the name of one person with the money of another of a resulting trust in favour of the person who provided the money does not apply in a case where property is bought by the father or another *in loco parentis* in the name of a child. On the contrary in such a case a strong presumption arises that it is intended to be a gift to the child. *20 N.L.R. at 251.* See *2 N.L.R. 360.*

According to the Roman Dutch law there is a presumption in favour of marriage rather than concubinage. According to the law of Ceylon where a man and woman are proved to have lived together as man and wife the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. *29 N.L.R. at 116.* A presumption of authority from the mere fact of cohabitation would not extend beyond the pledging by the wife of her husband's credit for necessaries. There is no presumption of authority to borrow money in his name and similarly there would be no presumption of authority to waive a claim for money due to the husband. *21 N.L.R. 383.* There is no presumption as to the continuance of life or of an admitted marriage. A party who asserts that a person was alive at a particular date must prove such fact. *12 N.L.R. 83.*

A Court is not bound to draw the statutory presumption in favour of a person holding a certificate of sale under Ordinance 19 of 1905 in respect of property sold for non-payment of Local Board tax if there is anything which arouses its suspicions. *15 N.L.R. 43.*

Under section 6 of Ordinance 12 of 1840 the point of time at which a land should be proved to be chena in order that the presumption of title in favour of the Crown may arise is the date of the encroachment. *3 Law Rec. 138; 4 Law Rec. 119 F.B.* In prosecutions under the Excise Ordinance the presumption created by section 50 of the Ordinance which puts the burden of proof on the accused has no application unless the prosecution has first proved that possession by the accused was actual and exclusive. *3 Cr. A.R. 135; 8 Times 65.* Presumptions created by section 10 of the Gaming Ordinance 1889 do not arise where a search warrant has been issued irregularly. *2 Times 19.* In order to raise a legitimate presumption of theft the possession of the stolen property should be exclusive as well as recent. *3 N.L.R. 170.* Recent possession of stolen articles may be presumptive not only of theft but of theft by housebreaking. *5 N.L.R. 295.*

Presumption of innocence. Even where the burden of proof of a fact is cast on an accused person there is yet an over-riding presumption of innocence in favour of him and where the accused gives, in discharge of such a burden, an explanation which is a reasonable one and which the prosecution fails to prove to be false such explanation must, even if the Court suspects it may not be true, be reckoned in favour of the accused on account of the over-riding presumption of the innocence of an accused. *10 Times 171; 13 Law Rec. 5.* See *7 Law Rec. 33.*

Presumption of ouster. It may be taken that this principle is part of the law of this Colony and it is open to the Court from lapse of time in conjunction with the other circumstances of the case to presume that a possession originally that of a co-owner has since become adverse. *21 N.L.R. at 23; 27 N.L.R. 33.*

Prevarication. The mere making of a false statement when giving evidence is not prevarication. To constitute prevarication there must be an attempt at evasion of the truth—at shuffling or quibbling when giving evidence. *16 N.L.R. 458.*

Preventive detention. A period of preventive detention cannot be imposed on an accused person on the ground that he is habitually addicted to crime unless the procedure laid down in Ordinance 27 of 1928 is strictly complied with. *3 Cr. A.R. 21.*

Previous conviction. A Magistrate is entitled after conviction of an accused person tried before him to receive proof of a previous conviction for an offence not coming within the categories indicated by section 68 of the Penal Code in considering what sentence should be passed on the person convicted. *5 Lead. 72.* A person's conviction should not be regarded as proved unless a properly certified copy of the conviction is put in and evidence given to identify the accused clearly with the person mentioned in it. *6 S.C.D. 15.*

Price. When price has been agreed upon it must be embodied in the memorandum for the sale of goods. *21 N.L.R. 186.*

Priest cannot be ejected from Buddhist vihare except for some personal cause irrespective of the rights of property. *23 N.L.R. 24 ; 3 Law Rec. 166.* A priest who misconducts himself and acts in contravention of the rules of his religion may be lawfully expelled from the vihare of which he is incumbent. *2 Mat. 21.* Where a priest is compulsorily deprived of his robes while in prison he does not thereby forfeit his priesthood. Renunciation of priesthood must be evidenced by a voluntary act of an unmistakable character. *1 Mat. 227.* A Buddhist priest out of religious property dedicated to pious uses is by the Buddhist religious law entitled to bare personal maintenance and that alone. *20 N.L.R. at 399.* Under the Kandyan law a man does not forfeit his right to succeed to his mother's estate by becoming a priest. *26 N.L.R. 111 ; 5 Law Rec. 203 ; 2 Times 137.* The office of a Hindu priest may be heritable and in such a case any question as to who are or are not the heirs of a particular priest should be determined by Hindu law and custom. *20 N.L.R. at 34.* The trustee of a Hindu temple has power to dismiss the officiating priest of the temple. *5 Lead. 103.* A priest-in-charge of a Hindu temple cannot bring an action in respect of land belonging to the temple. *3 Times 1 ; 6 Law Rec. 21.*

Prima facie proof means in effect proof which should be accepted if there is nothing established to the contrary. *31 N.L.R. at 99.*

Principal and agent. To establish a cause of action against one man for a contract made by another it is necessary for the plaintiff to show either that there was an actual agency in fact or that there was a holding out by the defendant that the person contracting is his agent for that particular purpose or that the agent was employed by the principal in a capacity which implied an authority to make such a contract as that made. *Per Shaw J. 5 C. W.R. 152.* An act done by an agent in the course of his employment on behalf of his principal and within the apparent scope of his authority binds the principal unless the agent was, in fact, not authorized to do the particular act and the person dealing with him had notice that in doing such act he was exceeding his authority. *33 N.L.R. 182.*

Priority is determined by the point of time at which a deed is received at the Registrar's office. *8 N.L.R. at 108.*

Privilege. Statements made by a witness are absolutely and unconditionally previleged. *22 N.L.R. at 234 ; 8 C.W.R. 292.* The true ground for the immunity enjoyed by a person making statements in a Court of law is the overwhelming consideration that protection is necessary on the ground of public policy and an

intolerable burden would be laid upon a witness if he had to determine before he made answer whether the question put to him was relevant to the issue, whether he was making his statement from the ordinary place appointed for witnesses and whether he had been properly sworn. *27 N.L.R. at 320.* Excessive language used in communications which are privileged does not of itself destroy the privilege. *22 N.L.R. 69.*

See also DEFAMATION.

Privy. It is necessary to the relation of party and privy not only that the two persons should have a similar interest in the property to which the estoppel relates but the latter should derive title from the former. *10 Law Rec. 152.* A purchaser at an execution sale is not privy to the execution creditor or execution debtor, *21 N.L.R. 335 ; 14 N.L.R. at 423 ; 1 Law Rec. 107 ; 7 N.L.R. at 138,* so as to be bound by an estoppel. *14 N.L.R. at 146 ; 4 C. W.R. at 381.* But see *20 N.L.R. at 303.* There is a great distinction between a private sale in satisfaction of a decree and a sale in execution of a decree. Under the former a person derives his title through the vendor and acquires no better title than that of the vendor. Under the latter the purchaser, notwithstanding that he acquires merely the right, title and interest of the judgment-debtor acquires that title by operation of law adversely to the judgment-debtor and freed from all alienations and encumbrances effected by him subsequent to the attachment of the property sold in execution. *20 N.L.R. at 144 ; 9 N.L.R. at 221.* But a purchaser in execution of a mortgage decree stands in an entirely different position from that of a purchaser under an ordinary money decree and it cannot be said that he does not derive title through or acquires title adversely to the mortgagor. Such a purchaser is a privy of the mortgagor for the purpose of the law of *res judicata. 25 N.L.R. at 267 ; 2 Times at 43 ; 5 Law Rec. 153.* He is not however a privy of the mortgagee. *2 Times at 99 ; 25 N.L.R. at 298.* Under the Roman Dutch law a fidei commissary is a privy of the fiduciary where the law of *res judicata* is concerned. *25 N.L.R. at 237.* A wife is not privy in law to her husband so as to be bound by an action brought against her husband in respect of her separate property. *2 Lead. 191 ; 12 N.L.R. 200 ; 1 C.W.R. 59.*

Probate of a will is a registrable instrument, *2 C.A.C. 82,* and must be registered. *28 N.L.R. at 85 ; 32 N.L.R. at 349.* Where a person dies leaving property which he held only as trustee probate of his will need not be stamped. *2 N.L.R. 355.* Under our law the taking out of probate constitutes acceptance of office by the executor. *5 Law Rec. 113.* An application for probate will not be refused on the ground that it is stale where the delay has been satisfactorily explained. *32 N.L.R. 331 ; 8 Times 56.* When application for probate is once allowed there is no necessity for a further motion that probate do issue to the applicant. *1 N.L.R. 245.* If probate

has been granted wrongly it may be recalled under section 536 of the Civil Procedure Code. *1 N.L.R. 245*, but not without notice to the executor. 2 *Law Rec. 212.*

Probate jurisdiction does not mean the same thing as testamentary jurisdiction. It is limited to the power in the exercise of which the Court grants or refuses probate of a testamentary paper. *Per Wendt, J. 11 N.L.R. 294.*

Procedure. In applying decisions on English procedure to the procedure of our Courts we ought never to lose sight of the essential difference between the two procedures. In the English Courts litigants take each step on their own responsibility and at their peril whereas here the duty of taking the greater part of the steps in a litigation is thrown upon the Court. While it may be right to punish litigants for their own carelessness it is not equally right to punish them for mistakes made by the Court. *Per Bonser, C.J. 6 N.L.R. 205.*

Process. It is the Fiscal's duty and not the plaintiff's to see the Court's process duly served. *4 N.L.R. 185.* A person licensed to serve and execute process in the division of a district has not authority to execute a process outside his district. *34 N.L.R. 53 ; 1 C.L.W. 40.* The Fiscal entrusted with the service of process has the whole of the returnable day to make the return to the process and is not in default till the expiration of that day. 2 *C.L.R. 122.* A process server who executes a warrant executable only between sunrise and sunset is criminally liable if he arrests any person in pursuance of such warrant outside such time. *1 C.L.W. 74.*

There is no authority in our law for the issue of process in a foreign language. The language of the Ceylon Courts being the English language, serious doubts might arise as to the legality of arrest upon a warrant issued in such form. *Per Bonser, C.J. 1 N.L.R. 248.*

Proclamation against a person and an order for the attachment of his property under sections 62 and 63 of the Criminal Procedure Code can be issued by such Court only as had issued in the first instance a warrant for the apprehsion of such person. *2 N.L.R. 211.* Before a proclamation can be issued there must be sworn evidence that the accused has absconded or is concealing himself. *2 C.L.R. 62*

Proctor or procurator is one who acts as agent for another person. A man who draws plaints or other pleadings for another acts as his proctor. *Per Hutchinson, C.J. 14 N.L.R. at 44.* A proctor is more than a mere agent or representative of his client. He is also an officer of the Court and, as such, owes his duty of good faith and honourable dealing to the Court before which he practises his

profession. He has a duty not only towards his client but also towards the Courts in the orderly and pure administration of justice. *30 N.L.R. at 70.* A proctor cannot appear for a client unless he has a proxy signed by such client and there cannot be more than one proctor at the same time on the record. Nor can one proctor employ another proctor to appear for him and conduct his case. *1 Br. 124 ; 4 N.L.R. 323 ; 6 N.L.R. 223.* A proctor should not be allowed to contradict the evidence of his own witness by deposing to what the witness had told him at a consultation. *35 N.L.R. 143.* A proctor, may be personally ordered to pay costs. *5 C.W.R. 52.* A proctor who prepares or signs a petition of appeal guarantees that it contains some points that is seriously worth arguing and where that condition has not been complied with the proctor may be, and should be, ordered to pay the cost of the appeal himself. *Per Wood Renton, C.J. 5 C.W.R. at 46.* There is no provision in the Criminal Procedure Code that a proctor may plead for or on behalf of an accused. *4 N.L.R. 154.*

Proctor and client. A client must suffer for his proctor's fault. *8 Law Rec. 81*, and cannot change his proctor except with leave of the Court. *4 S.C.C. 49.* It is a practice open to the gravest objection for a proctor to stand surety for his client in a cause in which he is acting in his professional capacity. *25 N.L.R. at 67.* A proctor is only entitled to refuse the disclosure without his client's express consent of any communication made to him in the course of, and for the purpose of his employment as such proctor ; he is not protected from disclosing a communication made in furtherance of an illegal purpose or any fact showing that fraud has been committed. *13 N.L.R. 1.*

Proctor's lien. See LIEN.

Productions. A Magistrate has no power to order the destruction of productions till the appealable time has expired. *31 N.L.R. at 256.*

Professional man. The liability of a professional man for a wrong opinion is governed in Ceylon by the Roman Dutch law. If his opinion is the outcome of gross ignorance or crass negligence he would be liable in damages. *1 Bal. 3.* So long as a professional man's opinion is a faithful and honest one and founded on a due exercise of reasonable professional skill the person calling for it is bound to pay for it whether it chances to be erroneous or not in fact. *3 Br. 127.*

Profits after litis contestatio. The ordinary rule of the common law as to such profits holds good in actions under the Partition Ordinance. *16 N.L.R. at 81.*

Prohibition. A writ of prohibition does not lie where an appeal is available. *2 C.L.W. 33.* But see *6 S.C.C. 77.* The Supreme Court may issue a writ of prohibition to an inferior Court exercising criminal jurisdiction and would be bound to do so upon being satisfied that the inferior Court is exceeding its jurisdiction or is acting without jurisdiction. *6 S.C.C. 77.*

Promise means something in the nature of an engagement from one person to another to do or not to do a specified thing. *17 N.L.R. at 426.*

Promissory note. No particular form of words is essential to the validity of a promissory note but the form must be such as to show the intention to make a note. *16 N.L.R. at 480.* Every undertaking in writing to pay a sum of money is not necessarily a promissory note but where the intention of the maker of the document is manifestly that it should be and take effect as a promissory note the document is a promissory note. *29 N.L.R. at 293.* Where the payee is not indicated with reasonable certainty the note is not a promissory note. *20 N.L.R. 318.* So a note made in favour of a person or his heirs is not a note. *5 C.W.R. 112 ; 3 Law Rec. 68 ; 8 C.W.R. 147.* See *2 Times 147.* A note made in favour of a fictitious person is a note payable to bearer. *7 Tam. 107.* Where a promissory note runs "We promise to pay" it is a joint note. *4 S.C.D. 84.* Each of the makers of a joint note is liable for the whole debt. *13 N.L.R. 284 ; 2 Times 179.* A note given in renewal of another note simply suspends the liability of the maker until the dishonour of the new note. *6 N.L.R. 48 ; 3 Br. 148.* An action on a note can be brought only by the holder of it and the holder is the payee or the endorsee or the bearer if it is payable to bearer. *10 Law Rec. 75.* The holder for value of a note without notice that it has been paid off is entitled to sue upon it provided the note has not come back into the hands of the maker. *26 N.L.R. 381 ; 6 Law Rec. 43 ; 8 Times 2.* See contra *21 N.L.R. 178 F.B. ; 11 N.L.R. 27 ; 35 N.L.R. 239 ; 13 Law Rec. 91.* An action on a promissory note may be brought where the plaintiff resides as the debtor must seek out his creditor at his residence or place of business. *35 N.L.R. 128.* Where money has been lent on a note a claim for money lent can be maintained apart from the note. *24 N.L.R. 487 ; 22 N.L.R. at 344 ; 2 Times 33 ; 5 Law Rec. 83 ; 8 C.W.R. at 77.* See contra *35 N.L.R. at 40 ; 13 Law Rec. 20.* A note given as security for future loans which contains a false statement in regard to the capital sum actually borrowed is not enforceable. *28 N.L.R. 339.* See *27 N.L.R. 342.* A note given as security for a debt due for goods sold is not a promissory note within the meaning of section 10 of the Money Lending Ordinance. *4 Law Rec. 130.* A claim for unliquidated damages is a defence to a note under Chapter 53 of the Civil Procedure Code. *4 N.L.R. 74.* The law applicable to promissory notes in the English law and not the Roman Dutch law. *2 Times 179.*

See also MATERIAL ALTERATION.

