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The Tangle of Precedent

AN American lawyer once described the highest appellate tribunal in his country as ' the ultimate Court of conjecture '. The same strain of cynicism found expression not very long ago in the closing paragraph of a written opinion of a distinguished Ceylon lawyer, now retired. ' I have set out ', he said, ' my own view on the matter submitted to me. But it is, of course, not safe to predict how the question would be answered by the Supreme Court '. The reproach contained in the words *of course* had been italicized.

A. ' STARE DECISIS ' IN ENGLAND

The principles underlying the rule of *stare decisis* are of very long standing. Lord Mansfield said over a hundred and fifty years ago in *Bishop of London vs. Ffytche*,[1] ' the object of the law is certainty, *especially such parts of the law as are of extensive and general influence*, which affect the property of many individuals and which inflict pecuniary penalties ; which create personal disabilities ; and which work forfeitures of temporal rights '.[2] The ideals of stability and certainty are, for obvious reasons, of special importance in commercial transactions and contracts affecting rights in property. In the words of Dean Roscoe Pound of America, ' the social interests in security of acquisitions and security of transactions—the economic side of human activity in civilised society—call for *rule or conception authoritatively prescribed in advance and mechanically applied* '.[3]

Chaos would indeed ensue if questions of law affecting human affairs were, whenever they arose, to be determined without due regard to precedent and solely according to ' the hunches, prejudices, idiosyncracies or sophistries of

1. (1782) 1 BRO. P.C. 211.

2. The relevant passages of Lord Mansfield's judgement are very fully quoted in Professor C. K. Allen's, *Law in the Making* (5th edn., 1951) at pages 207-208.

3. quoted in *Law and the Modern Mind*, by Jerome Frank (1949 edn.) at page 208.

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individual judges '.[4] As Mr. Justice Holmes has said, ' the prophecies of what the Courts will do in fact, and nothing more pretentious, are what I mean by Law '. This explains why, in the words of a distinguished American Professor of Law, ' the practising lawyer always wishes to know what a number of more or less elderly men who compose some Court of last resort will do when confronted with his client's case '.

But this does not mean that Judges should be ' hidebound by precedent ', or that once a question of practical importance has been decided by a particular judge, his ruling, right or wrong, irrevocably concludes the law on the subject. The great Cardozo, though an unrelenting advocate of the principle, sensibly applied, of *stare decisis*, condemned the ' sterility of ignoble ease ' which characterises Judges so enslaved by precedent that they can be equated to some medical practitioners who, according to John Stuart Mill, ' would rather the patient died by rule than live contrary to it '. It is only in a limited sense that a Judge should submit to the role of ' a slave of the past and a despot of the future '.

The judicial process falls short of its primary function if it fails at any given point of time to meet the ever-changing requirements of modern society —and in this respect the genius of the Roman-Dutch Law and of the English Common Law possess special qualities of adaptability. ' It is essential to the life of the common law ', explains Lord Simonds, ' that its principles should be adapted to meet fresh circumstances and needs '.[5] There is a constant conflict, in many branches of the law, between the need for stability and the need for change, and ' the moral is to accept *stare decisis* as a working guide without entering into abject bondage to it '.[6] What, then, is the Golden Rule ? Perhaps the answer, as Jerome Frank suggests, is that ' there is no golden rule '. The true solution lies in the ' combined wisdom of a creative Judiciary and a vigilant Legislature '—each seeking, in the performance of its respective

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4. One is reminded of the legend that, at the conclusion of an argument on a difficult question of law, the presiding Judge reserved his judgement saying ' *I shall have to wait for my hunch* '. Lord Justice Scrutton has pointed out how disastrous it would be if ' no citizen would know his rights or liabilities until he knew before what Judge his case would come and could guess what view the Judge would take on a consideration of the matter without any regard to previous decisions '. *Townlee Mill Co. vs. Oldham Assessment Committee.* (1936) 1 K.B. 585 at 613.

5. *British Movietone News Ltd. vs. London and District Cinemas Ltd.* (1951) 2 T.L.R. 571 at page 581. So also is the Roman-Dutch Law ' a virile, living system of law, ever seeking, as every such system must, to adapt itself consistently with its inherent basic principles to deal effectively with the increasing complexities of modern organised society '. *Pearl Assurance Co. vs. Union Govt.*, (1934) South African A.D. at page 563.

6. C. K. Allen, *op. cit. supra* at page 332. In the *Pollock-Holmes Letters* (1,239), Pollock condemns the ' strange ' theory that ' a proved series of blunders is more sacred than one truth'. Holmes agreed, asking why ' old disgrace is better than new honour '.

functions, to ensure that the law does not fall below the requirements of the times. ' Certainty generally is illusion ' says Holmes, 'and repose is not the destiny of man '.[7] As Professor Paton puts it, ' what is even more important than the machinery of justice is the quality of the men who control it '.

To what extent can a reasonable limitation be placed on the doctrine of *communis error facit ius?* The views of English Judges on this issue have not always precisely coincided, but they do at any rate agree that a long-established precedent should not be over-ruled except with great caution. ' If I find a long series of decisions by inferior Courts acquiesced in, which have become part of the settled law ', said Jessel, M.R., ' I do not think it is the province of the Appeal Court after a long lapse of time to interfere, *because most contracts have been regulated by those decisions* . . . There is another consideration which always has weight with me. *When the law is settled it gets into the text-books, which are a very considerable guide to practitioners* '.[8] There are times, however, when the House of Lords has found it proper to depart from this rule of general expediency ' when serious inconvenience or injustice would follow from perpetuating an erroneous construction or ruling of law '.[9] In a classic pronouncement on the subject, Lord Chancellor Simon said in *the Fibrosa case*[10] which over-ruled in 1943 an earlier decision of the Court of Appeal in 1904 :—

> ' Counsel asked us to consider whether this House would be justified in disturbing a view of the law which has prevailed for nearly forty years, which has been so frequently affirmed, which has been constantly applied in working out the rights of the parties to commercial contracts, and which, at any rate, furnishes a simple rule against the effect of which the parties to a contract can, if they so decide, expressly provide. These are weighty considerations, but I do not think they ought to prevail in the circumstances of this case over *our primary duty of doing our utmost to secure that the law on this important matter is correctly stated.* If the view which has hitherto prevailed in the matter is found to be based on a misconception

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7. The law must not be permitted to lag behind in narrowing 'the persistent gap between social needs and legal remedies '. See 68 L.Q.R. 226 footnote (2). The idea is unattainable unless the Legislature and the Judiciary both perform their respective functions in bridging this gap. The law must ' enrich itself from daily life '. *The Common Law,* by O. W. Holmes (42nd edn.), p. 121.

8. *Wallis vs. Smith* (1882) 21 Ch. D. 243 at page 265.

9. per Lord Wright in *Admiralty Commissioners vs. S.S. Valverda* (1938) A.C. 173 at page 194.

10. (1943) A.C. 32. This idea is at old as Justinian who ordained that ' if an erroneous decision has been given, it ought not to be allowed to spread and so to corrupt the judgement of other magistrates. Decisions should be based on laws, not on precedents '— quoted at pages 165-6 of C. K. Allen, *Law in the Making* (*supra*).

> of legal principles, it is of great importance that those principles should be correctly defined, *for, if not, there is a danger that the error may spread in other directions, and a portion of our law erected on a false foundation* ' .

An Australian High Court Judge once remarked ' it is not in my opinion better that the Court should be persistently wrong than that it should be ultimately right '.[11]

In England, the House of Lords is the ultimate appellate tribunal, and the principles laid down in the cases to which I have referred set out the attitude of the House to erroneous rulings laid down by the Court of Appeal. There is no instance, as far as I am aware, of the House of Lords expressly over-ruling its own previous decision, and it is generally accepted that ' such a decision is conclusive, and nothing but an Act of Parliament can set right that which is alleged to be wrong in a judgement of this House '.[12] For, explained Lord Halsbury,

> ' I do not deny that cases of individual hardship may arise, and there may be a current of opinion in the profession that such and such a judgement was erroneous. But what is that occasional interference with what is, perhaps, abstract justice, as compared with *the inconvenience—the disastrous inconvenience—of having each question subject to being re-argued, and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and in fact there would be no final Court of Appeal* '.

It is interesting that Lord Halsbury did recognise as a hypothetical exception to this fundamental rule the possibility of the House having *per incuriam* ' omitted to notice an Act of Parliament or having acted upon an Act of Parliament which was afterwards found to have been repealed '. In that ' unlikely event ', he ingeniously suggests, ' the mistake would be one *of fact* and *not of law*, so that it could legitimately be rectified '.

The question whether a Full Bench of the Court of Appeal in England has power to over-rule its earlier decisions (even a decision of one of its Divisional Benches) was finally answered in the negative in *Young vs. Bristol Aeroplane Company*.[13]

> ' The Court of Appeal is a creature of statute ', said Sir Wilfred Greene, M.R. (later Lord Greene), ' and its powers are statutory ; each Division has co-ordinate jurisdiction but *the Full Court has no greater powers or jurisdiction than any division of the Court* . . . What cannot be done by a division of the Court cannot be done by the Full Court '.

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11. quoted at footnote 61 of Paton's *Jurisprudence* (2nd edn.), p. 164.

12. *London Street Tramways vs. L.C.C.* (1898) A.C. 375.

13. (1944) K.B. 718 : see also the observations of Goddard, L.C.J., in *Rex vs. Northumberland Compensation Tribunal* (1951) 1 K.B. 711 at pages 723-724.

When one examines the corresponding position of the Supreme Court of Ceylon, which is also ' a creature of statute ', it will be found that a Collective Bench, properly constitued under Section 51 of the Courts Ordinance, possesses considerably wider *statutory* powers than its counterpart in England. On the other hand, there is no difference that I can discover between the powers of a Divisional Court performing appellate functions in either country.

The Master of the Rolls summarised his conclusions as follows in his judgement :—

> ' This Court is bound to follow previous decisions of its own as well as those of Courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are . . . (1) the Court is entitled and bound to decide which of two conflicting decisions of its own it will follow (2) the Court is bound to refuse to follow a decision of its own which, though not expressly over ruled, cannot in its opinion stand with a decision[14] of the House of Lords (3) the Court is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam* '.[15]

The basis of these rules of obvious convenience has been explained by the present Master of the Rolls, Sir Raymond Evershed, in a recent lecture delivered at the University of London.[16] In theory, if not invariably in practice, the function of ' finally settling the law ' is vested in the House of Lords, and ' so long as such revising discretion remains in the highest tribunal of the land, there is wisdom in the practice that cobblers in less exalted places should stick to their lasts, and should leave to the supreme tribunal the task of making such modifications as the times may require to previously established rulings '.

It may well be asked by way of criticism whether the fetters placed on the English Court of Appeal are not too rigid. Sir Raymond Evershed himself points out that ' the opinions of the Upper House can no longer be had for the asking ', and when they are available the expense involved often proves a deterrent except to the wealthier class of litigant.[17] Perhaps this explains

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14. ' Throughout the judgement it is clear that the Master of the Rolls was referring to *subsequent* decisions of the House of Lords '. C. K. Allen *op. cit. supra* at page 236 ; but see the cases cited by Dr. Allen, *ibid.* at page 235, note (1).

15. As to the meaning of *per incuriam*, cf. n. 41 *infra*.

16. *The Court of Appeal in England* by the Rt. Hon. Sir Raymond Evershed, page 17.

17. One is tempted to speculate whether the law relating to the interpretation of commercial contracts would not have been substantially different if the unsuccessful party before the Court of Appeal in *British Movietone News Ltd. vs. London and District Cinemas* (1951) 1 K.B. 190 could not have afforded to take his grievances before the House of Lords. In that event Lord Justice Denning's exposition of the law, which, ' after careful and candid consideration ' has now been superseded by Lord Simon's judgement reported in (1951) 2 T.L.R. 571, would presumably have still been binding in England.

why English Judges have developed such remarkable genius for ' distinguishing ' inconvenient decisions of the past—a technique which, ' however unsatisfactory it may be to perfect logic often . . . succeeds, in the long run, in purging the Common Law of its more glaring anomalies '.[18] It is by this process that precedents which are considered erroneous are sometimes successfully ' evaded to the point of sterilization '. Thus, a precedent which has once earned a bad reputation ' usually perishes, sometimes by express disapproval, more often by cold disregard '.[19] In any event as Lord Wright has pointed out, *notwithstanding all the apparatus of authority, the Judge has nearly always some degree of choice.*[20]

B. ' STARE DECISIS ' IN CEYLON

In the preceding paragraphs I have attempted a brief analysis of the principles on which the English Judges have developed the rule of *stare decisis*. It is now convenient to examine by way of comparison the position in this country in civil proceedings from the point of view of (*a*) Courts of first instance (*b*) the Supreme Court exercising appellate jurisdiction.

(*a*) Courts of first instance

The primary function of the trial Judge—be he District Judge, Commissioner of Requests or Magistrate—is ' to hear, supervise and determine particular, concrete controversies within his jurisdiction '. He makes his decision on the facts of the case which he believes to have been proved, and upon those facts he pronounces judgement in accordance with the relevant legal principles laid down either by statute or by previous rulings of the Superior

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18. C. K. Allen *op. cit.* at page 335. For an entertaining example of this technique, see Sargent, L. J.'s judgement in *re Swinbourne* (1926) Ch. 38 where he recalls that Buckley, J., when invited to follow a decision of which he ' thoroughly disapproved ', was content to say that it ' puzzled ' him, but that it could in any event be ' distinguished '. Strangely enough, the erroneous decision, though frequently ' disapproved ' in varying degrees of ' courtesy ', has never been granted the formalities of a formal burial. It is still cited by Counsel in the agony of defeat, but with little encouragement, and it now belongs to the sad group of authorities which are ' treated as overruled '.

See *Owen vs. I.L.R.* (1949), Law Journal Reports 1128.

19. To this melancholy category belongs *George vs. Skivington* (1869) L.R. 5 Ex.1 which, according to Pollock ' Torts ' (14th edn.) p. 461 ' still stands, but on such a little stool of its own that it is hardly worth citing in future '.

Cheshire's *Private International Law* (3rd edn.), p. 479 rejected a judgement pronounced in 1812 as ' too old to be of value '. Dr. Allen compares precedents to old wine, which ' improves with age ' up to a certain point, and then begins to ' go off '. *Law in the Making*, page 250.

20. *Legal Essays and Addresses* by Lord Wright, page 25.

Courts which are binding on him. If, as sometimes happens today, he is confronted with conflicting decisions of the Supreme Court which defy ' distinguishing ', he is forced to extricate himself from his embarrassment as best as he can by making an invidious choice. I cannot discover any logical ground for the prevalent theory that Courts of first instance must necessarily regard the more recent of two conflicting decisions as entitled to greater weight, although of course this is justified where the earlier of the conflicting decisions is so old that it is inapplicable to modern conditions.[21] ' A Judge of first instance will not be astute to discover conflict between two decisions of the Court of Appeal ; but where he is satisfied that there is a real conflict, he is under the same duty as the Court of Appeal to find out where the true doctrine lies. *He is bound to choose according to principle and not at random* '.[22]

(*b*) **The Court of Appeal**

If and when a decision of a trial Judge is taken up in appeal before the Supreme Court, the appellate tribunal is itself primarily concerned with arriving at a correct conclusion on the merits of the particular case. But that process involves other important implications as well, for the decision of the Supreme Court may lay down some rule of law and would thereafter establish a precedent binding in future cases on the trial Courts of the Island and also, subject to certain defined limitations, on the Supreme Court itself. The responsibilities attaching to such a situation are great indeed. On the one hand there is the danger of indulging in some *obiter dictum* which, through a Judge's failure to ' keep his eye on the ball ', may cause embarrassment to himself as well as to others on future occasions.[23] On the other hand, (I appreciate that I now trespass on controversial ground) it may sometimes be regarded as a pity when a fully representative Bench discards an opportunity to lay down certain clear general principles which, though relevant, may not perhaps be strictly essential to the decision of the particular case. The choice between these alternatives has been succinctly explained by the present Lord Chancellor of England, Lord Simonds, in a recent decision of the House of Lords.[24]

21. cf.n.19 *supra ad fin.*

22. *Armstrong vs. Strain* (1951) 1 T.L.R. 856 at page 864. There are many instances of such conflicting decisions in our Law Reports today-- indeed, in the same volume of some of the Reports. I do not doubt that practitioners and trial Judges would prefer that these points of controversy, particularly on questions which frequently arise in practice should, when opportunity arises, be settled by authoritative decisions of a Collective Bench. A senior member of the Judicial Service recently collected for my information a formidable list of such conflicting decisions.

23. An *obiter dictum* never possesses the weight of binding authority unless some established practice has followed upon it, but in that event, ' it is the practice and not the *dictum* that forms the binding authority '. *Leeds Industrial Co-operative Society vs. James* (1924) *A.C.* 854, 864.

24. *Jacobs vs. London County Council* (1950) A.C. 361 at 369.

> 'While it is the primary duty of a Court of Justice to dispense justice to litigants, it is its traditional role to do so by means of an exposition of the relevant law. Clearly such a system must be somewhat flexible, with the result that in some cases judges may be criticised for diverging into expositions which could by no means be regarded as relevant to the dispute between the parties ; in others, other critics may regret that an opportunity has been missed for making an oracular pronouncement upon some legal problem which has long vexed the profession '.

Certainly, no such ' oracular pronouncement ' would be useful unless the Judge has received the vitally important assistance of the Bar.[25] Many judgements ' deliberately addressed to posterity ' have, alas, proved to be what Lord du Parcq describes as a ' fruitful breeding ground of contention, if not of error '.

