# BOMBAY HIGH COURT

1862 - 2012

# A Journey of 150 Years through some Memorable Judgments

## Part 1

# PREFACE

A tiny kernel of an idea planted by Justice Mridula Bhatkar took root, and has resulted in a humble effort to present before you a compendium of the crux of some of the judgments of the Judges who have served the Bombay High Court since its inception in 1862.[1] The initial idea was to document one judgment of the First Court from each year which was modified to include a judgment of the Bombay High Court of each year. I soon realized that it was too expansive an idea to merit a single judgment a year. I could collect and collate, as many as ten judgments which would qualify to show the development of the law we desired to portray. Having found too vast a number of such judgments, I had to settle at a more reasonable figure of about five judgments each year to showcase the progress this Court has made from its illustrious beginnings. Our Chief Justice Mohit Shah and our Justice Chandrachud wholeheartedly supported the idea to complement the Book published on this the sesquicentennial of our Court.

As the number of Judges grew, fewer judgments of each Judge would be selected as illustrations. These judgments are not the only path-finding ground-breaking ones; they are also ones with simplicity and legal elegance. The number of judgments we settled upon just would not permit all deserving judgments to be compiled; only a few have been picked from each year as the first in a series of such compilation. The selection is largely subjective, most of which are selected by young minds reflecting the choice of today and have been largely accepted, with some additions and editing. The selection evinces the fountain of talent that awaits the future.

This enumeration is a joint effort, involving much labour and thought, from Judges and Lawyers, young and old, law students, interns, fresh Lawyers and newly appointed judicial officers. The entire exercise is an effort in making the judgments more readable and citizen-friendly.

A true test of a judgment is described by John Wirenius in his book on the freedom of expression in the United States *"First Amendments, First Principles"* :

[1] A list of Chief Justices is annexed as Schedule I-A and Puisne Judges and their tenure is annexex as Schedule I-B

*Law is not a Surgeon's scalpel. It is a blunt instrument, capable of inflicting crushing damage, but not of exploring fine nuances. Although it is easy for the Advocates and the Judge to explore fine legal distinctions, using scholastic logic, every law-suit ends up in a judgment and every judgment must be simple enough to be enforced without triggering a new law suit.*

The evolution of the Court has shown that law has been indeed used as a surgeon's scalpel.

A reading of the law reports from the very first year of the incorporation of this Court until the last has been a revealing experience.

The very first judgment of this Court which came to be reported was dated 30th June, 1863 in Special Appeal No.302 of 1862 and has been reported in the first volume of the Bombay High Court Reports (BHC Rep.) which reported judgments from 1862 to 1865. An intriguing aspect which became apparent upon reading the volumes of BHC Rep. was that the names of the Judges were not conspicuously mentioned at the top of the judgments as has been the practice since 1875 when the Indian Law Reports series came to be published followed by the Bombay Law Report series from 1899. It took some effort to ascertain from the reading of the judgments who the authoring Judges were, as the names and references were inconspicuously mentioned within the Judgments. The Counsel who appeared before them, were named, but once, in a single paragraph that dealt with their submissions. The law reports published for 2 or 3 years in a single volume showed many judgments of the few Judges who presided over the Court then. The most vivid and conspicuous aspect of the judgments was their length which was the one reason why the judgments of 2 or 3 years could be compacted in a single volume.

It was of interest to note how editors of Law Reports and illustrious Counsel who practiced in the Court later became Judges who presided over it, exemplified by Justice Nanabhai Haridas, Sir Chimanlal Setalvad and Sir Jamshedji Kanga. There have been illustrations of Advocates General of the Court who came to be Judges. Academicians and jurists also adorned the Bench, the best known being the Rt. Hon'ble Sir Dinshaw Mulla.

The decisions of the earlier Supreme Court of Bombay on its Plea Side and Equity Side of the years 1855 to 1861 were reported in an Appendix of the first volume of the BHC. The judgments of the Original Side, the Appellate Side and the Crown Cases were separately recorded. We have selected judgments from each of these sides, the Appellate side having far more judgments than the others by virtue of its sheer extent of the territorial jurisdiction. Those Law Reports published a list of Jurists, text books and works of authority in addition to the subject index and lists of cases reported and cited.

The extent of the territorial jurisdiction of the Court revealed by the content of the judgments was quite notable. It extended in the North up to a part of what is present day Pakistan; Karachi was within its jurisdiction, but not Peshawar. The orders of the 'Acting Judges' from Surat, Bharuch, Ahmedabad and Belgaum came up before the Court. One judgment revealed that the District of North Canara (except the Taluka of Kandapur) was detached from Madras Presidency and annexed to Bombay Presidency.

It is interesting to note how the laws which still govern us were in effect from the earliest days.

- ⇨ The Civil law relating to “readiness and willingness” in a specific performance suit from 1862; the Criminal law relating to recovery of property has been recorded since 1890. The very first publication of law reports showed the case of this principle in suits for specific performance of contracts since 1962, a legacy of the common law. The judgment considered how the Plaintiff could not be ready and willing to perform only a part of the contract and called upon the Defendant to specifically perform a part when he did not show his readiness and willingness to perform the other part.
- ⇨ The distinction between juridical possession and mere occupation of premises in custody of an agent came to be recognized from the early 20th Century.
- ⇨ The law of maintenance of Hindu wives and widows came to be settled with its various dimensions which holds good today.
- ⇨ The *benami* nature of transactions was considered in judgments since 1880s which culminated in the law more than a century thereafter in 1988.
- ⇨ The right to receive light was settled in Common Law resulting in injunctions against closure of windows or doors by the neighbour's construction, but not when one of the five windows had to be closed by such construction. The right to air was held to be even more sacred and

put on a higher pedestal than the right to light considering the climatic conditions and the entitlement to good health of the inhabitants of the 'Island'. Later judgments did clamp the private right of a single individual which gave way for the greater good of the many. The 'vast construction' in the island set in the earlier 20th Century has been observed to be the cause for containing that right. The degree of entitlement to light came to be settled at that time to the “45 degree Rule” as was then prevalent in England. The easementary right was granted essentially as a Common Law right which statutorily came to be recognized from 1882. This is perhaps the only law which narrowed its ambit as time marched on.

The content of the law considered in the early judgments was vastly different from what might be expected. An overwhelming number of judgments considered personal laws, more specifically the prevalent uncodified Hindu Law, most of which related to adoption, maintenance, partition and alienation of property. The reliance upon custom as the source of Hindu law was also imported into judgments relating to Mohammedans. The exceptions to Mohammedan Law were by way of custom with regard to matters of inheritance and succession amongst Khojas and Kutchis who sought to govern themselves by Hindu Law. No particular custom prevailed amongst Parsis. In the absence of customary law amongst Parsis, the English Common Law was applied to them.

The common law of justice, equity and good conscience became the main legacy left by the system of the Rule of Law. The touch of equity in the matter of law by which the parties were governed would leave an indelible mark.

- The Court dealt with the rights of riparian owners and neighbours with regard to the use of water from a stream. The striking case was of a man who was deprived of water from a stream and who sued for injunction restraining his neighbour from diverting all the water of the stream through a canal into his fields. While the Defendant claimed the use of the canal constructed by his father decades ago, the judgment held that the water of the stream is a “usufruct” and could not be used such as to deprive his neighbor completely.
- The parameters of 'apprehension' as a criminal offence as also a tort came to be considered in a rather hilarious appreciation of evidence. It was held that mere complaint of apprehension was not enough, but the evidence must expose such apprehension as would be expected by a reasonable man upon seeing what transpired. The admitted evidence of a burly man waving his hand within six inches of the face of the victim, with clenched or

unclenched fist, resulted in a verdict of the presence of apprehension entitling him to damage of Re.1.

- The alluvion, the land formed by a river, was held to belong to the owner of the contiguous land as against the Government.
- The building structures of the Convocation Hall, the Library in the Clock Tower as well as the Cawasji Jehangir Hall, were held to be included in the premises of the University as they were used for the purpose of education as against the Crown.
- The Court upheld the claim relating to the nuisance caused by falling branches and fruits of the trees of the neighbour.

The acceptance of the texts of the Hindu Law and the customs, pickled and sprinkled with a touch of Common law manifested itself in the interpretations in various judgments to advance justice by observation of minute details to decipher exceptions in the law. The Court bolstered the entitlement of unprivileged family members to inherit properties.

- A blind or deaf Hindu woman was not entitled to the estate of her father as she could not perform *shraadh*; it was held that this applied only when she was completely deaf from birth. However, she was entitled to maintenance out of the estate of her father.
- Leprosy was a disqualification for inheritance; it was held that this applied to only a virulent and aggravated type. Yet, he was entitled to maintenance.
- In execution of a decree the Judgment Creditor sought to attach the movables of a Hindu woman including her Mangalsutra; it was held that the Mangalsutra, which was required to be worn by a woman at all times, was her wearing apparel and that Life Insurance was for the heirs hence were exempt from attachment.
- Costs for withdrawal of a suit by a minor on attaining majority were granted to the Defendant as also his next friend.

As Jose Gracie Oliver said:

***"Justice is so subtle a thing that to interpret it one has only the need of a heart"***

Judgments came to be passed under the Court's supervisory jurisdiction *suo motu*.

- The Whipping Act of 1864 which set out the punishment of lashes/strikes for theft upon children to be awarded for a second time offence of theft, if 'locus penitence' is not offered, as the convict showed that he is not deterred by the sentence of imprisonment only, came under the Court's purview. Upon review of the register of criminal appeals disposed off by the Sessions Judge, an order annulling the sentence of the lower Court of one dozen lashes/strikes upon a child who committed the offence of theft was directed to be carried into effect.
- An order was passed upon review of taxation of Solicitors of the Court for the Solicitor's fees.

The Judgments also exhibit the confidence the Judges of this Court had in their judicial officers, even Magistrates, and the respect and trust the Judicial Officers commanded. It reflects how the parties accepted such position and how the Judges were above board.

- A case was refused to be transferred because a Magistrate took up the matter of a person under his service.
- A challenge to an order of a Magistrate who knew one of the parties was dismissed. The Judges observed that the relationship did not matter for the ultimate decision.

The judgments also betray the acceptance of streaks of gender discrimination then prevailing in English Law as also in the uncodified Hindu Law both of which came to be upheld.

- A marriage operated as a gift of all the properties of a Parsi governed by English law to the husband who could deal with it, lease and dispose it off without her consent.
- A Hindu widow could alienate her husband's estate only for legal necessity; the alienation could only be to incur expenses for pilgrimage for his last rites.

The distinction in the legal practice that prevailed in England and the Islands of Bombay came to be commented upon, leading to legislative reform in very early days. The total lack of registration of transfers of immovable properties was frowned upon. References were made to Regulative Acts. The first of such was the Bengal Regulation XXXVI of 1793 which preceded the Bombay Regulation I of 1800, followed by the Madras Regulation XVII of 1802 relating to registration of documents. These regulations were accepted and used to set the tone for the

requirement of registration with regard to immovable properties until the Indian Registration Act, 1843 came to be enacted. The legislations of those early days, with or without amendments, continue to apply today.[2]

The Court has had its triumphs and trials; its ups and downs; its crosses and crowns. The dark pre-independence days, exhibited adherence to the Law considered from an angle wholly different from the view of an independent mind. The cases of Lokmanya Tilak, Veer Sawarkar and others reflect two stark views. The post emergency era of detention and clamp-down on Fundamental Rights demonstrate victory over oppression by remarkable interpretation.

The law of tort in common law gave way to decisions under specified legislations and has evolved into verdicts upholding the Fundamental Rights of Citizens, and more specifically the Right to Life in ways too numerous to enumerate. This evolution reflects the social milieu through a century and a half that the Court has journeyed. A reading of the judgments show that Court has stood tall in an increasingly globalised economic society, conscious of the quality of life of people, as much as the extent of rights of their properties.

