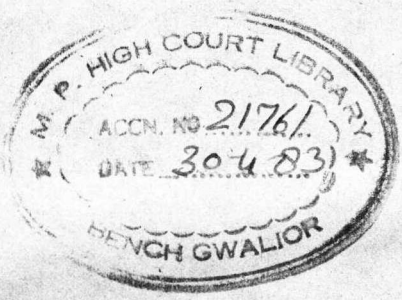
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MADHYA PRADESH AT JABALPUR

Editor

P. R. PADHYE, ADVOCATE, HIGH COURT

Reporter

A. M. MATHUR, ADVOCATE, HIGH COURT, INDORE

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The exclusion of jurisdiction of the civil Court under Section 33(c) is by reference to section 24 and not by reference to section 27. In fact it is *sine qua non* for any proceeding in the civil Court once there has been determination of the amount due under section 24.

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Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 12(1)(e)—Effect of—Once Section 12(1) is complied with, protection ceases—Tenant is a tenant at sufferance and is a rank trespasser—Need of one co-owner proved—Decree for ejectment of whole premises must follow—Transfer of Property Act—Section 109—Applies to a partition amongst lessors—Does not affect integrity of the lease: The effect of Section 12(1)(e) of M. P. Accommodation Control Act, 1961 is merely to remove the bar created by the opening words of Section 12(1) on the rights which a landlord has under the general law, to bring a suit for eviction of a tenant by giving a notice terminating his tenancy.

But once the bar against the filing of the suit is removed i. e. one or more of the grounds mentioned in Section 12(1) are established, the protection ceases and such a person is a tenant at sufferance. He is nothing more than a rank trespasser.

Once any of the landlords succeeds in proving his *bona fide* requirement, the protection of the tenant against eviction disappears. In that event, the ban against the filing of a suit is removed and the suit as a whole must be decreed under the Transfer of Property Act.

Pravirchandra Hathibhai and Co. v. *Shankarlal*, 1966 J.L.J. 553; relied on.

Though Section 109 of the Transfer of Property Act applies to a partition among the lessors by application of Section 109 as embodying a rule of justice and equity, it is well settled that a partition among the lessors *inter se* does not affect the integrity of the lease.

Badri Narain Jha and others v. *Rameshwar Dayal Singh and* others, A. I. R. 1951 S. C. 186; referred to.

Keshavdas v. *Kanhaiyalal*, Second Appeal No. 141 of 1962, decided on the 18th August 1962, *Chandra Sekhar* v.

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Niyamatram, Second Appeal No. 322 of 1967, decided on the 6th June 1970, *Dhannalal* v. *Jineshwar Prasad Diwan*, Second Appeal No. 461 of 1967, decided on the 28th February 1968 and *Shambhoo Dayal* v. *Chandra Kali Devi and others*, A. I. R. 1964 All. 350; distinguished.

In a suit by the landlords, for ejectment of their tenants on grounds of *bona fide* requirement of any one of them under Section 12(1)(e) of the M. P. Accommodation Control Act, 1961, it is not necessary for them to prove that each and every portion of the premises leased to the defendant was required for occupation by all of them. Even if any one of the landlords establishes his *bona fide* requirement under Section 12(1)(e), the decree for eviction must follow for eviction of the tenant from the entire premises demised.

Kanwar Behari v. *Smt. Vindhya Devi*, A. I. R. 1966 Punj. 481, *Miss S. Sanyal* v. *Gian Chand*, A. I. R. 1968 S. C. 438, *S. Mohanlal* v. *R. Kondaiah*, A. I. R. 1970 A P. 384 and *Ramdayal* v. *Ramnarain*, A. I. R. 1953 Raj. 125; referred to.

SHANTARAM *v.* SHYAM SUNDAR, I. L. R. [1972] M. P. ... 909

Accommoda ion Control Act, Madhya Pradesh (XLI of 1961) —Section 12(1)(e) or (f)—Landlord proving need for part of the leased premises—Landlord entitled to evict tenant from whole of the premises: *vide* Transfer of Property Act, Sections 108 and 106 ... 579

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13—Provisions to be strictly interpreted—Section 13(1)—Casts duty on tenant to deposit arrears claimed provided dispute regarding rate of rent does not exist—Section 13(2)—Expression "as to amount of rent payable" in—Means "as to the rate of rent payable"—Casts duty on Court to decide rate of rent only: The provisions of section 13 have to be strictly construed.

Punjalal v. *Bhagwatprasad*, A. I. R. 1963 S. C. 120; referred to.

Under Section 13(1) the tenant must pay or deposit the arrears claimed within time allowed provided there is no dispute as regards the rate at which the rent is to be paid.

Ramniwas v *Kishanlal*, Civil Revision No. 152 of 1963, (Gwalior Bench), decided on the 13th December 1963; not approved.

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Surajprasad v. *Ganpatrai*, Civil Revision No. 40 of 1965, decided on the 17th February 1966—1967 M. P. L. J. Note 65; distinguished.

Inderlal Balkiram v. *Mahagin Bai*, 1967 M. P. L. J. 125; relied on.

The words "as to the amount of rent payable" appearing in section 13(2) must be interpreted as meaning "as to the rate of rent payable" On the plain language of this section, the Court is required to decide a dispute as to the rate of rent at which it is to be paid and not a dispute as to the amount of arrears payable.

RAMKUMAR AGARWAL v. NARAYANDAS DAGA, I. L. R. [1972] M. P. ... 778

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(1)—Casts duty on tenant to deposit arrears claimed provided dispute regarding rate of rent does not exist: *vide* Accommodation Control Act, Section 13 ... 778

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(1)—Object and purpose of: *vide* Accommodation Control Act, Section 13(2) ... 1056

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(1)—The reason for making provision for fixing provisional rent: *vide* Accommodation Control Act, Section 13(2) ... 1056

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(1)—Word "thereafter" in second part of sub-section (1)—Meaning and implication of: *vide* Accommodation Control Act, Section 13(2) ... 1056

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(2)—Casts duty on Court to decide rate of rent only: *vide* Accommodation Control Act, Section13 ... 778

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(2)—Dispute regarding rent to be raised at earliest opportunity: *vide* Accommodation Control Act, Section 13(2) ... 1056

Accommodation Contool Aot, Madhpa Pradcsh (XLI of 1961) —Section 13(2)—Exery dispute as to the amount of rent payable by rent—Is a dispute as within the meaning of this provision: *vide* Accomodation Control Act, Section 13(2) ... 1056

Accommodation Control Act. Madhya Pradesh (XLI of 1961) —Section 13(2)—Expression "as to amount of rent payable" in—Means "as to the rate of rent payable: *vide* Accommodation Control Act, Section 13 ... 778

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Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(2)—Fixing of provisional rent—Contemplates enquiry—Enquiry is to be preliminary—Court has to satisfy itself *prima facie* about reasonable provisional rent: *vide* Accommodation Control Act, Section 13(2) ... 1056

Accommodation Control Act, Madhya Pradesh (XLI of 1961) —Section 13(2)— Words "may be deposited or paid in accordance with the provisions of sub-section (1 till the decision of the suit or appeal" in—Implication of—Every dispute as to the amount of rent payable by tenant—Is a dispute within the meaning of this provision—Dispute regarding rent to be raised at earliest opportunity—Section 13(1)—Word "thereafter" in second part of sub-section (1)—Meaning and implication of—Section 13(1)—Object and purpose of—The reason for making provision for fixing provisional rent—Fixing of provisional rent—Contemplates enquiry—Enquiry is to be preliminary—Court has to satisfy itself *prima facie* about reasonable provisional rent: The language of sub-section (2) of section 13 and particularly the words "may be deposited or paid in accordance with the provisions of sub-section (1) till the decision of the suit or appeal" leave no manner of doubt that it will be the reasonable provisional rent fixed by the Court which will have to be deposited by the tenant on every occasion throughout the period commencing with the institution of the suit until the final decision in the appellate Court. It is not a correct reading of the section that the provisional rent is fixed only for the second part of sub-section (1).

To put it differently, every dispute as to the amount of rent which is payable by the tenant will be a dispute within the meaning of sub-section (2).

A party who raises a dispute must do so at the earliest *opportunity and must seek early* fixation of provisional rent so that there may not be unnecessary delay in complying with the provisions of sub-section (1).

The word "thereafter" in the second part of sub-section (1) clearly means (i) "after one month of the service of the writ of summons on the tenant", or (ii) "after the time extended" under the first part. The word "thereafter" does not necessarily mean the period commencing from 31st day of service of the writ of summons.

The object and purpose of section 13(1) is to prevent the tenant from adopting dilatory tactics in a suit for his ejectment without paying arrears of rent and the rent falling due during the pendency of the suit.

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The scheme and the intention of the law is that the tenant must go on depositing or paying rent as it goes on accruing due and since the final determination will necessarily take time, a provision has been made for fixing a provisional rent.

As the provisional rent to be fixed by the Court under sub-section (2) must be 'reasonable' it is implicit that the Court must hold an enquiry and on the basis of the enquiry, it must fix a reasonable provisional rent.

The Court has merely to satisfy itself *prima facie* what provisional rent will be reasonable. The discretion is wide but has to be exercised judicially and objectively.

FIRM GANESHRAM HARVILAS, MORENA v. RAMCHANDRA RAO, I. L. R. [1972] M. P. ... 1056

Accommodation Control Act, Madhya Pradesh (XLI of 1961)— Section 13(6)—Effect of striking out the defence: (1) The effect of the striking out of the defence under section 13(6) of the M. P. Accommodation Control Act, 1961, is that the suit thereafter proceeds *ex parte* to the extent that it relates to section 12 of the Act. The written statement, so far as it relates to plaint averments concerning section 12 is over-looked, the defendant is precluded from cross-examining the plaintiff or his witnesses and he is also precluded from producing any evidence on any question relating to the Accommodation Control Act. The plaintiff's burden to establish at least one of the grounds under section 12 of the Act becomes light.

(2) However, the effect of the striking out of the defence under section 13(6) is not to confer any additional right on the plaintiff or to make the provisions of section 12 inapplicable to the suit. The plaintiff has still to establish that he is entitled to a decree for eviction (a) under the general law; and (b) also under the Accommodation Control Act. And, inspite of his defence having been struck out under section 13(6), the defendant can still contest the suit as regards (a), although it will proceed *ex parte* as regards (b).

(3) If the defence is struck out under section 13(6) in the appellate Court, the appellate Court will still have to see whether on the plaintiff's evidence produced in the trial Court, a ground under section 12 has been made out. The defendant will be heard on that point to the limited extent of showing that the plaintiff's evidence is not enough to

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prove any ground under section 12, but his written statement and the evidence on that aspect of the case will not be considered.

SMT. KRISHNABAI v. SMT. LAXMIBAI, I L. R. [1972] M. P. .. 563

Act—Conferring power on certain officer and also prescribing procedure for exercise of power—Power to be exercised in that manner—Exercise of power in prescribed manner—Does not become performence of duty because it is meant to protect interest of person to be affected thereby—Prevention of Food Adulteration Act, 1954—Section 11—Manner prescribed is mandatory—Power given by Section 10 to be exercised in manner prescribed by the section—Manner prescribed not followed—Exercise of power becomes null and void—Section 10 Person bolting away—Identity remains undisclosed - Action amounts to preventing exercise of power: When an enactment confers a power on a certain officer and prescribes the manner in which the power is to be exercised, it is common sense that the power should be exercised in the manner prescribed. But when a manner of exercise of power is prescribed, it cannot be held that the exercise of the power in that manner becomes a performance of the duty only because the particular manner is prescribed with a view to protect the interests of the person to be affected thereby.

Inasmuch as the manner prescribed under Section 11 of the Prevention of Food Adulteration Act is designed to protect the interests of the holder of the food stuffs, it must be held that the manner prescribed is mandatory, and hence the Food Inspector can exercise the power prescribed under section 10 only in the manner prescribed thereunder or not at all.

Mus saddi Lal v. *State*, A.I.R. 1959 All. 753; not followed.

If a person bolts away and thus his identity remains undisclosed, the whole purpose of the exercise of the power conferred under section 10 on the Food Inspector is defeated. In such a case, it will have to be held that in bolting away the person prevented the effective exercise of the power by the Food Inspector.

Municipal Boord, Sambhal v. *Jhamman Lal*, A. I. R. 1961 All. 103; relied on.

Bishan Dass Telu Ram v. *State*, A. I. R. 1957 Punj. 99 and *State of Gujarat* v. *Laljibhai Chaturbhai*, A. I. R. 1967 Guj. 61; distinguished.

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Act, 1887—IX: *vide* Provincial Small Cause Courts Act.

Act, 1894—I: *vide* Land Acquisition Act.

Act, 1897—X: *vide* General Clauses Act.

Act, 1898—V: *vide* Criminal Procedure Code.

Act, 1908—V: *vide* Civil Procedure Code.

Act, 1908—IX: *vide* Limitation Act, Indian.

Act, 1910—IX: *vide* Electricity Act, Indian.

Act, 1915—C. P. II: *vide* Excise Act, Central Provinces and Berar.

Act, 1922—C. P. II: *vide* Municipalities Act, C. P. and Berar.

Act, 1922—XI: *vide* Income-tax Act, Indian.

Act, 1926—XVI: *vide* Trade Unions Act, Indian.

Act, 1932—IX: *vide* Partnership Act, Indian.

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Act, 1939—IV: *vide* Motor Vehicles Act.

Act, 1939—C. P. XIV: *vide* Relief of Indebtedness Act, Central Provinces and Berar.

Act, 1940—X: *vide* Arbitration Act, Indian.

Act, 1946—XVI: *vide* University of Saugar Act.

Act, 1947—XIV: *vide* Industrial Disputes Act.

Act, 1948—M. P. XXXVIII: *vide* Local Government Act, Madhya Pradesh.

Act, 1948—LIV: *vide* Electricity (Supply) Act.

Act, 1948 - LXIII: *vide* Factories Act.

Act, 1949—LXVII: *vide* Taxation Laws (Extension to Merged States and Amendment) Act.

Act, 1950—LXIV: *vide* Road Transport Corporation Act.

Act, 1950—M. B. LXVI: *vide* Land Revenue and Tenancy Act, Madhya Bharat.

Act, 1951—M. B. XXVIII: *vide* Abolition of Jagirs Act, Madhya Bharat.

Act, 1951—M. P. I: *vide* Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, Madhya Pradesh, 1950.

Act, 1951—M. P. XXX: *vide* Public Trusts Act, Madhya Pradesh.

Act, 1951—XLIII: *vide* Representation of the People Act.

Act, 1951—XLV: *vide* Industrial (Development and Regulation) Act.

Act, 1952—LX: *vide* Commissions of Enquiry Act.

Act, 1954—XXXVII: *vide* Prevention of Food Adulteration Act.

Act, 1955—I: *vide* Bhopal State Sub-tenants (or Occupants) Protection Act.

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Act, 1955—V. P. III: *vide* Land Revenue and Tenancy Act, Vindhya Pradesh, 1953.

Act, 1955—X: *vide* Essential Commodities Act.

Act, 1956—XXXII: *vide* Hindu Minority and Guardianship Act.

Act, 1956—XXXVII: *vide* States Re-organisation Act.

Act, 1956—LXXIV: *vide* Central Sales-tax Act.

Act, 1957—XXVII: *vide* Wealth Tax Act.

Act, 1958—M. P. III: *vide* General Clauses Act, Madhya Pradesh, 1957.

Act, 1958—M. P. XIX: *vide* Civil Courts Act, Madhya Pradesh.

Act, 1959—M. P. II: *vide* General Sales Tax Act, Madhya Pradesh, 1958.

Act, 1959—M. P. XX: *vide* Land Revenue Code, Madhya Pradesh.

Act, 1960—M. P. XXVII: *vide* Industrial Relations Act, Madhya Pradesh.

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Act, 1961—M. P. XVII: *vide* Co-operative Societies Act, Madhya Pradesh, 1960.

Act, 1961—M. P. XXVI: *vide* Industrial Employment (Standing Orders) Act, Madhya Pradesh.

Act, 1961—M. P. XXXVII: *vide* Municipalities Act, Madhya Pradesh.

Act, 1961—M. P. XLI: *vide* Accommodation Control Act, Madhya Pradesh.

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Act, 1965—XXIV: *vide* Jawahar Lal Nehru Krishi Vishwa Vidyalya (Amendment) Act.

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Ghulam Khan v. *Mohd. Hussain*, I.L.R. 29 Cal. 167 (P.C.); relied on.

No appeal is competent against a decree based even on an invalid award.

In the case of a composite order, by which a Court refuses to set aside an award and also passes a decree in accordance with its terms, the order refusing to set aside the award and the decree are both appealable as the provisions contained in Sections 17 and 39 of the Arbitration Act are not mutually exclusive.

If the order refusing to set aside a decree is set aside, the decree which is founded on it would lapse and consequently, it cannot operate as a bar to the appeal against the order.

Keshavlal Ramdayal v. *Laxmanrao*, I.L.R. 1940 Nag. 386, *Jayantilal* v. *Surendra*, A. I. R. 1956 Nag. 245 and *Sheoram Prasad* v. *Gopal Prasad Parmeshwardayal Shukla*, A. I.R.1959 M. P. 102; referred to.

A *fortiori* the making of two separate orders does not take away the right of appeal given under Section 39(1)(vi) to a person aggrieved by an order setting aside or refusing to set aside an award.

Earnest money, although taken as part payment of the consideration, is also a guarantee for the due performance of the contract.

Chiranjit Singh v. *Har Swarup*, A.I.R. 1926 P.C.1; referred to.

There is a distinction between earnest money and part of the purchase price.

Ballabhdas v. *Paikaji*, 12 N.L.R. 177, *Abas Ali* v. *Kodhusao*, 24 N.L.R. 189 (F. B.), *Bhalchandra* v. *Mahadeo*, I. L. R. 1947 Nag. 60 and *Chunnilal* v. *Mohanlal*, A. I. R. 1964 M. P. 126; referred to.

The question whether the deposit of Rs 10,101/-was a part of the price or was in reality by way of earnest money depends upon the proper construction of the

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contract and not as to how the parties may have subsequently chosen to describe it.

The Court has a general discretion to remit an award for the re-consideration of the arbitrator This discretion is in general exercisable upon substantially the same grounds as will justify the setting aside of an award.

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Board of Secondary Education, Madhya Pradesh, Regulations —Regulation No. 126—Student debarred from appearing for 1966 Examination by Board of Uttar Pradesh—Student not eligible for admission to 10th Class in 1966 in School affiliated to M. P. Board—Admission secured by suppression of fact—Admission to school is invalid—Admission to examination by suppression of fact—Admission to examination effected by fraud or improper conduct—Admission to examination liable to be cancelled—Student appearing from school affiliated to Board—Cannot appear for XIth examination unless completion of studies for IXth, Xth and XIth classes—Order of Uttar Pradesh Board debarring student from admission of 1966 academic session—Bars not only his appearance for 1966 examination but also forbids his admission in Xth class in that year—Student debarred from appearing for Board Examination of a particular State for particular session—Its order has to be given effect to by Secondary Board throughout the country: If the petitioners-students were ineligible for admission to the Xth class in any of the Schools affiliated to the Madhya Pradesh Board in the year 1966, by reason of the rustication order made by the Uttar Pradesh Board for that academic session, then it follows that if they had secured admission in the T. T Jain Higher Secondary School, Ganj Basoda, by suppression of these facts, their admission to that school was itself invalid.

The fact that they had been rusticated by the Uttar Pradesh Board had been withheld from the T. T Jain Higher Secondary School at the time of admission to that institution and from the Board of Secondary Education, Madhya Pradesh, at the time of submission of their admission forms and, therefore, their admission to the examination itself had been effected by "fraud" or "improper conduct", within the meaning of Regulation 126 and the Board was, therefore, entitled to cancel their admission to the examination notwithstanding the inclusion of their names in the list of admitted candidates for the examination or their actual admission to the examination.

All regular candidates like the petitioners appearing from a school affiliated to the Board, cannot, therefore, appear at the XIth class examination held by the Board unless they have completed the course of studies of IXth, Xth and XIth classes and entitling them to appear at the said examination.

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The order of the Uttar Pradesh Board debarring the petitioners from admission to the 1966 academic session, debarred them not only from appearing at the 1966 Examination but also made them ineligible from securing admission to the Xth class in that year for the reason that the disqualification attached to all stages of the integrated course prescribed in the syllabus.

If a candidate is disqualified from appearing by the Board of Secondary Education of a particular State for a particular academic session, it stands to reason that its order would be given effect to by all the Boards of Secondary Education throughout the country.

PRAMOD KUMAR AGRAWAL v. BOARD OF SECONDARY EDUCATION, M. P., BHOPAL, I. L. R. [1972] M. P. ... 61

oard of Secondary Education, Madhya Pradesh, Regulations —Regulation No. 126—Student debarred from appearing for Board Examination of a particular State for particular session—Its order has to be given effect to by Secondary Board throughout the country: *vide* Board of Secondary Education, Madhya Pradesh, Regulations, Regulation No. 126 ... 61

Civil Procedure Code (V of 1908)—Section 11—Judgment against judgment-debtor in previous suit in which decree-holder not party—Judgment not *res judicata*: *vide* Civil Procedure Code, Section 11 ... 922

Civil Procedure Code (V of 1908)—Section 11—Person obtaining decree against another—Decree-holder does not claim through judgment-debter—Person seeking to attach judgment-debtors property—Person exercises his right under Civil Procedure Code and does not claim through judgment-debtor—Judgment against judgment-debtor in previous suit in which decree-holder not party—Judgment not *res judicata*: When a person obtains a decree against another, the decree-holder does not become a person claiming under the judgment-debtor Similarly, when the decree-holder proceeds to execute his decree and seeks to attach certain property as belonging to the judgment-debtor, he only exercises his right conferred by the Code of Civil Procedure and does not lay any claim through or under the judgment-dector.

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Richards v. *Johnson*, (1859) 28 L. J. Ex. 322 and *Richards* v *Jenkins*, (1887) 18 Q. B. D. 451 (C. A.); relied on.

Ramsewak v. *Bahal*, A. I. R, 1935 All. 888, *Dinshaw and Co.* v. *Anand Beharilal*, A. I. R. 1942 Oudh 327 and *Radharani* v. *Binodamoyee*, A. I. R. 1942 Cal. 92; not followed.

The judgment in the previous suit against judgment-debtor to which the decree-holder in subsequent suit was not a party, does not operate as *res-judicata* in the later suit.

INDRA KUMAR v. SHEOBAGAS, I. L. R. [1972] M. P. ... 922

Civil Procedure Code (V of 1908)—Section 47—Circumstances in which only the executing Court can go behind the decree and refuse to execute it—Judgment-debtor not raising objection at the earlier stage of suit—Has no right to challenge it at the stage of execution: An executing Court under Section 47, Civil Procedure Code cannot go behind the decree except in very special circumstances, namely, that the decree is patently illegal; that is, illegal just on the face of it, without any inquiry having to be made. If the illegality of the decree has to be established after some investigation and the weighing of pros and cons, the executing Court cannot make such an enquiry. Most often this patent illegality would be one relating to jurisdiction. In short, if the decree is patently illegal the executing Court may refuse to execute it; if, on the contrary, the alleged illegality is arguable and the judgment-debtor having taken part in the earlier litigation has failed to raise it, he cannot be heard to question the legality of the decree at the stage of execution.

Pirji Safdar Ali v. *The Ideal Bank Ltd.*, A. I. R. 1949 East Punj. 94, *Ganesh Dos* v. *Ganga Singh*, A I. R. 1932 Lah. 529 and *Tripti Prokas Nandy* v. *Biseswar Lal*, A. I. R. 1932 Cal. 517; referred to.

Meenakshi Ammal v. *T. S. Chidambaram*, A I.R. 1947 Mad. 341 and *Chintamani Saran Nath* v. *Syed Zahiruadin*; A. I. R. 1956 Pat. 57, distinguished.

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Civil Procedure Code (V of 1908)—Section 152—Application under—No limitation is provided—Application to be made with diligence which is proper and sufficient—Correction liable to be made at any time provided other parties have not acquired interest in the intervening period—Wording of the section, general—Covers both types of mistakes and slips and omissions—Mistakes can be remedied subject to equities by other parties—False description regarding subject-matter not leading to any confusion or mistake in mind of other party—Not affecting merits of decision—Can be corrected under this provision: There is no limitation as such for action under Section 152: but it is expected that the party seeking the assistance of the Court acts with diligence which can be called proper and sufficient in the circumstances of the case.

Where during the interval other parties have not acquired any interest in the subject-matter of the litigation, a correction under Section 152 can be made "at any time".

The wording of the section is so general that it will cover both types of mistakes and slips and omissions. Thus, in appropriate cases it is possible for the Court to remedy, subject to equities if any acquired by other parties, mistakes committed by it not on its own initiative but by copying the statement of one of the parties.

Where there is a just a *falsa demonstration* in regard to the subject-matter of the litigation, and it has not led to any confusion or mistake in the mind of the other party, and has not affected the merits of the decision, Section 152 can certainly be invoked.

Appat Krishna v. *Lakshmi Nathiar*, A. I. R. 1950 Mad. 751, *Narkulla Venkayya* v. *Noona Satyanarayana*, A.I.R. 1959 A. P. 360 and *Hatia* v. *Mangtibai*, Civil Revision No. 378 of 1956, decided on the 20th February 1958; relied on.

Nathuram v. *Arjuna*, A.I.R. 1955 M. B. 14; distinguished.

PEMA v. DHANYA, I.L.R. [1972] M. P. ... 601

Civil Procedure Code (V of 1908)—Section 152—Correction liable to be made at any time provided other parties have not acquired interest in the intervening period: *vide* Civil Procedure Code, Section 152 ... 601

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Civil Procedure Code (V of 1908)—Section 152—False description regarding subject-matter not leading to any confusion or mistake in mind of other party—Not affecting merits of decision—Can be corrected under this provision: *vide* Civil Procedure Code Section 152 ... 601

Civil Procedure Code (V of 1908)—Section 152—Wording of the section, general—Covers both types of mistakes and slips and omissions—Mistake can be remedied subject to equities by other parties: *vide* Civil Procedure Code, Section 152 ... 601

Civil Procedure Code (V of 1908)—Order 6, rule 17—Suit for *mesne* **profits—Future** *mesne* **profits not claimed—Amendment asking for inclusion there-of after substantial portion has become barred by time-Amendment cannot be allowed —Order 20, rule 12—Suit for declaration of title and possession—***Mesne* **profits not claimed—No relief under this provision can be granted:** When the plaintiff had deliberately not claimed future *mesne* profits when the suit was originally filed, there is no justification for allowing the amendment after a substantial portion of the claim has been barred by limitation.

Gopalakrishna Pillai v. *Meenakshi* Aval, A. I. R. 1967 S. C. 155; referred to.

Where the party has failed to claim past *mesne* profits and the suit is only confined to the relief of declaration of title and possession of the property or partition, as in this case, no relief could be given to the plaintiff under Order 20, rule 12, Civil Procedure Code.

P. H. Patil v. *K. S. Patil*, A. I. R. 1957 S. C. 363 and L. J. *Leach and Co. Ltd.* v. *M/s Jardine Skinner and Co.*, A. I. R. 1957 S. C. 357; distinguished.

DEEPCHAND v. SUKHLAL, I. L. R. [1972] M. P. ... 320

Civil Procedure Code (V of 1908)—Order 17, rules 2 and 3—Circumstances in which the different rules apply: If there are no sufficient materials on record, the Court should proceed under rule 2, but, if there are sufficient materials, it should proceed to decide the suit on merits under rule 3.

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Goverdhan Badrilal v. *Ganesh Balkrishna*, 1962 M. P. L. J. 325 and *Maruti Damaji Ashtinkar* v. *Gangadhar Rao*, 1964 M. P. L. J. 919 at p. 920; distinguished.

SMT. SAGAR BAI v. BHAI RATILAL, I. L. R. [1972] M. P. ... 954

Civil Procedure Code (V of 1908)—Order 19, rule 3 and High Court Rules, Chapter 3, rule 4—Circumstances in which affidavit should be sworn on personal knowledge and on information received and belief—Constitution of India —Article 329(b) and Representation of the People Act—Section 80—Defeated candidate made respondent—Such candidate cannot be allowed to make allegation so as to convert written statement into election petition—Declaration sought that candidate has been elected—It becomes election petition—It has to comply with sections 117 and 118 of the Representation of the People Act—Not permissible to raise plea regarding corrupt practice in the written statement of respondent—Election petition is statutory proceeding—Statutory requirements must be strictly complied with—Representation of the People Act—Section 123(3)—Symbol of Cow and Calf—Symbol not showing anything sacred or holy—Symbol does not become religious symbol—Worshipping cow as mother—Does not make it a religious symbol—Attribute of spiritual significance—Does not impart to its use on flag the character of religious symbol—Everything that is holy or sacred-Is not a religious symbol—Symbol of cow and calf—Does not point anything about its Godliness or holiness—Canvassing for voting for the symbol of cow and calf—Not covered within the mischief of this section—Section 123(2)(a)(ii)—Corrupt practice of undue influence-Meaning of-Speech containing offending part-Would amount to corrupt practice-Speech threatening electors that they will become or be rendered object of divine displeasure or spiritual censure—Amounts to interference with free electoral right-But the person making the speech must be capable of exercising spiritual undue influence—Corrupt practice—Is in the nature of *quasi* criminal charge—Standard of proof is that required in criminal case—Section 123(5)—Hiring or procuring a conveyance for carrying elector to or from polling booth by candidate or by agent with his consent—Is a corrupt practice—Proof of contract of hire of vehicle not necessary but fact of hiring has to be proved—Section 100—Proof of reception, rejecting or refusing a vote—Not sufficient for setting aside election—Result of election being affected has to be proved—Section 22—Requires reasonable opportunity to be given to the person whose name is to be struck

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out from electoral roll-Costs—Circumstances in which special costs can be granted: Rule 3 of Order 19, Civil Procedure Code says that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory applications on which the statements of his belief may be admitted, provided that the grounds thereof are stated.

Rule 4 of Chapter III of the High Court Rules and Orders also say that except in interlocutory proceedings, the affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove.

Respondent a defeated candidate, cannot be allowed to raise those allegations which virtually make a written statement as an election petition.

When a declaration is sought by a petitioner that he himself or any other candidate should have been duly elected, virtually it becomes an election petition and he has to deposit the security referred to in sections 117 and 118 respectively of the Representation of the People Act, 1951.

If any of the respondents raises a new ground of charge or corrupt practice in his written statement which is not included already in the election petition, neither it stands to reason nor is it allowed by the provisions of the Representation of People Act that any election of a successful candidate can be declared void (nor on the grounds on which the petition fails, but on the ground of corrupt practice or contravention of certain rules under the Representation of People Act, raised by the respondent).

An election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law, and the statutory requirements of the Election law must be strictly observed.

The poster showing the picture of cow and calf. There is nothing to show that there is anything sacred or holy. Unless this is done an election symbol by itself, will not be a religious symbol.

Shubhnath v. *Ram Narain,* A. I. R. 1960 S. C. 148, *Ramanbhai* v. *Dabhi Ajitkumar,* A. I. R. 1965 S. C. 669,

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Lachhiram v. *Jamuna Prasad Mukhariya*, 9 E. L. R. 149, *Narbada Prasad* v. *Chhaganlal*, A. I. R. 1969 S. C. 395, *Manubhai* v. *Popatlal*, A. I. R. 1969 S. C. 734, *Kanti Prasad* v. *Purshottamdas*, A. I. R. 1969 S. C. 851, *Karansingh* v. *Jamunasingh*, 15 E. L. R. 370, *K. C. Sharma* v. *Rishab Kumar*, A. I. R. 1960 M. P. 27 and *Jagdev Singh* v. *Pratap Singh*, A. I. R. 1965 S. C. 183; referred to.