Proof. In criminal cases legal proof cannot be dispensed with by consent of a prisoner even when his legal adviser joins in that consent. *Vand. at 179.*

Proper custody does not mean the best and most proper place of deposit. A will which is in the custody of an executor is in proper custody. *1 Bal. 46.* A document is in proper custody if it is in the care of a person with whom it would naturally be but no custody is improper if it is proved to have a legitimate origin or if the circumstances of the particular case are such as to render such an origin probable. *7 N.L.R at 361.*

Property includes not only money but all movables. *27 N.L.R. 429.* In section 388 of the Penal Code it includes immovable property. *3 Br. 16.*

Property decree is not a mode of transfer. It can only under certain circumstances to the basis of an estoppel. *24 N.L.R. at 169.*

Proprietor. The proper person to be registered as the proprietor of a tea estate under section 12 (2) of Ordinance 11 of 1933. is the person in possession of the estate. *35 N.L.R. 225.*

Pro-rata costs. In a partition action all the costs other than those involved in contentions between particular parties shall ordinarily be borne by the parties *pro rata.* But if the circumstances are such that it is reasonable to order each party to bear his own costs or to make any other equitable order, it is within the power of the Court to do so instead of ordering costs of partition *pro rata. 19 N.L.R. 272.*

Prosecution. To constitute a prosecution the accused should be before the Court. *2 C.A.C. at 153 ; 16 N.L.R. at 156.*

Prospective costs. It is not irregular to tax in a bill, as prospective costs, charges for work not yet done. *4 A.C.R. 49 ; 2 Lead. 27 ; 4 Bal. 29.* Contra *2 N.L.R. 223.*

Prostitution is not an offence *per se* under our law. *25 N.L.R. 251.* It is not an offence for a prostitute to live on her own earnings. *11 Law Rec. 81.* To sustain a conviction of knowingly living on the earnings of prostitution a single isolated fact is not sufficient. *23 N.L.R. 160.*

Protection in insolvency proceedings is not a necessary consequence of adjudication. *31 N.L.R. 7 ; 10 Law Rec. 70.* See *1 C.L.R. 23.* The power of a Court to refuse further protection to an insolvent is not confined to cases in which the insolvent has been guilty of some of the offences enumerated in section 151 of the Insolvency Ordinance. *7 S.C.C. 165.* The Supreme Court has inherent power to grant protection from arrest to an insolvent while an appeal by him to the Privy Council is pending. *34 N.L.R. 321 ; 12 Law Rec. 228.* Such an application cannot be made to the District Court. *12 Law Rec. 88.*

Proved. Facts which appear in the depositions of a witness taken not for the purpose of a trial but for the purpose of an inquiry into the *prima facie* guilt of an accused cannot be said to be proved for the purpose of a conviction. *Per Bonser, C.J. 1 N.L.R. at 98.*

Proviso. The ordinary rule with regard to provisos in any section is that the proviso deals with a matter which, but for the proviso, would be covered by the substantive enactment. A proviso does not introduce new matter. It qualifies the substantive words of the enactment and does not introduce substantive legislation for matters not covered by the preceding words. *26 N.L.R. at 435.* See *2 Times at 207.*

Provocation may be defined as something which a reasonable man is entitled to resent. *5 Law Rec. 209.* In considering whether the provocation is grave the Court may take into consideration the status of the accused and the mentality incident to persons of his class of life. It would also be right that the Court should take into consideration any peculiar susceptibility naturally incident to the offender's race or religion. The Court may also take into account the justly enraged condition of the person who received what might otherwise be deemed insufficient provocation. If a man receives comparatively slight provocation at a time when he has been the victim of a series of slights and insults of themselves sufficient to strain his self-control to breaking point, it seems impossible to deny that the Court should take this condition of mind into account. *25 N.L.R. at 462.*

Proxy must be signed by the party in person or by a recognized agent as defined in section 25 of the Civil Procedure Code. *2 Br. at 66.* The omission of a party to sign the proxy given by him may be rectified at any stage of the trial. *11 N.L.R. 270.* A proxy in favour of several proctors trading in partnership is good. *16 N.L.R. 434.* See *5 A.C.R. 47.* A proxy in favour of a firm of proctors jointly and severally enables the surviving partner to act without a fresh proxy in the event of the other partner's death. *3 Times 191 ; 7 Law Rec. 78.* A proxy which has been filed in Court can be revoked only with the leave of Court. *5 Bal. 66.* Section 27 of the code invests the Court with a real discretion as to whether or not the revocation should be allowed. *15 N.L.R. 88.* The Court would doubtless, except under special circumstances, not give leave except upon payment of the proctor's costs if he asked for it. *11 N.L.R. at 2.*

Public signifies the general body of people in a country. The very essence of the term "public" is its generality and indeterminateness. *3 C.W.R. at 13 ; 19 N.L.R. 153.*

Publication in clause 2 of section 255 of the Civil Procedure Code refers only to the posting of copies of notice of the sale for which the section has provided as an additional safeguard in the case of immovable property. *3 Bal. 250.* Where the property is over Rs. 1,000/- the provisions as to the publication in the Government Gazette are imperative and are not to be exercised at the caprice of the execution-creditor. *8 N.L.R. at 112.*

Publician action. For the purpose of the Publician action there must have been actual possession however short the period of possession may be. *21 N.L.R. at 277.*

Public duty. As a rule when the discharge of a public duty imposed by statute upon a person involves the exercise of a discretion which is not a merely ministerial act, if this discretion has been exercised erroneously, no action lies except on proof of *mala fides* or indirect motive. *27 N.L.R. 328.*

Public highway. The Roman Dutch law recognized two classes of public roads, viz., *viae publicae* and *viae vicinales.* A *via publica* was one which was declared to be a public road by the public authority. Originally a *via vicinalis* was one which was made up of contributions of the ground of private landowners and used by the owners of such farms in common under express or implied aggrement. The term appears to have been applied later to all unproclaimed public roads. *33 N.L.R. at 347.* A public road is either a road which has been constructed as such by the public authorities or which has been used as a public road by people inhabiting the neighbourhood from time immemorial. No amount of user by the public is sufficient to make a road a public road where the road was made within the memory of man. *34 N.L.R. 39 ; 21 N.L.R. at 242 ; 1 C.L.W. 346 ;* See *12 Law Rec. 54 ; 1 C.L.W. 302 ; 7 C.W.R. 3 ; 10 Times at 21 ; 1 Law Rec. 87 ; 4 Times 175.* All persons are entitled to pass and repass along a public highway unmolested. *3 N.L.R. 138.* A private person who seeks to recover damages for the obstruction of a public road is bound to prove that in consequence of such obstruction he has suffered special damage. By special damage is meant some particular damage to him in addition to the general inconvenience caused to the public. *14 N.L.R. 175.* It may not be possible for a house owner to prescribe from the public highway by virtue of length of possession but long uninterrupted possession *ut dominus* of land subsequently claimed to form part of the public highway raises a strong presumption that the land in question is the private property of the possessor. *4 Bal. at 6 ; 11 N.L.R. 41.*

Publica mercatrix. By the Roman Dutch law a married woman who is allowed by her husband to carry on a trade on her own behalf can sue for the price of goods sold and delivered by her in the course of such trade without making her husband a party to the action. *2 S.C.C. 204.* A woman living with her husband in a house where a hopper boutique was kept and in which she sold hoppers was held not to be a *publica mercatrix* without some reliable evidence that she was carrying on that trade independently of her husband. *6 N.L.R. 253.*

Public nuisance. It is in the quantum of annoyance that a public nuisance differs from a private nuisance. *8 Law Rec. 89.* A

man cannot by long continuance of his practice acquire a right to carry on his business in such a way as to be a public nuisance. *13 N.L.R. 119.*

Public officer. A customs officer is a public officer within the meaning of section 5 of the Civil Procedure Code. *4 C.W.R. at 80.* A Municipal officer is not a public officer within the meaning of section 218 (h). *14 Law Rec. 58; 36 N.L.R. 402.* An irrigation headman is a public officer under section 461. *1 Cur. L.R. 107.*

Public performence. It is sufficient to constitute a public performance within the meaning of section 2 of Ordinance 7 of 1912 if the public are generally admitted to it even though such admission be made without payment. *35 N.L.R. 220; 1 C.L.W. 422; 10 Times 44; 12 Law Rec. 114.* See *3 Law Rec. 132.*

Public place. A place although a charge is made for admission to it is nevertheless a public place provided members of the public have access to it. *26 N.L.R. 214.* The following have been held to be public places. A resthouse. *28 N.L.R. 173; 4 Times 12;* the witness shed of a Gansabhawa. *6 C.W.R. 307;* a threshing floor or *kamatha. 8 N L.R. 40;* a Court verandah. *6 Tam. 31,* an open coconut plantation crossed by several paths which did not appear to lead from one house to another in it nor from the adjoining roads to any of the houses in the plantation and in which a game for stakes was carried on. *6 N.L.R. 256.* The following have been held not to be public places. A police station. *1 S.C.R. 320; 2 C.L.R. 111;* a barrack or barrack square. *3 N.L.R. 211;* an empty room in the Railway lines. *1 Times 244; 25 N.L.R. 96;* a boutique. *8 Law Rec. 173;* the verandah of a set of cooly lines. *3 C.W.R. 12;* a Railway Station. *4 C.W.R. 425;* the open ground in front of a cooly line. *23 N.L.R. 154;* a circus. *21 N.L.R. 159; 6 C.W.R. 26;* the verandah of a private dwelling house. *Vand. 41.* A Buddhist temple. *28 N.L.R. 311; 8 Law Rec. 6; 4 Times 88.*

Public policy unless it is based on well-established and clearly recognized principles should not be made the ground of judicial decisions. *16 N.L.R. 337.*

Public right. To claim a right as one belonging to the public or to a section of the public it must at least be proved that the right was claimed and exercised at the earliest date that could be recalled by the oldest living inhabitant. *4 Bal. 16.*

Public right of way. See PUBLIC HIGHWAY.

Public road. See PUBLIC HIGHWAY.

Public servant. The Governor is a public servant within the meaning of section 19 of the Penal Code. *11 N.L.R. 265.* So is a Commissioner under the Partition Ordinance. *28 N.L.R. 179; 4 Times 95;* an Excise peon. *17 N.L.R. at 194; 1 Cr. A.R. 81; 8 Law*

Rec. 26; the secretary of a Local Board. *1 Times 16;* a deputy registrar of births and deaths. *2 Br. 281.* The following have been held not to be public servants within the meaning of that section. A Sanitary inspector. *10 Times 119; 2 C.L.W. 163; 35 N.L.R. 8;* a person who holds a licence from the Municipality to seize stray cattle. *2 Bal. 186; 11 N.L.R. 67;* a peon employed by the S.P.C.A. *34 N.L.R. 101; 1 C.L.W. 282.* A Fiscal's Surveyor is a public servant within the definition of the Penal Code. *4 A.C.R. 126.* A Fiscal's officer executing judicial process is a public servant within the meaning of section 183 of the Penal Code. *6 Tam. 8,* but not so a process sorver. *6 Tam. 51.* The Chairman of a Local Board is a public servant within the meaning of section 19 of the Penal Code but not within section 180. *4 A.C.R. 176.* An inquirer into sudden deaths is not a public servant within section 180 of the Penal Code. *4 A.C.R. 46.* An irrigation headman is a public servant and entitled to notice of action under section 461 of the Civil Procedure Code. *3 S.C.D. 23; 2 Lead. 189.* There is no provision of law which exposes a public servant to prosecution for every act which is not specially authorised. *29 N.L.R. at 212.*

An unregistered overseer in the P.W.D. is a public servant entitled to the benefits of the Public Servants Liabilities Ordinance. *34 N.L.R. 185; 1 C.L.W. 316; 12 Law Rec. 86; 10 Times 3.* So is an aratchi and police headman. *18 N.L.R. 249;* a pay agent of the Medical department. *2 C.L.W. 384;* but not a tide waiter at the Customs. *1 A.C.R. 28;* nor a registrar of births and deaths. *2 C.L.W. 322; 35 N.L.R. 369; 13 Law Rec. 69; 11 Times 67.*

Public Servants Liabilities Ordinance. A public servant is not protected by this Ordinance from an action brought to recover money due upon an agreement entered into by him to pay damages for breach of an earlier contract. *31 N.L.R. at 295.* The Ordinance does not prevent an action against a public servant after he has ceased to be a public servant or against his representatives after his death. *2 A.C.R. 165.* Where an action against a public servant has been dismissed by reasons of the provisions of this Ordinance a second action on the defendant ceasing to be a public servant is not maintainable. *13 Law Rec. 55.*

Public stream. The bed of a public stream belongs to the Crown. *27 N.L.R. 50; 3 Times 74.*

Public street in section 183 of the Municipal Councils Ordinance of 1887 means the roadway as used by the public for their passage along it and might include a covered aqueduct, drain or sewer but not an uncovered one. *8 N.L.R. at 147.*

Public way. The Galle Face Green is not a public way within the meaning of section 272 of the Penal Code. *34 N.L.R. 308; 10 Times 24; 1 C.L.W. 382.*

Punishment in the ordinary acceptance of the term is some loss or pain inflicted for a crime or fault. *2 Cr. A.R. at 5.*

The term "punishment" as used in section 335 (1) of the Criminal Procedure Code does not mean a punishment mentioned in section 52 of the Penal Code. *17 N.L.R. 444; 2 Br. 191.* It must be one created by law. *6 Law Rec. 175.* A term of police supervision is a punishment within the meaning of this section. *2 Cr. A.R. 3.* An order to alter or demolish a building is a punishment within the meaning of section 289 of the Penal Code. *1 A.C.R. at 9.* Binding over a party to keep the peace is not a punishment under the Penal or Criminal Procedure Code. *5 N.L.R. 311.*

It is an anxiom in penology. *per Bonser, C.J.*, that a light punishment following with certainty close upon the offence is far more efficacious than the mere chance of a much heavier punishment which may never be inflicted. *2 N.L.R. at 75.* In determining the amount of punishment Judges are perfectly entitled to have regard not merely to the circumstances of the particular cases with which they have to deal but to the character and prevalence of the offence itself and to the necessity or otherwise of an example being made. *2 C.W.R. at 2.* A Judge may take into consideration previous convictions of the accused but not any offence with which a person has been charged but which has resulted in a discharge or an acquittal. *8 Law Rec. at 39.* Where the prosecution desires to bring before the Magistrate any facts for the purpose of establishing that an offence is deserving of deterrent punishment these facts should be placed before the Magistrate by a witness duly sworn or affirmed to speak the truth and unless the accused admits the facts he should be given an opportunity of rebutting that evidence. *3 C.L.W. 72.* In laws imposing punishment the more lenient interpretation is to be preferred to the more severe. *4 N.L.R. 221.* Sentences of imprisonment in gaming cases are excessive. Only moderate fines should be imposed. *2 S.C.D. 53.* Insufficiency of punishment is an error in a law only when a minimum of amount of penalty has been prescribed but has not been imposed. *1 N.L.R. at 89.* The Supreme Court has power under section 357 of the Criminal Procedure Code to enhance punishment, *2 S.C.D. 18* even by way of revision. *2 Lead. 65.*

Pupil. See SISYANU SISYA PARAMPARAWE.

Pupillage. According to the ecclesiastical law observed among the Buddhists of Ceylon presentation for ordination apart from robing is in itself sufficent to constitute pupillage. *20 N.L.R. at 403.*

Purchase in section 4 (1) of the Waste Lands Ordinance should not be limited to a purchase by the Crown from the claimant but includes also a purchase by the claimant from the Crown. *19 N. L.R. 299.*

The term "purchase" in section 4 of the Cocoa Theft Ordinance is satisfied where the ordinary elements of the contract of sale

are present, that is to say, where the parties are at one as to the subject matter and the price. *1 C.W.R. 234; 18 N.L.R. at 459; 19 N.L.R. at 115; 4 C.A.C. at 58.*

Purchase on speculation. A purchaser who knows that a vendor has a disputed title and buys the land on speculation is not entitled on eviction to recover any more than the price actually paid to the vendor. He is not entitled to recover damages. *22 N.L.R. 377.*

Purchaser in execution can count his predecessor's possession right up to the time when it first began and thus show a prescriptive title. *25 N.L.R. at 428.*

Purporting. A public officer who does an illegal act *mala fide* in the pretended exercise of statutory powers cannot be said to be purporting to act under the statute which confers those rights. *9 N.L.R. 138; 6 Law Rec. 15.*

Quantum meruit. Where there is a contract to do work for a lump sum until the work is completed the price of it cannot be recovered. *8 S.C.C. 45; 23 N.L.R. at 410.* It is not competent for a plaintiff who has been engaged upon a special contract to sue upon a *quantum meruit* as long as the special contract remains open. *20 N.L.R. at 356.*

Quay is nothing more than a landing place. *30 N.L.R. at 85.*

Questions of fact the expression comprises three distinct issues. In the first place what facts are proved. In the second place what are the proper inferences to be drawn from facts which are either proved or admitted. And in the third place what witnesses are to be believed. In the first two questions no special sanctity attaches to the conclusion of a Court of first instance. *1 A.C.R. 126.* A Court of appeal will not interfere with findings of a trial Judge on questions of fact. *20 N.L.R. 282*, except where the facts are of such complication that their rights interpretation depends not only on the impression formed by listening to witnesses but also upon documentary evidence and upon the inferences to be drawn from the behaviour of these witnesses both before and after the matters on which they gave evidence. *20 N.L.R. 332*, or where the trial Judge fails to discuss the evidence in his judgment. *26 N.L.R. 497.* The tests to be applied by an Appeal Court are three. Was the verdict of the Judge unreasonably against the weight of the evidence. Was there a misdirection either on the law or on the evidence. Has the Court of trial drawn the wrong inferences from matters in evidence. *14 Law Rec. 144.* In criminal cases a Judge sitting in appeal must himself be satisfied that the findings of fact are correct *32 N.L R. 251.* An appeal from an acquittal on a question

of fact should only be allowed to succeed in very exceptional cases and where it is perfectly clear to the appellate tribunal that the findings of the interior Court is erroneous. *11 Law Rec. 1.*

See also APPELLATE COURT.

Quia timet action lies in Ceylon. *4 Bal. at 37; 10 N.L.R. 355,* and may be permitted where no other remedy is available. *1 Law Rec. 50.* The necessary ingredients for a *quia timet* action are actual or imminent injury and prospective damages of a substantial but not irreparable kind. *28 N.L.R. 259; 12 N.L.R. at 259; 17 N.L.R. 16; 8 Law Rec. 16.* A person relying on a prescriptive title may maintain such an action. *8 Law Rec. 16.* Where the nature of the evidence of title is such that there is danger of its being lost by lapse of time a suit may be entertained *quia timet* lest in the event of the suit being delayed till the threatened cause actually arises the necessary proof should then be wanting. *1 S.C.C. at 28.* A Court will under proper circumstances order the delivery up or the declaration of invalidity of instruments on which actions at law might be brought. *10 N.L.R. 355.* Where a person takes a mortgage of land belonging to another from a third party and put such mortgage in suit and obtains decree thereon the true owner has a sufficent cause of action against such person to maintain an action *quia timet 12 N.L.R. 16.* The trustee of a temple who claims certain lands on behalf of the temple by right of prescriptive possession has a right to maintain such an action to have set aside a deed affecting such lands although the possession by the temple of such lands has not been interfered with. *4 Times 104.*

Quo warranto. An application for a writ of quo warranto on the ground of wrongful usurpation of offce will not be granted unless the person against whom it is directed is in office *de facto. 29 N.L.R. 168; 5 Times 47.*

Rabana is a drum within the meaning of section 90 of Ordinance 16 of 1865. *14 N.L.R. 426.*

Race conotes a people belonging to the same stock. *4 N.L.R. at 247.*

Ratification. The Roman Dutch law of ratification of contracts by a minor is in force in Ceylon. *15 N.L.R. 286; 6 Lead 67.* A deed of ratification granted to a purchaser of property from a minor himself after he comes of age is in effect a conveyance. *2 A.C.R. 47.* A principal can ratify the unauthorised act of his agent only when he is fully aware of its nature. *18 N.L.R. 273.*

Realization. The meaning of the word "realized" need not necessarily be restricted to "converted into actual cash". The

word means "to make real" and I think that when property is sold and therefore has ceased to be the property of the judgment-debtor and is converted either into cash itself or into a liability of the purchaser to pay the amount to the Fiscal it may well be said to be realized within the meaning of section 352 of the Civil Procedure Code. *Per Shaw, A.C.J. 3 C.W.R. at 32; 19 N.L.R. at 85.* The mere issue of a notice under section 232 of the Code does not amount to realization. To shut out a judgment-creditor who applies for execution realization must have reached the stage of appropriation to another decree-holder. *29 N.L.R. 481;* See *2 C.L.R. 178.*

Reasonable. To say that an explanation is reasonable means that it is reasonable in all the known circumstances of the case. *25 N.L.R. at 392.*

Reasonable doubt in section 704 of the Civil Procedure Code does not mean doubt for which reason could be given although a judge should always be able to give a reason for his belief. *14 N.L.R. 190.* Contra *5 N.L.R. 310.*

Reasonable ground. Continuous ill-treatment affords a reasonable ground for the refusal of a wife applying for maintenance to live with her husband. *1 Cr. A.R. 15.*

Reasonable notice. Unless there are special considerations a month's notice has been recognized as reasonable notice under our law. *26 N.L.R. at 210; 12 Law Rec. 84.* Where there were indications that the contract was for an indefinite period six month's notice was held to be reasonable. *14 Law Rec. 190.*

See also NOTICE.