Appeals to the Supreme Court from decisions of a Court of first instance are now regulated by Section 38 of the Courts Ordinance. A single Judge is empowered to hear appeals from Courts of Requests and Magistrate's Courts, but he is not precluded from reserving *any appeal* for the decision of more than one Judge. He is also authorised by Sections 48 and 48A to reserve *questions of doubt and difficulty* for the decision of a Bench of two or more Judges, the constitution of the Bench being determined in either of these eventualities by the Chief Justice.[26] The distinction between the two alternative procedures is that in the former case the entire *lis* is decided by the fuller Bench ; in the latter, only a particular question is answered, and the appeal is then remitted to the single Judge for adjudication.[27]

Can a single Judge sitting in appeal ' overrule ' some previous ruling pronounced by a single Judge ? In *Jane Nona vs. Leo*,[28] which came up before a Bench of five Judges, Bertram, C.J. declared that ' it was not competent for a Bench of two Judges to overrule a judgement of two Judges ', and it follows *a fortiori* that a Judge sitting alone could not properly overrule a decision of

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25. In England, the notable decisions which represent milestones in the development of the Common Law have, according to a regular contributor to the *Law Quarterly Review*, been pronounced from time to time by ' a comparatively small number of distinguished Judges . . . selected from and sharing the ideals of a powerful Bar '. In the words of Harold Laski, ' they were able to transcend the limitations of experience and see the issue in a wider perspective '. Their most notable quality has been what Frederick Pollock calls ' judicial valour '. Pollock dedicated his text book on Torts to ' Mr. Justice Willes—a man courteous and accomplished, a Judge wise and valiant '.

26. It is submitted that much loss of judicial time would be avoided in the long run if the provisions of Section 48 are more frequently resorted to.

27. For an example of the former procedure, see *Rajapakse vs. Fernando* (1951) 52 N.L.R. 361, and the latter procedure see *De Mel vs. de Silva* (1949) 51 N.L.R. 105.

28. (1923) 25 N.L.R. 241.

another single Judge. Garvin, J. agreed. Ennis, J. neither agreed nor disagreed expressly with this particular proposition in his separate judgement, and he did not acknowledge or repudiate the anticipated ' dissent ' imputed to him in the judgement of the Chief Justice. Porter, J. was content to identify himself with the judgement of Ennis, J. Schneider, J., however, declared that, ' as far as (he was) familiar with the practice of our Court, a judgement pronounced by a Bench of two Judges has not been regarded as binding upon another Bench of two Judges '. All the observations on this controversial point are no doubt *obiter dicta,* but the eminence of the Judges who pronounced them certainly entitles their views to considerable respect. Is it permissible, I wonder, to reconcile their *dicta* by assuming that Schneider, J. intended to convey that a Court, though powerless to ' overrule ' certain decisions, could nevertheless ' refuse to follow ' them ?[29] Upon that view of the matter, the Court would be authorised to initiate a conflict of authority—leaving it to ' judicial posterity ' to resolve the conflict (or worse still, to intensify it). If that be the true rule of *stare decisis* in Ceylon, the position of trial Judges, lawyers and litigants would indeed be unenviable. It seems too high a price to pay for stimulating ' the vigour of dissent ', and Bertram, C.J's contrary opinion should be accepted as correct.

It is abundantly clear to any student of our Law Reports that single Judges (including, I regret to confess, myself) have in the past ' refused to follow ' each other's previous rulings, and that a similar attitude has sometimes prevailed, though less frequently, when a Bench of two Judges was confronted with the earlier pronouncement of a Bench similarly constituted. The result is that what Mr. Justice Wendt observed in 1907 seems to be just as true today. ' The law which is proverbially uncertain, is rendered more uncertain still, and the passion for litigation, which is one of the curses of the Island, is thereby fostered '.[30] I venture to suggest that *there is an urgent need to devise some simple rules whereby the element of chance in litigation can be minimised,* and that more frequent application of the provisions of Sections 38 (as amended), 48 and 51 of the Courts Ordinance provides a solution to the difficulties

29. Since I wrote the above, Professor Nadarajah, who has been kind enough to read my manuscript, has sent me a reference to the following passage in a letter from Pollock, C.B. to his grandson Frederick Pollock (quoted in Hanworth's : *Lord Chief Baron Pollock* (1929) at page 198) : ' Even Parke, Lord Wensleydale (the greatest legal pedant that I believe ever existed) did not always follow even the House of Lords ; he did not *overrule* . . . but he did not *act upon* cases which were *nonsense* '.

30. *Rabot vs. de Silva* (1907) 10 N.L.R. 140.

which have been increasingly created by the present tangle of precedent in our Courts.[31]

The rules laid down by the Court of Appeal in England in *Young vs. Bristol Aeroplane Company*[32] can, it is submitted, legitimately and conveniently be adapted in Ceylon in such a manner as to avoid inconsistency with the express provisions of our Courts Ordinance. I suggest accordingly that the true rule of *stare decisis* which should guide a Judge of the Supreme Court sitting alone to hear minor Court appeals is as follows :—

(*a*) that he is bound to follow any earlier decision, not previously overruled, of a single Judge or a Bench of two or more Judges subject to the qualification that he is bound to refuse to follow a decision which, though not expressly overruled, cannot in his opinion stand with a decision of the Privy Council or a Collective Court summoned by the Chief Justice under Section 51 of the Courts Ordinance ;

(*b*) that should he be confronted with two previous irreconcilable decisions of the Court or with a decision which he regards as made *per incuriam*, it would generally be more expedient if, instead of selecting for himself the decision which he prefers to follow or refusing to follow the decision made *per incuriam*, he reserved either the entire appeal or the particular question for a larger Bench constituted under Section 38 or Section 48A of the Courts Ordinance.[33] The law would then be more authoritatively settled subject only (*a*) to any subsequent ruling of the Collective Court (assembled for the purpose under Section 51) or of the Privy Council, and (*b*) to the intervention of the Legislature.

Turning now to appeals to the Supreme Court from the decisions of a District Judge, the procedure is also regulated by Section 38 of the Courts Ordinance. The matter ' shall be heard before *two at least* of the Judges ' of the Supreme Court. The meaning of those words has itself been the subject of judicial controversy. In *Sellappah vs. Sinnadurai*,[34] Basnayake, J. took the view that in this particular context ' two at least ' meant ' not less than two and not more than two either ', so that in his opinion three Judges could not form a properly constituted Bench to dispose of an appeal from a District Court

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31. Since writing the above, I have been referred by a friend to certain observations of Sir Lionel Leach, now a member of the Judicial Committee of the Privy Council, in a judgement pronounced by him when presiding over a Full Bench of the High Court of Madras. He pointed out that, through a conflict of authority between Divisional Bench decisions in Madras, ' the subordinate Courts were left without guidance . . . and there were the additional factors of loss of money and judicial time '.

32. (1944) K.B. 718 ; see page 5 *supra*.

33. The position should be the same if he is confronted with a past decision which he is powerless to overrule and which he believes to be unsatisfactory.

34. (1951) 53 N.L.R. 121.

unless, as provided by the Section, there had been previous disagreement between the two members of the Bench who had sat to hear the appeal. Swan, J. (Nagalingam, J. concurring) rejected Basnayake, J's objection on this point. With respect, I acknowledge the force of Swan, J's interpretation of the words concerned, but at the same time I venture to suggest that the controversy is of little more than academic interest ;[35] because in my submission a Divisional Bench of three Judges disposing of an appeal from a District Court *under Section* 38 (whether because two Judges had previously disagreed or for any other reason) has, for the reasons given by Lord Greene in *Young vs. Bristol Aeroplane Company*,[36] no greater power than a Divisional Bench of two Judges (normally constituted under the Section) to overrule an earlier ruling of a Bench of two Judges.[37]

It has sometimes been the practice in the past for a Bench of three Judges to be appointed to hear an appeal in which the *ratio decidendi* of earlier decisions of the Court cannot be reconciled. This procedure was admittedly sanctioned under earlier provisions of the Courts Ordinance when three Judges did *in fact* constitute a ' Full Bench ', but with submission, there seems to be no warrant for such a practice at the present time. Section 51 provides that a Bench, which ' shall include the Chief Justice ', and ' shall consist of five or more Judges ' alone has power to make an authoritative pronouncement on a question of law, and such pronouncement, whether it be unanimous or a decision of the majority, ' shall *in all cases* be deemed and taken to be the judgement of the

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35. The proper objection, it is submitted, would have been that it was profitless to refer to a Bench of three Judges, functioning under Section 38, the question whether *Sachchithananthan vs. Sivaguru* 50 N.L.R. 293 (*a two-Judge decision*) had been correctly decided. For, in my view, the larger Bench was in truth bound by and therefore powerless to overrule the earlier decision. A Collective Court has since authoritatively decided this question. See *Akilandanayaki vs. Sothinagaratnam* (1952) 53 N.L.R. 385.

36. See p. 5 *supra*.

37. It is a matter for consideration, however, whether an appeal which is likely to be taken up to the Privy Council by the unsuccessful litigant should not as a matter of course be heard before three Judges of the Supreme Court. In former times, Section 52 of the Charter of 1833 required that, before an appeal was preferred to the Privy Council it should first come up *in review* before a Collective Court of the Supreme Court. This procedure no longer obtains—because the pressure of work in the Courts makes a ' re-hearing ' impracticable, but much benefit would result if such appeals were in the first instance argued before three Judges. The innovation would, I believe, be welcomed by the Bench and the Bar alike. There is much to be said for the view that at least three Judges should share the responsibility for a decision which is ultimately to be conveyed before the highest tribunal in the Commonwealth. Besides, quite apart from the rule of *stare decisis*, the ruling of three Judges, if unanimous, must necessarily claim more persuasive authority in the development of the law.

Supreme Court '. It is in this respect that the statutory power of a Collective Bench in Ceylon to overrule earlier decisions of a less authoritative Divisional Bench of Judges exceeds those of the Full Court of Appeal in England.

The classic pronouncement regarding the powers of a ' Collective Court ' in Ceylon—the term ' Full Court ' is a misnomer today, since it is improbable that *all* nine Judges would ever be available and qualified to be summoned under Section 51 on any particular occasion—is to be found in *Jane Nona vs. Leo.*[38] It may overrule any past decision of a Bench of Judges except that of a Collective Court which had previously pronounced an authoritative judgement under Section 51 of the Courts Ordinance (or under an earlier statutory equivalent of Section 51). *The numerical strength of the Bench which sat on either the earlier or the later occasion is irrelevant.* For a Collective Court, if duly summoned and properly constituted for the purpose, is the only judicial tribunal invested with statutory authority ' to overrule the past and to enslave the future '—subject only to subsequent intervention by Parliament or being overruled (expressly or by necessary implication) by the Privy Council.[39] No such ' revising discretion ' (to quote the words of Sir Raymond Evershed) is now entrusted to a Bench of three Judges performing functions under Section 38, and in this context no statutory halfway house exists between Sections 38 and 51. Indeed, serious consequences could be visualised if the law were otherwise—for, in theory, only judicial loyalty would prevent a bare majority of a Bench of three Judges from overruling a long line of two-Judge decisions of the Court on the same point. Disrespect for the law would result, says Professor Paton, if *a chance majority* were to affect the decision of a particular case and, in addition, change the law for the future.

It is submitted for consideration that the true principle of *stare decisis* governing a Bench of two *or more* Judges of the Supreme Court functioning under Section 38 to dispose of appeals from judgements of a District Court

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38. (1923) 25 N.L.R. 241.

39. I have often wondered why some enterprising member of the Bar has not found the time and the inclination to publish a set of Reports containing all Collective Court decisions of the Supreme Court which have not up-to-date been overruled by the Privy Council or set at naught by the Legislature. Some of these judgements were pronounced as long ago that they are liable to be lost sight of by busy practitioners and Judges. For instance, the ruling of a Full Bench in *G.A. Central Province vs. Ryan* (1881) 4 S.C.C. 181 was not brought to the notice of the Judges who fifty-nine years afterwards gave a contrary ruling *per incuriam* in *Kanagasunderam vs. Podihamine* (1940) 42 N.L.R. 97. This error was rectified eleven years later in *Waloopillai vs. Manders* (1951) 53 N.L.R. 235. Professor Paton, in the 2nd Edition of his *Text book of Jurisprudence*, quotes two instances where a case had reached the House of Lords before the existence of a binding precedent was discovered by Counsel (page 163 footnote 56)—a situation which ' certainly brings the administration of justice into disrepute ' *per* C.K. Allen 59 L.Q.R. at p. 310.

should, *mutatis mutandis*, be the same as that which I have previously suggested as appropriate to the case of a single Judge disposing of minor Court appeals. The exceptions to the binding quality of earlier decisions of the Supreme Court are (*a*) that such a Bench may overrule a previous decision of a single Judge (*b*) that—as the special powers of ' reference ' prescribed by Section 38 and by Section 48 are vested only in a single Judge—the most desirable procedure to adopt when a Bench of two or more Judges is embarrassed by an inconvenient decision of the past or by conflicting decisions affecting a sufficiently important legal issue, is to invite the Chief Justice to give appropriate directions under Section 51 to have the issue authoritatively settled once and for all by a Collective Court. The same expedient should be adopted if some new problem of doubt or difficulty arises which is likely to have far-reaching consequences affecting titles to land or the rights of parties in commercial transactions. Recent volumes of the Law Reports bear testimony to the fact that some conflicting decisions have in the past been pronounced on the same point within a short period of time before the controversy could be finally settled by a Bench of Judges summoned for the purpose under Section 48A or 51. In the meantime, the law on the point had remained embarrassingly uncertain, and the ultimate solution could have brought little comfort to the litigants who suffered at the hands of a decision which was subsequently overruled.[40]

C. ' STARE DECISIS ' IN THE PRIVY COUNCIL

It is now convenient to examine very briefly the extent to which the rule of *stare decisis* is applied by the Judicial Committee of the Privy Council (which is Ceylon's ultimate appellate tribunal) with reference to its own past decisions. In the first place, there is statutory provision under Section 4 of the Judicial Committee Act, 1833, for the Crown to refer back any question to the Privy Council for its opinion, so that ' there is no inherent incompetency in ordering *a re-hearing of a case already decided*, even where a question of a right of property is involved, but such an indulgence will be granted in very exceptional cases only. But expediency (not competency) requires the avoidance of the great public mischief which would arise on any doubt being thrown on the finality of the decisions of the Judicial Committee '.[41]

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40. It is interesting to note that in America the appellate tribunals sometimes remove the hardship which would otherwise follow from *ad hoc* over-ruling of past decisions which were of such long standing that litigants have been induced to act upon them. In such cases, ' the Court follows the precedent in the instant case, but announces that it will not do so in future '. Paton *op. cit. supra* page 164 footnote 59.

41. *Hebbert vs. Purchas* (1871) L.R. 3 P.C. 664.

The Privy Council does not regard itself as rigidly bound by the doctrine of *stare decisis*. Lord Reading said in *Irish Civil Servants, in re*[42] :—

> ' It may well be that the Board would hesitate long before disturbing a solemn decision by a previous Board, which raises an identical or similar issue for determination. But for the proposition that the Board is in all circumstances bound to follow a previous decision, as it were blindfold, their Lordships are unable to discover any adequate authority ' ;

and he concluded that it was ' repugnant to good sense ' to attribute to the Board, as a Court of last resort, ' an impotence which would be deplorable '.

Similarly, Lord Porter said in *Gideon Nkambule vs. The King*[43] :—

> ' The Board does not act, as the House of Lords acts, on the strict rule that they are bound by a previous decision based on the same considerations. Nevertheless, as was said in *Read vs. Bishop of Lincoln* (1892) A.C. 664, a decision on a given state of facts ought not to be reopened without the greatest hesitation, though the right to reopen is not confined to cases where some fresh fact was adduced which had not been under consideration on the previous occasion. *Still, the right to reopen remains . . .* '.

In that particular case the Board refused to follow its own interpretation of an amended Section of the Criminal Procedure and Evidence Proclamation of 1938.[44]

' Their Lordships do not doubt ', said Lord Simon, ' that in tendering humble advice to His Majesty they are not absolutely bound by previous decisions of the Board, as is the House of Lords by its own judgements '.[45] More recently, however, the judgement pronounced by Lord Simonds in *Bakhshumen vs. Bakhshumen*[46] makes it clear that, for all practical purposes, the doctrine of *stare decisis* is as effective in the Privy Council as it is in the House of Lords.

D. CONCLUSION

The main purpose of this article is to indicate the extent of the problem under consideration, and I have not presumed to lay down any authoritative or novel rule as to its final solution.[47] The suggestions offered here are made tentatively and I should certainly welcome the opportunity to revise them

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42. (1929) A.C. 242.

43. (1950) A.C. 379 at 397.

44. *Tumahole Bereng vs. The King* (1949) A.C. 253.

45. *Attorney General for Ontario vs. Canada Temperance Federation* (1946) A.C. 193.

46. (1952) A.C. 1. *Vide* in this connection the editorial comment in 68 *Law Quarterly Review*, p. 142.

47. Nor have I attempted to elucidate the analogous problem of how the true *ratio decidendi* can be extracted from a judicial decision.

after ascertaining the views of more experienced minds. Much that I have said is frankly confessional and self-critical in character. Possibly the present tangle of precedent has in some measure been over-stated, for, as a general rule, the principles of law applicable to ordinary human affairs are no less ' reasonably predictable ' in Ceylon than they are in other countries. In England, the Judges of the Court of Appeal lack the advantages of such statutory provisions as are contained in Sections 48 and 51 of our Courts Ordinance. In the result, they are sometimes obliged to summon to their aid much ingenuity in their attempts plausibly to ' distinguish ' the undistinguishable, to ' sterilise ' the inconvenient or unwanted precedent, and to extend the doctrine of decision *per incuriam* to limits which are justified perhaps by expediency rather than by perfect logic.[48] But in this country the advantages of the existing statutory machinery do permit a more direct approach to the rectification of past error than is permissible in England.[49] Further amendments to the Courts Ordinance would probably prove even more beneficial. Would it not be desirable, for instance, to vest the Supreme Court with a modified power to ' review ' its own ruling *in a particular case ?* Certain preliminary safeguards against an unprofitable usurpation of judicial time would, of course, be necessary—for example, by insisting as a condition precedent to the suggested right of review *either* the *fiat* of the Attorney General *or* the certificate of private Counsel (subject, in the latter case, to the over-riding discretion of the Chief Justice). In regard to all these problems, the Bar and the Judiciary share a common responsibility to protect the Courts from any justifiable reproach that they are in truth Courts ' of conjecture ' rather than institutions in which justice is dispensed according to law. I sometimes wonder whether the pendulum has not swung too far. Have we become insufficiently ' *stare-decisis*-minded ' at the present time ?

E. F. N. GRATIAEN

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48. See *Moore vs. Hewitt* (1947) 2 A.E.R. 170, 272 and *Nicholas vs. Penny* (1950) 2 K.B. 466 at 473. The tendency is to bring inconvenient decisions within the *per incuriam* category if they have been decided without reference to material cases or statutes or even if one party to the appeal was not represented by Counsel.