Simply worshipping a cow like a mother will not make a religious symbol of an ordinary election symbol depicting 'calf and cow'. It is true that a mother deserves as much respect as possible on earth, but by respecting mother or worshipping her, she will not be a religious symbol.

It is true that a cow is held in veneration by the Hindus, but this fact alone will not make the election symbol of 'calf and cow' a religious symbol.

The attribute of a spiritual significance, if there is such a one, does not necessarily impart to its use on a flag the character of a religious symbol in the context in which the expression religious symbol, occurs in section 123(3).

An election symbol of 'calf and cow' by itself will not be a religious symbol unless these characteristics or attributes which go to make it a religious symbol are present there. Then again, everything that is holy or sacred will not be a religious symbol unless there is something on the election symbol to point out to this effect. The election symbol of 'calf and cow', as it stands, does not point out anything about its Godliness or holiness. Unless that is there, it would not make such a symbol a religious symbol.

A candidate by merely saying that he had been allotted a symbol of 'calf and cow' and that the electors should vote for the same, is not covered within the mischief of section 123(3) of the Act.

Section 123(2)(a)(ii) deals with corrupt practice of undue influence. It means any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or any other person with the consent of the candidate or his election agent with the free exercise of any electoral right.

"Undue influence" is not only a corrupt practice under the Representation of the People Act, 1951, but it is also an offence under section 171(c) of the Penal Code.

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Section 123(2)(a)(ii) read with first proviso is very clear to the effect that where any candidate or his agent or any other person, with the consent of the candidate or his election agent, induces or attempts to induce an elector that he will become or be rendered an object of divine displeasure or spiritual censure, he would be deemed to interfere with the free electoral right of an elector. It is true that a person who induces or attempts to induce, should be a person of some standing in the society; he should be capable of exercising spiritual undue influence.

It is very clear that had the offending part of the speech been proved to have been made by the respondent no. 1 at the relevant meeting, he would certainly have been found guilty of corrupt practice as defined in section 123(2)(a)(ii) of the Act.

Narbada Prasad v. *Chhaganlal*, A. I. R. 1969 S. C. 395; *Manubhai Nandlal Amersey* v. *Popatlal Manilal Joshi and others*, A. I. R. 1969 S. C. 734 and *Kanti Prasad Jayshanker Yagnik* v. *Purshottamdas Ranchoddas Patel and others*, A. I. R. 1969 S. C. 851; referred to.

Corrupt practice is in the nature of a *quasi* criminal charge, and the standard of proof required to prove the same is similar to the one required for proving a criminal charge, and then, it should be proved beyond a reasonable doubt.

Hiring or procuring, whether on payment or otherwise, of any vehicle or vessel for the conveyance of an elector to and from any polling station with the consent of a candidate or his agent or by any other person with the consent of a candidate or his election agent, is a corrupt practice under section 123(5) of the Act.

It is true that in proving corrupt practice like this, it is not necessary for the petitioner to prove the contract of hire of the vehicle, but the fact of hiring has got to be proved.

Balwan Singh v. *Lakshmi Narain and others*, A. I. R. 1960 S. C. 770; referred to

In order to prove that there was improper reception, refusal or rejection of any vote, or reception of any vote which was void, it was required to be proved under section 100 of the Act that the result of the election so far as it concerns the returned candidate has been materially affected.

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Vashist Narain Sharma v. *Dev Chandra and others*, A. I. R. 1954 S. C. 513; referred to.

Under section 22 of the Act, the persons concerned have to be given a reasonable opportunity of being heard, i. e. when the electoral registration officer either of his own motion or on an application is satisfied after such an enqiry as he thinks fit, that any entry in the electoral roll of the constituency is, as found in clauses (a), (b) or (c) of the section.

For awarding special costs, the court is required to see, amongst other things, if the claim or defence is false or vexatious to the knowledge of the party concerned.

SHRI BHARTENDRA SINGH v. SHRI RAMSAHAI PANDEY, I. L. R. [1972] M. P. ... 95

Civil Procedure Code (V of 1908)—Order 20, rule 12—Suit for declaration of title and possession—*Mesne* profits not claimed—No relief under this provision can be granted: *vide* Civil Procedure Code, Order 6, rule 17 ... 320

Civil Procedure Code (V of 1908)—Order 40, rule 1—Principles to be observed regarding appointment of receiver: Principles relating to appointment of receiver may be stated thus:

(1) Generally stated, the object of appointment of receiver is preservation of the subject-matter of the litigation pending a judicial determination of the rights of the parties to it.

(2) The rule embodied in Order 40, rule 1, C. P. C. empowers the Court to appoint a receiver whenever it appears to it to be just and convenient to do so. The language employed in the Rule leaves the matter to the discretion of the Court.

(3) The Court has fullest jurisdiction in the matter of appointment of receiver, but the discretion cannot be exercised arbitrarily or in an unregulated manner; it must be exercised judicially, cautiously and according to legal principles on a consideration of the whole of the circumstances of the case.

(4) Appointment of receiver is recognized as one of the harshest remedies which the law provides for the

enforcement of rights so that the jurisdiction must be exercised only in extreme cases.

(5) The Court does not, while considering the question whether a receiver should be appointed, arrive at any final decision on the merits of the case. Its aim is merely to preserve the *status quo ante* during litigation.

(6) Receiver cannot be appointed just because it is expedient or convenient to one of the parties to do so; nor merely because it will do no harm to do so.

(7) When a person is in *bona fide* possession of the property in dispute, his possession should not be disturbed by appointment of receiver unless there is some substantial ground for such interference, such as a well founded fear that the property in suit will be dissipated or other irreparable mischief may be done unless the Court appoints a receiver. The plaintiff must not only show a case of adverse and conflicting claims to property, he must further show some emergency or danger or loss demanding immediate action and, further, the plaintiff's own right must be reasonably clear and free from doubt.

(8) Although the jurisdiction of the trial Court in the matter of appointment of a receiver is discretionary, that discretion is liable to interference, if it is not in accordance with the principles on which judicial discretion must be exercised.

BAL VYASI v. MAHILA UJJALA, I. L. R. [1972] M. P. ... 756

Civil Procedure Code (V of 1908)—Order 46, rule 7—Decree passed by High Court—Is effective by its own force: *vide* Provincial Small Cause Courts Act, Section 16 ... 630

Civil Procedure Code (V of 1908)—Order 46, rule 7—High Court in control of the case—High Court can pass fresh decree—Even though original Court having no jurisdiction had passed the decree: *vide* Provincial Small Cause Courts Act, Section 16 ... 630

Civil Procedure Code (V of 1908)—Order 47, rule 1—Review —Omission to advert and apply specific and material

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provision of law—Is an error apparent on the face of record or at least analogous to it – Review on this ground is permissible: The omission of the Court to advert to and apply the specific and material provisions of law is an error apparent on the face of the record or at least analogous to it so as to attract the provisions contained in Order 47, rule 1, Civil Procedure Code.

Dwarkadas v. *Shrikishan*, Miscellaneous Civil Case No. 327 of 1959, decided on the 28th September 1960 and *Narayanan* v. *Raman*, A. I. R. 1953 T. C. 306 (F. B.); relied on.

BHAILAL v. SUALAL, I. L. R. [1972] M. P. ... 969

College Code—Has force of law: *vide* Master and Servant ... 249

College Code—Clause 9(iv)—Effect of the provision: *vide* Master and Servant ... 249

Commissions of Enquiry Act (LX of 1952)—Section 3—Evidence recorded or findings given by Commissioner—Has no bearing or relation to actual events—Statements recorded before Commission—Not admissible in any civil or criminal proceedings except for prosecution for giving false evidence—Proceedings before the Commission—Not an enquiry by a civil or a criminal court—Proceedings not judicial proceedings of a court of law: The evidence which the Commission may record and the findings it may give has no bearing on or any relation to the actual events that took place.

No statement made by a person before a Commission of enquiry can subject him to, or be used against him, in any civil or criminal proceedings except in a prosecution for giving false evidence before the Commission.

Ram Krishna Dalmia v. *Justice Tendolkar*, A. I. R. 1958 S. C. 538; relied on.

Sohanlal v. *State*, A. I. R. 1965 Bom. 1; not followed.

The enquiry being held by the Commission is not an enquiry by a civil or criminal court and the proceedings thereof are not judicial proceedings of a court of law.

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Chimansingh v. *State*, A.I.R. 1951 M B.44, *M. V. Rajwade* v. *Dr. S. M. Hasan*, A. I. R. 1954 Nag. 71, I. L. R 1954 Nag. 1 and *Ram Krishna Dalmia* v. *Justice Tendolkar*, A. I. R. 1958 S. C. 538; relied on.

PUHUPRAM v THE STATE OF MADHYA PRADESH, I. L. R. [1972] M. P. ... 284

Commissions of Enquiry Act (LX of 1952)- Section 3— Proceedings before the Commission—Not an enquiry by a civil or a criminal court—Proceedings not judicial proceedings of a court of law: *vide* Commissions of Enquiry Act, Section 3 ... 284

Commissions of Enquiry Act (LX of 1952)—Section 3—Statements recorded before commission—Not admissible in any civil or criminal proceedings except for prosecution for giving false evidence: *vide* Commissions of Enquiry Act, Section 3 ... 284

Constitution of India—Article 14—Teachers employed in Hindi Primary School and English Primary School doing same work and one not inferior to the other—Difference in pay of teachers in those two branches—Does not offend this article-Article 16—Qualifications, method of recruitment, avenues of promotion of teachers of two types of Schools different—They form two distinct and separate classes—Between them there is no scope for predicating equality or inequality of opportunity in matters of promotion: Even if it be assumed that the teachers employed in the primary schools run by the Bhilai Steel Project are State employees and that the teachers and head-masters employed in Hindi Primary Schools do the same work as is done by the teachers and head-masters in English Primary Schools and are in no way inferior to those teaching English, still the difference in the scales of pay of those teaching Hindi and those teaching English cannot be held to be offending article 14 of the Constitution.

Kishori v. *Union of India*, A. I. R. 1962 S. C. 1139 (1) and *State of Punjab* v. *Joginder Singh*, A.I.R. 1963 S. C. 913; relied on.

If the qualifications prescribed for Hindi Teachers and English Teachers are different, if the method of recruitment of these teachers are different and these teachers have separate avenues of promotion, then Hindi and

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English Teachers form two distinct and separate calsses. That being so, "as between them, there can be no scope for predicating equality or inequality of opportunity in matters of promotion".

All India Station Masters' and Assistant Station Masters, Association, Delhi v. *General Manager, Central Railway, Bombay*, A. I. R. 1960 S. C. 84 and *State of Punjab* v. *Joginder Singh*, A. I. R. 1963 S. C. 913; referred to.

BHILAI HINDI PRIMARY SCHOOL TEACHERS, ASSOCIATION, BHILAI v. THE GENERAL MANAGER, HINDUSTAN STEEL LTD., BHILAI, STEEL PROJECT, BHILAI, I. L. R. [1972] M. P. ... 704

Constitution of India—Article 16—Qualifications, method of recruitment, avenues of promotion of Teachers of two types of Schools different—They form two distinct and separate classes—Between them there is no scope for predicating equality or inequality of opportunity in matters of promotion: *vide* Constitution of India, Article 14 ... 704

Constitution of India—Article 226—Directions not issued for enforcing or preventing breach of rights or obligations contractual in character: *vide* Excise Licence, Clause 6 ... 32

Constitution of India—Article 226—Equation of post—Purely administrative function: *vide* States Re-organisation Act, Section 115 ... 78

Constitution of India—Article 226—Writ to committee appointed by Central Government in administrative capacity—Writ if can be issued to such body: The Committee was formed by the Central Gevernment in its administrative capacity and is, as a matter of fact, a self-imposed organisation of the producers to ensure proper distribution of their products at proper price. The mere fact that the Controller is the *ex officio* Chairman of the Committee does not clothe it with any executive authority. No writ can be issued against the Joint Plant Committee or its officers also.

MESSRS S. R. KALANI AND CO., INDORE v. THE IRON AND STEEL CONTROLLER, CALCUTTA, I.L.R. [1972] M. P. ... 255

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Constitution of India—Article 311–Person holding temporary post or in officiating capacity—Person has no right to hold that post–Person reverted to original post held by him—Order does not amount to punishment—Rules framed under Section 96-B, Government of India Act, 1915—Rules are laws in force—Are kept alive under Article 313 of Constitution—Fundamental Rules 14 and 14-A (c)—Lien on substantive post—Circumstances in which it could be terminated—Could not be terminated even with the employees consent: A person holding a post temporarily or officiating in it, until further orders has no right to hold that post and if his services are terminated or he is reverted to the post formerly held by him, there is, without more, no punishment because this could be done under the very condition of his appointment.

State of Bombay v. *F. A. Abraham*, A. I. R. 1962 S. C. 794, *The Divisional Personal Officer, Southern Railway* v. *S. Raghavendrachar*, A. I. R. 1966 S. C. 1529 and *Hartwell Prescott Singh* v. *U. P. Government*, A. I. R. 1957 S. C. 886; relied on.

The rules made by the Secretary of State for India in Council under Section 96–B of the Government of India Act, 1915, are laws in force which have been kept alive under Article 313 of the Constitution.

Pradyat Kumar Bose v. *The Honourable Chief Justice, High Court*, A. I. R. 1956 S. C. 285; relied on.

The lien of a person which he held substantially as a permanent incumbent could be terminated as provided by Fundamental Rule 14(c) if he was appointed substantially to a permanent post.

Employee's lien on the substantive post can in no circumstances be terminated even with his consent because the result could be to leave him without a lien or a suspended lien on another permanent post.

B. S. BIRTHARE v. STATE OF M. P., I. L. R. [1972] M. P. ... 902

Constitution of India—Article 329(b) and Representation of the People Act (XLIII of 1951)—Section 80—Defeated candidate made respondent—Such candidate cannot be allowed to make allegation so as to convert written statement into election petition: *vide* Civil Procedure Code,

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Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 ... 95

Contract—Earnest money—A part payment of consideration—Is a guarantee for due performance of the contract—Distinction between earnest money and part of the purchase price exists-Deposit whether earnest money or part of price—Depends upon proper construction of contract--Does not depend upon how parties chose to describe: *vide* Arbitration Act, Sections 17 and 39 ... 173

Contract Act, Indian (IX of 1872)—Principle of British Common Law-Limitations under which it can be applied: *vide* Contract Act, Section 65 ... 365

Contract Act, Indian (IX of 1872)—Section 2(d)—Fresh promise of fulfilling executory contract for sale—Can be a good consideration for a pro-note: *vide* Negotiable Instruments Act, Section 118 ... 535

Contract Act, Indian (IX of 1872)—Section 65—Agreement by minor whose pretence to majority innocently accepted by other party—Agreement is void: *vide* Contract Act, Section 63 ... 365

Contract Act, Indian (IX of 1872)—Section 65—Phrases "discovered to be void" and "becomes void" in—Denote two different situations—Distinction between the two—Both parties knowing from the beginning that agreement is void—Either party not entitled to benefit of restoration of benefit—Basic principle underlying Section 65, Contract Act and Section 4, Specific Relief Act—Agreement by minor whose pretence to majority innocently accepted by other party—Agreement is void Principle of British Common Law—Limitations under which it can be applied—Section in terms not applicable—Doctrine of equitable restoration still applicable: The two phrases—"discovered to be void" and "becomes void" in Section 65 of Contract Act should be understood to denote different situations. In the one case at least the person who has given the advantage to the incompetent party has believed the agreement to be valid, and has at a later stage discovered that it was really void from the very beginning or at all events from an earlier date. When a contract becomes void the position is materially different; it is not void from before, but something has happened after the execution of the contract which has made it void. Thus while it is clear that in the case of a contract becoming

void it should have been valid *ab initio*; it is not necessary for an agreement to be discovered to be void, that it should necessarily have been valid from the beginning.

The basic principle of equity behind section 41, Specific Relief Act and Section 65 of the Contract Act is the same, namely, a person who wants to get out of his obligation under an agreement or a contract, whether or not evidenced by an instrument may, if equitable considerations require, be compelled to disgorge the advantage gained by him.

The agreement by the minor whose pretence to majority has been innocently accepted by the opposite party, or as for that matter an agreement by an incompetent party whose pretence to competence has been accepted by the other, is certainly void *ab initio*; but one of the parties may be believing that it is valid till something happens and he discovers the voidness.

Most of the parts of the law relating to contract which have been codified in the Indian Contract Act are derived either from the principles of the British Common Law of the contract or from those of equity and good conscience accepted in all civilized socie ies. But if there is a principle which is inevitable in any civilized society, it will have to be applied even if there is no express text to that effect in the Contract Act. Certainly some limitations are necessary before we apply such principles; for example, it should not conflict with any of the express provisions in the legislation; secondly, if on that topic there is an express provision, the equitable principle should not be such as intentionally to avoid any limitation imposed by such a provision; and certainly, it should not be repugnant to the large broad scheme of the Act.

Even on the assumption that Section 65 in terms does not cover agreement *ab initio* valid, and discovered later to be void, still the very wording of that section does not show that it was intended to exclude such cases from the operation of the doctrine of equitable restoration.

Mohori Bibee v. *Dharmadas Ghose*, I. L. R. 30 Cal. 539, *Khan Gul* v. *Lakha Singh*, A. I. R. 1928 Lah. 608 (F. B.); *T. R. Appasami Ayyangar* v. *Narayanaswami Iyer*, A I R. 1930 Mad. 945 and *Dyaviah* v. *Shivama*; A. I. R. 1959 Mys.188; referred to.

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Ajudhia Prasad v. *Chand n Lal*, A.I.R. 1937 All. 610 and *Gokeda Latcharao* v. *Viswanadham Bhimayya*, A. I. R. 1956 A P.182; not followed.

SETH AMOLAKCHAND (FIRM), SANAWAD v. PRAHALAD SINGH, I. L R. [1972] M.P. ... 365

Contract Act, Indian (IX of 1872)—Section 65—Section in terms not applicable—Doctrine of equitable restoration still applicable: *vide* Contract Act, Section 65 ... 365

Contract Act, Indian (IX of 1872), Section 65 and Specific Relief Act (I of 1877), Section 41—Basic principle underlying both the sections: *vide* Contract Act, Section 65 ... 365

Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961)—Section 93—Ommission of reference to Industrial Disputes Act, 1947 in—Does not imply that that Act will apply to societies ragistered under Societies Act, 1960: *vide* Industrial Disputes Act and Co-operative Societies Act, Section 55(2) ... 989

Costs—Circumstances in which special costs can be granted: *vide* Civil Procedure Code, Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 ... 95

Court—fees Act (VII of 1870)—Anomalies in Act—Remedy: *vide* Court-fees Act, Section 7 (v)(b) and (d) and rule under section 35 ... 1

Court-fees Act (VII of 1870)—Section 7(iv)(c)—Suit for declaration to avoid decree, agreement, document or liability —*Ad valorem* Court-fees when required to be paid:

Per Full Bench—Where it is necessary for a plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simpliciter. In such cases the question of court-fees has to be determined under Section 7(iv) (c) of the Act. But, however, where a plaintiff is not a party to such a decree, agreement, instrument or liability, and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or liability, he can sue for a declaration simpliciter, provided he is also in possession of the property.

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All the same if the plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim to pay court-fees under any of the Sub-clauses of Article 17, Schedule II of the Court-fees Act.

Baldeo Singh v. *Gopalsingh and others*, 1967 M. P. L. J. 242 and *Ratansingh* v. *Raghunathsingh*, I. L. R. 1945 Nag. 975; relied on.

Dipchand Balchand v. *State of Madhya Pradesh*, 1947 M. P. L J. 46 and *Badrilal Bholaram* v. *State of M. P.*, 1963 M. P. L. J. 717; referred to.

SANTOSHCHANDRA v. SMT GYANSUNDARBAI, I. L. R [1972] M. P. ... 412

Court-fees Act (VII of 1870)—Section 7(v)(b) and (d) and rule under Section 35—Scope and implication of—Words "Definite share" in— Meaning of– Anomalies in Act— Remedy—Interpretation of Statutes—Taxing provision to be strictly construed in a manner favourable to citizen:

Per C. J. and Bhargava J.—In cases where Court-fee is required to be paid on the market value under Section 7(v)(d) the plaintiff cannot be allowed to pay court-fee on the whole estate of which the land claimed in suit forms part but is not assessed to separate land revenue; nor can the plaintiff be allowed in such cases to work out the proportion of the land revenue in respect of the part of land claimed by him and pay court-fee on the proportionate multiple of the land revenue worked out according to section 7(v) b).

Kashirao v. *Ramchandra*, Taxing Decisions 1936-43 at p. 39, *Baldeo Gulabrao* v. *Abdul Hafiz*, A I. R. 1950 Nag. 249, *Dwarka Prasad* v. *Pyarelal*, 1962 J. L. J. Note 376, *Santosh* v. *Lingraj*, 1959 M. P L. J Note 21 and *Bidhichand* v. *Barelal*, 1964 J. L. J. Note 83; followed

The words "definite share" as used in paragraph (v) of section 7 have all along been considered to mean an undivided and un-demarcated fraction of an estate as distinct from a definite demarcated plot which has been taken out of an estate.

Godavarty Sundaramma v. *Godavarthy Mangamma*, A. I. R. 1918 Mad. 25, *Kandasami Goundan and another* v. *Subbai Goundan and another*, A. I. R. 1924 Mad. 646, *P. Kesanna* v. *Boya Bala Gangappo*, I. L. R. 1947 Mad. 643(F.B.)

and *Baldeo Gulabrao* v. *Abdul Hafiz*, A. I. R. 1950 Nag. 249; referred to.

If a suit is for a distinct plot and not for a definite share of a separately assessed estate, court-fee has to be paid on the market value.

Reference under the Court-fees Act, 1870(5), I.L.R. 16 All. 493, *Chunohan* v. *Bishen Singh*, I. L. R. 33 All. 630, *Randhir Singh and another* v. *Randhir Singh*, I. L. R. 193 7All. 128, *Haliman and another* v. *Media and another*, I. L. R. 55 All. 531, *Ma Shin* v. *Maung Hman*, 79 I. C. 579, *Buniad Lal* v. *Shyam Lal*, I. L. R. 12 Cal. 960 and *Chandra Narayan Singh* v. *Asutosh De*, I. L. R. 41 Cal. 812; referred to.

Subramania Ayyar v. *Rama Ayyar*, A. I. R. 1927 Mad. 1002, *Kuljas Rai* v. *Pala Singh*, A. I. R. 1945 Lah. 15 *Bidhichand* v. *Barelal*, 1964 J. L. J. Note 83 and *Babulal* v. *Bismilla*, Civil Revision No. 4 of 1965, decided on the 23rd May 1965; discussed.

Rule framed by State Government under Section 35 enables plaintiff to pay court-fee on the computation prescribed in the rule only when he is suing for a fractional share of that part of the land which pays annual revenue to the Provincial Government under a settlement which is not permanent and the part is recorded in the Collector's register as separately assessed It is plain that the rule can have no application where the part is not separately recorded in the Collector's register and a part thereof is claimed in the suit.

Legal provision is not affected at all on account of the anomalies and it is for the legislature alone to remove the anomalies by proper legislation. Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care.

A taxing provision has to be construed strictly and must always be interpreted in a manner most favourable to the citizen. However, this rule has no application where the language of the statute is absolutely clear and unambiguous and does not yield to two interpretations.

Charles James Partington v. *The Attorney General*, (1869) L. R. 4 H. L. 100; referred to.

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Words of statute are clear, a rule of equitable construction cannot be imported by reading something not in the relevant provisions nor can anything be read as implied therein.

Gurshai v. *I. T. Commissioner, Punjab*, A. I. R. 1963 S. C. 1062 and *Income-Tax Commissioner* v. *Firm Muar*, A. I. R. 1965 S. C. 1216; referred to.

Per Bhave J.—The words "definite share of an estate paying annual rent to Government" means that the annual revenue must be fixed *vis-a-vis* that definite share of an estate distinct from the "entire estate" as such.

Sub-clause (b) of section 7(v) contemplates suits for whole parcels of land which are either estates or definite share of an estate or part of an estate. But in all these cases those parcels of land are such on which land revenue is payable or assessed as a unit. It contamplates only those cases where the suit is for the whole unit over which land revenue is separately assessed. Where this is not so, the case comes under sub-clause (d) and the court-fee payable is on the market value.

Sub-clause (d) of section 7(v) speaks of "part of an estate" but that part must be such as is not a definite share of an estate and is not separately assessed. It comes into operation where the land forms part of an estate but is not a unit of assessment for the purpose of land revenue. When a suit is brought for a share or a part of an estate, if that share or part of an estate is not separately assessed as a unit of land revenue, the case must fall within the residuary sub-clause (d) and the court-fee in that case should be on the market value.

Kashirao v. *Ramchandra*, 1936-43 Taxing Decisions at p. 39; discussed.

Kuljas Rai v. *Pala Singh*, A. I. R. 1945 Lah. 15 and *Subramania Ayyar* v. *Rama Ayyar*, A. I. R. 1927 Mad. 1002; referred to.

In the matter of interpretation of a statute, the Courts are not free to put their own interpretation on the statute for the purpose of removing anomalies. This is the function of legislature. The Courts are required to interpret the statutes as they are; and if there is no ambiguity in the language used, effect must be given to the clear terms of the statute. The second limitation on the Courts is

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that the interpretation by the Courts of the statute in any particular manner should not render any part of the statute otiose.

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Criminal liability—Case of contributory negligence not relevant: *vide* Criminal Trial ... 766

Criminal Procedure Code (V of 1898)—Cognizance—What is meant by taking cognizance and when can the Magistrate be said to have taken cognizance of offence: *vide* Criminal Procedure Code, Section 10 ... 589

Criminal Procedure Code (V of 1898)—Does not specify authority before whom affidavits can be sworn: *vide* Criminal Procedure Code, Section 145 ... 959

Criminal Procedure Code (V of 1898)—Section 5(2)—Makes Criminal Procedure Code applicable to offences for which provision not made in Special Acts dealing with these offences: *vide* Criminal Procedure Code, Section 523 ... 782

Criminal Procedure Code (V of 1898)—Section 10—Power of District Magistrate under—Cannot be taken away by Coal Mines Regulations, 1957 which are only executive instructions—Factories Act—Section 105—Personal presentation of complaint by District Magistrate not required—District Magistrate forwarding complaint to Magistrate authorised to try the offence is sufficient compliance of requirement—What is meant by taking cognizance and when can the Magistrate be said to have taken cognizance of offence: The Coal Mines Regulations, 1957 are only executive instructions. These are merely of directory nature and cannot have the effect of depriving the District Magistrate of the powers given to him under the Code of Criminal Procedure.

As there was no procedure in the Code of Criminal Procedure requiring personal presentation of the complaint by the District Magistrate or his representative under section 105 of the Factories Act, the requirement of law was satisfied when the complaint was forwarded by the District Magistrate and received in the Court charged with the duty of trying the offence.

State Government, Madhya Pradesh v. *Rukhabsa Jinwarsa*, A. I. R. 1953 Nag. 180; followed.

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Taking cognizance does not involve any formal action or action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Taking cognizance is both a mantal as well as a judicial act. When he applies his mind for taking action of the kind, for example, investigation by the police under section 164 or issue of a search warrant, he cannot be said to have taken cognizance of the offence.

Superintendent and Remembrancer of Legal Affairs v. *Abani Kumar Banerjee*, A. I R. 1950 Cal. 437 and *R. R. Chari* v. *The State of Uttar Pradesh*, A. I. R. 1951 S. C. 207; relied on.

STATE v. S P. MATHUR, I. L. R. [1972] M. P. ... 589

Criminal Procedure Code (V of 1898)—Section 145—Affidavit in proceedings—To be sworn before the Magistrate dealing with the particular case: *vide* Criminal Procedure Code, Section 145 ... 959

Criminal Procedure Code (V of 1898)—Section 145—Does not specify authority before whom affidavit has to be sworn—Criminal Procedure Code does not specify authority before whom affidavits can be sworn—Oaths Act, 1873—Section 4—Power of Court to administer oath in a matter pending before it—Words "in discharge of the duties" in—Modifies "administer"—Affidavit in Section 145, Criminal Procedure Code proceedings—To be sworn before the Magistrate dealing with the particular case: Section 145 itself does not specify any particular authority before whom an affidavit may be sworn. There is no provision in the Code of Criminal Procedure where a competent authority before whom an affidavit can be sworn is named.

By virtue of Section 4 of the Oaths Act, a Court is authorised to administer oath only in a matter before it because then alone it can be said that it is acting in discharge of its duty or in exercise of its power. The adverbial phrase "in discharge of the duties " cannot be read as modifying "receive" in clause (a). It undoubtedly modifies "administer". The argument that the phrase "in discharge of the duties ....." has reference to "persons" and not to Courts as well, must be rejected, as that construction would be repugnant to the language of the section.

An affidavit to be put in under Section 145, Criminal Procedure Code must be sworn before the Magistrate who is dealing with the particular case.

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Wahid v. *State*, A. I R. 1963 Ali. 256 and *Hemdan* v. *State of Rajasthon*, A. I. R. 1966 Raj. 5; rel ed on.

Ahmad Din v. *Abdul Salem*, A. I. R. 1966 Punj. 528; not followed.

STATE OF M. P. v. TRIVENI PRASAD, I. L. R. [1972] M. P. ... 959

Criminal Procedure Code (V of 1898)—Section 197—For removal of non-councillor President—Sanction of State Government not necessary: *vide* Criminal Procedure Code, Section 197 ... 381

Criminal Procedure Code (V of 1898)—Section 197—Person a Councillor and also President of Municipal Committee—Person is a public servant—Section not applicable if President can be removed in othere ways than by order of State Government—For removal of non-councillor President—Sanction of State Government not necessary—Municipalities Act, Madhya Pradesh, 1961—Section 47—Restricted meaning not to be given to the word "removal" in—Prosecution of President and Vice—President—Sanction is necessary—Section 38—Councillor can be removed only by State Government: A Councillor and the President of Municipality are public servants.

Section 197, Criminal Procedure Code does not apply and no sanction of State Government is necessary when president of Municipal Committee can be removed in other ways than by order of State Government.

State v. *Chikka Venkatappa*, A. I R. 1965 Mys. 253 and *Vishwa Mohon* v. *Mohadu*, A. I. R. 1964 Bom. 191; referred to.

The word "removal" in Section 47, Municipalities Act, should not be given a restricted meaning.

Chimanbhai v. *Jashbhai*, A. I. R. 1961 Guj. 57 and *Pukhraj* v. *Ummaidram*, A. I. R. 1964 Raj. 174; not followed.

Section 47, Municipalities Act supplies a mode of removal. Section 197, Criminal Procedure Code will apply only in cases when the removal can be made by the State Government and not in any other manner.

If President and Vice-President are also Councillors, they cannot be prosecuted without sanction.

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A Councillor is a public servant and can be removed only by the State Government. Any complaint against the President who is also a Councillor in the discharge of his duties as a public servant would require sanction under Section 197, Criminal Procedure Code.

Pukhraj v. *Ummaidram*, A. I.R. 1964 Raj. 174 and *Chimanbhai* v *Jashbhai*, A. I. R. 1961 Guj. 57; relied on.

If accused is only a President, then no sanction under Section 197, Criminal Procedure Code is necessary.