Receiver is an officer of the Court and must look to the Court for payment. There is no implied contract between him and the parties to the action. *14 N.L.R. 126.*

Receiving stolen property. To support a conviction of unlawfully receiving stolen property knowing it to be stolen there must be some material supporting an inference that the prisoner received the property since the theft from some other person. *1 S.C.C. 31 F.B.* It is not necessary, however, to allege or prove that some person has been convicted of the theft. *2 N.L.R. 345.* For the burden of proof see *1 Law Rec. 155.*

See also BELIEVE.

Receipt. A written receipt acknowledging the payment of a sum of money and adding that it is in full discharge of the debt is not conclusive evidence of the discharge of the whole debt. Such a receipt only affords *prima facie* proof which may be rebutted by other evidence. *2 N.L.R. 304.*

Recent possession. What is not recent possession depends largely on the nature of the stolen property. 2 *Bal.* 46; 27 *N.L.R. 358*; *1 Law Rec. 121*; *1 Lead. 8.* What is meant by saying that the possession in any case is not sufficiently recent is that no reasonable man would draw inferences against the accused from the circumstances of the article being found in his possession after so long an interval. *Per Bertram, C.J. 7 C.W.R. 114.* Possession of cattle eight months afterwards is recent, *3 Times 39; 6 Law Rec. 77*; but not two years. *2 C.W.R. 201; 3 Br. 138.*

Reckless driving means driving in a dangerous manner regardless of consequences. *31 N.L.R. 453.*

Recognizance can be entered into by a surety. *26 N.L.R. at 380.* A recognizance given by a petitioner in an election petition under the provisions of the State Council Order in Council is liable to stamp duty. *12 Law Rec. 38; 11 Law Rec. 155.*

Record. The judge's notes of evidence in an Assize case are a record within the meaning of section 434 of the Criminal Procedure Code. They are in fact the only record that exists of the evidence given at the trial and it would obviously give rise to great hardship in many cases if the parties had no right of access to them. *Per Wood Renton, J. 11 N.L.R. at 269.*

The accuracy of a record cannot be impeached by affidavit. *2 Tam. 12.*

The fact that a record is lost does not affect the right of a plaintiff to execute a judgment which undoubtedly has been given if the terms of the judgment can be discovered. *8 Law Rac. 138; 4 Times 191.*

Rectification. The erasure of a person's name from a register of births is a rectification centemplated by section 22 of Ordinance 1 of 1895. *1 S.C.D. 53.*

Rectification of deed. A deed if rectified takes effect retrospectively from the date of its execution. *28 N.L.R. at 231.* It may be rectified in the course of a partition action provided all the necessary parties are before the Court. *28 N.L.R. 230; 7 Law Rec. 88*; *4 Times 7.*

Ree-ntry. Under the Roman Dutch law the Crown has no power any more than a private party to resume possession of land without having first obtained a decree in that behalf from a competent Court. *7 S.C.C. 171.*

Re-erection. The erection of pillars adjacent to and outside existing walls and the erection upon them of a completely new structure is not the re-erection of a building within the meaning of Ordinance 19 of 1915. *34 N.L.R. at 340*; *10 Times 103*; *12 Law Rec. 197.*

Refund. A person who advances money on an informal agreement is entitled to a refund only if the other party refuses or is incapable of completing the transaction. *20 N.L.R. 1 F.B.*

Registered for the purposes of the Trade Marks Ordinance means that the mark is actually on the register kept under the provisions of the Ordinance. *31 N.L.R. 288*; *6 Times 153*, and that the registration of the trade mark had been obtained in terms of section 64 of that Ordinance. *32 N.L.R. 239.*

Registrable. Probate of a last will is registrable. *20 N.L.R. 97 F.B.* Letters of administration must be registered. *3 Times 144*; *7 Law Rec. 23*; *11 Times 134.* A mortgage decree requires registration under section 16 of the Registration Ordinance 14 of 1891. *6 Law Rec. 28.*

Registration. The Registration Ordinance provides for the registration of documents relating to land. It is not a register of lands but of documents which is contemplated in the Ordinance for it is only concerned with lands or allotments in so far as they are the subjects dealt with in and by registered documents. *7 Law Rec. at 143.* The scope and object of the Registration Ordinance is the protection of the purchaser for valuable consideration. *17 N.L.R. at 77.* It enables him by search to discover previous dealings with the property. *20 N.L.R. at 304*, although registration is not notice to all the world. *28 N.L.R. at 106.* See *1 A.C.R. at 140.* A deed which is not registered in the proper place is not "so registered" for the purpose of section 17 of the Registration Ordinance 14 of 1897. *15 N.L.R. at 149*; *15 N.L.R. 157.* Registration by an innocent person of an instrument by which for valuable consideration he acquires interests renders him secure against any person claiming an adverse interest by virtue of a previous instrument which has not been registered. *28 N.L.R. at 45.* The operation of section 39 of the Land Registration Ordinance of 1863 in favour of deeds registered before deeds of earlier date is confined to deeds made for valuable consideration. *2 C.L.R. 32*; *4 Tam. 158.* Where a deed under which a person claims title is registered it is immaterial that earlier deeds forming links in the title have not been registered. *15 N.L.R. at 180*; *10 N.L.R. 33.* Registration affords no protection in cases of fraudulent concealment, *14 N.L.R. at 154*; *7 Times 27 P.C.*; but mere notice of a previous deed is not enough to deprive a person who has registered his deed of the benefit of registration. *14 N.L.R. 417 F.B.*; *5 Lead. 56*; *1 S.C.C. 84.* Where the first dealing with a land is registered in a certain folio all subsequent dealings with the whole land or a portion of it should be registered either in the same folio or in a different folio with references back to the original folio. Otherwise the registration is bad whether or not there has been negligence in effecting such registration. *6 C.W.R. 109.* The owner of an undivided share of a land has no right to consolidate it with other lands for

the purpose of registration and thereafter to contend that it is the correct folio in which deeds relating to the undivided land should be registered. *3 Times 107.*

The prior registration of a contract is a condition of the application of the benefit conferred by section 93 of the Trusts Ordinance. *31 N.L.R. at 55.*

The object of registration of old deeds is to prevent the setting up of forged instruments of title bearing old dates. *7 N.L.R. at 45.*

Registration of marriage among Kandyans has the effect of making the marriage date back to the actual native ceremonies performed for the purpose of constituting the marriage. *16 N.L.R. 61.*

Re-issue of writ is not *ipso facto* illegal provided the stamp duty has been paid afresh. *9 N.L.R. 150; 10 N.L.R. 180 F.B.; 19 N. L.R. 225.* Otherwise it is irregular. *8 N.L.R. 325.* There must be a fresh seizure to justify a sale thereunder. *16 N.L.R. at 300; 3 C. A.C. 23.*

Rei vindicatio. The whole basis of an action *rei vindicatio* is the title or rather the superior title of the plaintiff and a denial of that title or an interference with the plaintiff's rights under it by the defendant. *30 N.L.R. at 16.* The plaintiff must prove that he is full owner of the property sought to be vindicated. *1 Times at 1; 32 N.L.R. at 219.* An action *rei vindicatio* may be brought against the Crown, *5 N.L.R. 65; 2 Br. at 96.* Under the Roman Dutch law such an action lies at the suit of a person who has a mere *nuda proprietas. 3 S.C.R. 87.* In an action *rei vindicatio* for the recovery of specific movable property an alternative decree for the payment of its value is bad. *1 N.L.R. 114; 1 N.L.R. 117.* Contra *14 N.L.R. 8.* An action for declaration of title brought within a year of dispossession may be converted into a possessory action at the trial. *4 Bal. 167; 6 Lead. 69; 5 A.C.R. 34; 2 Lead. 184.* See *5 Times at 81.*

Religious foundation. The law does not recognize the personification of a religious foundation. *27 N.L.R. at 21; 3 Times 7.*

Remarriage. In the Kandyan law the remarriage of a widow without the consent of the relations of her first husband involves in certain cases a forfeiture of her rights in the acquired property of her first husband. *6 Times 65.*

Removal for the purposes of the Sea Shore Ordinance means removing from a place where a thing is found. It does not imply a removal to a place outside a prohibited area. *30 N.L.R. 439; 6 Times 83.*

Remuneration of assignee. In fixing the remuneration to be paid to an assignee the Court has to exercise its discretion taking into consideration the circumstances of the case. *23 N.L.R. 413.*

Renewal of lease. Provision for renewal is a common condition in leases and cannot be regarded as a separate and distinct agreement. Knowledge of the lease necessarily calls for inquiry regarding its conditions. *33 N.L.R. at 55.*

Renunciation being *stricti juris* will not be presumed but must be express. *19 N.L.R. at 458.*

Replication. A plaintiff has no right to the filing of a replication and the right of a Judge to order a plaintiff to do so is limited by the terms of section 79 of the Civil Procedure Code. *2 C.L.W. 168* There is no necessity for a replication to an ordinary answer containing a plea in bar by way of confession and avoidance. *1 S. C.R. 325; 2 C.L.R. 125 F.B.*

Representative in section 339 of the Civil Procedure Code has a wider meaning than legal representative. *11 N.L.R. 69.*

Representative in interest. A judgment-creditor is not a representative in interest of the judgment-debtor within the meaning of section 92 of the Evidence Ordinance. *12 N.L.R. at 119.*

Republication. There is a republication of a will by a codicil. *31 N.L.R. at 20.*

Repudiation. Where one party to an agreement repudiates it, the other is not bound to accept the repudiation. He may stand upon his contract and hold the other party responsible and wait for the time of performance. If he does this he is under no obligation to make any attempt to minimize damages. It is only where he elects to treat the repudiation as an immediate breach and to sue upon the contract that it becomes his duty to do his best to minimize damages. *24 N.L.R. at 156.*

Residence may import various meanings according to the context of the enactment which has to be construed. *8 C.W.R. at 164.* A person may be said to reside where he has his family establishment and home. *13 N.L.R. 411.* but a man's residence is not dependent altogether on his physical occupation of any house. *24 N.L.R. 431; 1 Times 214.* A place where a party carries on business is not a place where he resides within the meaning of section 9 of the Civil Procedure Code. *2 C.L.R. 37 F.B.* In order to constitute residence a party must possess at least a sleeping apartment. *8 Law Rec. 46,* but the permissive use of apartments as a guest is insufficient to constitute legal residence. *28 N.L.R. 161; 4 Times 135.* A person going from his house to visit a sick person elsewhere does not change his residence. *25 N.L.R. at 216.* In no case where residence is the test of jurisdiction can compulsory detention in jail after conviction for a criminal offence constitute residence. *8 C.W.R. at 164.* The residence referred to in section 25 (b) of the

Civil Procedure Code is the domicile or the place where the principal place of business of a corporation is situated. *35 N.L.R. at 195; 13 Law Rec. at 68.*

Residuary. Under Muslim law the paternal uncles' agnate grandchildren are residuaries. *18 N.L.R. 446.* It is doubtful whether on the general principles of Muslim law grandchildren who trace descent through a daughter are entitled to come in as residuaries. *16 N.L.R. at 236.*

Resignation from an office once properly tendered cannot be withdrawn. *2 C.L.W. 134.*

Res inter alios acta. A judgment obtained against a mortgagor of land after the mortgage is *res inter alios acta* as to a mortgagee who was not a party to the action. *15 N.L.R. at 256.*

Resistance to an order which is *ultra vires* is justified. *24 N.L.R. at 58.*

Res judicata. The principle of estoppel by *res judicata* is not concerned with the operative effects of judgments. That principle does not mean that parties to a judgment are bound by its operative effect but that they are barred by the determination of the Court on all actual or implied issues of fact or law and may not raise them again. *26 N.L.R. at 392.* All that the law requires for the purpose of constituting *res judicata* or estoppel by judgment is that the issue in question should have been distinctly raised between the same parties appearing respectively in the same capacity and should have been directly and necessarily determined by the former proceedings. *5 C.W.R. at 24.* See *21 N.L.R. at 203; 26 N.L.R. at 229.* The doctrine only applies to matters which the parties had an opportunity of bringing before the Court, *1 C.L.W. 239,* and the plea must be restricted to the cause of action for which the action is brought. *5 A.C.R. 13; 14 Law Rec. 91* A plea of *res judicata* can be successfully raised only against parties and their privies. *7 Times 68.* An order of a Court which is vague and does not conclude upon the rights of the parties and is merely an expression of opinion by the judge does not operate as *res judicata. 3 C.L.W. 134.* A judgment in order to be *res judicata* must be that of a Court of competent jurisdiction. *17 N.L.R. at 274; 19 N.L.R. 217; 4 Law Rec. 66.* A judgment entered by consent is *res judicata. 34 N.L.R. 37; 1 C.L.W. 253.* A decision on a pure question of law does not prevent a Court from deciding the same question afterwards between the same parties according to the law. *23 N.L.R. at 212.* The decision of a competent tribunal under the Land Acquisition Ordinance is *res judicata. 1 C.W.R. 232* A decision with regard to the basis of a claim to property, such as heirship, is *res judicata* though the property claimed in the subsequent action may be different. *4 C.W.R. 155.* A judgment dismissing an action for declaration of title to land on the ground that the plaint disclosed

no valid cause of action does not operate as a bar to a second action for the same relief. *12 N.L.R. 184.* The dismissal of a partition action for non-prosecution does not operate as *res judicata. 3 Times 60; 6 Law Rec. 92.* When a Court of competent jurisdiction has dismissed an action not in the exercise of its jurisdiction over the subject matter of the action but for non-compliance with a condition for the exercise of its jurisdiction the dismissal does not operate as a bar to a second action. *12 Law Rec. 168.* An *ex parte* decree when final is *res judicata* only so far as the decision necessarily decided an issue. *17 N.L.R. at 113.* Where an appeal lies the finality of the decree, on such appeal being taken, is qualified by the appeal and the decree is not final in the sense that it will be *res judicata. 11 Law Rec. 87 P.C.; 9 Times 17.*

Res religiosa is a *res nullius. 1 Br. at 142; 4 N.L.R. at 89.*

Restitutio in integrum is an extraordinary remedy granted for relief against error, fraud or mistake and it is essential that there should be merit in the case submitted; *5 Times 167; 9 Law Rec. 114; 35 N.L.R. at 304.* Applications for restitution are by way of summary procedure and are governed by the provisions of Chapter 24 of the Civil Procedure Code. *3 Law Rec. 4; 22 N.L.R. 383.* "Applications for *restitutio in integrum* should be made, *per* Wood Renton, J., in open Court by petition supported by affidavit and all the materials necessary for the purpose of making out a *prima facie* case for relief, such applications being made to a Bench of one Judge or two Judges according as the tribunal of first instance is a Court of Requests or a District Court and not by petition addressed to the Judge in chambers. The application should, in the first instance, be *ex parte* and if the Court is of opinion that a *prima facie* case for relief has been made out notice must be given to the other side. If after hearing both sides the Supreme Court is satisfied that restitution should be granted the case should be remitted for further inquiry and adjudication in the Court of first instance and such adjudication subject to an appeal where a right of appeal exists should be final". *14 N.L.R. at* 359. An application for *restitutio in integrum* is an action within the meaning of section 11 of the Prescription Ordinance and is barred in three years. *10 N.L.R. 193; 1 A.C.R. 150.* Restitution is not granted if the applicant has any other remedy equally effectual open to him. It can be availed of only by those who were actually parties to the contracts or legal proceedings in respect of which it is desired. *3 N.L.R. 325; 15 N.L.R. 411.* See *2 Times 119.* Relief by way of *restitutio in integrum* from the effect of an order in judicial proceedings will not be granted where the legality of such order is not questioned. *35 N.L.R. 302.* An application on the ground of discovery of fresh evidence must be made with the utmost promptitude. *3 Bal. 227; 1 Lead. 66.* In the absence of fraud this remedy is not available in a partition suit on the ground of discovery of fresh evidence after judgment. *11 N.L.R. 44.* Restitution is not allowed unless the applicant can show

that he has suffered actual damage. *35 N.L.R. 302.* But it is available in all cases where a contract can be shown to have proceeded in total misconception. *2 S.C.R. 1.* Restitution is not granted to a minor who has committed fraud by falsely representing himself as being a major. *9 Law Rec. 128.*

Restitution of conjugal rights. A suit for the restitution of conjugal rights is not maintainable in Ceylon. *1860-62 Ram. 134; 9 N.L.R. 31.*

Restraint of marriage. A general restraint of marriage is against public policy and void but a provision in restraint of marriage not as a condition annexed to the gift but as pointing out the limit of the legatee's interest is good. The doctrine, however, does not apply to a restraint on a second marriage of a legatee. *19 N.L.R. at 108; 4 C.A.C. 95.*

Restraint of trade. Contracts in general restraint of trade are void under our law as opposed to public policy but where the restraint is partial and limited the law will enforce any agreement entered into by parties. *3 Times 21.*

Resulting trust. Where property has been purchased by one person with money advanced for the purpose by another a trust results in favour of the latter. But it is essential that resulting trust should not be admitted unless the advance of the purchase money is proved by clear and unequivocal evidence. *6 S.C.D. 53; 5 Lead. 109.*

Retainer given to an Advocate in a case means that he is to hold himself ready to accept a brief with a fee. If the retainer is not followed by a brief and fee the Counsel is at liberty to appear upon the other side upon retainer and fee. *4 N.L.R. 209.*

Retaining stolen property. The offence of dishonest retention of stolen property does not necessarily imply an innocent receipt in the first instance. *1 C.W.R. 230.*

