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X

JAFNA, FRIDAY MAY 1, 1970

X

NO.

The Law and the Common Man

BY

Hon. Dr C. G. Weeramantry, LL D (Lond.)
Puisne Justice

(Continued from our last issue)

Every lawyer in the course of his practice has come across numerous instances of persons who have laid out large sums of money on the basis of agreements in relation to immovable property, not realising that they are of no force or avail in law unless notarially attested. There are even some clients who do not know that ten years' adverse possession may found title in another in respect of lands that have been possessed by a family for generations. All these are instances readily coming to mind, which underline the importance of at least a certain irreducible minimum of legal knowledge being imparted to the average member of the public.

Take again even a simple thing as the Highway Code, and the ignorance of rules of the road on the part of the public. What a deal of avertible tragedy results from such ignorance! It is remarkable again that many members of the public do not even know - and I am here speaking even of people of education and culture - the difference between a criminal wrong and a civil wrong. It would indeed be true to say that most people have never in all their lives heard of the expressions tort or delict.

Let us next take the familiar example of the guarantee. All too often people are prepared to sign guarantees at the request of friends not realising that they may be signing away all that they have. Take the case of hire purchase agreements. Hire purchase agreements, it has been wittily said, are agreements entered into, at the persuasion of someone we do not know, to buy something we do not want, with money we do not have, and, upon the terms of a contract we do not understand. Despite all this, you will find people cheerfully signing on the dotted line merely because persons interested in obtaining the hire purchase agreement tell them to do so. These are all illustrations, then, of fortune lost, rights abandoned, liberty sacrificed, merely for lack of knowledge of certain very elementary matters.

Such lack of elementary knowledge is also not without its amusing aspects. Some years ago a survey was made by the King's Proctor in England in regard to the knowledge on the part of the members of the public, of what constituted adultery in law, and he came up with some curious results. There were some people who thought that adultery was not adultery unless committed during the night, and that the law was not interested in anything that happened by the broad light of day. There were some who thought that it was not adultery, if the other party was a woman over the age of fifty. There were others who thought that there could be no adultery unless a child resulted. And there was one lady so delightfully naive as to believe that adultery meant drinking with men in public houses.

Now, amusing though it may seem, such gross ignorance can also have dire practical results, as any of these interrogated persons may well have realised with a startled shock, had they crashed upon the realities of the law.

Reasons of self interest alone, would thus render it essential, that our citizens should have a somewhat greater knowledge of the rudiments of legal knowledge, than they have at present.

Passing from considerations of self interest to a somewhat more important aspect, let us take a larger view of the subject, and consider its importance to the public, as opposed to its importance to the individual.

We are living today in an enlightened age. Literacy is practically universal, there is a greater understanding of civic duties and responsibilities, there is a greater interest in, and awareness of, the happenings in the State. Against this background, can the citizen sit back with folded arms and say, "I am not interested in the law and the legal process." To use an expression of Mr. Justice Holmes, "The law is not a brooding omnipresence in the sky." It is something real. It is something down to earth. It is something practical. It is something connected with everyday life. It is something tied up with social concepts. Public opinion is therefore the very foundation of the law. It is public opinion that moulds the law. If a law is found unsatisfactory, it is through the operation of public opinion, that it can be changed and, therefore, you will see the importance of that public opinion, being an enlightened public opinion.

Let me illustrate the way in which public opinion can change the law, and our very attitudes towards it, by referring to an observation, made not more than one hundred and fifty years ago by Lord Eldon, the Lord Chancellor of England at the time. We are severely shaken today to learn that the learned Lord Chancellor was able to say, when consulted regarding a measure to abolish capital punishment, for theft of articles under ten shillings in value, that this was a "mollycoddling of the public which would undermine the very foundations of the law." The changed opinions and concepts of our time render unthinkable the very law that theft is a capital offence, leave alone the slight modification thereof which so shocked Lord Eldon.