The Judgments serving the Fundamental Rights of citizens and Judgments upon Judicial Review are a class apart. Beneficient, reasonable, practical and purposive interpretation was made to enhance justice and prevent its frustration. They held that –

- Hearing does not always include personal hearing; Written Statement is enough
- Supervisory jurisdiction also extends to Tribunals, local bodies and authorities
- Court would inspect and have re-valued answer sheets of college students
- There can be implied waiver of statutory notice to the BMC
- Probate Petitions would not be barred by limitation; only the delay would have to be explained
- Milk would include milk powder which does not cease to be milk on dehydration

[2] A list of the Statutes referred to and considered in these judgments is annexed as Schedule II

- Devolution of interest of a female in a dwelling house cannot be kept in abeyance as the only single male member would not constitute joint family
- Rules of Bar Council classifying students in two categories – those in regular employement and those undergoing professional course – were discriminatory
- Right to Life extended to the right to die by suicide
- Right to Adopt is included in the right to Life
- Victims of crime had rights of protection, representation and participation
- Death in a factory compound was death in a public place as the public had access there
- A father could evict his son from his own property; the son lived as member of the family – nothing more and nothing less
- Mandatory injunction to restore status quo ante could be granted though in rare cases
- Right to maintenance during *iddat* period included permanent settlement for *post-iddat* period also
- Writs could be issued even in contractual disputes if the State acted arbitrarily
- *Talaq* could be effective only when rules were strictly complied by the husband claiming it
- Presumption of a letter being posted could be drawn when the receipt was not rebutted
- Exemption of Court Fees payable by female litigants for maintenance was not applicable to Probate Petitions, but applicable to Petitions for Succession Certificate when the estate was for only employment benefits but not when the estate was shares and securities
- Striking off defence for disobedience of an order of the Court would include excluding the right of cross-examination also.
- A foetus is not a person to be able to claim compensation
- The right of information extends to 'what' but not 'why'
- Sonography machines could be seized; the installation of "silent observer" in sonography machines was legal
- Infertility, unlike impotency, could not annul a marriage which could be consummated
- Merit and need-based scholarships granted to students of minority communities were valid as they did not impinge upon the rights of students of majority communities

Aside from the challenge to stray provisions of Statutes, such as, S. 309 of the IPC relating to suicides, the vires of legislations such as the Profession Tax Act,

Public Premises Act, Customs Act, Pre-conception and pre-natal Diagonostic Tecniques Act came to be considered.

The public interest litigation era, which has come of age, has produced directional orders rather than judgments. The cases of rescue and rehabilitation of trafficked children, Mumbai flood victims, Mithi River clearance and traffic pollution control are worthy examples.

While some of the judgments may have been overruled by the Supreme Court, they are unique in their contributions, the other view notwithstanding. The verdict relating to the right to commit suicide, the ambit of the grant of mandatory injunctions, the fact that imported goods attract custom duty when they enter the Indian territorial waters and the more recent rulings relating to open green spaces in the city and the jurisdiction to tax non-residents are but a few notable illustrations.

Like the small acts of small men that make a nation, rather than just the great acts of only great men, these are the judgments of innumerable Judges that have made and moulded our Court.

This is not a digest of judgments, it is not a ready-reckoner or a legal referencer for a Lawyer. It is the first electronic documentation of a proposed series of the core of the judgments of the Bombay High Court, serving the purpose of going down the memory lane. We have turned the complex into the simple. It reads much like a book, though it is only a compilation, which I hope will be read by all persons without distinction of education or age to know what this Court has stood for.

The tiny acorn which took root and held its ground has become a mighty oak. I wish you many happy hours of reading under the shade of its canopy. I hope you enjoy reading the compilation as much as we all have, presenting it to you.

Justice Roshan Dalvi

18th August, 2012

# 1862-65

(1862-65) 1 BHC Rep. 1

Jina Ranchod v/s. Jodha Ghella

Forbes & Newton, JJ

The Appellant sued for removal of a building constructed by the Respondent on waste land of the town on Gogo. The land was contended to be belonging in common to all the houses in the street. The Respondent contended that he had not encroached on any land not his own, but only built his house on old foundations.
The acting Judge of Ahmedabad held that the disputed house was on the Queen's Highway which was a thoroughfare and hence, in charge of the Magistrate.

Held: The Plaintiff was competent to sue in Civil Court for removal of a building erected on any portion of a waste land belonging in common to all the houses in a street or road if it causes him injury.

(1862-65) 1 BHC Rep. 4

Reg. v/s. Chanviova Kon Shidram Shetti

Sir Sausse, CJ, Forbes & Newton, JJ

A woman attempted to commit suicide by throwing herself into a river. She confessed her guilt and stated that that was when she had suffered from extreme bodily affliction.

The Magistrate sentenced her to pay a fine of Rs.25/- and in default to undergo simple imprisonment for two months.

Held: S. 309 IPC requires both imprisonment and fine to be levied. Hence, the sentence was not according to law; some imprisonment was essential, however, short.

(1862-65) 1 BHC Rep. 4
Dhondu Jagannath v/s. Narayan Ramchandra
Sir Sausse, CJ, Forbes & Newton, JJ

The Plaintiff sued for the balance amount payable on a bond of Rs.1,500/- with interest @ 1-3/4% p.a. The Bond was executed in 1846. Interest had been paid from time to time till 1855. The Defendant signed the account as adjusted then and admitted a balance of Rs.1,788/- for principal and interest and promised to pay the consolidated

sum.

The Trial Judge found that double the principal amount on the Bond short of only Rs.226/- was repaid by way of interest. He decreed the suit for Rs.226/- on the Hindu Law that no amount in excess of double the amount by way of interest can be claimed.

The Court considered the Law laid down by Manu, Chapter on Judicature and on Law, Civil and Criminal, Shlok 151 which ran thus -

> *"Interest on money received at once, not month by month or day by day as it ought, must never be more than the amount of the Principal paid up at the same time."*

The Court also considered the commentary of Mithila School by Vachapati Misra, in (1) Colebroke's Digest page 63 which ran thus -

> *"This is paid without diminishing the Principal; even though received for a thousand years, it does not reduce the Principal."*

Held: The Rule of Hindu Law is simply that no greater arrears of interest can be recovered at any one time than what will amount to the Principal sum; but if the Principal remained outstanding and the interest was paid in smaller sums then the amount of the Principal money there is no limit to the amount of interest which may be recovered from time to time.

(1862-65) 1 BHC Rep. 56
Bechar Bhagwan v/s. Bai Lakshmi
Forbes, Erskine & Sir Westropp, JJ

A Hindu widow executed a Deed of Gift of movable and immovable properties inherited by her from her husband consisting of bonds and lands in favour of the Plaintiff without the consent of her husband's heirs. The sister of the deceased husband challenged the transfer as exceeding authority and claimed it to be void.
The Court referred to the opinion of the Shastri of Surat, Strange on Hindu Law, Vol.1 pg. 246, Vyavahar Mayukha commenting on the text of Katyayana, the answers of the Supreme Court Pundits (Bengal) and Hindu Law by Sir Francis Macnaghten pg.4.

Held: A Hindu widow has full right to alienate the movable properties of her husband inherited by her without consent of the heirs; not the immovable properties except under special circumstances, for necessary subsistence or purposes beneficial to the deceased, e.g. religious purposes. She is little more than a tenant for life in his immovable properties.

(1862-65) 1 BHC Rep. 205
A.C. Cama v/s. H.F. Morgan
Sir Arnould, Acting CJ, Newton & Tucker, JJ

The Plaintiff's case is that the Defendant came running out of his house with a stick and flourishing it within 6 inches of his face gesticulated to the Plaintiff in abusive language that if he were impertinent he would strike him and the Plaintiff so believed. The Defendant admitted that he ran out of the house, with a stick in his right hand, but seeing the miserable, little, puny man that the Plaintiff was, shifted the stick to the left hand so he would not be tempted to use it against the Plaintiff and gesticulated with his right hand unclenched within 6 inches of the Plaintiff's face for the sake of emphasis.

He denied that he threatened to strike the Plaintiff, if he was impertinent, but deposed that he stated to the Plaintiff that “if he were not such a miserable little snob or a brute (he forgets which) he would knock his head off his shoulders”. The Court held that whether the Defendant had the stick in his hand or his unclenched hand did not matter for either would have the “same legal quality (though not the quality) of violence or criminal force. The test was whether The Plaintiff had reasonable apprehension from the gestures and abusive language that the Defendant would strike.

The Court observed that the word “if” can have no effect on the apprehension.

Held: While interpreting the law the Court would go on grounds of plain sense than on any subtleties or refinements – a look, a gesture, a word, even silence may be construed as threat. Hence held that the Defendants' act was an assault hence in appeal granted damages of Re.1/-.

(1862-65) 1 BHC Rep. 262
Vishwanath Atmaram Vs. Bapu Narayan
Sir Sausse, CJ & Sir Arnould, J

Upon accounts of certain transactions and liabilities, the Plaintiff and the Defendant entered upon an agreement giving the Plaintiff certain properties from the estate of the Defendant with right of management in exchange of one house to be given to the Defendant’s wife. The Plaintiff conceded only a life interest to her and demanded the property and gave notice that the agreement about the interest of the wife was at an end.

Held : The Plaintiff must be ready and willing to perform the entire agreement in the absence of which he cannot claim specific performance of any part.

(This position in law still prevails)

# 1864-66

(1864-66) II BHC Rep. 36
Dada Honaji v/s. Babaji Jagushet
Sir Couch, Newton & Warden, JJ

The Appellant sold his house to the Respondent for Rs.675/-. The Respondent paid him Rs.275/- and agreed to pay Rs.400/- to the mortgagee. The Appellant admitted the contract, but alleged that the Respondent agreed to resell the property upon payment to him of the purchase money and that he would execute a writing to that effect before he took possession.

It was held by the lower Court that written evidence of the Deed of Sale could be impeached only by other written evidence.

Held : That the rules of justice, equity and good conscience require that the terms of a contract may be shown by way of addition or alteration to a written contract if such evidence is very powerful to induce the Court to believe that the terms expressed are not the real ones (in the written contract).

[S. 91 of the Evidence Act, 1872 changed this position in law.]

(1864-66) II BHC Rep. 75
Nesarwanji Pestonji v/s. Deputy Collector of Customs
Sir Couch & Tucker, JJ - upon dissent
Forbes & Newton, JJ

The Plaintiff had a hak called Mogalai Ki Choki purchased by his father from the successors-in-title of the Nawab of Surat to recover annual produce on articles imported and exported through the City gates. The Defendant, by a proclamation, forbade him to collect under pain of punishment which order the Plaintiff challenged.

Held: The intention of the Legislature in Act XIX of 1844 abolished collection of all huks, fees, customs, dasturi, duties, taxes, cesses under whatsoever name not forming a part of the revenue in a language too large to bear the construction that it abolished the Plaintiff's right to levy only the taxes and cesses levied by the Government.

(1864-66) II BHC Rep. 106
Reg. v/s. Vyankatsvami
Forbes, Sir Couch & Newton, JJ

The Respondent was convicted and sentenced by the Sessions Judge of North Canara to 10 years transportation on 18.9.62. He appealed.

On 28.2.62, The Secretary of State for India in Council ordered the District of North Canara, which formed the Presidency of Fort St. George (Madras), except the Taluka of Kandapur, to be detached from Madras Presidency and annexed to Bombay Presidency from 16.4.62.

The Legislative Council of Bombay passed Act III of 1863. Government of Bombay assented to the Act on 4.1.63. Nothing was to affect acts done in Canara prior to the Act.

As the sentence was passed after annexation but prior to the Act, it was contended that the Bombay High Court had no jurisdiction to hear the Appeal.

Held: S. 408 of the Cr.PC applied and under clause 26 of the Letters Patent this Court had jurisdiction to hear the appeal.