49. On the other hand, Judges in Ceylon lack the advantages of having their pronouncements criticised, as they would be in England and America, in the professional Law Journals to which academic lawyers, practising barristers and, indeed, the Judges themselves regularly contribute. One would like to see the Law Department of the Ceylon Universtiy, even though handicapped at present by shortage of staff, inaugurate at least a Quarterly Law Review in this Country. Lord Wright, in an article at page 46 of Volume 67 of the *Law Quarterly Review* of England, reminds us that this splendid journal was introduced ' to encourage free discussion of current decisions, going hand in hand with doctrinal and historical research, and critical appreciation of legal literature *without respect of persons* '.

Joseph Conrad's Lord Jim

LORD JIM was begun (Conrad tells us in his AUTHOR'S NOTE of 1917) as a short story, laid aside for two years, and then reworked into a serial for *Blackwood's Magazine* :

> 'But, seriously, the truth of the matter is, that my first thought was of a short story, concerned only with the pilgrim ship episode; nothing more. And that was a legitimate conception. After writing a few pages, however, I became for some reason discontented and I laid them aside for a time. I didn't take them out of the drawer till the late Mr. William Blackwood suggested I should give something again to his magazine.
>
> It was only then that I perceived that the pilgrim ship episode was a good starting-point for a free and wandering tale; . . .'

The 'free and wandering tale' into which the original episode was prolonged was not made by merely joining new material to old :

> 'The few pages I had laid aside were not without their weight in the choice of subject. But the whole was re-written deliberately.'

The narrative shows no signs of incoherence or discontinuity, of the assembling of two non-cohesive or loosely-connected parts. It is a complete story. But though there is no logical break, there is a qualitative change (affecting both subject-matter and technique) which begins to be felt in the nineteenth chapter. The stream flows on, but the character of the river-bed is different and the waters take on a new colouring. The first half is good Conrad, a really fine short story; the rest is more popular Conrad, it draws upon the material and experiences out of which he made his popular successes, *Almayer's Folly*, *An Outcast of the Islands* and *The Rescue*. But even this romantic melodrama has its own distinction and the finale is a superb *coup de théâtre*, entirely in character and completely right as the ending of Jim's story.

As a result of its combination of two modes, *Lord Jim* has received little serious critical inspection. The reader with a serious interest in Conrad is inclined to dismiss it as neither a good short story nor a satisfying novel. Even those critics who have given some serious attention to the first half, have (misled perhaps by Conrad's reference to 'the acute consciousness of lost honour' in Jim) seen his case as much simpler than it is. Miss Bradbrook, for instance, says: 'In *Lord Jim*, fidelity is considered as a constituent of personal honour, as it is expounded by the French lieutenant: . . . Personal honour, in a sense Polish and perhaps also Latin, dominates *Lord Jim*, *The Rescue* and many short stories.' And this leads to what is, as I hope to be able to show, a simplification and misunderstanding of the problem of conduct and character Marlow sees in Jim. 'In spite of Marlow,' Miss Bradbrook says, 'Jim not

only looks sound, but he is sound, as even Marlow comes to recognise before long.' This misses the significance of Jim's case ; for certainly (as Conrad says in the AUTHOR'S NOTE) ' . . . Jim is not a type of wide commonness ' and though he may be ' a simple and sensitive character ', his motives are ambiguous and complicated :

> ' " You are so subtle, Marlow."
>
> " Who? I ?" said Marlow in a low voice. " Oh, no ! But *he* was ; and try as I may for the success of this yarn I am missing innumerable shades—they were so fine, so difficult to render in colourless words. Because he complicated matters by being so simple, too—the simplest poor devil ! . . . By Jove ! he was amazing." '

It is the intention of this article to examine fairly closely this rather neglected and sometimes misinterpreted short story, and then to try and indicate more briefly the connexion of Tuan Jim of Patusan with the Jim who jumped from the *Patna*.

The great crisis of Jim's life, the event ' which could conceivably colour the whole " sentiment of existence " in a simple and sensitive character ', is the pilgrim ship episode. This event, with all that belongs to it, illuminates Jim's case. For, to Conrad, as to Marlow ' the meaning of an episode was not inside like a kernel but outside, enveloping the tale which brought it out only as a glow brings out a haze '. (*Heart of Darkness*, Blackwood, p. 55.) It is characteristic of Conrad to make a moral interest the controlling principle of a story : a ' moral discovery . . . should be the object of every tale ', says the old teacher of languages, who tells the story of Razumov in *Under Western Eyes*. In the short story of Jim, Conrad is concerned with psychological exploration, moral discovery and the attempt to define moral impressions.

Jim's weakness lay hidden, and uncomprehended ; a part of his psychological make-up, it lurked in the unconscious. It is the function of the speculative Marlow, the subtle analyst, to probe Jim's consciousness, to try to expose and define the feelings and motives of which Jim himself is only dimly aware, if at all :

> ' " The commonest sort of fortitude prevents us from becoming criminals in a legal sense ; it is from weakness unknown, but perhaps suspected, as in some parts of the world you suspect a deadly snake in every bush—from weakness that may lie hidden, watched or unwatched, prayed against or manfully scorned, repressed or may be ignored more than half a lifetime, not one of us is safe." '

Characteristically, the novel opens with an account of Jim as he appeared some years *after* the pilgrim ship episode ; he comes to vivid life and our interest is immediately arrested by his curious conduct :

> ' Jim had always good wages and as much humouring as would have bought the fidelity of a fiend. Nevertheless, with black ingratitude he

would throw up the job suddenly and depart. To his employers the reasons he gave were obviously inadequate. They said " confounded fool ! " as soon as his back was turned. This was their criticism on his exquisite sensibility.

. . . His incognito, which had as many holes as a sieve, was not meant to hide a personality but a fact.'

This account is rounded off in Chapters XVIII and XIX, and within this frame is enclosed the moral history of Jim.

After the opening sketch of Jim we are carried back to the beginning of his career as a sailor, and swiftly presented with facts and traits of character which are later discovered to be of high significance. The moral lineaments of the boy, whose vocation for the sea had declared itself ' after a course of light holiday literature ', help to explain the conduct of the young man who was chief mate of the *Patna*. On the ' training-ship for officers of the mercantile marine ', ' He was generally liked '. He was romantic, a dreamer, seeing himself as the hero of thrilling adventures, which called forth his courage and devotion to duty :

' On the lower deck in the babel of two hundred voices he would forget himself, and beforehand live in his mind the sea-life of light literature. He saw himself saving people from sinking ships, . . . or as a lonely cast-away, . . . He confronted savages on tropical shores, quelled mutinies on the high seas, and in a small boat upon the ocean kept up the hearts of despairing men—always an example of devotion to duty, and as unflinching as a hero in a book.'

While he stands dreaming of imaginary achievements, reality confronts him and leaves him confounded :

' " Collision. Just ahead of us. Mr. Symons saw it." ' . . .

' Jim felt his shoulder gripped firmly. " Too late, youngster." The captain of the ship laid a restraining hand on that boy, who seemed on the point of leaping overboard, and Jim looked up with the pain of conscious defeat in his eyes.' . . .

'He felt angry with the brutal tumult of earth and sky for taking him unawares and checking unfairly a generous readiness for narrow escapes. . . . When all men flinched, then—he felt sure—he alone would know how to deal with the spurious menace of wind and seas. . . . The final effect of a staggering event was that, unnoticed and apart from the noisy crowd of boys, he exulted with fresh certitude in his avidity for adventure, and in a sense of many-sided courage.'

This incident foreshadows the emergency on the *Patna;* this failure throws light on that ; neither now nor after that great crisis of his life does he realise that the fate that betrays him is within himself. As Marlow exclaims

later, 'Ah, he was an imaginative beggar'. One more point: 'collision' and 'leaping' or 'jumping overboard' acquire in Jim's history a sinister significance.

The next two chapters carry Jim's story forward to the climactic event. Entering 'the regions so well known to his imagination', Jim 'found them strangely barren of adventure'. He is bored with the life, because he hasn't that 'perfect love of the work' which is the only reward 'for the exactions of the sea, and the prosaic severity of the daily task that gives bread'. What he had regarded as vocation was only an avidity for the adventures of the sea-life of light literature ('his vocation had declared itself' 'after a course of light holiday literature'). The brief episode which reveals that Jim has mistaken his vocation gains a symbolic force from Conrad's intense belief in the ideals and achievement of the merchant service. It is, basically, the kind of test exemplified in different ways in *The Nigger of the 'Narcissus'*, *Typhoon*, and *The Shadow Line*. He encounters the destructive malice of the sea. But the conflict stirs no loyalty to the ship or the service. He is disabled by a falling spar and lies in his cabin (during 'a week of which his Scottish captain used to say afterwards: "Man! it's a perfect meeracle to me how she lived through it!"') pre-occupied with his own sensations. He is 'secretly glad he had not to go on deck' and feels 'a despairing desire to escape at any cost' an existence liable to the agony of such sensations. Left behind at a hospital in an Eastern port, 'Directly he could walk without a stick, he descended into the town to look for some opportunity to get home.'

The men of his calling in the port divide themselves into two classes: those who followed an ideal, and those (the majority) 'who, like himself, thrown there by some accident, had remained as officers of country ships. They had now a horror of the home service, with its harder conditions, severer view of duty, and the hazard of stormy seas . . . and in all they said—in their actions, in their looks, in their persons—could be detected the soft spot, the place of decay the determination to lounge safely through existence.'[1]

Jim hasn't gone soft, but he is fascinated by their 'appearance of doing so well on such a small allowance of danger and toil. In time, beside the original disdain there grew up slowly another sentiment; and suddenly, giving up the idea of going home, he took a berth as chief mate of the *Patna*.'

It is ironical that, deciding to take what appeared to be a 'soft thing', Jim encounters the great testing event of his life.

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1. Cp. in *The Shadow Line* the drunken 'officer of some Rajah's yacht which had come into port to be dry-docked', 'dozing prone in a long chair', and the aristocratic unemployable Hamilton, and Captain Giles's comment on the former: 'He was a nice boy. Oh! these nice boys! . . . What I meant is that some of them do go soft mighty quick out here.'

Conrad describes with characteristic evocative power the scorching heat and the cloudless calm, ' the plain luminous and smooth ' over which the *Patna* passed ' with a slight hiss '. The lurking fate, the potential hostility are suggested by significant and intensified details : ' a treacherous shoal ', ' the sinister splendour ' of the sky, the sea ' viscous, stagnant, dead '. The silence and calm, by this ironic heightening, become charged with menace, ' the shadow of the coming event ' :

> ' Jim on the bridge was penetrated by the great certitude of unbounded safety and peace that could be read on the silent aspect of nature . . .
>
> " How steady she goes ", thought Jim with wonder, with something like gratitude for this high peace of sea and sky. At such times his thoughts would be full of valorous deeds : he loved these dreams and the success of his imaginary achievements. They were the best parts of life, its secret truth, its hidden reality. . . . There was nothing he could not face.'

His *dreams*, his *imaginary* achievements were the secret *truth*, the hidden *reality* of life.

The sordid setting, the ironical background, for his heroic dreams is the rotten pilgrim ship and its despicable officers : the drunken sot of a second engineer, the red-faced skipper, ' a sort of renegade New South Wales German ', ' like a clumsy effigy of a man cut out of a block of fat ', and the chief engineer, who with the skipper ' in the way of brazen peculation had done together pretty well everything you can think of '.

> ' Outwardly they were badly matched : one dull-eyed, malevolent, and of soft, fleshy curves ; the other lean, all hollows, with a head long and bony-like the head of an old horse, with sunken cheeks, with sunken temples, with an indifferent glazed glance of sunken eyes.'

Later, further touches are added to these vivid thumb-nail character sketches.

Jim, faintly amused by the scene the skipper makes, reflects that ' those men did not belong to the world of heroic adventure ; they weren't bad chaps though '.

The sudden blow is communicated (it is characteristic Conrad) through happenings and sensations : the second engineer ' suddenly pitched down head-first as though he had been clubbed from behind. . . . Had the earth been checked in her course ? . . . A faint noise as of thunder infinitely remote, less than a sound, hardly more than a vibration, passed slowly, and the ship quivered in response, as if the thunder had growled deep in the water. . . . '

What might be called the Exposition is over. It has introduced to us Jim the water-clerk and his puzzling behaviour, told us that he is running away from a ' fact ' ; it has revealed his dominant trait and his attitude to his ' vocation ', given us his thoughts and feelings on board the *Patna* and led up to the ship's collision ' with something floating awash '.

We next find ourselves at an official inquiry, a month or so later, at which 'Jim, in answer to pointed questions, tried to tell honestly the truth of this experience'. What had happened to the *Patna*? What had Jim done? The dramatic suspense evoked by our ignorance of what has happened intensifies the moral suspense created by the problem of Jim's conduct.

The inquiry is finely dramatized: the scene and persons, the atmosphere, Jim's shame, anguish and despairing efforts to comprehend the significance of what he had done are vividly realized:

> 'Outside the court the sun blazed—within was the wind of great punkahs that made you shiver, the shame that made you burn, the attentive eyes whose glance stabbed. . . . They wanted facts. Facts! They demanded facts from him, as if facts could explain anything!'

Jim's account of what followed the collision dramatically recreates the scene; and simultaneously we apprehend his moral bewilderment:

> 'He spoke slowly; he remembered swiftly and with extreme vividness; . . . The facts these men were so eager to know had been visible, tangible, open to the senses, occupying their place in space and time, . . . He wanted to go on talking for truth's sake, perhaps for his own sake also; and while his utterance was deliberate, his mind positively flew round and round the serried circle of facts that had surged up all about him to cut him off from the rest of his kind:'

'Jim's eyes, wandering in the intervals of his answers, rested upon a white man who sat apart from the others, with his face worn and clouded, but with quiet eyes that glanced straight, interested and clear'. This is Marlow. For now we come to the moral core of the pilgrim ship episode, and it is Marlow's function to probe, to question, to try to understand, to look beneath and around the facts.

Marlow takes up the narrative, going back to the time when he had perceived four men walking towards him along the quay. The description of these men illustrates Conrad's 'astounding power of physical vision' which 'enabled him to tell a character from its external manifestations'.

> 'I spotted the jolly skipper of the *Patna* at the first glance: the fattest man in the whole blessed tropical belt . . .
>
> He made me think of a trained baby elephant walking on hind-legs. . . .
>
> . . . something round and enormous, resembling a sixteen-hundredweight sugar-hogshead wrapped in striped flannelette, up-ended in the middle of the large floor space in the office. . . .'
>
> 'The other three chaps that had landed with him made a little group waiting at some distance. There was a sallow-faced, mean little chap

with his arm in a sling, and a long individual in a blue flannel coat, dry as a chip and no stouter than a broom-stick, with drooping grey moustaches, who looked about him with an air of jaunty imbecility. The third was an upstanding broad-shouldered youth, with his hands in his pockets, turning his back on the other two who appeared to be talking together earnestly. . . . This was my first view of Jim. He looked as unconcerned and unapproachable as only the young can look. There he stood, clean-limbed, firm on his feet, as promising a boy as the sun ever shone on ; and, looking at him, knowing all he knew and a little more, too, I was angry as though I had detected him trying to get something out of me by false pretences. He had no business to look so sound.'

The Significance of Jim's Case

Marlow attempts to explain why Jim's case interested him, why he ' longed to go grubbing into the deplorable details of an occurrence which, after all concerned me no more than as a member of an obscure body of men held together by a community of inglorious toil and by fidelity to a certain standard of conduct, . . . ' That was it : Jim had betrayed a whole tradition, ' a fixed standard of conduct ', the sustaining ideal ' of an obscure body of men held together by a community of inglorious toil and by fidelity to a certain standard of conduct '. That, and Jim's real worth, his uncommonness (' He was of the right sort ; he was one of us '), which made him no mere renegade and raised a moral issue. What secret weakness was there to corrupt Jim's real goodness, what fatal alloy in his metal ?

' He was the kind of fellow you would, on the strength of his looks, leave in charge of the deck—figuratively and professionally speaking. I say I would, and I ought to know. . . .

' I tell you I ought to know the right kind of looks. I would have trusted the deck to that youngster on the strength of a single glance, and gone to sleep with both eyes—and, by Jove! it wouldn't have been safe. He looked as genuine as a new sovereign, but there was some infernal alloy in his metal.'

It is the sense of hidden weaknesses (' surrounding and underlying gulfs ')[2] waiting to betray the human being that makes Jim's case significant : ' the thoughts suggested by the knowledge of his weakness—made it a thing of mystery and terror—like a hint of a destructive fate ready for us all whose youth—in its day—had resembled his youth '.

2. Cp. ' He does believe intensely, as a matter of concrete experience, in the kind of human achievement represented by the Merchant Service—tradition, discipline and moral ideal ; but he has also a strong sense, not only of the frailty, but of the absurdity or unreality, in relation to the surrounding and underlying gulfs, of such achievement, . . . ' F. R. Leavis, *Scrutiny X*, No. 1, p. 49. Jim's is an early case in Conrad ' of metaphysical gulfs opening under life and consciousness '. (ibid., p. 50.)

The interest of Jim's case is psychological. The official inquiry can only deal with facts, 'not the fundamental why, but the superficial how, of this affair'. But the inset story of the assessor Big Brierly is significant. From the beginning of the inquiry he catches the eye:

> '. . . the other, a heavy, scornful man, thrown back in his seat, his left arm extended full length, drummed delicately with his finger-tips on a blotting-pad:
>
> '"Yes", said the big assessor, with a dreamy smile at the blotting-pad; his fingers played incessantly, touching the paper without noise.
>
> '. . . Brierly was the other. Big Brierly. Some of you must have heard of Big Brierly—the captain of the crack ship of the Blue Star Line. That's the man.
>
> 'He seemed consumedly bored by the honour thrust upon him. He had never in his life made a mistake, never had an accident, never a mishap, never a check in his steady rise, and he seemed to be one of those lucky fellows who know nothing of indecision, much less of self-mistrust. . . .
>
> 'As I looked at him flanking on one side the unassuming pale-faced magistrate who presided at the inquiry, his self-satisfaction presented to me and to the world a surface as hard as granite. He committed suicide very soon after.'

