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OBITER DICTA.

We trust that Government will lose no time in publishing a revised edition of the local enactments. The first volume of our Ordinances, for instance, contains much over a thousand pages and embodies a great deal that has been repealed. A new edition, with the repealed Ordinances omitted, will reduce the bulk of the volume by one half at least and render it more handy for practitioners. A little consolidation might be attempted and certainly the old Bankruptcy Act of 1853 ought to be replaced by one more suited to our times. Our Ordinance was based on an English Act now nearly fifty years old. The English Act, however, was continually amended till 1882, when Mr. Chamberlain introduced his famous Bankruptcy Act which now obtains. We, however, seem to be satisfied with what has long since been done away with in the Mother Country. Now that they have such excellent precedents before them, a little effort on the part of our Legislature ought to produce a suitable Bankruptcy Act.

* * *

Undoubtedly the system whereby the majority of the creditors are allowed to choose the assignee, is most vicious in principle and ought to be abolished at once. With very few exceptions, the assignee is the creature of either the vindictive or the bogus and, therefore, highly favourable creditor. In the former case he has not a good word to say for the insolvent, in the latter he has not a bad word for him. The Court naturally cannot in every case go into the details of the insolvent's business and is usually guided by the assignee, a man of whom the Judge, probably, knows nothing. Dishonest debtors, as a consequence, frequently obtain first-class certificates, whilst honest debtors more often than not have their certificates suspended or refused altogether. This anomaly ought to cease to exist and a permanent official assignee appointed by Government and responsible to the Court, should be selected for the administration and distribution of insolvent estates.

* * *

But no more absurd Ordinance exists in our Statute Book than 3 of 1842, and we cannot understand why it has not been amended especially as we are aware that the Chief Justice has written to the Executive Government on the subject. The Ordinance provides that every individual not professing the Christian faith and every Quaker, Moravian and Jew shall make a solemn affirmation in lieu of an oath. There are many Christians who, as, matter of fact, affirm and refuse to be sworn. The redoubtable "Senior" editor, for instance, and all the members of his staff invariably affirm. But this is manifestly illegal and if the question is raised, they will have either to take their oath or be committed for contempt! In England the law is in an equal jumble. A man who believes in a god but is not a Christian, can neither be sworn nor affirmed. It was only the other day that an Indian gentleman was not allowed to give evidence in the High Court in an important case on the ground that no provision had been made to meet a case like his. He could not be sworn because he was not a Christian. He could not be affirmed because he believed in a god. "How do you manage in India?" asked the judge, "Oh," was the reply, "I am told to speak the truth the whole truth, and no humbug about it. Mr. Justice Denman thought this very satisfactory.

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As there are various versions given of the mock epitaph on Lord Westbury, it is well that the authentic one should be placed before our readers. After recording his various virtues, the epitaph concluded with—"Towards the close of his earthly career in the Judicial Committee of the Privy Council, he dismissed Hell with costs and took away from Orthodox members of the Church of England their last hope of everlasting damnation."

* * *

Lord Westbury, when Attorney-General of England, was retained and appeared for the respondent in the famous Rajawella case. Sir Richard Morgan was paid a thousand guineas by the Oriental Bank to consult Counsel in England, perhaps the largest fee paid to a Ceylon lawyer. Sir (then Mr.) Richard Morgan after a long consultation with Bethell in London, was somewhat taken aback when at the end of the consultation the English Attorney-General remarked "Go back to Ceylon my dear fellow with an easy conscience. There is lots of money to be made out of this case."

* * *

The Proctors' examination has concluded at last, after having lasted just one month and two days, that is to say, the examination papers were scattered over that period. The Council of Legal Education, it will be remembered, was created by the Courts Ordinance and, says the Act, "shall consist of the Judges of the Supreme Court, the Attorney and Solicitor-General" and

some others. Nobody seems to be enamoured of the portion relating to the examination of Advocates and Proctors. The Chief Justice will have nothing whatever to do with the Board of Legal Education, and as for the Senior Puisne he sneers at it as he only can. There are two lecturers paid by the Government and between them they have had an audience of one! That solitary student has been lectured to during the year of grace 1891 by two lecturers at the rate of three lectures a week. The same fate is awaiting him this year and the next. We wonder what will be left of him when his term of apprenticeship is ended.

Summary of Decisions on the Ceylon Civil Procedure Code.

ABSOLUTION FROM THE INSTANCE.—*see* ADMINISTRATION, 1.