Let me show you again how public opinion can change one's very attitude towards matters in a fundamental way. In the time of Justinian, it was considered contrary to good morals, for a producer to enter into a contract with an actress for the production of a play. Today, on the other hand, public opinion has turned full circle, and as someone has said we knight our comedians and we worship our stars.

Lest you may think these examples indicate that a long course of years, or a period of generations is necessary to build up a public opinion sufficiently intense to result in salutary law reforms, I would like to refer to just one more example. In nineteenth century England, it was by the pressure of public opinion, and lay opinion at that, that the entire sta-

(Continued on page 2)

General Election - 1970

(By Muhandiram
E. P. Rasiyah, J. P.)

The system of 'Election of Candidates' for various functions was as old as the ancient civilisation of Greece. Spartans had recorded their votes with a shout and sometimes by the clashing of spears on their shields, the Athenians had pebbled when secrecy of ballot was found necessary, and the Romans had used wax-coated chips of wood as ballot papers. About the year 1856, the principle of secret balloting was first introduced in a State in South Australia, and thereafter it came to be known as 'Australian Ballot'. In pre Nazi Germany, the voter went into an 'Isolation Cell' placed his ballot inside an official envelope and passed it on to the Presiding Officer. In the early part of the 19th century, Adult Franchise or 'Universal Suffrage' became popular in all civilised countries, including Ceylon.

Nominations

Bombastic Party Meetings in Jaffna Town heralded the Nomination

(Continued on page 2)

TIME IS PRECIOUS

FOR INSTANT WASH

Use Milk White
Washing powderCOLLECT THE WRAPPERS
and
WIN PRIZESMILK WHITE
SOAP WORKS
JAFFNA

be submitted to the authorities concerned in time for their criticism, modification and adoption before January 1971. There should be a radical change in the outlook of the examiners. Mere patchwork will not do. That New Syllabus is an insult offered to the memory of Sri La Sri Arumuga Navalar in the very year in which his countrymen have deemed it fit to erect a statue in his honour.

May I, as a layman, humbly submit a tentative syllabus to be reviewed by a body of scholars well versed in the Siddhanta Shastras.

Paper I

1 Hindu Shastras Authoritative works on Saivism viz. the Four Vedas and all Saiva Agamas—A/General Study.

2 Dharma Shastras—Manusmitri—the provisions of the Varnashrama Dharma.

3 Shiva Puranas which are based on the Vedas and Agamas.

4 The twelve Thirumurai.

5 The fourteen Siddhanta Shastras.

6 The doctrines of Saiva Siddhantam—Pati, Pasu, Pasam. Law of Karma, Rebirth and Mukti—a detailed study.

7 Saivaite Observances (Sadhana) symbols, ceremonies, rituals, festivals and their raison detre—a critical study.

8 Panchadharanam, Deekshai, Nithiya Karma Vithi, Temple-worship and the Laws of Pollution—a critical study.

9 The four stages, viz. Sarlyai, Kriyai, Yogam and Gnanam—a detailed study.

10 Lives of the 63 Saivaite saints and the Four Hereditary Teachers of Saivism—Santhana Kutavar—detailed study with dates.

Paper 2

This paper may be confined entirely to the study of Prescribed portions of Saivaite texts e. g.

1 Thiru Kural—10 chapters from Arattu Pal, to be changed from year to year.

2 Thiru Arud Payan—the first ten chapters

3 Parts of Thevaram, Thiruvachakam, and other works on Thirumurai to be changed from time to time.

4 Periya Parasma—Sekkilar—about 100 verses—to be prescribed from time to time.

5 Skantha Parasma—about 100 verses—to be prescribed from time to time.

6 Any other additions deemed fit.

S. Subramaniam
Sathumalai

The Law and the Common Man

(Continued from page 1)

tute book was practically re-written. This change of the statute book, a change beyond recognition, was effected in consequence of pressure from enlightened lay opinion, led by crusaders such as Bentham. Even matters concerning procedure in Courts were changed, and, changed fundamentally, under the pressure of lay opinion, as distinguished from the pressure of professional opinion. This shows us that an awakened and enlightened civic consciousness can do, and, if need be, do within a short space of time; and that it would be wrong for the layman to think that in these matters he has no part to play. After all, all law proceeds from the people, and it is by the pressure of the people's will, that every law is pressed into its eventual shape.