The most essential element to be proved in such a charge is that the property was in fact stolen. *1 C.W.R. 104.*

In a case of possession of stolen property the test should be whether the circumstances point to the fact that the accused was convinced in his own mind that the property was stolen. *7 Times 9.* Mere suspicion of this by the accused is not sufficient to establish this charge. *3 Cr. A.R. 40.*

Retrospective. The principal that enactments dealing with matters of procedure have a retrospective effect means that when any law is passed affecting the procedure in an action the benefit or the burden of the new enactment comes into play in any proceedings subsequent to the enactment and even in proceedings pending at the time of the enactment notwithstanding the fact that the subject matter of the proceedings was a thing anterior to it. *21 N.L.R. at 271.*

There is always a strong presumption that an enactment is not intended to have a retrospective operation so as to destroy existing vested rights. *25 N.L.R. at 428.* Statutes are not to be held to act retrospectively unless a clear intention to that effect is manifest or the matter in issue relates to procedere alone. *16 N.L.R. at 60.*

Reversal of a judgment On the reversal of a judgment the law imposes an obligation on the party who received the benefit of the erroneous judgment to make restitution to the other party for what he lost. *1 Bal. 124.*

Revision. The Supreme Court has the power of revising the proceedings of all inferior courts. This power is no way limited by section 132 of the Insolvency Ordinance. *2 N.L.R. 105.* It may be exercised in non-summary proceedings. *19 N.L.R. at 338,* but the Supreme Court ought not to interfere lightly in the exercise of its powers of revision in such cases. *19 N.L.R. 346.* It is open to the Supreme Court to exercise its powers of revision on the application of an aggrieved person not a party to the record. *23 N.L.R. 467; 3 Law Rec. 203.* Where the proper remedy is by way of appeal an application for revision will not be entertained save in exceptional circumstances, *30 N.L.R. 482; 2 A.C.R. 172; 1 C.L.R. 80,* but this does not debar the Supreme Court from dealing with a case on its merits if it is clearly of opinion that a conviction is bad. *1 Cr. A. R. 13.* See *7 Law Rec. 29.* There is no hard and fast rule which precludes the Supreme Court from dealing in revision with decisions which could have been brought before it by way of appeal. *2 Cur. L.R. 67.*

An application for revision should not be combined with an application for leave to appeal notwithstanding lapse of time. *5 Times 151.* Where the Attorney-General has refused to sanction an appeal the Supreme Court will hear the case in revision of the applicant makes out a strong case amounting to a positive miscarriage of justice in regard either to the law or the Judge's appreciation of the facts. *34 N.L.R. 50; 13 N.L.R. 115; 1 C.L.W. 246; 12 Law Rec. 35.* An order of a District Court which is wrong *ex facie* may be quashed by the Supreme Court in the exercise of its revisionary powers even though no appeal may lie against such order. *1 N. L.R. 303.* The Supreme Court will exercise its powers of revision to set aside an order releasing property from seizure where such order is wholly based on a misapprehension. *7 N.L.R. 333.* The Supreme Court has no power to set aside the final decree in a partition action acting in revision on the ground that a person who had a share in the land was not made a party to the partition proceedings and was thus deprived of his share. *19 N.L.R. at 298.*

Revocation. Testamentary instruments can be revoked only in the ways prescribed in section 5 of Ordinance 7 of 1840 and it is not open to a Court to hold that testamentary instruments can be revoked by implication. *14 N.L.R. 467.* If a will made by a testator and is shown to have been in his possession and is not forthcoming after his death it is presumed to have been destroyed *animo revocandi.* It is a necessary condition to the coming into effect of this presumption that the Court should be satisfied that the will was not in existence at the time of the death. The onus of this is on those who assert it. It must be borne in mind in this connection that there is a presumption against the hypothesis of a fraudulent abstraction. Even in the absence of positive evidence the Court may presume that the will was in the actual custody of the deceased. 22 *N.L.R. 497.* The revocation of a will by its destruction does not operate as a revocation of a codicil which was left undestroyed. *5 Lead. 105.*

A legacy may be expressly or tacitly revoked. If the property bequeathed perishes or is disposed of by the testator before his death or is destroyed or altered in such a manner that it can no longer be regarded as the same thing then the legacy is tacitly revoked. *29 N.L.R. at 93.* See *5 Times 132.* Where by a deed of gift property which formed part of a specific devise has been disposed of by the testator during his lifetime the disposition operates of a revocation *pro tanto* of the devise. *9 Law Rec. 102.* A Kandyan deed of gift is revocable whether it is made as a reward for past services or in consideration of a marriage that has already taken place or even in view of a contemplated marriage so long as it has all the elements of a mere free will gift. Where, however, a donation is made in consideration of or as an inducement for a marriage to be contracted or services to be rendered thereafter and such marriage is accordingly contracted or such services are accordingly rendered then it would be inequitable to allow a revocation of the gift. *15 N.L.R. 407.* Under the Muslim law a donor can exercise his power of revocation without the intervention of a Court of law. *2 Times 92.*

See also DONATION.

Right and title is used as synonymous with the legal estate, a term well-known to the English law which it seems to me must be our guide in interpreting section 289 of the Civil Procedure Code. *Per Withers, J. 1 N.L.R. at 17.*

Right folio is the one in which the first deed relating to a particular land has been registered. *13 Law Rec. 98.*

The proper folio for a subsequent registration of a lot having no registration prior to that of the consolidated property is the folio in which the consolidated whole is registered. *28 N.L.R. 26.*

Right of market. A claim by an individual to exercise by immemorial custom a private and exclusive right to expose his goods for sale outside a shop over a drain by a roadside is not a claim to a right of market. *6 C.W.R. 295.*

Rights of parties are to be ascertained at the commencement of the action. *15 N.L.R. 500 P.C.; 22 N.L.R at 272; 12 Law Rec. 136; 2 Times 193;* and according to the law existing at that date. *10 N.L.R. 44 F.B; 8 N.L.R. at 226 P.C.*

Right of way. In Ceylon a right of way can only be acquired by user under the Prescription Ordinance and the course or track over which the right is acquired is necessarily strictly defined. *15 N.L.R. at 259; 31 N.L.R. 126; 10 Law Rec. 115.* See *2 C.A.C. at 31; 16 N.L.R. at 28.* A decree establishing a right of way ought to specify the beginning, course and end of the way which is claimed. *5 Bal. 71.* Our law of prescription does not recognize the acquisition by user of a right of way personal to a single individual. Such a right can only be claimed as appertaining to a land. *3 Bal. 33.* The existence or non-existence of a right of way is a question of fact and there is no reason why like any other fact the existence of a right of way which traverses a number of contiguous lands may not be established without hearing the owners of the intervening lands. *34 N.L.R. at 119.* But in an action for a declaration of a right of way all the co-owners of the servient tenement are necessary parties. *32 N.L.R. 328; 2 C.L.W. 1.* Where a right of way has been acquired by prescription the owner of the servient tenement may not alter the route even if he offers another track as serviceable as the former. *3 Law Rec. 83; 7 Times 38.* Where a right of way has existed over more than one servient tenement and where one of the servient tenements is partitioned without the decree conserving the right, the whole right becomes extinguished. *7 Times 41.* But a public right of way is not affected by a final decree for partition to which the Crown is not a party. *1 C.L.W. 199; 12 Law Rec. 21.*

Right of way of necessity can only be granted if it can be shown that there is no right of way available, *1 C.W.R. 44,* and can be claimed no further than the actual necessity of the case demands. *6 Times 44.* The owner of a land who by his own act deprives himself of access to a road is not entitled to claim a way of necessity to the road over the land of another. *32 N.L.R. 44.*

Riparian proprietor may deal with the stream as freely as with any other portion of his land provided only that he must not by so doing sensibly disturb the natural conditions of the stream as it exists within the limits of other proprietors whether above or below or on the opposite side. *5 Law Rec. 119.* A proprietor of land adjoining a stream or watercourse is not justified in doing anything to dam up the stream in such a way as to cause an accumulation of water injurious to the land of a proprietor higher up the stream. *24 N.L.R. 460.*

Road. Land adjoining a public road and reserved for its protection or benefit is a road within the meaning of the Road Ordinance of 1861. *7 C.W.R. 8.* The term in section 4 of Ordinance 10 of

1861 is wide enough to include a case where an offending cart is on the grass by the side of the road. *1 Times 32.* The steps of a private house which encroach on a public road do not form part of the road within the meaning of this Ordinance. *2 C.L.W. 326.*

Robbery. Theft is robbery only when the hurt or restraint caused to the complainant is shown to have been intended for, or made subservient to, any of the purposes mentioned in the definition, viz., in order to the committing of the theft or in committing the theft or in carrying away the money. The word 'for that end' imply this. *Per Schneider, J. 8 C.W.R. at 245.* In order to constitute the offence of robbery the intent to commit theft must be antecedent to the assault. *1 C.W.R. 88.* It is not necessary in order to constitute this offence that the offender should have the intention of permanently depriving the owner of his property. *1 Br. 57.* A Police Court has jurisdiction to try a charge of robbery even where the amount stolen exceeds one hundred rupees. *18 N.L.R. 256.*

Roman Dutch law. The Proclamation of 1799 established the Roman Dutch law as it subsisted under the ancient government of the United Provinces as our common law and the presumption is that every one of these laws if not repealed by the local legislature is still in force. *25 N.L.R. at 496.* It is well settled in Ceylon that if any rule of Roman Dutch law is found to be inconsistent with the well-established practice of the Colony the reasonable inference is that it was never introduced. *16 N.L.R. at 173.* See *8 N.L.R. at 13.* The Roman Dutch law being the law applicable to the whole Island applies where the Thesavalamai is silent. *23. N.L.R. 221.*

It is a principle of the Roman Dutch law that a person cannot benefit at the expense of another. *23 N.L.R. at 19.*

Roots of a tree. When the roots of a tree project into the soil of another such soil owner acquires no rights in the tree though possibly he may cut the roots of the tree. *15 N.L.R. 383; 6 S.C.D. 84.*

Route in regulation 4 (2) of the Gazette of the 22nd November 1929 under the Motor Car Ordinance means the route prescribed in the license. *1 C.L.W. 252.*

Rule of the road. Although the rule of the road is not to be adhered to if by departing from it an injury can be avoided yet in cases where parties meet on the sudden and injury results, the party on the wrong side should be held answerable unless it appears clearly that the party on the right had ample means and opportunity to prevent it. *16 N.L.R. at 98.*

Salary in section 3 (2) of the Public Servants Liabilities Ordinance means the regular remuneration received by a man in respect of his fixed appointment in the public service under the head "salary" as distinct from "allowance". It does not include overtime. *2 C.L.W. 378; 13 Law Rec. 248; 36 N.L.R. 73.*

An insolvent's salary vests in the assignee except to the extent necessary for the maintenance of himself, his wife and his family. *26 N.L.R. 360; 6 Law Rec. 68.*

Sale. A Court which orders a sale has an inherent power to control and guide the officer who is authorized to carry it out. *5 Law Rec. 226.* It is the duty of the Court to inform the Fiscal of any order made by the Court in respect of a sale which is being held under the directions of the Court. *6 N.L.R. at 240; 2 Br. 373.* Where property is sold under the directions of the Court it is incumbent on the Court to see that no taint of fraud or deceit or misrepresentation is found in the conduct of its ministers. *4 Law Rec. 48.* Where a Court has ordered the stay of sale the Fiscal has no power to act on the writ and such a sale is void. *7 Law Rec. 63.* The grounds on which a sale at a bidding may be set aside are to be found in the principles of the common law and according to them the only grounds are material irregularities. The omission of what is called a formal solemnity does no harm. These principles are the same whether the sale is an ordinary sale by the Fiscal or a sale in execution of a mortgage decree. *4 Law Rec. 195.* The confirmation of a sale held in pursuance of a mortgage decree is dependent only upon the directions contained in the mortgage decree itself and upon the conditions of sale. *10 Times 15.*

In the case of a sale under the Partition Ordinance the form and contents and mode of giving notice must be sanctioned by Court. A sale may be set aside where the Commissioner has not followed the directions of the Court. *31 N.L.R. 319.*

A seller of shares must deliver forthwith or within a reasonable time before payment unless his obligation is otherwise regulated by a binding usage or custom. *15 N.L.R. 289.*

The evidence of a decoy is not essential to prove a sale in the prosecution for illicit sale of an excisable article. *2 C.L.W. 365; 36 N.L.R. 27.*

Sale of goods. The question whether there is consideration to support a contract for the sale of goods is governed by English law. *18 N.L.R. 417 F.B.* A contract for the sale of goods entered into in writing is not enforceable unless there is a note of the price agreed upon. *1 Law Rec. 8.*

Salus populi suprema lex. All social legislation proceeds on this maxim. *21 N.L.R. at 396.*

Sand. Sea sand is not forest produce within the meaning of the Forest Ordinance. *23 N.L.R. 212.* A Government Agent has no right to prohibit the removal of sand from large tracts of the seashore. *30 N.L.R. 466; 6 Times 115.*

Sanghika means no more than property belonging to the entire priesthood, that is to say, to the temple as distinguished from the private property of the priestly incumbent. *19 N.L.R. at 244.* Sanghika property is not *res sacra.* It may be seized and sold in execution of a writ for the recovery of costs against the trustee of a vihare. *19 N.L.R. 242.* It is by a gift that a temple or any other property can become sanghika and the very conception of a gift requires that there should be an offering or dedication. This dedication may take the form of a writing or may be verbal but in either case it is a formal act accompanied by a solemn ceremony in the presence of four or more priests who apparently represent the *sarva sangha* or entire priesthood. *22 N.L.R. at 242; 8 C.W.R. at 320; 3 Law Rec. 39.* In the case of a temple claimed to be sanghika property a dedication may be presumed where it is shown to have existed for a very long time and where there is no proof of a private claim having been made within living memory. *6 Times 22.*

Schedule is as much a part of the statute and is as much an enactment as any other part. *14 N.L.R. at 100; 5 S.C.D. 65.*

School buildings for the purpose of section 13 of Ordinance 7 of 1902 are the buildings in which the class-rooms are. *8 N.L.R. at 341.* The Art gallery is not a school building. *14 Law Rec. 61; 36 N.L.R. 409.*

School leaving certificate. The refusal on the part of the Principal of a school to issue a school leaving certificate to a pupil does not give him a cause of action for damages. *36 N.L.R. 198.*

Sealing. There is no inflexible rule that Excise articles should be sealed immediately after seizure in the presence of the accused before they are taken to the Police station. It depends upon the circumstances of each case whether the failure to seal in the presence of the accused affords a good defence or not. *34 N.L.R. 164,* See also *1 C.L.W. 297; 1 C.L.W 373; 2 C.L.W. 416; 3 Cr. A.R. 1; 12 Law Rec. 94; 7 Times 91.*

Search warrant. The powers of a Magistrate to issue a search warrant for the investigation of an offence can be exercised only when the offence has been disclosed *prima facie* by legal evidence on record. *34 N.L.R. 41; 12 Law Rec. 56.* See *1 C.L.W. 294.*

A search warrant under section 35 of the Excise Ordinance should only be issued upon proper evidence being led before the Magistrate who issues it. *3 Cr. A.R. 50;* See *10 Law Rec. 71.* The

affidavit of an Excise Inspector based on hearsay evidence is insufficient material for its issue. *31 N.L.R. 493.* Before a search warrant is issued under the Gaming Ordinance 17 of 1889 the requirements of section 7 should be strictly complied with. *5 Law Rec. 125; 2 Law Rec. 99; 8 Times 97.* The failure of an informant to sign his statement makes the issue of the warrant irregular. *5 Times 26; 11 Times 57.* See *8 Times 55.*

Seashore is not land at the disposal of the Crown. It is *res communis* the disposal of which is open to the whole community though the Crown has the right of control on behalf of the public. *23 N.L.R. 212; 1 S.C.R. 11.*

See also SAND.

Secondary evidence. Section 63 of the Evidence Ordinance is exhaustive of the different kinds of secondary evidence that are admissible to prove the contents of a document. *14 N.L.R. 279.*

Secondary mortgage. It is settled law that where a secondary mortgagee sells land in execution of a mortgage he does so subject to the rights of the primary mortgagee. *24 N.L.R. at 300.*

Secured. A debt is secured by any mortgage or other security taken for the purpose of securing it even though the security is worthless. *1 Cur. L.R. at 139.*

Security in the Public Servants Liabilities Ordinance must be read *eiusdem generis* with the other documents mentioned in section 3 (c) and an agreement in writing to give specified sum by way of dowry is not such a security. *14 N.L.R. 87; 5 S.C.D. 57; 5 Lead. 17;* See *7 Times 88.*

Security for costs. Where a party dissatisfied with a judgment appeals he should give security for the costs of all the respondents. *15 N.L.R. 186.* The Court should sanction the acceptance of security tendered by the appellant for the respondent's costs of appeal. *3 Law Rec. 3.* An appeal lies without security for costs where the respondent's proctor waives security. *18 N.L.R. 341 F.B.* The Crown is not bound to give such security, *30 N.L.R. 64,* nor an appellant *in forma pauperis, 15 N.L.R. 41,* nor an appellant in insolvency proceedings. *24 N.L.R. 431 F.B.* In an appeal to the Privy Council security may be given by the mortgage and hypothecation of immovable property. *28 N.L.R. 350.*

Seduction. An action for seduction lies in Ceylon. *2 N.L.R. 173; 1 S.C.D. 37; 5 S.C.C. 38 F.B.* See *5 S.C.C. 214.* The essence of the action for seduction under the Roman Dutch law is the defloration of *virgo intacta* and the action might be brought at once on the completion of the first act of intercourse. *11 N.L.R. 242; 28 N.L.R. at 159.* An action for damages for seduction lies even where

the woman was a consenting party to the seduction, 26 *N.L.R.* 319, but not where the man was married and the woman knew he was married. 2 *C.W.R.* 331; 19 *N.L.R.* 209. See 1 *Law Rec.* 98. The damages granted are in the nature of a dowry and whatever the conduct of the defendant may have been the Court should not grant merely vindictive damages without taking into consideration the dowry which the plaintiff would have received on an ordinary marriage. 3 *Law Rec.* 45. See 2 *S.C.C.* 91. An action for seduction falls under section 10 of the Prescription Ordinance and is prescribed in two years. 4 *Times* 125; 28 *N.L.R.* 158; 8 *Law Rec.* 79. Prescription begins to run from the date of the seduction and not from the date when the defendant by his marriage with another woman puts it out of his power to marry the plaintiff. 8 *Law Rec.* 79.