ACCEPTED PLAINT.—A plaint once accepted cannot be taken off the file without notice to the plaintiff [Sects. 46, 47]—S. C. C., ix, 189.

ADMINISTRATION.—1. Section 54 does not apply to actions brought for recovery from the estate of a deceased person, but only to actions on behalf of such estate. So where debtor's estate amounts to or exceeds Rs. 1,000, administration need not always be taken out. Absolution from the instance is not a judgment that can be passed under the Code. [*see* also Sects. 201, 207, 547, 642,]—S. C. C. Vol. ix, p. 181.

2. The procedure prescribed by Chap. 46 for the appointment of an administrator to the estate of a deceased mortgagor, on the application of the mortgagee, is not applicable where the mortgagor has died before the Code came into operation. Upon an application under Chap. 46, it is not competent for the Court to appoint the mortgagee himself administrator. [*see* also Sects. 3, 534, 539, 641, 642]—S. C. C. Vol. ix, p. 197.

ARBITRATION.—Reference to arbitration need under the Code be in writing where only it is made through Proctors, and not by parties in person.—[Sect. 676] 226, C. R., Avisawella, 441—Civ. Min. Nov., 5, 1891.

ASSIGNEE.—Where a plaintiff has assigned his claim in a case after defendant had answered and counter-claimed, the assignee is not entitled to be substituted plaintiff in respect only of the claim against defendant.[Sects. 404, 405] S. C. C., Vol. ix, p. 128.

CLAIM IN EXECUTION.—1. Where a claim is upheld, and an action is instituted under Section 247 by the execution-creditor, execution for costs in the claim-proceeding is not stayed—S. C. C., Vol. ix, p. 179.

2. Sundays and Public Holidays are not excluded in reckoning the 14 days within which, under Sect. 247, an action may be instituted to set aside an order in a claim-proceeding.—S. C. C. Vol. ix, p. 182.

3. Order of a Court on a claim in execution binds only parties to the claim-inquiry. Those who prefer no claim can always resort to the regular process of an action regardless of Sect. 247. Where a person for himself and on behalf of others claims property seized, the latter are no parties to the claim-proceedings, and are not bound by them. S. C. C., ix, 190.

4. Where property seized belonged partly to plaintiff and partly to plaintiff and A, plaintiff was right in bringing one action for what belonged to him solely, and another with A for what belonged to them jointly. Here, Section 34 as to splitting causes of action did not apply.—C. L. R., Vol. I. p. 82.

CONCURRENCE.—The Code has superseded the Roman-Dutch Law regulating the concurrent claims of creditors upon the execution proceeds of a common debtor's property. Under Sect. 342 such concurrence has place only where the claimants hold decrees for their claims, and have, prior to the realisation of the proceeds, applied to the Court for execution of such decrees.—S. C. C., ix, 203.

COPIES.—Copies of documents filed with plaint, not only translations, must, under Sect. 42, be served on the defendant. Per Ferdinands D. J. in D. C. Colombo, c. 491.

CORPORATION *see* SUMMARY PROCEDURE, 2.

COSTS.—*see* CLAIM IN EXECUTION, 1.

COUNTERCLAIM—*see* ASSIGNEE.

COURTS OF REQUESTS.—Summary Procedure under Chapter 53 is not applicable to Courts of Requests.—S. C. C., Vol, ix, p. 206.

DECREE.—1. Under Sect. 85 notice of the decree *nisi* means a copy of such decree, and such copy (and not merely the substance of the decree embodied in a notice) must be served on the defendant. The copy must bear a stamp.—C. L. R. I., 62.

2. Without a certificate under Sect. 349, a party who pays the whole amount of a decree against himself and co-obligors, cannot sue the co-obligors for contribution. Such certificate is the sole evidence of payment by one party or other adjustment of decree.—S. C. C., ix, 187.

JURISDICTION.—A claim for land against party in possession may be joined with one, for refund of purchase money, against vendor upon failure to warrant and defend. Such action may be brought in court within jurisdiction of which the vendor resides, although the land and party in possession are out of the territorial jurisdiction of such Court.—[Sects. 14, 17, 37, 38] S. C. C., ix, 189.

MORTGAGE.—1. Provisions of Sect. 201 apply to mortgages executed before as well as after the Code came into operation.—S. C. C., ix, 206.

2.—*See* ADMINISTRATION, 1 & 2.

PLAINT.—In a land case plaintiff must trace his title in his plaint. In the absence of averments disclosing steps of plaintiff's title a list of documents annexed to the plaint is meaningless. [Sects. 40, 50, 51]—S. C. C., ix, 185.