(1864-66) II BHC Rep. 133
Sir Jamshetji Jijibhai v/s. Sonabai Patak
Sir Couch, J

The Plaintiffs are Executors & Trustees of the Will of the Late Sir Jamshetji Jijibhai ("Sir JJ") and sued for distribution of the properties forming the Estate of the Late Sir JJ. The Plaintiffs admit that the Defendants are entitled to those properties. The Defendants claimed the properties.

The evidence showed that Sir JJ did not pay salary to the persons he employed, but gave them benefit of certain trading adventures. He opened an Account in his books in the name of Sorabji Pestonji, the predecessor of the Defendants.

He credited various amounts from time to time therein and debited his account. From Rs.750/- the credits rose to Rs.110,549/- in October 1829. Then the proceeds of a shipment made to China was received by Sorabji and carried into the account and the balance was reduced. After the death of Sorabji the account continued in favour of his son, Dinsha. In 1867, a house was purchased by Sir JJ in the name of Dinsha and the purchase money and expenses were debited to the account of Dinsha. Government Securities and company shares were purchased by Sir JJ. Share certificates, though in the name of Jehangir Sorabji, remained with Sir JJ and interest was paid into the account. Sorabji was his faithful servant and related by marriage to his niece. Sir JJ took a lively interest in his welfare. He would deal with the property as would be most beneficial to Sorabji. He did not deal with it for his own benefit. After his death, the

account was continued. His Will gave the account balance to those to whom the income or interest was credited.

Held: The credits and accretions in the account were not gifts; the intention was to create a Trust which could not be defeated by subsequent acts. The property which was not sold was ordered to be sold and proceeds ordered to be distributed as per the declaration in the Will.

[See Lopez v/s. Lopez 1868-69 (V) BHC Rep.172 - no primogeniture was recognised amongst Portuguese after the Treaty by which Bombay was ceded to the British as English Law is then applicable.

(1864-66) II BHC Rep. 345
Nasarwanji Pestanji v/s. Nasservanji Darasha
Sir Arnould, Acting CJ & Warden, J

The Appellant sued to recover possession of 2 bighas of land on the banks of R.Tapi. The Appellant alleged that it had formed part of his field No.63 and had been washed away and subsequently re-formed on the west of his field. The Respondent claimed that it formed part of his field no.64 which measured less than it was said to measure.

Held: The land was admitted to have been gained from the River by gradual accretion, was contiguous to the Appellant's field no.63 and hence he was entitled to it on the principle of alluvian, the imperceptible augmentation to the land from washing up of earth by the river which is added so gradually that it is impossible to distinguish how much is added at any one moment of time. Inundation is different from alluvian for it does not alter the nature of the land on the water receding. It is clear that the land remains the property of the former owner.

## 1866-67

(1866-67) IV BHC Rep. 1
Naoroji Beramji v/s. Henry Rogers
Sir Westropp, J

The Appellant and his wife were conveyed the suit property. The Appellant leased it to the Respondent. The Respondent demanded renewal as per its terms. The Appellant was to renew the lease at the same rent and under the same conditions. The wife

objected.

The Court considered Lex Loci as also the Law of Inheritance and Succession, specially of Parsis.

From Act IX of 1837 until The Indian Succession Act X of 1865, English Law was applicable to Parsis except to matrimonial suits "and perhaps, I should add, except as to bigamy". It applied to chattel real or chattel estate.

The Parsis petitioned to the Bombay Government in March 1836 to have their succession and Inheritance Law according to their established custom and usage "amongst the most wealthy and respectable families" corresponding with the mode of distribution amongst Hindus.

Mr. Rogers, then Acting Advocate General found the usages very inadequate and inconclusive and observed that it would be difficult to assert that there was any system peculiar to Parsis". He observed that Parsis made no distinction between movable and immovable properties for distribution, did not prefer the decisions of their Panchayat and had no rule of primogeniture. The better remedy for them would be an Act declaring the Law as having been hitherto applicable to them as would be applicable in future to them.

The opinion of Mr. Rogers was forwarded to the Government. The Act was passed in 1937 as put up for opinion of the Parsi community. It was accepted in toto as the "enactment entirely and most completely meets with the views and wishes of the Parsi community and they have no objections whatsoever to urge against it."

Lex Loci in Bombay previous to the cession of the Island to Charles II could only have been the Hindu Law, the Mohammedan Law and the Portuguese Law. The Hindu and Mohammedan Laws were not abrogated when the country was brought under the subjection of the King of Great Britain, but they did not bind all Christians and others.
Bombay was obtained expressly for the purpose of English commerce. The Island was inhabited almost exclusively by Hindus, Muslims and Portuguese. Lex Loci of Bombay was English Law applicable to all except Hindus and Mohammedans. Real property law of primogeniture was not introduced in Bombay, since the time of the cession from the Portuguese. Immovable properties were sold, mortgaged by parties or the Sheriff under Writs without any fine or recovery or without legalisation by any Act of the Legislature under seal as personal estate or chattels real and merely by a simple writing expressive of the intention of the parties unlike in England.

[The Registration Act was enacted later.]

The property was conveyed to the Appellant and his wife who were goverened by English Law.

Held: The marriage of the Appellant and his wife operated as a gift to the husband of all the wife's properties (chattels real). The Appellant could let it as he desired without the concurrence of the wife. He was bound to perform his obligations under it. The Respondent was entitled to specific performance.

(1866-67) IV BHC Rep. 73
Ramchandra Dixit v/s. Savitribai
Sir Couch, CJ and Newton, J

A Hindu widow, supported by her father-in-law till his death, sued his eldest son for maintenance out of the father-in-law's estate. The father-in-law left behind 3 sons. The Respondent contended that he was not solely liable. The Small Cause Court granted maintenance of Rs.150/-.

Held: The maintenance of a Hindu widow is a charge upon the whole estate and, therefore, every part thereof. The Respondent is liable, but may sue his brothers for contribution.

(1866-67) IV BHC Rep. 113
Madhavrao Raghavendra v/s. Balkrishna Raghavendra
Tucker & Gibbs, JJ

The parties are brothers. An ancestral house was in the possession partly of the Plaintiff and partly of the Defendant. The Plaintiff sued for the portion in the possession of the Defendant. He alleged a custom in his family that the eldest brother was entitled to the whole of it. The Defendant denied the custom.

Held: Though custom and usage of the country, if established, would bind the parties, the special family custom is opposed to, repugnant and antagonistic to Hindu Law and the ordinary custom amongst Hindus and hence cannot be enforced.

(1866-67) IV BHC Rep. 114
Dhondu Naik v/s. Ramji Kakda
Tucker & Gibbs, JJ

The Appellant (DH) got the property of Rama attached in execution of a decree. The property did not belong to the JD. The Respondent purchased the property. The Respondent sued for damages.

Held: In a Court sale there is no implied warranty by the execution creditor of the title of the JD; the rule of Ceveat Empteur applies. The proclamation of sale declares only the right, title, interest of JD to be sold. The purchaser is bound to satisfy himself of the title. Should it turn out that JD had no title, the purchaser has no remedy in the absence of fraud or willful misrepresentation. The persons whose property is wrongfully sold can sue to recover damages against the executing creditor for loss suffered by the sale.

(1866-67) IV BHC Rep. 185
Jehangir Modi v/s. Shamji Ladha
Sir Sargent, J

The Directors of a Joint Stock Company purchased shares on behalf of the company in other companies. That was purchased out of the subscribed capital of the company in the ordinary course of its business and not to re-sell them at a profit for the company. A shareholder sued to recover the price of the shares purchased by him, when the company went into losses.

The first object of the company was "purchase and sale of shares on commission" which would exclude purchases by the company on its own account for profit.

Held: The Memorandum of Association must authorise the Directors to purchase shares in other companies, otherwise the purchase is ultra vires the company. The shareholders can compel such Directors to restore the funds of the company employed for such purchase. Courts of Law and Equity have constantly held that no company can purchase its own shares and such a contract is ultra vires. That would be a transfer to an abstraction. Though it would be harsh on some individuals, for companies to flourish in this country, the application of funds of the company must be used for legitimate purposes. Hence, purchase by Directors from individual shareholders is ultra vires. Purchase of shares must be confined to dealings in other companies.

[This has been legislated since the Companies Act of 1913. Under S. 77A of the Companies Act, 1956, a company can purchase its own shares on specified conditions.]

(1866-67) IV BHC Rep. 206
Bhimacharya v/s. Fakirappa
Tucker & Gibbs, JJ

The Plaintiff sued the Defendant, his tenant, to eject him from the Plaintiff's land as the lease had expired. He served the Summons. The Defendant appointed a Vakil who

stated that he had no instructions and was unable to put in a Written Statement or make any defence. The suit was decreed. The Defendant appealed.

Held: The hearing was ex-parte and hence the Decree was not appealable. The Summons directed the Defendant to appear and answer the Plaintiff's claim, in person, or by a pleader duly instructed and able to answer all questions. Hence, the presence of the pleader is not all necessary to constitute compliance of the Summons. A pleader not supplied with the means of answering or who is instructed to remain mute or decline making any answers cannot be called a representation of the Defendant which will give the suit the character of defended action. The policy of law and the course of justice would both be defeated if such an appearance were to be treated as otherwise than nugatory. Decree upheld.

## 1868-69

(1868) V BHC Rep. 75
Bhima Krishnappa v/s. Ningappa
Warden & Gibbs, JJ

The Plaintiff sued for removal of 7 water pipes of the Defendant's house and for injunction restraining the Defendant from interfering with building his new house.

The Defendant set up prescriptive use of the water pipes for 30 years and asserted that the Plaintiff's new house would interfere with his water pipes.

The parties entered into an agreement in respect thereof. The Assistant Judge found want of consideration as it was merely to avoid litigation.

Held: Such an agreement is not without consideration and upheld it.

[O.23 R.3 CPC after 1976 amendment settles this position.]

(1868-69) V BHC Rep. 109
Manchersha Aspandiarji v/s. Karunissa Begum
Sir Couch CJ & Newton, J

A Hindu agent of a Mohammedan mortgaged her property to a Parsi. The mortgaged property caught fire. The mortgagee repaired it. The mortgagor sought to redeem it on that ground. It was contended that the Mohammedan Law applied.

Held: Since there was no law on the subject applicable to Parsis, whose act was challenged, the law of justice, equity and good conscience would apply as done by the Courts of equity in England with such modifications as are required in India.
In equity the mortgagor should not be allowed to recover the property only on payment of the principal advanced since it would be inequitable that the mortgagor who has rebuilt one part of the premises must have no allowance made to him.

(1868-69) V BHC Rep. 135
Hari Dhangar v/s. Biru Darsh
Warden & Gibbs, JJ

The Plaintiff sued to establish his right to perform divine service at a temple and to recover the property allotted to it. The Plaintiff relied upon a written document showing admission of the predecessor-in-title of the Defendants.
The Assistant Judge held the document proved because it was more than 30 years old and came from proper custody.

Held: That was not enough. The Plaintiff must also show that the document offered reasonable presumption that it was honestly and fairly obtained and procured for use and was free from suspicion of dishonesty.

(S. 90 of Indian Evidence Act, 1872 with extra requirements was legislated later)

(1868-69) V BHC Rep. 24
Reg. v/s. Mulya Nana
Sir Couch, CJ & Newton, J

2 persons were charged with theft. The Respondent was sentenced to suffer rigorous imprisonment for 2 years, to receive 2 dozen lashes under the Whipping Act VI of 1864 and a fine of Rs.10/- by distress sale of his movable property. The other was sentenced to 1 months' rigorous imprisonment and to receive 1 dozen lashes/strikes.

The Respondent appealed. The appeal was dismissed against him. But the order against the other Accused who did not appeal was reversed as he was a child and had no previous conviction and was hence discharged from prison after having undergone sentence of 15 days.

Held: (Upon review of the Register of Criminal Appeals disposed of by the Sessions Judge) The order of the Sessions Judge is annulled and the sentence must be carried into effect.