J. M. PENDSE ADVOCATE, KANNOD v. CHANDRA GOPAL, I. L. R. [1972] M. P. ... 381

Criminal Procedure Code (V of 1898) –Section 197—Prosecution of President and Vice-President—Sanction is necessary: *vide* Criminal Procedure Code, Section 197 ... 381

Criminal Procedure Code (V of 1898)—Section 197—Section not applicable if President can be removed in other ways than by order of State Government: *vide* Criminal Procedure Code, Section 197 ... 381

Criminal Procedure Code (V of 1898)—Section 491—Circumstances when a writ of *habeas corpus* **can be issued:** *vide* Criminal Procedure Code, Section 491 ... 621

Criminal Procedure Code (V of 1898)—Section 491—Detention of minor by a person not entitled to legal custody—Writ can be issued—Detention is equivalent to imprisonment of minor—writ can be issued when ordinary remedy is not available or is ineffective or inadequate—In exceptional cases writ can be issued for restoration of custody of minor to guardian entitled to the custody of child—Guardian's claim to the custody of the child is a right in the nature of trust or benefit of minor: The writ of *habeas corpus* also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated, for the purpose of granting the writ, as equivalent to imprisonment of the minor.

Gohar Begam v. *Suggi alias Nozmo Begam and others*,(1960) 1 S. C. R. 597; referred to.

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The prerogative writ is an extraordinary remedy and the writ is issued where, in the circumstances of the particular case ordinary remedy provided by the law, is either not available or is ineffective or inadequate.

For restoration of custody of a minor from a person, who according to the personal law, is not his legal or natural guardian, the ordinary remedy lies under the Hindu Minority and Guardianship Act or the Guardian and Wards Act or the Guardian and Wards Act, as the case may be, and it is only in exceptional cases that the rights of the parties to the custody of the minor will be determined on a petition for *hapeas corpus*.

Makutam Basavalingam v. *Makutam Swarayalakshmi and others*, A. I. R. 1957 A. P. 704; referred to.

In an application under section 491, the underlying principle is that the guardian's claim to the custody of the child is not a right in the nature of property but, indeed, it is a right in the nature of trust for the benefit of the minor. Where there is imminent danger to the health or safety or morals of the minor, an interim order for production of the minor becomes necessary.

SMT. BHAGWATI BAI v. YADAV KRISHNA AWADHIYA, I. L. R. [1972] M. P. ... 25

Criminal Procedure Code (V of 1898)—Section 491—Guardian's claim to the custody of the child is a right in the nature of trust for benefit of minor: *vide* Criminal Procedure Code, Section 491 ... 25

Criminal Procedure Code (V of 1898)—Section 491—In exceptional cases writ can be issued for restoration of custody of minor to guardian entitled to the custody of child: *vide* Criminal Procedure Code, Section 491 ... 25

Criminal Procedure Code (V of 1898)—Section 491—Nature of the writ of *habeas corpus*—Scope of—Circumstances when it can be issued—Guardianship—Custody of the minor when cannot be given to the natural guardian father: A writ of *Habeas Carpus ad subjiciendum* (you have the body to submit or answer) shortly called as a writ of *habeas corpus*, is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. (2) However, the writ further extends its influence to restore the custody of a minor to his guardian, when

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wrongfully deprived of it. (3) The detention of a minor by a person who is not entitled to the legal custody is treated for the purpose of granting a writ as equivalent to imprisonment of the minor. (4) The power of this Court in granting a writ is qualified and has to be used in exercise of judicial and sound discretion (5) An application under section 491, Criminal Procedure Code cannot be thrown out merely on the ground that there is an alternative remedy under the Guardian and Wards Act available to the petitioner. (6) The paramount consideration in every such case is the welfare of the minor. The best interest of the child is the primary consideration; the right of the guardian is secondary, so that the latter will not be enforced by issuance of a writ when it is in conflict with the former consideration. (7) If that paramount consideration does not call for a writ to be issued, it will be refused and the petitioner would be left to resort to the remedy provided under the ordinary law. (8) The guardian's claim to the custody of the child is not a right in the nature of property, but it is a right in the nature of trust for the benefit of the minor.

Bhagwatibai v. *Yadav Krishna*, 1968 J. L. J. 717; referred to.

Father, the natural guardian of the minor cannot be given custody from foster parents, when he is not in a position to look after the welfare of the minor as the welfare of the minor is a paramount consideration.

BUDHULAL v, AN INFANT CHILD, I. L. R. [1972] M. P. ... 621

Criminal Procedure Code (V of 1898)—Section 491—Writ can be issued when ordinary remedy is not available or is ineffective or inadequate: *vide* Criminal Procedure Code, Section 491 ... 25

Criminal Procedure Code (V of 1898)—Section 517-Circumstances in which property can be restored to the original owner: *vide* Criminal Procedure Code, Section 517 ... 201

Criminal Procedure Code (V of 1898)—Section 517—For purpose of considering return of property after trial, two points required to be considered—Test to be applied for considering restoration of property—Circumstances in which property can be restored to the original owner: Two points emerge out of Section 517, Criminal Procedure Code; Firstly it is essential that the property before the Court in regard to the disposal of which it is called upon

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to make an order, is one regarding which any offence appears to have been committed or which had been used for the commission of the offence; secondly, in deciding this, the Court has not to start on a new and independent enquiry but has to study the decision of the trial Court or appellate Court. In other words, we have to look at the last final judgment in the case.

The test for the restoration to the original owner of the property, under Section 517, Criminal Procedure Code, is not whether the accused before the Court has been convicted under the charge, but whether any offence had been committed regarding the property.

If it is an acquittal with the benefit of the doubt to the person on trial while it is found that the offence has been committed, then certainly there will be restoration to the original owner because, whether or not the persons on trial are guilty, the property has been removed by commission of an offence; but where the benefit of doubt relates to the commission of the offence itself, there will be no restoration, becau.e there has been no offence committed and the property will have to be made over to the person from whom it had been taken.

The general principle, that the property should be restored to the person from whom it is recovered, should be followed, there being no justification for a departure on the ground of the commission of an offence.

BHAGCHAND v. STATE OF MADHYA PRADESH, I. L. R. [1972] M. P. ... 201

Criminal Procedure Code (V of 1898)—Section 517—Test to be applied for considering restoration of property: *vide* Criminal Procedure Code, Section 517 . 201

Criminal Procedure Code (V of 1898)—Section 523—Does not exclude application to a property which is liable to confiscation—Empowers a person affected by seizure for release of property: *vide* Criminal Procedure Code, Section 523 ... 782

Criminal Procedure Code (V of 1898)—Section 523—Power under Section 523 not limited by Section 190, Criminal Procedure Code—Sections 523, 516-A and 517—Refer to different stages in connection with release of property which has been seized—Excise Act, Central Provinces and Berar, 1915—Section 61—No bar to the exercise of powers under Section 523,—Criminal

Procedure Code—Section 5(2)—Makes Criminal Procedure Code applicable to offences for which provision not made in Special Acts dealing with these offences—Excise Act, Central Provinces and Berar, 1915—Sections 46 and 47—Provide for liability to confiscation and power to order confiscation—No provision in Excise Act authorising Magistrate to order disposal of seized property—Section 48(b)—Merely confers power to substitute money value for property which is liable to confiscation and is applicable where offence is sought to be compounded—Language not analogous to that of section 523 of Criminal Procedure Code—Word "Release" in section 48(b) of the Excise Act—Refers to final release in lieu of payment of the value of the property—Section 48—Scope of—Criminal Procedure Code—Section 523—Does not exclude application to a property which is liable to confiscation—Empowers a person affected by seizure for release of property: Section 190, Criminal Procedure Code does not limit the powers of the Magistrate under Section 523 of the Code to make an order respecting disposal of the property seized by a Police Officer.

Sections 523, 516-A and 517 deal with three different stages at which the court may pass suitable orders for the disposal of property: (1) Before the Court receives a charge sheet, the matter is covered by section 523 of the Code; (2) during the pendency of an inquiry or trial, the matter comes within section 516-A of the Code; and (3) on the conclusion of an inquiry or trial, the matter is within the purview of section 517 of the Code.

In re. Siyaram Hanumanprasad, 1962 M. P. L. J. 1121; referred to.

Section 61, C. P. Excise Act is no bar to the exercise of powers under section 523, Criminal Procedure Code.

Section 5(2) of the Code which enacts that all offences under any law, other than the Penal Code, shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code, but subject to any special enactment regulating investigation, inquiry, trial or otherwise dealing with such offences. It seems clear that: (1) Where a complete procedure is provided in any enactment for the trial of an offence under a special or local law, that procedure must be followed and not the one prescribed by the Code of Criminal Procedure; (2) where an enactment provides a special procedure, only for some matters, such procedure must be followed as regards those matters only; and in regard to

other matters on which that enactment is silent, the provisions of the Code of Criminal Procedure must be applied; and (3) where there is no enactment prescribing the procedure for dealing with an offence under a special or local law, the procedure laid down in the Code of Criminal Procedure must be applied.

Bhimsen v *The State of U. P.*, (1955) 1 S C. R. 1444 and *Shambhuji Warhaae* v *Shankarappa Bhanagire*, I. L. R. 1960 Bom 692; referred to.

The provisions contained in Sections 46 and 47, C. P. Excise Act provide for the liability to confiscation and the power to order confiscation. There is no provision in the Excise Act which empowers a Magistrate to make an order for disposal of property seized which is liable to confiscation.

Section 48(b), C. P. Excise Act merely confers a power to substitute money value for the property which has been seized as liable to confiscation. It is obvious enough that this power can be exercised when the Collector accepts to compound an offence. Clause (b) of section 48(1) is connected with clause (a). The power conferred under clause (b) of sub-section (1) cannot be exercised except when the occasion is one where the Collector exercises his powers under clause (a) which empowers him to order confiscation of articles when he accepts a sum of money by way of composition for the offence or imposes a penalty.

The language employed in clause (b) is not analogous to the provisions contained in Section 523, Criminal Procedure Code.

The words "release the same on payment of the value thereof as estimated by the Collector" refer to final release in lieu of payment of the value of the property.

Where a property has been seized as being liable to be confiscated under the provisions of the Act and the question is where that property should be kept or in whose custody it should be placed until an inquiry or trial begins, section 48 of the Excise Act is inapplicable, and the question must be dealt with under section 523, Criminal Procedure Code. Section 48 of the Excise Act does not correspond, nor is analogous to section 523, Criminal Procedure Code. In the absence of any provision in any special enactment, section 523, Criminal Procedure Code truly comes into play.

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State v. *Ramyas Thakur*, A. I. R. 1964 Pat. 416; not followed.

There are no words in Section 523, Criminal Procedure Code which exclude its application to a property which is liable to confiscation.

A party affected by the seizure is entitled to move the Magistrate for an order under Section 523. To read that section otherwise is to render it nugatory, because then the police officer or any other officer authorised to seize property may not report about such seizure at any time and for any length of time.

STATE OF M. P. *v.* NARAYAN SINGH, I. L. R. [1972] M. P. ... 782

Criminal Procedure Code (V of 1898)—Sections 523, 516-A and 517—Refer to different stages in connection with release of property which has been seized: *vide* Criminal Procedure Code, Section 523 ... 782

Criminal Trial—Practice—Appreciation of evidence—Penal Code, Indian—Section 304-A—Ingredients of—Case not falling under section 304-A—Accused may be guilty of any other offence under Indian Penal Code or by any special enactment—Criminal liability—Case of contributory negligence not relevant—Penal Code, Indian—Section 287—Requirements of: If the trial Judge found that prosecution witnesses were trumped up witnesses, then whole-sale rejection of their testimony might be justified. But if assurance is lent of the prosecution assertion that the witnesses were present, there is no reason to discard the entire prosecution evidence on the basis of the police report. But the testimony of the prosecution witnesses has to be examined on its own merits.

Section 304-A lays down that a person should cause the death of another person by doing any rash or negligent act not amounting to culpable homicide. The death should be the direct result of rash or negligent act and such act should not amount to culpable homicide. If these ingredients are present, an offence under the Section can undoubtedly be said to have been made out. If death be the direct result of a rash and negligent act, the offence will undoubtedly fall within the ambit of section 304-A, Indian Penal Code. In case the death is the direct result of a rash and negligent act of an accused, in that event

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only he can be found guilty under section 304-A; otherwise he may be guilty of any other offence which may be provided by Indian Penal Code or by any special enactment.

Kurban Hussain Rangawalla v. *State of Maharashtra*, A. I. R. 1965 S. C. 1616 and *Cherubin Gregory* v. *State of Bihar*, A. I. R. 1964 S. C. 205; referred to.

Section 287 also requires an act rash or negligent so as to endanger human life with respect to some machinery.

Mohri Ram v. *Emperor*, A. I. R. 1930 Lah. 453; referred to.

So far as criminal liability is concerned, the principle of contributory negligence cannot be at all made applicable.

Sekh Jumman v. *King Emperor*, 1944 N. L. J. 451 and *Shankar Rao More* v. *Union of India*, 1959 M. P. L. J. 289; referred to.

JIWANLAL *v.* DEVI LUHAR, I. L. R. [1972] M. P. ... 766

Electricity (Supply) Act (LIV of 1948)—Section 42—Brings into operation whole frame work of part III of Telegraph Act: *vide* Tort ... 191

Electricity (Supply) Act (LIV of 1948)—Section 42—Scope of: *vide* Tort ... 191

Electricity (Supply) Act (LIV of 1948)—Regulation 7(c)—Circulars issued by Board amount to an executive order—Board not competent to call upon employees to pass departmental examination before becoming eligible for promotion—Mere passing of resolution by Board for holding departmental examinations not sufficient—Amendment of regulation necessary: The circulars which merely embody the decision of the Board to hold departmental examination for determining the eligibility for promotion, is on the face of it no better than an executive order.

So long as the present regulation 6(c) stands and no regulation is framed by the Board in the exercise of its powers under section 79(c) of the Electricity (Supply) Act, 1948, amending the Regulstions framed in 1952, and incorporating in the Regulations the passing of examination as an

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eligibility requirement for promotion, the Board is not competent to call upon its employees to appear and pass the departmental examination, to make promotions on the basis of the results of the examination or to revert those who had not passed that examination.

Mere decision by Board to hold departmental examination is not sufficient. It has to be followed by an amending regulation made under section 79(c) of the Electricity (Supply) Act, 1948 incorporating in the regulations the passing of departmental examination as an eligibility requirement for promotion.

MADHYA PRADESH ELECTRICITY BOARD, JABALPUR v THE M. P. VIYDUT KARMACHARI SANGH, JABALPUR, I L.R. [1972] M. P. ... 439

Evidence Act, Indian (I of 1872)—Section 45—Opinion of expert—Not conclusive—Does not take the place of substantive evidence—Is evidence of general tendencies exhibited in handwriting which can be affected by several factors —Specific Relief Act, 1963 –Section 16—Formal tender—Not necessary to party who would have refused to accept money—Section 2 (2), b)—Money spent over repairs and improvement with knowledge that property will have to be reconveyed–Not a case of hardship which was not foreseen at the time of contract—Party brings upon himself the hardship with full knowledge of contract—Court will not refuse specific performance of agreement to reconvey: The opinion of expert is not conclusive and that it can rarely take the place of substantive evidence.

Ishwari Prasad v. *Mohammad Isa*, A. I. R. 1963 S. C. 1748 and *Shashi Kumar* v. *Subodh Kumar*, A. I. R. 1964 S. C. 529; relied on.

The best that can be said about the opinion of any handwriting expert is that it is the evidence of only general tendencies usually exhibited in the handwriting and its weakness consists in the fact that such tendencies are affected, or liable to be affected, by the state of mind of the writer influenced by several factors like self consciousness, hurry or a desire to conceal. Therefore, before acting on such evidence it is usual to see if it is corroborated by direct or circumstantial evidence.

A formal tender is not required when it appears from the evidence that the party to whom it would have been made would have refused to accept the money.

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Venkatarayanim v. *Subadrayamma*, A. I. R. 1923 P. C. 26; relied on.

If, with the knowledge that property will be required to be reconveyed, the party invests money in effecting repairs and making improvements, it cannot be said that this is a case of hardship that the party did not foresee at the time of contract.

Where the party, knowing its liability under the earlier contract, brings about a hardship of this kind on itself, the Court will not regard that as a consideration in favour of refusal of specific performance.

Haradhan Deb v. *Bhagabati Dasi*, A. I. R. 1914 Cal. 137 (D. B.); referred to.

SMT. SUSHILA DEVI v. SMT. LAXMI BAI, I. L. R. [1972] M. P. ... 1034

Excise Act, Central Provinces and Berar (II of 1915)—No provision in the Act authorising Magistrate to order disposal of seized property: *vide* Criminal Procedure Code, Section 523 ... 782

Excise Act, Central Provinces and Berar (II of 1915)—Sections 46 and 47—Provide for liability to confiscation and power to order confiscation: *vide* Criminal Procedure Code, Section 523 ... 782

Excise Act, Central Provinces and Berar (II of 1915)—Section 48—Scope of: *vide* Criminal Procedure Code, Section 523 ... 782

Excise Act, Central Provinces and Berar (II of 1915)—Section 48(b)—Merely confers power to substitute money value for property which is liable to confiscation and is applicable where offence is sought to be compounded—Language not analogous to that of section 523 of Criminal Procedure Code: *vide* Criminal Procedure Code, Section 523 ... 782

Excise Act, Central Provinces and Berar (II of 1915)—Section 48(b)—Word "release" in—Section 48(b) of the Excise Act—Refers to final release in lieu of payment of the value of the property: *vide* Criminal Procedure Code, Section 523 ... 782

Excise Act, Central Provinces and Berar (II of 1915)—Section 61—No bar to the exercise of powers under Section 523 Criminal Procedure Code: *vide* Criminal Procedure Code, Section 523 ... 782

Excise licence—Clause 6—Circumstances in which it comes into operation—Determination of cost price by Commissioner—Rules out fixation of price after inviting tenders—Expression "determined" and "such price shall be binding on the licensee" in—Implies fixation of cost price by Commissioner—"Cost price" in—Not cost of manufacture of 100% Mahua-based spirit—Includes profits of licensee—Fixing of cost price—Cannot be said to be done by State under "police powers"—Constitution of India—Article 226—Directions not issued for enforcing or preventing breach of rights or obligations contractual in character: Clause 6 of the license comes into operation precisely when the inability of the petitioner to supply blended spirit in the prescribed proportion arises not on account of any lapse of his but on account of a cause beyond his control, namely, "non-availability of *Mahua* or any other special circumstances beyond his control."

The determination of cost price by the excise Commissioner altogether rules out fixation of cost price after inviting tenders.

The use of the word "determined" and of the expression "such price shall be binding on the licensee" clearly involve the determination of the cost price by Excise Commissioner in his own judgment.

The "cost price" contemplated by clause 6 is not the bare cost of manufacture of 100 % *Mahua*-based spirit. It is the price which the State is required to pay to the licensee for the spirit, and clearly includes the profits of the licensee.

The fixation of price under clause 6 by the State cannot in any sense be said to be an act done by the State in the exercise of "police powers".

It is well settled that any dispute between the parties with regard to the rights and privileges under a contract must be litigated in the ordinary Civil Courts, and not in proceeding under articles 226 and 227 of the Constitution. Under those articles, directions cannot be issued for enforcing or preventing a breach of the rights and obligations contractual in character.

United Collieries v. *E.-in-Chief, S. E. Rly, Manindragarh,* A. I. R. 1964 M. P. 42; relied on.

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Guruswamy v. *State of Mysore*, A. I. R. 1954 S. C. 592 and *Ghaio Mal and Sons* v. *State of Delhi*, A. I. R. 1959 S. C. 65; distinguished.

M/S UNITED EXCISE, UJJAIN v. STATE OF MADHYA PRADESH, I. L. R. [1972] M. P. ... 32

Excise Licence—Clause 6—"Cost price" in—Not cost of manufacture of 100% Mahua-based spirit—Includes profits of licensee: *vide* Excise Licence, Clause 6 ... 32

Excise Licence—Clause 6—Determination of cost price by Commissioner—Rules out fixation of price after inviting tenders: *vide* Excise Licence, Clause 6 32

Fxcise Licence—Clause 6—Expression "determined" and "such price shall be binding on the licensee" in—Implies fixation of cost price by Commissioner: *vide* Excise Licence, Clause 6 ... 32

Excise Licence—Clause 6—Fixing of cost price—Cannot be said to be done by State under "police powers": *vide* Excise licence, Clause 6 32

Factories Act (LXIII of 1948)—Section 105—Personal presentation of complaint by District Magistrate not required—District Magistrate forwarding complaint to Magistrate authorised to try the offence is sufficient compliance of requirement: *vide* Criminal Procedure Code, Section 10 ... 589

Food-grains Dealer's Licensing Order, Madhya Pradesh, 1958—Clause 3(1)—Breach of—Involves a guilty mind— ***Mens rea*** **is essential ingredient of an offence—"Dealer" in—Includes a person who purchases bulk quantity and endorses railway receipt in course of business dealings:** Even though *mens rea*, is an essential ingredient of an offence under Section 7 of the Essential Supplies Act, the breach of clause 3(1) of the order involved a guilty mind on the part of the accused.

Nathulal v. *State of Madhya Pradesh*, 1965 M. P. L. J. 832; referred to.

Indenting of a bulk consignment cannot be but for the purposes of trade. It can hardly be asserted that the purchase in question by the respondent was for his own consumption. Similarly, the endorsing of the relative railway receipts by him was in the course of business

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dealings. Not only the initial purchases were made by him directly with the supplying dealers but the eventual sales were also effected by him, through the commission agency of another. Both the constituent parts of the definition of "dealer" as contained in clause 3(1) of the Order were present in the case.

Manipur Administration v. *Nila Chandra Singh*, A. I. R. 1964 S. C. 1533 and *M. Subba Rao* v. *State of Orissa*, A. I. R. 1966 Orissa 27; distinguished.

STATE OF MADHYA PRADESH v. LAXMINARAYAN, I. L. R. [1972] M. P. ... 185

Food-grains Dealer's Licensing Order, Madhya Pradesh, 1958—Clause 3(1)—"Dealer" in—Includes a person who purchases bulk quantity and endorses railway receipt in course of business dealings: *vide* Food-grains Dealer's Licensing Order, 1958, Clause 3(1) ... 185

Function of Government—Executive function—May include legislative and judicial powers—*Quasi***—judicial decision—Implications of Motor Vehicles Act, 1939—Section 68-D—Functions performed under—Are administrative functions, though the process is** *quasi***-judicial—Functions under Section 68-D are executive,** *quasi***-judicial and also legislative—Functions can be regulated by rules of business—Delegations of** *quasi***-judicial and** *quasi***-legislative functions—Validity—Section 68-D and State Road Transport Services (Development) Rules, Madhya Pradesh, 1959, Rule 6—Confer no power on Governor—Functions of State Government—Can be discharged according to rules of business—Can be performed by a person duly authorised under rules of business—Section 68—D(2) and Supplementary Instructions, para 3—Minister, Power of, to interfere with the order of Special Secretary—Rules of Business—Cannot override statutory provisions regarding particular functions or business—Rules of Business—Rule 13—Supplementary instructions, para 2—Delegation of power of State Government under Section 68-D(2) without reference to particular scheme—Validity—Authority in general terms on special Secretary sufficient—Not necessary to make an order of allocation with reference to any existing scheme before delegating power to Special Secretary—Things necessary to be shown to prove** *mala fides* **of the scheme—Nature of objections which can be raised to the draft scheme—Enquiry under Section 68-D(2)—Cannot be regarding conclusion or otherwise of the requisite opinion formed under Section 68-C—State Road Transport Services (Development) Rules, Madhya Pradesh,**

1959—Rule 3(1)(j)—Contemplates making of provision for transfer of permits if proposals are made—Motor Vehicles Act, 1939—Section 43(i)(iii)—Scope of—Section 68-D(2)—Non-specification in a scheme of a permit proposed to be cancelled—Permit cannot be cancelled and hence scheme vitiated—Section 68-B—Chapter IV-A overrides Chapter IV—Scheme framed under Chapter IV-A—Scheme conflicting with ceiling order—Scheme does not become invalid: The Executive may be empowered by a statute to perform certain functions and exercise certain powers which may have at the same moment, executive, legislative and judicial characteristics.

A *quasi*-judicial decision is nothing but an administrative decision, some stage or some element of which possesses judicial characteristics.

Province of Bombay v. *Khushaldas*, A. I. R. 1950 S.C. 222, *Board of High School* v. *Ghanshyam*, A. I. R. 1962 S. C. 1110, *Board of Revenue U. P.* v. *Sardarni Vidyawati*, A. I. R. 1962 S. C. 1217, *Moti Miyan* v. *Commissioner, Indore Division*, 1960 M. P. L. J. 100 and *State of M. P.* v. *Board of Revenue, M. P.*, 1964 M. P. L. J. 237; referred to.

The function performed under Section 68-D of the Act of hearing objections to a Scheme and of approving or modifying it is essentially an administrative function, though the process of hearing objections to the Scheme is *quasi*-judicial.

The fact that the function performed under Section 68-D has judicial and legislative characteristics also does not, however, take out that function from the realm of a function performed in discharge of the executive power of the State Government and which function can be regulated by the Rules of Business.

ayantilal Amratlal Sodhan v. *F. N. Rana*, A. I. R. 1964 S. C. 648 at p. 655; relied on.

If executive functions also involve *quasi*-legislative and *quasi*-judicial functions, then those functions can also be delegated as part of the executive functions.

G. Nageswara Rao v. *A. P. S. R. T. Corpn.*, A. I. R. 1959 S. C. 308 at p. 326 and *Premchand Jain* v. *State of M. P.*, A. I. R. 1965 M. P. 196; referred to.

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Neither Section 68-D of the Act nor rules 6(4) and (5) of M. P. State Road Transport Services (Development) Rules, 1959, confer on the Governor any statutory power.

The function of hearing objections to a scheme and thus after considering the objections, to approve or modify the scheme can be discharged by the State Government in accordance with the rules of business.

C. M. P. Corpn. Societies v. *State of M.P.*, A. I. R. 1967 S. C. 1815; referred to.

The duty which the State Government is required to perform under sub-rules (4) and (5) of Rule 6 of M. P. State Road Transport Services (Development) Rules, 1959, could be performed by a person duly authorised under the rules of business.

The Minister cannot claim any power under paragraph-3 of the Supplementary Instructions to pass any order under Section 68-D (2) in a case in which the Special Secretary, in exercise of the power conferred on him, has considered the objections to the Scheme and approved or modified it.

It is well settled that in making the rules of business the Governor cannot override the statutory provisions relating to a particular function or business.

Rukhmanibai v. *Mahendralal*, I. L. R. 1949 Nag. 183; referred to.

There can be a valid delegation under paragraph-2 of the Supplementary Instructions issued under rule 13 of the Rules of Business, without reference to particular schemes of the power conferred on the State Government under section 68-D(2) of the Act. It is sufficient if the Special Secretary is authorised in general terms to receive and consider objections to the Schemes that may be notified by the Corporation and to approve or modify them after considering the objections.

It is not necessary to make an order of allocation with reference to any specific existing scheme before the power to consider objections to the Scheme and to approve or modify it thereafter could be delegated to the Special Secretary.

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Godavari v. *State of Maharashtra*, A. I. R. 1964 S. C. 1128; relied on.

In order to succeed in the plea of *mala fides*, it is not sufficient for the petitioners merely to show that the Chief Minister had bias and ill-will against them; they must also show that the Corporation was also similarly motivated; and unless the petitioners were able to do that, bias or ill-will on the part of the Chief Minister would be irrelevant. The bias on the part of the Corporation must be "real". The petitioners must show that in formulating the Schemes the Corporation so conducted itself that a high probability arises of a bias inconsistent with the fair performance of its duties with the result that in the minds of reasonable persons there is a feeling that the Schemes formulated are not in reality the Schemes of the Corporation.

C. S. Rowjee v. *State of Andhra Pradesh*, A. I. R. 1964 S. C. 962; referred to.

In an enquiry under Section 68-D(2) of the Act the grounds of attack on the draft schemes are limited to the consideration of the question whether the schemes are required "for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service" and the evidence to show that the objectors were providing more efficient, adequate, economical and properly co-ordinated services would be irrelevant.

Ramnath Verma v. *State of Rajasthan*, (1963) 2 S. C. R. 152, *Malik Ram* v. *State of Rajasthan*, (1962) 1 S. C. R. 978, *C. M P. Co-op. Societies* v. *State of M P.*, A.I.R. 1967 S. C. 1815, *Premchand Jain* v. *State of M. P.*, A. I R. 1965 M. P. 196, and *Capital Multipurpose Co-operative Society Bhopal* v. *State of M P.*, Miscellaneous Petition No 351 of 1965, decided on the 15th September 1966; relied on.

An enquiry under Section 68-D(2) is not limited only to the correctness or otherwise of the requisite opinion formed by the State Transport undertaking under Section 68-C of the Act before initiating the scheme.

The language of Rule 3(1)(j) of M.P. State Road Transport Services (Development) Rules, 1959, is plain enough to show that the proposal for grant of permits for alternative routes is required to be mentioned in the Scheme

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only if there is any such proposal. If there is no such proposal, then obviously no provision in that behalf can be inserted in the Scheme.

Section 43(1)(iii) gives to the State Government the power to issue directions to the State Transport Authority regarding the grant of permits for alternative routes or areas to persons in whose cases the existing permits are cancelled or the terms thereof are modified under clause (b) or clause (c) of sub-section (2) of section 68-F.

Kashi Prasad v. *R. T. Authority, Gorakhpur*, A. I. R. 1961 All. 214; distinguished.

In the absence of non-specification in a scheme of a permit proposed to be cancelled it cannot be cancelled and it must be held that Scheme No. 60 is invalid to the extent it directs the cancellation expressly or impliedly of contract carriage permits.

As is clear from Section 68-B, Chapter IV-A of the Act overrides Chapter IV thereof. Therefore, the scheme framed under Chapter IV-A does not become invalid even if it conflicts with any ceiling order made under Section 47 (3) included in Chapter IV of the Act.

RAIPUR TRANSPORT COMPANY PRIVATE LTD., RAIPUR *v.* THE STATE OF M. P., I. L. R. [1972] M. P. ... 822

Fundamental Rules 14 and 14-A(c)—Lien on substantive post—Circumstances in which it could be terminated—Could not be terminated even with the employee's consent: *vide* Constitution of India, Article 311 ... 902

General Clauses Act, Madhya Pradesh, 1957 (III of 1958)—Section 16—Enacts the rule of general law: *vide* Master and Servant ... 249

General Clauses Act, Madhya Pradesh, 1957 (III of 1958)—Section 16—Not available for construing University of Sagar Act or Ordinance made by University under the Act: *vide* Master and Servant ... 249

General Sales-tax Act, Madhya Pradesh, 1958 (II of 1959)—Section 8(1)—Felling of standing timber trees, cutting them and converting some of them into *Ballis*—Character as timber is not altered—Sale of timber not liable to pay tax under Section 8(1): By felling Standing Timber trees,

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cutting them, and converting some of them into *Ballis*, the assessee did not alter their character as timber or used them for the manufacture of "other goods" within the meaning of Section 8(1) of the M. P. General Sales Tax Act. Hence purchase-tax could not be levied under Section 8(1) of the Act.

The State of Madhya Pradesh v. *Wasudeo*, (1955) 6 S.T.C. 30; not followed.

MOHANLAL VISHRAM *v.* THE COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE, I. L. R. [1972] M. P. ... 618

General Sales Tax Act, Madhya Pradesh, 1958, (II of 1959) —Section 18 and Rule 15(4)—Provision of rule 15 4)—Accompaniment of certificates and list of certificates as per rule 24 with return—Not mandatory: Having regard to the relevant provisions of the Act especially section 18, it does not appear that the requirement of Rule 15 (4), that the certificates and list of certificates as per Rule 24 shall accompany the return, is mandatory.