You will ask in what ways this public opinion can assert itself.

First of all, every one of our citizens must be aware, he must have come to know during the course of his personal experience, of a number of defects, and loopholes in existing laws. He is bound to have come across provisions of certain statues which are not functioning as well as they ought to, in consequence of some defect which he has experienced himself. Now, why cannot he bring that to the notice of the appropriate authorities? Why should he brood over the fact that there is a loophole in the law and keep that knowledge to himself? The citizen must realize that by communicating that information to the authorities concerned he will be building up a body of opinion, which eventually the authorities would have to consider. Are there not people who are actually involved in cases, and know in what ways certain rules of law have operated for or against them? Take for example the scale of costs in the Civil Procedure Code. There are numerous persons who have had the schedule of costs in the Code used either for or against them. Well, what are their views in regard to a scale of costs that was worked out over seventy five years ago? Do they think it adequate? Do they think it must remain, or do they think it should be changed? What are their views in regard to the Maintenance Ordinance, with its antiquated rules, and antique, and, often, ineffectiva procedure?

Now again, if I may take a matter that is very much an active issue at the moment—what is the attitude of the public in regard to the denial to the defence, of information book extracts, and what is their attitude in regard to non-summary proceedings? Do they feel that non summary proceedings which take perhaps a number of days in the Magistrates' Courts, may waste a person's family assets to such a degree, and, cause such impoverishment as to result in the denial of an adequate defence at the trial proper? Do they think non-summary proceedings should be done away with, and the defence compensated by making available to it the jealously guarded information book extracts? What are their views in regard to the Jury system itself, which is so fundamental to the administration of criminal law in this country? No doubt the authorities are giving their attention to fundamental matters of that nature, but one would like to know what the citizen thinks in regard to questions of that sort.

May I give you another illustration or two from the field of land law. There is this concept of fideicommissa, yet a live principle of our law, by which the dead hand can, in this modern age, still tie down property for four generations. What does the public think of that? What does the public think of our present rule of law, in regard to the ownership of land, a rule which comes down to us from before

Hindu Culture Society Honours Saiva Scholar

Shri M. Guanapiragasam B A., B. So., Principal Parameshvara College and a disciple of Shri S. Shiyapadasundarampillai was honoured by the Hindu Culture Society with the conferment on him of the title 'Swami' in recognition of the Swami's devotion to religion, devoted religious practice and deep spiritual knowledge.

ORDER NISI

IN THE DISTRICT COURT OF POINT PEDRO

Testamentary Jurisdiction
No. 965

In the matter of the Intestate estate of the late Kandasamy Ratnasingam of Puloly East.

Deceased
Pockiam widow of Ratnasingam of Puloly East.

Vs. Petitioner

1 Ratnasingam Rajanayagam

2 Ratnasingam Sri-tharan

3 Kalawathy daughter of Ratnasingam all of Puloly East

Respondents

This matter coming on before C. M. Tharmalingam Esquire, District Judge, Point Pedro on the 10th day of August 1969, in the presence of Mr. M. Eswarapadham Proctor for the petitioner and the petitioner and affidavit of the Petitioner having been read.

It is ordered that the 1st Respondant be appointed Guardian-Ad-Litem of the minor the 3rd Respondent that the Petitioner as widow the abovenamed deceased be declared entitled to obtain Letters of Administration to his estate and that Letters of Administration be issued to the petitioner unless the Respondents or any other person interested appears before the 28th day of September 1969 and show cause to the satisfaction of this court to the contrary.

This 19th day of August 1969.

Sgd C. M. Tharmalingam
District Judge

Time to show cause extended to 15-5-1970

Intld. C. M. T.
D J.