(1868-69) V BHC Rep. 145
Shivshankar Govindram v/s The Justices of the Peace for the City of Bombay
Sir Couch & Sir Sargent, JJ

The Plaintiff owned a house. He ran up arrears of house rate. The Municipal Corporation issued a distress warrant to sell the goods to satisfy the claim. The Plaintiff sued the Defendants.

Held: The Justices did nothing wrong at all. The rate made by them was to be levied by the Municipal Commissioner. The Justices were not liable in tort committed by the Commissioner. They have no control over him or the rate levied even if the money is to be paid out of the fund over which the Justices have control.

(1868-69) V BHC Rep. 50
Amritrau Deshmukh v/s. Anyaba Deshmukh
Newton, Acting CJ & Gibbs, J

The Plaintiff claimed a ½ share in 10 villages and main lands. He claimed to have been in his possession down to 1862 within 12 years preceding the suit. The Plaintiff sued showing the acknowledgment (admission) in writing of the draft to allow him a share in a watan. The Defendant was in management and paid the rents.

Held: Though an acknowledgment of liability is enough to bring a suit on a debt or a legacy within limitation, it is not enough to sue on a deshmukhi watan. The Plaintiff must show what he has paid for the alleged share to show his possession or management of the Watan.

(1868-69) V BHC Rep. 85
Reg. vs. Fattechand Vastachand
Warden & Sir Sargent, JJ

4 persons were tried and convicted of murder of 1 person in their house and sentenced to transportation for life. The victim's throat was cut in their house. The witness gave evidence consistent with the case of the accused that he was a thief and was caught and so committed suicide by slitting his own throat which the accused tried to prevent him from doing. The witness was not an accomplice and needed no corroboration.

The Sessions Judge in summing up before the jury did not revert to this evidence. He did not read out the entire evidence of all important witnesses as per convention (though not enjoined in the Code).
The accused applied for acquittal on these amongst other grounds.

Held: The Sessions Judge must give a full and detailed statement of the evidence of both sides to the jury and point out what weight the jury must assign to it. If the accused is prejudiced by its omission, it would be error in law justifying setting aside the verdict. The Court observed that the evidence of the witness was so absurd, it need not have been referred to and the accused suffered no prejudice. Non reading of the evidence of other important witnesses in extentio was compensated by the defence Counsel showing all the evidence in favour of the accused to the jury.

Held: There was defective summing up but no misdirection. The accused did not suffer prejudice thereby and hence no retrial was necessitated.

(1868-69) V BHC Rep 145
Janardhan Pandurang v/s Gopal and Vishnu Pandurang
Sir Couch, CJ

A brother was sought to be disinherited on the ground that he suffered from leprosy.

Held: Only a virulent and aggravated type of leprosy and not a mild curable form of leprosy would come under the expression “one incurably diseased” so as to be a disqualification entailing forfeiture of inheritance under the Mitakshara and Vyavahara Mayukha Hindu law.

# 1870

(1870) VII BHC Rep. 12
Yesoba Damodhar v/s. Secretary of State for India in Council
Spencer, J

A land was required for public purposes. The collector paid compensation to the owner under Act VI of 1857. He was sued by the person claiming to be the real owner for compensation.

Held: The collector who pays compensation under the Act after making proper inquiries to the person “deemed by him to be in possession as owner” is not liable to be sued by the real owner of such land for the amount of compensation.

(1870) VII BHC Rep. 45
Jivandas Keshavji v/s. Framji Nanabhai
Sir Bayley, J

A lien was created in 1865 when the first Registration Act XVI of 1864 came into force. A Gujarati unregistered document was subsequently executed by the person who gave the lien on 13th June 1865 acknowledging the receipt of the loan.

Held: The original oral contract of lien being in itself a perfected transaction, was not merged in or invalidated by the subsequent document, and that, therefore, the fact of the latter not being registered did not affect the validity of the prior transaction. A lien created by a verbal contract and deposit of title deeds of immoveable property was upheld.

(1870) VII BHC Rep. 70
Reg v/s. Kusa Valad Lakshman
Gibbs & Sir Melvill, JJ

The prisoner Kusa and a boy named Kashiram, aged 15 and 12 years, were tried for theft. Kusa was sentenced to receive twenty stripes with rattan and to be confined to six months in Puna Jail Reformatory.

Held: The object of the law under S. 3 of the Whipping Act VI of 1864 is to inflict whipping, in addition to the other punishment, upon those persons only who, after completing a previous sentence, and after having a *locus penitence* afforded to them, again commit the same offence, and thereby show that they are not to be deterred by a sentence of imprisonment only. The Court therefore, reversed only so much of the sentence as directed the prisoner to receive twenty stripes with rattan.

## 1871

(1871) VIII BHC Rep. 69
Narotam Bapu v/s. Ganpatrao Pandurang
Sir Westropp, CJ & Sir Bailey, J

The Plaintiff claimed a right of way in a galli (Agiary Lane) which belonged to the Defendant.

Held: Prior to the passing of the Indian Limitation Act, 1871, in order to give rise to an easement by prescription over immoveable property in the Island of Bombay it was

necessary for a Plaintiff claiming such an easement to prove twenty years' uninterrupted user of it.

A note was written at the end of the judgment :-
We are happy to find that the Indian Legislature has recently passed The Limitation Act (IX of 1871) legislating on the subject of easements and adopted the twenty years' period for the whole of British India.

(1871) VIII BHC Rep. 23
Khandu Keru v/s. Tatia Vithoba
Lloyd & Kemball, JJ

The Plaintiff sued to recover the price of the skin and flesh of an ox brought by a Mahar who ascertained a hereditary right to carry away dead animals of the village to which he belonged and take their skins,

Held: The suit is for damages and cognizable by the Court of Small Causes. Although a question of title may be incidentally gone into in such a suit, no special appeal lies under S. 27 of Act XXIII of 1861.

(1871) VIII BHC Rep.129
Tukaram Ramakrishna v/s Gunaji Bhaloji
Sir Westropp, CJ

The judgment-creditor applied to attach the ornaments of the wife of a Judgment-debtor in execution.

Held: Ornaments on a person of a Hindu wife, if forming part of her Stridhan, cannot be taken under an execution against her judgment-debtor husband. On certain occasions, however, the husband may take them, but the right is personal to him. The exceptions cited from Sir Thomas Strange on Hindu Law Vol. I pg 27 are preservation of a family during a famine, meaning general want, distress preventing performance of a religious duty, sickness, imprisonment, etc.

(1871) VIII BHC Rep. 114
Rupchand Hindumal v/s. Rakhmabai
Sir Melvill & Kemball, JJ

Two brothers died undivided in interest, leaving their widows but no issues. On the death of the first brother the whole estate vested in the other brother and on the death

of the second husband, in his widow. The first brother's widow adopted a son after the death of both the brothers. The adopted son incurred some debts. The property of the other widow was attached. She got the attachment raised. The ownership of he adopted son was challenged.

Held: A Hindu widow can adopt a son without the consent of her husband's kinsmen, but when such adoption has the effect of divesting an estate already vested in a third person, e.g. the widow of her husband's deceased brother, the consent of such third person would be necessary to give validity to such an adoption.

(1871) VIII BHC Rep. 24
Reg. v/s. Tai Nanchand
Sir Westropp, CJ, Gibbs, Sir Melvill & Kemball, JJ

The sanction given by the Assistant Sessions Judge for the prosecution under S. 193 of the Indian Penal Code was challenged for the want of specification.

Held: The sanction to prosecute is sufficient even if does not mention the section of the Penal Code under which accused is permitted to be prosecuted.

## 1872

(1872) IX BHC Rep. 12
Yenkoba Kasar v/s. Rambhaji Arjun
Gibbs & Sir Melvill, JJ

The Court had to see whether the Plaintiff's suit was a "suit for land".

Held: A suit for land is the suit in which the Plaintiff prays for delivery of possession of the suit land.

(This position in law has been stated to be well settled and applied to a suit for partition in AIR 1952 BOM 365 which is followed till date)

(1872) IX BHC Rep. 19
The Advocate General v/s. Fatima Sultani Begam
Sir Sargent, J

A person had executed a *Wakfnama* whereby he made an endowment in favour of a

mosque built by him, laying down details of the class of people, his relations, upon whom the guardianship would vest with after his death. He later, executed a will, the construction of which implied that the management of the *Wakf* would vest in two Parsi vakils.

Held: If the donor has specified the class from whom the manger is to be selected, he is bound by the *Wakfnama* and cannot disregard it by naming a person not answering the proper description.

(1872) IX BHC Rep. 147
Manmal Valad Suratmal v/s. Dashrath valad Narayan
Sir Westropp, CJ & Sir Melvill, J

The Appellant sued to obtain possession of a field under a certificate of sale granted to him by a civil Court in satisfaction of a money decree against the debtor.

The Respondent defended that the field had been sold to him by the debtor under a deed of sale earlier and he had been in possession since.

Held: An unregistered deed of sale accompanied by immediate possession ought to be preferred to a subsequent registered certificate of a Court sale or to a subsequent deed unaccompanied by possession.

(1872) IX BHC Rep. 171
Reg v/s. Jethya Valad Vestya
Sir Bayley & Kemball, JJ

A labourer agreed to serve in consideration of money due from him on account of his previous debts. He quit service after three months in violation of the agreement under which he was to serve for ninety-seven and a half months.
He was prosecuted and convicted of breach of contract of service.

Held: The labourer was not liable to be dealt with criminally because there was no fraudulent breach of contract.
However, he had already suffered the full term of imprisonment.

(1872) IX BHC Rep. 266
Srinivas Udpirav v/s. L. Reid, District Magistrate of Dharwar
Gibbs & Llyod, JJ

The Appellant opened a new window in his house at Dharwar which rendered the Respondent's house less private than before.

Held: The Appellant was not guilty of any tortious act, and should not be debarred from improving his own house, though the effect might be, to some extent, prejudicial to his neighbour.

The Respondent should adopt some arrangement by which the inconvenience arising therefrom may be avoided.

(1872) IX BHC Rep. 413
Narayan Bava v/s. Balkrishna Shideshvar
Llyod & Kemball, JJ

The Appellant claimed his exclusive right of breaking the *dahi handi* on a certain day in the precincts of a temple at Dehu.

The Respondents broke a *dahi handi* of their own on the same day in the same place. The Appellant was deprived of a donation of Rs. 5,000 which one devotee intended to make but did not make.

Held: The breaking of their own *dahi handi* by the Respondents on the same day in any part of the temple was injurious to the Appellant and occasioned immediate and necessary loss.

(1872) IX BHC Rep. 438
In Re The Albert Mills Company Limited
Green, J

On a motion made by the Applicants, a rule was granted calling upon the company and its directors to show cause why a Writ of Mandamus be not issued requiring them to permit each of the Applicants to exercise the office and the functions of a director of the said company.

Held: The High Court has jurisdiction to enforce by a Writ of Mandamus the right of persons duly elected as directors of a Joint-stock company to exercise the functions of a director of such company, if such rights are interfered by the company acting through its other directors even if they are not permanent directors and can be removed from office by a special resolution of shareholders.

# 1873

(1873) X BHC Rep. 51
Gulabhai Mondas v/s .Dayabhai Gowardhandas
Sir Westropp, CJ & Sir Melvill, J

The Plaintiff sold field no. 956 along with his share in the well to the Defendent. The Plaintiff used to pay Rs.8 as 'kus' (tax on well) when he owned the land. The Deed of sale stated that the defendent would be paying tax on the land but remained silent as to payment of tax on the well. The Collector collected 'kus' amounting to Rs.8, from the Plaintiff. The Plaintiff sued the Defendent to recover the amount paid by him by way of tax and also claimed damages worth Rs. 1-3-0.

Held: From the deed of sale, it is amply clear that the defendents need not reimburse to the Plaintiff a single penny. The sale deed speaks about payment of tax on the field itself but remains silent on payment of tax on the well upon the common law rule of construction of deeds '*expressio unius est exclusio alterius*'.