M/S NATIONAL TRADERS (INDIA), INDORE *v.* ADDITIONAL COMMISSIONER OF SALES TAX, M. P., INDORE, I. L. R. [1972] M. P. ... 89

Government of India Act, 1915—Section 96-B—Rules framed under—Rules framed under Section 96-B, Government o India Act, 1915—Rules are laws in force—Are kept alive under Article 313 of Constitution: *vide* Constitution of India, Article 311 ... 902

Guardianship—Custody of the minor when cannot be given to the natural guardian father. *vide* Criminal Procedure Code, Section 491 ... 621

Income-tax Act, Indian (XI of 1922) as adopted by Sarguja State—Amendments made in Income-tax Act after repeal of Sarguja Act—Cannot be read in the Sarguja Act—Purpose of saving clause—Purpose defeated if expression "amendments made from time to time" interpreted literally to make subsequents amendments applicable—Taxation Laws (Extension to Merged States and Amendment) Act, 1949—Section 7—Saving in Section 7—Effect is to continue Sarguja Act for purposes of earlier assessment and has to be read as referring to Income-tax Act as it stood at the commencement of that Act in 1949: Amendment in the Income-tax Act subsequent to the repeal of Sarguja Act cannot be read in the Sarguja Act.

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The very purpose of the saving clause is to save vested rights as they existed on the date of repeal and this purpose may be defeated if the expression "amendments made from time to time" is interpreted literally to make subsequent amendments applicable.

The Amalgamated Coalfields Ltd., Calcutta and others v. *The State of M. P and another*, 1966 M. P. L. J. 842; relied on.

The saving in Section 7 of the Taxation Laws (Extension to Merged States and Amendment) Act, 1949 has the effect of continuing the Sarguja Act for the purpose of earlier assessment but it will have to be read as referring to the Income-tax Act as it stood at the commencement of that Act in 1949. Subsequent amendments will have to be ignored.

SHYAM SUNDER GOVINDRAM *v.* SHRI R. R. MISHRA, INCOMETAX OFFICER, RAIGARH CIRCLE, RAIGARH, I. L. R. [1972] M. P. ... 69

Income-tax Act, Indian (XI of 1922)—Section 16, clause (c) —Deals with two types of settlements—Section 16, clause (c) third proviso—Aims at conditional revocation of settlement—Is out of mischief of clause (c) so long as settlor does not revoke—Purpose of the proviso—Circumstances in which whole of the income in the hands of settlor becomes taxable: The substantive provision in clause (c) of section 16 deals with two types of settlements, namely, (i) where assets, the income of which is settled on others, remain the property of the settlor, and (ii) where the assets are transferred but the transfer is revocable.

The third proviso to section 16(c) aims at a settlement, which is on its own terms not revocable for a certain period, that is to say, which is subject to conditional revocation, though such a settlement is deemed to be revocable under the first proviso, shall be out of the mischief of clause (c) so long as the settlor does not actually revoke it and receives the income from the assets.

The purpose of the third proviso is to take away from the operation of clause (c) those settlements, which are rendered revocale by operation of the first proviso but which come only under the latter part of the first proviso.

The trust-deed mentions that one-fourth income was to be given to the settlor. This case is covered by the first part

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of the first proviso and the settlement is rendered revocable. It does not come within the ambit of the third proviso and thus the whole of the income becomes taxable in the hands of the settlor.

Once the deed of settlement is held to be revocable and is held to be one not covered by the third proviso, the conclusion is that "all income" of "any person" under the deed of settlement must be assessed in the hands of the settlor.

Commissioner of Income-tax, Calcutta v. *Jitendra Nath Mallick*, 50 I. T. R. 313; *Ramji Keshavji* v. *Commissioner of Income-tax, Bombay*, 13 I. T. R. 105, *Dr. A.J. Kohiyar* v. *Commissioner of Income-tax, Bombay*, 51 I T. R. 221, *Commissioner of Income-tax Patna* v. *Rani Bhuwneshwari Kuer Tekari Rai*. 45 I. T. R. 357 and *Commissioner of Income-tax, Bihar and Orissa* v. *Rani Bhuwanceshwrri Kuer*, 53 I. T. R. 195; discussed.

SMT. GULABBAI v. THE COMMISSIONER OF INCOME TAX. M. P. NAGPUR AND BHANDARA, NAGPUR, I. L. R. [1972] M. P. ... 389

Income-tax Act, Indian (XI of 1922)—Section 16, clause (c) Circumstances in which whole of the income in the hands of settlor becomes taxable: *vide* Income-tax Act, Section 16, Clause (c) ... 389

Income-tax Act, Indian (XI of 1922)—Section 16, Clause (c), third proviso—Aims at conditional revocation of settlement - Is out of mischief of clause (c) so long as settlor does not revoke—Purpose of the proviso: *vide* Income-tax Act, Section 16, clause (c) ... 389

Industrial Disputes Act (XIV of 1947)—Section 10-A——Decision of arbitrator—Subject to writ jurisdiction of High Court: *vide* Industrial Disputes Act, Section 10-A ... 1016

Industrial Disputes Act (XIV of 1947)—Section 10-A—Dispute between employees' Union and employer—Dispute referred to arbitrator—Arbitration—Not a private arbitration—Arbitrator has to follow procedure laid down in Section 10-A—Procedure is mandatory—Award vitiated if procedure not followed—Decision of arbitrator—Subject to writ jurisdiction of High Court: Arbitration agreement between employer and employee regarding industrial

dispute is not a private agreement and is not outside the scope of Section 10–A of the Act.

Section 10–A of the Act prescribes the procedure which the arbitrator has to follow in the Arbitration under Section 10–A of the Act. The provision regarding procedure is mandatory.

The procedure to be followed under sub-section (3–A) is directory and the Government is required to adopt it, if it wants to make the award binding on the parties or persons who have not joined the reference to arbitration.

The provisions of sub-sections (3) and (4) are mandatory. If this procedure is not followed, the machinery for enforcement of the award would not be available to the parties.

Arbitrator in proceedings under Section 10–A, acts as *quasi*–judicial body, Hence the decision of the Arbitrator would be subject to writ of *certiorari* in appropriate cases.

Air Corporation Employees' Union v. *D. V. Vyas*, A. I. R. 1962 *Bom.* 274, *Rohtas Industries Staff Union* v. *State of Bihar*, A. I. R. 1963 Pat. 170 and *Engineering Mazdoor Sabha* v. *Hind Cycles Ltd.*, A. I. R. 1963 S. C. 874; referred to.

K. P. SINGH v. S. K. GOKHALE, I. L. R. [1972] M. P. ... 1016

Industrial Disputes Act (XIV of 1947)—Section 10–A—Procedure is mandatory– Award vitiated if procedure not followed: *vide* Industrial Disputes Act, Section 10–A ... 1016

Industrial Disputes Act (XIV of 1947)—Section 25 F and 33–C (c)—Question of amount of retrenchment compensation payable under Section 25–F–Fallss within jurisdiction of Labour Court under Section 33–C(2): *vide* Industrial Disputes Act, Section 33–C (1) and (2) and Rule 62 ... 431

Industrial Disputes Act (XIV of 1947)—Section 25–FFF(1)—Applicability of: *vide* Industrial Disputes Act, Section 33-c(1) and (2) and Rule 62 ... 431

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Industrial Disuptes Act (XIV of 1947)—Section 33-C(1) and (2) and Rule 62—Application for relief under sub-section (2)—To be made to Labour Court having jurisdsction to decide the question—Rule 62 refers to application under sub-section (1) capable of being disposed of by Government—Section 33-C(2)—Application made under, by Advocate—Is mere irregularity not affecting merits—Order of Labour Court on that Count not challengeable—Question of amount of retrenchment compensation payable under Section 25-F— Falls within jurisdiction of Labour Court under Section 33-C(2)—Section 25—FFF(1)—Applicability of: A reading of Section 33-C as a whole and a comparison of the language of sub-sections (1) and (2) goes to show that an application for relief under sub-section (2) is to be made to the Labour Court which has jurisdiction to decide the question.

Rule 62 mentions Section 33-C which *prima facie* includes both sub-sections (1) and (2) but as the rule is silent as to what the Government is to do after receiving the application it is implicit that the rule refers only to applications under sub-section (1) which under terms of that subsection are to be disposed of by the Govenment.

The filing of an application by an Advocate under Section 33-C is merely an irregularity not affecting the merits and the order of the Labour Court is not now open to challenge on the ground of this irregularity as the proceedings became regularised when the workmen began to be represented by an officer of the trade union.

The question of the amount of retrenchment compensation payable under Section 25-F fell within the jurisdiction of the Labour Court under Section 33-C(2).

Section 25-FFF(1) and the proviso apply where an undertaking "is closed down" and as in the instant case the undertaking has merely changed hands but is still running it cannot be said that the case falls under Section 25 FFF(1) or the proviso.

Workmen of U. P. State Electricity Board v. *U. G. V. Electric Supply Co.*, (1966) I. L. L. J. 730 (S. C.); relied on.

THE CENTRAL INDIA ELECTRIC SUPPLY CO. LTD., BILASPUR v. THE PRESIDING OFFICER, DISTRICT LABOUR COURT, JABALPUR, I. L. R. [1972] M. P. ... 431

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Industrial Disputes Act (XIV of 1947)—Section 33-C (a) —Applicatoin made under, by Advocate—Is mere irregularity not affecting merits—Order of Labour Court on that count not challengeable: *vide* Industrial Disputes Act, Section 33-C(1) and (2) and Rule 62 ... 431

Industrial Disputes Rules, Madhya Pradesh—Rule 62—Refers to application under sub-section (1) capable of being disposed of by Government: *vide* Industrial Disputes Act, Section 33-C(1) and (2) Rule 62 ... 431

Industrial Disputes Act (XIV of 1947) and Co-operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961), Section 55(2)—Dispute between the society and its employees—Dispute to be settled as per provision of Societies Act and not by Industrial Disputes Act, 1947—Co-operative Societies Act, Madhya Pradesh, 1960—Section 93—Omission of reference to Industrial Disputes Act, 1947 in—Does not imply that that Act will apply to Societies registered under Societies Act, 1960: Section 55(2), Madhya Pradesh Co-operative Societies Act, 1960 contains a special provision for adjudication of disputes between a Co-operative Society and its employees regarding terms of employment, working conditions and disciplinary action. It is no doubt true that the definition of an Industrial Dispute as given in Section 2(a) of the Industrial Disputes Act, 1947 is wide enough to include a dispute between Co-operative Soceity and its employees regarding terms of employment, working condition and disciplinary action. But as "Industrial and Labour Disputes" is one of the matters enumerated in the Concurrent List and the Madhya Pradesh Co-operative Societies Act,1960 received the assent of the President, Section 55(2) of the Act must prevail in the State over the provisions of the Industrial Disputes Act, 1947 in regard to disputes between the Co-operative Society and its employees regarding terms of employment, working conditions and disciplinary action.

Co-operative Milk Societies Union v. *W. B. State*, A. I. R. 1958 Cal. 373 and *Jullunder T. C. Society* v. *Punjab State*, A. I. R. 1959 Punj. 34; distinguished.

The omission of any reference in Section 93 to the Industrial Disputes Act, 1947 cannot be read as a positive direction that the Industrial Disputes Act, 1947, would apply to a society registered under the Act, even though that Act, as pointed out earlier, does not regulate adjudication of disputes between a Co-operative Society and

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its employees regarding terms of employment, working conditions and disciplinary action. On the other hand the provisions in Section 93 of the Act, that M.P. Industrial Relations Act, 1960 shall not apply to a society registered under the Act only emphasizes the fact that a dispute falling under Section 55(2) of the Act can be decided only by the authorities pointed out therein even though the dispute may be capable of adjudication under the M. P. Industrial Relations Act, 1960 as an Industrial Dispute.

THE SAGAR MOTOR TRANSPORT KARMACHARI UNION, SAGAR v. THE AMAR KAMGAR PASSENGER TRANSPORT COMPANY, CO-OPERATIVE SOCIETY, SAGAR, I. L. R. [1972] M. P. ... 989

Industrial Employment (Standing Orders) Act, Madhya Pradesh (XXVI of 1961) Standing Order—Difference between terms and Conditions of Standing Order and the terms of contract—Terms and conditions of standing order to prevail—Standing Orders—Are statutory rules—Not liable to be ignored, modified varied or departed from by an agreement or contract between employer and the employee—Parties cannot contract out of the terms of standing orders—Standing Order 12—"Unsatisfactory work"—May not constitute "misconduct"—Employer can terminate services still on that ground—Termination is not by way of punishment: The Standing Orders embody the terms and conditions of service in a statutory form and are binding on the parties, that is the employer and the employee; and that if a contract between the employer and the employee provides for matters expressly covered by the Standing Orders, then the Standing Orders override the terms of the contract in regard to those matters.

The Standing Orders are statutory rules embodying the terms and conditions of service, and that they cannot be ignored, modified, varied or departed from by any agreement or contract between the employer and the employee in regard to any matter specifically contained in the Standing Orders. The Standing Orders being statutory rules embodying the relevant terms and conditions of service, there can be no freedom to the parties governed by the Standing Orders to contract out of the terms of the Standing Orders.

Bagalkot Cement Co. Ltd. v. *R K Pathan*, A. I. R 1963 S. C. 439, *Buckingham and Carnatic Co. Ltd* v. *Venkatiah*, (1963-64) 25 F. J. R. 25, *Workmen of Dewan Tea*

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Estate v. *Their Management*, (1963-64) 25 F. J. R. 386, *Tata Chemicals Ltd.* v. *Kailash*, A. I. R. 1964 Guj. 265 and *Behar Journals* v. *Ali Hasan*, A. I. R 1959 Pat. 431; referred to.

M/s J. K. Cotton Manufacturers v. *J. N. Tewari*, A. I. R. 1959 All. 639; not followed.

"Unsatisfactory work" may not constitute "misconduct" falling under Standing Order 12; yet it is open to the employer to terminate the services of an employee on that ground just as on the ground of any other infirmity in the employee.

JAGDISH MITRA SHARMA *v.* JIYAJEE RAO COTTON MILLS LTD. GWALIOR, I. L. R. [1972] M. P. ... 890

Industrial Employment (Standing Orders) Act, Madhya Pradesh (XXVI of 1961)—Standing Order 12—"Unsatisfactory work"—May not constitute "misconduct"—Employer can terminate services still on that ground—Termination is not by way of punishment: *vide* Industrial Employment (Standing Order) Act ... 890

Industrial Relations Act, Madhya Pradesh (XXVII of 1960)—Section 31(3)—Acceptance of amount—No bar to approaching labour Court for getting order set aside: *vide* Industrial Relations Act, Section 31(3) ... 293

Industrial Relations Act, Madhya Pradesh (XXVII of 1960)—Section 31(3)—Passing of receipt in full and final payment of all claims—Does not preclude the employee from challenging the correctness of order of discharge: *vide* Industrial Relations Act, Section 31(3) ... 293

Industrial Relations Act, Madhya Pradesh (XXVII of 1960)—Section 31(3)—Payment of amount of salary for notice period, gratuity amount and provident fund—Not a gratuitous payment or as matter of bounty or boon—Does not amount to an advantage under an order of discharge—Acceptance of amount—No bar to approaching labour Court for getting order set aside—Passing of receipt in full and final payment of all claims—Does not preclude the employee from challenging the correctness of order of discharge: The payment to the employee of the amount of salary for the notice period, gratuity amount and the Provident Fund amount was not any payment made to him gratuitously or merely as a matter of bounty or

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boon. It was not any benefit which the employee took under the order terminating his services dehors the claim on merits.

It cannot be maintained that when the employee received the salary, gratuity and Provident Fund amounts he obtained thereby some advantage under the order of discharge to which he would not have been entitled if he had not accepted the order as a valid one.

There being no choice before the employee his act in accepting the salary, gratuity and Provident Fund amounts could not prevent him from approaching the Labour Court for having the order terminating his services set aside.

Bhau Ram v. *Baij Nath Singh*, A. I. R. 1961 S. C. 1327; relied on.

It is wrong to infer that by receiving the amounts of salary etc. and passing a receipt containing the statement "Received in full and final payment of all my claims" employee precluded himself from challenging the correctness and legality of the order of his discharge from service.

Moore v. *Cunard Steamship Co.*, (1935) 28 B. W. C. C. 162; referred to.

Andhra Laundry v. *Addl. L. C.*, (1968) 1 L. L. J. 356; distinguished.

MANAGER, HIRA MILLS LTD., UJJAIN v. MUKUND, I. L. R. [1972] M. P. ... 293

Industrial Relations Act, Madhya Pradesh, (XXVII of 1960) —Section 66—Revisional jurisdiction of Industrial Court —Same as that of High Court under Section 115, Civil Procedure Code: *vide* Master and Servant ... 48

Interpretation of Statute—Aid from subsequent statute can be taken to determine meaning of particular term: *vide* States Re-organisation Act, Section 51(2) ... 799

Interpretation of Statute—Cardinal rule—Statute is prospective unless specially made retroactive: *vide* States Re-organisation Act, Section 51(2) ... 799

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Interpretation of Statute—Implications of directory and mandatory provisions of the statute—Test to be applied to find out whether provision is mandatory—Municipalities Act, Madhya Pradesh, 1961—Section 43 2)(b)—Provision as to time in—Is directory—Notification of the result of election held before expiry of time—Amounts to substantial compliance: An absolute enactment must be fulfilled exactly and that the act permitted by such an enactment is lawful only if it is done in accordance therewith without any departure therefrom. On the other hand, it is enough if a directory enactment is fulfilled substantially and the act so done is not rendered invalid for that reason.

Banarsi Das v. *Cane Commissioner, U. P.*, A. I. R. 1963 S. C. 1417 and *R. B. Sugar Co. Ltd., Rampur* v. *Rampur Municipality*, A. I. R. 1965 S. C. 895; referred to.

The legislative command is not couched in negative words which are usually regarded as a device to make a statute imperative.

M. Pentiah v. *Veeramallappa*, A. I. R. 1961 S. C. 1107; referred to.

Nor does the statute provide that the omission to observe the time specified therein will either be punishable or result in nullification of the act done.

Montreal Street Railway Company v. *Normandin*, A. I. R. 1917 P. C. 142; relied on

The provision as to time in Section 43(2)(b) of the Act is directory.

If the elections take place slightly before the expiry of the term of the outgoing office-bearers and such elections are notified under Section 45 of the Act after the expiry of that time, there will be substantial compliance with the directory provisions of clause (b) of Section 43(2) of the Act in regard to the time for holding the elections.

BIR GOVIND SINGH v. THE CHIEF MUNICIPAL OFFICER, MUNICIPAL COMMITTEE, JORA, I. L. R. [1972] M P. ... 1000

Interpretation of Statute—Principle "In a taxing Act one has to look merely at what is clearly said—There is no room for any intendment—There is no equity about a tax—There is no presumption as to a tax—Nothing is to be read in, nothing is to be implied—One can only look

fairly at the language used"—Applicable to the construction of charging sections and not machinery sections—Municipalities Act, Central Provinces and Berar—Rules framed under—Rules 9 and 10—Words "consumption or use" in Meaning of—Goods brought within municipal area for sale—Liable to payment of octroi tax—Words and Phrases —Word "Evade"—Implication of—Rules 13 and 43—Person not paying tax under *bona fide* and honest belief reasonably entertained regarding particular interpretation of Act or the rules—Person does not come within the mischief of those provisions—*Mens rea*—An essential constituent of offence: The Principle "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used" applies to the construction of charging sections only and not to machinery sections which only provide a machinery for the assessment and collection of the tax.

Cape Brandy Syndicate v *Inland Revenue Commissioners*, (1921) I. K B. 64 at p. 71, *Drummond* v. *Collins*, 6 T. C. 525 at p 540 *Whitney* v. *The Commissioners of Inland Revenue* 10 T. C. 88 at p. 110, *The Commissioner of Inland Revenue* v. *Countess of Longford*, 13 T. C. 593 at p. 620, *The Commissioners of Inland Revenue* v. *Longmans Green and Co., Ltd.*, 17 T. C. 272 at p. 282, *Allen and another (As Murray's Executors)* v. *Trehearne (H. M. Inspector of Taxes)*, 22 T. C 15 at p. 27, *Commissioner of Income-tax, Bengal* v. *Messrs Mahaliram Ramjidas*, A. I R. 1940 P. C. 124 *India United Mills Ltd.* v *Commissioner of Excess Profits Tax, Bombay*, (1955) S C. R. 1, 810 at p 816 and *Gursahal Saigal* v. *Commissioner of Income-tax, Punjab*, (1963) XLVIII ITR 1 -5; referred to.

The limited words "consumption or use" used in rules 9 and 10 of the Rules, which are the machinery sections of the taxing provisions relating to imposition and collection of octroi-tax by the Municipal Committee, Harda, must be construed 'in aid and not in derogation of the provisions imposing the tax on all articles brought within the municipal limits of Harda for 'sale, consumption or use'

Panchamlal v. *Municipal Board Rewa and another*, 1962 M. P L. J. 92, *Burmah-shell Oil Storage and Distributing Co. of India Ltd*, *Belgaum* v. *Belgaum Borough Municipality, Belgaum*, A. I. R. 1963 S. C. 906 at p. 912

and *Anand Transport Co. (Pri.) Ltd., Raipur and another* v. *Board of Revenue, M. P., Gwalior and others.* 1962 M. P. L. J. 775; referred to.

The goods brought within the Municipal Limits for sale are liable to the octroi tax due on them.

An act evaded is not necessarily an act infringed, even though often times the two expressions are used synonymously.

Simms v. *Registrar of Probates*, 1900 A. C. 323 at p. 334 and *Levene* v. *Inland Revenue Commissioners*, 1928 A. C. 217 at p. 227; referred to.

Rule 13 is a penal provision as it seeks to punish persons for evasion of octroi-tax, and consequently it must be understood as suggesting an underhand dealing, the adoption of a device or a stratagem to cheat the municipal committee of its legitimate dues. Consequently mere non-payment of a tax by a person under a *bona fide* and honest belief reasonably entertained, that on a proper interpretation of the Act and the Rules made thereunder the tax was not due from him, cannot bring the case within the mischief of rules 9, 13 and 43 of the Rules framed under Municipalities Act, C. P. and Berar, 1922.

Secretary, Municipal Committee, Sagar v. *Vrajlal*, 1958 M. P. L. J. 84 at p. 87; referred to.

For making a person liable to punishment under rule 43, that person must have requisite *mens rea* or a guilty mind.

Brend v. *Wood* (1946) 110 J. P. 317 at p. 318=(1946) 175 L. T. 306 and *Sriniwas Mall* v. *Emperor*, A. I. R. 1947 P. C. 135 at p. 139; referred to.

THE MUNICIPAL COMMITTEE, HARDA, DISTRICT HOSHANGABAD, M. P. *v.* BANSHILAL AGARWAL, PROPRIETOR OF THE SHOP M/S BAIJNATH BANSHILAL, HARDA, I. L. R. [1972] M. P. ... 935

Interpretation of Statute—Principle—Statute to be construed in a way so as to harmonise different provisions and not in a way which would make non-sense of legislation: *vide* Sugar Dealers Licensing Order ... 1110

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Interpretation of Statute—Purpose of saving clause—Purpose defeated if expression "amendments made from time to time" interpreted literally to make subsequent amendments applicable *vide* Income-tax Act, 1922 ... 69

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Jawaharlal Nehru Krishi Vishwa Vidyalaya Act (XII of 1963)—Section 55(2)(a)—Essential condition to be fulfilled for the validity of option: For the validity of an option it is essential that the party opting should be cognizant of his right, the party must have the knowledge of his or her right to opt and of those circumstances which would influence the exercise of the option. The person to whom an option is given must be left to his own free will to take or do one thing or another.

S. S. Pathak v. *State of M. P.*, 1967 M. P. L. J. 957; relied on.

As the petitioner did not validly exercise the option given to him by section 55(2)(a) of the Act within two years of 1st December 1964, then he must be regarded as having become an employee of the Vishwa Vidyalaya and having been absorbed in its service with effect from the expiry of two years from 1st December 1964.

DR. SHIVNAND JHA v. STATE OF M. P. I. L. R. [1972] M. P. ... 713

Jurisdiction—Ouster of jurisdiction of Civil Court not to be readily inferred—Parties can contract regarding jurisdiction of particular Court—Matter is question of fact in each case—Words regarding jurisdiction printed on top of contract form—Contract stating that it was subject to conditions printed over-leaf which did not contain that condition—Jurisdiction of civil Court not ousted: It is settled law that ouster of jurisdiction of a Civil Court is not to be readily inferred; and though it is permissible for the parties to a contract to agree to have all their disputes arising under the contract adjudicated upon by one of the Courts having jurisdiction (where more than one Court is competent to try them), it is a question of fact in each case whether the parties to the contract had so stipulated.

The words regarding jurisdiction of Court are printed on the contract form. The contract mentions that it is subject to conditions printed over-leaf, which does not contain that condition.

In the circumstances the jurisdiction of ordinary civil Court within whose jurisdiction part of the cause of action arises, is not ousted.

M/s Patel Bros v. *M/s Vadilal, A. I. R.* 1959 Mad. 227, and *S. Manuel Raj and Co.* v. *J. Munilal and Co*, A. I. R. 1963 Guj. 148; referred to.

RATANCHAND v. ROHTAS INDUSTRIES LIMITED CALCUTTA, I. L. R. [1972] M. P. ... 1106

Jurisdiction—Parties can contract regarding jurisdiction of particular Court—Matter is a question of fact in each case: *vide* Jurisdiction ... 1106

Jurisdiction—Words regarding jurisdiction printed on top of contract form—Contract stating that it was subject to conditions printed over-leaf which did not contain that condition—Jurisdiction of civil Court not ousted: *vide* Jurisdiction — 1106

Land Acquisition Act (I of 1894)—Sections 9 and 25(1)—Claim made in pursuance of notice—Cannot be equated to offer—Claimant cannot claim compensation in excess of that made under this provision: *vide* Land Acquisition Act, Section 25(1) ... 311

Land Acquisition Act (I of 1894)—Section 25(1)—Court, Power of, to grant compensation at a rate higher than that claimed—Sections 9 and 25(1)—Claim made in pursuance of notice—Cannot be equated to offer—Claimant cannot claim compensation in excess of that made under this provision: Whatever may have been the reason, the claimants restricted their claim to compensation, and it was not open for the Court to award to them more than what they claimed.

In re. Zamindar of Ettaypuram. A. I. R. 1943 Mad. 337; distinguished.

A claim made on a notice under Section 9 for getting compensation cannot be equated to an offer which, leads to the formation of a contract. Section 25(1) is plain and

contains a statutory injunction to the Court not to award compensation in excess of what is claimed in pursuance to a notice under Section 9.

THE COLLECTOR, SEONI v. DADOO YOGENDRA NATH SINGH, I. L. R. [1972] M. P. ... 311

Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)—Sections 140 and 142—Decision given by Tahsildar under Section 140—Final unless got set aside through civil Court—Party injured by breach of that order—Remedy is before revenue officer under later part of Section 142: *vide* Land Revenue and Tenancy Act, Madhya Bharat, Sections 140 and 142 ... 164

Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)—Sections 140 and 142—Scope and applicability—Decision given by Tahsildar under Section 140—Final unless got set aside through civil Court—Party injured by breach of that order—Remedy is before revenue officer under later part of Section 142—Condition in which civil Court will have jurisdiction when matter is entrusted to the revenue Court by the provision of the Act—Civil Court, Jurisdiction of, to entertain suit for removing encroachment on recognised road or path or common land: Under section 140 of the Land Revenue and Tenancy Act, Madhya Bharat, the Tahsildar takes note of the disputes arising as to the route by which the holder of the land seeks to have access to his fields or to waste or pasture lands otherwise than by recognised routes, paths or common lands; in other words, the holder of land seeks to use another holder's land as a pathway in certain circumstances, or, seeks to exercise an easement of the kind usually described as easement of necessity. Where the obstruction is caused to path or route, the aggrieved party can move the revenue officer under later part of section 142 of the Act.

When the plaintiff comes with an averment that there is a recognised road, path or common land belonging to Government and available to the whole village and further that the defendant has obstructed it, he comes under Section 142 and has accordingly to move the Tahsildar and the Tahsildar only. A suit in a civil Court for claiming such relief will not be maintainable.

Ramadhar v. *Nyaya Panchayat, Hanumana and others*, Misc. Petition No. 140 of 1960, decided on the 31st January 1961; distinguished.

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It is beyond dispute that in the event of a particular class of disputes being cognizable by a revenue officer or by government under the Madhya Bharat Act, the civil Court will have no jurisdiction except where the Act itself expressly empowers it. Such jurisdiction of the civil Court may be exclusive or may be optional in the sense that the aggrieved party may either go straight way to the civil Court or having gone to the revenue authority may still go to the civil Court for a declaration of the invalidity of the decision. In fact two types of cases would arise; those in which the statute empowers the revenue authority–Tahsildar or Sub–Divisional Officer or Collector or the Board or the Government as the case may be, and leaves the matter at that without any indication that the *lis* is further cognizable by a civil Court; in that class of cases Section 147 of the Madhya Bharat Act would make the revenue court's jurisdiction exclusive. Naturally at any stage a party can invite the civil Court to drop the matter or return the plaint to the plaintiff for presentation to the appropriate revenue authority. The second class of cases are those in which the revenue courts initial competency notwithstanding the party is not debarred from going to the civil Court. There the revenue Court's powers are of a summary nature and its orders are provisional; it is open to the party aggrieved to get a fuller adjudication in the civil Court.

BHULIBAI v. AMBARAM, I. L. R. [1972]M. P. ... 164

Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)—Section 142—Condition in which civil Court will have jurisdiction when matter is entrusted to the revenue Court by the provision of the Act: *vide* Land Revenue and Tenancy Act, Madhya Bharat, Sections 140 and 142 ... 164

Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)—Sections 142 and 147 - Civil Court, Jurisdiction of, to entertain suit for removing encroachment on recognised road or path or common land: *vide* Land Revenue and Tenancy Act, Madhya Bharat, Sections 140 and 142 ... 164

Land Revenue and Tenancy Act, Vindhya Pradesh, 1953 (III of 1955)—Section 220 Finding given by civil Court in a reference—Finding not to be considered to be of civil Court in a suit respecting title—Civil Court acts in consultative or advisory capacity: *vide* Limitation Act, Article 142 ... 1049

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Land Revenue Code, Madhya Pradesh (XX of 1959)– Section 51—Power of review retrospectively conferred and is available in respect of orders made by Revenue Officers under any law for the time being in force: *vide* Review ... 238

Land Revenue Code, Madhya Pradesh (XX of 1959)—Section 51 and Abolition of Proprietary Rights Act, Madhya Pradesh, 1950 (I of 1951), Section 6(2)– Order passed under Section 6(2) of Abolition of Proprietary Rights Act, Madhya Pradesh, 1950—Can be reviewed under Section 51 of the Madhya Pradesh, Land Revenue Code: *vide* Review ... 238

Land Revenue Code, Madhya Pradesh (XX of 1959)—Section 56—Definition of "Order" in—Applies to the whole of the chapter: *vide* Review ... 238

Land Revenue Code, Madhya Pradesh (XX of 1959)—Section 168(2)—Headings of section not attracted—Person holding land becomes occupancy tenant—Section 168(4)– Provides for ejectment of a tenant of a disabled *Bhumiswami* —Section 257—Jurisdiction under, to be treated as exclusive unless provision is found to grant jurisdiction to civil Court—Sub-Divisional Officer alone has jurisdiction to eject tenant of disabled *Bhumiswami* and not civil Court—For claiming benefit under Section 168(2)(v)—Tenant has to move Sub-Divisional Officer and not civil Court: If any of the headings in Section 168(2) of Madhya Pradesh Land Revenue Code not attracted, then certainly person holding land cannot acquire occupancy tenancy.

Section 168(4) is the only express provision in the Code under which the tenant of a *Bhumiswami* disabled under Section 168(2) can be ejected at all, the presumption being that without recourse to this step even such a tenant cannot be evicted.