Big Brierly's suicide is a conventional response to failure. It is an act of egotistic self-righteousness; the result of narrow and insensitive arrogance, of 'that belief in his own splendour which had almost cheated his life of its legitimate terrors. Almost! Perhaps wholly. Who can tell what flattering view he had induced himself to take of his own suicide?'

Brierly's superficial view of decency is implicitly contrasted with Marlow's own passionate attachment to an ideal of conduct:

> 'Frankly, I don't care a snap for all the pilgrims that ever came out of Asia, but a decent man would not have behaved like this to a full cargo of old rags in bales. We aren't an organized body of men, and the only thing that holds us together is, just the name for that kind of decency. Such an affair destroys one's confidence.' [3]

'Brierly was not bored—he was exasperated' by Jim's staying to face the consequences of his failure. His view ('at bottom poor Brierly must have been thinking of himself') that Jim should run away, 'creep twenty feet underground and stay there', only convinces Marlow 'that the inquiry was a

3. Contrast Captain MacWhirr in *Typhoon*: 'He was glad the trouble in the 'tween-deck had been discovered in time. If the ship had to go after all, then, at least, she wouldn't be going to the bottom with a lot of people in her fighting teeth and claw. That would have been odious. And in that feeling there was a humane intention and a vague sense of the fitness of things.'

severe punishment to that Jim, and that his facing it—practically of his own free will—was a redeeming feature in his abominable case.'

There is a vital ambiguity in Jim's response to his situation, a central paradox. He asserts to Marlow :

'I may have jumped, but I don't run away.'

And soon after, 'He was running. Absolutely running, with nowhere to go to.' When we first meet him he is still running away from his past.

In the resolution of this paradox lies the answer to the questions raised by Jim's behaviour in the pilgrim ship emergency and after it : Why did Jim jump ? Why didn't Jim run away from the inquiry ? What was he running away from ? To assist us in answering these questions, we have (i) Jim's character and past history, (ii) the facts disclosed at the inquiry, (iii) Jim's groping attempts to understand himself, (iv) Marlow's comments and elucidations, and (v) the representative cases of Big Brierly, Bob Stanton, Chester and his partner Old Robinson, and the attitude of the French lieutenant.

First, Why did Jim jump ?

In describing to Marlow what he thought and felt and did in the emergency, Jim is also struggling to clarify the issue to himself.

'It is all in being ready. I wasn't ; not—not then.'

This recalls the emergency of his training-ship days. Then, as now, Jim had been preparing himself for every imaginary situation by re-living in his imagination 'the sea-life of light literature' ; but the 'staggering event' confounds him.

> 'There he sat telling me that just as I saw him before my eyes he wouldn't be afraid to face anything—and believing it, too. . . . He was confident that on the square, " on the square, mind ! " there was nothing he couldn't meet. Ever since he had been " so high "—" quite a little chap ", he had been preparing himself for all the difficulties that can beset one on land and water. . . . He had been elaborating dangers and defences, expecting the worst, rehearsing the best. . . .'

It was not ordinary fear that had paralysed him. For he certainly had courage ; he was even reckless, a dare-devil, as Marlow later learns from Egstrom : 'Can't get a man like that every day, sir ; a regular devil for sailing a boat ; ready to go out miles to sea to meet ships in any sort of weather. More than once a captain would come in here full of it, and the first thing he would say would be, " That's a reckless sort of a lunatic you've got for a water-clerk, Egstrom "'. What he was afraid of was the emergency ! He suffered from a hypertrophied imagination.

> 'He was tempted to grip and shake the shoulder of the nearest lascar, but he didn't. Something held his arms down along his sides. He was not afraid—oh no ! only he just couldn't—that's all. He was not afraid

of death perhaps, but I'll tell you what, he was afraid of the emergency. His confounded imagination had evoked for him all the horrors of panic, the trampling rush, the pitiful screams, boats swamped—all the appalling incidents of a disaster at sea he had ever heard of. He might have been resigned to die, but I suspect he wanted to die without added terrors, quietly, in a sort of peaceful trance.'

' " Somebody was speaking aloud inside my head," he said a little wildly. " Eight hundred people and seven boats—and no time ! Just think of it." '

'You must remember he believed, as any other man would have done in his place, that the ship would go down at any moment ; . . .'

He had prepared himself (he believed) for the unexpected ; this was the unconceivable :

' I suppose he meant that the unexpected couldn't touch him ; nothing less than the unconceivable itself could get over his perfect state of preparation. . . . Everything had betrayed him ! He had been tricked into that sort of high-minded resignation which prevented him lifting as much as his little finger, while these others who had a very clear perception of the actual necessity were tumbling against each other and sweating desperately over that boat business.'

' There was nothing to do but to sink with the ship. No use making a disturbance about it. Was there? He waited upstanding, without a sound, stiffened in the idea of some sort of heroic discretion.'

Meanwhile the others are busy with ' that boat business ' : ' The boat was clear.' ' The last moment had come, as he thought, and he did not move. His feet remained glued to the planks if his thoughts were knocking loose in his head.' The men in the boat were yelling to the man who was already dead :

' Jump, George ! Jump ! oh, jump ! I stood by with my hand on the davit. I was very quiet. It had come over pitch dark. . . . Suddenly the skipper howled, " *Mein Gott !* The squall ! The squall ! Shove off ! " With the first hiss of rain, and the first gust of wind, they screamed, " Jump, George ! We'll catch you. Jump ! " The ship began a slow plunge ; the rain swept over her like a broken sea ; my cap flew off my head ; my breath was driven back into my throat. I heard as if I had been on the top of a tower another wild screech, " Geo-o-o-orge ! Oh, jump ! " She was going down, down, head first under me. . . . '

' " I had jumped . . . ' He checked himself, averted his gaze. . . .' " It seems, " he added. . . . '

" I wished I could die ", he cried. " There was no going back. It was as if I had jumped into a well—an everlasting deep hole. . . ." '

The drama of events is as vividly evoked as the tense inner drama of which it is the setting and the occasion.

Marlow reflects that there is ' Nothing more awful than to watch a man who has been found out, not in a crime but in a more than criminal weakness.' Of the nature of his weakness Jim is only vaguely aware : ' I was so lost, you know. It was the sort of thing one does not expect to happen to one. It was not like a fight, for instance.' He sees confusedly that there is a moral issue (' There was not the thickness of a sheet of paper between the right and wrong of this affair '), and tries to justify himself with a piece of sophistry : ' And, anyhow, if I had stuck to the ship I would have done my best to be saved.' It isn't evident to him that he has betrayed a traditional ideal of conduct, ' the solidarity of the craft ' :

> ' " A hair's breadth", he muttered. " Not the breadth of a hair between this and that. And at the time . . . "
>
> " It is difficult to see a hair at midnight, " I put in, a little viciously I fear. Don't you see what I mean by the solidarity of the craft ? I was aggrieved against him, as though he had cheated me—me !—of a splendid opportunity to keep up the illusion of my beginnings, as though he had robbed our common life of the last spark of its glamour. " And so you cleared out—at once." '

But ' clearing out ' is an act of deliberate desertion of which Jim believes himself incapable. ' " Jumped ", he corrected me incisively. " Jumped—mind ! " he repeated, and I wondered at the evident but obscure intention.' Others could not of course be expected to see this subtle distinction. It was generally interpreted as merely a case of fear ; Jim's nerve failed and so he cleared out with the others. The French lieutenant's view is representative : ' And so that poor young man ran away along with the others, . . . '

But if it is not a case of ordinary fear, neither is it the sort of failure Jim takes it to be ; to him it is primarily a chance missed through his not being ready, and not a question of moral responsibility. He still has faith in himself, he believes he wasn't afraid, and he has to prove that to himself and to others. He had prepared himself for every conceivable situation but had been betrayed by the unconceivable. Running away or suicide ' would have ended—nothing ' ; it could only have been interpreted as an admission of guilt. The only way was to face it.

> ' " I wasn't going to be frightened at what I had done. . . .
> I am—I am not afraid to tell. And I wasn't afraid to think either. I looked it in the face. I wasn't going to run away. . . . But I knew the truth, and I would live it down—alone, with myself. I wasn't going to give in to such a beastly unfair thing. What did it prove after all ? . . . what would have been the good to shirk it—in—in—that way ? That

was not the way. I believe—I believe it would have—it would have ended—nothing. . . .

Would have ended nothing," he muttered over me obstinately, after a while. " No ! the proper thing was to face it out—alone for myself—wait for another chance—find out . . ." '

In the egoism and moral simplicity of Jim there is something that is attractive and defeats blame :

' " Not one of them would face it. . . . They ! . . . " He moved his hand slightly to imply disdain. " But I've got to get over this thing, and I mustn't shirk any of it or . . . I won't shirk any of it. . . . I may have jumped, but I don't run away." " I meant no offence," I said ; and added stupidly, " Better men than you have found it expedient to run, at times." He coloured all over, while in my confusion I half-choked myself with my own tongue. " Perhaps so," he said at last ; " I am not good enough ; I can't afford. it I am bound to fight this thing down—I am fighting it *now*." '

There is an element of moral confusion in Jim's attitude. It is to him primarily a chance missed, an opportunity lost of being the romantic hero he yearns to be : ' Suddenly he lifted his head : he sat up ; he slapped his thigh. " Ah ! what a chance missed ! My God ! what a chance missed ! " '. He has no clear understanding of the moral import of his failure, and that is why Marlow fears for his future :

' . . . still the idea obtrudes itself that he made so much of his disgrace while it is the guilt alone that matters. He was not—if I may say so—clear to me. He was not clear. And there is a suspicion he was not clear to himself either.'

' But I cannot fix before my eyes the image of his safety. I shall always remember him as seen through the open door of my room, taking, perhaps, too much to heart the mere consequence of his failure.'

Jim is troubled not by the guilt but by the consequence of his failure ; the opportunity for fame he has lost and the disgrace he has suffered. He does not feel the fears and self-distrust that one more self-aware would have experienced. Hence it is not atonement he plans but rehabilitation in men's estimation and in his own. Jim, as Guerard well puts it, is ' a romantic egoist who failed to discern the egotism of his benevolent impulses, and who always confused public honour with atonement and self-justification . . .'[4] That is the limited sense in which Jim is acutely conscious of loss of honour ; he isn't troubled by the concept of personal honour, Polish or Latin. It is from popular misjudgment that he runs away ; from those who in their ignorance would say that he has behaved like a cur. This is illustrated by his swift reaction to the remark,

4. *JOSEPH CONRAD* by Albert Guerard, Jr., Direction ONE.

'Look at that wretched cur', which he thinks is addressed to him. 'Who's a cur now—hey?' 'Perhaps he looked forward', says Marlow, 'to that hammering he was going to give me for rehabilitation, for appeasement?'

Jim faces it out because he has faith in himself, and then he runs away because he knows he is disgraced in the eyes of men. He 'could never go home now; . . . He has seen it all in the home papers by this time,' said Jim 'I never can face the poor old chap. . . . I could never explain. He wouldn't understand.' This is 'the old parson in Essex', Jim's father, who 'possessed such certain knowledge of the Unknowable'! And so he waits for another chance, meanwhile working among men who, he thinks, are ignorant of his past. 'His incognito, which had as many holes as a sieve, was not meant to hide a personality but a fact.' But the fact turns up in one form or another, pursues him: the second engineer of the *Patna* turns up, a pilgrim ship comes in with two blades of her propeller gone and there is talk of the *Patna*. 'There were many other episodes of this sort. They were all equally tinged by a high-minded absurdity of intention which made their futility profound and touching.' 'Thus in the course of years he was known successively in Bombay, in Calcutta, in Rangoon, in Penang, in Batavia—and in each of these halting-places was just Jim the water-clerk.'

Jim is naïve, unsophisticated and therefore incapable of the kind of disillusioning self-knowledge which gives Dr. Monygham, for instance, his invulnerability and moral toughness. He is an appealing figure (Conrad calls him, affectionately and perhaps protectively, 'my Jim'), likable and sensitive, innocent and vulnerable. 'He was a youngster of the sort you like to see about you; of the sort you like to imagine yourself to have been . . .'

He 'is not a type of wide commonness' and his unusualness is brought out, indirectly, by a number of representative, contrasting cases. They come into the story in the most natural manner and it is only when the pattern of the short story as a whole begins to fall into place in our minds that we see their significance.

The case of Big Brierly (whose significance has already been noticed) is presented with admirable economy: first we notice the rather strange attitude and behaviour of one of the assessors at the inquiry, later we learn that this is Brierly, Big Brierly, and are told briefly of his career and suicide, then we see and hear him again, with a new interest.

The dullness of Jim's job as a water-clerk and a less obvious association of ideas recall to Marlow the brief history of Little Bob Stanton, the insurance canvasser. This cheerful and good-natured fellow 'got drowned afterwards trying to save a lady's maid in the *Sephora* disaster. A case of collision on a hazy morning off the Spanish coast . . .'

After the court of inquiry has pronounced sentence on the broodingly imaginative and romantic Jim, Marlow's thoughts are interrupted by the deep voice of the tough extrovert Chester, a West Australian, who also 'had been looking after Jim'.[5] 'He looked knowingly after Jim. "Take it to heart?" he asked, scornfully. "Very much," I said. "Then he's no good," he opined. . . . You must see things exactly as they are. . . Look at me. I made it a practice never to take anything to heart."' Chester's partner is Old Robinson, the notorious Old Robinson, reputed to have eaten human flesh when the saving of his own life required it: 'He didn't allow any fuss that was made on shore to upset him; he just shut his lips tight, and let people screech.'

Finally, there is the fine chapter on the French lieutenant to whom Marlow talks about the case in his eagerness 'to take opinion on it . . .: individual opinion, international opinion—'. '"And so that poor young man ran away along with the others," he said, with grave tranquillity.' He goes on, indulgently, to talk about fear: the fear of the external, the fear of oneself, from which no one is exempt. 'Man is born a coward.' But 'one does not die of it—of being afraid.' Marlow is pleased at the apparently tolerant and sympathetic attitude of the lieutenant: '"I am glad to see you take a lenient view," I said.' The lieutenant's startling reaction to these words, the transformation of the kindly human being, before our very eyes, into a punctilious French officer, illustrates how Conrad is able 'by the power of the written word to make you hear, to make you feel—. . . before all, to make you *see*'.[6]

> 'The shuffle of his feet under the table interrupted me. He drew up his heavy eyelids. Drew up, I say—no other expression can describe the steady deliberation of the act—and at last was disclosed completely to me. I was confronted by two narrow grey circlets, like two tiny steel rings around the profound blackness of the pupils. The sharp glance, coming from that massive body, gave a notion of extreme efficiency, like a razor-edge on a battle-axe. "Pardon," he said, punctiliously. His right hand went up, and he swayed forward. "Allow me . . . I contended that one may get on knowing very well that one's courage does not come of itself (*ne vient pas tout seul*). There's nothing much in that to get upset about. One truth the more ought not to make life impossible . . . But the honour—the honour, monsieur! . . . The honour . . . that is real—that is! And what life may be worth when" . . . he got on his feet with a ponderous impetuosity, as a startled ox might scramble up from the grass . . . "when the honour

5. Chester, like every other person who enters the story for even a moment, for instance, Old Father Elliot the Master Attendant, and Old Robinson 'the cannibal', comes to vivid life instantly: 'He was a man with an immense girth of chest, a rugged, clean-shaved face of mahogany colour, and two blunt tufts of iron-grey, thick wiry hairs on his upper lip.'

6. Conrad's Preface to *The Nigger of the 'Narcissus'*.

is gone—*ah ca ! par exemple*—I can offer no opinion. I can offer no opinion—because—monsieur—I know nothing of it."

'I had risen, too, and, trying to throw infinite politeness into our attitudes, we faced each other mutely, like two china dogs on a mantelpiece . . . '

The French lieutenant is an individual, a distinct personality, but he is also representative. He judges Jim according to a particular and inflexible code in which the abstraction honour *is*, i.e. has an existence independent of the particular occasion. He can understand fear, he can be indulgent towards the young, towards Jim as a person he can be forgiving. But to go on living after the loss of honour, that to him is inconceivable: 'His own country's pronouncement was uttered in the passionless and definite phraseology a machine would use, if machines could speak.'

This very fine short story should have been concluded in Chapter XVIII. It is characteristic Conrad in its interests and technique: the controlling moral interest, the method so aptly described by Henry James as, '. . . a prolonged hovering flight of the subjective over the outstretched ground of the case exposed'.[7]

The rest of the novel is, with certain exceptions, a different kind of Conrad. Jim is sent to Patusan, where his acceptance as Tuan Jim, a kind of benevolent providence, satisfies his romantic egoism. He encounters and overcomes treachery (the Portuguese Cornelius) and villainy (Rajah Allang and Sherif Ali), is accepted as an ally by the Malay chief Doramin and becomes the sworn brother of Dain Waris, Doramin's only and dearly loved son. He has his faithful henchman Tamb' Itam, and marries the beautiful girl Jewel.

The exceptions are the character and history of Stein the Bavarian and the breaking in on Jim's domain of Gentleman Brown. There are also other Conradian felicities, such as the characterization of Doramin, the use of the ring Stein gives Jim, and the suggestion of approaching doom in the later chapters.

It is on Stein's advice that Jim is sent to Patusan. The kindly and gentle Stein, who has achieved wisdom and self-sufficiency through misfortune and disillusion, immediately understands Jim's weakness:

'I understand very well. He is romantic.'

He has diagnosed the case and prescribes for it. But there is no question of a cure. For Jim is incurably romantic.

'"A man that is born falls into a dream like a man who falls into the sea. If he tries to climb out into the air as inexperienced people endeavour to do, he drowns—*nicht wahr?* . . . No! I tell you! The way is to the

7. 'His aim was . . . to converge on a single and isolated "fact" from as many directions, from as many points in space and time, as possible.' A. Guerard, op. cit., p. 64.

destructive element submit yourself, and with the exertions of your hands and feet in the water make the deep, deep sea keep you up. So if you ask me—how to be ? . . . In the destructive element immerse." '

Jim has fallen into a world of dreams and it is no use asking him to climb out of it into reality ; let him instead live in the world he dreams of. And so Jim is sent to the real equivalent of his dream-world of romantic adventure.