(O18 1 & 8)

the time of Justinian, a rule which recognises the principle only of vertical ownership, and says that the owner of land is the owner of all that is above and below it from the centre of the earth right up to the summit of the sky. It is not possible to introduce in this country the principle of horizontal ownership, by which, there may be separate ownership of the different floors of a building, as in so many Indian cities, thus giving a much-needed impetus to the construction of multi-storeyed buildings, in congested urban areas.

There are all matters in which the common man has his own ideas and experience, and on which lay opinion can make a valued contribution. Whoever the authorities that concerned with such matters, and, particularly at the present moment, there is a Law Reform Commission which is about to commence work—will no doubt be interested to know what the public thinks in regard to them.

To be Continued

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testy No. T. 2534

In the matter of the intestate estate of the late Sina-thamby Muttiah of Chankani East

Deceased

Kanagammah widow of S. Muttiah of Chankani East

Vs. Petitioner

1 Muthiah Mathipoo-shanam

Minor 2 Muthiah Thirulogan aged at 20 years both both of Chankani East

Respondents

This matter coming on for disposal before I. M. Ismail Esquire District Judge of Jaffna on the 23rd day of October 1969 in the presence of Messrs. M. K. Subramaniam and V. Paramanandan Proctors on the part of the petitioner and the affidavit of the petitioner dated 12th October 1969 having been read.

It is ordered that the 1st respondent be appointed guardian-ad-litem over the 1st respondent minor, that the petitioner abovenamed be and she is hereby declared entitled to as lawful widow of the abovenamed deceased to have Letters of Administration to the estate of the abovenamed deceased and the same be issued to her accordingly unless the respondents or any other person or persons interested shall show sufficient cause to the satisfaction of this Court to the contrary on or before the 26th day of January 1969.

This 23rd day of October 1969

Sgd. I. M. Ismail
District Judge

The date for showing cause is extended to 5th March 1970

Sgd. I. M. Ismail
District Judge
23-10

The date for showing cause is extended to 16th May 1970

Sgd.

K. E. Kathirgamalingam
Actg. District Judge
5-3-70

16 1 & 8

NOTICE

LIQUOR LICENSE

We hereby give notice that we have on the 12th April 1970 applied to the Government Agent Jaffna for the license shown in the schedule hereto annexed for the license period ending 30th September 1971 in compliance with Exeise Notification No. 200 of 30th Sept. 1930.

SCHEDULE

(1) Name and address of applicant: Teresa Annasampillai & Lillian Annasampillai of 31/61 Main Street Jaffna.

(2) Description of licence applied for: Foreign liquor Retail off

(3) State whether application is for Renewal of existing licence or licence or for a new licence or licences; Renewal of existing licence

(4) Situation of Premises to be licenced: 31/31 Main Street Jaffna

Name of Applicant

Teresa Annasampillai Lillian Annasampillai 12 1

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction No. 2577

In the matter of the intestate Estate of the late Ramalingam Ponnambalam of Ponnabalai, Karainagar Deceased

Theivanaippillai widow of R. Ponnambalam of Ponnabalai, Karainagar Vs. Petitioner

Ramalingam Nadarajah of Ponnabalai, Karainagar Respondent

This matter of the Petition of the abovenamed Petitioner coming on for disposal before I. M. Ismail, Esquire, District Judge, Jaffna on the 20th day of March 1970 in the presence of Mr K. Arumugam, Proctor on the part of the Petitioner and the affidavit of the abovenamed Petitioner dated the 3rd day of March 1970 having been read.

It is ordered that the abovenamed Petitioner be declared entitled as widow of the abovenamed deceased to have Letters of Administration to the above estate issued to her accordingly unless the Respondent or any other person or persons interested shall appear before this court on the 16th day of May 1970 and show sufficient cause to the contrary.