Jurisdiction conferred by Section 257 has to be treated as exclusive unless either in Section 168 itself or elsewhere in the Code there is a general or a particular provision making this also cognizable by the civil Courts.

The power to eject any tenant under a disabled *Bhumiswami*, such as the plaintiff claims to be, is in the Sub-Divisional Officer and not in the Civil Court. Even on the assumption that the plaintiff is really entitled to the benefit of Section 168(2)(v) it is for him to go to the Sub-Divisional Officer.

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Land Revenue Code, Madhya Pradesh (XX of 1959 —Section 168(2)(v)—For claiming benefit under—Tenant has to move Sub-Divisional Officer and not Civil Court: *vide* Land Revenue Code, Section 168(2) ... 324

Land Revenue Code, Madhya Pradesh (XX of 1959)—Section 168(4)—Provides for ejectment of a tenant of a disabled *Bhumiswami*: *vide* Land Revenue Code, Section 168(2) 324

Land Revenue Code, Madhya Pradesh (XX of 1959)—Section 257—Jurisdiction under, to be treated as exclusive unless provisions is found to grant jurisdiction to civil Court: *vide* Land Revenue Code, Section 168(2) ... 324

Land Revenue Code, Madhya Pradesh (XX of 1959)—Section 257—Sub-Divisional Officer alone has jurisdiction to eject tenant of disabled *Bhumiswami* and not civil Court: *vide* Land Revenue Code, Section 168(2) ... 324

Lessor and Lessee—Joint co-lessor can sue other co-sharer for reimbursement: *vide* Lessor and lessee ... 749

Lessor and Lessee - Plaintiff—Joint Lessor-not entitled to sue for share of his proportionate rent unless there is arrangement—Joint co-lessor can sue other co-sharer for reimbursement: Certain principles are well settled. Firstly, payment of rent to one of the several joint-lessors is a payment to all. Secondly, the joint-lessors may sue together, or any one of them may sue alone; for the lease by lessors who are joint-tenants of a property operates as a lease by each and by all Thirdly, if the lessors are tenants-in-common, the lessee should pay rent on a joint receipt to all or to one who is authorised by others. Payment to one-cosharer landlord is not a discharge against all.

The liability of a tenant to pay rent is founded on privity of estate. That is why a joint owner is not entitled to sue for proportionate rent unless there is such an arrangement.

Raja Pramada Nath Roy v. *Raja Ramani Kanta Roy*, (1907) L. R. 35 I. A 73, *Roy Joitindra Nath* v. *Prasanna Kumar Benerji*, (1910) L. R. 38 I. A 1 and *Baraboni Coal Concern* v. *Shree Sree Gopinath Jiu*, (1933) L. R. 61 I.A. 35; relied on.

When one co-lessor appropriates the whole of the rent to the exclusion of the others, there is no reason why the

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excluded co-sharer should not have the remedy by a suit for his share of rents. The right of the joint-lessor to be reimbursed by his joint-lessor does not arise out of any contract, express or implied, but is founded on principles af equity and justice.

Robert Watson and Co. v. *Ramchand Dutt*, (1890) L.R. 171 I A 110 and *Ramsankar Bhaduri* v. *Juanada Sundari Debya*, 5 Cal. L. J. 267; referred to.

Chandra Kishore Chakravarty v. *Biseswar Pal*, (1928) L. R. 55 Cal. 396, *Deva Venkatakrishna* v. *Govindraja*, A. I. R. 1953 Mad. 854, *Narul Huda* v. *Mohd. Ibrahim*, A. I. R. 1953 Nag 45, *Murlidhar* v. *Ishri Prasad*, I. L. R. (1884) 6 All. 576, *Jyoti Bhushan Gupta* v. *B. N. Sarkar*, A. I. R. 1945 All. 311 and *Brijlal* v. *Dau Mohanlal*, 1959 M. P. L. J. 879(F. B.); distinguished.

GANGADHAR RAO KHER *v.* GANESH PRASAD, I. L. R. [1972] M. P. ... 749

Limitation Act, Indian (IX of 1908)—Article 142—Relief of possession—Includes declaration of title—Jurisdiction is only of Civil Court: *vide* Limitation Act, Article 142 ... 1049

Limitation Act, Indian (IX of 1908)—Article 142—Suit for possession after dispossession—Plaintiff has to establish title—Relief of possession—Includes declaration of title—Jurisdiction is only of Civil Court—Land Revenue and Tenancy Act, Vindhya Pradesh, 1953—Section 220—Finding given by Civil Court in a reference—Finding not to be considered to be of Civil Court in a suit respecting title—Civil Court acts in consultative or advisory capacity—*Res *-judicata*—Decision given by revenue Court in pursuance of order of Civil Court on reference—Not *res judicata* in subsequent suit in Civil Court: A suit for possession after dispossession is a suit based on title although the question of title may be *res judicata*. The relief of possession cannot be had unless the plaintiffs establish their title and also showed that the title was still subsisting on the date of suit.

Shanker v. *Poonamchand*, I.L. R. 1936 Nag, 254; referred to.

A declaration of title is implicit in the relief of possession asked for, the Civil Court undoubtedly has jurisdiction to try the suit.

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Nathu v. *Dilbande Hussain and others*, 1964 M. P. L. J. 822 and *Kaliuram* v. *Ganesh Prasad*, 1962 M.P.L J. Note 237: Second Appeal No. 127 of 1961, decided on the 5th March 1962; referred to.

The finding given by the Civil Court on the issue referred to it would not be treated as if it were given by a Civil Court in a suit respecting title.

In answering the issue of title referred, the Civil Court was not acting as a Court of ordinary original jurisdiction but in a consultative or advisory capacity.

The finding in the previous proceedings would not operate as *res judicata* inasmuch as the revenue Court which ultimately tried the former mutation case was not competent to try the present suit.

SMT. SARBADIABAI v. ISHWARDIN SINGH, I.L.R. [1972] M.P. ... 1049

Master and Servant—Employee bound by his terms of employment given to him or by those that he subsequently accepted expressly or impliedly—Not to be prejudiced by reservation not communicated to him though same noted on office file or recorded elsewhere—Terms of appointment cannot be unilaterally revised—States Reorganisation Act —Section 115(7) - Scales of pay— Not revisable to the disadvantage of employee—Mode for prescribing the conditions of service of the Government Servant of the former State—Is by making rules under Article 309 of the Constitution only: An employee is bound by the terms of employment given to him or by those that be subsequently accepted, either expressly or by necessary implication. He cannot be prejudiced by any reservation not communicated to him, though it might be noted on the office file or recorded elsewhere.

The terms of appointment of employee forming part of the contract of service cannot be unilaterally revised.

Scale of pay made available to the employee cannot be revised to his disadvantage in view of the provisions of Section 115(7) of the States Regorganisation Act.

Raghvendra Rao v. *Deputy Commissioner*, A. I. R. 1965 S. C. 136; referred to.

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The only method that seems to be available for prescribing the conditions of service of the Government Servant of the former State is by making rules under Article 309 of the Constitution.

J. K. PAL *v.* STATE OF MADHYA PRADESH, I.L.R. [1972] M. P. ... 1008

Master and Servant—Employee not to be prejudiced by reservation not communicated to him though same noted on office file or recorded elsewhere: *vide* Master and Servant ... 1008

Master and Servant—Matter of promotion—Entirely in the discretion of employer—Temporary promotion of a person to a higher cadre in officiating capacity—Does not amount to appointment in that post or cadre—Does not confer right to the post—Industrial Relations Act. Madhya Pradesh, 1960—Section 66—Revisional jurisdiction of Industrial Court—Same as that of High Court under Section 115, Civil Procedure Code: Normally, in dealing with disputes as to promotion, however anxious industrial adjudication may be, regard must always be had to the fact that in matters of promotion discretion has primarily to be left to the employer.

Brooke Bond (India) Pvt. Ltd. v. *Their Workmen*, (1963) 1 L. L. J. 256 and *Management of Brooke Bond India (P) Ltd.* v. *Their Workmen*, A. I. R. 1966 S. C. 668; relied on.

Now, the temporary promotion of a person to a post in a higher cadre in an officiating capacity, is not tantamount to his appointment in a particular category or cadre within the meaning of the Circular. Such a temporary appointment confers on him no right to that post.

The powers of Industrial Court are indentically the same as the powers of the High Court under Section 115 of the Civil Procedure Code because section 66 of the Madhya Pradesh Industrial Relations Act, 1960, is in *pari materia* with that section.

Kymore Cement Mazdoor Congress, Kymore v. *Industrial Court, M. P., Indore*, 1966 M. P. L. J. 94; relied on.

MAHENDRALAL *v.* THE GENERAL MANAGER, HINDUSTAN STEEL LTD, BHILAI, I. L. R. [1972] M. P. ... 48

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Master and Servant—Right of Master to suspend servant during pendency of enquiry—Right of Servant to salary during pendency of suspension—College Code—Has force of law—Clause 9(iv)—Effect of the provision—General Clauses Act, Madhya Pradesh, 1957—Section 16—Not available for construing University of Sagar Act or Ordinance made by University under the Act—Section 16 enacts the rule of general law: A master can refuse to take work from his servant and in that sense can suspend him during the pendency of an enquiry against him even though there is no specific provision in the contract of service. But the servant remains entitled to his full remuneration inspite of suspension unless there is some contractual term or statutory provision which enables the master to suspend the servant without payment of salary.

Management of Hotel Imperial, New Delhi v. *Hotel Workers Union*, A. I. R. 1959 S C. 1342; *T. Cajee* v. *V. Jormanik Siem*, A. I. R 1961 S. C. 276, at p. 283 and *R. P. Kapur* v. *Union of India* A. I. R. 1964 S. C. 787; relied on.

The Code having been made under statutory powers has the force of law.

P. R. Godh v. *A. L. Pande*, 1965 J. L. J. 513 (S. C.); relied on.

The effect of clause 9 (iv) of the College Code is that the governing body of College can with previous approval of the Vice Chancellor take disciplinary action against a Principal.

M. P. General Clauses Act, 1957 in general or Section 16 in particular cannot be resorted to for construing University of Sagar Act, 1946 or an Ordinance made by the University under that Act.

Section 16 of the General Clauses Act statutorily enacts the rule of general law that the authority entitled to appoint a servant is also competent to suspend and dismiss him but the section has not the effect of providing that the servant who has been suspended will not be entitled to his pay.

Dr UMASHANKAR SHUKLA v. B.R. ANAND, CHAIRMAN, GCVERNING BODY, ARTS AND COMERCE COLLEGE, HARDA, ILR [1972] M. P. ... 249

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Master and Servant—Temporary promotion of a person to a higher cadre in officiating capacity—Does not amount to appointment in that post or cadre—Does not confer right to the post: *vide* Master and Servant ... 48

Master and Servant—Terms of appointment cannot be unilaterally revised: *vide* Master and Servant. ... 1008

Master and Servant—Tests which determine the relationship of Master and Servant—Panchayats Act, Madhya Pradesh, 1962—Section 17—Village Patel—A person in the service of Government—Disqualified from being elected as Panch: The existence of relationship of Master and Servant in general imports selection and appointment by the master, payment of wages or remuneration by him, power in him of termination of employment and his right to control the manner of doing the work. But all these factors need not be present in every case and normally the right of the master to control the manner of doing the work and his power of supervision and control are strongly indicative that the relationship of Master and Servant exists.

State of U P. v. *A. N. Singh*, A. I. R. 1965 S. C. 360 at p. 363; *D. M Sahib and sons* v. *Union of U. B. Workers*, A. I. R. 1966 S. C. 370 at pages 373 and 374 and *I. T. Commissioner of U. P.* v. *Manmohandas*, A. I. R. 1966 S. C. 798 at pp. 802 and 803; relied on.

The relationship of Master and Servant exists in between the State Government and a Patel A person who is a Patel is therefore in the service of the State Goverment and is disqualified for being elected as such.

State of Assam v. *Kanak Chandra*, A. I. R. 1967 S. C. 884; relied on. *M. Ramappa* v. *Sangappa*, A. I. R. 1958 S. C. 937; referred to.

MANOHARLAL v. GANGARAM, I. L. R. [1972] M. P. ... 1026

Mineral Concession Rules—General law of waiver of forfeiture—Applicable to mining leases—Rule 27(5)—Use of words "May" and "Shall"—Indicates that Government not bound to determine lease if notice not complied with—Embodies the principle of waiver—Government doing any act after serving notice showing intention to continue lease—Action amounts to implied waiver of right to forfeit or determine lease: The general law of waiver of forfeiture is applicable to mining leases.

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Rex v. *Paulson*, (1921) A. C. 271 (P. C.); relied on.

The use of the word "May" in the context of the determination of the lease and use of the word "shall" in earlier portion of Rule 27(5) in the context of notice is clearly indicative that the Government is not bound to determine the lease even if the notice be not complied within time. It is thus open to the Government either to elect to determine the lease or to elect not to determine it The choice of action emerging from the enabling 'may' clearly brings in the principle of waiver. If the Government, after a notice requiring the lessee to make payment or remedy the breach is not complied with, does any act which shows an intention to continue the lease, it would amount to an implied waiver of the right to forfeit or determine the lease on the ground of non-compliance of the notice.

M/S OZHA AND CO.(PRIVATE) LTD., JAMKUNDA COLLIERY, v. THE UNION OF INDIA, I. L. R. [1972] M. P ... 708

Mineral concession Rules—Rule 27(5)—Use of words "May" and "Shall"—Indicates that Government not bound to determine lease if notice not complied with—Embodies the principle of waiver—Government doing any act after serving notice showing intention to continue lease-Action amounts to implied waiver of right to forfeit or determine lease: *vide* Mineral Concession Rules ... 708

Motor Vehicles Act (IV of 1939)—Act contains no provision for restoration of the application—Authority does not possess inherent power except when given by statute: *vide* Motor Vehicles Act, Section 57(5) and (7) ... 218

Motor Vehicles Act (IV of 1939)—Appeal—Is a continuation of proceedings before Regional Transport Authority: *vide* Motor Vehicles Act, Section 57(5) and (7) ... 218

Motor Vehicles Act (IV of 1939)—Section 43 (i)(iii)—Scope of: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 57(5) and (7)—Does envisage dismissal for default—Act contains no provision for restoration of the application—Authority does not possess inherent power except when given by statute—Section 64 and Rule 73—Circumstances in which the case can be remanded to Regional Transport Authority by the appellate authority—Appeal—Is a continuation of

proceedings before Regional Transport Authority—Rule 73(c)—Does not exclude power to order remand—Power of remand is inherent in every appellate authority:

Per Full Bench. There is no power in Regional Transport Authority to dismiss an application for default and specially when notice as required by rule 45(f) has not been served on the applicant.

Shri Balwant Transport Company (Private) Ltd. v. *The State Transport Appellate Authority*, Miscellaneous Petition No. 121 of of 1964, decided on the 11th August 1964; followed.

The State Transport Appellate Authority has power to remand the case for fresh decision under certain circumstances.

Per C. J.—The language of section 57(5) and (7) does not envisage a dismissal on account of the absence of a party. The very fact that for such refusal, reasons have to be given by the R. T. A. indicates that the application must be decided on merits.

Another consideration which would lead to the same conclusion is that there is no provision in the Act for restoration of such applications if dismissed for default.

The power to restore, unless it be due to some apparent mistake of the dismissing authority itself, cannot be inherent in all authorities, except when it is given by statute; and in the second place such a power to restore not only would upset the order in favour of that applicant but would affect a number of other persons who had applied and whose cases had been considered on the previous occasion. It would further complicate the matter by dislodging the person who got the pemit and had invested money for starting the service, for no fault of his.

If the material is on record the appellate authority should dispose of finally such a dispute and not remand the case to Regional Transport Authority. The mere fact of the Regional Transport Authority not having applied its mind to the facts of a particular case should not be sufficient to clothe the State Transport Appellate Authority with power to remand the case to the Regional Transport Authority.

The proper principle on which remand can be made by the State Transport Appellate Authority is that the material on record is insuffieient to decide the matter and that the further enquiry which is necessary is such as cannot conveniently be undertaken by the Appellate Authority.

Per Bhave J.—When any statute entrusts any function to a particular authority, it is always desirable that authority alone should discharge that function.

The Appellate Authority would be justified in remanding the case where the Regional Transport Authority totally failed to determine the competing claims of the parties on a consideration of the material on record having regard to the provisions under section 47 of the Motor Vehicles Act and has even failed to refer in its order to the material placed before it.

Per A. P. Sen J.– On plain reading of Rule 73 of Madhya-Pradesh Motor Vehicles Rules 1940 it is manifest that the power and jurisdiction of the State Transport Appellate Authority in the matter of grant or refusal of stage carriage permit, is co-extensive with those of the Regional Transport Authority.

Appeal before Appellate authority is, virtually a continuation of the proceedings before the Regional Transport Authority for the grant of a stage carriage permit.

Whether there is a special provision or not, the power to order a remand must be taken to be inherent in every appellate Court or Tribunal in its very constitution as an appellate authority.

A power to entertain an appeal must comprise within its ambit the power to dispose of the appeal in any manner known to law.

A recourse should be had to the power of remand only in very exceptional circumstances where justice of the case demands it. An order of remand under Rule 73(c) would be a proper order, if it is made by the Appellate Authority, in a case where there is no material or in which the material on record is not sufficient for reaching a decision on the point at issue or where there is some material defect in procedure which renders the proceedings before the Regional Transport Authority radically defective. In a case where there is material on record,

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on which a decision can be reached, the Appellate Authority would not be justified in remanding the case after setting aside the finding of the Regional Transport Authority or to direct it to reconsider the evidence.

SURENDRA MOHAN CHAURASIYA v. STATE TRANSPORT APPELLATE AUTHORITY, M. P., GWALIOR, I. L. R. [1972] M. P. ... 218

Motor Vehicles Act (IV of 1939)—Section 57(8)—Extension of route by 19 miles—Extension cannot be said to be a little change—Extension of permit not permissible: Having regard to the distance and other factors extension of 19 miles cannot be called a little change of the original permit and is not permissible under section 57(8) of the Act.

Ugratara Motor Service v. *Regional Transport Authority, Rewa*, M. P. No 266 of 1963, decided on the 14th October 1963, *M/S Ramgopal Satyanarayan* v. *Regional Transport Authority, Rewa* M. P. No. 46 of 67, decided on the 26th April 1967 and *Sheikh Rasul Motor Transport Company* v. *Regional Transport Authority, Jabalpur and others*, M. P. No. 108 of 67, decided on the 2nd May 1967; relied on.

Ramvilas Service Ltd v. *Raman and Raman Service Ltd.*, C. A. No. 258 of 67, decided on the 20th October 1967 (S. C.); distinguished.

ABDUL MOHI SIDDIQUI v. THE STATE TRANSPORT APPELLATE AUTHORITY, GWALIOR, I.L.R. [1972] M. P. ... 244

Motor Vehicles Act (IV of 1939)—Section 64 and Rule 73—Circumstances in which the case can be remanded to Regional Transport Authority by the appellate authority: *vide* Motor Vehicles Act, Section 57(5) and (7) ... 218

Motor Vehicles Act (IV of 1939)—Section 68-B—Chapter IV-A overrides Chapter IV—Scheme framed under Chapter IV-A—Scheme conflicting with ceiling order—Scheme does not become invalid: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D—Delegation of *quasi*-judicial and *quasi*-legislative functions—Validity: *vide* Function of Government ... 822

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Motor Vehicles Act (IV of 1939)—Section 68-D—Functions performed under—Are administrative functions, though the process is *quasi*-judicial: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D—Functions under the Section 68-D are executive, *quasi*-judicial and also leg slative—Functions can be regulated by rules of business: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D and State Road Transport Services (Development) Rules, Madhya Pradesh, 1959, Rule 6—Confer no power on Governor: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D and State Road Transport Services (Development) Rules, Madhya Pradesh, 1959, Rule 6—Functions of State Government—Can be discharged according to rules of business—Can be performed by a person duly authorised under rules of business; *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D(2) and Supplementary Instructions, para 3—Minister, power of, to interfere with the order of Special Secretary: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D(2)—Authority in general terms on Special Secretary sufficient—Not necessary to make an order of allocation with reference to any existing scheme before delegating power to Special Secretary: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D(2)—Enquiry under Section 68 D 2)—Cannot be regarding conclusion or otherwise of the requisite opinion formed under Section 68-C: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 68-D(2)—Non-specification in a scheme of a permit proposed to be cancelled—Permit cannot be cancelled and hence scheme vitiated: *vide* Function of Government ... 822

Motor Vehicles Act (IV of 1939)—Section 95(2)(b)—Extent of liability of Insurance Company to pay compensation: *vide* Motor Vehicles Act, Section 110-A ... 733

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Motor Vehicles Act (IV of 1939)—Section 110-A—Action under—Is a representative action on behalf of all representatives of deceased: *vide* Motor Vehicles Act, Section 110-A and D ... 1069

Motor Vehicles Act (IV of 1939)—Section 110-A—Burden of Proof—Initial burden to prove want of negligence is on defendant—Defendant has to prove that inspite of his reasonable care, accident occurred: Motor Vehicles Act, Section 110-A ... 733

Motor Vehicles Act (IV of 1939)—Section 110-A—Presumptions that can be drawn from the nature and character of the accident—Burden of Proof—Initial burden to prove want of negligence is on defendant—Defendant has to prove that inspite of his reasonable care, accident occurred—Quantum of damages—Principles to be applied for determining compensation—Section 95(2)(b)—Extent of liability of Insurance Company to pay compensation: Where an omnibus leaves the road and an accident takes place on the off-side and this is proved without more, then the principles of *res ipsa loquitur* is at once attracted. Negligence will be presumed as the cause of the event. Unless the defendant rebuts this presumption, the plaintiff succeeds. (2) To merely point out what the immediate cause of the bus leaving the road was, e g. there was a tyre burst or that it went into a skid, is by itself no rebuttal of the presumption. (3) To displace the presumption, the defendant must prove, or must show from the evidence, either that the immediate cause was due to a specific cause, which does not connote negligence on his part but points to its absence as more probable, or he must show that all reasonable care in and about the management of the vehicle was taken. (4) The burden, in the first instance is on the defendant to disprove his liability.

British Columbia Electric Rail Co Ltd. v. *Loach*, (1914-15) All E. R Rep. 426, *Barkway* v. *South Wales Transport Co. Ltd*, (1948) 2 All E R. 460 and *Gobald Motor Service Ltd.* v. *R M. K. Veluswami*, A. I. R. 1962 S. C. 1; relied on.

Even assuming that the spring broke before the impact, the burden was still on the defendants to prove want of negligence. It was for them to prove that reasonable care had been taken inspite of which the spring broke.

The principles which must be applied in determining the quantum of compensation payable to the heirs of deceased are: (1) The expectation of the life of deceased has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents; (2) Having regard to the amounts which the deceased used to spend on his dependants during his life time, and having regard to other circumstances, the amount which is required for future provision of the dependants is to be estimated. (3) The estimated annual sum must be multiplied by the number of years of the estimated span of life of the deceased and that must be balanced by any pecuniary advantage which, from whatever source, comes to the dependants by reason of the death (4) The burden is on the plaintiffs to establish the extent of their loss.

Nance v. *British Columbia Eletric Railway*, 1951 A. C. 601; relied on.

In case of accident resulting in death of a passenger the insurance company, by virtue of section 95(2)(b) (second part) is liable to pay Rs. 2000/- as compensation for each passenger.

KUMARI SWARNALATA *v.* JOGENDRAPAL, I.L.R. [1972] M. P. ... 733

Motor Vehicles Act (IV of 1939)—Section 110-A—Quantum of damages—Principles to be applied for determining compensation: *vide* Motor Vehicles Act, Section 110-A ... 733

Motor Vehicles Act (IV of 1939)—Section 110-A and D—Cricumstances in which driver of Motor Vehicle can be held responsible for accident—Driver continues to be liable even if the other party to the accident is negligent—Action under—Is a representative action on behalf of all representatives of deceased: Where a motor vehicle dashes against a rick-shaw, if, in a situation of imminent peril, after the danger became apparent or should have become apparent, there was time during which either or both might avert the impending disaster and if in spite of the difficulties which such situation presented the drivers due efforts to avoid the accident could have been successful, his negligence would be the decisive cause.

Even if negligence of the rickshaw driver is *causa sine qua non*, yet, if the driver of the Motor Vehicle, acting reasonably, could and ought to have avoided the casuality, he is liable.

British Columbia Electric Rail Co. Ltd. v. *Loach*, (1914-15) All E. R. Rep 426 and *Mclean* v. *Bell*, (1932) All E. R. 421; referred to.

A claim under Section 110-A of the Motor Vehicles Act has a representative character and is essentially on behalf of all the reprnesetatives of the deceased.

Northern India Transporters Ins. Co. Ltd. v. *Shrimati Amra Wati and another*, 1966 A. C. J. 165; *The State of Rajasthan* v. *Mst. Parwati Devi*, 1966 A. C. J. 123 and *Chuharmal Issardas* v. *Haji Wali Mohammed*, 1968 A. C. J. 391; referred to.

SMT. SUMAN SINGH *v.* GENERAL MANAGER, M P. STATE ROAD TRANSPORT CORPORATION, BHOPAL, I. L. R. [1972] M. P. ... 1069

Motor Vehicles Act (IV of 1939)—Section 110-A and D—Driver continues to be liable even if the other party to the accident is negligent: *vide* Motor Vehicles Act, Section 110-A and D ... 1069

Motor Vehicles Act (IV of 1939)—Section 110-A(3)—In deciding question of delay—Humane and not mechanical view is to be taken—Some delay in filing application for claim after discharge from hospital—Delay liable to be condoned: It is proper for the tribunal to take humane and not a mechanical view of delay that might occur in filing of the claims.

If the claim is presented soon after the discharge from the hospital and the interval is broadly speaking not excessive and is about the time sufficient to make enquiries and take legal advice, the claim even though it might be beyond the statutory limitation should be entertained and delay condoned.

New Indian Assurance Co. Ltd. v. *Punjab Roadways*, A.I.R. 1964 Punj. 235; relied on.

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Bhojraj v. *Darsu*, A. I. R, 1959 M. P. 52; referred to.

Basanti lal v. *M/s Sagar Transport-Co. Ltd.*, 1965 M. P. L J. Note 120; distinguished.

RAJU v. CHOGALAL, I. L. R. [1977] M. P. ... 585

Motor Vehicles Act (IV of 1939)—Section 110-A(3)—Some delay in filing application for claim after discharge from hospital -Delay liable to be condoned: *vide* Motor Vehicles Act, Section 110-A(3) ... 585

Motor Vehicles Act (IV of 1939)—Chapter IV-A—Nature of objections which can be raised to the draft scheme framed under the Chapter: *vide* Function of Government .. 822

Motor Vehicles Act (IV of 1939)—Chapter IV-A—Things necessary to be shown to prove *mala fides* of the scheme framed under the Chapter: *vide* Function of Government ... 822

Motor Vehicles Rules, Madhya Pradesh, 1940—Rule 73(c)—Does not exclude power to order remand—Power of remand is inherent in every appellate authority: *vide* Motor Vehicles Act, Section 5(5) and (7) ... 218

Municipalities Act, C. P. and Berar (II of 1922)—Rules framed thereunder—Rules 9 and 10—Goods brought within municipal area for sale—Liable to payment of octroi tax: *vide* Interpretation of Statute ... 935

Municipalities Act, C. P. and Berar (II of 1922)—Rules framed thereunder—Rules 9 and 10—Words "consumption or use" in—Meaning of: *vide* Interpretation of Statute ... 935

Municipalities Act C. P and Berar (II of 1922)—Rules framed thereunder—Rules 9 and 10—Word "Evade"—Implication of: *vide* Interpretation of Statute ... 935

Municipalities Act, C. P. and Berar (II of 1922)—Rules framed thereunder—Rules 13 and 43—Person not paying tax under *bona fide* and honest belief reasonably entertained regarding particular interpretation of Act or the rules—Person does not come within the mischief of those provisions: *vide* Interpretation of Statute ... 935

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Municipalities Act, C. P. and Berar (II of 1922)– Rules framed thereunder—Rule 43—*Mens rea*—An essential constituent of offence: *vide* Interpretation of Statute ... 935

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 38—Councillor can be removed only by State Government: *vide* Criminal Procedure Code, Section 197 ... 218

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 43—Does not contain provision for convening of a meeting for election of President or Vice-President for filling vacancy caused by death or resignation– Section 43(2)(e)—Meeting at which a new President or Vice President is to be elected—Not a first meeting after the general election—*Filling in the vacancy of the President or* Vice President—will be in the meeting other than first meeting after general election—The election has to be in accordance with rules framed under sub-section (4) of section 43—Section 59—Not applicabl to a meeting convened for election of President or Vice-President—Section 56(3)—Notice of meeting—Is mandatory—In computing the period of 7 days notice—Both terminal days are to be excluded: There is no express provision in section 43 itself about the convening of a meeting for the election of the President or the Vice-President upon the occurrence of any vacancy in the office of the President or the Vice-President by death or resignation.

The election of a new President or Vice-President to fill a casual vacancy can be at a meeting other than the first meeting of the Council after every general election and the election has to be in accordance with the rules framed under sub-section(4) of section 43 for regulating the mode and time of election of the President and the Vice-Presidents.

Section 59 has no applicability to a meeting convened for the election of President or a Vice-President.

The provision about seven clear days' notice for an ordinary meeting of the Council is a mandatory one and that in computation of that period both the terminal days have to be excluded.

Raghuvans Prasad v. *Mahendra Singh*, 1967 M P. L. J. 941; relied on.

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Narasimhiah v. *Singri Gowds.* A. I. R. 1966 S. C. 330 and *Jai Charan Lal* v. *State of U. P.* A. I. R. 1968 S. C, 5; distinguished.

AWADH BEHARI PANDEY v. THE STATE OF MADHYA PRADESH, I. L. R. [1972] M. P. ... 263

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 43(2) (b)—Notification of the result of election held before expiry of time—Amounts to substantial compliance: *vide* Interpretation of Statute ... 1000

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 43 2)(b)—Provision as to time in—Is directory: *vide* Interpretation of Statute ... 1000

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 43 2)(e)—Meeting at which a new President or Vice Presdent are to be elected—Not a first meeting after the general election—Filling in the vacancy of the President or Vice-President—Will be in the meeting other than first meeting after general election—The election has to be in accordance with rules framed under sub-section (4) of section 43: *vide* Municipalities Act, Section 43 ... 263

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 47—Restricted meaning not to be given to the word "removal" in: *vide* Criminal Procedure Code, Section 197 ... 381

Municipalities Act, Madhya Pradesh (XXXVII of1961)—Section 56(3)—In computing the period of 7days notice—Both terminal days are to be excluded: *vide* Municipalities Act, Section 43 ... 263

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 56(3)—Notice of meeting—Is mandatory: *vide* Municipalities Act, Section 43 ... 263

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 59—Not applicable to a meeting convened for election of President or Vice-President: *vide* Municipalities Act, Section 43 ... 263

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 94(7)—State Government, Power of, to transfer Officers and Servants other than those mentioned in sub-sections (1) and (2): The enumerated officers *viz* Revenue

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Officer, Accounts Officer, Sanitary Inspector, Over-seer. Revenue Inspector and Accountant are the only officers mentioned in sub-sections (1) and (2) and other officers and servants which a Council may appoint for the efficient discharge of its duties are not the officers and servants mentioned in the sub sections. The word "mentioned" in the context of sub-section (7) means 'named'. Officers and servants not specifically enumerated cannot be said to be named or mentioned.

Sub-section (7) of Section 94 confers on the State Government power of transfer only in respect of enumerated categories of officers and servants. The power of transfer under Section 94(7) is available only in respect of officers and servants specifically named or enumerated in Section 94(1) and (2) and not in respect of other officers and servants which Council may appoint.