The finale is fine melodrama. Jim is faced once more with an emergency. He has proved himself more than adequate to the realities of his world of romantic adventure ; even its treacheries and hatreds he has subdued. But the world he has abandoned breaks in on him, in the form of the despicable Gentleman Brown and his crew :

' These were the emissaries with whom the world he had renounced was pursuing him in his retreat. White men from " out there " where he did not think himself good enough to live.'

That Brown says more than he means only intensifies the sense of unavoidable doom. The fact from which he had formerly run away, returns to undo him.

' They met, I should think , not very far from the place, perhaps on the very spot, where Jim took the second desperate leap of his life—the leap that landed him into the life of Patusan, into the trust, the love, the confidence of the people.'

They face each other across the creek in instinctive antagonism. These two men, who are poles apart in their conception of life, are yet connected by facts. And so the appeals of Brown repeatedly strike home in a way he himself doesn't understand. Shrewd, intensely curious about Jim's motives for coming to Patusan, Brown suggests that they are both running away from something, that they are brothers in crime.

' " But I am not a coward. Don't you be one.

And what did *you* come for ?

There are my men in the same boat—and, by God, I am not the sort to jump out of trouble and leave them in a d—d lurch . . . "

When he asked Jim, with a sort of brusque despairing frankness, whether he himself—straight now—didn't understand that when " it came to saving one's life in the dark, one didn't care who else went—three, thirty, three hundred people "—it was as if a demon had been whispering advice in his ear.

He asked him whether he had nothing fishy in his life to remember that he was so damnably hard upon a man trying to get out of a deadly hole . . . And there ran through the rough talk a vein of subtle reference to their common blood, an assumption of common experience, a sickening suggestion of common guilt, of secret knowledge that was like a bond of their minds and of their hearts.'

When on Jim's advice, which for the first time goes contrary to the judgment of those who had learnt to trust him implicitly, Brown is allowed to sail away without being deprived of his weapons, and on his way out, treacherously directed by Cornelius, makes a surprise attack on Dain Waris's men and kills Dain Waris, the whole structure which has been founded on absolute confidence in Jim's fidelity and rectitude, collapses.

> 'He had retreated from one world, for a small matter of an impulsive jump, and now the other, the work of his own hands, had fallen in ruins upon his head.'

> 'Everything was gone, and he who had been once unfaithful to his trust had lost again all men's confidence. It was then, I believe, he tried to write—to somebody—and gave it up. Loneliness was closing on him. People had trusted him with their lives—only for that; and yet they could never, as he had said, never be made to understand him.'

The manner of Jim's death is all in the part he has been playing, that of the unflinching hero in a book. He walks into the *campong* of Doramin, who he knows, believes that he has betrayed his son Dain Waris:

> 'Jim waited awhile before Doramin, and then said gently: "I am come in sorrow." He waited again. "I am come ready and unarmed," he repeated'.

Doramin 'struggling to keep his feet, clinging heavily with his left arm round the neck of a bowed youth, and lifting deliberately his right, shot his son's friend through the chest', as he 'stood stiffened and with bared head in the light of the torches, looking him straight in the face'.

> 'They say that the white man sent right and left at all those faces a proud unflinching glance.'

So he dies as he lived, romantically, 'at the call of his exalted egoism'. His death conforms to 'a shadowy ideal of conduct'; it is the last gesture of his romantic ego, not an admission of guilt, not an act of atonement, but of rehabilitation.

The last act in Jim's drama, all of it, is very good Conrad. And Jim's death is superbly in character.

H. A. PASSÉ

Education and Social Needs in Ceylon

A study of vocational ratings, ambitions and opportunities

CONTENTS

1. Acknowledgements

THE author wishes to acknowledge his indebtedness to Mr. R. E. P. Ranasinghe who collected the data used in this paper. Having used the data for his own purposes Mr. Ranasinghe kindly allowed the author to analyse it for other purposes. The author however accepts responsibility for all interpretations in this paper.

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2. Introduction

Social conditions in Ceylon are such that vocational problems are of extreme interest, not merely to the individual, but to society as a whole. Until late in the nineteenth century the country was almost entirely dependent upon agricultural pursuits and, although some degree of industrialisation has now been achieved, Ceylon is still primarily rural. Its social structure is still marked by caste and status systems which tend to restrict social mobility and which channel vocational choices along narrow lines, although they are breaking down under western influences.

Two events have initiated changes which are considerable and rapid. The attainment of political independence has led to a drive towards economic and social development through a considerable increase of educational provision. World political events have led to the setting up of international agencies which, taking economic and social progress to be the best barriers against communism, have flooded Ceylon (and much of the East) with schemes and means of progress which are largely technological.

The present situation in Ceylon has three marked features :—

1. The urgent need rapidly to increase productive capacity as the basis of improved standards of living.

2. The urgent need for workers with practical and technical training to operate the technological schemes which are being introduced as the basis of increased productivity.
3. The rapid expansion of educational facilities as a fundamental step in providing a higher level of education which will be more widely available and will include the practical and scientific knowledge and skills essential for technological progress.

3. The Problem

While the rapid development of educational facilities is important it is essential that there should be an appropriate relationship between the products of the various institutions and the social needs of the country. In other words the curriculum must be suited to social conditions and economic and technical development. This point has not been overlooked and received emphasis in the Report of the Special Committee on Education (1) and elsewhere, so that there has been frequent reference to the need to develop a type of education which is suited to the needs of the country.

Despite realisation of this need among educationists in Ceylon the author has already questioned whether the theory is being put into practice and has pointed out that education is formal, abstract and unpractical to a very high degree (2). These criticisms receive support from Reports on Examinations (3, 4) and from a quantitative study of University entrants (5).

This problem of the relations between education and the social needs of the country is obviously of very great practical importance. It is also one which should be studied at once, although some may claim that it is too early to see the effects of educational policy which is still in the process of maturing. The curriculum however has received little attention and shows few signs of change and it will therefore be of interest, even at this stage, to consider its vocational effects.

It is therefore the purpose of this paper to examine the hypothesis that 'Education in Ceylon is resulting in vocational ambitions among secondary school pupils which are related to the vocational needs of the country'.

4. Methodology

This hypothesis, which obviously involves several aspects will be examined along five lines :—

1. A survey of the preferences expressed by pupils with regard to school subjects based on ratings to show the three favourite school subjects in preferential order.
2. A survey of statements made by pupils regarding subjects which they would like to study but cannot because of lack of opportunity.

3. A survey of ambitions expressed with regard to employer in terms of Government Service, private employer or self employment.
4. A survey of ratings by pupils of 36 vocations which were chosen as being known to all the pupils and within the realm of possibility for a majority of them.
5. A survey of the choices of career expressed by pupils.

It is necessary here to point out that this is a pilot study in a field full of pitfalls. A fundamental difficulty in all work of this kind in Ceylon (and doubtless elsewhere) is that of using questionnaire methods and other such devices to collect data which will be free from defects due to subjectivity, prejudice, suspicion and apathy. It must also be realized that the available measuring techniques applicable to socio-economic levels, vocational status vocational interests and the like have been developed for use in western culture patterns. Before work in these fields can be carried out effectively such instruments have to be developed and standardized in Ceylon. Before this is possible new attitudes must be developed which will lead to a clearer realization of the implications of educational sociology and hence to a more ready support of empirical research in a field needing large-scale work over long periods of time, operated by a sufficient staff adequately equipped with facilities for machine tabulation and calculation.

5. Material

The protocol material was collected in 1950 by a questionnaire (see Appendix) administered to pupils in the Senior School Certificate classes in schools of all nine Provinces in 1950. The data from the total of 1,365 pupils, drawn from all Provinces, is used only for the fifth survey mentioned above. For the other four surveys data from four Provinces only is used, namely, Northern and Eastern Provinces which are Tamil areas, Southern Province, which is Sinhalese and Western Province which is mixed. Between them these four Provinces represent the extremes of westernisation, cultural conservatism and urban-rural differentiation to be found in Ceylon.

The results are presented in the following sections and in each case some interpretive comment is made as a guide to understanding. While the results are purely objective it is unavoidable that interpretation should include subjective components. To ensure that this is minimized as much as possible, and that it shall be as realistic as possible, the data and its possible implications have been discussed in detail with a group of fifty teachers drawn from all over the Island. The acceptability or otherwise of the hypothesis and other points are dealt with in a general discussion at the end of the paper.

6. Subject Preferences

The results of the survey of subject preferences are shown in Table 3 below. In order to avoid certain difficulties arising from the fact that not all pupils study all the subjects and to make comparison more effective relative rankings are shown in centile positions.

Table 3

Centile order of subject Preferences by Province and sex.

Subject	PROVINCES							
	Northern		Eastern		Southern		Western	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Mathematics	100·0	67·8	39·4	5·0	66·4	16·6	84·7	21·9
Applied Mathematics ..	42·2	1·4	—	—	1·8	—	0·9	—
Arithmetic	33·4	45·9	17·2	38.1	82·3	100·0	61·8	27·5
Chemistry	53·5	28·4	24·1	0·9	21·4	—	37·7	53·7
Physics	82·3	7·6	6·9	—	26·7	0·9	44·2	17·5
Botany	33·4	83·4	84·2	68·1	16·9	0·2	31·4	86·0
Zoology	25·9	2·8	57·1	—	—	—	6·7	33·2
Biology	0·6	0·5	—	—	—	—	9·8	6·8
History	19·2	100·0	31·4	10·0	12·4	10·7	73·1	39·7
Geography	3·5	21·8	2·9	16·5	54·7	29·1	24·8	46·7
English	13·1	36·9	47·8	25·8	35·1	56·2	51·1	100·0
Sinhalese	—	—	—	—	100·0	42·2	100·0	63·3
Tamil	65·4	56·4	100·0	52·6	—	—	—	—
Religious Knowledge ..	1·7	15·6	68·9	100·0	8·2	3·0	13·6	13·2
Drawing	7·6	4·3	11·8	10·0	44·4	75·1	18·9	73·4
Music	—	10·9	—	—	—	—	2·1	9·7
Home Science	—	—	—	10·0	—	—	—	1·6
Pali	—	—	—	—	4·7	5·6	4·1	4·1

With the exceptions of arithmetic and botany boys tend to give a higher position to science subjects than girls do. In arts subjects girls give higher positions than boys, except in the case of languages where boys put oriental languages higher than English : girls reverse the position. To some extent the sex differences may be due to differences in provision for teaching science subjects in boys' and girls' schools. It is possible to see the effects of the sex factor more clearly by taking the mean values for each subjects when the total ratings of each sex are taken as is done in Table 4.

TABLE 4

Centile positions of selected subjects for both sexes in the provinces taken together.

Subjects	*All boys*	*All girls*
Mathematics	72·6	27·8
Arithmetic	48·7	52·9
Chemistry	34·2	27·7
Physics	40·0	8·7
Botany	41·5	59·4
History	34·0	40·1
Geography	21·5	28·5
English	36·8	54·7
Oriental Languages*	91·3	53·6
Religious Knowledge	23·1	32·9
Drawing	20·7	40·7

*Tamil and Sinhalese taken together.

The possibility that there may be a sub-cultural factor of communal type in the situation can be explored by taking the mean scores for each sex in the Tamil Provinces and comparing with the values for Southern Province as shown in Table 5.

TABLE 5

Mean centile positions of certain subjects in Tamil and Sinhalese regions.

Subjects	*Tamil*		*Sinhalese*	
	Boys	*Girls*	*Boys*	*Girls*
Mathematics	69·7	36·4	66·4	16·6
Arithmetic	25·3	42·0	82·3	100·0
Chemistry	38·8	14·6	21·4	—
Physics	44·6	7·6	26·7	0·9
Botany	58·8	75·7	16·9	0·2
History	25·3	55·0	12·4	10·7
Geography	3·2	17·1	54·7	29·1
English	30·4	32·3	35·1	56·2
Oriental Languages ..	82·7	54·5	100·0	42·2
Religious Knowledge ..	35·3	57·8	8·2	3·0
Drawing	9·7	7·1	44·4	75·1

Probably the most that can be said is that these figures support a wide spread belief that Tamils take more readily to mathematics and science.

Interpretation of the data on subject preferences is not easy because the motivating factors in such preferences have received little attention in Ceylon. Work on this point is in progress but all that can at present be said is that the potential economic and status values, as seen by parents, rank high and that pupils in Ceylon do not appear to have the wealth and intensity of interests known among western pupils. In view of the data presented it appears not unjustifiable to make the following comments.

The position with regard to mathematics is in accordance with a reputedly widespread opinion that this is a subject for which Tamils have a special aptitude. No analysis appears to have been made of public examination results or of public appointments which might provide evidence but stereotype studies (6) have substantiated the existence of the opinion. A similar belief is said to exist with regard to physical and chemical science but, other than the apparently greater interest in these subjects among the Tamils recorded here, no evidence exists to support it. The biological subjects also appear to be of greater interest to Tamils than Sinhalese, though the position is less clearly defined, especially when figures for Western Province are considered. So far as this province is concerned, with regard to all the sciences, it may be that a generally higher economic level makes the hope of a medical career more possible, which is therefore reflected in greater emphasis on subjects related to the pre-medical examination requirements. Another point relates to the position of the biological subjects. Zoology is consistently placed below botany as a preference. This is very probably a reflection of religious belief, especially in the Buddhist areas—a point to which the author has given attention elsewhere (7). 'Biology' is consistently given a low rating. This may to some extent be an artefact due to the greater provisions for teaching zoology or botany separately. On the other hand it has been stated (8) that the results of public examinations, up to 1950 at least, have given rise to a widespread belief that success is easier to achieve in botany than in zoology and easier in both of these than in biology. Another possibility is related to the fact that education in Ceylon tends to be verbal and abstract with a heavy emphasis on memorization (2). Biology meets with disfavour because it has some tendency, even in Ceylon examinations, to be concerned with principles rather than details and with functions rather than structures. That this analysis is justifiable was demonstrated in the University Entrance Examinations of December, 1950. when the questions in the *Botany* paper laid an unusual stress on functional principles—and 90 per cent. of the candidates failed (3). To this situation, which appears to indicate a disregard for, or a lack of understanding of, the logical relations between the biological sciences there must be added an apparent disregard for the implications of biology for professions outside medicine. It is known that agriculture makes little appeal to the students of

Ceylon and veterinary science even less, though it must be admitted that opportunities are few in these fields. Other research work (5) indicates that university entrants exhibit no ambitions with regard to Ceylon's major activity, the plantation economies, and that those who consider agriculture as a career tend to think only of administrative or teaching posts but not of the practice of agriculture.

This lack of concern about practical subjects is shown in other ways and has been discussed by the writer in sociological terms elsewhere (2). From the data presented in Tables 3, 4 and 5 it is seen that applied mathematics is rated low by boys in Southern and Western Provinces, not rated by those of Eastern Province and is put in fifth place by those of Northern Province. Home Science, a practical subject which can be considered of immediate importance to girls, is rated low in the two Provinces where it is mentioned. This may be the effect of a culture pattern which relies upon an abundance of cheap domestic labour.

The position with regard to languages is of interest in relation to the sociological implications of the trend in language policy—towards the use of the national languages for official purposes, instead of English. In Northern and Eastern Provinces Tamil, the local language, rates higher than English. In Western and Southern Provinces this is less clearly defined because though boys rate Sinhalese higher than English, girls do the reverse. This seems to be one of two things, the continuance of a regard for English as the mark of culture or the outcome of the greater value placed on an English-speaking wife. This value is widely admitted and it is known that many girls who leave school with little or no English go to night schools to acquire it.

About other subjects it is less easy to offer comments. The greater emphasis on geography in Western and Southern Provinces may reflect the effect of the presence of the two main commercial harbours of Colombo and Galle and of the major airport—and Colombo is the centre of commercial business. Drawing may be more marked in Southern Province and Western Province partly because the Sinhalese are perhaps more artistic and partly because art exhibitions and the only Art Gallery in Ceylon are centred in Colombo. To offer further comments would merely be to progress still further from our objective data into speculation.

7. Subjects which pupils would like to learn

Inequalities of educational provision in different districts are still marked in Ceylon, despite the great extensions recently achieved. Moreover there is a wide variation in amenity and curricular provision between various schools —and alterations and extensions in the content of education are less marked

in Ceylon at present than attention to administrative problems. Because of these conditions information was collected concerning subjects which pupils would like to learn, this is presented in Table 6.

TABLE 6

Percentage of pupils of each sex in each Province wishing to learn selected subjects which were generally not present in the curriculum.

Subjects	*Northern Province*		*Eastern Province*		*Southern Province*		*Western Province*	
	Boys	*Girls*	*Boys*	*Girls*	*Boys*	*Girls*	*Boys*	*Girls*
Shorthand with Typing ..	66·6	77·1	70·6	82·4	69·5	60·5	41·1	40·1
Book-keeping	6·0	2·8	—	—	2·8	—	1·0	—
Pali	3·0	31·4	2·6	29·4	11·8	25·4	3·1	2·8
Sanskrit	1·5	—	2·6	—	—	—	1·5	—
Sinhalese	2·0	85·7	2·6	—	—	—	—	—
Tamil	—	—	—	—	36·2	18·3	21·9	24·3
Music	28·8	2·8	15·2	64·8	43·0	40·8	35·4	29·9
Botany	—	—	5·2	—	5·4	25·4	6·3	4·7
Zoology	9·0	8·4	10·4	35·3	15·1	14·1	2·5	6.5
Biology	7·6	5·6	13·6	5·9	16·5	7·0	3·6	4·7
Rural Science	—	—	5·2	—	—	—	—	—
Applied Maths ..	3·0	2·8	5·2	—	6·6	2·8	5·7	3·7
Mechanics	—	—	—	—	1·4	—	1·0	—
Physics	—	—	—	11·8	8·2	5·6	5·7	6.5
Chemistry	—	2·8	—	—	10·8	14·1	4·6	4·7
Home Science ..	36·4	51·4	2·6	5·9	6·8	64·7	9·9	19.6
Civics	3·0	—	7·6	—	3·2	—	2·5	2.8

Of all other subjects, which were mentioned by less than 1 per cent. of the pupils in any one group, the following are of most interest :—

Hindi, Latin, Greek, French.

Engineering, aero-engineering, electrical engineering, mechanical work, radio.