Seizable interest. Any interest however small or limited in the judgment-debtor will be sufficient to support a sale. 1 *Law Rec.* 15. A *jus retentionis* may be seized and sold. 3 *C.A.C.* at 133; 5 *B.N.C.* 36. A fidei commissary interest is a contingent interest and not liable to seizure and sale. 1 *Times* 97. Until the purchaser at a Fiscal's sale obtains a conveyance the title to the property vests in the judgment-debtor and the property remains a seizable interest. 8 *Law Rec.* 204.

Seizure. Possession *ut dominus* at the date of seizure is the criterion of liability to seizure. 10 *N.L.R.* at 336; 1 *Lead.* 34 *F.B.* The Fiscal can only seize and sell the debtor's interest in a land and where there has not been a regular and perfect attachment a sale is void. 2 *Br.* 117. The seizure of movables must be made by some manual act indicative of the seizure in order to render a subsequent sale thereof void under section 236 of the Civil Procedure Code. 5 *Lead.* 46. Where a decree is seized in execution under section 234 of the Code it is not necessary to give notice of such seizure to the judgment-debtor. 5 *Law Rec.* 41. Where a writ is recalled the seizure made under it comes to an end. 10 *N.L.R.* 90. "Where it is provided by section 238 of the Code that a private alienation after seizure shall be void. I am of opinion that the word *seizure* is used in the sense in which it is employed in the preceding section and that the point of time from which alienations are declared to be void is the date of seizure and not the date of registration of the seizure." *Per Lascelles*, C.J. 9 *N.L.R.* at 2. The registration of a notice of seizure does not create an adverse interest in land for valuable consideration within the meaning of section 7 (1) of the Registration Ordinance of 1927 so as to avoid an unregistered previous deed of gift affecting the land. 35 *N.L.R.* 89. See 14 *Law Rec.* 81; 13 *Law Rec.* 33.

Sentence. In passing sentence on an accused convicted of an offence a Court should be influenced neither by the falsity of any statement made by the accused nor by an imputation of bad character of the accused of which there is no legal proof. 13 *Law Rec.* 191. Where a person has been convicted of a series of offences

it is a breach of section 17 of the Criminal Procedure Code to impose a term of imprisonment in the lump. Separate sentence should be imposed on each count. 8 *Law Rec.* 12. It is open to a District Court to pass two separate sentences for the offences of housebreaking with intent to commit theft and of theft. 3 *N.L.R.* 196. Contra 2 *N.L.R.* 157. Query whether a Court has jurisdiction to postpone the execution of a sentence so as to take effect upon the expiration of another sentence already passed. 2 *S.C.C.* 12.

Separation. See JUDICIAL SEPARATION.

Sequestration before judgment. The power of District Courts to issue writs of sequestration is now limited to cases of fraudulent alienation of property as provided by the Civil Procedure Code and they have therefore no jurisdiction generally to issue sequestration for the protection, *pendente lite* of property the subject of litigation. 2 *C.L.R.* 63 *F.B.* The issue of a mandate of sequestration before judgment is not an ordinary step in the proceeding and such a mandate should not be issued by the Court until it is satisfied on the two grounds referred to in section 653 of the Code. These two grounds require the serious attention of the Court and the Court should not exercise its discretion in favour of allowing the application for sequestration unless the applicant has strictly complied with the requirements of the section. 25 *N.L.R.* at 192; 2 *Times* at 3; 5 *Law Rec.* 66; 8 *Times* 103. A mandate should not issue on a mere assertion that the defendant is making arrangements to draw money and place it beyond the reach of the plaintiff. 2 *C.L.W.* 147; 10 *Times* 120. The prupose of a mandate of sequestration before judgment is to prevent the alienation of his property by a debtor who is fraudulently alienating it with intent to avoid payment of a debt. A creditor who procures the issue of such a mandate by representing to the Court that his debtor is fraudulently alienating his property when his debtor is not doing so in fact and merely for the purpose of enforcing and assuring speedy payment of his debt is actuated by an indirect motive and is therefore in the eye of the law acting maliciously. 33 *N.L.R.* at 335. A creditor who obtains such an order irregularly is liable in damages. 12 *Law Rec.* 233, which would include damages for loss of reputation as well as loss actually sustained. 3 *Law Rec.* 77. Where property belonging to a third party is seized under such a mandate an action lies for the recovery of damages without proof of malice. 8 *Times* 3. The object of sequestration before judgment is not to alter the position of the plaintiff with reference to third parties nor to give him any priority which he would not otherwise have over them but only to protect him against the fraud of the defendant. 1 *S.C.D.* 42.

Series. Two acts constitute a number of acts and would be sufficient to constitute a series. 27 *N.L.R.* at 141. Contra 27 *N.L.R.* at 113. Whether or not an act forms part of a series depends entirely on the class of acts which are in question. 5 *Times* 89.

Servant as used in section 9 of the Prescription Ordinance must not be taken to apply to persons other than those employed as domestic, menial or agricultural servants. It does not apply to the agent of a merchant for example. *1 Bal. 143; 4 Tam. 80.*

The mere use of the words "monthly paid servant" in a written contract of service and hire does not make one a servant as defined in Ordinance 11 of 1865. *1 Cr.A.R. 9.* A carriage painter is a servant within the meaning of that Ordinance. *16 N.L.R. 127.* A dhoby is not, *9 S.C.C. 117*, nor the tindal of a cargo boat, *Vand. 53*, nor a chauffeur, *6 Lead. 26*, nor a clerk, *2 C.L.R. 93; 4 Bal. 93*, nor a barber, *4 Tam. 44.*

A servant employed by a licensed butcher need not hold a license. *21 N.L.R. 184.*

Servitude. "I cannot believe, *per Shaw, J.*, that the Roman Dutch law is so inflexible that it is impossible to adapt it to modern requirements and that it is necessary to say that no servitude can now be acquired in Ceylon in the twentieth century other than were found necessary in Holland in mediæval days". *4 C.W.R. at 188.* So a servitude of threshing paddy can be acquired in Ceylon. *2 C.L.W. 361; 13 Law Rec. 230; 36 N.L.R. 267.* An obligation in the nature of a servitude might be imposed upon a land in respect of the passage over it of sewage matter from an adjoining land by long user. A sufficient *locus casus* is all that Roman Dutch law required for the exercise of this right. *3 Bal. 104.* There is no such servitude as drying clothes on the land of another, *14 N.L.R. 166*, nor can a servitude be claimed in respect of an overhanging tree. *2 N.L.R. 83.* Personal servitude cannot be acquired by user. *4 N.L.R. 189.* A co-owner cannot grant a servitude over the common property without the concurrence of the other co-owners. *36 N.L.R. 330.*

A servitude is extinguished by abandonment. *1 C.A.C 28; 24 N.L.R. 438*, which may be either express or tacit. *14 N.L.R. at 102; 5 Lead. 18.* A servitude also becomes extinct by confusion or merger by the same man becoming owner of the servient and dominant tenements, *22 N.L.R. at 126*, but there is no such *confusio* unless the interest of the proprietor in both tenements is indentical. *23 N.L.R. at 505.* A servitude once extinguished by fusion without the intention of subsequent separation is not revived by such separation unless provision for such revival is made in the subsequent deed. *2 Law Rec. 107.*

Share and share alike. A bequest of a thing to two people is not really converted into two separate bequests because the testator adds that they shall have it in equal shares *20 N.L.R. at 238.*

Setting aside a sale. A Court has power to set aside a sale for reasons other than those given in section 282 of the Civil Procedure Code if the application is made before confirmation of the sale. *14*

N.L.R. 8. Sections 282 and 283 of the Code require that the grounds of each irregularity should be expressly notified to the Court within the period of thirty days contemplated by the section and the Court has no power to set aside—whatever hardship the particular circumstances of the case may disclose—any sale on the ground of irregularity which has not been so notified. *15 N.L.R. at 141.*

Settlement. The Court can only act upon a settlement which has not only been mutually arrived at but is stated to Court by both parties. If one of the parties denies, though falsely, that there was any settlement there is an end of the matter and the case must take its ordinary course. *26 N.L.R. 126; 5 Law Rec. 204; 2 Times 159.*

Signals by a police officer to be obeyed refer to police officers in control of traffic. *31 N.L.R. at 361.*

Signature in section 69 of the Evidence Ordinance must be taken to include a mark. *17 N.L.R. at 62.* A signature in Sinhalese is not a mark within the meaning of section 439 of the Civil Procedure Code. *6 N.L.R. 25.*

The general rule of law is that if a man intends by his signature to vouch the promise embodied in a promissory note it means little on what part of the paper containing the engagement the signature has been placed. *21 N.L.R. 152; 4 Bal. at 142.*

Si sine liberis. The condition *si sine liberis decesserit* cannot be read into a deed *inter vivos.* *2 C.W.R. 208.*

Sister-in-law. By the law of this Colony there is no objection to a man marrying his wife's sister. *1 Br. 31.*

Sisyanusisiya paramparawe. The English equivalent of *sisyanusisiya paramparawe* is pupillary succession. *3 Bal. 260.* This law of succession is the general rule and the burden is on those who assert a different law of succession. *1 Mat. 236; 32 N.L.R. at 243.* The principle is that unless the founders of a temple are shown to have settled a particular rule of succession to an incumbency there is a presumption that the incumbency is governed by this pupillary succession. *22 N.L.R. at 242; 22 N.L.R. 276; 2 S.C.C. 26; 3 Law Rec. 25.* By this rule the succession devolves first to the pupils of the incumbent but when the descending line has been exhausted resort must be had to the ascending line and the tutor of the last incumbent is the proper person to succeed. *5 S.C.C. 8.* Where the incumbent of a vihare dies leaving a pupil and a fellow-pupil the pupil has the prior right of succession to the incumbency. *26 N.L.R. 257 F.B.* Where a priest was incumbent of two vihares and left two pupils one succeeding to each vihare, on the failure of the succession in one line any direct pupillary successor in the other line has a right to succeed to the vacant incumbency. *3 Law Rec. 15.* The rights of pupillary succession will be forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims. *14 N.L.R. at 407.*

Slander. The Roman Dutch law requires no proof of special damage to sustain an action for slander. *1 N.L.R. at 85; 18 N.L.R. 73.*

Slander of title. In an action for slander of title the plaintiff must prove malice or want of reasonable and probable cause on the part of the defendant. Mental and moral damages cannot be claimed in such an action. *2 Times 148.*

Soliciting. There is no such offence as soliciting prostitution. *2 Cr. A.R. at 9.*

Special circumstance. The failure on the part of a proctor to obtain the necessary leave to appear and defend an action, even where such failure is a case of pure oversight, is not a special circumstance such as is contemplated by section 707 of the Civil Procedure Code. *8 Law Rec. 10.*

Special damage means some particular damage to the person bringing the action in addition to the general inconvenience occasioned to the public. *5 Lead. 55.*

Specific performance is a doctrine known to our law. *1 N.L.R. at 284; 2 Br. 351.* Specific performance is an equitable remedy and in deciding whether this remedy should be given the Courts in Ceylon are guided by the same principles as the Courts of Equity in England. *1 N.L.R. 282; 17 N.L.R. at 241.* The rule that specific performance should be refused for want of mutuality must be considered from the Roman Dutch point of view so that where there is reasonable cause there is no want of mutuality. *20 N.L.R. at 407; 5 C.W.R. 242.* Where a contract cannot completely be performed the party in default may be ordered specifically to perform his part of the contract as far as possible. *30 N.L.R. 278.* Where time is of the essence of a contract the Courts of Equity will not decree specific performance and the only relief which will be given is relief from forfeiture in the nature of a penalty. *3 Times at 173; 7 Law Rec. 49.* A tender of the purchase money is a condition precedent to a demand for specific performance. *4 Times 122.*

Spes successionis. An heir has a right to sell a *spes successionis. 1 Mat. 281.*

Spot in section 5 of Ordinance 12 of 1911 means a particular spot on the seashore. *10 Law Rec. 47.*

Stall is a booth in a market and it means in some cases a table on which goods are exposed for sale. The word suggests nothing more than the space used for the purposes of sale. *Per Drieberg, J. 33 N.L.R. at 356; 9 Times at 76.* Licenses to hold stalls in a public market which are personal and not transferable do not form assets of an insolvent in insolvency proceedings. *36 N.L.R. 69. P.C.*

Stamp duty. A deed of gift of land must bear an *ad valorem* stamp. *12 N.L.R. 357 F.B.* If the essential and distinguishing features of a lease are present in any instrument such instrument is liable to stamp duty as a lease. *12 N.L.R. 59 F.B.* Where a plaintiff by reducing his claim by amendment of plaint reduces the class of a case the stamp duty payable on proceedings after such amendment is as in actions of the lower class. *1 N.L.R. 213.*

Starve. A person cannot be said to starve an animal unless it is within his power to feed it. *17 N.L.R. at 303.*

Statement to police officer cannot be used as substantive evidence because the witness who made the statement says it is true. *7 Law Rec. 175.*

Status. An objection with regard to the status of a party may be taken for the first time in appeal subject to an appropriate order as to costs. *26 N.L.R. 451.*

Statute. In construing an Ordinance the first rule of construction is that words are to be taken in their ordinary meaning unless it is clear that they are used in some technical sense. *5 N.L.R. at 55.* Courts have no power to add to the language of a statute unless the language as it stands is meaningless or leads to an absurdity. *25 N.L.R. 197.* Words are not to be read into an enactment which are not to be found there and which would alter its operative effect because of provisions found in a proviso. *26 N.L.R. 185.* For the purpose of construing an Act of Parliament a Court is not entitled to look at the Parliamentary debates which preceded its enactment. *13 N.L.R. at 31.* See *13 N.L.R. at 277.* If two constructions of an Ordinance are possible one of which is reasonable and the other unreasonable, it is the duty of the Court to choose the one which makes the Legislature to express a reasonable intention. *4 N.L.R. at 100.* It is a primary rule that a thing which is within the letter of a statute is not within the statute unless it is also within the real intention of the Legislature and words must be construed in the sense which is more in harmony with that intention. Every section of a statute should be construed with reference to the context and to the other sections so as to make a consistent enactment of the whole statute. *20 N.L.R. at 95; 4 C.W.R. at 273.* In interpreting an Ordinance imposing burdens on the subject it must be construed favourably to the subject. *4 N.L.R. 236.* It is a principle in the construction of statutes that you must not construe the words so as to take away rights which already existed before the statute was passed unless you have plain words which indicate that such was the intention of the Legislature and it is a rule not to construe a statute as interfering with or injuring a person's rights without compensation unless one is obliged so to construe it. *30 N.L.R. at 24.* The interpretation of all statutes must be favourable to personal liberty. *3 N.L.R. at*

163; 29 N.L.R. at 445; 9 Law Rec. at 146. It would be a very dangerous rule of construction if, when the Legislature has selected one rule out of several to carry with it penal consequences, it is to be understood as having implied that non-compliance with any other rule which is not mentioned is to have the same conequences. *29 N.L.R. at 5; 8 Law Rec at 171.* It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such construction appears very clearly in the terms of the Act or arises by necessary and direct implication. *34 N.L.R. at 68; 9 N.L.R. 90.* The general rule that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant does not hold good if the prior enactment is special and the subsequent enactment is general, *4 C.W.R. at 79.* As a rule when an enactment declares that a certain state of facts shall be presumed to exist the meaning is that this shall be so presumed or deemed by a Court in some legal proceeding before it and that the material time to consider for the purpose of the application of this presumption. If no time is otherwise indicated, is the date of the institution of the proceedings, that being the time with reference to which the respective rights of the parties are to be determined. *24 N.L.R. at 6.* It is one of the primary rules of construction of Ordinances that the jurisdiction of the civil Courts cannot be taken away by statute or other legislative enactment by implication only and any legislative enactment to take away the ordinary rights of citizens to have their cases tried by the legally constituted Courts must be specific and unmistakeable. *1 Law Rec. 167.* Under Roman Dutch law the Courts have power to declare a statute obsolete if they are satisfied of its tacit repeal by disuse or contrary usage. *2 C.L.W. 436; 14 Law Rec. 55; 36 N.L.R. 362.*

Statute of frauds should not be allowed to be used to perpetrate and cover fraud. *9 N.L.R. 177; 13 N.L.R. 104.* Where a person has obtained possession of property of another subject to a trust or condition and fraudulently claims to hold it free from such trust or condition he cannot be allowed to claim the advantage of the Statute of Frauds. *24 N.L.R. at 172.* But the principle that Equity does not allow the Statute of Frauds to be used as an instrument of fraud does not apply to a case where the absence of the writing is due merely to the non-performance of an informal contract to execute one. *7 Times 4.* The provisions of section 2 of Ordinance 7 of 1840 are limited to acts of parties which are directed to affect the legal estate; they are not concerned with equitable interests. *8 Law Rec. 192; 5 Times 19.* There is a substantial difference between section 4 of the English Statute of Frauds and section 2 of Ordinance 7 of 1840. *28 N.L.R. at 13.*

Statute law. No Court should refuse to apply statute law even though there be no formal issue stated on the point. If necessary the Court should, in pursuance of the provisions of the Civil Procedure Code in that behalf, frame an issue before delivering judgment. *21 N.L.R. 51.*

Stay of proceedings. A Court has inherent jurisdiction to make an order in the nature of a stay of proceedings against a judgment appealed from where such order is necessary to prevent the appeal, if successful, from being nugatory. *8 C.W.R. at 239.*

Stipulation. No technical words are required to make stipulation a condition precedent. The question must depend on the nature of the contract and the acts to be performed by the contracting parties. *16 N.L.R. at 22.*

Stirpes. The words *per stirpes* in section 35 of the Matrimonial Rights Ordinances governs only the words "children of deceased uncles and aunts" and not the earlier phrase "uncles and aunts" as well. *20 N.L.R. 308.*

Street lines. The laying down of street lines is not a legal step in the acquisition of land by the Municipality *35 N.L.R. at 121.* A local authority has no power to cancel street lines which it has defined under section 18 (4) of Ordinance 19 of 1915. *7 Times 114.*

Subsequent deed in section 17 of the Land Registration Ordinance of 1891 means a deed which is subsequent as regards date of execution. *5 Lead. 70.*

Substituted service of summons should not be allowed unless the Fiscal has reported that he is unable, although reasonable exertions have been made by him to do so, to effect personal service and the Court is satisfied on evidence that the defendant against whom substituted service is applied for is within the Island. Where substituted service is allowed the Court must prescribe the mode of substituted service and it must do so on proper materials which satisfy it that the mode selected is the most perfect substitute for personal service which under the circumstances it is possible to obtain. *9 N.L.R. 325; 1 Times 141; 3 Times 85; 4 Law Rec. 157; 2 Law Rec. 194.* The failure to prescribe the mode of service is an irregularity which renders the proceedings void. *11 Law Rec. 165.* The order must specify the last known place of abode of the defendant at which substituted service is to be effected. *9 Times 44.*

Sub-tenant. The principle of the Roman Dutch law that a purchaser of property is entitled to claim rent due by a lessee to the original owner does not apply to sub-tenants. *27 N.L.R. 59.*

Suffer. See ALLOW.