SHANKERLAL *v.* STATE OF MADHYA PRADESH, I. L. R. [1972] M. P. ... 995

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 328—Dissolved municipal council can be restored by review of order—Power of review of order—under Section 328—Power is wide: *vide* Municipalities Act, Section 332(1) ... 272

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 328—Grounds on which order can be reviewed—Power to be exercised in exceptional cases: *vide* Municipalities Act, Section 332(1) ... 272

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 328—Order dissolving municipal council—Review—Maintainability: *vide* Municipalities Act, Section 332 (1) ... 272

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 332—Words "parties interested" in Section 332—Mean parties interested in maintaining the order under review—Include councillors: *vide* Municipalities Act, Section 332(1) ... 272

Municipalities Act, Madhya Pradesh (XXXVII of 1961)—Section 332(1)—Scope of—Order dissolving municipal council—Review—Maintainability—Dissolved municipal council can be restored by review of order—Power of review of order under Section 328—Power is wide—Words "Parties interested" in Section 332—Mean parties

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interested in maintaining the order under review—Include councillors—Grounds on which order can be reviewed—Power to be exercised in exceptional cases: From the language of Section 332(1) of the Act it will be clear that the power of review conferred on State Government by that provision is not in any way qualified or limited or controlled by anything that is contained in Section 332 or in any other provision of the Act. There is nothing in Section 332 to show that under that provision only *quasi*-judicial orders can be reviewed and not an administrative or an executive order.

The council can be restored by the State Government itself in exercise of the power of review under Section 332.

Akbarali Arif v. *The Government of M.P.*, 1967 M.P.L.J. 949; distinguished.

The power of review conferred on State Government under Section 332 is wide enough to enable it to review an order passed under Section 328.

The expression "parties interested" to appear and be heard in support of such order" clearly means those parties who are interested in the maintenance of the order sought to be reviewed.

All the Councillors were not parties interested in supporting the order which was reviewed under Section 332. The principal party interested can be only the councillors or the party who asked the Government to dissolve the Council.

It is open to the Government to review an order in the exercise of its power under section 332 if it thinks that the order is not reasonable or proper or legal.

Though the Government has the power to review an order dissolving a municipal council and to restore the dissolved municipal council, it is a power which should be exercised sparingly and in extra-ordinary circumstances.

BALBHADRA PRASAD v. STATE OF MADHYA PRADESH, I.L.R. [1972] M.P. ... 271

Negotiable Instruments Act (XXVI of 1881)—Section 118—Statutory presumption under, rebuttable by direct or circumstantial evidence or even presumption of law or fact—Admission—Principle that admission to be taken as a

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whole—Limited in application to facts and not to the plea of law—Contract Act—Section 2(d)—Fresh promise of fulfilling executory contract for sale—Can be a good consideration for a pro-note: The statutory presumption under Section 118 of the Negotiable Instruments Act can be rebutted by direct or circumstantial evidence or even presumption of law or fact.

Kundan Lal v. *Custodian, Evacuee Property*, A.I.R. 1961 S. C. 1316; referred to.

If a written statement incorporates an admission of some facts favourable to the plaintiff and a denial of certain other facts favourable to him or an assertion of still other facts which are unfavourable to him, he (plaintiff) must, if he wants to take advantage of the admission, take not only the first set of facts as truly stated but also the second set of facts so as stated. But the principle is limited in application to facts and does not embrace within its ambit any plea of law raised by the defendant in the cumulative effect of the two sets of facts.

Sooltan Ali v *Chand Bibee*. 9 Suth. W.R.130, *Poolin Beharee* v. *R. Watson and Co.*. 9 Suth. W.R.190 and *Motabhoy Mulla Essabhoy* v. *Mulji Haridas*; A. I. R. 1915 P.C.2; referred to.

Fresh promise to fulfill the executory part of the contract for sale can be a good consideration for the promissory note.

Gopal Co.Ltd. v. *Hazarilal and Co.* 1962 M. P. L. J. 781, *Shadwell* v. *Shadwell*, 142 E. R. 62 and *Scotson* v. *Pegg*, 158 E. R.121; referred to.

INDERMAL v. RAMPRASAD, I.L.R.[1972] M.P. ... 536

Oaths Act, Indian (X of 1873)—Section 4—Power of Court to administer oath in a matter pending before it: *vide* Criminal Procedure Code, Section 145 ... 959

Oaths Act, Indian (X of 1873)—Section 4—Words "in discharge of the duties" in—Modify "administer" *vide* Criminal Procedure Code, Section 145 ... 959

Panchayats Act, Madhya Pradesh (VII of 1962)—Section 17—Village Patel—A person in the service of Government—Disqualified from being elected as Panch: *vide* Master and Servant. ... 1026

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Partnership Act, Indian (IX of 1932)—Decree binding on firm property even though one partner is declared insolvent—Not necessary to join insolvency Court as party: *vide* Partnership Act ... 722

Partnership Act, Indian (IX of 1932)—In case of solvent partners not executing sale-deed—Court can execute on their behalf: *vide* Partnership Act ... 722

Partnership Act, Indian (IX of 1932)—One partner cannot transfer partnership property for his own benefit: *vide* Partnership Act ... 722

Partnership Act, Indian (IX of 1932)—Partnership entering into cantract of sale of property—Transaction can be completed by two solvent partners on behalf of the firm: *vide* Partnership Act ... 722

Partnership Act, Indian (IX of 1932)—Partnership Property—Nature of—Rights of partner in that property—Principles of co-ownership do not apply to such property—Partners individually parties to suit—The property of partner can be proceeded against—Not necessary when proceedings are to be taken against partnership property—Decree binding on firm property even though one partner is declared insolvent—Not necessary to join insovency Court as party—Partnership entering into contract of sale of property—Transaction can be completed by two solvent partners on behalf of the firm—In case of solvent partners not executing sale-deed—Court can execute on their behalf—One partner cannot transfer partnership property for his own benefit—Transfer of Property Act—Section 52—Transfer of property during pendency of suit for specific performance—Transfer affected by *lis pendens*: Although partnership property is in one sense joint property between the partners, the rights of the partners really do not extend to a share in each partnership property.

The position of partnership property is so different from other property which is in co-ownership of three persons that the principles of co-wnership cannot apply to this case.

The necessity of joining individual partners is only for the purposes of binding a particular partner personally, but for binding the partnership property it is not at all necessary to implead any partner by name.

Execution can be granted against the person or personal property of the partners only if they are parties to the

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suit or permission is obtained to execute the decree against individual partners.

A decree is binding upon the firm property even though one of the partners became insolvent and thereafter lost all interest in the partnership.

Since the partnership had already entered into an agreement for the sale of the property, this transaction could be completed by only two solvent partners on behalf of the partnership firm.

The executing Court can on behalf of the partnership execute a valid sale-deed in respect of the whole of the interest of the partnership in the property.

One partner cannot transfer partnership property for his own benefit.

Whenever a suit is pending in respect of any property, a transfer of that property by a party would be subject to the result of the suit and a suit for specific performance is certainly a suit in respect of immovable property.

Gouri Dutt Maharaj v. *Sukur Mohammed*, A. I. R. 1948 P. C. 147; relied on.

SMT. VRAJ KUWAR BAI v. KUNJBEHARILAL, I L.R. [1972] M. P. ... 722

Partnership Act, Indian (IX of 1932)—Partners individually parties to suit—The property of partner can be proceeded against—Not necessary when proceedings are to be taken against partnership property: *vide* Partnership Act ... 722

Partnership Act, Indian (IX of 1932)—Principles of co-ownership do not apply to partnership property: *vide* Partnership Act ... 722

Penal Code, Indian (XLV of 1860)—Section 287—Requirements of: *vide* Criminal Trial ... 766

Penal Code, Indian (XLV of 1860)—Section 299—Supervening condition or disease immediate cause of death—Original injury not effaced from chain of causes and events if death results—Circumstance in which inflicting of injury cannot be regarded as cause of death—Test to be applied—Cause of death to be reasonably approximate—To connect

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injury with death two things to be shown—Injury sufficient in ordinary course to cause death—Absence of skilful treatment cannot be defence—Section 302—Injuries sufficient in ordinary course of nature to cause death—Accused guilty of murder: (1) When there is a long interval between the causing of bodily injury by the offender and the death of the victim, a question arises whether the injury was the cause of the death or whether there was a supervening cause unrelated to the injury which brought about the end. (2) The Court must have regard to all what happened in the intervening period. (3) The Court must determine what the immediate cause of death was and whether it was connected with the injury caused by the offender and the chain of causation had not been cut, or whether the death was the result of some other disease or any other injury unrelated to the initial injury caused by the offender. (4) If the injury caused by the offender was still a substantial and an operating cause at the time of the death, then the injury will be said to be the cause of the death, although some other cause of death is also operating. And, in that case it is no defence that the victim was not given skilful treatment and proper remedies. (5) Intervention of time is not material. Criterion is the relation between the injury caused by the offender and the death of the victim.

R. v. *Holland*, (1841) 2 M. and Robb. 351, *R.* v. *Pym*, (1846) 1 Cox. 339; *R.* v *Doyis*, (1883) 15 Cox. 174; *Ragina v. Smith*, (1959) 2 Q. B. 35; *The Oropesa*, P. D. (1943) P. 32, 39, *Minister of Pension* v. *Chennel*, (1947) K. B. 250, *Britons Ltd.* v. *Turvey*, (1905) A. C. 230; *Nga Dwe* v. *King Emperor*, (1904) 1 Cr. L.J. 909; *Davasia* v. *State*, A. I. R. 1958 Kerala 207; *Nga Paw* v. *Emperor*, A. I. R. 1936 Rang. 526, *The King* v. *Abor Ahmed* A. I. R. 1937 Rang. 396 (F.B.) and *Nga Moe* v. *The King*, A. I. R. 1941 Rang. 141; referred to.

Where accused caused injuries which were sufficient in the ordinary course of nature to cause death, the accused is guilty of murder punishable under section 302, Indian Penal Code.

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Penal Code, Indian (XLV of 1860)—Section 302—Injuries sufficient in ordinary course of nature to cause death—Accused guilty of murder: *vide* Penal Code, Section 299 ... 339

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Penal Code Indian (XLV of 1860)—Section 304-A—Case not falling under section 304-A—Accused may be guilty of any other offence under Indian Penal Code or under any special enactment: *vide* Criminal Trial ... 766

Penal Code, Indian (XLV of 1860)—Section 304-A—Ingredient of: *vide* Criminal Trial ... 766

Police Regulations—Regulation No. 241-D-District Magistrate ordering magisterial investigation—Additional District Magistrate holding enquiry and administering oath to witnesses examined by him—It is merely a fact finding enquiry—Discretion alternatively lies with District Magistrate to decide whether the delinquent should be dealt with departmentally or should be prosecuted in a court of law—Enquiry held by Additional District Magistrate amounts to magisterial investigation and not a judicial enquiry: The District Magistrate had ordered a magisterial investigation, and even though Additional District Magistrate was also empowered as a Magistrate First Class and further he had given oath to the witnesses examined before him, yet it was, merely a fact finding enquiry, and the preliminary one as it was, in order to know the truth, and it was the District Magistrate who was finally to decide whether the petitioner was to be dealt with departmentally or should be prosecuted in a court, and in view of the aforesaid circumstances of the case, the enquiry which the learned Additional District Magistrate (Executive) was ordered to conduct was only a magistrate investigation and not a judicial inquiry.

Mohammad Bux v. *State of Uttar Pradesh and another*, A. I. R. 1953 All 739; *Basant Singh* v. *Janak Singh*, A. I. R. 1954 All 447 and *Chiman Singh Balbhadrasingh* v. *State*, A. I. R. 1951 M. B. 44; referred to.

SHARDA PRASAD MISHRA *v.* THE STATE OF MADHYA PRADESH, I. L. R. [1972] M. P. ... 403

Practice—Appreciation of evidence—Conjectural nature of pleadings—Evidence subsequently sought to adduce to establish—Are to be borne in mind when question of appreciation of evidence arises: *vide* Proof ... 451

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Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16—Accused not entitled to acquittal on conjectural prejudice: *vide* Prevention of Food Adulteration Act ... 1082

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Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16—Long delay fatal if demand of accused under section 13(2) stands defeated: *vide* Prevention of Food Adulteration Act ... 1082

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16—Period for which milk can be preserved: *vide* Prevention of Food Adulteration Act ... 1082

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16—Proper quantity of formalin not added in sample—Conviction not challengeable on that ground alone: *vidi* Prevention of Food Adultnration Act ... 1082

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16—Report of Public Analyst—Good Evidence unless superseded by report of Director of Central Food Laboratory: *vide* **Prevention of Food Adulteration Act** ... 1082

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16—When prejudice caused to accused because of long delay in launching prosecution—Accused entitled to acquittal: *vide* Prevention of Food Adutetration Act ... 1082

Prevention of Food Adulteration Act (XXXVII of 1954)—Rules—Preservatives properly added—Delay of 14-15 days not injurious—Section 16—Circumstances in which a long delay is fatal—Report of Public Analyst—Good evidence unless superseded by report of Director of Central Food Laboratory—Proper quantity of formalin not added in sample—Conviction not challengeable on that ground alone—Long delay fatal if demand of accused under section 13(2) stands defeated—Period for which milk can

be preserved—Accused not entitled to acquittal on conjectural prejudice—When prejudice caused to accused because of long delay in launching prosecution—Accused entitled to acquittal: Where preservatives are added it cannot be asserted by the defence that a delay of 14 or 15 days would be fatal to the prosecution case.

If prejudice to an accused could be inferred on account of long delay in launching the prosecution on account of the fault of the prosecution itself, where-by the accused is deprived of his valuable right of challenging the report of the Public Analyst, as conferred by section 13(2) of the Act,, the conviction cannot be sustained on account of such prejudice, although the report of the Public Analyst would continue to be good evidence.

Municipal Corporation of Delhi v. *Ghisa Ram*: A.I.R. 1967 S.C.970 and *Municipal Corporation, Gwalior* v. *Kishan Swaroop*. A.I.R. 1965 M.P. 180; relied on.

Three kinds of cases could be envisaged in order to ascertain whether the delay in launching of the prosecution would prejudice an accused in his trial.

(i) Where there is undue delay in the sample being examined by the Public Analyst and there is also delay in launching prosecution so that the right of the accused conferred by section 13(2) of the Act is rendered nugatory;

(ii) (a) Where there is no delay in examination of the sample by the Public Analyst, but there is undue delay in launching the prosecution so as to deprive the accused of his right under section 13(2) of the Act, but where adequate precautions are taken by adding of preservatives or by keeping the samples in a refrigerator;

(b) Where there is no delay in examination of the sample by the Public Analyst and adequate precautions are taken by adding of preservatives and by keeping the samples in refrigerator, but there is inordinate delay in launching the prosecution, with the result that the right of the accused to have the sample tested by the Director of Central Food Laboratory, stands defeated and any demand by him in that behalf would be rendered meaningless;

(iii) where in the present two cases, the samples were examined by the Public Analyst without any undue delay, but there was undue delay in launching of the prosecution, coupled with the fact that preservatives were not added by the Food Inspector according to the prescribed quantity, as prescribed by rule 20 of the Rules framed under the Prevention of Food Adulteration Rules, 1955.

The report of the Public Analyst would continue to be good evidence unless it be superseded by the report of the Director of Central Food Laboratory.

Where formalin is not added to the samples in the prescribed quantity, the conviction of the accused could not be challenged on that ground alone.

Ramdayal v. *State of M. P.*, 1966 M. P. L. J. 638; referred to.

Municipal Council, Multai v. *Juggan*, Criminal Appeal No. 495 of 1964, decided on the 3rd October 1966; relied on.

Conviction cannot be maintained where prejudice is caused to the accused, but where no such prejudice may be inferable, the conviction can, as well, be based on the unchallenged report of the Public Analyst. Their Lordships of the Supreme Court have also observed that diffiiculties would arise in a case where the accused makes a demand for exercise of the right under section 13(2) of the Act and that right stands defeated on account of the long delay in launching the prosecution.

Municipal Corporation of Delhi v. *Ghisa Ram*, A. I. R. 1967 S. C. 970; *Ataul Haque* v. *The State of M. P.*, Criminal Revision No 431 of 1966, decided on the 30th September 1969, *Municipal Council, Multai* v. *Juggan*, Criminal Appeal No. 495 of 1964, decided on the 3rd October 1966, *Ramsajeewan* v. *Commissioner, City of Jabalpur Corporation*, Criminal Revision No. 100 of 1967, decided on the 8th September 1969, *Phagn* v. *The State of M. P.*, Criminal Revision No. 83 of 1967, decided on the 29th August 1969, *Mathura* v. *State of M. P.*, Criminal Revision No 591 of 1967, decided on the 1st August 1969, and *Nandlal* v. *The State of M. P.*, Criminal Revision No. 438 of 1968, decided on the 24th January 1968; referred to.

Manka Hari v. *The State of Gujarat*, A. I. R. 1968 Guj. 88 and *The Chairman, Jugsalai Notified Area Committee* v. *Mukharam Sharma*, A. I. R. 1969 Pat. 155; discussed.

Milk would start deteriorating and would start becoming curd after about $1\frac{1}{2}$ to 2 days and by adding preservatives, it might be kept intact at the most for a month or a month and a half. However, if more precautions are taken by keeping the contents in a refrigerator, the contents could be preserved without deterioration for a period of four to six months.

A conviction cannot be set aside or an accused cannot be acquitted on a hypothetical conjectural prejudice said to have been caused to an accused by the mere fact of some delay being caused in launching the prosecution.

Where the report of the Public Analyst may not have been unduly delayed, but no proper precautions are taken by adding preservatives in the prescribed quantity and for that reason, it may be open to the accused to challenge the report of the Public Analyst, or there may be infirmity of some other kind so that the report of the Public Analyst cannot be relied on for basing a conviction, although it may continue to be good evidence. In such a case, if the prosecution is unduly delayed, the prejudice to the accused would be obvious, if his right under section 13(2) of the Act stands defeated on account of the long delay in launching the prosecution. The Court ought to decline to base a conviction on the basis of the report of the Public Analist.

Where the analysis by the Public Analyst is inordinately delayed and the launching of the prosecution also is inordinately delayed, prejudice to the accused being obvious, conviction cannot be based on the report of the Public Analyst. Where, however, the analysis by the Public Analyst is not inordinately delayed and the preservatives are added in the prescribed quantity, the mere fact some delay in launching the prosecution will not entitle of the accused to claim an acquittal and the report of the Public Analyst can form the basis of conviction. Lastly, where report of the Public Analyst is not unduly delayed, but there is an infirmity in the prosecution case by failure to add the prescribed quantity of preservatives to the samples, prejudice to the accused being obvious, no conviction can be based on the report of the Public Analyst. The same result will follow if in addition to

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insufficiency of preservatives, the analysis by the Public Analyst is inordinately delayed.

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Proof—Charge of corrupt practice—Nature of proof needed—Representation of the People Act—Section 123(4)—Essentials of corrupt practice regarding false statement—False statement—Has to be a statement of fact and not statement of expression of opinion—Statement must be regarding personal character or conduct of candidate—Statement of defamatory opinion—Not a statement of fact—Truth regarding statement of personal character or conduct—Complete defence to corrupt practice—Statement not true but *bona fide*—Falls outside purview of the section—Section 83(b)—Particulars regarding person distributing Pamphlet date and place and description of material necessary to be given—Practice—Appreciation of evidence—Conjectural nature of pleadings—Evidence subsequently sought to adduce to establish—Are to be borne in mind when question of appreciation of evidence arises—Agent—When a person can be said to act as agent of candidate in Election—Section 99—Person not acting as Election agent or agent or worker and with consent of the candidate—His name cannot be recorded under this section: The charge of corrupt practice is almost akin to a criminal charge, the onus to prove it is on the petitioner and has to be strictly established by cogent and reliable evidence. The evidence should be cogent, positive and reliable beyond any reasonable doubt. Suspicion is not the same thing as proof of the corrupt practice with which the opposite party was charged.

Dr. Jagjitsingh v. *Giani Kartar Singh and others*, A. I. R. 1966 S. C. 773; relied on.

Regarding corrupt practice relating to false statement as contemplated by Section 123(4) of the Act, the essential ingredients are:-

(i) The publication must be by a candidate or his agent or by any other person with the consent of the candidate or his election agent.

(ii) It must be a publication of a statement of fact, which is false as a matter of fact and which the pulisher either believes to be false or does not believe to be true.

(iii) The statement of fact must relate to the personal character or conduct of the candidate (as distinguished from his public conduct in connection with his political or other activites) or in relation to his candidature or withdrawal.

(iv) It must be a statement which is reasonably calculated to prejudice the prospects of that candidate's election.

In order that the statement should come within the mischief of the definition of false statement under section 123(4) of the Act, it must be a statement of fact as opposed to a statement or expression of opinion. The statement of fact must be in relation to the personal character or conduct of the candidate, but if it relates to his public and political character, it would not be covered by this section.

Inder Lal v. *Lalsingh*, A. I. R. 1962 S. C. 1156 and *Sheopal Singh* v. *Ram Pratap*, A. I. R. 1965 S C. 677; referred to.

The mere statement of a defamatory opinion unless coupled with the grounds upon which it is formed is not a statement of fact.

Devasharan Sinha v *Sheo Mahadev Prasad and others*. 10 E L. R. 461 and *Habib Bhai* v. *Pyarelal and others* A. I. R. 1964 M. P. 62; referred to.

A statement of fact relating to the personal character or conduct of a candidate can be made if is true and thus truth of such allegation is a complete defence to the corrupt practice under section 123(4) of the Act. In other words the statements which are not true but made *bona fide* are also outside the ambit of the provisions of this section.

Sheopal Singh v. *Ram Pratap*, A. I. R. 1965 S. C. 677; referred to.

If any corrupt practice is committed by an election agent then the election of returned candidate has to be declared void forthwith under section 100(1)(b) of the Act.

Under Section 83(b) of the Act it is necessary for the petitioner to have stated which particular person distributed which particular issue of the Udgar on which particular date and in which particular village.

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Conjectural pleadings and the evidence subsequently sought to be adduced to establish them can be kept in view when the question of appreciation and reliability of such evidence arises.

Didarsingh Cheeda v. *Sohan Singh Ramsingh and others*, A. I. R. 1966 Punj. 282; referred to.

The expression "agent" has a much wider connotation than it is ordinarily understood to have under the law of contract. Anybody who acts in furtherance of the prospects of the candidate's election may be said to be an agent of the candidate concerned, provided he does so with the consent of the candidate and that this consent need not be necessarily an express consent and no written document is necessary but may be gathered and implied from the circumstances of the case.

Noni Gopal Swami v. *Abdul Hamid Choudhury and others*, 19 E. L. R. 75; relied on.

A person who has not committed any corrupt practice in his capacity as candidate's election agent or his agent or worker and with his consent, cannot be said to have committed the corrupt practice within the meaning of the Act and, therefore, it is not necessary to record his name under section 99 of the Act.

RAGHUBIRSINGH *v.* RAGHUBIRSINGH KUSHWAHA, I. L. R. [1972] M. P. ... 451

Provincial Insolvency Act (V of 1920)—Section 24(2)—Object of—Provision mandatory: The object of the provision in Section 24(2) of the Act is to obtain information at as early a stage as possible of the property of the debtors and their whole conduct in relation to the insolvency proceedings.

Sub-section (2) of Section 24 of the Act is mandatory and if the debtors are present in Court, there is an obligation on the Court to examine them and failure to do so would vitiate the order of adjudication.

Gangadas Seal and another v. *Percival and others*, A. I. R. 1927 Cal. 32, *Popa Ram* v. *Bora Khan*, A. I R. 1935 Peshawar 139 and *Raja Ram Sant Ram* v. *Gyan Singh and others*, A. I. R. 1930 Lah. 746; relied on.

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Sitaram Bajirao Bhalerao v. *Amrutrao Ganpatrao Kunbi and another*, A. I. R. 1937 Nag. 226; distinguished.

BHAWANI PRASAD *v.* SHRIKISHAN, I. L. R. [1972] M. P. ... 930

rovincial Insolvency Act (V of 1920)—Section 24(2)—Provision mandatory: *vide* Provincial Insolvency Act, Section 24(2) ... 930

:ovincial Small Cause Courts Act (IX of 1887)—Section 16—Suit of small cause nature—Suit tried and decided by ordinary civil Court—Decision is not without jurisdiction—Civil Procedure Code—Order 46, rule 7—High Court in control of the case—High Court can pass fresh decree—Even though original Court having no jurisdiction had passed the decree—Decree passed by High Court—Is effective by its own force:

er Majority— The judgment and decree passed in contravention of section 16 of the Provincial Small Cause Courts Act is not null and void as having been passed without jurisdiction. It is good and effective, until set aside in accordance with law.

agannath v. *Harsingh*, 1968 J. L. J. 566 and *Poonamchand* v. *Ramprasad*, 1968 J. L. J. 583; overruled.

Shiv Dayal J.– Contra– Where a suit of small cause nature is instituted and tried as a regular suit by an ordinary Court in contravention of the provisions of section 16 of the Provincial Small Cause Courts Act, the decree or order rendered in it is without jurisdiction and a nullity.

However, the provisions in the Small Cause Courts Act (for instance section 23) and those contained in any other enactment for the time being in force (for instance section 24, Civil Procedure Code, Order 46, Rules 6 and 7, Civil Procedure Code, Section 15 of the M. P. Civil Courts Act) must be given effect to by virtue of the saving clause in section 16 of the Small Cause Courts Act. In these and such other cases, the decree passed by an ordinary Court is not in contravention of section 16 of that Act.

When, by virtue of an order of the District Judge under section 15 of the M. P. Civil Courts Act, 1958, any civil business cognizable by the District Judge and the Courts

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under his control is distributed among them and if because of such distribution any cases cognizable by a Court of Small Causes are assigned to ordinary Courts, then the decrees passed by the latter are not nullities; they are valid being within the saving clause of section 16.

Once the High Court is seized of a case under Order 46, rule 7, Civil Procedure Code it has large and discretionary power to make such fresh decree as it may think fit, having regard to all the facts and circumstances of the case and the material on record, even though it finds that an ordinary Court has tried a suit cognizable by a Small Cause Court, and the decree or order passed by such Court is a nullity, being without jurisdiction. Such a decree made by the High Court is a fresh one and is executable and given effect to by its own force, not because it validates, cures or condones the nullity.

TIKARAM v. BHAIYALAL, I. L. R. [1972] M. P. ... 630

Public Trusts Act, Madhya Pradesh (XXX of 1951)—Section 32—Applicability of: Section 32 is attracted in case of those Trusts only which have to be registered under that Act. The M. P. Public Trusts Act, 1951, being a State Act cannot have extra-territorial jurisdiction and it is for this reason that the scheme of jurisdiction in the Act is confined to Trusts operating in M. P.

RAMESHWAR PRASAD *v.* PANDIT KRISHNA MOHAN NATH RAINA, I. L. R. [1972] M. P. ... 156

Representation of the People Act (XLIII of 1951)—Allegation against contesting candidate made regarding corrupt practice—Contesting candidate is necessary party—Petition liable to dismissal for non-joinder: The petitioner having made an allegation against a candidate which he meant to be a corrupt practice, he should have impleaded him also and his failure to do so would lead to the dismissal of the petition.

RAGHUNATHSINGH v. GOVERDHAN, I.L.R. [1972] M. P. ... 302

Representation of the People Act (XLIII of 1951)—Election petition is statutory proceeding—Statutory requirements must be strictly complied with: *vide* Civil Procedure Code, Order 19, Rule 3 and High Court Rules, Chapter 3, Rule 4 ... 95

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epresentation of the People Act (XLIII of 1951)—Section 83(b)—Particulars regarding person distributing pamphelt, and date place and description of material necessary to be given: *vide* Proof ... 451

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epresentation of the People Act (XLIII of 1951)—Section 100—Proof of reception, rejecting or refusing a vote—Not sufficient for setting aside election—Result of election being affected has to be proved: *vide* Civil Procedure Code, Order 19, Rule 3 and High Court Rules, Chapter 3, Rule 4 ... 95

Representation of the People Act (XLIII of 1951)—Sections 117 and 118—Declaration sought that candidate has been elected—It becomes election petition—It has to comply with sections 117 and 118 of the Representation of the People Act—Not permissible to raise plea regarding corrupt practice in the written statement of respondent: *vide* Civil Procedure Code Order 19, Rule 3 and High Court Rules, Chapter 3, Rule 4 ... 95

epresentation of the People Act (XLIII of 1951)—Section 123—Corrupt practice—Is in the nature of *quasi* criminal charge—Standard of proof is that required in criminal case: *vide* Civil Procedure Code, Order 19, Rule 3 and High Court Rules, Chapter 3, Rule 4 ... 95

Representation of the People Act (XLIII of 1951)—Section 123 (2)(a)(ii)—Corrupt practice of undue influence—Meaning of: *vide* Civil Procedure Code, Order 19, rule 3 and High Court Rules, Chapter 3, Rule 4 ... 95

Representation of the People Act (XLIII of 1951)—Section 123 (2)(a)(ii)—Speech containing offending part—Would amount to corrupt practice: *vide* Civil Procedure Code, Order 19, Rule 3 and High Court Rules, Chapter 3, Rule 4 ... 95

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Representation of the People Act (XLIII of 1951)—Section 123(2)(a)(ii)—Speech threatening electors that they will become or be rendered object of divine displeasure or spiritual censure—Amounts to interference with free electoral right—But the person making the speech must be capable of exercising spiritual undue influence: *vide* Civil Procedure Code, Order 19, Rule 3 and High Court Rules, Chapter 3, Rule 4 ...

Representation of the People Act (XLIII of 1951)—Section 123(3)—Attribute of spiritual significance—Does not impart to its use on flag the character of religious symbol—Everything that is holy or sacred—Is not a religious symbol: *vide* Civil Procedure Code, Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 ...

Representation of the People Act (XLIII of 1951)—Section 123(3)—Symbol of cow and calf—Does not point anything about its Godliness or holiness—Canvassing for voting for the symbol of cow and calf—Not covered within the mischief of this section: *vide* Civil Procedure Code, Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 ...

Representation of the People Act (XLIII of 1951)—Section 123(3)—Symbol of cow and calf—Symbol not showing anything sacred or holy—Symbol does not become religious symbol: *vide* Civil Procedure Code, Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 —

Representation of the People Act (XLIII of 1951)—Section 123(3)—Worshipping cow as mother—Does not make it a religious symbol: *vide* Civil Proc dure Code, Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 ...

Representation of the People Act (XLIII of 1951)—Section 123(4)—Essentials of corrupt practice regarding false statement: *vide* Proof ...

Representation of the People Act (XLIII of 1951)—Section 123(4)—False statement—Has to be a statement of fact and not statement of expression of opinion—Statement must be regarding personal character or conduct of candidate—Statement of defamatory opinion—Not a statement of fact: *vide* Proof ...

Representation of the People Act (XLIII of 1951)—Section 123(4)—Truth regarding statement of personal character

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Representation of the People Act (XLIII of 1951)—Section 123(5)—Hiring or procuring a conveyance for carrying elector to or from polling booth by candidate or by agent with his consent—Is a corrupt practice—Proof of contract of hire of vehicle not necessary but fact of hiring has to be proved: *vide* Civil Procedure Code, Order 19, rule 3 and High Court Rules, Chapter 3, rule 4 ... 95

***Res-judicata*—Decision given by revenue Court in pursuance of order of civil Court on reference—Not *res judicata* in subsequent suit in civil Court: *vide* Limitation Act, Article 142** ... 1049

Review—No right of review unless conferred by statute—Land Revenue Code, Madhya Pradesh, 1959—Section 51—Power of review retrospectively conferred and is available in respect of orders made by Revenue Officers under any law for the time being in force—Section 56—Definition of "order" in—Applies to the whole of the chapter—Order passed under Section 6(2) of Abolition of Proprietary Rights Act, Madhya Pradesh, 1950—Can be reviewed under Section 51 of the Madhya Pradesh Land Revenue Code: A power of review does not exist unless it is conferred by statute and ordinarily a statute conferring such a power will not apply to orders previously made.