Architecture, drawing, photography.

Philosophy, psychology, logic, ethics.

Sewing, embroidery, health, education.

This table carries some interesting points of which the following are perhaps the most significant.

The heavy emphasis upon shorthand and typing reflects the demand for white collar jobs, especially in clerical work and Government Service. It is true that these skills are not a pre-requisite of entry to Government Clerical Service, but they are known to be the first step towards promotion and to be a short cut to entry above the lowest grades. The fact that the demand for

these subjects is less in Western Province is probably related to the higher socio-economic levels of the metropolitan area and its residential outliers, with which are associated vocational ambitions carrying higher prestige and economic status than is the case for work in the clerical grades.

Except in Eastern Province, which is in many ways more culturally isolated and backward, Tamils and Sinhalese show a marked desire to learn each others languages. This is a significant point in connection with the language policy in the country but action on it appears to be almost entirely confined to Jaffna and the Peninsula where several Tamil schools employ a teacher of Sinhalese.

The demand for Pali and Sanskrit (the classical forerunners of Sinhalese and Tamil) is not very marked though the resurgence of national sentiment has given them places in the curriculum and there is evidence of a desire to extend the teaching of these subjects. The resuscitation of past national cultures is a well known feature in societies which have gained a new degree of freedom from over-lordship, but the demand for it tends to come from the ranks of the old who seek inspiration from the past, rather than from the young who see the challenge of the future. In connection with this reference to culture the demand for more music is to be noted.

A call for Rural Science hardly exists—in a country which is and will for long be predominantly rural. Here it might be noted that this was a popular subject in rural schools some ten years ago but its removal from the requirements or options in the School Certificate has resulted in its almost complete disappearance from education.

Home Science presents a curious pattern. Boys record a felt need for this in all provinces though, as secondary schools (except the recent Government Central Schools) are not co-educational they may have misinterpreted its nature. While girls record the need for this subject the demand is lowest in the least advanced Province. The lower demand in Western Province is probably a reflection of higher economic levels and the fact that westernisation is more marked so that a higher proportion of girls seek vocational employment.

While the demand for applied mathematics exists in the four Provinces it is low. Craftwork, weaving, book-binding, pottery work and the like, common interests among English school pupils (though perhaps at slightly lower ages, but not always so) receive no mention. Nor is there, among boys, any evidence of interests widespread in the West—aero-engineering, mechanics, radio and so on are mentioned in less than 1 per cent. of the cases. This lack of interest is bound up with the comparative lack of industrialisation in Ceylon—a point which receives support from the fact that the little demand which does exist for these technical subjects comes from Western Province where technology is most marked.

8. Choice of Employer

While the Government is the largest employer in Ceylon it cannot employ all who seek work, but it is commonly assumed that Government employment is that most sought after. While the factors involved are probably several one of them, security, appears to rank high (5). Business appears to make little appeal because it has little prestige status, while to be one's own employer involves risks which are not willingly accepted. Information on choice of employer was collected together with that relating to the father's employer. The data is shown in Table 7.

Table 7

Percentage of fathers in government service and percentages of pupils by sex and Province choosing government service, business or to be their own employer.

		fathers in government service	*want government service*	*seek a business job*	*to be own employer*	*no answer*
Northern	Boys	48·4	99·9	0·1	0·0	0·0
	Girls	77·7	81·2	0·0	18·7	0·1
Eastern	Boys	44·3	85·2	3·0	8·8	3·0
	Girls	47·1	24·0	6·0	70·0	0·0
Southern	Boys	24·4	84·2	4·3	9·3	2·2
	Girls	19·7	80·0	0·5	18·4	1·0
Western	Boys	34·2	75·3	8·4	15·7	0·6
	Girls	42·6	61·5	5·6	28·9	4·0

In considering this table it should be noted that self employment for girls, especially in the rural areas and at the lower economic levels, means the pursuit of cottage industries such as mat-making, coir work and so on. It is characteristic of the culture pattern of Ceylon that girls marry rather than seek careers, the interval between leaving school and marriage being spent in 'helping at home'. This convention is however breaking down, but it shows a tendency to continue longest in those areas which are most conventional, have a higher proportion of Muslims or which are generally richer, so that the economic motive is absent. This is seen in the case of girls in the Eastern Province where Tamil, Hindu and Muslim traditions are strong, and in Western Province where

economic levels are highest. In the case of boys the widespread desire for Government employment is heavily marked. It is least in Western Province which offers relatively greater opportunity for employment in other spheres.

It has already been pointed out that the Government is the largest employer in Ceylon and it must be understood that the employment available in Government Service is of a highly varied nature. Non-governmental enterprise in public utilities is confined to transportation. A few privately owned factories exist but otherwise non-government service is confined to business. Of this much is owned by and operated by Indian nationals while the large mercantile firms tend to be in European control. Many of them in the past offered such positions as senior clerks, sales staff and the like to Burghers whose knowledge of English gave them an advantage. The policy of ' Ceylonisation ' in mercantile and other spheres however is being pressed, though whether there is a widespread desire to enter these spheres appears uncertain. This, and other points are likely to be more clearly seen after consideration of other data.

9. Vocational Ratings

Each pupil was given a list of thirty-six vocations and asked to rate each of them by awarding a mark, on a scale from 0 to 100, to show how each vocation appeared to him in terms of prestige. Low marks were to indicate low prestige. The results are shown in Table 8 which shows the rank orders of the vocations for boys and girls separately in each Province and for each sex irrespective of Province. The questionnaire is shown in the Appendix.

Table 9

Quantitative rating differences in relation to sex.

Range of placings	*Boys*	*Girls*
0	1	2
1	4	0
2	7	1
3	4	2
4	3	3
5	3	1
6	5	2
7	2	4
8	1	3
9	3	5
10	2	4
11	1	1
12	0	3
13	0	2
14	0	2
24	0	1

TABLE 8

Rank orders of Vocational Ratings by Sex and Province.

	NB	EB	SB	WB	MB	NG	EG	SG	WG	MB	ROB	ROG
Police Constable	32	31	27	25	28·75	32	8	23	28	22·75	29	21
Peon	35	36	35	36	35·50	36	27	32	35	32·50	35	35
Contractor ..	33	22	28	26	27·25	33	33	27	33	31·50	27	32
Farmer ..	5	3	4	5	4·25	8	4	5	6	5·75	4	4
Trader ..	23	20	20	22	21·25	20	25	20	29	23·50	21	23
Tea Maker ..	26	25	25	30	26·50	22	28	25	34	21·25	25	27
Dhoby ..	31	34	34	34	33·25	29	24	34	24	27·25	34	29
Nurse	17	21	17	15	17·50	12	17	8	5	10·50	18	9
Potter	30	32	33	32	31·75	31	34	31	32	32·00	33	33
Fisherman ..	27	29	32	33	30·25	35	26	35	27	30·75	31	31
Advocate ..	13	14	8	14	12·25	6	7	6	10	7·25	13	5
Blacksmith ..	29	33	30	28	30·00	30	30	30	26	29·00	30	30
Mason	28	30	26	27	27·75	24	31	29	25	27·25	28	27
Photographer ..	24	24	22	24	23·50	21	35	26	21	25·75	23	24
Accountant ..	9	12	18	18	14·25	10	18	21	20	17·25	18	19
Engine Driver ..	12	11	11	11	11·25	18	5	16	13	13·00	11	13
Railway Guard ..	20	18	19	19	19·00	25	19	19	18	20·25	19	20
Hotel Waiter ..	36	35	36	35	35·50	34	36	36	36	35·50	35	36
Doctor ..	1	1	1	1	1·00	1	1	1	1	1·00	1	1
Carpenter ..	21	27	24	20	23·00	26	21	24	22	23·25	22	22
Car Driver ..	34	28	31	29	30·50	27	29	33	31	30·00	32	30
Govt. Clerk ..	18	8	10	17	13·25	9	16	10	17	13·00	15	13
Air Pilot ..	3	5	5	4	4·25	4	9	13	4	7·50	4	6
Jockey.. ..	25	23	23	23	23·50	23	32	28	23	26·50	23	26
Engineer ..	2	2	3	2	2·25	3	10	4	3	5·00	2	3
Politician ..	7	17	12	9	11·25	5	15	14	19	13·25	11	15
Teacher ..	4	4	2	3	3·25	2	2	2	2	2·00	3	2
Insurance Agent	19	19	21	21	20·00	11	14	18	8	12·75	20	12
Electrician ..	11	9	15	16	12·75	7	11	17	15	12·50	14	11
Radio Operator	10	6	14	13	10·75	14	12	12	11	12·25	8	10
Salesman ..	22	26	29	31	27·00	28	23	22	30	25·75	26	24
Sailor	14	15	16	10	13·75	19	13	15	12	14·75	16	16
Soldier ..	6	10	9	8	8·25	15	3	7	7	8·00	7	8
Police Inspector..	8	7	6	6	6·75	13	6	3	9	7·75	6	7
Surveyor ..	15	16	13	12	14·00	16	20	11	14	15·25	17	17
Planter ..	16	13	7	7	10·75	17	22	9	16	16·00	8	18

NB, EB = Northern Province boys, E.P. boys, etc.
NG, EG = Northern Province girls, E.P. girls, etc.
MB = mean rating by boys.
MG = mean rating by girls.
ROB, ROG = Rank Order for boys and Rank Order for girls.

The implications of this table can first be considered in relation to sex differences in the ratings which are shown quantitatively in Table 9.

The close agreement in the ratings by boys and girls shown in Table 8 is shown further by the Rank Order Correlation Co-efficient which has a value of ·94. The qualitative aspects of such variation as does exist is seen in Table 10.

TABLE 10

Qualitative differences in ratings related to sex.

Variation in rating	*No. of cases*	*Vocations*
Complete agreement	8	Sailor, doctor, farmer, potter, fisherman, blacksmith, carpenter ;
1-2 places	17	mason, trader, tea maker, photographer, accountant, engine-driver, railway-guard, hotel waiter, car driver, government clerk, air pilot, engineer, teacher, radio operator, salesman, soldier, police inspector ;
3-4 places	2	jockey, electrician ;
5-6 places	3	contractor, dhoby, politician ;
7-9 places	6	police constable, nurse, advocate, insurance agent, planter, car driver.

In nearly a quarter of the cases there is complete agreement while in nearly a half of the cases the variation is only one or two places. The variability of rating by girls is 8·31 places, that of boys only 4·64 places. This sex difference is partly a real difference of attitude related to sex and partly the result of the character of the vocations in the list. The former factor probably is due to mixed motives in the girls who consider a vocation partly for themselves and partly as that of a potential husband.

These results confirm an opinion which is widely held, that caste still exerts a considerable influence on vocational attitudes. This is seen in the consensus of opinion that farmer rates high while potter, fisherman, blacksmith and mason are all low in rating position. It should be noted that only in two of the caste occupations is there any variation in rating between the sexes.

The influence of the search for status is shown in the high position and unanimity in the case of doctor, closely followed by teacher. In seventeen cases the variation is but one or two places and of these teacher rates high because of status, mason rates low because of caste. The remainder appear to reflect a considerable degree of agreement and to be rated in purely economic terms, though ' glamour ' perhaps has put pilot high—and the lack of caste.

10. Choice of Career

Choice of career is motivated by such factors as interests, caste, economic reward, social prestige and other such factors, together with others which are more directly the outcome of school life and experience—and which are largely determined by the curriculum. Thus choice of career is the ultimate index to the personal experiences of the chooser and the pressure of social attitudes and environmental conditions. From the standpoint of this paper it is the crucial test of the suitability of the school curriculum to social needs as evinced in vocational demands.

The occupations of the gainfully employed in Ceylon can be arranged in three categories—production, distribution and services. The thirty-six occupations considered here can be arranged in these categories, as shown in Table 11.

Table 11

Production	*Distribution*	*Services*	
		a	*b*
Farmer	Contractor	Advocate	Constable
Tea Maker	Trader	Doctor	Peon
Potter	Engine Driver	Police Inspector	Dhoby
Fisherman	Railway-guard	Surveyor	Nurse
Blacksmith	Car Driver	Engineer	Govt. Clerk
Mason	Air Pilot		Hotel Waiter
Photographer	Radio Operator		Jockey
Carpenter	Salesman		Politician
	Insurance Agent		Teacher
	Accountant		Soldier
Planter	Electrician		Sailor

It will be seen that Productive occupations are those which rate low, with the exception of farmer, and, to a lesser extent, planter. The Distribution group all rate higher. The Services fall into two sections, those requiring a considerable high-level training and those requiring less or no training. 'Teacher' has been placed in the latter group because, despite its high status the majority of Ceylon's teachers are untrained and have minimal qualifications. This arrangement gives some indication of attitudes towards production, distribution and services. It can be given quantitative expression by adding together all the scores given by all the pupils for each occupation in each category and dividing the total by the number in the category and subsequently expressing the values in relation to each other, when the lowest total

score is taken as unity. The result obtained is that production, distribution and services are related in proportions 1, 1·11 and 1·25. The last value includes low scores—peon and waiter—if attention is paid only to ' professional services ' the last value would become 1·59. If teacher had been placed in this group its value would become still higher.

A further comparison is of importance as will be seen from Table 12 which shows the percentages of the gainfully employed of Ceylon within each of the three major groups (Census Report Figures, 11) and the distribution of vocational ambitions in percentage terms under the same headings.

TABLE 12

Percentage distribution of vocational ambitions and vocational opportunities, the latter taken as proportions of the gainfully employed.

	*Ambitions**	*Opportunities*
Production	24·8	64·0
Distribution	23·2	21·0
Services	52·0	15·0

*The writer is indebted for permission to use these figures which are taken direct from Mr. R. E. P. Ranasinghe's records.

These figures are in accordance with the vocational attitudes already recorded but they serve to make clear the lack of balance between the patterns of ambition and opportunity. This disparity is even more severe than appears at first because the category ' services ' in the Census Report includes two kinds of service, professional and public service by the academically or otherwise qualified, and personal and domestic services—as nurse, dhoby, hotel waiter and the like. The low vocational rating already recorded for this latter kind of service suggests that school leavers of Senior School Certificate level will not be interested in such work. They will compete for the professional services of high standing, and these employ only 5·7 per cent. of the gainfully employed. In other words more than half of the products of secondary education are competing, and being prepared for, occupations employing not much over one twentieth of the gainfully employed. On the other hand the country's need for producers is two and a half times as great as the number seeking productive work. While it is true that from other types of schools of the less academic kind there will be leavers who will have to enter productive work, and so bridge this gap, it must be noted that these are the low level producers. Ceylon is in urgent need of high-level productive workers, the highly skilled workers and the well educated foreman types who are of such importance in technological cultures—whether they are based on heavy industry, mechanised agriculture or light engineering. Of this class of worker, many of whom are the products of high-level education in the West, there is no sign in Ceylon,

nor will there be while manual work is despised and ill rewarded and while academic education is looked on as a method of escape from caste and poverty because, by leading to high level professional work it confers social status and financial reward.

11. Discussion

Pupil's preferences for school subjects suggest that there is little realisation of the logical inter-relations of the subjects and that the main factors which motivate preferences are related to a narrow vocational field. This field calls for academic and theoretical subjects rather than practical and manual activities. It is indeed true that the position with regard to languages suggests that pupils are already reacting to the implications of the language policy. Coupled with this however is the marked emphasis laid by girls on English, which is perhaps nothing more than evidence of the value of English as a social attribute in connection with marriage. The data regarding subjects which pupils want to learn stresses the widespread desire for ' white collar ' jobs, the effect of the language policy, the restricted interest in practical subjects and the lack of any marked response to a dependence upon agricultural economy. The demand for music is also evidence of the seeking for cultural prestige.

Seen from the view points of preferences and demands it appears that the growing need for technological knowledge and skill has had little effect on the attitudes of pupils towards the choice of subject or career.

The overwhelming demand for Government employment, though to some extent unavoidable in a society where the Government is the chief employer, is also evidence of the search for security and of unwillingness to depart from tradition or accept risks—conditions essential in private enterprise.

Vocational ratings also emphasise the value set on prestige, the strong effect of caste and the low value given to manual work—and the strength and wide extent of these determinants is shown in the remarkable degree of similarity of rating by boys and girls of a list of occupations which are predominantly of male interest.

The tendencies remarked on above, the demand for status and security, the effect of caste and the rejection of manual work lead to the situation recorded concerning ambitions, which shows the unbalance of the country's pattern of vocational ambition. Few wish to be producers but many wish to enter the privileged groups of those who are ' professionally ' employed.

It must of course be admitted that candidates for the Senior School Certificate form a group from which the professional classes must be drawn and that the majority of agricultural producers will not be in this group. It may also be pointed out that ' Engineer ' rates high as a vocational choice—but Engineer in Ceylon means an administrative post—nor must the lack of

interest in and demand for applied subjects be overlooked. A further criticism may be that the status afforded to ' farmer ' is evidence that manual labour is not despised—but this is no more than the effect of caste in which farmer (goigama) takes pride of place. Despite the high rating given to farmer it can be said that few would contemplate farming as a career, and the lack of appeal of agriculture is further shown in the lower status given to planter—a point already shown with regard to the vocational interests of university entrants (5), none of whom mentioned plantation economics as a chosen career.

Although the new provisions in education are of so short a duration that they can have had little effect up to now it is clear that curricular provisions which exist are not producing patterns of vocational ambition of a type related to the social needs of Ceylon at present. The expected direction of change in these needs is towards a further emphasis on technology, which will make the vocational ambitions appear still less acceptable. It has already been shown that, despite the extensions of educational provision, the curriculum is showing little evidence of change. Such change as it does show towards a more practical bias is not likely to be acceptable in view of the rejection of manual work and the tradition of caste.

All the evidence available from each of the lines of study used is consistent and is such as to refute the hypothesis originally formulated. The rate of change in the curriculum is likely to be much less than the rate of growth of the demand for a technological culture so that the position is likely to become worse. It would be idle to pretend, having demonstrated the effect of caste and tradition, that the curriculum is alone to blame, but at least there are grounds for suggesting its revision in sociological terms. Coupled with this is an obvious need for far greater attention to the educational guidance of the pupil and the vocational guidance of the school-leaver.

12. Summary

(*a*) Ceylon needs to raise standards of living through increased production which is dependent upon technological and agricultural progress.