(1873) X BHC Rep. 95
Lallu Haribhai v/s Ranchod Jamnadas
Sir Sargent, Acting CJ & Kemball, J

The Plaintiff and the Defendent were owners of adjoining properties and shared a common veranda. Both of them had agreed via a written statement that they would not build upon the veranda or divide it with wall. The Defendent on the occasion of rebuilding his house, built a front wall of eighteen inches in advance of the Plaintiff so as to encroach upon a part of veranda.

Held: The fact that the defendent, in breach of agreement with the Plaintiff, built a wall of eighteen inches in advance of the Plaintiff's property in itself, is not sufficient for its removal. The Court should be satisfied that the wall materially interferes with the comfort and convenience of the Plaintiff and that the Plaintiff could not be compensated by damages. Also, the Court shall inquire whether the Plaintiff protested while the wall was being built or played the role of a watchdog and came to Court once the damage was inflicted.

(1873) X BHC Rep. 344
Mor Joshi v/s. Muhammad Ebrahim
Sir Melvill & Sir West, JJ

The Plaintiff's property was for sale under a decree. The Defendent, a bona fide purchaser, bought the land with his own funds. Since the Defendent had friendly relations with the Plaintiff, he agreed to return him the land on receipt of purchase money and made a promise to this effect in writing.
The Plaintiff, through its assignee, sued to compel the defendent to receive the purchase money and execute a conveyance in his name.

Held: The promise made by the defendent was without consideration. The document shows nothing more than a proposal and the defendent cannot be compelled to sell off his property merely on this. If the Plaintiff is able to prove that he had accepted the proposal and thereby reciprocated the promise of the defendent, it would have been a valid contract.

(1873) X BHC Rep. 356
Reg v/s Pirtai
Sir Melvill & Sir West, JJ

3 prisoners were charged with the offence of murder whereas 1 prisoner, who was the victim's wife, was charged with the offence of abetting the murder. All 4 offenders were residents of foreign territories. The murder was committed by them in Satara, a British territory. However, the 4$^{th}$ offender had instigated the offence from Kolhapur State. The Sessions Judge assumed jurisdiction over all four accused and tried the case himself on evidence and merit and sentenced all of them to death.

Held: The offence, for which the 4$^{th}$ offender was charged, had occurred in foreign territory. S. 66 of the Cr.PC assumes the offence therein indicated to have been committed within a district, i.e. within a local jurisdiction. Hence her conviction was annulled.

(1873) X BHC Rep. 381
Khemkor v/s Umiashankar Ranchhor
Sir Westropp, CJ & Nanabhai Haridas, J

The Plaintiff Khemkar, widow of late Ranchhor, was a Sompura Brahmin. 'Natras' or remarriages are allowed in Sompura Brahmina. The Plaintiff underwent a marriage with Ranchhor during the lifetime of her first husband without obtaining his consent. Now, after the death of Ranchhor, the Plaintiff claims maintenance from the son of

Ranchhor. The Defendent is the son of Ranchhor with another wife. The Defendent claims that the Plaintiff was not the legal wife of Ranchhor as she got married to him during the lifetime of her first husband and thus she is not entitled to maintenance.

Held: The Plaintiff Khemkar cannot be considered the lawful wife of Ranchhor plainly because she married him when her first husband was alive and also without his consent. The Judges corroborated with the view taken by the Judge of the small Cause Court, Ahmedabad, that even though she is not the legal wife of Ranchhor, she is entitled to maintenance as the mother of illegitimate children of Ranchhor i.e. as his concubine.

(1873) X BHC Rep. 483
Udaram Sitaram v/s. Sonkabai
Sir West & Nanabhai Haridas, JJ

The Plaintiff sued her father-in-law for separate maintenance after the death of her husband. The Defendent claimed that his son had not left any property that came to him and therefore he was not liable to maintain his daughter-in-law. The defendent used to ill treat the petitioner. Maintenance of Rs. 10 p.m. was ordered.

Held: Hindu law contemplates that a daughter-in-law, after the death of her husband, continues to be a part of the family of her in-laws and it imposes a duty on her of attending to the needs and commands of her in laws. It is the duty of the head of the family to look after the needs and maintenance of the dependents of the family. The father in law cannot shake off from his duties by ill treating the petitioner which may hasten her to death or force her to quit the family. Brihaspati, the Hindu mythological God, had said “one who leaves his family naked and unfed, shall taste honey at first, but shall afterwards find it to be poison”. If the daughter in law fails to perform her duties towards her in laws, she would not be entitled to any maintenance. The duty of paying maintenance is an inalienable right and if the corresponding duty is not performed voluntarily, it must be enforced.

## 1874

(1874) XI BHC Rep. 23
Hari Yemaji v/s. Parsharam Gundo
Sir West & Pinhey, JJ

The Plaintif sued to recover arrears of rent of certain land belonging to him.

He alleged that he had given a notice of enhancement to the Defendant. The Defendant denied the Plaintif's right to enhanced rent.

Held: The Plaintiff could not, by a notice given in December 1870, entitle himself to enhanced rent for the then current year 1870-1871. The Respondent was awarded the rent for last two years at the previously established rate.

(1874) XI BHC Rep. 44
Reg. v/s. Daya Anand & Ranchod Khalpo
Sir West & Nanabhai Haridas, JJ

The two accused persons were convicted of murder and sentenced to death. The conviction was principally based upon a confession by the second accused.

The confession that was in form of question and answer was duly attested by the signature of the Magistrate but instead of the signature or mark of the accused, it bore the following: "The signature of Ranchod Khalpo; the handwriting of Venkatesh Narotam, Talati of Binari."

Held: Taking the confession of the accused Ranchod but omitting to cause that prisoner to sign or mark the confession was serious carelessness & rendered the evidence inadmissible under S. 91 of the Evidence Act, 1872. The evidence apart from the confession is insufficient to sustain the charge.

(1874) XI BHC Rep. 137
Reg. v/s. Balvant Pendharkar
Nanabhai Haridas & Larpent, JJ

The accused was tried of a charge of forgery. The accused alleged that his confession in the Magistrate's Court was induced by illegal pressure.

Majority of the jury was of the opinion that the accused should be acquitted, but the Session Judge differed from them.

Held: If a statement in confession of crime is the result of any undue or illegal influences, it is utterly inadmissible; but in the absence of evidence that it was induced by illegal pressure, it cannot be presumed that it was so induced. Under S.24 of the Indian Evidence Act, 1872 a confession is inadmissible only if it is induced by illegal pressure. When the Sessions Judge did not consider it to have been so induced and found it full and clear and supported by reliable evidence, it was properly admitted in evidence notwithstanding his retraction and though he was found not guilty by the Jury.

(1874) XI BHC Rep. 172
Reg. v/s. Bapu Yadav
Sir West & Nanabhai Haridas, JJ

This appeal was from a conviction for counterfeiting coin. The accused made certain coins, bearing on one side the superscription "Jalaluddin Akabar Badshah Gazi San 988 and the celebrated formula of the Mahomedan faith on the other side.

Held: A coin is a metal used for the time being as money. Money is a general standard of value & medium of exchange. The test whether a particular piece of metal is money or not is the possibility of taking it into the market & obtaining goods of any kind in exchange for it.

It is clear, thus, that the tokens imitated in this case were not money & therefore not coins within the legal meaning. Thus it did not amount to an offence under Ss. 230 and 231 of the IPC.

## 1875

(1875) XII BHC Rep. 294
Hirbai v/s. Gorbai
Sir Sargent, J, and on appeal, Sir Westropp, CJ & Green, J

A Khoja having died intestate and without leaving issue, was survived by his mother (a widow), his wife, and a married sister.
Khojas, having been originally Hindus converted from Hindu religion to the Muhammadan of a Shia division and Ismaili subdivision, were partly regulated by Muhammadan Law, partly by Hindu law and partly by custom.
If a custom opposed to Hindu law be alleged to exist amongst Khojas, the burden of proof rests upon the person setting up that custom.

Held: According to the custom of the Khojas, the mother was entitled to the management of his estate, and, therefore, to letters of administration, in preference to his wife and sister.

(1875) XII BHC Rep.10
Suleman Vadu v/s. Trikamji Velji
Sir West & Nanabhai Haridas, JJ

In a conveyance between the parties the land which was to be sold was 19 acres. It was described in the conveyance as 30 acres instead. An award of damages was made in respect of the area of the land which was found to have fallen short. It was argued that though this is a material discrepancy, the specification of the area with boundaries was a mere matter of description and that an error in this respect offers no ground for compensation.

Held: The specification in a deed of sale of land of the area of the land sold prima facie implies that area was regarded as material by the parties, and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of the land, the real area of which is found to fall short of the area specified in the deed of sale.

(1875) XII BHC Rep. 9
P. Sokabai v/s. Lakshmibai
Sir Bayley, J

The Defendant contended that the High Courts in India "absolutely control the cause lists". Thus, according to them, the Bombay High Court had the power to lay down that a case shall not come to the Court unless the Plaintiff has paid the cost of the summons.

Held: The Court will not make the payment of the cost of a summons adjourned from chambers into Court, a condition precedent to the hearing of the suit.

(1875) XII BHC Rep. 147
Reg. v/s. Gulam Abas
Sir West & Pinhey, JJ

The accused, Gulam Abas, had committed the offence of theft in his master's house on two occasions. A separate sentence was granted by the Magistrate for both the occasions.

Held: The aggregate of the sentences awarded to one person in one trial for several instances of the same offence, is to be regarded as one sentence.

(1875) XII BHC Rep. 262
Hormasji Temulji v/s. Mankuvarbai
Sir Westropp, CJ & Green, J

The Solicitor of the Respondent mortgaged the property of his father to the Respondent, purporting to do so under a power of attorney granted by his father. They did not advertise the mortgage and delayed the registration of the mortgage deed. In the meanwhile, the Solicitor's father agreed to sell a house, which formed part of the mortgaged property, to the Appellant.

Held: The doctrine of constructive notice cannot be applied against the Appellant as the Solicitor act of mortgaging was a fraud. As the Respondent was equally guilty of keeping the transaction a secret, she cannot also claim the benefit of the doctrine.

(1875) XII BHC Rep. 94
Himatsing Becharsing v/s. Ganpatsing
Sir Westropp, CJ & Kemball, J

The Respondents had contended that a Hindu son could not sue his father for maintenance.

Held: A Hindu son can sue his father for maintenance out of ancestral property, if the property in the hands of the father cannot be partitioned.

(1875) XII BHC Rep. 229
Vrandavandas Ramdas v/s. Yamunabai
Sir Westropp, CJ & Larpent, J

Gokaldas, a member of an undivided family died leaving two nephews and one concubine, the Respondent. One of the nephews made a gift of the entire property to the Respondent as she was his uncle's concubine for a very long time.

The deed of gift was void as against the other nephew. The Respondent was only entitled to maintenance which would be secured out of the property.

# 1876-77

(1876-77) ILR 1 BOM 15
Reg. v/s. Maruti Dada
Sir West & Nanabhai Haridas, JJ

Two persons were jointly charged with stealing. One of them was charged with receiving stolen goods also. He confessed the crime. No evidence was led against the first person. He was made witness against the other.

Held: The offence of abetment is a substantive offence. The conviction of an abettor is not dependent on the conviction of the principal. The punishment is also the same for him. An abettor may be convicted before the principal is arrested. The principal may then be tried and acquitted. Even if there is no identity or guilt of the principal seen, the guilt of the abettor can be seen. Only because both are tried together cannot alter the real force of the case against the abettor. The acquittal of the principal does not necessarily require the acquittal of the abettor.

(1876-77) ILR 1 BOM 64
Reg. v/s. Devama
Sir West & Nanabhai Haridas, JJ

A Magistrate dismissed the complaint upon the complainant and the accused having settled their dispute and divided their property.