Section 51, Madhya Pradesh Land Revenue Code, 1959 clearly makes the power of review by it retrospective and read along with the definition of "order" in Section 56 the power is available in respect of orders made by any revenue officer under any law for the time being in force.

The definition of "order" as given in Section 56 applies to the whole of the Chapter and, therefore, that definition has to be read for construing the word 'order' both in sections 51 and 55. Construed in that way the power conferred by Section 51 can be exercised to review an order made under Section 6(2) of the Abolition of Proprietary Rights Act, 1950 even though the order was made before coming into force of the Code of 1959.

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Rules Framed Under Local Government Act, Madhya Pradesh (XXXVIII of 1948)—Rule 3—Failure to examine witnesses in departmental enquiry in support of charges—Amounts to fatal infirmity—Rules requiring holding of oral enquiry—Recording of evidence mandatory—Failure to hold such oral enquiry is fatal: Failure to examine witnesses in support of the charges is a fatal infirmity in the proceedings cannot be doubted.

Jagdish Prasad v. *State of M. P.*, A. I. R. 1961 S. C. 1070, *State of M. P.* v. *Chintaman*, A. I. R. 1961 S. C. 1623, *Bombay State* v. *Nurul Khan*, A. I. R. 1966 S. C. 269, *H. P. Verma* v. *State of M. P.*, Misc. Petition No. 361 of 1964, decided on the 18th December 1964 and *R. N. Waghmare* v. *State of M. P.*, Misc. Petition No. 215 of 1963, decided on the 6th February 1964; relied on.

Wherever a statutory provision or a rule lays down that if it is desired by the charge-sheeted officer or if the authority concerned so directs, an oral enquiry shall be held, the holding of an oral enquiry is mandatory. It is obligatory on the authority concerned to record evidence in support of the charges as well as the evidence which the charge-sheeted officer may lead in support of his plea; and the failure to hold such an oral enquiry is a serious infirmity in the enquiry depriving the charge-sheeted officer of a reasonable and adequate opportunity of defending himself against the charges.

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Sales Tax (Central) Rules, Madhya Pradesh, 1957—Rule 8(1), Proviso—Enforceability of: The proviso to Rule 8(1) of the M P. Sales Tax (Central) Rules, 1957 is unenforceable.

State of Madras v. *R. Nand Lal and Co.*, (1967) 20 S.T.C. 374 (S.C.); referred to.

THE COMMISSIONER OF SALES TAX, M. P., INDORE v. MESSRS GIRJA PRASAD SUNDERLAL, SATNA, I.L.R. [1972] M. P. ... 793

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State Road Transport Services (Development) Rules, Madhya Pradesh, 1959—Rule 3(i)(j)—Contemplates making of provision for transfer of permits if proposals are made: *vide* Function of Government ... 822

States Re-organisation Act (XXXVII of 1956)—Enactment to be interpreted liberally :: *vide* States Re-organisation Act, Section 51(2) ... 799

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States Re-organisation Act (XXXVII of 1956)—Section 51(2) —Notification dated 28-11-68 issued thereunder—Effect of—Word "Bench" in—Meaning of—Power of President to limit territorial jurisdiction of Judges to hear cases—Phrase "matter connected with the Bench"—Cannot refer to the limitation of the area—Section 51(2)—Confers no authority to prescribe limitation regarding jurisdiction of the Judge of the Bench—Notification restricting jurisdiction of Judge to hear cases from territories other than mentioned in the notification—Notification is bad—Enactment to be interpreted liberally—Interpretation of Statute—Aid from subsequent statute can be taken to determine meaning of particular term—Phrase "Permanent Bench" in—Used in special sense—Phrase used in the context of jurisdiction—Words "any matter connected therewith" in —Include power of President to prescribe jurisdiction of permanent Bench—Notification not prohibiting Judges of permanent Bench from hearing cases from areas other than those mentioned therein—Prescribes the ordinary jurisdiction of the Judges of the permanent Bench—Interpretation of Statute—Cardinal rule—Statute is prospective unless specially made retroactive—Expression "in respect of cases arising in the Revenue District of " in the notification—Indicates compendious description of cases to which notification applies prospectively—Order passed under the proviso —Order would be prospective—Notification does not affect order transferring a case from jurisdiction of one Bench to jurisdiction of another Bench passed before its date:

Per Full Bench—There is nothing in the notification issued by the President dated 28-11-68, which precludes the Judges constituting for the time being the permanent Bench at Indore from hearing cases other than those indicated in the notification. The notification purports to

provide that the power and jurisdiction in regard to certain cases therein specified would be exercisable, unless the Chief Justice acting under the proviso directs the permanent sitting at Indore.

It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retroactive operation.

David W. E. Smith v. *Henry Cattander*, (1901) A. C. 297 at p. 305 and *State of Bombay* v. *Vishnu Ramchandra*, A. I. R. 1961 S. C. 307; referred to.

The expression "in respect of cases arising in the Revenue Districts of" used in the notification is merely a compendious description of the cases to which notifications apply prospectively.

Like notifications themselves, the orders passed under the proviso would be prospective in operation in the sense that they affected cases thereafter instituted.

Yamunabai Rishimwale v. *Municipal Corporation, Indore*, First Appeal No. 16 of 1963, decided on the 19th April 1969; not followed.

The notifications do not affect either the order dated 16-11-59 or the power and jurisdiction of the Bench to which it was transferred to hear and dispose of appeal.

Per S. B. Sen J.– The idea of "Bench" is a very old one and has never been thought of in relation to any area.

The power to form certain permanent Bench by itself will not give the power to decide the territorial jurisdiction of the Bench.

If area of territorial limit is foreign to the idea of Bench, the limitation of an area cannot be "a matter connected with the Bench"

Manickam v. *Asstt. Reg. High Court*, A. I. R. 1958 Kerala 188; referred to.

From a plain reading of Section 51(2) it appears that the provision authorises the Judge of a permanent Bench at a place and matters connected with the Bench and not matters regarding jurisdiction of a Judge sitting at the Bench.

Notification of the President, so far as it relates to the restriction of the High Court Judges to hear cases from areas other than mentioned in the notification is beyond the scope of Section 51(2) of the States Re-organisation Act.

Per Oza J.– States Re-organisation Act has to be interpreted liberally so far as the language of that enactment justifies.

W. W. Joshi v. *State of Bombay*, A. I. R. 1959 Bom. 363; referred to.

The word "Bench" has not been used in its restricted sense as dictionary meaning would indicate.

Sometimes a subsequent statute can also be brought in aid to understand the meaning of a particular term.

M/s Ram Krishna v. *Janpad Sabha*, A. I. R. 1962 S. C. 1073; referred to.

The phrase "Permanent Bench" is conceived in the context of jurisdiction being prescribed for such a Bench. There remains no doubt that the words "any matter connected therewith" include the power of the President to prescribe jurisdiction for such a permanent Bench.

Manickam v. *Assistant Registrar*, I. L. R. 1958 Kerala 188; referred to.

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States Re-organisation Act (XXXVII of 1956)—Section 51(2)—Words "any matter connected therewith" in—Include power of President to prescribe jurisdiction of permanent Bench: *vide* States Re-organisation Act, Section 51(2) ... 799

States Re-organisation Act(XXXVII of 1956)—Section 115—Assistant Superintendent from Bhopal region—Cannot be equated with Gazetted Officers from other regions: *vide* States Re-organisation Act, Section 115 ... 78

States Re-organisation Act (XXXVII of 1956)—Section 115—Principles to be observed in the matter of integration of Government servants allotted to service of new State of M. P in matters of equation of posts—Assistant Superintendent from Bhopal region—Cannot be equated with Gazetted Officers from other regions—Constitution of India—Article 226—Equation of post—Purely administrative function: The following principles have been formulated for being observed, as far as may be, in the integration of Government servants allotted to the service to the new State of Madhya Pradesh:

"1. In the matter of equation of posts:

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(i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but

(ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts—

(a) nature and duties of posts;

(b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post and;

(d) the salary of the post."

Assistant Superintendents from Bhopal region who were non-gazetted officers drawing a lower scale of pay could not possibly be equated with the Gazetted Officers from other regions drawing a higher pay-scale.

The petition is liable to be dismissed on short ground that the matter of equation of posts is purely an administrative function under Section 115 of the States Reorganisation Act. It has been left entirely to the Central Government as to how it has to deal with these questions.

P. B. Mukerjee v. *The State of M. P.*, Miscellaneous Petition No. 567 of 1965, decided on the 18th January 1967; relied on.

Union of India and another v. *P. K. Roy and others*, Civil Appeal No. 618 of 1966, decided on the 9th November 1967 (S. C.); referred to.

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Sugar Dealers Licensing Order, Madhya Pradesh, 1959 – Shop with reference to place of business is unit—Interpretation of Statute–Principle–Statute to be construed in a way so as to harmonise different provisions and not in a way which would make non-sense of legislation –Sugar Dealers Licensing Order, Madhya Pradesh, 1959—Clauses 2(a) and 3 – Limit of 137 mds, to be co-related to each place of business of selling the controlled commodity—Purchase of more than 137 mds. of sugar in lots for 2 or 3 shops—No contravention of clause 3, committed: For the purposes of the Order, a shop with reference to the place of business is the unit and one of the rules of interpretation is to interpret the statute in a manner which would harmonise the different provisions and would not render it an absurdity or would not make a nonsense of the legislation.

The limit of 137 maunds mentioned in the definition of a dealer would necessarily be co-related to each place of business where a person may be carrying on his business of selling the controlled commodity.

If a person purchases in two lots more than 137 maunds of sugar for 2 or 3 places of business, he does not commit any contravention of Clause 3 of the said Order.

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Sugar Dealers Licensing Order, Madhya Pradesh, 1959—Clauses 2(a) and 3— Limit of 137 mds. to be co-related to each place of business of selling the controlled commodity—Purchase of more than 137 mds. of sugar in lots for 2 or 3 shops–No contravention of clause 3, committed: *vide* Sugar Dealers Licensing Order ... 1110

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Tort—Invasion of right to private property—Invasion amounts to Tort—Public authority—Right of, to invade private property or affect right of owners of such property—Electricity (Supply) Act, 1948—Section 42—Scope of—Brings into operation whole frame work of part III of Telegraph Act, 1885—Telegraph Act—Section 16(3) and Electricity (Supply) Act, 1948—Section 42—District Judge, Power of, to determine compensation: A public authority has no power, unless conferred by law, to invade private property or to affect the rights of owners of such property. Without the support of legal authority, any invasion of private rights would amount to tort.

Section 42 Electricity (Supply) Act deals with the powers of a State Electricity Board in two cases, *viz* (1) when there is a sanctioned scheme in which provision is made for the placing of any wires, poles, wall brackets, stays apparatus and appliances for the transmission or distribution of electricity or for the transmission of telegraphic or telephonic communications necessary for the coordinating of the works of the Board; and (2) when there is no such sanctioned scheme.

The conferral, by Section 42 of the Electricity (Supply) Act, 1948, on the Board of all the powers which the telegraph authority possesses under Part III of the Telegraph Act, 1885, brings into Section 42 the whole frame work of Part III i. e. powers, duties, obligations and remedies all of which are described by the word—'Power'-in the heading of that part. Section 42 of the Electricity (Supply) Act, 1948, in effect by reference incorporates *Mutatis mutandis* all the provisions contained in Part III of the Telegraph Act.

When in pursuance to a sanctioned scheme the State Electricity Board by virtue of Section 42 of the Electricity (Supply) Act, 1948, exercises the powers under Part III of the Telegraph Act, it becomes subject to the obligation to pay full compensation to all persons interested for all damage sustained by them as provided in proviso (d) to section 10 and further, in case of dispute, as to the sufficiency of the compensation the obligation is to pay

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such compensation as may be determined by the District Judge under Section 16(3) of the Act. The District Judge is thus competent to entertain an application under section 16(3) of the Telegraph Act for determining the compensation payable under Proviso (d) to section 10 even when power is exercised under that section by virtue of section 42 of the Electricity (Supply) Act.

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evict tenant from whole of the premises: The settled rule is that a lease-hold estate or a tenancy in respect of a property cannot be divided or split up without the landlord's consent.

Notice calling upon the tenant to quit a portion of a holding is absolutaly bad. Such a notice would be invalid. Hence the ejectment of a tenant can only be from the entire rented out premises and not from a part of it, unless a special statute regulating tenancies contains a provision permitting ejectment from a part of the tenanted premises.

Harihar Banerji v. *Ramshashi Roy*, A. I. R. 1918 P C. 102; relied on.

Jiwandas v. *Guljarilal*. Second Appeal No. 138 of 1962, decided on the 15th December 1962(Gwalior) and *Nathulal* v. *Ratansi*, 1957 M. P. L. J. 80; referred to.

Krishnachandra v. *Hiralal*, 1962 J. L. J. 450; explained.

When the tenancy is indivisible and cannot be split up and the tenant cannot be evicted from a portion of the rented out premises, it necessarily follows that when the landlord proves his requirement in respect of a part of the accommodation, then for the purposes of eviction his requirement for the entire premises must be held to be established.

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Wealth Tax Act (XXVII of 1957)—Section 2(m)(e)(q) and Section 3—Compensation amount not paid is a debt—Is an asset—Liable to be included in the net wealth of assessee: *vide* Wealth Tax Act, Section 17(1)(b) ... 207

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The question whether one particular mode of valuation should be adopted in computation of the net wealth or another is a matter entirely in the discretion of the Tribunal.

Gold Coast Trust Ltd. v. *Humphrey*, (1948) 2 All E. R. 379; referred to.

is not right to contend that in each and every case irrespective of the facts and circumstances thereof, all depreciation which is allowable for income-tax purposes, must be allowed in the computation of the total wealth. It must depend upon the facts and circumstances of each case.

THE COMMISSIONER OF WEALTH-TAX, M. P., NAGPUR AND BHANDARA, NAGPUR. v. THE SWADESHI COTTON AND FLOUR MILLS LTD., INDORE, I. L. R. [1972] M. P. ... 1119

Wealth-tax Act (XXVII of 1957)—Section 7(2)(a)—Not necessary that all depreciation allowable for income-tax purposes to be allowable in computation of total wealth—Depends upon facts and circumstances of each case: *vide* Wealth-Tax, Act, Section 7(2)(a) ... 1119

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Wealth-Tax Act (XXVII of 1957)—Section 7(2)(a)—Question of adopting particular mode of valuation—Matter entirely in the discretion of the Tribunal: *vide* Wealth-tax Act, Section 7(2)(a) ... 1119

Wealth Tax Act (XXVII of 1957)—Section 17(1)(b)—Word "Information" in—Meaning of—Section 2(m)(e)(q) and Section 3—Wealth-tax chargeable on all assets wherever located on a valuation date—Requirement is that it must belong to assessee—The definition of "assets"—Wide—Includes every description of property movable and immovable—Includes also present and future debts—Compensation amount not paid is a debt—Is an asset—Liable to be included in the net wealth of assessee: The word "information" in section 17(1)(b) is not limited to factual information but includes information leading to the belief as to the true and correct state of law and thus covering information as to the relevant judicial decisions. It must be held that Wealth Tax Officer is justified in re-opening the assessment when he learns about a decision.

Maharaj Kumar Kamal Singh v. *Commissioner of Income-tax, Bihar and Orissa*, (1959) 35 I. T. R. 1; referred to.

Reading together the provisions of section 2(e)(m)(q) and section 3 it is clear that Wealth-tax is charged on the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assesse on the valuation date. The words "wherever located" occurring in the definition of 'net wealth' show that for including an asset in the net wealth of the assessee it is not necessary that the assets must be with him. It may be located anywhere, but it must belong to the assessee on the valuation date.

The definition of "assets" as given in section 2(e) is wide enough. It includes property of every description movable or immovable.

Both present and future debts are existing debts and can be attached and assigned and are therefore clearly assets.

Syud Tuffuzzool Hossein Khan v. *Rughoonath Pershad*, (1871) 14 M. I. A. 40-50, *Banchharam Majumdar* v. *Adjanath Bhattacharjee*, I L. R. 36 Cal. 936 (F. B) and *E. D. Sassoon and Co. Ltd.* v. *Commissioner of Income-tax, Bombay City*, (1954) 26 I. T. R. 27 (S, C.); relied on.

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The amount of compensation instalments which had not been paid to the assessee was a debt owed to him by reason of a present obligation and was, therefore, an asset. That being so, the Wealth-tax Officer rightly included the amount of these instalments in the computation of the net wealth of the assessee.

Mir Imdad Ali Khan v. *Commissioner of Wealth-tax*, (1963) 50 I. T. R. 216, *Rani Bhagya Laxmamma* v. *Commissioner of Wealth-tax, Andhra Pradesh*, (1966) 62 I. T. R. 601, *V. Chandramani Puttamaha Devi* v. *Commissioner of Wealth-tax, Andhra Pradesh*, (1967) 64 I. T. R. 147 and *Maharojjkumar Kamal Singh* v. *Commissioner of Wealth-tax*, (1967) 65 I. T. R. 460; relied on.

The amount of instalments payable to the assessee under the Jagirs Act after the valuation date has to be included in the computation of the total Wealth of the assessee.

SARDAR C. S. ANGRE v. THE COMMISSIONER OF WEALTH TAX, M. P., NAGPUR, I. L. R. [1972] M. P. ... 207

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THE INDIAN LAW REPORTS

MADHYA PRADESH SERIES

FULL BENCH 2176/30-4-83

Before Mr. Bishambhar Dayal C. J., Mr. Justice Bhargava and Mr. Justice Bhave.

1969

Dec. 19

BALU and another, Applicants*

v.

AMICHAHD and others, Non-applicants

Court-fees Act (VII of 1870)—Section 7 (v)(b) and (d) and rule under Section 35–Scope and implication of–Words "Definite share" in–Meaning of–Anomalies in Act–Remedy–Interpretation of Statutes–Taxing provision to be strictly construed in a manner favourable to citizen.

Per C. J. and Bhargava J.—In cases where Court-fee is required to be paid on the market value under Section 7 (v) (d) the plaintiff cannot be allowed to pay court-fee on the whole estate of which the land claimed in suit forms part but is not assessed to separate land revenue; nor can the plaintiff be allowed in such cases to work out the proportion of the land revenue in respect of the part of land claimed by him and pay court-fee on the proportionate multiple of the land revenue worked out according to section 7 (v) (b).

Kashirao v. *Ramchandra* (1), *Baldeo Gulabrao* v. *Abdul Hafiz* (2),. *Dwarka Prasad* v. *Pyarelal* (3), *Santosh* v. *Lingraj* (4) and *Bidhichand* v. *Barelal* (5); followed.

The words "definite share" as used in paragraph (v) of section 7 have all along been considered to mean an undivided and undemarcated fraction of an estate as distinct from a definite demarcated plot which has been taken out of an estate.

*Civil Revision No. 108 of 1966. Reference on the question of payment of deficit court-fee on market value under Section 7 (v) (d) of the Court-fees Act.

(1) Taxing Decisions 1936-43 at p. 39. (2) A. I. R. 1950 Nag. 249.

(3) 1962 J. L. J. Note 376. (4) 1959 M. P. L. J. Note 21.

(5) 1964 J. L. J. Note 83.

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Balu v. Amichand

Godavarty Sundaramma v. *Godavarthy Mungamma* (1), *Kondasami Goundan and another* v. *Subhai Goundan and another*(2), *P. Kesanna* v. *Boya Bala Gangappa* (3) and *Baldeo Gulabrao* v. *Abdul Hafiz* (4); referred to.

If a suit is for a distinct plot and not for a definite share of a separately assessed estate, court-fee has to be paid on the market value.

Reference under the Court-fees Act 1870 (5), *Chandhan* v. *Bishan Singh* (6), *Randhir Singh and another* v. *Randhir Singh* (7), *Haliman and another* v. *Media and another* (8), *Ma Shin* v. *Maung Hman* (9), *Buniad Lal* v. *Shyam Lal* (10) and *Chandra Narayan Singh* v. *Asutosh De* (11); referred to.

Subramania Ayyar v. *Rama Ayyar* (12), *Kuljas Rai* v. *Pala Singh* (13) *Biahichand* v. *Barelal* (14) and *Babulal* v. *Bismilla* (15); discussed.

Rule framed by State Government under Section 35 enables plaintiff to pay Court-fee on the computation prescribed in the rule only when he is suing for a fractional share of that part of the land which pays annual revenue to the Provincial Government under a settlement which is not permanent and the part is recorded in the Collector's register as separately assessed. It is plain that the rule can have no application where the part is not separately recorded in the Collector's register and a part thereof is claimed in the suit.

Legal provision is not affected at all on account of the anomalies and it is for the legislature alone to remove the anomalies by proper legislation. Consideration of hardhip, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care.

A taxing provision has to be construed strictly and must always be interpreted in a manner most favourable to the citizen. However, this rule has no application where the language of the statute is absolutely clear and unambiguous and does not yield to two interpretations.

(1) A. I. R. 1918 Mad. 25.
(2) A. I. R. 1924 Mad, 646.
(3) I. L. R. 1947 Mad. 643 (F. B.).
(4) A. I. R. 1950 Nag. 249.
(5) I. L. R. 16 All. 493.
(6) I. L. R. 33 All. 630.
(7) I. L. R. 1937 All. 128.
(8) I. L. R. 55 All. 531.
(9) 79 I. C. 579.
(10) I. L. R. 12 Cal. 990.
(11) I. L. R. 41 Cal. 812.
(12) A. I. R 1927 Mad. 1002.
(13) A. I. R. 1945 Lah. 15.
(14) 1964 J. L. J. Note 83.
(15) Civil Revision No. 4 of 1965, decieed on the 23rd May 1965.

Charles James Partington v. *The Attorney General* (1); referred to.

Words of statute are clear, a rule of equitable construction cannot be imported by reading something not in the relevant provisions nor can anything be read as implied therein.

Gursahai v. *I. T. Commissioner, Punjab* (2) and *Income-tax Commissioner* v. *Firm Muar* (3); referred to.

Per Bhave J — The words "definite share of an estate paying annual rent to Government" mean that the annual revenue must be fixed *vis-a-vis* that definite share of an estate distinct from the "entire estate" as such.

Sub-clause (b) of section 7(v) contemplates suits for whole parcels of land which are either estates or definite share of an estate or part of an estate. But in all these cases those parcels of land are such on which land revenue is payable or assessed as a unit. It contemplates only those cases where the suit is for the whole unit over which land revenue is separately assessed. Where this is not so, the case comes under sub-clause (d) and the court-fee payable is on the market value.

Sub-clause (d) of section 7(v) speaks of "part of an estate", but that part must be such as is not a definite share of an estate and is not separately assessed. It comes into operation where the land forms part of an estate but is not a unit of assessment for the purpose of land revenue. When a suit is brought for a share or a part of an estate, if that share of part of an estate is not separately assessed as a unit of land revenue, the case must fall within the residuary sub-clause (d) and the court-fee in that case should be on the market value.

Kashirao v. *Ramchandra* (4); discussed.

Kuljas Rai v. *Pala Singh* (5) and *Subramania Ayyar* v. *Rama Ayyar* (6); referred to.

In the matter of interpretation of a statute, the Courts are not free to put their own interpretation on the statute for the purpose of removing anomalies. This is the function of legislature. The

(1) (1869) L. R. 4 H. L. 100.
(2) A. I. R 1963 S. C. 1062.
(3) A. I. R. 1965 S. C. 1216.
(4) 1936-43 Taxing Decisions at p. 39.
(5) A I. R. 1945 Lah. 15.
(6) A. I. R. 1927 Mad. 1102

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Courts are required to interpret the statutes as they are; and if there is no ambiguity in the language used, effect must be given to the clear terms of the statute. The second limitation on the Courts is that the interpretation by the Courts of the statute in any particular manner should not render any part of the statute otiose.

R. S. Dabir for the applicants.

K. P. Munshi Government Advocate and *B. L. Pawacka* for the non-applicants.

Cur. adv. vult.

OPINION

PER BHARGAVA J.—This order shall also govern the disposal of the point referred to the Full Bench in civil revisions Nos. 497/66, 498/66 and 521/67. In this case and cases Nos. 497/66 and 498/66 reference has been made by Krishnan J., and in the last case by S. B. Sen, J. All these revisions were filed in the High Court by plaintiffs in different cases who were required to pay the deficit court-fee on market value under section 7(v)(d) of the Court-fees Act (hereinafter called the Act). The references are confined to the question that whether for purposes of assessing the court-fee in a suit regarding a fraction or part of a holding the whole of which is assessed to revenue or to payment of the nature of rent in the absence of revenue, the plaintiff should be required to pay the court-fee on his claim on the market value of the land under section 7(v)(d) of the Court-fees Act, or whether the subject-matter should be allowed to be valued on the basis of the revenue payable on the entire estate and the plaintiff should be allowed to distribute the land revenue proportionately on the area claimed by him in the suit. In other words, the question for consideration is as to whether in such cases the claim of the plaintiff falls within section 7(v)(b) or section 7(v)(d) of the Act. These clauses read as follows:-

"(v) In suits for the possession of land, houses and garden- according to the value of the subject-matter; and such value shall be deemed to be—

Where the subject-matter is land, and-

(b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or where the land forms part of such estate and is recorded as aforesaid;

... ...

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned the market value of the land;

Explanation- The word 'estate', as used in this paragraph, means-

(i) any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;"

There is no specific provision in sub-clause (b) for the valuation of a fractional share of a part of an estate but in exercise of the powers vested in the State Government under section 35 for reductions and remissions of court-fees, the State Government has enacted the following rule:-

"(2) When a part of an estate paying annual revenue to the Provincial Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share."

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Krishnan J., in the order of reference, has mentioned the position which emerges on the basis of the Single Bench decisions reported in *Dwarka Prasad* v. *Pyarelal* (1), *Bidhichand* v. *Barelal* (2) and *Santosh* v. *Lingraj* (3) as anomalous because the litigant is required to pay ten or fifteen times more the court-fee if the suit is in respect of a part or fraction of the holding on the market value of the land claimed in the suit, but if he sues for the entire holding he is reguired to pay only a small fraction of what he had to pay in the suit for a part. The learned Judge also draws attention to the other anomaly, which is the result of the first, that in case of a fraction or part of the land the plaintiff is required to file a suit in the Court of larger jurisdiction but he files a suit with regard to the entire holding in a Court of lower status as in the former case the valuation arrived at on the basis of the market price is many times higher than the value which is calculated on the basis of the multiples of land revenue as stated in clause (b) of section 7(v). The learned Single Judge has suggested that the said anomaly can be removed by adopting one or other of the following two alternatives:-

> "In any case we can insist on the litigants evaluating the suit as if it is one for the entire holding; the hardship if any would be on him and the excuse obviously is that the fraction or the portion for which the suit is filed is to be deemed equal in value to the whole. A more logical way of doing it is that in the case of an undemarcated fraction to value it on the basis of the proper multiple of the same fraction of the assessment; in the case of a definite portion to treat that portion as being so valued as to represent for our purposes the entirety of the holding. Either way, the multiple would be much less than the market value calculated according to (d). This I would

(1) 1962 J. L. J. Short Note 376. (2) 1964 J. L. J. Short Note 83.
(3) 1959 M. P. L. J. Short Note 21.

base upon the recognized principle that statutes on taxation should be applied in a manner most favourable to the citizen, and simply because he has been moderate enough to bring a suit in respect of a part instead of filing it as a whole, not to tax him excessively. One can never get over the absurdity of the present situation where the part becomes much more valuable than the whole and a suit for the part is to be heard by courts of a higher status than the suit for the whole. It is also of interest to note that a litigant who overstates his case and claims the entire holding will pay much less and need go only a court of lower status. In fact he does not lose much except possibly in the matter of part of the costs because it would be open to the court in a suit for the entire holding to grant relief in respect of the portion or fraction to which the plaintiff has succeeded in proving his claim."

Obviously, S. B. Sen., J., does not agree with the alternatives suggested by Krishnan J. in the paragraph quoted above. He has pointed out that–

"Undoubtedly, statutes on taxation should be applied in a manner favourable to the citizen, but there should be a scope for such application. When two views are possible, invaliable rule in taxation cases is that it should be interpreted in favour of the subject. If there is no ambiguity in the statute, there is no scope for a different interpretation. If for the possession of an entire holding a smaller amount of court-fee is necessary, then when the claim is for possession of a part, we have only to see what the statute says unequivocally. If, unluckily, he has to claim a portion only, he must pay court-fee for that and not challenge the law on the ground that a luckier person would pay less court-fee."

The reason which the learned Judge mentioned for making the reference is that as a reference has been made in civil revislon No. 108/66 by Krishnan J., he also referred the case before him.

The first point for consideration before us is as to what is the true scope of the provisions made in

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section 7(v)(b) and 7(v)(d) quoted above. This question came up for consideration before Mr. Justice Bose (as he then was) in *Kashirao* v. *Ramchandra* (1). The learned Judge first pointed out that it was necessary to read section 7(v)(b) along with section 7(v)(a) because the word 'aforesaid' which was used in clause (b) related back to clause (a). He further stated that clause (a) is divided into two separate paragraphs. The first deals with (a) an entire estate, and (b) a definite share of an estate which pays annual revenue to Government. The second deals with land which "forms part of such an estate (that is to say, of an estate which pays annual revenue to Government) and is recorded in the Collector's Register as separately assessed with such revenue." Clause (b) also divides the subject in the same way. The learned Judge then explained the difference between 'part' as opposed to 'definite share' by making the following weighty observations :—

> "Therefore the crux of the situation is not the number of digits in the fraction defining the share but whether the claim is for a definite share of a whole estate as opposed to a part of an estate separately assessed to revenue.
>
> In my opinion the section means this. If the plaintiff claims 1/4, or 5, As. or $6\frac{7}{8}$ pies, or any other fraction (however clumsy) of an entire estate which pays annual land revenue to Government, then the first part of clause (a) or (b), as the case may be, applies. All this would be a definite share: But if he claims a specified area (22 acres here), then that relates to a 'part' as opposed to a 'definite share' and the second portion will apply if that area is separately assessed. If it is not, then section 7 (v) (d) will apply.
>
> The word 'share' is ordinarily used in litigation to denote a definite fraction of a bundle or parcel of rights and is an obstraction. When therefore the section speaks of shares in an estate as opposed to parts of an estate (which is what

(1) Taxing Decisions 1936-1945 at p. 39.

it does), then it seems to me that it is drawing a distinction between the abstract rights in an estate and the concrete or physical portion of it."

The view taken in *Kashirao's Case* (1) *Baldeo Gulabrao* v. *Abdul Hafiz* (2) and was referred to and followed by Shrivastava J. in *Dwarka Prasad* v. *Pyarelal* (3) as also by Bhutt J. in *Santosh* v. *Lingraj* (4). We will refer to *Bidhichand* v. *Barelal* (5) later.

The words "definite share" as used in paragraph (v) of section 7 have all along been considered to mean an undivided and un-demarcated fraction of an estate as distinct from a definite demarcated plot which has been taken out of an estate.

(See *Godavarty Sundaramma* v. *Godavarthy Mangamma* (6), *Kandaswami Goundan and another* v. *Subbai Goundan and another* (7), *P. Kesanna* v. *Boys Bala Gangappa* (8) and *Baldeo Gulabrao* v. *Abdul Hafiz* (9).