(*b*) Such kinds of progress need an education in which practical work, applied science and manual skills receive attention.

(*c*) Educational changes and expansion in Ceylon are least marked with regard to the curriculum of education.

(*d*) The hypothesis that the curriculum in Ceylon results in appropriate patterns of vocational ambition was posed.

(*e*) Material was examined from five lines of study :—

1. Subject preferences.
2. Subjects pupils wished to learn.

3. Choice of employer.
4. Vocational ratings.
5. Vocational ambitions and opportunities.

(*f*) Evidence was presented to show the rejection of manual and practical work, the search for status and prestige and the effects of caste and tradition.

(*g*) The lack of balance between vocational ambitions and opportunities was demonstrated.

(*h*) In view of the evidence the hypothesis formulated must be rejected.

(*i*) Three needs, a reconsideration of the curriculum, the development of educational guidance and of vocational guidance have been emphasized.

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Appendix

Questionnaire Form used to collect data.

1. Surname .....
2. Other names .....
3. Father's native place .....
4. Age today .....
5. Place of birth .....
6. Mother's native place .....

7. Place a **X** in the squares below to show which terms apply to you.

I am a		I am a		I am a		I am in		During the five last years I have lived in
Sinhalese		Buddhist		Boy		1st Form		
Ceylon Tamil		Hindu		Girl		2nd Form		
Burgher		Christian				3rd Form		Colombo
Ceylon Moor		Muslim				S.S.C.		Another Town
						H.S.C.		Village

8. Place a **X** within the brackets that apply to you :—

(i) My father is in (*a*) Government Service ( ). (*b*) Business ( ). (*c*) Private employment ( ).

(ii) What do you wish to do after leaving school ?

(*a*) Enter Government Service ( ). (*b*) Do business ( ). (*c*) Seek private employment ( ).

9. How do you spend your leisure at home ?

Place a **X** against the one that applies to you.

(*a*) Visit friends ( ). (*b*) Engage in hobbies ( ). (*c*) Help in the parent's work ( ). (*d*) Play games ( ). (*e*) Do nothing ( ).

10. Put 1, 2 and 3 against the subjects below to show your order of choice.

	Favourite subjects	*Subjects you would like to learn*		*Favourite subjects*	*Subjects you would like to learn*
1. History			11. Pali		
2. Geography			12. Sinhalese		
3. Mathematics			13. Home Science		
4. Arithmetic			14. Zoology		
5. Drawing			15. Applied Mathematics		
6. Physics			16. Shorthand Typewriting		
7. Chemistry			17. Tamil		
8. Biology			18. Music		
9. Botany			19. Religious Knowledge		
10. English					

11. According to your opinion give marks ranging from 0-100 to the following occupations against each in the appropriate place:—

Police Constable ..	Advocate	Car Driver	Wireless Operator .....
Peon	Blacksmith.....	Govt. Clerk.....	Salesman .....
Contractor	Mason	Air Pilot	Sailor.....
Farmer	Photographer....	Jockey	Soldier .....
Trader	Accountant.....	Engineer	Police Inspector .....
Tea Maker.....	Engine Driver	Politician	Surveyor .....
Dhoby	Railway	Teacher	Planter .....
Nurse	Guard	Insurance	Electrician .....
Potter	Hotel	Agent	Carpenter .....
Fisherman.....	Waiter.....	Doctor.....	

T. L. GREEN

A Loan to a Minor

IN his *Ars Poetica* Horace describes in terms which are universally true some of the chief characteristics of the immaturity of youth :

> ' The beardless youth at last from tutor freed,
> Loves playing-field and tennis, dog and steed :
> Pliant as wax to those who lead him wrong,
> But all impatience with a faithful tongue[1] ;
> Imprudent, lavish, hankering for the moon,
> He takes things up and lays them down as soon '.[2]

A transaction which was probably as common with improvident minors in the Rome of Horace's time as it is with their Ceylonese counterparts today recently came up for the consideration of our Supreme Court. The judgement in *Christie* v. *Mohamed Bhai*,[3] which was delivered on the 29th of February, 1952 but was reported only towards the end of August, considers some of the legal implications of a loan of money to a minor.

The judgement in this case is a very short one. But as it deals (it is respectfully submitted, in an unsatisfactory way) with a contract of frequent occurrence, it is perhaps worthwhile considering the law of Ceylon relating to the topic in question in more detail than was done by the learned judge who decided the case. It must, however, be emphasised that the present article does not attempt to expound the law of Ceylon on the whole of what Voet justifiably calls ' the thorny subject of minority '.[4] Nor does this article profess to treat exhaustively of the subject of Contracts of Minors which has given endless trouble to law-students and even to Judges.[5] All that the article seeks to do is to set out the chief legal principles which are believed to govern the Contracts of Minors with particular reference to a loan of money to a minor.[6]

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1. The Latin reads *monentibus asper*, literally ' rough to his advisers '.

2. *Ars Poetica*, 160 et seq. (Conington's translation). Cf. Voet, *Commentaries*, 4.4.13 *ad fin.*, and Aristotle's *Rhetoric* 2.12.

3. 53 N.L.R. 525.

4. Voet 4.4.12.

5. See, e.g., *Simon Naide* v. *Aslin Nona*, 46 N.L.R. at p. 339, per Soertsz, A.C.J.

6. Thus, we shall consider contracts of minors only so far as they are executory on both sides or have been executed by the party contracting with the minor, as where the money promised has been delivered to the minor. We are not in this article concerned with contracts of minors which have been executed on the minor's side by transfer of his property.

The judgement in *Christie* v. *Mohamed Bhai* says[7]: 'In this case all that matters turns upon the liability of a minor to repay a loan together with legal rate of interest . . . It appears that the appellant" (the minor) "at the material time was employed as a clerk on an estate on a salary of Rs. 75·00 per month and an allowance of Rs. 60·00, having previously been a "creeper" on the same estate at a salary of Rs. 45·00 per month. It seems to me that in all the circumstances of this case the loan must be taken to be *ex facie* beneficial to the minor. The onus, therefore, lay upon the minor to displace this presumption. He failed to do so. I am therefore of opinion that the plaintiff respondent was entitled to succeed. As is pointed out by Balasingham (at page 708 in Volume II of his book on the *Laws of Ceylon*) in the case of a loan the onus of proof is on the minor to show that he has received no benefit. For these reasons the appeal is dismissed with costs'.

Since the passage in Balasingham's *Laws of Ceylon* to which the learned judge refers is taken verbatim from the judgement of Ennis, J., in *Silva* v. *Mohamadu*,[8] it is sufficient here to set out the latter passage. Ennis, J. said[8]: 'The Roman-Dutch Law prohibited contracts by minors, to ensure the protection of minors. But it did not make the prohibition absolute in every case. Whenever a minor obtained a benefit from the contract there was no complete prohibition, and whether or not he obtained a benefit was a question of fact. In two cases only, viz., donation and suretyship, it was held that the absence of any benefit by a minor was manifest, and the contract was declared to be void *ad initio*, the prohibition in such cases being regarded as absolute. In the case of a loan there was some doubt, which had the effect of throwing the onus of proof on the minor to show that he had received no benefit'.

From a reading of the judgement in *Christie* v. *Mohamed Bhai* and the passage from the judgement of Ennis J., in *Silva* v. *Mohamadu* set out above, it would seem that three questions arise for our consideration. First, is the contract of a minor void or voidable, or (to use language with smaller potentialities of confusion, for the words 'void' and 'voidable' are used with many meanings) to what extent is a minor liable and entitled on a contract to which he is a party? Secondly, are contracts of donation, suretyship and loan on a special footing as regards the liability of a minor who is a party to such contracts? Thirdly, what is the burden of proof that must be discharged by a minor who claims relief on the ground of minority from a contract into which he has entered, and is the contract of a loan of money to a minor governed by special rules? We shall now attempt answers to each of these questions in the order in which they have been posed above.

7. 53 N.L.R. at p. 526.
8. 19 N.L.R. 426 at p. 428.

As regards the first question, it may be said that a contract entered into by a minor without the assistance of a parent or guardian is not binding upon him and can be described as *prima facie* void as against the minor, in so far as he is exempt from liability on the contract without the need for any relief from a Court by way of *restitutio in integrum* or otherwise.[9] But the contract is not entirely devoid of legal effect for all purposes,[10] inasmuch as the contract (unless repudiated by the minor on attaining majority or by the parent or guardian during minority) is binding on the other contracting party,[11] and inasmuch as the contract can be made binding on the minor by it being ratified either expressly or impliedly by the parent or guardian during minority[12] or by the minor after he attains majority.[13]

Further, although the minor is not liable *on the contract* unless it has been ratified, he will be liable in delict[14] to the other contracting party where the latter has been misled by the minor expressly or impliedly misrepresenting himself to be of full age[15] ; and the minor will be liable in quasi-contract[16] to

9. Van Leeuwen Cens. For. 1.4.43.2 ; Gr. 3.48.10. But, as Voet points out, although an action to repudiate the contract is not absolutely necessary ' wherever a person is *ipso iure* protected ' yet in practice ' since extra caution can do no harm and skilled practitioners are apt to take the safer course . . ., a general practice has been introduced for the sake of safety rather than from necessity to ask for restitution from the Courts against contracts labouring from manifest nullity '. Voet 4.1.13 ; cf. also Voet 4.1.20.

10. Thus, the contract of an unassisted minor creates a natural obligation (Voet 26.8.4 ; cf. Voet 4.4.21) and is sufficient to permit of a valid suretyship being entered into and valid pledges and mortgages being given in respect of it. Voet 26.8.4 ; 44.7.3.

11. Gr. 3.6.9. Voet (26.8.3) calls the contract a ' limping ' or ' halting ' contract because the minor is not bound but the other party is. Of course, if the minor seeks to enforce the contract against the other party (which would amount to ratification of the contract) he must perform his own obligations under the contract. Voet ibid.

12. Voet 26.8.1. *ad fin.*

13. Voet 4.4.44 and 26.8.4. *ad fin.*

14. The basis of the minor's liability in the circumstances now being set out (i.e. where he has deceived the other contracting party) has been explained as delictual. Wessels, *Contract*, sec. 843.

15. Voet 4.4.43, *Shorter and Co.* v. *Mohamed* 39 N.L.R. 113. But where the other contracting party ' is not ignorant of his being a minor . . . the minor, however fraudulent, is still to be listened to '. Voet ibid. The burden of proving knowledge on the part of the other contracting party that the fraudulent minor was in reality a minor will be on the minor, unless the other contracting party was a blood relation of the minor in which case the presumption is that he was aware of the minor's age. Voet ibid. It must be noticed that a minor, even in the absence of an express representation of full age, will be liable if he has, by his dealings or the office he holds, impliedly represented himself to be of full age (Voet 4.4.43, cf. also 4.4.50, 51), and this liability applies even where the circumstances are insufficient to show tacit emancipation in the proper sense ; cf. *Muthiah Chetty* v. *Silva*, 1. N.L.R. at p. 362 and *Ratwatte* v. *Hevawittarna* 3 Balasingham at pp. 27-8.

16. Gr. 3.30.3 ; 1.8.5 ; 3.1.26 ; 3.6.9 ; *Edelstein* v. *Edelstein, N.O.* 1952 (3) S.A.L.R. at p. 12. The liability arises *out of the contract*, but is not itself contractual.

the extent to which he can be shown to have taken the benefit of or been enriched by the other contracting party's performance of the contract.[17] Since this last head of non-contractual liability is most relevant on the facts of *Christie* v. *Mohamed Bhai* (*supra*), we must consider it in more detail.

The view expressed in most of the older South African and Ceylon decisions that an unassisted minor's contract is binding on him when it can be shown that the contract is for his benefit must now be taken to be incorrect. The test is not whether the contract is for the benefit of the minor but whether he has in fact been benefited.[18] Thus, a minor who has without the assistance of a parent or guardian entered into a contract which has not enriched him is not liable to the other contracting party,[19] and an executory contract entered into by an unassisted minor, however advantageous it may seem, cannot be enforced against him.[20] Even where money promised by way of loan to an unassisted minor has been handed over to him, it cannot be recovered by the lender where the money has been lost[21] or squandered,[22] and money lent can be recovered only where it can be shown to have been spent on 'necessaries'.[23] Where the minor is liable for money borrowed and spent on 'necessaries', his liability is therefore quasi-contractual. A minor's liability for 'necessaries' supplied directly to him is also quasi-contractual, and therefore it would seem that the minor is liable to pay, not the contractual price, but only what the goods supplied are reasonably worth.[24]

So far we have considered contracts entered into by a minor without the assistance of a parent or guardian. When we turn to contracts made by a minor with such assistance or contracts made by a parent or guardian on behalf of a minor, we find the legal position is different in important respects.

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17. See *Tanne* v. *Foggit* 1938 T.P.D. 43, approved in *Edelstein* v. *Edelstein, N.O* 1952 (3) S.A.L.R. 1 (A.D.)

18. See *Tanne* v. *Foggit* 1938 T.P.D. 43 (esp. at pp. 47-50), and *Edelstein* v. *Edelstein, N.O.* 1952 (3) S.A.L.R. at pp. 12-14.

19. Voet 4.1.13.

20. *Tanne* v. *Foggit* 1938 T.P.D. at pp. 48-49, and cf. *Edelstein* v. *Edelstein, N.O.* 1952 (3) S.A.L.R. at p. 12.

21. Gr. 3.30.3.

22. Voet 4.4.52 ; Gr. 3.30.3.

23. See D. 46.3.47. 1, Gr. 3.30.3. Voet, Compendium, 14.6.5. says that the *exceptio S. C. Macedoniani* (by which a *filius familias* who had borrowed money could in Roman Law defeat the lender's action for recovery) does not operate in Roman-Dutch Law if the money lent to the minor is in existence or if the minor has been enriched by the loan. Cf. Groenewegen ad Code. 4.28.

24. Cf. the position in Anglo-American Law where also the minor's liability for 'necessaries' supplied to him is quasi-contractual and does not extend beyond their reasonable value. *Nash* v. *Inman* (1908) 2 K.B. at pp. 8-9, and, for America, Williston on Contracts (Revised Edn. 1936), Vol. I, p. 712 n. 1.

A contract made by a minor with the assistance[25] of a parent or guardian or made by a parent or guardian for a minor is *prima facie* valid and binding on the minor[25a] and on the other party to the contract. But since the minor may on attaining majority repudiate the contract[26] by claiming[27] within three years of majority[28] *restitutio in integrum* from a Court on the ground that the contract is prejudicial to him, the contract may to that extent be described as voidable. Restitution will not be granted to a minor where on coming of age he has either expressly or impliedly ratified the transaction,[29] or where he has been guilty of reprehensible conduct in connection with the transaction[30] as where the other contracting party has been misled by the minor misrepresenting his age expressly or tacitly.[31] Where restitution is granted, the Court as far as possible restores the *status quo ante* on both sides.[32]

Having thus set out the chief principles which generally govern the contracts of minors, we must now attempt an answer to the second of the questions posed above,[33] namely, are contracts of donation, suretyship and loan (as suggested by Ennis, J. in *Silva* v. *Mohamadu*[34]) different from other contracts in respect of the liability they impose on a minor? As we have seen,[35] any contract entered into by an unassisted minor is *prima facie* void as against him

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25. Assistance may take the form either of consent given before or at the time of the contract or of ratification given after the contract has been made. Voet 26.8.1.

25*a*. Van der Keessel Dict. ad Gr. 1.8.5 and Th. 133, Gr. 3.48.10 and 1.8.8.

26. provided he has not expressly or impliedly ratified the contract after majority; see infra at n. 29.

27. It is not only as a plaintiff that the former minor can claim restitution—he can plead as a defence facts which would justify restitution. Voet. 4.4.12, Gr. 1.8.8.

28. Sec. 10 of Ceylon Prescription Ordinance No. 22 of 1871 (R. S. cap. 55), sec. 3 (2) (c) (viii) of South African Prescription Act of 1943. In the Roman-Dutch law the period was four years from majority (Voet. 4.1.19) or from the time after majority when the late minor knew or ought to have known of the facts entitling him to relief. V. Leeuwen Cens. For. 1.4.43.9. *ad. fin.*, Voet 4.1.20.

29. Voet 4.4.44, Van Leeuwen Cens. For. 1.4.43.8, with knowledge of the facts and circumstances entitling him to relief. Van Leeuwen op. cit. 1.4.43.9.

30. Van Leeuwen Cens. For. 1.4.43.7.

31. Voet. 4.4.43. cf. p. 319 n. 15 *supra*.

32. Thus, where a *prima facie* valid contract has been executed by alienation of the minor's property, the minor will have restored to him what he has handed over with fruits, interest and profits (Voet. 4.1.22; 4.4.36). He on his side must compensate for necessary and useful improvements to the property restored to him (Voet. 4.1.22) and restore, with fruits, interest, and profits, what he acquired by the contract (Voet. 4.1.22; 4.4.36) subject to set-off wherever the circumstances demand it. Voet. 4. 1. 22; 4. 4. 37.

33. See p. 318 *supra*.

34. 19. N.L.R. at p. 428, see p. 318 *supra*.

35. p. 319 *supra*.

and this would be equally true of contracts of donation,[36] suretyship and loan. But are contracts of these three kinds, entered into by a minor with the assistance of a parent or guardian, also void as against the minor, contrary to the usual rule stated above[37] ? The answer to this question is that contracts of donation, suretyship and loan are not all on the same footing as regards the liability they impose on a minor, and that even in the case of donations certain distinctions must be drawn.

It is submitted that where a minor has with the aid of a parent or guardian entered into a contract to borrow or lend money or into a contract to stand as surety for another's debt, the contract is *prima facie* valid subject only to restitution on the ground of prejudice[38] —the only difference between these contracts and others being that in the case of a loan or suretyship the minor who claims restitution is, as we shall see, absolved from the necessity of proving prejudice which is presumed in his favour.[39] As regards donation, gifts and promises to give to a minor are valid if accepted by a parent or guardian on his behalf.[40] As for donations by a minor, it is clear that, with one or two exceptions,[41] no alienation of a minor's property in execution of a contract of donation (whether *donatio inter vivos* or *mortis cuasa*) can be made by a minor with or without the assistance of a parent or guardian,[42] and that a minor over the age of puberty even if not assisted by parent or guardian has (except in

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36. But a minor over the age of puberty has capacity to make a promissory *donatio mortis causa* (even without the aid of a guardian) since capacity to make such a promise is governed by the rules of testamentary capacity. Voet 39.6.5, Van der Keessel and Schorer ad Gr. 3.2.23 ; *secus* in Natal and Ceylon where by statute minors have been denied testamentary capacity. It must be noticed, however, that an unassisted minor cannot before majority implement his promise to make a *donatio mortis causa* by alienating property, since an unassisted minor cannot alienate his property. Schorer ad Gr 3.2.23, Sande De Proh. Rer. Alien. 1.1.7.111).