Held: Dismissal of the case means that the no offence had been proved and hence the accused was discharged. “Dismissal of a complaint" applies to a summons case only. The provisions of S. 215 of the Cr.PC are highly useful in many cases. They enable a Magistrate, to dispose of an accusation without proceeding to an actual conviction or acquittal where a strict application of the criminal law would be undesirable. But these provisions are open to abuse, and, to guard against their perversion, a discharge made not equivalent to an acquittal and does not bar the revival of a prosecution even if agreed by the parties. The Magistrate would exercise the power of recall only if it is just.

(1876-77) ILR 1 BOM 67
Shankar Ramchandra v/s. Vishnu Anant
Sir West & Nanabhai Haridas, JJ

The Appellant claimed that a Deed of Partition, on which he sued, was not compulsorily, but optionally registrable. He valued his interest in the suit property at more than Rs.100 and hence “declared” such interest.

Held: If the instrument requires registration under S. 17, the specific provision imposing a necessity for registration is not superseded by a general provision for optional registration. Even if the partition deed did not create an interest, it at least declared an interest in immoveable property. Since it was not registered, it could not be admitted in evidence.

(1876-77) ILR 1 BOM 97
Rahi, wife of Teja Kurad v/s. Govinda Teja
Sir Westropp, Kt. CJ & Larpent, J

Re-marriage prevails amongst Sudra tribe. Bhagu and Gau were married. Gau re-married by Pat marriage without having received a chor-chitti (release) from her husband and before their divorce. Under an adulterous intercourse, a son was born. He claimed a half share in the estate of his deceased father and a right to be maintained therefrom.

Held: He was not a Dasiputra. He could not inherit as an illegitimate child even to the extent of half a share. He was entitled to maintenance. A liberal but suitable maintenance, having regard to the extent of the estate of his father, was directed to be ascertained and allotted to him.

[Later, in the case of Khemkor v/s. Umashankar (10 BHC Rep 381) a Brahmin wife who remarried in the lifetime of her husband without his consent, though not a legal wife, but his concubine and the mother of his illegitimate children, was held entitled to maintenance after his death from out of his estate.]

(1876-77) ILR 1 BOM 177
Murarji Gokuldas v/s. Parvatibai
Sir Westropp, Kt. CJ & Sir Sargent, Kt. J

The Plaintiffs challenged the property in the hands of the Defendants who were the heirs of a blind widow who had inherited the property through her late husband. The widow's blindness developed with advance in age preceding the death of her husband. It was contended that she could not bequeath as under Hindu law, blindness disqualifies inheritance.

Held: Blindness, to cause exclusion from inheritance, must be congenital, as expressly provided by Manu and in other Hindu texts and authorities. Therefore, the widow's blindness did not prevent her from inheriting the property of her husband on his demise, and consequently, her heirs could rightfully claim under her will.

(1876-77) ILR 1 BOM 513
Secretary of State for India v/s. Sir Albert Sassoon
Sir Sargent, Kt. & Green, JJ

Two lands were leased for 999 years. The annual rent of one land was Rs.500/- per acre and for the other Re.1/- per acre as it was "at times covered by the sea". The Lessee had the right to reclaim it from the sea in which case the rent would be Rs.500/- per acre. The lessee also had the power to dig, excavate or remove the soil from that land,

The lessee excavated the land and turned it into a dock, at the entrance of which he constructed gates so as to control the flow of the sea water into the dock.

The Court was to give meaning to the word "reclaim". It could be to convert the land from being overflowed by the sea into dry land by rendering it secure from the ingress of the sea or the creation of the land applied to a useful mercantile purpose, controlled and regulated.

The Court saw the intention of the parties in the Lease Deed and held that the meaning of the word "reclaim" was to be used in its ordinary sense.

Held: The construction of the dock was not such a reclamation as was contemplated in the lease. Therefore, enhanced rent could not be charged.

## 1878

(1878) ILR 2 BOM 19
Baban Mayacha v/s. Nagu Shravucha
Sir Westropp, Kt. CJ & Nanabhai Haridas, J

Some fishermen erected fishing stakes at a distance of between 2 to 3 miles of the coast of Salsette. Other fishermen sued them for ejectment from their fishing ground upon trespass. It was held that Civil Court had no jurisdiction. Later, they again sued them for damages for maliciously erecting fishing stakes at a distance of only 120 feet from those of the Plaintiffs and disturbing the Plaintiffs' enjoyment of their right to fish and unjustifiably preventing fish from getting into the nets of the Plaintiffs.

The Rights of the Crown and of the public in the waters and the subjacent soil of the sea and the right of the public to fish in the sea, whether it and its subjacent soil is vested in the crown or not, is common and is not subject of property. The right may, in certain portions of the sea, be regulated by local custom.

Held: Public exercising the right to fish in the sea are to do so in a fair and reasonable manner, and not so as to stop others from the same. Conduct to prevent another from a fair exercise of his equal right, if injury results to him, is actionable.

(1878) ILR 2 BOM 377
Rangubai v/s. Bhagirthibai
Sir West & Pinhey, JJ

The parties are sisters. Their father was adopted. He inherited a property from his adoptive mother. The mother had taken him in adoption against the wishes of his natural father. His natural father had given consent to the adoption on the conditions that she must obtain consent of the British Government, her own family and the bankers of the town. He wrote letters to her in that behalf. "Without the prior order of the British Government", he wrote, "do nothing at all, as I have not 5 or 10 sons; only this one". He directed the adoption to be upon "an order issued in the boy's favour as to all the possessions" of the family. His letters conveyed an absolute prohibition to the proposed adoption without Government consent. His letters were read out at the adoption.

Held: According to the Hindu Law prevailing in the Bombay presidency a wife is not competent to give her son in adoption against the will, express or implied, of her husband, the father of that son, or under circumstances from which the husband's dissent can be inferred.

Since the condition was not fulfilled, the adoption became invalid notwithstanding that the condition was unnecessary and imposed because of a mistake as to the necessity for the assent of Government to the adoption.

(1878) ILR 2 BOM 346
Ramachandra Sakharam Vagh v/s. Sakharam Gopalvagh
Sir Melvill & Pinhey, JJ

In 1801 the Peshwa granted a village a saranjam to a person. He enjoyed it till his death in 1818. The British Government resumed it and granted instead a political pension of Rs.1200/- p.a. to his son during his lifetime and a moiety to the second generation.
The adult legitimate son of such person claimed maintenance alleging that he was turned out of the house by his stepmother.

Held: A saranjam and pension in lieu thereof are both impartible. The Pensions Act, 1871 prevents a Civil Court from declaring such a pension to be partible, unless the

collector authorizes it. The fact that the collector authorizes a suit for maintenance out of such pension, affords no ground for presuming that he authorizes a suit for the partition of the pension.

Therefore, if a Hindu father possesses practically no partible property, his legitimate son, though adult and suffering from disability to inherit, is entitled to maintenance from him.

(1878) ILR 2 BOM 110
The Collector of Thana v/s. Bal Patel
Sir Westropp, CJ & Nanabhai Haridas, J

The Plaintiff, a cattle-breeder, erected a hut on public ground in Thana and lived there for a few months in monsoon while his cattle grazed on the public grazing ground in that area in Thana. He was not an owner or a lessee of any land in the village. On being prevented by the Collector in Thana from grazing his cattle, the Plaintiff brought a suit against the same for declaration of his right to graze his cattle within limits not only of that village area but any other district of Thana.

Held: He had no right to so graze his cattle under S. 32 of the Bombay Act, I of 1865 under which free pasturage is provided for village cattle only. The section specified that such right could not be "otherwise appropriated or assigned without the sanction of the Revenue Commissioner."

(See also ILR 14 BOM 213 and AIR 1990 BOM 343)

(1878) ILR 2 BOM 75
Dhanjibhai Bomanji Gugrat v/s. Navazbhai
Green, J

The Plaintiff sued his mother and brothers for administration of the estate of his deceased father. He applied for reliefs in respect of certain amounts given by him to the Defendants, by the deceased to his wife and for his wife's ornaments.

Held: Under S. 8 of the Parsi Succession Act, XXI of 1865, S. 42 of the Indian Succession Act of 1865, which dealt with the rule of advancement, was excluded for Parsis. Yet the scheme of distribution in the Parsi Succession Act did not favour the rule of children's advancement being accounted for in distribution.

(1878) ILR 2 BOM 67
Bhala Nahana v/s. Parbhu Hari
Sir Westropp, Kt. CJ & Sir West, J

A Hindu desired to adopt a son. He induced the boy's parents to give him their son in adoption, but died without having executed such settlement. The son was treated as adopted during his lifetime. His widow executed a gift in favour of the son after 30 years.

Held: The widow was bound by the contract of her husband to adopt in equity and must specifically perform the adoption. The alienation made by her was valid as against the next heir by blood of the adoptive father.

A member of the Talabda caste may adopt by an express promise to settle his property upon the boy.

## 1879

(1879) ILR 4 BOM 29
Ravji Sarangpani v/s. Gangadharbhat
Sir West & Pinhey, JJ

The Plaintiff sued his brother and the brother's purchaser challenging the sale of Inam land. Both brothers had shares in the Inam village and jungle of 8 Pies in a Rupee. The Plaintiff was a manager of the jungle having purchased the right to cut the jungle for 3 years. His brother executed the sale deed without adequate consideration and without the Plaintiff's consent. The purchaser obstructed the Plaintiff in his right as owner and manager. The Plaintiff's brother claimed that he was the sole manager and not under any legal obligation to obtain the consent of the Plaintiff and so long as the Plaintiff received consideration, he had no right to challenge the same.

Held: The Plaintiff was a member of the family who owned the Inam village. He had a perfect right to question any transactions entered into by the elder member as manager, whereby he would be defrauded.

(1879) ILR 4 BOM 103
Nilkanth v/s. Dattatraya
Sir Melvill & Pinhey, JJ

The Plaintiff claimed Rs.27-14-0 due to him on a money bond dated 2nd of Kartik Vadya Shake 1797 (15th November, 1875). The suit was filed on 12th March, 1879. Reckoning the period by the British calendar, the suit is in time, but reckoning it by the native one, it is out of time.

Held: When the bond bears a native date only and is made payable after a certain time, that time, whether denoted by the month or the year is to be computed according to the Gregorian (British) calendar under S.25 of the Limitation Act, 1877.

(1879) ILR 4 BOM 37
Sadu v/s. Baiza
Sir Westropp, Kt., CJ, Kemball & Pinhey, JJ

A Hindu Sudra died surviving him two widows, B & S, son of B Mahadu and the daughter of S, Darya and an illegitimate son Sadu, the Plaintiff. Sadu and Mahadu continued to live together for some time. Later they lived separately but continued joint and undivided in estate till Mahadu's death. They entered into an agreement in writing under which Sadu was allowed a portion of the family property by Mahadu. Sadu sued on the agreement. The suit was decreed. Later he brought a second suit as heir of his father and brother and claimed the whole ancestral property.

Held: The second suit was not barred as the first suit was on the agreement and the second suit was on his rights as heir. Sadu and Mahadu were co-parceners from the death of their father until the death of Mahadu. Sadu, as the surviving co-parcener could take the whole property.

(1879) ILR 4 BOM 219
Vithaldas Manickdas v/s. Jeshubai
Sir Westropp, CJ & Kemball, J

A Hindu widow inherited an estate of her seperated husband who dies leaving her a widowed daughter-in-law and a paternal uncle's son. The daughter-in-law filled a suit against to recover possession of certain immovable property left by the deceased widow.

Held: The daughter-in-law was entitled to succeed to the property in priority to the paternal first cousin of her deceased husband.

# 1880-82

(1880) ILR 3 BOM 251
Brito v/s. The Secretary of State for India in Council
Sir Sargent, Kt., J

Prior to the 28th December, 1877, the excise duty on salt manufactured in Bombay was paid under the Bombay Salt Act VII of 1873 which regulated the importation and transport of salt in the Presidency of Bombay. The Plaintiffs, who were salt merchants, were desirous of exporting salt from their saltworks at Uran and Panvel, and accordingly under the provisions of Act VII of 1873 made four separate applications in writing to the Assistant Collector of Salt Revenue for the necessary permits, all dated prior to the 28th of December, 1877. Each application stated the amount of salt which it proposed to export and the duty payable in respect of the amount of salt therein mentioned was paid.