In *Venkatasubba Rao* v. *Venkata Rao* (10) a Division Bench of the Madras High Court explained that "a fractional share predicates that the owner of that share is entitled to every bit of the total extent of the land till a partition is held and specific part is allotted to him." In *Chandrala Seshayya* v. *Chandralal Lakshmamma* (11) it was explained that when a specific property is claimed, that can never be an unspecified fractional share of the property, though, of course, it will be, like any portion of land, some fraction of the entire land. It was further explained that where the plaintiff is claiming not a partition of an unspecified fractional share of undivided land but

(1) Taxing Decisions 1936–1943 at p. 39.
(2) A. I. R. 1950 Nag. 249.
(3) 1962 J. L. J. Short Note 376.
(4) 1959 M. P. L. J. Short Note 21.
(5) 1964 J. L. J. Short Note 83.
(6) A. I. R. 1918 Mad. 25.
(7) A. I. R. 1924 Mad. 646.
(8) I. L. R. 1947 Mad. 643 (F. B.).
(9) A. I. R. 1950 Nag. 249.
(10) 1951–1 M. L. J. 73.
(11) A. I. R. 1952 Mad. 88.

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is claiming a specific portion of that undivided land, namely, the 'northern half' of the land, court-fee is payable under clause (d) of section 7(v) on the market value of the property.

If a suit is for a distinct plot and not for a definite share of a separately assessed estate, court fee has to be paid on the market value (see *Reference under the Court-fees Act* (1); *Chandhan* v. *Bishan Singh* (2); *Randhir Singh and another* v. *Randhir Singh* (3); *Haliman and another* v. *Media and another* (4); *Ma Shin* v. *Maung Hman* (5); *Buniad Lal* v. *Shyamlal* (6) and *Chandra Narayan Singh* v. *Asutosh De* (7).

The decisions cited above make it clear that clause (b) is a residuary provision intended to supplement clauses (a) and (b) and the court-fee is payable on the basis of the Government revenue where the subject-matter of suit is (i) an entire estate or a definite share of an estate paying revenue to Government, or (ii) a part of an estate recorded as separately assessed, or (iii) a fractional share of a part of an estate recorded as separately assessed. However, if the subject-matter of the suit is the land which forms part of such an estate, i.e., if a specified area or a demarcated area is claimed out of an estate, for bringing it within clause (b) it is necessary that that part must be recorded in the Collector's register as separately assessed with such revenue. In cases not falling strictly within the purview of clauses (a), (b) and (c), the court-fee has to be paid on the market value as provided by clause (d). Clause (a) which dealt with land permanently settled has

(1) I. L. R. 16 All. 493
(2) I. L. R. 33 All. 630.
(3) I. L. R. 1937 All. 128.
(4) I. L. R. 55 All. 531.
(5) 79 I. C. 579.
(6) I. L. R. 12 Cal. 990.
(7) I. L. R. 41 Cal. 812.

been omitted in the Madhya Pradesh Court-fees Act by Madhya Pradesh Act IX of 1953.

However, in *Subramania Ayyar* v. *Rama Ayyar* (1) and *Kuljas Raj* v. *Pala Singh* (2) a different view was taken. In *Subramania Ayyar* v. *Rama Ayyar (supra)* it was held that the words "fractional share" in the notification (which corresponds to the rule quoted above under section 55) cover not only a definite fraction but also an indefinite fraction and the deciding factor was whether the land formed part of an estate paying land revenue to the Government. In *Kuljas Rai* v. *Pala Singh (supra)* it was held that when a person sues for possession of a plot of land which can be arithmetically worked out as a proportion or a fraction of the property that has been assessed to land revenue and is not noted in the *jamabandi*, the provisions of section 7(v)(b) are applicable and not the provisions of section 7(v)(d). The reasoning followed by the Lahore High Court was that when a person sues for land jointly owned by two persons even if specific plots are sold, in law it is treated as a sale of a share of the joint property because no co-sharer has any right to sell specific plots out of the joint *khata* and therefore the value of an individual plot comprised in the joint *khata* is wholly immaserial in determining the point of court-fee.

However, in *P. Kesanna* v. *Boya Bala Gangappa* (3) the Full Bench overruled the view which was taken in *Subramania Ayyar* v. *Rama Ayyar* (4). Thus the Lahore High Court appears to be the only High Court which takes the view that even when the possession of a demarcated part of land is asked for, the case will be governed by section 7(v)(b) even though that part may not be separately assessed to

(1) A. I. R. 1927 Mad. 1002.
(2) A. I. R. 1945 Lah. 15.
(3) I. L. R. 1947 Mad. 643.
(4) A. I. R. 1927 Mad. 1002.

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land revenue. The weight of authorities clearly is in favour of the view taken in *Kashirao's case* cited above.

However, it appears that in two Single Bench decisions of this Court a different view has been taken. The first case is *Bidhichand* v. *Barelal* (1). In this case the view taken is that a suit for possession of a fraction of a *khasra* number which was assessed to separate land revenue was governed by section 7 (v)(d) and court-fee should have been paid on the market value of the fraction claimed in the suit. This view ignores both the Explanation under section 7(v)(b) as also the Rule made by the State Government under section 35. The other case taking such view is *Babulal* v. *Bismilla* (2). In this case S. B. Sen J. was concerned with a suit for partition governed by section 7 (vi-a) of the Court-fees Act, where the court-fee according to the Explanation to paragraph (vi-a) is required to be paid on the market value which in the case of immovable property shall be deemed to be the value as computed in accordance with paragraph (v). The claim was in respect of 2/3 share of the joint Hindu family estate which was separately assessed to land revenue. The learned Judge held that though the claim was in respect of a definite share, yet as that share was not separately assessed to land revenue, the court-fee was payable under section 7 (v) (d). In our view, the requirement of the share being separately assessed to land revenue was wrongly insisted upon. The claim was not in respect of a "specified" or "definite" area, but only for a "definite share" and therefore the court-fee was payable in this case also in accordance with section 7 (v) (b) at twenty times of the proportionate land revenue assessed on the estate.

(1) 1964 J. L. J. Short Note 83.
(2) Civil Revision No. 4 of 1965, decided on the 23rd May 1965.

We, therefore, find ourselves to be in complete agreement with the view expressed in *Kashirao's case (supra)* about the true scope and implications of clauses (b) and (d) and hold that suits are required to be valued accordingly. The rule which has been enacted by the State-Government under section 35 enables a plaintiff to pay court-fee on the computation prescribed in the rule only when he is suing for a fractional share of that part of the land which pays annual revenue to the Provincial Government under a settlement which is not permanent and the part is recorded in the Collector's register as separately assessed. It is plain that the rule can have no application where the part is not separately recorded in the Collector's resgister and a part thereof is claimed in the suit.

It is true that anomalies pointed out by Mr. Justice Krishnan are there. These anomalies were pointed out in the decision in *Venkatasubba Rao* v. *Venkata Rao* (1) in the following words :—

> "We may point out that by reason of the Full-Bench decision many anomalies are introduced in the application of S. 7 (v) (d) and the notification issued by the Government In a suit for possession of a specified plot a larger court-fee may be payable, whereas for partition and possession of a fractional share in regard to a larger extent a smaller court-fee may suffice. In the case of a fractional share, a suit for its recovery may be filed in a District Munsif's Court whereas for a smaller extent, if the property is a specified one with boundaries, it will have to be filed in the Subordinate Judge's Court. This situation is not only illogical but sometimes makes the members of the litigant public feel its oppressiveness by contrast. Though this decision was made as early as 6th Jannuary 1947, no attempt has yet been made by the Legislatures to remove the anomalies, without at the some time overburdening the litigant public."

(1) 1951-1 M. L. J. 73.

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In *Chandra Narayan Singh* v. *Asutosh De* (1) it was argued on behalf of thh plaintiff that he should not be called upon to pay a larger amount as court-fee than what he would have had to pay if he had been the owner of all the fifty-two *ghatwali mahals* and sued to recover possession thereof. This contention was held to be fallacious for two reasons, namely, first, that the plaintiff cannot avail himself of sub-clause (a) unless he brings his case strictly within its terms, and for that purpose the determining factor is the land in suit and not a larger property in which it may be included; and, secondly, that even if the plaintiff had sued for recovery of all the fifty-two *ghatwali mahals*, the questions would require careful examination, whether those mahals constitute an estate paying annual revenue to Government.

The Taxing Officer had indicated the anomaly briefly even when *Kashirao's case (supra)* was referred to the Taxing Judge. The same anomaly was referred to in *Haliman Media* (2) also. However, our view is that the legal provision is not affected at all on account of the said anomalies and it is for the Legislature alone to remove the anomalies by proper legislation. Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. Lord Moulten explained in *Vacher and Sons* v. *L. S. C.* (3) as to why great caution is necessary in such cases by observing:

> "There is a danger that it may degenerate into a mere judicial criticism of the propriety of the acts of legislature. We have to interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice in between them, it can only be where, taking the

(1) I. L. R. XLI Cal 812. (2) I. L. R. LV All 531.
(3) 1911-13 All E. R. 241 at to 252.

> Act as a whole, and viewing it in connection with existing state of the law at the time of the passing of the Act, we can satisfy oureselves that the words cannot have been used in the sense to which the argument points."

In our opinion, the language applied in section 7(v)(b) and section 7(v)(d) is not open two different interpretations. In fact, if we agree with the view suggested by Krishnan J., we feel that the provision made in section 7(v)(d) would be rendered nugatory and therefore in spite of the possible hardships or anomaly we have to stick to the natural construction. To allow a litigant to pay court-fee on a part of the holding which is not recorded in the Collector's register as assessed to separate revenue would amount to construing the language of section 7(v)(b) and section 7(v)(d) into a meaning which the words used therein cannot bear.

It is true that a taxing provision has to be construed strictly and must always be interpreted in a manner most favourable to the citizen. However, in our opinion, this rule has no application where the language of the statute is absolutely clear and unambiguous and does not yield to two interpretations. Lord Cairns stated the principle by saying that "if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of law the case might otherwise appear to be." (See *Charles James Partington* v. *The Attorney-General* (1). As the words of the statute are clear we cannot import a rule of equitable construction by reading something not in the relevant provisions nor

(1) 1869 L. R. 4 H. L. 100.

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can any thing be read as implied therein (See *Gursahai* v *I. T. Commr, Punjab* (1) and *I. T. Commr* v. *Firm Muar* (2).

In cases falling under section 7(v)(d) of the Act, the plaintiff cannot be allowed to pay court-fee either on the basis of land revenue on the whole estate of which the land claimed in suit forms part but is not assessed to separate land revenue, nor can the plaintiff be allowed in such cases to work out the proportion of the land revenue in respect of a part of the land claimed by him and pay court-fee in the proportionate multiple of the land revenue by working it out according to section 7(v)(b).

Jurisdiction depends on the valuation and therefore when a larger amount is required to be paid as court-fee, no grievance can be legitimately made about the suit for part of the land being required to be filed in a court of superior jurisdiction.

The reference, is, therefore, answered by saying that in cases where court-fee is required to be paid on the market value under section 7(v)(d) the plaintiff cannot be allowed to pay court-fee on the whole estate of which the land claimed in suit forms part but is not assessed to separate land revenue; nor can the plaintiff be allowed in such cases to work out the proportion of the land revenue in respect of the part of land claimed by him and pay court-fee on the proportionate multiple of the land revenue worked out according to section 7(v)(b).

PER BISHMBHBR DAYAL C. J.—

I agree.

(1) A. I. R. 1963 S. C. 1062. (2) A. I. R. 1965 S. C. 1216.

PER BHAVE J.,—I agree with the conclusions reached by our brother Bhargava, J., though for slightly different reasons.

Krishnan, J., has noted certain anomalies resulting from the literal interpretation of sub-clauses (b) and (d) of clause (v) of Section 7 of the Court-fees Act. He has, therefore, made this reference with a request that the matter be placed before a Full Bench for resolving the anomalies flowing from the literal interpretation. Krishnan, J, has made certain recommendations in the matter of interpretation of the sub clauses so as to avoid the anomalies. Those recommendations I shall consider at the proper place.

Clause (v) of Section 7 of the Court-fees Act provides that in suits for possession of land, houses and gardens the court-fee is payable according to the value of the subject-matter. That clause further provides that where the subject-matter is land, such value shall be deemed to be–

"(a) (Omitted by local amendment);

(b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or where the land forms part of such estate and is recorded as afore-said (that is, is recorded in Collector's register as separately assessed with such revenue) and such revenue is settled, but not permanently-twenty times the revenue so payable;

(c) (Not material for our purposes);

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned-the market value of the land."

The word "estate" hasbe en defined by adding an explanation. According to the Explanation, "estate" means–

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"(1) any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;"

The first part of sub-clause (b) refers to an entire estate, or a definite share of an estate, paying annual revenue to Government. Now, when an entire estate pays annual revenue to Government, it follows that a share thereof also pays annual revenue to Government. When the sub-clause speaks of a 'definite share of an estate, paying annual rent to Government', it means that the annual revenue must be fixed *vis-a-vis* that definite share of an estate distinct from the 'entire estate' as such. If I am correct here, it follows that on that on the literal interpretation of sub-clause (b) it would appear that it covers three types of cases: (i) when the suit for an entire estate on which land revenue is payable; (ii) when the suit is for a 'definite share of an estate' and the land revenue is payable as such a share, that is to say, the land revenue is not to be worked out on the basis of the land revenue fixed for the whole estate and is fixed *vis-a-vis* the definite share itself; and (iii) when the suit is for land which forms part of an estate, but that part of land is recorded in the Collector's register as separately assessed to land revenue. It is thus apparent that sub-clause (b) contemplates suits for whole parcels of land which are either estates or definite share of an estate or part of an estate. But in all these cases those parcels of land are such on which land revenue is payable or assessed as a unit. Before the abolition of proprietary rights, often times the estates comprised a village or groups of villages, the revenue of which was settled as a unit. In some cases the village was divided into *patties* and the land

revenue was fixed *vis-a-vis* the *patties*. All this happened during the settlement. But in between two settlements, estates used to be partitioned through the revenue Courts and in those cases, record used to be made in Collector's register showing separate assessment for the divided parts. It is for this reason that all the three categories were included in the sub-clause which contemplated suits for units of land assessed to land revenue. On the other hand, sub-clause (d) speaks of 'part of an estate', but that part must be such as is not a definite share of an estate and is not separately assessed, that is, is not recorded in the Collector's register as separately assessed. Inasmuch as a definite share of estate or part of an estate separately assessed to land revenue is also a part of an estate, special pre-caution is taken in clause (d) to exclude definite share or part of a share from the operation of clause (d). It thus follows that sub-clause (d) comes into operation when the land forms part of an estate but is not a suit of assessment for the purposes of land revenue. Thus, the artificial mode of determining the value of the subject-matter of suit on the basis of multiple of land revenue is available only in the case of the whole estate or a definite share of an estate or a part of an estate if that is a unit for payment of land revenue. In all other cases, the market price is the measure for determination of the value of the land. This to me appears to be the plain and literal interpretation of the two sub-clauses.

In *Kashirao* v. *Ramchandra* (1), Bose J. (as he then was) interpretated sub-clauses (b) and (d) of clause (v) of Section 7 in the following manner:

> "In my opinion the section means this. If the plaintiff claims 1/4, or 5 annas or $6\frac{7}{8}$ pies, or any other fraction (however clumsy) of an entire estate which pays annual land revenue

(1) Taxing Decisions 1936-43 at p. 39.

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to Government, then the first part of clause (a) or (b), as the case may be, applies. All this would be a definite share. But if he claims a specified area (22 acres here), then that relates to a 'part' as opposed to a 'definite share', and the second portion will apply if that area is separately assessed. If it is not, then section 7 (v) (d) will apply."

From this it would appear that according to Bose, J., only two categories were considered in sub-clause (b), namely, the estate or a definite share of an estate, and a part of an estate separately assessed to land revenue. A 'part of an estate' is always a 'share of an estate'. But the distinction that Bose, J. appears to have made is that when you sue for a part of an estate, no doubt you sue for a share in the estate, but your suit is with respect to a particular parcel of land comprised in the estate, and not any land that may fall to your share when a a partition is effected, and hence if you sue for a particular piece of land, if that piece is not separately assessed, you must pay court-fee on the market value of the land. This is a plausible interpretation; but, in my view, it does not take into consideration the words "definite share of an estate". When one sues for a part of an estate, though it is with regard to any particular parcel of land, it cannot be said that one is not suing for a definite share. When one says 'I want possession of 22 acres of land', and 22 acres of land represent 1/5th of the whole estate, then one is really suing for a definite share. I, therefore, feel that the distinction drawn by Bose, J. between a 'definite share of an estate' and a 'part of an estate' in not altogether logical. On the contrary, if sub-clause (b) is interpreted to mean that where an estate is one unit of land revenue, or a definite share of an estate is a unit of land revenue, or a part of an estate is again a unit of land revenue, as it is separately assessed in the Collector's register, the interpretation becomes more rational, the idea being that inasmuch

as the revenue on the share of the estate or the part of the estate has already been determined, its multiple can be worked out. In my opinion, therefore, sub-clause (b) contemplates only those cases where the suit is for the whole unit over which land revenue is separately assessed. Where this is not so, the case comes under sub-clause (d) and the court-fee payable is on the market value. My brother Bhargava, J. has referred to various cases of various High Courts where a view similar to the one taken by Bose, J. was expressed. There is only one case of the Lahore High Court which takes a contrary view. In *Kuljas Rai* v. *Pala Singh* (1), Mahajan, J. (as he then was) quoted, with approval, the following passage from the decision of the Madras High Court in *Subramania Ayyar* v. *Rama Ayyar* (2) :

> "It is difficult to say that a fraction means a simple fraction like, 1/3, or 1/4 and not a complicated fraction like 19/48 or 37/72, etc., as one may get in Mahomedan law cases. If the words 'fractional share' can cover any kind of fraction, the only question is : Does it make any difference when a plaintiff mentions an area which can be worked out as a fraction of the whole but does not mention it by describing it as a fraction. In our opinion it does not. The opposite conclusion can be easily evaded by a clever plaintiff describing the plot he claims and not as so many acres and cents but as the north-western 37/73, of such and such a survey number or something like that. The liability to pay court-fee shoul not depend upon the ability to evade or not to evade court-fee. The Court-fees Act is a fiscal enactment and ought to be liberally construed."

On this reasoning it was held by Mahajan, J. :

> "When a person sues for land jointly owned by two persons, even if specific plots are sold, in law, it is treated as a sale of a share of the joint property. No co-sharer has any right to sell specific plots out of the joint *khata* and, therefore, the value of an individual plot comprised in the

(1) A. I. R. 1945 Lah. 15. (2) A. I. R. 1927 Mad. 1002.

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joint *khata* is wholly immaterial in determining the point of court-fee."

There is a great deal of force in this argument. A part of an estate is always a share of an estate; and if you wish to make it a definite share, then in that case you must describe it with reference to its geographical boundaries. In that case alone it can be said to be a definite share. All this difficulty would be obviated if the interpretation put by me on sub-clause (b) is accepted. In my opinion, therefore, when a suit is brought for a share of a part of an estate, if that share or part of an estate is not separately assessed as a unit of land revenue, the case must fall within the residuary sub-clause (d) and the court-fee in that case should be on the market value.

Krishnan J. in his order of reference has practically conceded that when a suit is filed for a part of an estate which is not separately assessed to land revenue, the case falls under sub-clause (d). His Lordship, however, pointed out that the value of a part can, in no case, exceed the value of the whole. It generally happens that if the part is valued on market price, its value would work-out to be much more than the value of the whole estate determined on the basis of the multiple of the land revenue. Because of this anomaly, Krishnan, J., thinks that in such cases when a suit is brought for a part of the estate, the plaintiff should be allowed to bring the suit on the basis as if the suit was for the whole estate and he should be made to pay court-fee on that basis, this fiction, of course, being limited for the purposes of determination of court-fees and jurisdiction. Krishnan, J., has observed that though the anomaly was pointed out in several decisions of this Court, the same has not been removed by the legislature and hence the Courts must take a strong

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attitude in the matter of interpreting sub-clause (b) and interpret sub-clause (b) in the manner suggested by him, though literally that is not possible to do.

In the matter of interpretation of a statute, the courts are not free to put their own interpretation on the statute for the purpose of removing anomalies. This is the function of legislature. The Courts are required to interpret the statutes as they are; and if there is no ambiguity in the language used, effect must be given to the clear terms of the statute. The second limitation on the Courts is that the interpretation by the Courts of the statute in any particular manner should not render any part of the statute otiose. If the interpretation of Krishnan, J. is accepted, in that case sub-clause(d) will have to be re-written by the Court to say that in case of part of an estate which is not separately assessed to land revenue, the court-fee shall not be paid on its market value but on the value of the whole estate worked out on the multiple of the land revenue. This the Courts cannot do. If it is held that the suit for a part of an estate not separately assessed to land revenue is also included in sub-clause (b) itself, in that case sub-clause(d) is rendered otiose.

For the abovesaid reasons, it is clear that where a suit is filed for a part of an estate or a share of an estate, but where such part or share of the estate is not separately assessed to land revenue, the court-fee is payable on the basis of the market value. In those cases where the suit is for an entire estate, or a defined share of an estate, or a part of an estate, assessed to land revenue as a unit, and the suit is for possession of the whole unit, the court-fee is to be charged on the value to be worked out on the basis of the multiple prescribed. On this reasoning, even when a suit is filed for a share of an estate not

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being any specified part thereof, the court-fee payable would be on the market value and not on the multiple to be worked out. But inasmuch as the decision of Bose, J. in *Kashiro* v. *Ramchandra* (1) has been followed in this Court for such a long time and inasmuch as other High Courts have also adopted the same reasoning, I do not wish to take the extreme view which follows from the literal interpretation of sub-clauses (b) and (d) of clause (v) of Section 7 of the Court-fees Act and agree that the reference should be answered in the manner proposed by Bhargava, J. This I am doing on the principle of *stare decisis*; but, in my view, no further relaxation in the matter of interpretation of the sub-clauses is warranted.

After the abolition of proprietary rights, now the estates have been reduced to small holdings. There is not much difference in the quality between one part of an estate as compared to the other. It is, therefore, high time that the legislature should intervene and make one uniform rule for fixing the court-fees for whole estate as well as for the part on the basis of either the market price or the multiple of the land revenue, the proportionate revenue for a part being determined on the basis of acreage.

Reference answered accordingly.

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(1) Taxing Decisions' 1936-43 at p. 39.

MISCELLANEOUS PETITION

Before Mr. Justice Shiv Dayal and Mr. Justice Bhave

SMT. BHAGWATI BAI, Petitioner* 1968

v. Mar. 22

YADAV KRISHNA AWADHIYA and others, Respondents.

Criminal Procedure Code (V of 1898)—Section 491—Detention of minor by a person not entitled to legal custody—Writ can be issued—Detention is equivalent to imprisonment of minor—Writ can be issued when ordinary remedy is not available or is ineffective or inadequate—In exceptional cases writ can be issued for restoration of custody of minor to guardian entitled to the custody of child—Guardian's claim to the custody of the child is a right in the nature of trust for benefit of minor.

The writ of *habeas corpus* also extends its influence to restore the custody of a minor to his guardian when wrong-fully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated, for the purpose of granting the writ, as equivalent to imprisonment of the minor.

Gohar Begam v. *Suggi alias Nazma Begam and others* (1); referred to.

The prerogative writ is an extraordinary remedy and the writ is issued where, in the circumstances of the particular case ordinary remedy provided by the law, is either not available or is ineffective or inadequate.

For restoration of custody of a minor from a person, who according to the personal law, is not his legal or natural guardian, the ordinary remedy lies under the Hindu Minority and Guardianship Act, as the case may be, and it is only in exceptional cases that the rights of the parties to the custody of the minor will be determined on a petition for *habeas corpus*.

*Miscellaneous Petition No. 2 of 1968.

(1) (1960) 1 S. C. R. 597.

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Makutam Basavalingam v. *Makutam Swarajyalakshmi and others* (1); referred to.

In an application under section 491, the underlying principle is that the guardian's claim to the custody of the child is not a right in the nature of property but, indeed, it is a right in the nature of trust for the benefit of the minor. Where there is imminent danger to the health or safety or morals of the minor, an interim order for production of the minor becomes necessary.

S. C. Dutt for the petitioner.

P. R. Padhye for respondent no. 1.

Cur. adv. vult.

ORDER

The Order of the Court was delivered by SHIV DAYAL J.—This is a petition under section 49 , Criminal Procedure Code, and Article 226 of the Constitution for issue of a writ in the nature of *habeas corpus*. It is alleged by the petitioner that she was married to Yadav Krishna, respondent 1, on 7 March 1964 according to Hindu rites. They have two children; Shyam aged about 2½ years and Ramoo about 5 months. The husband is a lecturer in the Government Higher Secondary School, Dongargarh, district Durg. The parents of the petitioner reside at Jabalpur. Because of his illtreatment, she came to Jabalpur for her first delivery. This was with the permission of her husband, but she wanted an assurance of good behaviour to be given to her, before she would return. The husband then instituted a suit for restitution of conjugal rights under section 9 of the Hindu Marriage Act, in the Court of the District Judge, Rajnandgaon. This was in March 1966. But, when he came to Jabalpur in June 1966, there was conciliation in the presence of respectable persons. She then agreed to go and stay with him, provided he withdrew the suit. That was done. She

(1) A. I. R. 1957 A. P. 704.

went back end started living and cohabiting with him at Dongargarh.

She further alleges that he again started illtreating and beating her and also threatened to kill her. In the meanwhile, she again conceived and, to help her in her delivery, her mother was called from Jabalpur. Her father also went there to see her. On 25 October 1967, the younger child was delivered. On 3 December 1967, the husband quarelled with the petitioner and her parents and threw out the luggage of her parents and pushed her out of the house saying that he no more wanted her or any relations of her to live with him. She resisted but she was forcibly turned out. She wanted her children to accompany her but they were forcibly kept back by the husband.

In these circumstances, she alleges that the children are under illegal and unlawful detention of their father inasmuch as under the law she is entitled to their custody and that the welfare of the minor children lies in their staying with her.

Shrimati Kejabai (respondent 2) is the sister of Yadav Krishna; Samharoo Ram (respondent 3) is his brother-in-law. Yadav Krishna has kept Ramoo, the younger child, with them and is under their care.

Yadav Krishna opposes this petition. In the return filed by him, he *inter alia* denies that he ever illtreated the petitioner. He says that she being the only child of her parents, the latter want him to stay with them, but to this he does not agree. This seems to be the rift in the lute between him and the petitioner. He says that the children were left by the petitioner herself, and that they are being looked

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after very well. He denies that it will be in the interest of the children that they live with the petitioner. He says that Ramoo is not respondent 2 or 3, but he has kept the child under the care of his paternal aunt at Raipur. Her name has not been disclosed.

When this petition came up for hearing, Shri Dutt for the petitioner and Shri Padhye for Yadav Krishna made a sincere and prolonged endeavour for reconciliation. It is remarkable that neither side has anything to say against the moral character of the other. It is quite clear that they are not carrying on well with each other, but the cause of this seems to be petty domestic quarrels. Although the present proceeding is not under the Hindu Marriage Act, or the Hindu Minority and Guardianship Act, it appeared that if the parties came to an amicable settlement, it would be in the interests of both the children and this petition would become infructuous. But, ultimately, learned counsel stated that the parties could not come to terms amicably.

The writ of *habeas corpus ad subjiciendum*, i.e., you have the body to submit or answer, is commonly known as the writ of *habeas corpus*. It is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated, for the purpose of granting the writ, as equivalent to imprisonment of the minor. It is, therefore, not necessay to show that any force or restraint is being used against the minor by the respondent. In *Gohar Begum* v. *Suggi alias Nazma Begam and others* (1) where the mother had, under the

(1) (1960) 1 S. C. R. 597.

personal law, the legal right to the custody of her illegitimate minor child, the writ was issued.

But it must be remembered that this prerogative writ is an extraordinary remedy and the writ is issued where, in the circumstances of the particular case, ordinary remedy provided by the law, is either not available or is ineffective or inadequate. Otherwise, a writ will not be issued; it will be open to the person aggrieved to see the ordinary remedy. Thus the power of the High Court in granting the writ is qualified and has to be used in the exercise of judicious and sound discretion. For restoration of custody of a minor from a person, who according to the personal law, is not his legal or natural guardian, the ordinary remedy lies under the Hindu Minority and Guardianship Act or the Guardian and Wards Act, as the case may be, and it is only in exceptional cases that the rights of the parties to the custody of the minor will be determined on a petition for *habeas corpus*. (See *Makutam Basavalingam* v. *Makutam Swarajyalakshmi and others* (1).

It cannot be said that an application under section 491, Criminal Procedure Code by a guardian for custody of the minor cannot lie just because there is the ordinary remedy provided by the law. The paramount consideration in every such case is the welfare of the minor. The best interest of the child is the primary consideration; the right of the guardian is secondary and it will not be enforced by issuance of the writ when it is in conflict with the former consideration. If that paramount consideration does not call for the writ to be issued, it will be refused and the applicant would be left to resort to the remedy provided under the ordinary law. The underlying principle is that the guardian's claim to the custody of the child is not a right in the nature

(1) A. I. R. 1957 A. P. 704.

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of property but, indeed, it is a right in the nature of trust for the benefit of the minor. Where there is imminent danger to the health or safety or morals of the minor, an interim order for production of the minor becomes necessary.

We shall now apply these principles to the present case. The petitioner is the mother of both the minor children, Shyam and Ramoo. Both of them are under five years of age. Section 6 of the Hindu Minority and Guardianship Act, 1956, enacts that the natural guardian of a Hindu minor boy is the father, and after him, the mother. Then there is a proviso which reads thus:

> ".....provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;"

The language of the proviso make it abundantly clear that although the guardian is the father, the custody shall be with the mother until the minor completes the age of five years.

Shyam, the elder child, is with his father. He cannot be called a stranger; after all, Shyam is his son. There is absolutely nothing to show that there is imminent danger to the health or safety or morals of Shyam, while he is in the custody of Yadav Krishna. Likewise, there is nothing on the basis of which it can be said that it will not be in the interest of the minor to stay with his father. On the contrary, it appears to us that having regard to the welfare of this boy, it will be better that he stays with his father. This is the time that his education should begin. Yadav Krishna is a lecturer in a Government Higher Secondary School. He can look after the boy very well. Having regard to all these circumstances, issuance of *habeas corpus* must be refused in this case.

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But the same situation does not obtain as regards Ramoo. He is a little babe of about five months. Considerations of his welfare require that he should be kept with the mother in preference to the father. It is true that the petitioner is also a teacher in a School, but, during her absence for a few hours every day when she goes to the school, her mother can take care of the child. It is remarkable that the father has voluntarily parted with the custody of Ramoo by entrusting him to his paternal aunt, who does not reside at Dongargarh; she resides at Raipur, which is said to be about 100 miles away from Dongargarh. Ramoo is thus not under the immediate care and custody of Yadav Krishna. There is not the slightest doubt that the care of this younger child will be much better if he is kept with his mother.

Let us still hope that the petitioner and her husband will amicably settle their quarrels.

Accordingly, we direct that the respondents shall forthwith place Ramoo under the care and custody of the petitioner. This petition is dismissed as regards Shyam. Shri Dutt and Shri Padhye agree that the child Ramoo shall be handed over by Yadav Krishna (respondent No. 1) to the petitioner in the presence of the District Magistrate, Raipur, or, in his absence, in the presence of the City Magistrate, Raipur, on 2 April 1968. We direct that a warrant shall be issued accordingly. The warrant shall be served on respondent no. 1 to produce Ramoo before the District Magistrate or the City Magistrate, as directed above. Shri Padhye and Shri Dutt will also intimate the respective parties forthwith. There shall be no order for costs of this proceeding.

Petition partly allowed.