Suitor in section 5 of Ordinance 11 of 1894 means a party to a suit in Court who for the time being has business in Court. *18 N.L.R. 63.*

Summary inquiry may mean an inquiry the decision whereof will be limited to a finding based upon such facts as may summarily be proved, e.g., by an admission of the parties or the production of some absolute notarial act which is *prima facie* conclusive against the party making it. *2 Br. at 84.*

Summary trial is a trial without preliminary investigation by a Magistrate, without the supervision and control of the Attorney-General, necessarily without assessors to assist the Judge and, as a general rule, without the aid of Crown Counsel to conduct the prosecution. Cases in which the complicated character of the facts or the difficult questions of law involved render it desirable that the trying Judge should have such assistance must not therefore be tried summarily. *1 Bal. 25.* See *7 N.L.R. at 189*; *2 N.L.R. 340.* Offences of exceptional gravity are not triable summarily by a Police Magistrate. *14 Law Rec. 43*; *14 Law Rec. 191.* In the course of a trial for an offence triable summarily by a Police Magistrate if the evidence adduced discloses a graver offence not triable summarily, it is not competent for the Magistrate to select the lesser offence for trial. *1 A.C.R. 49*; *5 N.L.R. 93.* A Magistrate has no power to adjourn a summary trial to enable the complainant to make inquiry and find out further evidence against the accused. *2 N.L.R. 180.* In a summary trial the accused ought not to be allowed to make statements not on oath. *1 Br. 98.*

Summons can only issue to a party. *3 Bal. at 129.* Summons served upon the defendant should be in the English language and not merely a translation. *22 N.L.R. 33 F.B.* Service of summons under section 705 of the Civil Procedure Code need not be personal. *28 N.L.R. 443*; *8 Law Rec. 154*; *5 Times 2.*

A summons under section 83 of the Criminal Procedure Code should state specifically under which of the heads dealt with by the section the man is understood to come and evidence at the trial should be limited to the charges so specified. *4 Law Rec. 212.* It is irregular to convict an accused under section 172 of the Penal Code for not attending Court in obedience to a summons alleged to have been served on him unless the summons is produced in evidence. *3 N.L.R. 260.*

Under the provisions of section 15 of the Waste Lands Ordinance as well as sections 55 and 121 of the Civil Procedure Code the Secretary of the Court is entitled to withhold the issue of a summons until the party desiring the issue of that summons has furnished a form for the purpose for his signature. *2 Law Rec. 101.*

Sunday. The Holidays Ordinance expressly disclaims any intention of attributing any special sanctity to Sunday as religious day. *20 N.L.R. at 473.* Under our law a person cannot be compelled to do a judicial act on a Sunday. *26 N.L.R. at 409*; *6 Law Rec. 99.*

Superficies. The right of *superficies* is recognised by the civil law and is in accordance with the habits and customs of the people of this country. *7 Tam. at 76.* According to the common law of Ceylon a person has right to build on land belonging to another and to use such building until the owner of the land tenders the value of the building. *8 N.L.R. 330.* The *jus superficias* is acquired and lost

in the same manner as any other right to immovable property. It may be acquired by prescription and is capable of alienation. *8 N.L.R. 330.* *Superficies* may be acquired by agreement between the owner and the superficiary and it is a matter of doubt whether such agreement would be valid unless it is notarially executed. *14 N.L.R. at 270.* In order to create the right of *superficies* it is necessary that there should be a distinct agreement between the parties to that effect. In exceptional cases such an agreement may be inferred from the fact that the owner permits another to build on his land. *9 N.L.R. 331.* *Superificies* being included in the term landed property may form the subject of a partition suit. *1 Br. 251.*

Superintendent of an estate has no authority to pledge the credit of the owners. *4 C.W.R. 134.*

Supreme Court as it now exists was constituted by Ordinance 1 of 1889 and has the powers which are expressly or impliedly given to it by that statute and no other. *1 A.C.R. 128.* The Supreme Court has power to review a judgment of its own passed in appeal where it appears that fresh evidence has been discovered since such judgment was pronounced. *2 N.L R. 311.* The Supreme Court has inherent power to grant protection from arrest to an insolvent who has appealed to the Privy Council from an order of the Supreme Court refusing a certificate. *2 C.L.W. 195*; *10 Times 136.*

Surety who discharges the principal obligation is entitled to stand in the shoes of the creditor and enforce all the rights available to that creditor. *21 N.L.R. 94.* A creditor is in fact the trustee of a surety for the security which he holds for his debt and he cannot be allowed to impair the value of his securities and still preserve his right to proceed against the surety. *24 N.L.R. at 243*; *3 Lor. 254.* The law limits the discharge of the surety to the loss than can be shown to have accrued to him from the creditor's misfeasance. *24 N.L.R. at 345.* Where it can be shown that in respect of a partial discharge of a debtor the surety acquiesced and agreed in the transaction the law does not declare that the surety is discharged. *21 N.L.R. at 344.* Mere dilatoriness on the part of the creditor is not sufficient to discharge the surety in the absence of any positive act on his part depriving the surety of his recourse against the principal debtor. *8 Law Rec. 23.*

There is no provision in the Criminal Procedure Code whereby the property of an accused must be excused before the surety can be held liable on his recognizance. *3 Times 17.* A surety is entitled to notice to show cause why the bond should not be forfeited and a forfeiture without such notice is bad. *4 Tam. 91.* A surety has a right of appeal from an order declaring a bond forfeited. *4 Tam. 94.* See *8 N.L.R. 140.*

Surgeon. By the Lex Aquilia a surgeon is liable in damages for unskilfulness or negligence. *1 Bal. 3.*

Surgery. The manual treatment known as massage is not surgery. *30 N.L.R. 285; 10 Law Rec. 27; 6 Times 91.*

Surrender in insolvency is a personal act. *31 N.L.R. 7.*

Survey. It is the ordinary practice where one party is unwilling in the first instance to contribute towards the cost of a survey for the other party who desires such a survey to get the work done at his expense and take his chance of recovering it after the determination of the action. *22 N.L.R. at 184.*

Surveyor appointed by the Court becomes an officer of Court and it is his duty to hold the scales equally between the litigants. *8 N.L.R. 298.* A surveyor although he may not be guilty of fraudulent misconduct is liable to have his license cancelled under section 8 of Ordinance 15 of 1889 if it is shown that his work contains such errors as to prove him incapable of discharging his duties with advantage to the public. *12 N.L.R. 53.*

System. Evidence of system is not admissible unless a question arises whether an act was accidental or intentional or done with a particular knowledge. *14 Law Rec. 183.*

Tacit hypothecs has been recognized in Ceylon. *1 Bal. at 136.* See also ANNUITY; COMPENSATION.

Tank. The bed of an abandoned tank, the name of which appears in the list of public tanks, must be presumed to be the property of the Crown. *3 Times 91; 6 Law Rec. 149,* and is forest. *2 Lead. 148.*

Tattamaru possession is an arrangement by which the co-owners agree for considerations of convenience to possess the entirety of the corpus in turns instead of each taking his proportionate share of the crop. The arrangement not being by notarial deed in no way affects the rights of the co-owners each of whom is free at any time to resume his strict legal rights. *16 N.L.R. 207.* Occupation of land by one in tattamaru succession with another is for the whole period of the succession continuous possession by each jointly with the other. *2 S.C.C. 87.*

Taxable bet. A bet taken on a horse race to be run outside Ceylon is covered by section 3 of the Betting Ordinance of 1930. *10 Times 62; 12 Law Rec. 123.* A bet cannot be made merely by handing money to a person for him to put on the totalisator. *9 Times at 56.*

Taxable income. Income derived from loans, other than interest on those loans, is taxable income under the Income Tax Ordinance. *35 N.L.R. at 297.*

Taxation of costs. The taxation of a bill of costs lies in the discretion of the taxing master subject to revision by the Court. *3 Law Rec. 68.* Before a bill of costs is taxed the opposing proctor is entitled to have a fair and reasonable notice of taxation. *5 Lead. 62; 14 N.L.R. 334.* There is no provision of law which empowers a Judge to re-tax or revise the taxation of bills as taxed by the taxing officer except upon a reference to him of a matter in dispute by that officer. *8 Law Rec. 174.* Where in a bill of costs presented for taxation an item is accidentally omitted application may be made to Court to correct the mistake and order the taxing officer to tax a supplementary bill. *35 N.L.R. 249.* The jurisdiction of the Court to award costs cannot be questioned in proceedings in review of taxation. *6 C.W.R. at 83.* An appeal lies from an order of the Commissioner of Requests in revision of taxation of a bill of costs. *1 C.W.R. 131.*

The proceedings under the Trade Marks Ordinance should be valued as in ordinary actions and the class of costs determined upon such valuation. *8 Law Rec. 143.*

Technicalities. Judges should not give effect to merely technical objections in the course of judicial proceedings, *2 N.L.R. 9; 8 Law Rec. 13,* or in arbitration proceedings. *5 Law Rec. 112.*

It would be most unfortunate in this country where three languages are employed and where documents have to be executed by notaries of a comparatively simple type in remote parts of the country if the strict technicalities of English practice were applied to the deeds which they draw up. *21 N.L.R. at 4.*

Under the provisions of the Criminal Procedure Code a conviction should not be set aside in appeal on a purely technical objection. The point of law may be decided in appellant's favour but the appeal dismissed unless there has been a failure of justice, i.e., if the point had been considered in the original Court the Judge or jury might have come to a different conclusion. *4 Law Rec. 64.*

Tediatatem. Under the Thesavalamai property acquired by a wife during the subsistence of the marriage out of money which formed part of her separate estate is tediatatem property. *35 N.L.R. 313 F.B.; 13 Law Rec. 135.* See *2 Law Rec. 155.* Property acquired by a spouse after separation *a mensa et thoro* cases to be tediatatem property under section 22 of Ordinance 1 of 1911. *2 C.L.W. 177.* Tediatatem does not include salary earned as a teacher. *31 N.L.R. 257; 10 Law Rec. 145.* Tediatatem property is liable for the debts of the husband notwithstanding a divorce a *vinculo* between husband and wife. *2 C.L.R. 132.* A husband has the power to sell and mortgage the tediatatem without the consent of his wife in the exercise of his power of management, *12 Law Rec. 83,* but he cannot donate more than one half. *9 Law Rec. 89; 5 Times 135.* A husband is ordinarily not an heir to

the estate of his wife. The half of the tediatatem which vests in him on the death of his wife does not devolve on him as an heir of his wife. It is a separation of his half of the property acquired during marriage which is regarded as common. The position is similar to the separation of the half share of the survivor of persons married in community of property under the Roman Dutch law. *33 N.L.R. at 175.*

Temple registers are not public documents with the meaning of section 74 of the Evidence Ordinance. Nor are they admissible as private documents unless they are statements made in the ordinary course of business by a deceased person. Ordinarily they are only hearsay evidence, that has been recorded, of some clerk in the Kachcheri who is under no public obligation to keep them and are merely compiled for the information of the Government Agent. 2 *C.W.R. 333.*

Tenant. Where a person is in possession of a land by virtue of a non-notarial lease for a number of years he is to be regarded as a monthly tenant and not as a tenant at will or a tenant by suffrance and is entitled to a month's notice before ejectment. *25 N.L.R. 176*; see *30 N.L.R. 363.*

A tenant is entitled to quit a house without notice without making himself liable for any rent for the period after quitting provided he can prove that the defects in the house rendered it useless for the purpose for which, to the knowledge of the landlord, he had hired it. *10 Law Rec. 44.* Where a tenant holds over after a notice to quit or pay increased rent the question arises in the first instance whether by so doing he assents to a new tenancy on the new terms and if it is held that he did he will be liable for the enhanced rent. If it is held that a new tenancy was not created he is liable for use and occupation and the increased rent may afford fair material on which to determine what that is worth. *34 N.L.R. at 28.* A tenant is not discharged from his legal obligation to his landlord by a purely lawful act on the part of that landlord simply because in consequence of that act his own sub-tenants misconceived their legal positions. *24 N.L.R. at 242.*

See also LEASE, LESSEE.

Tender. A mere statement that money is ready without it being offered for acceptance is not sufficient to constitute tender. 2 *N.L.R. 159.* The rule that a creditor to whom a tender is made is under no obligation to give change has no application where the creditor at the time of the tender takes no exception to its form but refuses to accept the tender on entirely different grounds. 2 *C.W.R. 251.*

The production of a document to the Court under the provisions of section 53 of the Civil Procedure Code is not the tendering of evidence to the Court within the meaning of the word "tender" as used in section 37. *9 Law Rec. 62.*

Tenement. A small tenement need not be a single room occupied by one tenant. Many rooms may constitute one tenement provided that the tenants do not pay more than twenty rupees a month. *5 N.L.R. 186; 2 Br. 175.*

Tenement sheet attached to a survey made by an officer of the Surveyor-General's department cannot be referred to in explanation of the survey unless it be properly proved. *5 N.L.R. 98; 2 Br. 131.*

Tether. To tether an animal is to secure it so as to allow it a certain definite and limited range of movement. 2 *C.L.W. at 342; 13 Law Rec. 152; 36 N.L.R. 143.*

Thalie Under the Muslim law a husband who has divorced his wife is not entitled to recover the thali given by him to her at marriage. *34 N.L.R. 356; 1 C.L.W. 347; 12 Law Rec. 67.*

Theft. To constitute the offence of theft it is not necessary that the accused should have intended to deprive the owner permanently of his property provided he acted so as to cause wrongful loss to the owner. *2 Times 9; 5 Law Rec. at 131.* But a person who keeps the owner of movable property temporarily out of the possession of them merely in order to cause him annoyance does not commit theft. *5 Law Rec. 151; 1 S.C.R. 31; 2 C.L.R. 14.* Theft may be committed of one's own property if it be taken from the possession of a person who has a right to such possession. *25 N.L.R. at 5.* Abandoned things cannot be the subject of theft. It is not necessary that the subject should be in fact derelict. It is sufficient if the person charged *bona fide* believed it to be so. *19 N.L.R. 190.*

Thereupon. "I do not think the word *thereupon* must always be interpreted as meaning "immediately." It would be necessary sometimes to interpret it as meaning "as soon as an act which has to be done may conveniently and properly be done." *28 N.L.R. at 154; 4 Times 143.*

Thesavalamai is not a personal law attaching itself by reason of descent and religion to the whole Tamil population of Ceylon but an exceptional custom in force in the province of Jaffna and in force there only among Tamils who can be said to be inhabitants of that province. *16 N.L.R. 321; 1 Cur. L.R. at 249.* The Thesavalami has no application to a native of Tinnevelley who has settled down in the Central Province. *14 N.L.R. at 503.*

It applies to Tamils residing in the Mannar district. *1 S.C.C. 9.* The English text of the Thesavalamai published in the first

volume of the Ordinances must be taken as the sole recognized official depository and declaration of the laws and customs of the Tamils of Jaffna. *8 N.L.R. 62.* The customs collected under the Thesavalamai must be read in the light of convenience rather than by any theory of positive law. *20 N.L.R. at 480.* Where the Thesavalamai is silent or contains no provisions from which a principle may be deduced to decide a contest the Roman Dutch law is applicable but its assistance should be sought only to the extent necessary to fill the omission of the Thesavalamai and no more. *3 Law Rec. 125; 4 Tam. 116.*

One general rule of the Thesavalamai is that males succeeded to males and females to females. *4 Tam. 60; 31 N L R. at 267.* The principle regulating intestate succession that females shall inherit from females is not affected by the fact that the survivor is unmarried. *10 Law Rec. 150.* Property inherited by a child from its mother goes on its death to the mother's next of kin and not to the father. *11 N.L.R. 345 F.B.* The principle of the Thesavalamai that a dowried daughter has no share in the paternal inheritance applies equally to the case of a daughter who has been dowried by her brother as to that of a daugther dowried by her parents. *7 Times 87.* Under the Thesavalami there arises between the husband and wife in all property acquired during the marriage a partnership by operation of law. All such property from the moment of its acquisition is the common property of the two spouses. On the death of either of the spouses one half of this common property remains the property of the survivor and the other half vests in the heirs of the deceased subject to its liability to be applied for payment of debts contracted by the spouses or either of them. *3 Times at 18; 5 Law Rec. 92.* A married woman is not competent to deal with her immovable property without the concurrence of her husband. *18 N.L R. 435.* But a married woman who is seperated from her husband may, without the husband joining in the deed, alienate property for the sake of procuring maintenance for herself. *3 N.L.R. 347.*

Third party. Under the Roman Dutch law a stipulation in a contract in favour of a third party may be enforced by such party where it has been accepted by him. *34 N.L.R. 344; 10 Times 85; 12 Law Rec. 179.*

Thombu was a register made by the Dutch Government and was in its sole custody and this fact at once takes it out of the category of instruments aimed at by the Registration Ordinance. *21 N.L.R. at 148.*

Thoroughfare is not the property of the Crown but of the public. *21 N.L.R. at 251.* The enjoyment of an undefined right of way for a passage of carts over a person's land does not necessarily constitute that right of way a thoroughfare within the terms of Ordinance 10 of 1861. *4 S.C.C. 95.*

Threat of injury to a public servant punishable under section 186 of the Penal Code must be of coming injury such as is likely to operate on the mind to cause the public servant to do or to forbear to do or delay doing an act connected with the exercise of his public function. *34 N L.R. 319*

Time immemorial. From a user by the public for a considerable time the Court may infer a user from time immemorial. *23 N.L R. 348.* See *34 N.L.R. 39.*

Title in section 2 of Ordinance 6 of 1866 is not used in the sense of *dominium* but in the larger significance of right or interest in land. *16 N.L.R. at 483.*