On 28th December, 1877, Act XVIII of 1877 came into force by which Act the excise duty on salt manufactured in Bombay was raised and on that date the Plaintiffs were disallowed to remove the salt unless an additional duty was paid as per the new Act. The Plaintiffs paid the additional duty demanded under protest demanded and exported the salt. The Plaintiffs instituted a suit to recover the excess duty paid.
Held: On the 28th December, 1877, the Plaintiffs had acquired the right to remove salt, whenever they might think proper, by simply complying with the usual forms required by the Act VII of 1873, and that Act XVIII of 1877 did not operate retrospectively so as to destroy that right and to impose on the Plaintiffs a heavier burden as a condition of their removing the salt.

However, as the salt was allowed to pass free into British Malabar on the strength of they having already paid the duty, the sum paid under protest must be deemed to have been appropriated by the Plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of British Malabar by applying to the Collector of Customs at Bombay for certificates that the duty had been paid, by presenting them at the Malabar ports, and claiming, in virtue of such certificates, that the salt should be admitted free of Customs duty.

(1880-81) ILR 3 BOM 725
Murari v/s. Suba
Sir Sargent, CJ & Kemball, J

The Plaintiff, a Murari, instituted this suit to establish his right as *guru* to certain annual fees from the Defendants as his *sishayas* (disciples), and to recover one year's arrears of such fees from them.

The Plaintiff belonged to Mahar caste, and used to recover from the Defendants certain fees which, he alleged were appurtenant to the office of the *guru* amongst the members of the Mahar caste living in a certain village. The Defendants denied that the Plaintiff was their *guru.*

Held: A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honors at the hands of the members of the caste by virtue of that office is a caste question, and not cognizable by a Civil Court. The same rule applies where there are fees appurtenant to the office.

(1882) ILR 3 BOM 592
Sadu v/s. Shambu
Sir Sargent, CJ. & Sir Melvill, J

The standing crop of sugarcane was attached to be sold in execution of a money decree.

Held: Standing crops are immovable property within the meaning of S. 22 of the Dekkhan Agriculturalists' Relief Act (XVII of 1879) as well as within the Code of Civil Procedure, and not liable to attachment and sale in execution of money decrees, unless specifically pledged.

(1880-82) ILR 3 BOM 725
Murari v/s. Suba
Sir Sargent, Kt. CJ & Kemball, J

The Plaintiff Murari instituted this suit to establish his right as *guru* to certain annual fees from the Defendants as his *sishayas* (disciples), and to recover one year's arrears of such fees from them.
The Plaintiff belonged to Mahar caste, and used to recover from the Defendants certain fees which, he alleged were appurtenant to the office of the *guru* to the members of the Mahar caste living in a certain village. The Defendants denied that the Plaintiff was their *guru.*

Held: A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honors at the hands of the members of the caste in virtue of that office is a caste question, and not cognizable by a Civil Court. The same rule applies where there are fees appurtenant to the office.

(1882) ILR 3 BOM 592
Sadu v/s. Shambu
Sir Sargent, Kt. CJ & Sir Melvill, J

This was in reference under S. 617 of the CPC, 1877- "whether standing crops must be regarded as immovable property within the meaning of S.22 of the Dekkhan Agriculturalists' Relief Act, 1879 and, as such, whether they are attachable and saleable in execution of money decrees."

Held: Standing crops are immovable property within the meaning of S. 22 of the Dekkhan Agriculturalists' Relief Act, as well as within the CPC and not liable to attachment and sale in execution of money decrees, unless specifically pledged.

(1882) ILR 3 BOM 717
Naginbhai v/s. Abdulla
Sir Melvill & Pinhey, JJ

In execution of a decree obtained by the Plaintiff he attached three pieces of land and a house in Surat as the property of the Judgment-debtor. The property was purchased by his father in his name. The father of the Judgment-debtor sued for a declaration of his own right to the property and to prevent the Decreeholder from attaching and selling the property. The Decreeholder contended that the property had been purchased with the money of the Judgment-debtor and belonged to him and was liable to attachment and sale in execution of their decree.

Held: When a purchase is made by a Hindu or Mahomedan in the name of his son, the presumption is in the favour of its being a *benami* purchase; and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate. When the rights of creditors are in issue in such a transaction very strict proof of the nature of the transaction should be required from the objector to such rights, and the burden of proof lies with more than ordinary weight on the person alleging that the purchase was intended for the benefit of the son. The decree of the lower Court was reversed.

[This position was legislated more than a century thereafter under the Benami Transactions (Prohibition) Act, 1988]

# 1881

(1881) ILR 5 BOM 99
Narbadabai v/s. Mahadeo Narayan
Sir West, J

A Hindu widow, who was the third wife of the deceased, sued her step sons for maintenance.

Held: A Hindu husband cannot alienate, by a deed of gift to his undivided sons by his first and second wives, the whole of his immovable property, though self acquired, without making suitable provisions to take effect after his death for his third wife, who is destitute and has not forfeited her right to maintenance. After her husband's death, she is entitled to "follow such property in the hands of her step sons" to recover her maintenance, her right to which is not affected by any agreement made by her with her husband in his lifetime. Also, maintaining the wife is a duty which the husband cannot owe to another. Her right as against him is one that she cannot transfer to another. Even a widow's right to maintenance against the heirs taking her husband's property, cannot be assigned.

(1881) ILR 5 BOM 425
The Guzerat Spinning and Weaving Company v/s. Girdharlal Dalpatram
Sir Westropp, Kt. CJ & Sir Melvill, J

The Defendant subscribed for 101 shares of a company as a subscriber to the memorandum and articles of association of the Plaintiff Company, then in the process of formation. Subsequently, and before registration, the Defendant gave notice to the persons most active in the promotion of the said company that he would withdraw his signature and have no connection thenceforth with the proposed company. His withdrawal, however, was not accepted.

Subsequent to the receipt of the said notice, the memorandum and articles of association signed by the Defendant were presented for registration, but registration was refused on the ground that the documents were not printed. A printed copy of each was then procured and registered.

The registered copies differed, in respect of the signatures subscribed thereto, from the copies signed by the Defendant. The Defendant's name was put upon the register of the company as the holder of 101 shares, but without the Defendant's assent or knowledge, and two calls were made upon him in respect of the said shares. The Defendant denied that he was a member of the company or liable for calls.

Held: The Defendant was not a member of the Plaintiff Company. S. 22 of the Indian Companies Act, 1866 required the subscriber to subscribe to a registered

memorandum. The The Defendant was, therefore, not a subscriber to the memorandum of that company. Besides, the agreement referred to in S. 22 was an agreement with the company. Since the company was not in existence when the Defendant signed the memorandum, he could not have entered into any contract with the company.

(1881) ILR 5 BOM 371
The Great Indian Peninsula Railway Company v. Radhakisan Khushaldas
Sir Westropp, Kt. CJ, & Sir Melvill, J

The Respondent sued the Appellant railway company for damages for breach of contract of carriage for goods delivered to the railway company from B, a station belonging to another railway company, for transport to S, a station belonging to the Appellants and obtained from that company a receipt which recited that it was granted "subject to the rules and regulations and charges in force on that or any other railway over which the goods might pass". The goods were lost while on the line and in the charge of the Appellants.

Between the two railway companies, there existed an agreement arranging for the interchange of traffic which provided, inter alia, that goods should be booked through to and from all stations on both lines at certain stated rates, that in such cases, one company should receive payment and account to the other; that any claim for loss or damage should be paid by the company in whose custody the goods were while damaged or lost, or if that could not be ascertained, then by both companies rateably; and that no alteration affecting the through traffic should be made by either company without previous notice to the other. The Appellants pleaded that the suit was wrongly brought against them, as there was no contract between themselves and the Respondent.

Held: "The real ground of liability is that the trade has been carried on behalf of the Appellants. Hence the suit, whether or not it might also have been brought against the other Railway Company, was rightly brought against the Appellants in as much as the agreement between the two companies, if it did not actually constitute a partnership between them, showed at least that the other railway company became the agent of the Appellants to make the contract for carriage with the Respondent.

(1881) ILR 5 BOM 132
Jechand Khusal v/s. Aba and Baika
Sir Melvill & F.D. Melvill, JJ

A spinner entered into an agreement with a spinning and weaving Company to receive

payment on the number of pounds of cotton spun by him, calculated at a certain rate for every hundred pounds. He attached the money due under the said agreement. The opponent contended that this money was not wages, and hence, refused to give.

Held: A person who agrees to spin cotton and to receive a certain amount of money for a certain quantity of cotton spun by him is a labourer and, therefore, the remuneration is wages liable to be paid.

(1881) ILR 5 BOM 580
Luckumsey Rowji v/s. Harbun Nursey
Sir West, J

At the funeral of the Plaintiff's father in the presence of a large number of persons from their caste, the Defendant spoke that the deceased was a '*Patit',* a man who had acted contrary to moral and religious principles, and that he was an outcaste sinful man. The Plaintiff sued for defamation as such words were used to hurt the feelings of the family members.

Held: A suit for defamation can only be brought by the person who has been defamed. The fact that the defamatory statement has caused injury to other person, does not entitle them to sue.

## 1882

(1882) ILR 6 BOM 122
Dhadphale v/s. Gurav
Sir Melvill & Kemball, JJ

The Plaintiff belonged to a family of Guravs (temple servants) attached to Temple of Bahiroba and the Defendant was a holder of inam allowance granted in consideration of his daily offering to the idol of some rice and cake and burning a lamp. The Plaintiff filed a suit alleging the failure of the Defendant to make such offering for a period of one year. The Defendant alleged that during the said year he offered food in his own house to the idol and that he had eaten it himself and it was not obligatory upon him to offer food to the idol in the temple.

Held: As a temple servant, the Plaintiff may have the right to take the food offered to the idol. However, the Plaintiff cannot obtain relief upon the omission of the Defendant to offer food and the consequent loss suffered by the Plaintiff of his own account and

not as a representative of the idol. The Defendant was not obliged to supply food to the temple servants though that may involve a loss to the Plaintiff.

(1882) ILR 6 BOM 541
Khodabhai Mahiji v/s. Bahdhar Dala
Sir Westropp, Kt., CJ, & Nanabhai Haridas, J

The Plaintiff sued to recover an amount due on a bond executed by the principal debtor and the surety. The debtor was survived by his father, mother and two brothers. After the death of the debtor the Plaintiff sued his father, mother and brothers along with the surety. While the surety denied execution of the bond, the other Defendants denied knowledge of the transaction.

The debtor was separate in interest from his father and his mother and brothers could not be considered as his legal heirs. The Court had to determine the heirs of the debtor.

Held: The father is the heir of the deceased as that had to be determined in Hindu law upon who offers the funeral cake.

(The rules of succession have changed since the codification of succession law)

(1882) ILR 6 BOM 700
Lukmidas Khimji v/s. Purshotam Haridas
Latham, J

The Plaintiff sued a partnership firm and some of its partners for recovery of a certain amount. The first Defendant denied being a partner of the firm. The third Defendant also denied that the first Defendant had ever been a partner in the firm. It was contended by the Defendants that the firm consisted of 3 partners, one of whom had not been joined as a party to the suit.

Held: A promisee is at liberty to sue any one or more of the joint promisors against whom he wishes to proceed allowing his right against those he does not proceed against to be barred.

(1882) ILR 6 BOM 116
Rama v/s. Shivram
Sir Melvill & Pinhey, JJ

The Plaintiffs and the Defendants belonged to a village in which, by custom, they had a right to carry their bullocks in a procession on the *Pola* on the last day of *Shravan*. The Plaintiffs and the Defendants had entered into an agreement at the instance of the Defendants for each of them to exercise this right every alternate year. In the year 1878 it was the Plaintiffs turn to carry the procession of parading their bullocks but the Defendants prevented them from doing so. The Plaintiffs sued for declaration of their rights and damages to recover Rs.25/-.