This 20th day of March 1970

Sgd. I. M. Ismail District Judge

10 4 & 11

Order Absolute in the First Instance

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction No. 2579

In the matter of the Last Will and Testament of the late Thambiah Kulasegaram of Colombogam Road, Chundikuli, Jaffna- Deceased

Subathiradevi widow of Thambiah Kulasegaram of Colombogam, Chundikuli, Jaffna Vs. Petitioner

This matter coming on for disposal before I. M. Ismail, Esquire, District Judge, Jaffna on the 1st day of April 1970 in the presence of Mr K. Gnanachandran Proctor on the part of the Petitioner and the affidavit of the Petitioner dated 11th day of March 1970 and the affidavit of the attesting Notary Public, and the witnesses to the Last Will and Testament dated the 11th day of March 1970 having been read.

It is ordered that the Last Will and Testament No 3347 made by the deceased abovenamed jointly with the Petitioner abovenamed on the 13th day of October 1968 and attested by Kanagasabai Gnanachandran of Chavakachcheri Notary Public, the original of which has been produced and is now deposited in court be and the same is hereby declared proved and it is further ordered that the petitioner abovenamed is the Executrix and sole heir named in the said Will and that she is hereby declared entitled to have Probate thereof issued to her accordingly on her taking the usual Oath and tendering security.

This 1st day of April 1970.

Sgd. I. M. Ismail District Judge.

Drawn by Sgd. K. Gnanachandran Proctor for Petitioner

14 1 & 8

NOTICE

IN THE DISTRICT COURT OF JAFFNA

No. P 957

Nadarajah Sivasubramaniam of Tellippalai East

Vs. Plaintiff

1 Thamotheampillai Puvirajasingham and wife

2 Jegatheeswari both of Puloly East

3 Kanagasabai Ratnam of Tellippalai East

4 Kanagasabai Krishnapillai

5 Kanagasabai Kandaswamy all of Tellippalai

PARTITION NOTICE

IN THE DISTRICT COURT OF JAFFNA

No. P/1189

Kandappu Sinnadurai of Grand Bazaar, Jaffna

Vs. Plaintiff

- 1 Sebamalai wife of Philip
2 Philip
3 Luviasi, wife of Chrisostom
4 Chrisostom
5 Mariyai wife of Savarimuttu
6 Neekilan Savarimuttu
7 Mariyai wife of Sebateyu
8 Markando Sebateyu
9 Ustinal wife of Anthonipillai
10 Thomas Ththonipil ai
11 Marsalinal wife of Rokku
12 Rayappu Rokku
13 Loorthu wife of Stanislaus
14 Marian Stanislaus, all of Pungudutivu East
15 Gabriel Augustin
16 Kandappu Kartygesu of do

It is hereby notified that action No. P/1189 has been instituted in the District Court of Jaffna under the partition act No. 16 of 1951 for the Parition/sale of the land called 'Koyiluppiddy' in extent 50 Lms v o. and situated at Pungudutivu East, in Pungudutivu parish, Islande Division, Jaffna District, Northern Province, and boundea on the East by land of Kanapathipillai Lokkupillai & others, North by that of Seethapillai, West by Sinnadurai and South by waste land.

The Defendants in the abovenamed action are summoned to appear in Court on the tenth day of May 1970 at 10'0 Clock of the forenoon

By Order of Court T Sivabalasingham Chief Clerk

This 29th day of April 1970

Drawn by V. Somasunderam Proctor for Plaintiff 16 5

East 6 Krishnar Sellathurai of do Defendants

It is hereby notified that action No. P/957 has been instituted in the District Court of Jaffna under the partition act No. 16 of 1951 for the partition/the land/called Karavaiyiddy and Pilarvai in extent 6, 7/8 Lms. V. C. and situated at Tellippalai East in Tellippalai Parish.

The defendants in the aforesaid action are summoned to appear in Court on the 3rd day of May 1970 at 10 O'clock of the forenoon.