In proceedings under the Land Acquisition Ordinance it is open to a claimant to perfect his title after the reference to Court. *30 N.L.R. 216.*

Under the common law there must be delivery to complete the transfer of title; under our law as it obtains today delivery of the deed is sufficient for the purpose. *33 N.L.R. at 367.* No conveyance from an executor is necessary for the purpose of vesting title in the heirs. *26 N.L.R. at 475.* If a person sells a specific thing even though his source of title to it is mistakenly stated his title, however derived, passes to the purchaser. *25 N.L.R. at 436.*

Title paramount. A tenant may prove that since the tenancy commenced the landlord's title expired and that he had been evicted by title paramount. *23 N.L.R. 91; 8 Law Rec. 13; 4 Times 108.*

Toddy. The expression "drawing toddy" has been held to refer both to the act of extracting toddy from the flower as well as the act of bringing away the toddy collected in the pot attached to the flower. *28 N.L.R. at 130; 9 S.C.C. 19.* In a charge of drawing toddy from a coconut tree it is sufficient to prove that the accused removed toddy from the top to the bottom. *5 Times 90.* A person who allows toddy to ferment in a pot on a tree draws fermented toddy from that tree, *8 Times 147*, and may be said to manufacture fermented toddy. *28 N.L.R. 129 F.B.* By the term "tapping for fermented toddy" the legislature intended to describe the whole process of tapping the trees, allowing the toddy to ferment in the pots and bringing it away in the fermented state from the trees. *6 Law Rec. 133.* The mere fact that a person is the owner of a land on which a tree from which fermented toddy has been shown to have been drawn stands is not sufficient proof of the manufacture of fermented toddy by him. *11 Times 59.*

Tollok means words of divorce and need not be in writing. *10 N.L.R. at 111; 3 Br. at 11.*

Tort. All trespass is *prima facie* actionable. There is no action where the plaintiff himself has caused the injury or where the acts complained of are due to inevitable accident by which is meant an act which is neither intentional nor negligent. *6 N.L.R. 179.* The Crown cannot be sued in tort in Ceylon. *2 Br. 91; 5 N.L.R. 65; 16 N.L.R. 161; 26 N.L.R. 1.*

Tout is one who procures the employment in any legal business of any legal practitioner in consideration of remuneration moving from such practitioner or proposes to secure his employment in legal business in consideration of such remuneration. *16 N.L.R. 69.*

Touting. The offence created by section 5 of Ordinance 11 of 1894 has relation to persons other than parties to the action or other proceeding in Court. *1 Cr. A.R. 47.*

Town. A village is a town within the meaning of section 90 of the Police Ordinance 16 of 1865. *8 N.L.R. at 169; 2 C.W.R. 228.*

Trade means primarily traffic by way of sale or exchange or commercial dealing. *15 N.L.R. at 331; 26 N.L.R 321,* with or without profit. *16 N.L.R. 310; 2 Law Rec. at 197.* An isolated act of slaughtering a goat and selling its flesh does not make a man responsible for carrying on a trade of a butcher within the meaning of Ordinance 9 of 1893. *2 A.C.R. 28.*

Trade description. A mere oral description of any goods does not amount to a trade description. *5 Tam. 43.*

Trader is a man who buys and sells goods. *1 Br. 70.*

Trade mark is calculated to deceive by its resemblance to another on the register if in the probable course of its legitimate use in the trade it is likely to do so. *34 N.L.R. 231; 12 Law Rec. 213.* The question whether two trade marks so nearly resemble each other as to be calculated to deceive must be determined by considering what is the leading characteristic of each and whether the main impression which would remain with any person seeing them at different times is the same. *35 N.L.R. 48.* See *35 N.L.R. 129; 10 Times 107; 36 N.L.R. 317.* To establish the offence of forging a trade mark it is not necessary to show that there was any intent on the part of the accused to deceive anyone. *34 N.L.R. 231; 10 Times 75; 12 Law Rec. 146.* A party opposing an application for the registration of a trade mark may not raise at the hearing of the appeal from the decision of the registrar a ground of objection not taken by him before the registrar but which was known to him at the time. *7 Times 101.* The mere possibility of deception by passing off is not a good ground for refusing registration of a mark. *24 N.L.R. 396.*

Trade name. The addition of the name of one's village to one's own name does not render it a trade name requiring registration under Ordinance 6 of 1918. *8 Times 106.*

Tramcar is a coach within the meaning of the Carrier's Ordinance of 1865. *5 N.L.R. 52.*

Tramway is not a railway line within the meaning of section 37 of Ordinance 14 of 1865. *2 Br. 41.*

Transaction in section 180 of the Criminal Procedure Code is sufficiently general to cover the case of a man who is reduced to a state of temporary frenzy by drunkenness or drugs and in pursuance of the condition so generated runs along a street and commits a series of offences sometimes inspired by one motive and sometimes by another against persons with whom he comes face to face. *21 N.L.R. 375 F.B. 1 Law Rec. 191.*

Transfer. A mortgage is not a transfer and does not fall within section 547 of the Civil Procedure Code. *12 N.L.R. 134.*

Transfer of a decree is not complete until the Court after consideration has sanctioned it. *31 N.L.R. at 382.*

Transmission by post. Where a creditor asks a debtor to forward the money due by post and the money is so transmitted the risk of loss during transmission by post is on the creditor. The onus, however, of proving that the money was stolen in the post lies on the debtor. *23 N.L.R. 218; 4 Law Rec. 46.*

Transporting. The act of transporting arrack itself constitutes the offence and it does not matter whether the quantity so transported was originally purchased by one person or several. *18 N.L.R. 286.*

Treating. One single instance of treating whether it be a cup of tea and stringhoppers, a glass of beer or even bread and water if given with a corrupt intention is sufficient to invalidate an election. *32 N.L.R. at 124.*

Trespass in section 292 of the Penal Code does not mean criminal trespass. *6 Law Rec. 71,* but includes any violent or injurious act committed in a place of worship. *2 Times 231.* The term "trespass" in section 32 of Ordinance 9 of 1902 has not the same meaning as criminal trespass. *14 N.L.R. 349.* Lawful entry is not trespass whatever ulterior motive may partly actuate the party in exercising the right of entry. *19 N.L.R. at 264.* Mere constructive possession is not a sufficient basis for an action for trespass. *24 N.L.R. 54; 4 Law Rec. 129,* but a person who is in possession of property though he may not have come by it legally can maintain trespass against all persons except the true owner. *21 N.L.R. 123.*

Trespasser is treated as a person who may suitably be punished with vindictive damages. *6 S.C.D. 63.* An over-holding tenant is

treated as a trespasser. *6 Lead 6.* There is no authority for the proposition that a trespasser may be ordered to pay compensation as an alternative to removing encroachments. *2 Mat. 204.*

Trial. It is the duty of the Court to fix a day for the hearing of a case and not to await an application therefor by the plaintiff. *2 N.L.R. 29; 11 N.L.R. 202.*

Trust whether express or constructive is not extinguished by a decree for partition and attaches to the divided portion which on the partition is assigned to the trustee. *22 N.L.R. 137 F.B.; 2 Law Rec. 77.* Where property is sold under a partition decree there is nothing to prevent a person claiming the property on the ground of a secret trust between himself and the nominal purchaser. Such a claim if successful will in no way challenge or defeat the title. It will only have the effect of substituting the real purchaser for the nominal one. *15 N.L.R. at 138.*

A trust cannot be enforced while the plaintiff is in a position of influence and confidence as a solicitor of the defendant although the plaintiff does not use that influence. *6 Times 136.*

The word "trusts" in section 39 of the Buddhist Temporalities Ordinance of 1915 is inseparable from the ownership of property and consequently a trustee or a member of a committee appointed under the Ordinance can be sued under this section for a neglect of duty only if the neglect of duty is in respect of property held in trust by him. *7 C.W.R. 77.*

Trustee cannot delegate his powers except within certain well-recognized limits. *31 N.L.R. at 44; 10 Law Rec. 96.* The law knows nothing of the idea of a trustee suing or being sued in his capacity as trustee. He has not a representative character like that of an executor or administrator. *23 N.L.R. at 265.* A trustee is personally liable on contracts entered into by him as trustee. *35 N.L.R. 157, 10 Times 156; 12 Law Rec. 266; 4 Law Rec. at 5.* A trustee receiving money on behalf of his *cestui que trust* cannot set up a plea of prescription in bar of the claim by such *cestui que trust. 1 N.L.R. 120.*

A trustee under the Buddhist Temporalities Ordinance is the owner of the temple property subject to the terms of the trust on which the property is vested in him. *7 N.L.R. at 165.* A trustee of a Buddhist temple whose resignation from office has been tendered to and accepted by the Public Trustee and his Advisory Board cannot withdraw his resignation upon changing his mind. *10 Times 112; 12 Law Rec. 208.*

Uncertificated bankrupt. A person who has been adjudged an insolvent and who has not obtained a certificate at the date of the preparation of the list is an uncertificated bankrupt within the meaning of section 10 (4) (c) of Ordinance 6 of 1910. *34 N.L.R. 352; 2 C.L.W. 141; 10 Times 124; 12 Law Rec. 236.*

Undivided in section 17 of the Partition Ordinance means undivided in the eye of the law. *6 S.C.D. 69.*

Undivided share. It is competent to owners of undivided shares to make arrangements among themselves as to the enjoyment of the produce of the land. *3 N.L.R. 195.* Where by agreement among the co-owners the owner or the lessee of an undivided share possesses certain specific trees for his right in the land the owner or lessee, as the case may be has a right to ask to be restored to possession of the specific trees when ousted therefrom. It would be a denial of justice to say that his only remedy is to obtain a partition of the land. *2 Mat. 160.* Where persons who are entitled by prescriptive possession to a part of the land convey an undivided share of the whole land then the persons claiming under that title, unless they can show that they themselves have acquired title by prescription, are bound by the terms of their deeds. *32 N.L.R. at 229.* A person who acquires an undivided share of a land is only entitled to the same undivided share of any specific portion of the land when the partition of that portion is under consideration. Where, however, two parties have acquired the whole interest of a shareholder in certain proportions and their deeds describe the interests of such a shareholder as an undivided interest and it transpires that a specific portion of the land has in fact been held by the person through whom they both claim as his portion for the prescriptive period and the question then arises as to the proportion in which that specific portion has to be divided as between these parties, this specific portion must be divided in the same proportions as those described in their deeds. *23 N.L.R. 483.* The prohibition against alienation or hypothecation of undivided shares or interests in property subject to a partition action where the Court decrees a sale continues till the issue of the certificate under section 8 of the Partition Ordinance. *26 N.L.R. 204 F.B.*

See also ALIENATION PENDING PARTITION.

Undue influence. The English law of undue influence has become part of the law of Ceylon. *35 N.L.R. 257.* The burden of proof of undue influence is on those who allege it. It cannot be presumed. *22 N.L.R. at 6; 9 N.L.R. at 23.* In order to establish undue influence there must be something in the nature of coercion of fraud. It must in fact be shown that the document impeached is not really that of the maker in the sense that he had not a consenting mind to its terms. *2 C.W.R. 190.*

Unexecuted. Where a judgment-creditor allows a judgment to remain unexecuted for a number of years a *prima facie* presumption arises that the debt has been satisfied or some settlement or adjustment has been come to about it. The creditor must prove that the amount is due before he is entitled to the prayer of his petition for execution. *2 Bal. 61.*

Unlawful assembly. In order to make a member of an assembly criminally liable for joining that assembly it must be clearly shown in what respect the assembly was unlawful and the nature of the unlawfulness must be specified in the charge. *30 N.L.R. at 242.* An intention voluntarily to cause hurt can constitute the common object of an unlawful assembly. *18 N.L.R. 322 F.B.* Criminal force is a necessary ingredient to an unlawful assembly. *8 C.W.R. at 285.* In a charge of unlawful assembly the omission to state the common object of the assembly should not be regarded as material unless the accused were misled by it. *1 C.W.R. 207.* But see *10 Law Rec. 1; 6 Times 70.* Where three out of six men charged with unlawful assembly had been acquitted the remaining three could not be convicted of unlawful assembly although many others not definitely known or identified might have been present with these three. *1 Tam. 15.*

Unlawful gaming includes betting or playing a game for a stake in private premises to which the public have access. It is not a question of the public having access as of right. It is merely a question of publicity. *6 Law Rec. 172.* Chance is not a necessary element in the offence of unlawful gaming. *15 N.L.R. 189; 26 N.L.R. 214.* The essence of the offence of gaming is the existence of a stake. *2 S.C.R. 62.* The playing of games of chance is lawful provided there is no stake. *2 S.C.R. 75; 3 C.L.R. 2; 2 C.L.R. 193.* The essence of the offence of unlawful gaming under Ordinance 17 of 1889 is the publicity which attracts idlers of all sorts to various forms of public nuisance. It is therefore incumbent on the prosecution, on a charge of unlawful gaming, to prove that the house in which the gaming was carried on was a common gaming place. *1 N.L.R. 216; 4 S.C.D. 94; 4 Lead. 123.*

Unlawful purpose. An immoral purpose is not an unlawful purpose. *14 Law Rec. 190.* The purpose of committing secret fornication is not an unlawful purpose within the meaning of section 4 (6) of the Vagrants Ordinance. *Wendt 237.*

Unliquidated damages. A claim for unliquidated damages is a defence to an action under Chapter 53 of the Civil Procedure Code. *1 Br. 61; 6 N.L.R. 289.*

Unoccupied and uncultivated land means land unoccupied or uncultivated during the whole of living memory. *1 Mat. 80.* Uncultivated land in the Waste Lands Ordinance includes all land which at the time of the passing of the Ordinance was not in the actual occupation of any person. *23 N.L.R. 289.* Land is not unoccupied because, for their own reasons, the owners of it leave it without a caretaker and without making any use of it for some months. *6 N.L.R. at 320.*

Unprofessional conduct. It is unprofessional conduct on the part of a proctor to sign a plaint drawn by a petition drawer and such conduct will render him liable to be disenrolled or suspended from practice. *4 N.L.R. 127.* To appear before Court to conduct a case while being drunk is unprofessional conduct. *4 N.L.R. 155.*

Unreasonably. A father who refuses to give his consent to his daughter marrying a man of a different race and religion cannot be said to be unreasonably withholding his consent. *8 C.W.R. 307.*

Use and occupation. An action for use and occupation has been formally and authoritatively adopted into the law of Ceylon. *6 Law Rec. 171.* An action for use and occupation will not lie unless there has been a contractual relationship either express or, as in the case of a tenancy by suffrance, implied between the parties. *3 Bal. 110; 10 N.L.R. 178.* It does not lie where the defendant has never admitted title in the plaintiff but has occupied under a claim of title hostile to plaintiff. *5 S.C.C. 133; 4 Times 124.* Though a land is let on a verbal lease an action for use and occupation lies for recovery of the rental due. Such an action will not fail because the cause of action discloses an agreement which is required by law to be in writing. *1. A.C.R. 43.* The action for use and occupation lay at common law in respect of the occupation of land by a person bound to pay remuneration for it without the amount or time of payment being fixed. *23 N.L.R. at 200.* There is no reason why a person in the occupation of a land to which he has not a complete title should not sue for use and occupation a person whom he has put into occupation under himself. *23 N.L.R. at 201.*

Useful improvements are any improvements or any benefit done to the land which enhances its selling value. *6 N.L.R. at 47.* Electric lights are a useful improvement in regard to a boutique. *1 C.L.W. 228.* The money which a *bona fide* possessor pays in discharge of a mortgage which encumbered the property when it came into his hands is *utilis impensa*. *1 N.L.R. 228.* A *mala fide* possessor is not entitled to compensation for useful improvements. *18 N.L.R. 57.* A purchaser from a fiduciary heir cannot claim compensation from the fidei commissary for useful improvements. *18 N.L.R. 57.*

Usufruct may be acquired by proof of prescriptive possession for the necessary period. *9 Law Rec. at 128; 30 N.L.R. 112.*

Usufructuary may dig for and extract minerals from the land but he is only entitled to the interest on the proceeds thereof. *21 N.L.R. 197.*

Usufructuary mortgage is, in effect, a letting of the land superadded to the hypothecation with the agreement that the rent should be appropriated to the satisfaction of the interest on the debt. *3 Bal. at 224.* A usufructuary mortgagee is bound to restore

the mortgaged property undamaged to the mortgagor when the debt has been discharged. Such mortgagee is liable for damage done to the mortgaged property through his *culpa levis* during his possession. *9 Law Rec. 85; 29 N.L.R. 349.* A usufructuary mortgagee can lease his usufructuary rights. *24 N.L.R. at 224; 2 C.L.R. 158.* A person possessing a land as usufructuary mortgagee can acquire title to it by prescription if something in the nature of ouster and adverse possession for over ten years can be proved by him. *1 Law Rec. 5.*

Vacant possession is possession unmolested by the claim of any other person in possession of the property sold. *17 N.L.R. at 43.* See *18 N.L.R. at 169.* The vendor is understood to deliver vacant possession when he makes such delivery that the purchaser cannot be deprived of the possession of the thing by another person and when therefore the purchaser would be successful in a suit for the possession. *8 C.W.R. 80.* A purchaser who has not obtained vacant possession can under our law either rescind the sale and obtain a refund of the purchase money or accept delivery of the deed as a sufficient delivery of possession and sue the persons in possession in an action *rei vindicatio.* *27 N.L.R. at 440.* A lessee is entitled by law to receive physical and vacant possession of the premises leased. *1 C.W.R. at 89.*

Valuable securities. Boat licenses granted under Ordinance 6 of 1865 are not valuable securities. *6 N.L.R. 67.*

Value of the subject matter of a possessory action for the purpose of jurisdiction when the suit is brought by a lessee is not the value of the unexpired term of the lease but the value of the land itself. *20 N.L.R. 343.*

The value of the matter in dispute in a suit for the purpose of an appeal to the Privy Council would be determined by the value of the particular interest in claim. *27 N.L.R. 410.* In appeals to the Privy Council the established principle appears to be that where there has been no fraud on the part of the appellant and where he has not consented to a lower valuation for the purpose of obtaining some advantage he should be allowed to prove the value of his claim and that where the value has appreciated since the date when action was first taken he should be allowed to prove the value at the time of appeal. *30 N.L.R. at 425.*

Value of improvements means no more than what a party who has effected the improvements is, in law, entitled to receive as their value. *16 N L.R. at 309.*