37. p. 321 *supra.*

38. As regards loans to a minor see Voet 4.1.24 and cf. Van der Keessel ad Gr. 3.1.30 ; as regards loans by a minor see Voet 4.4.23 (referring to Voet 4.4.21) ; as regards suretyship see Voet 46.1.5.

39. Voet 4.4.13. see p. 324 *infra.*

40. See, e.g., *Barrett* v. *O'Neill's Executors* 1879 Kotze at p. 108, *Fernando* v. *Cannangara* 3 N.L.R. at 8, 10, *Idroos Sathuk* v. *Sitti e Leyaudeen* 51 N.L.R. 509. Provided the gift is not in any way onerous, it can even be accepted by the minor himself, so long as he has *intellectus*, the capacity of understanding the nature of the transaction; cf. *Babaihamy* v. *Marcinahamy* 11 N.L.R. at p. 234.

41. with the possible exception of a *donatio remuneratoria* which partakes of the nature of an exchange (Gr. 3.2.3, Schorer ad Gr. ibid.), and the exception of ordinary presents to close relatives and gifts for their necessary maintenance. D. 26.7.12.3. (cited by Voet 4.4.18 and by Van der Keessel ad. Gr. 3.1.30) and D. 26.7.13.2. and D. 27.3.1.2. (cited by Voet 4.4.18.)

42. or even by a guardian on behalf of a minor.

Ceylon and Natal) the capacity to make a promissory *donatio mortis causa.*[43] But it would seem that, with one or two exceptions,[44] a promise to make a *donatio inter vivos* made by a minor, even with assistance of a parent or guardian, is *prima facie* void as against the minor,[45] unlike other contracts entered into by a minor with the aid of a parent or guardian.[46]

Having attempted answers to two of the three questions posed above,[47] we may now proceed to consider the third question—namely, what is the burden of proof required of a minor who claims relief,[48] on the ground of minority, from a contract into which he has entered, and are contracts of loan on a special footing ?

By way of answer we may state that where a contract is entered into by a minor without the assistance of a parent or guardian, it is sufficient for the minor who claims[48] that the contract is not binding on him to prove minority[49] and he need not also prove prejudice.[50] In such a case the burden of proving that the minor has been benefited,[51] or that he has been emancipated,[52] or

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43. See n. 36. *supra.*

44. See n. 41. *supra.*

45. Gr. 3.1.30; 3.2.7.

46. But so long as the minor's promise to make a *donatio inter vivos* remains unexecuted by alienation of his property, it makes little difference whether his promise to give is held to be *prima facie* valid or *prima facie* void as against him. For the period of time within which relief must be claimed by the minor (whether as plaintiff or as defendant v.n. 27 *supra*) is the same whether the contract is *prima facie* valid (and *restitutio* is strictly necessary) or the contract is *prima facie* void (and *restitutio* is not strictly necessary but sought as a matter of prudence cf.n.9 *supra*) cf. *Willenburg* v. *Willenburg* 25. S.C. at p. 913; and since in the case of donations prejudice to the minor is presumed (v.p. 324 *infra*) the burden of proof that has to be discharged by the minor is the same where he has had the assistance of a parent or guardian in making the promise as where as he has not had such aid.

47. See p. 318 *supra.*

48. either as plaintiff or as defendant vide n. 27, *supra.*

49. The burden of proving the minority is always on the minor (Voet. 4.4.12), because in cases of doubt, every one contracting is presumed to have had the legal capacity for doing effectually what he proceeded to do, so that any one asserting the contrary must prove it ibid.

50. *Gantz* v. *Wagenaar* 1 Menzies 92; cf. Lee, *Introd. to Roman-Dutch Law,* 4th edn., p. 422.

51. *Du Toit* v. *Lotriet* 1918 O.P.D. at p. 115, *Nel* v. *Divine Hall & Co.* 8 S.C. at p. 18, (which speaks of ' burden of proving that an obligation has been incurred by a minor for his benefit'; but since *Tanne* v. *Foggit* 1938 T.P.D. 43 what has to be proved is that the minor has benefited by the contract—and the extent of such benefit—and not that the contract is for the minor's benefit. cf. p. 320 *supra*). In the case of minors, enrichment is strictly construed see pp. 324-5 *infra.*

52. *Venter* v. *De Burghersdorp Stores* 1915 C.P.D. at p. 255, and *Ochberg* v. *Ochberg's Est.* 1941 C.P.D. at p. 36, citing *Ambaker* v. *African Meat Co.* 1927, C.P.D. at p. 327.

that he misrepresented his age[53] is on the other contracting party. On the other hand, where a contract is entered into by a minor with the assistance of a parent or guardian or a contract is made by a parent or guardian on behalf of a minor, the minor, if he claims relief from the contract, must prove minority[54] as well as prejudice,[55] except that where a contract is by its nature prejudicial to the minor, (for example, where a minor makes a donation or binds himself as surety or gives or even receives a loan) there is a presumption of prejudice, which is rebuttable by the other contracting party showing that the minor has been benefited.[56]

We have now enunciated what are conceived to be the correct legal principles which govern the contracts of minors and are in a position to set out our objections to the judgement in *Christie* v. *Mohamed Bhai*.[57] In the first place, is it correct to say that a loan to a minor ' must be taken to have been *ex facie* beneficial to the minor ' ?[58] ; and, since the judgement draws no distinction between a minor assisted by parent or guardian and a minor without such assistance, is the loan to be considered ' *ex facie* beneficial ' in both cases ? Now it is clear that a loan obtained by a minor with a view to benefiting some other person (even if that person is the minor's father with whom the minor is living[59]) cannot be regarded as having benefited the minor. But even where it is admitted that the loan was obtained solely for the minor's own use, can the mere fact that the money was handed over to him by the lender be considered as giving rise to a presumption of benefit and making the loan ' *ex facie* beneficial ' to the minor ?

Far from saying that a loan to a minor is presumed to be for his benefit, Voet stigmatises such a loan as ' most pernicious to young men ', and in fact cites it as an example of a contract which is ' in its nature damaging '.[60] Further, it must also be remembered that, as Grotius says,[61] ' in regard to minors enrichment is construed more strictly than in other cases ' (i.e. of persons of

53. See p. 319 at n. 15 *supra*.

54. See n. 49 *supra*.

55. Voet 4.4.13, *Wood* v. *Davies* 1934 C.P.D. at p. 258.

56. Voet 4.4.13.

57. 53. N.L.R. 526.

58. 53. N.L.R. at p. 526.

59. See *Ramen Chetty* v. *Silva* 15 N.L.R. at p. 287, *Vellasamy Pulle* v. *Peries* 3 Balasingham at p. 4. The father himself will be liable on a loan given to the minor son to the extent to which it can be shown that the money was applied to the father's use (Voet 15.3.1-5) or where it can be shown to have been spent on ' necessaries' of the son which the father has not supplied and for the supply of which the father is by law responsible. Voet 15.3.4.

60. Voet 4.4.13 *ad fin.*

61. 3.30.3.

full capacity)[62]. ' For in their case enrichment is not held to have taken place if the minor has lost what he received or spent it in some unusual way,[63] but the case is different if the minor has spent it through necessity or if it would in any event have had to come out of his estate.[64] In the case of persons of full understanding and capacity, whatever is enjoyed by them is held to be enrichment '.[65]

It follows therefore, that where a person who has lent money to a minor shows only that he handed over the money without furnishing any evidence of how the money was applied by the minor, it is incorrect to say that ' the loan must be taken to be *ex facie* beneficial to the minor ' and that ' the onus, therefore, lay upon the minor to displace this presumption '.[66] It is respectfully submitted that the transaction of a loan to a minor which was considered by the Court in *Christie* v. *Mohamed Bhai* (*supra*) should have been decided by the application of the following principles, a recapitulation of which may serve as a summary of the conclusions reached in this article.

Where a minor who has borrowed money without the assistance of a parent or guardian is sued by the lender for recovery of the money, the minor need prove only minority[67]; and the lender (if he cannot prove that the minor was emancipated[68] or misrepresented his age, expressly or impliedly[69]) must then

62. Cf. Voet 4.4.36 *ad fin.*: ' because the condition of minors is such that it is not to be presumed that they would manage their own affairs carefully, and hence the presumption is that they had not spent the money on what was serviceable to them '.

63. See p. 320 n. 21, 22.

64. See p. 320 n. 23.

65. It is interesting to note that the position in French and Egyptian Law is identical :—

' In deciding whether there has been an enrichment, there is an important distinction between incapable persons and capable persons. When a payment is made to a capable person he is always enriched. The money is always *in rem versum*, to use the classical phrase. For example, a borrower possessing full capacity cannot plead that he did not benefit by the loan. If he got the money he derived a profit, although he may have thrown the money into the Nile the moment afterwards. But where the payment is made to a creditor who is by law incapable of receiving it, the presumption is that it did not "turn to his profit ". The onus lies on the other party to displace this presumption. Larombiere (*Traite theorique et pratique des obligations*, Paris, 1885) on art. 1312, n. 6; Demolombe, (*Cours de Code Napoleon*, Paris, 1860-81) Cass. 1 *er juin* Vol. XIX, n. 174; Cass 1 *er juin* 1870, (D. 70.1.432; Req. 7 *juillet* 1879, D. 1880.1.61). The incapable person is not necessarily the richer by the mere fact of having received the payment for he may have squandered it in folly. And it is precisely because his incapacity makes such folly probable that he is protected by the law '. F. P. Walton, *Egyptian Law of Obligations*, Vol. I, 2nd Edn., pp. 96-7. See also p. 326 *infra*.

66. 53. N.L.R. at p. 526.

67. See p. 323 *supra*.

68. See p. 323 *supra*.

69. See p. 319 at n. 15.

show that the minor has been enriched by the loan.[70] The liability of the minor, if enrichment can be proved, is (as we have seen[71]) not contractual but quasi-contractual. Where a minor who has borrowed money with the assistance of a parent or guardian is sued by the lender for recovery of the loan, (on which he is *prima facie* liable in contract[72]), the minor once again need prove only minority. For, (contrary to the usual rule applicable to contracts made by a minor with assistance[73]) a minor who has borrowed money even with the assistance of a parent or guardian need not prove prejudice which is presumed in his favour [74]; and this presumption will have to be rebutted by the lender showing that the money had been applied to the benefit of the minor.[75]

T. NADRAJAH

ADDENDUM TO NOTE 65 SUPRA

The position in Scots Law is similar. 'Where money is lent to a minor . . . there is a presumption of lesion which is not rebutted by proof that the terms of the loan . . . were perfectly fair. It must also be shown that the money is still part of the minor's estate, or has been expended in a manner profitable to him. A minor is lesed ' (i.e. prejudiced) ' if money is put into his hands which he squanders and has to repay... (The lender) cannot recover money lent... unless he can prove that the expenditure of the loan... has been *in rem versum* of the minor'. W. M. Gloag, *The Law of Contract*, 2nd edn., p. 85.

70. See p. 320 *supra*; and 'enrichment' in the case of minors is strictly construed, pp. 324-5 *supra*.

71. See p. 320.

72. See p. 321.

73. where normally the minor must prove minority as well as prejudice see p. 324.

74. Voet. 4.4.13. cf. p. 324.

75. ibid.

Reviews

A. S. Collins : *English Literature of the Twentieth Century*, University Tutorial Press, Oxford University Press, 8/6.

I find this a difficult book to review because its intentions are not only unfulfilled, but even contradicted by its author's procedures. The book is offered as an ' introductory guide '. The author hopes it is going to be ' readable enough and full enough to encourage and enable the reader to find his way '. To my mind nothing is better calculated to confuse and bog the reader down in a morass of valueless information than the attitudes to literature and the mode of treatment adopted by Mr. Collins.

Mr. Collins has apparently a great deal of industry, patience, and a capacity for providing a vague and genteel remark which could profitlessly be attached to any poem, novel or play. Had the first two of these qualities been linked with a critical intelligence, this book might have provided the general reader anxious to find his way with some kind of direction. But apparently the desire to make the book ' full enough ' intrudes at every turn, and the reader fails to see where he is going, while Mr. Collins adds another morsel of useless information to a rapidly growing load. His intentions are laudable, but what help are comments like these : ' Yeats in *The Second Coming* saw anarchy rising in bloody violence to inaugurate a new and bestial age. Edith Sitwell, after startling the conventional and impercipient with her new imagery and her technical experiments, during years when she created abundant beauty while acutely conscious of the materialism of the age in many ways, came in 1929 to her *Gold Coast Customs*, a symbolic poem of dark intensity, of which she wrote later : ' it was written with anguish and I would not willingly re-live that birth '. T. S. Eliot saw his vision of the Waste Land and the Hollow Men seeking in cold despair a personal salvation through the culture of the ages, until be abandoned that for penitential renunciation to refresh his spirit '. Even if the fag ends of meaningless epithet were pardonable, the attitude and mode of the writer are inexcusable. You can add to that paragraph—as the author does—as many hollow and allusive remarks as there are writers you wish to name, but what happens to your reader in the meantime, that hopeful spirit you intended to guide ?

I am afraid this won't do. The same procedure infects the writing on the work of single authors. This is a Baedeker without the minimal virtue of Baedekers—reliable information. Here follows Mr. Collins on *Little Gidding* : ' In *Little Gidding* he found a spiritual home in the little sanctuary of seventeenth century communal worship, a very precious place, to visit which was an experience similar to the moment in the rose-garden. The opening landscape is one where in mid-winter the sun flames on ice from a windless sky and all has a supernatural glow as of Pentecostal fire, and the poem draws to its climax with imagery of fire, the fire of Love, until Eliot can conclude the Quartets with the peace that passeth understanding, himself ' at the still point of the still turning world . . . '. At least these remarks provide the reader with sufficient directions for finding Dr. Eliot.

E. F. C. L.

The Roman-Dutch Law of Divorce. By C. E. Jayewardene, 1952. (Published by the Colombo Apothecaries' Co., Ltd.). Price Rs. 10/-.

Mr. Jayewardene's book is a welcome addition to the meagre literature on the laws of Ceylon. Although the author makes special reference to Ceylon the law of South Africa is also discussed. One is pleased to note that throughout the author adopts a critical attitude towards his subject and is not content merely to reproduce the head-notes of reported

cases. He does not hesitate to disagree with our case law where he feels that Roman-Dutch Law principles have not been adhered to.

That the book is not meant to be exhaustive on the subject is apparent from the fact that it runs to only 125 pages of large type and the author warns us in his Preface against expecting to find '*all* the authorities and *all* the law from *every* source'. This is to be regretted for the attempt to confine an important and difficult subject like divorce to the mere essentials cannot be called a success. Certain topics are inadequately or inaccurately dealt with. For instance, malicious desertion as a ground for divorce receives summary treatment, many aspects of it being totally ignored. The Ceylon law is ably discussed but one feels that the South African law has not been properly or carefully considered and many errors in the book could be traced to this. Yet, no doubt, the book will serve as a useful guide to practitioners and students alike.

The twelve Chapters of the book deal with, *inter alia*, the grounds of divorce, defences, damages, alimony and custody of children. In addition there are three Appendices. Of special interest is the discussion in Chapter II of the question of the jurisdiction of our Courts to dissolve marriages of parties domiciled outside Ceylon. This question which was presumably settled by *Le Mesurier v. Le Mesurier* and the Indian and Colonial Divorce Jurisdiction Act, is re-opened by Mr. Jayewardene who submits that the decision in *Le Mesurier's Case* should be confined to very narrow limits (p. 11), that it is obiter on this point (p. 13), and that in any event it has been overruled by Ord. 19 of 1907 (p. 15). These submissions deserve careful consideration.

Chapters 3-5 set out the grounds of divorce. A separate section is devoted to the question whether a woman may not be cited as co-respondent. Mr. Jayewardene disagrees with our case law in an able argument. Having discussed Dr. Barlow's article in the *South African Law Journal*, the author states (at p. 29) that *Foulds v. Smith* adopted the approach suggested by Dr. Barlow. Judge Van Den Heever's judgement in this case is in Afrikaans, but as far as one can gather there is no reference to Dr. Barlow's article. In fact, it is difficult to understand how it could be said that Dr. Barlow's views were adopted when, according to him, damages could be awarded against a woman only when it is clear that 'she had by her actions, deliberately or negligently, led to the committing of the wrongful act'. It is more likely that *Strydom v. Saayman* [1949] 2 S.A. 736, where Lucas, A.J. *disagreeing* with Dr. Barlow held that an action by a wife for damages lies 'on the simple ground of injury done to the wife, irrespective of whether the woman was an active inciter of the adultery or merely a passively or weakly consenting party', was followed.

Similar inaccuracies are to be found in the section dealing with the discretion of the court in granting a divorce where the plaintiff has been guilty of adultery. At p. 65 *Zelie v. Zelie* is referred to as being a decision by 'a full bench of judges of the South African Courts'. This might suggest that it is a decision of the Appellate Division whereas in fact it is a decision of the Cape Provincial Division. For this reason too, one must disagree with the author when he states that *Zelie's Case* 'is now accepted as the law on this subject in South Africa'. The law on this point in South Africa is unsettled, for there are a number of decisions of other Provincial Courts, subsequent to *Zelie's Case*, which do not accept the fetters on judicial discretion imposed by Fagan, J. Special mention may be made of *Hope v. Hope* [1950] 1 S.A. 743, where the arguments in favour of judicial discretion are marshalled by Tredgold, J.

The Appendices consist of two judgments and a short note on the acquisition of domicil in Ceylon. One hesitates to say that they are necessary or serve a useful purpose. One last word of criticism may be directed at the arrangement of the Tables of References, Cases and Statutes which are at the end of the book and not at the beginning as is usual.

R. K. W. G.