PRESCRIPTION.—May be pleaded *ore tenus* subject to question as to costs. Under Code where in course of hearing the bar by prescription is made apparent, it is competent to the Court to recognize such bar *mero motu*.—S. C. C., ix, 190.

SUBSISTENCE MONEY.—*See* WRIT AGAINST PERSON.

SUMMARY PROCEDURE.—1. Summons in case under Chapter on Summary Procedure, must be according to the form given in the Code. Judgment obtained on a summons not according to such form is irregular.—Per D. J. in D. C., Colombo, C 523.

2. A Corporation, being incapable of making the required affidavit, cannot proceed under the Chapter for Summary Procedure.—S. C. C., ix, 169.

3. See COURTS OF REQUESTS.

TESTAMENTARY.—Chapter 38 applies only to cases of persons dying after the Code came into operation.—S. C. C., ix, 179.

WRIT AGAINST PERSON.—1. If writ against person goes without deposit of subsistence money as required by Sect. 313, arrest under it would be irregular, and party arrested is entitled to be discharged—Per D. J. in D. C., Colombo, 4,036.

2. Where defendant has a cross decree against the plaintiff, the latter in issuing his writ is bound to deduct the amount of such decree from that of the decree in his own favor. Where a defendant was arrested on a writ issued at the instance of the plaintiff without such deduction, the arrest was held to be irregular, and the defendant was discharged. [Sects. 345, 346.]—Per D. J. in D. C., Colombo, 2,006.

3. Under Section 299 no writ against person can issue when the sum awarded, exclusive of interest from date of decree and of costs, does not amount to Rs.200 or upwards. So, where the decree was for the release of a certain quantity of rice (value over Rs. 200) and damages, Rs. 57, and costs had been taxed at Rs. 490, the plaintiff was not entitled to a writ against person. Query—Has a judgment-creditor no right to seize the person of his judgment-debtor for *costs alone* when it exceeds Rs. 200?—Per D. J. in 3,477, D. C., Colombo.

UNREPORTED CASES. *

[SUMMARIES OF JUDGMENTS.]

1. The mere substitution of a defendant does not make him liable to the extent of a judgment obtained before he was on the record. If a plaintiff wishes to bind substituted defendants to the extent of the property of their ancestor which may have come to their hands, he should proceed regularly against them and obtain a decree for the purpose—Markar *vs.* Perera, 34,171, *D. C., Kalutara, S. C., Civ. Min., Aug.* 18, 1891.

2. Acceptation of a donation is mere matter of proof, and it is not necessary to allege it as a link of title.

Although, according to the R.-D. Law, acceptance is an essential ingredient in a deed of donation, the acceptance of the deed itself is a sufficient compliance with the requirements of the law.

Under the R.-D. Law a husband is not obliged to make his wife a party-plaintiff with him in suits respecting land which has come to him in community. He may sue alone.

A mere sale by one person of lands of another gives the latter no cause of action until he is disturbed in the physical possession of the lands—De Silva *vs.* Ondaatjee, 54,307, D. C., Galle, *S. C. Civ. Min., May* 8, 1890.

3. A tenant in common cannot by mere occupation prescribe against a co-tenant; and hence a step-mother, by merely continuing to occupy the family home after her husband's death, could not, in the absence of some direct act going to shew that such occupation was adverse, prescribe against her husband's children.

The interruption of the possession of a party pleading prescription by one co-owner enures to the benefit of all the co-owners.—Gunesekere *vs.* Mack, 31, Sp. Com. Ct., Wellawatte, *S. C. Civ. Min.*, 11 *Feby*, 1890.

4. On an indictment for murder the verdict must be by a majority of six at least of the Jury, whether it be a verdict in respect of the capital charge or of any lesser offence for which a verdict might be returned on such an indictment.—Per Dias, J., in *Reg. vs.* Mohotti, tried at the Supreme Court Sessions, Colombo, February 8, 1892.

5. Where an indictment presented to a District Court appears good on the face of it, and is supported by a commitment and the Attorney-General's *fiat*, the District Judge has no jurisdiction to inquire into the validity of the commitment. The remedy against an irregular commitment is by application to the Supreme Court—*Reg. v.* Colendevel, 4165, *D. C., (crim) Badulla Civ. Min, March 3, 1891.*

6. Where a District Judge dismisses a Petition of intervention with costs, without adjudicating on the question of title to the land in dispute, and reserving his final decision on the question at issue between the plaintiffs and the defendants, the intervenients have no right of appeal until such final decision.—Dissanaike *et al. v.* Ekanaike *et a'*, 4665, D. C., Tangalle.