Vehicle. A motor omnibus is a vehicle within the meaning of section 18 of the Vehicles Ordinance of 1916. *7 Law Rec. 103.*

The obligation to pay hire for a vehicle taken on hire is purely civil and contractual and section 49 of the Vehicles Ordinance only seeks to provide a speedier means of enforcing a purely civil right. *7 Law Rec. 20; 4 Times 106.*

Vendee may, if he chooses, sue his vendor on the direct allegation that he had no title. In such an action the onus would lie on the vendee of showing the state of the title. *2 Mat. 59.* A vendee has the right to recover rent due by a lessee who has taken a lease from the vendor prior to the sale, *2 Mat. 70,* but not from a subtenant of the lessee. *6 Law Rec. at 122.*

Vendor and purchaser. The law regarding vendors and purchasers is that it the vendor fails to implement the sale by putting the purchaser in possession of the property the latter has an immediate cause of action against the former for a refund of the purchase money and damages but where the vendor has put the purchaser in possession the purchaser has no cause of action against the vendor until he has been legally evicted by a third party by an action of which he is bound to give notice to the vendor. *1 Bal. 8.* A vendor cannot derogate from his own grant by setting up the plea that he was not in fact entitled to so much as he granted but that he has another interest in the property which he has never conveyed and which he retains to himself. *23 N.L.R. at 284.* A vendor cannot bind a purchaser by statements made after the sale. *1 Mat. 193.* A purchaser of land who has a conveyance from his vendor but has never had any possession may maintain an action to eject from the land a third party claiming title adversely to the vendor. *5 S.C.C. 160 F.B.*

Verdict one month after trial is irregular. *5 N.L.R. 140.* But the verdict need not be recorded forthwith after taking the evidence. *8 Law Rec. 196.* See *35 N.L.R. 252; 4 Times 145.* A verdict can be amended only before or immediately after it is recorded, that is, before the jurors have left the Court and while they are still under the observance of the presiding Judge. *31 N.L.R. 124.* On a criminal trial in the Supreme Court if the Judge does not approve of the verdict returned by the jury he may direct them to reconsider it. *18 N.L. R. 41.*

Vernacular language in the Village Communities Ordinance means the language of the locality. *30 N.L.R. at 124; 9 Law Rec. at 106.*

Vessel in the prohibitive part of rule 4 of the Port rules made under section 6 of Ordinance 6 of 1865 includes a steam launch. *9 N.L.R. 107.*

Vesting order. A manager of a Hindu temple is not entitled to cure the defect of his title by obtaining a vesting order after the institution of the action. *34 N L.R. 359.*

Vexatious. Every false charge is not necessarily vexatious. 29 *N.L.R. at 114*, but a charge that is deliberately false is vexatious within the meaning of section 197 of the Criminal Procedure Code. *15 N.L.R. 332; 1 C.A.C. 49.* See *3 N.L.R. 3.* If the facts constituting a charge are deposed to by the complainant as from his personal knowledge and the charge turns out to be false and to have been made with the deliberate intention of not merely punishing the accused but of harassing him, the proceedings are vexatious in every sense of the word and are within the statutory provisions of section 197 (1) of the Criminal Procedure Code. *Per Sampayo, J. 4 C.W.R.* 289.

See also FRIVOLOUS.

Via vicinalis. Originally a *via vicinalis* was one which was made up of contributions of the ground of private landowners and used by the owners of such farms in common under express or implied agreement. The term appears to have been applied later to all unproclaimed public roads. *9 Times at 102.* Every member of the public has a servitude over a *via vicinalis. 7 Law Rec. 107.*

Vihare property. The incumbent priest is sole owner of the vihare property but could not alienate or encumber it except for the benefit of the vihare. *32 N.L.R. at 241.*

Vilasams are not individuals so much as designations of businesses. *29 N.L.R. at 229.* It is an established custom that a Chetty agent signing on behalf of a firm does so by prefixing the initials of the firm to his own name. *19 N.L.R. at 426.*

Void. A contract is void if prohibited by a statute though the statute inflicts a penalty only because such a penalty implies a prohibition. *1 Bal. 199.* Whether an act be void or voidable a minor who seeks relief from it must apply to the Court for restitution. *29 N.L.R. 449.*

Voluntary in section 134 of the Criminal Procedure Code must be interpreted as meaning a statement not only made without any fear of menaces but also a statement not induced by any promise or observation in the nature of a promise proceeding from a person in authority. *21 N.L.R. 499.*

Voluntary association cannot by agreement between its members give any individual the right to sue on their behalf. *1 N.L.R.* 292.

Wagering contracts are unenforceable under our law. *13 Law Rec. 173; 36 N.L.R. 145.*

Wages are debts and nothing more. Section 232 of the Civil Procedure Code will not apply to them. *15 N.L.R. at 119; 6 S.C.D. 93; 6 Lead. 34.* The term "wages" in Ordinance 13 of 1899 includes the head money and pence money earned by kanganies. *17 N.L.R. 343; 1 Cr. A.R. 63.*

Waiver implies that either by law or by the terms of the contract an alternative is open to the party charged with the waiver. He has a right which he can enforce or which he can declare by words or by conduct that he will not enforce. He has a choice of two rights so that if he omits to avail himself of the one he cannot avail himself of the other. If he makes the other person believe that he, the party with the choice, is definitely adopting one alternative to the exclusion of the other whereon that person alters his position to his detriment, than the party so making the choice is held by the choice which he has made. It is an illustration of the law of estoppel by representation. *Per MacDonell, C.J. 1 C.L.W. at 204; 12 Law Rec. at 24; 9 Times at 108.* A person should not be held to have waived a right of which he was unaware. *19 N.L.R. 392.* An unconditional acceptance of rent by a landlord even after action has been instituted is a waiver of the notice to quit. *2 Law Rec. 113.*

Wal vil. The grant of what is referred to in a sannas as *wal vil* does not include forest which is generally referred to in such grants as mukalana. *5 Times 100.*

Warrant. The issue of a warrant is a serious matter and a Magistrate should exercise his own independent judgment on the facts before he does this judicial act. In every case it is the duty of the Magistrate to see that the complainant or other person when giving what purports to be oral evidence gives it consciously and upon his own responsibility and not merely adopts general statements already printed and furnished to him by the proctor. *1 C.W.R. at 109; 18 N.L.R. at 445.*

A search warrant should not issue as a matter of course upon every charge of a petty offence without any allegation that the person charged cannot be found or that a summons is not likely to be effectual to secure His presence. *3 S.C.D. 52; 5 A.C.R. 63.* A warrant of arrest should not be issued in the first instance unless the Court has reason to believe that the accused has absconded or will not obey summons. *11 N.L.R. 92.* The absence of an accused who has not previously been arrested is not a ground for the issue of a warrant. *19 N.L.R. at 170.* A Court has no right to issue a general warrant. A warrant of arrest must describe the person to be arrested with such minuteness as to leave no doubt as to the person intended and such description must be as to name and address. *6 Tam. 62.* A Magistrate has power to recall a warrant that has irregularly issued. *27 N.L.R. 215.* A warrant remains in

force until it is cancelled or till it is executed. *8 Times 163.* A warrant of arrest defective on the face of it is not a lawful order. *6 Tam. 13*; *6 Tam. 91.* Where a warrant is *ex facie* defective the public servant executing it cannot be said to be acting in discharge of a public function nor is the person arrested in lawful custody. *29 N.L.R. at 446.* A search warrant is not a warrant within the meaning of section 187 (1) of the Criminal Procedure Code. *6 Lead. 25.*

A warrant in execution of a decree cannot issue unless a writ against property has issued previously. *19 N.L.R. 268; 25 N.L.R. 465; 5 Law Rec. 218.* A warrant of arrest may be issued in execution of a decree for costs only. *23 N.L.R. 488.* A Court cannot refuse to issue a warrant against a judgment-debtor merely because he has preferred an appeal against the decree. *6 Law Rec. 75.* A warrant for the arrest of a judgment-debtor is not illegal merely because it does not follow exactly the terms of the form provided in the schedule to the Code as long as it embodies the necessary averments. *35 N.L.R. 386.* A warrant of arrest against the judgment-debtor in the Sinhalese language is valid. *9 N.L.R. 80.* A warrant of arrest of a debtor under section 219 (2) of the Civil Procedure Code which is not signed by the Judge is void. *6 Times 7.* Such a warrant can be executed between sunrise and sunset only. *9 Times 52.*

One warrant is sufficient for the recovery of more than a month's arrears of maintenance. *11 N.L.R. 289.*

Warrant and defend. Notice to warrant and defend is not necessary where the plaintiff alleges that the vendor had no shadow of title to the property sold. *2 N.L.R. at 310.* A mere service of summons on the vendor is not a notice to warrant and defend. *6 S.C.D. 86*; *15 N.L.R. at 98.* A vendor may intervene in a partition action to warrant and defend his purchaser's title. *2 Law Rec. 169.* An administrator cannot covenant to warrant and defend title without the express permission of Court for the insertion of such a clause. *3 Times 174; 7 Law Rec. 54.*

Warrant of attorney to confess judgment is intended to tie the hands of a debtor and if debtors take the risk of giving these documents they must consent to their hands being tied. *26 N.L.R. at 468*; *3 Times 66.* See *2 Times 191.* The object of the warrant is to enable the plaintiff to obtain judgment and put the document in the hands of any proctor for the purpose. *19 N.L.R. 378.* By giving such a document the debtor loses all control over any defences that may be available to him on the mortgage bond. *1 C.L.W. 85*; *11 Law Rec. 196.* Where in an action on a mortgage bond judgment is entered on a warrant of attorney to confess judgment the "power" includes an order for a sale and a consequent order nominating an auctioneer. *2 Times 138.* It includes authority to consent to a money decree being entered on the bond. *28 N.L.R. 337.* Such a warrant granted in respect of a mortgage bond need

not necessarily contain the conditions to which the mortgage bond itself is subject. *9 Times 73.* Except in a case where gross and definite fraud has been established a decree entered on a warrant of attorney to confess judgment cannot be modified by an application for *restitutio in integrum.* *6 Law Rec. 107.* Such a warrant cannot be signed by an agent even though he has express authority to do so. *32 N.L.R. 15; 11 Law Rec. 57.*

Warranty. An affirmation made by a vendor of goods at the time of the sale is a warranty only if it appears on evidence to be so intended. *18 N.L.R. 302.*

Warranty of title. An express warranty of title may be enforced without the preliminary condition of notice and eviction. *19 N.L.R. 277.* But where a purchaser of land sues the vendor on a breach of express warranty of title and fails to establish such express warranty he cannot fall back on the implied warranty of title under the Roman Dutch law. *1 S.C.R. 201.* There is ordinarily no warranty of title at a fiscal's sale in execution of a decree. *2 S.C.C. 158.*

Waste land primarily denotes open country in which there are few or no trees, land which is open, desolate, unoccupied and uncultivated. *23 N.L.R. 289; 1 Mat. 80.* Waste lands in this Colony are held by the Crown in trust for the advantage of the inhabitants of the Colony. *21 N.L.R. at 359.*

Water. Under Ordinance 7 of 1886 the Government is bound to supply drinking water within the Municipality of Colombo but not water for domestic use. *1 N.L.R. 34.* Failure to pay the excess charged for over consumption of water does not entitle the Municipal Council to cut off the defaulter's water supply under section 124 (2) of Ordinance 7 of 1887. *5 A.C.R. 59.*

Wedawasan. See DIVEL.

Whipping A Police Court cannot inflict whipping in a case of cattle theft where the offender is over 16 years of age. *2 N.L.R. 336.*

Wholesale. Deal of wholesale refers to selling by wholesale even in one instance. *1 Bal. 199.*

Widow. Under the Kandyan law where a person dies childless the widow is entitled to the movable property except the heirlooms. *19 N.L.R. 221.* She has also the right to retain possession during her lifetime of the acquired property of her husband whether such property be acquired before or after the marriage. *11 N.L.R. 222; 4 A.C.R. 30* The right of a Kandyan widow to an absolute life interest in the acquired lands arises only when there is *paraveni*

property as well. But where the entire estate of the deceased consists of acquired property only and there are children by a former marriage the widow's life interest extends only to a part and presumably only to half such acquired property. *7 Law Rec. 1.* The life interest of the widow in the acquired property of her husband does not cease on her departure from his house and her marriage a second time in another village. *6 N.L.R. 214.*

Will is clearly not a deed as lawyers understand it. *7 N.L.R. at 45.* In the case of wills the paramount consideration is the intention of the testator and effect is in all cases given to that intention even though it may be indicated by inartistic or inadequate language. *26 N L.R. at 139; 6. N.L.R. 344.* Where the intention is in fact testamentary a Court will not be deterred by the form of the document from giving effect to it as a will. *1 Law Rec. 125.* Where the language of a will is not strictly grammatical the meaning to be given to it should be consonant with what the context shows the testator to have intended. *18 N.L.R. 91.* A will is valid and is sufficiently executed if the signature is so placed that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed. *2 Lead. 49; 1 S.C.D. 89.* The explanation of a will to a testator and the making of such an explanation in the hearing of the attesting witnesses are not pre-requisities to its validity however important they may be from the standpoint of evidence of approval of its contents. It is sufficient if the testator at the moment of execution believes the will to be, and the will is, in accordance with the instructions previously given. *9 N.L.R. at 21.* Where a will is re-published and confirmed by codicil the effect is to bring the will down to the date of the codicil. *11 Law Rec. 139 P.C.* According to the Roman Dutch law if a testator excludes part of his property from the operation of the will such property descends to his heirs *ab intestato* and not to the instituted heirs. *9 N.L.R. 246.* A will is not proved until probate has been granted by a proper Court. *3 S.C.R. 105.* A will may be proved incidentally in an action but such a procedure would be highly inconvenient. *2 S.C R. 150.* Contra *6 Lead. 40.* Where a will has been found in the custody of the testator's widow and such custody has a legitimate origin the Court should presume in favour of its genuineness even if the best and most proper custodian of the will is the Court itself. *7 N.L.R. 360.* Whenever a will is prepared and executed under circumstances which arouse the suspicion of the Court it ought not to pronounce in favour of it unless the party propounding it adduces evidence which would remove such suspicion and satisfies the Court that the testator knew and approved of the contents of the instrument. This principal is not limited to cases in which a will is propounded by a person who takes a special benefit under it and himself procured or conducted its execution. *20 N.L.R. at 494.* A will which is made by a testator and is shown to have been in his possession but is not forthcoming at his death is presumed to have been destroyed *animo revocandi* but

this presumption may be rebutted by evidence that the intention of the testator had altered since its execution. *6 Lead. 3; 3 Law Rec. 123.* See *6 S.C.D. 68; 1 Law Rec. 85.* A person attacking a will on the ground that it is a forgery must bring an action for the purpose in the ordinary manner and must prove his case. *5 S.C.D. 3.*

Section 1 of Ordinance 24 of 1844 enables a Muslim to dispose of the whole of his property by will. *14 N.L.R. 464.* The will of a Muslim ought to be construed according to the laws and usages of the Muslims in Ceylon. *2 N.L.R. 200.*

Wilfully in section 2 of Ordinance 17 of 1898 is not used in the sense of "knowingly". *16 N.L.R. 225.*

Within with reference to time means "not longer ago than", "not later than". *25 N.L.R. at 328.*

Witness should not be debarred from giving evidence because he was present in Court during the hearing. *35 N.L.R. 186; 1 N.L.R. 90; 2 C.L.W. 282; 3 Cr. A.R. 12.*

The wife of a co-accused cannot be called as a witness against the other accused. *1 Lead. 72.* The want of registration of her marriage does not make her a competent witness. *1843-55 Ram. 138.*

In a criminal prosecution the Crown should as an ordinary rule call the attention of Court and of Counsel for the defence to the fact that it does not propose to call certain witnesses as its own, should state the reason why this is considered undesirable and should tender the witnesses in question to the accused for cross-examination. *18 N.L.R. 215.*

Work and labour contemplated by section 9 of the Prescription Ordinance 22 of 1871 is manual labour. *5 N.L.R. 142.* The work done by a surveyor requires the exercise of care and skill and is not work and labour done under this section. *5 A.C.R. 75.* Actions for work and labour done and goods sold and delivered though these are unwritten contracts come within section 9 of the Prescription Ordinance. *21 N.L.R. at 319.*

Worship. The right of a person to worship at a Hindu temple is a civil right enforceable in a Court of law. *36 N.L.R. 75.*

Writ which is not founded on a decree is a nullity and all proceedings thereunder are void *ab initio*. *12 N.L.R. 302; 3 S.C.D, 60.* There is no limit to the time within which a first application for the execution of a writ may be granted. *12 N.L.R. 362.* Where an application for a writ is allowed once but no writ is taken out and a subsequent application is made the provisions of section 337

of the Civil Procedure Code as to the exercise of due diligence will apply. *11 N.L.R. 57.* Writ of execution against the person cannot issue unless a writ against property has issued previously. *19 N.L.R. 268; 25 N.L.R. 465.*

Writ of execution. This expression connotes execution by ordinary civil process. *18 N.L.R. at 131.*

Writ of prohibition is a remedy *ex debito justitiæ* and lies before or after sentence and it is not necessary that a party applying for it should, as in applications, for injunctions, so that he would be otherwise without remedy. *1 N.L.R. 181.* No writ of prohibition can be issued to a Police Magistrate unless he has acted in excess of his jurisdiction. *19 N.L.R. 346.* The Supreme Court has no power to issue a mandate in the nature of a writ of prohibition to a Court Martial. *18 N.L.R. 334 F.B.*

Wrong folio. A deed which has been registered in a wrong folio is void as against parties claiming an adverse interest on valuable consideration by virtue of a subsequent deed which has been duly registered. *6 Lead. 21; 17 N.L.R. at 484.*

Wrongful in Section 81 of the Criminal Procedure Code means "wrongful in law" and not "open to criticism" or "deserving of reprehension". *22 N.L.R. 445; 2 Law Rec. 151.*

Wrongful arrest. In an action against the Fiscal for wrongful arrest malice need not be proved where such arrest has been effected without lawful authority. But where the arrest has been properly made no action lies unless the arrest was malicious and without reasonable and probable cause. *13 N.L.R. 38.*

Wrongful restraint. An act by a person which prevents another from proceeding in a direction in which he has a right to proceed unless the latter chooses to commit a criminal act amounts to wrongful restraint. *30 N.L.R. at 378; 6 Times 58.*

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