By order of Court

Sgd. T. Sivabalasingam Secretary/Chief Clerk This 27th day of April 1970

11 7

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

No. 2572/T

In the matter of the intestate estate of the late Velauthar Kandappu Subramaniam of 3rd Cross Street, Jaffna

Deceased

Sivapackialedchumy widow of Subramaniam of 3rd Cross Street, Jaffna

Vs Petitioner

- 1 Subramaniam Vignarajah
2 Subramaniam Sivarajah
3 Subramaniam Balarajah
4 Subramaniam Yogeswary
Minor 5 Subramaniam Lograjah
6 Subramaniam Thisageswary all of 3rd Cross Street, Jaffna
The 5th and 6th Respondents are minors appearing by their Guardian - ad - litem the 1st Respondent

This matter coming on for disposal before I. M. Ismail Esqr. District Judge, Jaffna on the 10th day of March 1969 in the presence of Mr S. Selvarajah Proctor on the part of the Petitioner and the petition and affidavit of the Petitioner dated 25.2.1970 having been read.

It is ordered that the 1st respondent be and he is here by appointed Guardian-ad-litem over the minors the 5th and 6th respondents abovenamed and that the petitioner as the widow of the deceased be declared entitled to have Letters of Administration over the estate of the deceased be declared entitled to have Letters of Administration over the estate of the deceased abovenamed issued to her and that such Letters of Administration be issued to her unless the respondents abovenamed or any other person or persons shall appear on or before 9th day of May 1970 and show sufficient cause to the satisfaction of court to the contrary.

It is further ordered that the 1st respondent do produce the 5th and 6th respondents before this Court on the 9th day of May 1970

This 10th day of March 1970

Sgd. I. M. Ismail District Judge, Jaffna.

Drawn by Sgd. S. Selvarajah Proctor for Petitioner 7 24 & 31

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction No. 2524

In the matter of the Last Will and Testament of the late Mohamed Sathakathulla Abdulla Sahib Alim of Vannarponnai West Deceased

Mohamed Abdul Cader Mohamed Sathakathulla of Vannarponnai West Vs. Petitioner

- 1 Mohamed Abdul Cader Hajjar Moulavi Mohamed Caarem and wife
2 Maimoon
3 Meerapillai Hajjar Sahui Hameed and wife
4 Rasbeetha
5 Aboobucker Segu Alaudeen and wife
6 Seynambu
7 Mohamed Abdul Cader Mohamed Buhari and wife
8 Subitha all of Navalur Road, Vannarponnai West Respondents

This matter coming on for disposal before I. M. Ismail Esquire, District Judge, Jaffna on the 15th day of October 1969 in the presence of Mr. M. M. Sultan Proctor on the part of the Petitioner and the affidavit of the petitioner dated the 30th day of September, 1969, petition of the Petitioner dated the 5th day of October, 1969 and affidavit of the witnesses and Notary dated the 20th day of September, 1969 having been read.

It is ordered that the Last Will and Testament bearing No 4314 dated 20th April 1968 and attested by M. M. Sultan Notary Public, the Original of which has been deposited in this Court, be and the same is hereby declared proved and the petitioner is the Executor named therein and that Probate thereof be issued to the Petitioner unless the respondents or any other person or persons shall on or before the 12th day of December 1969 appear before this Court and show sufficient cause to the satisfaction of this Court to the contrary.

This 15th day of October 1969 Sgd. I. M. Ismail District Judge

Drawn by Sgd. M. M. Sultan Proctor for Petitioner

13.72.69 Time to show cause extended till 25-2-1970 Itd K. E. K. A. D. J.

25-9.70 Time to show cause extended till 8 - 5 - 70

Itd. I. M. I. D. J. D. J.

9 24 & 31

மாண்புமிகு வழக்கு விசாரணை அதிகாரி அவர்கள் கீழ்க்கண்ட வழக்கு தொடர்பாக உத்தரவிடப்பட்டிருக்கின்ற உத்தரவுகளைக் கீழ்க்கண்டவர்கள் கவனிக்கவேண்டுகிறோம்.

Printed and published by Mr. M. Mylvaganam residing at No. 2, Second Lane Brown Road Jaffna, for and on behalf of the Proprietors, the Saiva Paripalana Sabha, Jaffna, at their Press, the Saiva Prakasa Press, 460 K. K. 81 Road Vannarponnai, Jaffna, on Friday May 1, 1970

Editor E. N. SIVABALASINGAM