7. Three plaintiffs in three different cases had judgments against the same defendant, and the same property of the defendant was seized under all three writs, but the Fiscal purported to sell under one of them only. *Held*, that the three creditors were entitled to share *pro rata* in the proceeds of the Fiscal's sale.—Warren *V.* McMillan & Co., 3448, D. C., Colombo, *S. C. Civ. Min, January* 23, 1891.

8. A petition for the appointment or removal of a guardian need not be stamped.—No. 12, D. C. (Testamentary) Kurunegalla S. C. Civ. M., February 26, 1892.

9. A creditor of a deceased testator may not follow, under writ of execution property of the estate in the hands of a *bona fide* purchaser or mortgagee from the executor of the testator's estate—Smith *V.* Wijeratne, c/1162, D. C., Colombo, S. C. Civ. Min., Dec. 18, 1891.

(To be continued.)

* These cases will, as opportunity occurs, be reported in full in the Supreme Court Reports.

THE EXTRADITION OF FUGITIVE CRIMINALS.

(By C. S. HAY, Esq., Acting Sol.-General.)

Fugitive criminals may be divided into two classes:—

1. Those escaping from the United Kingdom to a British possession, or from a British posession to the United Kingdom, or from one British possession to another.

2. Those escaping from the United Kingdom to some Foreign State, or from some

Foreign State to the United Kingdom or to some British possession.

Class 1 falls within the provisions of the "Fugitive Offenders Act 1881."

Class 2 is provided for by "The Extradition Act 1870" amended by 36 & 37 Vict. chap. 60—(1873.)

2. It is with the latter class that I propose dealing in this paper.

3. By various Extradition Treaties between Great Britain and Foreign States(a list is given at the end of the paper) arrangements have been made with these States, with respect to surrender of fugitive criminals, and when these arrangements have been made Her Majesty in Council is authorized by section 2 of the "Extradition Act, 1870" to make that statute applicable to the said Foreign States.

4. As soon as the order by Her Majesty in Council has been made, the Extradition Act of 1870, the Amending Act of, 1873, and the local Ordinance No. 10 of 1877, have he effect of vesting in the Police Magistrates of the Island, "all powers vested in," and the jurisdiction to perform all "acts authorized or required to be done by, a Police Magistrate or any Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom under the Extradition Acts 1870 and 1873." (S. C. C. Vol. 11, page 124, *re* Julius Haufman.)

5. A requisition for the surrender of a fugitive criminal of any foreign State who is suspected of being in Ceylon, should be made to the Governor of Ceylon, by some one recognized by the said Governor as a diplomatic representative of that State, such as a Consul-General, Consul, or Vice-Consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign State on behalf of which the requisition is made) by the person recognised as the Governor of such colony or dependency.

6. The Governor may, by an order under his hand and seal, signify to a Police Magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

7. If the Governor is of opinion that the offence is one of a political character, he may refuse to send any such order, and may at any time order a fugitive criminal, accused or convicted of such political offence, to be discharged from custody.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in, or suspected of being in, the Island of Ceylon, may be issued by any Police Magistrate having territorial jurisdiction ;

(1) on the receipt of the said order from the Governor, and on such evidence as would in his opinion justify the issue of a warrant, if the crime had been committed or the criminal convicted in Ceylon.

(2) on such information, or complaint, and such evidence or after such proceedings as would, in the opinion of the Police Magistrate issuing the warrant, justify the issue of a warrant, if the crime had been committed or the criminal convicted in that part of Ceylon in which he has jurisdiction.

9. It is sufficient to describe the offence in the warrant in general terms in the words of the act (*re* Terrax 48 L. J., Exch: 214.)

10. Any Police Magistrate issuing a warrant under (2) must forthwith send a report of the fact of such issue, together with the evidence and information, or complaint, or certified copies thereof, to the Governor, who may order the warrant to be cancelled and the person, who has been apprehended on the warrant, to be discharged.

11. When a fugitive criminal is brought before a Police Magistrate he should hear the case in the same manner, and has the same jurisdiction and powers as near as may be, as if the prisoner were brought before him charged with an offence committed in Ceylon.

12. The Police Magistrate is bound to receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted, is an offence of a political character, or is not an extradition crime.

13. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, that is to say, if it

(To be continued.)

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