Held: The Plaintiffs have no cause of action as the agreement entered into between the parties is a personal one and none of the parties to the agreement were parties to the suit.

(1882) ILR 6 BOM 83
Rungo Bujaji v/s. Babaji
Sir Westropp, Kt. CJ & Birdwood, J

The Plaintiff sued on a note bearing a native date Ashad Vadya 13$^{th}$, Shake 1799 (7$^{th}$ August 1877) and contained a stipulation of payment of money to be made in Kartik, Shake 1799.

Held: The true construction of the note is that the maker was to pay within four lunar months which would expire in the month of kartik. The said period of four months for ascertaining whether the suit was barred was to be calculated according to the Gregorian Calendar and therefore, the claim is not barred.

# 1883

(1883) ILR 7 BOM 1
Hassonbhoy v/s. Cowasji Jassawalla
Sir West, J

The Defendant, obtained a *rule nisi* calling on the second Plaintiff to show cause why he should not be committed for contempt in disobeying an order made by Marriott, J., directing him to give to the Defendant inspection of all documents in his possession or under his control.

Held: As regards the jurisdiction of High Courts in India, power to commit for contempt is provided in S. 136 of the CPC of 1877.

“The process of attachments for contempt”, it is said, “must necessarily be as ancient as the laws themselves”.

Under the authority conferred by the charters of the Supreme Court and continued by their own Letters Patent, the High Courts in India posses the power of enforcing obedience to their orders by committal for contempt.

As regards the High Courts in India, the remedies provided by section 136 of the CPC (Act X of 1877) in cases of disobedience to an order of Court may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience.

An application may properly be made in Court to commit for contempt of an order made in Chambers.

(1883) ILR 7 BOM 127

Kalu v/s. Kashibai

Sir Sargent, Kt., CJ & Nanabhai Haridas, J

A Hindu widow sued her father-in-law for maintenance for herself and her infant children. It was found that the Defendant held no ancestral property, and that the property which he possessed was exclusively his own self-acquired property.

Held: They had no legal right to be supported by the Defendant, notwithstanding that they were in indigent circumstances. The Court decided the matter after referring to the texts of Manu and previous judgments. It was remarked by the Court that a man's aged parents, his wife, and his infant children appeal to his protection in a special manner in which no other relations do, and the strength of the expression used in the injunction as to their protection points to children only being intended. To extend the legal obligation to descendants would impose in many cases a heavy burden. The Chief Justice observed: "On the whole we think that, whatever the extent of moral obligation may be amongst Hindus, the legal obligation should not be carried beyond what the language the text creates according to its plain and obvious sense."

(1883) ILR 7 BOM 221

Kashibai Bhagvantv/s. Tatiya Lakshman

Sir Sargent, Kt., CJ & Kemball, J

The Plaintiff sued for the possession of certain land on the ground that he was the adopted son of his deceased father. The Defendant contended that the adoption was invalid because the Plaintiff was the eldest son of his natural father. The question

before the Court was that of the validity of the adoption of an eldest son.

Held: The prohibition to the adoption of the eldest son, unlike that of the adoption of an only son, is merely admonitory in the texts of the original Smritis, the opinions of the commentators and the decisions of the High Court and does not create any legal restriction.

(1883) ILR 7 BOM 131
Vasudev Bhat v/s. Narayan Damle
Sir Sargent, Kt., CJ, &. Kemball, J

The Plaintiff sued for possession of certain lands, alleging that they had been given to him under a registered deed of gift. It was found that no possession was given to him under the deed. It was contended by him that his title was complete without possession as the deed had been registered.

Held: The Plaintiff was only entitled to the land of which he had been put into possession.

According to Hindu law, in order to give complete validity to a gift of land as between donor and donee, the donee must be put into possession.

Registration gives the done neither actual, nor constructive nor symbolic possession and therefore cannot be regarded as equivalent to delivery and acceptance.

## 1884

(1884) ILR 8 BOM 95
Nandkishor Balgovan v/s. Bhagubhai Pranvallabhdas
Sir Bayley, Acting CJ & Sir West, J

In May 1876, the Defendants raised the outer wall of his shop and thereby enclosed the Plaintiff's window. The Plaintiff sued for injunction against the Defendants directing them to remove a portion of their shop which obstructed the access of light and air to the window of the Plaintiff's shop.

Held: Access of air in this country is hardly of less importance than that of light. It must be taken as matter of common knowledge that a material interference with it is injurious not only to the comfort but to the health of the inmates of house thus affected.

To take control of air and light in this way out of the hands of a person entitled is a material injury giving a claim to relief by the Civil Court.

[See also (1905) 7 BLR 73 and (1891–93) 7 BHC Rep. unreported Judgments 177]

(1884) Indian Decisions ILR 8 BOM 395
Narsingrav Ramchandra v/s. Venkaji Krishna
Kemball & Birdwood, JJ

Three brothers belonging to a joint Hindu Family instituted a suit in their own name and on behalf of their minor brother to set aside an alienation of the family property made by their deceased father. A certificate of administration in the name of one of the Plaintiffs was demanded before the suit could proceed.

Held: No certificate was necessary. The manager of the family should be allowed to proceed with the suit as next friend of the minor with permission.

(1884) Indian Decisions ILR 8 BOM 421
Ranchhod Varajbhai v/s. the Municipality of Dakor
Sir Sargent, Kt., CJ & Nanabhai Haridas, J

The applicant claims refund from the municipality and serves notice to be refunded the amount within one month, but sues on the notice prior to the expiration of the month.

Held: The Defendant, a surveyor of highways, was entitled to the notice period of one month until its expiration.

(1884) Indian Decision ILR 8 BOM 490
Bhikaji Oke v/s. Yashwantrav Khopkar
Sir Sargent, Kt. CJ & Kemball, J

A house and an anganna (homestead) was the ancestral undivided property of the Plaintiff and his father, having been acquired by his grandfather. The property was sold in execution of a money decree passed against the father. The purchaser came into possession. The Plaintiff sued to recover his 1/6$^{th}$ share in the house, his father having another 1/6$^{th}$ share.

Held: By the sale of ancestral property in execution of a mere money decree against the father for his separate debt, only the right, title and interest of the father would pass

to the purchaser. A purchaser at a Court sale cannot set up the title of a bona fide purchaser for value without notice.

(1884) Indian Decision ILR 8 BOM 532
Purshottam Vithal v/s. Purshottam Ishwar
Sir Sargent, Kt., CJ & Kemball, J

The Plaintiff sought to stay the sale of an immovable property in execution of a decree of the Court. The purchaser obtained possession of the property. The trial Court inquired into an application that the decree was obtained by fraud.

It is not competent for the Court to refuse to sell the property as ordered by the decree on the ground that a stranger impeaches it as having been fraudulently obtained. If the stranger wishes to stay the execution of the decree, he should file a suit and obtain an injunction for that purpose.

(The law has been altered since the amendments to the CPC in 1976)

## 1885

(1885) 9 ILR BOM 58
Giriowa v/s. Bhimji Raghunath
Sir West & Nanabhai Haridas, JJ

Raghunath and Balaji were brothers and vatandar 'Kulkarnis' of village Kalagadi. Balaji died leaving a piece of land for his widow. Raghunath endeavoured to appropriate the whole vatan estate. The parties entered into an agreement under which Raghunath gave the widow a certain property as her share for her lifetime. The widow adopted her brother's son and gifted him her entire share under the agreement. After Raghunath's death his son sued for declaration that the adoption as well as the gift of her share of the property was invalid. He claimed rights on the entire vatan as an undivided estate.

Held: The expression 'to enjoy for the rest of her life' ordinarily described the estate of a Hindu widow and did not impose any restriction on the exercise of her power. She had separated in interest from Raghunath and was at a liberty to adopt a son without the previous sanction of Raghunath or his son. The fact that the adoptee was a son of her brother did not in any way restrain her from adopting him. Further, that a long period of 25 years had passed between the death of her husband and adoption and circumstances did not in any way extinguish the right of the Defendent to adopt a child amidst the circumstances calling for adoption.

(1885) ILR 9 BOM 82
Dagdusa Tilakchand v/s. Bhukhan Shet
Sir West & Nanabhai Haridas, JJ

The Plaintiff claimed a right to a wall which he alleged to be his property. He obtained an Award of his rights with costs. The award of costs was challenged.

Held: The Arbitrator had no implied power to deal with the question of costs. Hence the award relating only to costs was set aside. The remaining award was upheld. The Court observed that in case of excess of jurisdiction or a perversion of the purpose of legislature, it would interfere under its extra-ordinary jurisdiction, where no remedy is available.

(1885) ILR 9 BOM 94
Keshav Ramkrishna v/s. Govind Ganesh
Sir West & Nanabhai Haridas JJ

A father and son both died leaving their widows. Both widows adopted a son each. The adopted son of the father sued to declare the adoption by the widow of the son invalid since his adoption was prior and upon an allegation that the other widow was unchaste.

Held: The adoption of the son by the widow of the father was invalid. After the death of the son, his estate vested in his widow. The existence of the widow and her ownership over the property of her deceased husband rendered the elder widow incapable of adoption. The estate having thus vested in the son’s widow would not be divested by her subsequent unchastity and, therefore, enquiry into her chastity is irrelevant.

(1885) ILR 9 BOM 172
In the petition of Bapasa
Sir West & Nanabhai Haridas, JJ

The Petitioner was charged, convicted, fined and sentenced for having committed an offence of hurt. The complainant in the petition was a servant of the Magistrate. It was contended that the Magistrate ought not to have tried the case himself and should have transferred it to other Magistrate.

Held: The Magistrate was not deprived of his jurisdiction by the circumstances that the complainant was his servant complaining on his own account though it would generally be expedient for him to refer the complaint to another Magistrate.

(See AIR 1931 BOM 206 showing confidence of the High Court in Magistrates)

[Consider the position today and the applicable law]

(1885) ILR 9 BOM 106
Appanna v/s. Tangamma
Sir Sargent, Kt. CJ & Kemball, J

The Plaintiff obtained a decree and sought to execute it. The execution directed recoevery from 'Streedhan'. The decree holder requested the Court to attach two trinkets on the Judgment debtor stating that she had concealed her ornaments. The two ornaments were 'mokti' and 'mangalsutra,' the latter being a thread on which glass beads are strung, with large perforated gold balls hanging in the middle.

Both the ornaments are of very insignificant value, but a Mangalsutra means a thread of auspiciousness (mangal means good luck and sutra means thread). According to the time honoured and universal usage obtaining amongst the Hindus community, the sutra is a sacred tie or trinket co-existent with the mark of vermilion found on every woman whose husband is alive. It is only on the death of the husband that the sutra is removed.

Held: Though under S. 266 of the CPC, 1882 ornaments were not protected from sale and attachment, the removal from the neck of a 'Sadhava' is calculated to give offence to the whole community to which the Defendant also belongs and it is necessary to uphold the customary law. Therefore, having regard to the universal practice amongst Hindus for a married woman to wear a mangalsutra during the lifetime of her husband without ever removing it, it must be regarded as a part of her necessary wearing and the apparel not to be taken vide the execution order.

(1885) ILR 9 BOM 272

In the petition of Raja Paba Khoji
Nanabhai Haridas & Wedderburn, JJ

The Municipality of Thana had promulgated a rule that no place except for municipal market would be used for selling vegetables. The Petitioner exposed vegetables on the '*ota'* of his house. Different people started selling their own marketable items in the area nearby to the petitioners. The Petitioner was fined.

Held: The petitioner used his '*ota'* as a shop and not as a market. The Defendants failed to prove that the crowd that accumulated was because of the petitioner. The grant of market in itself did not imply a right in grantee to prevent persons from selling marketable articles in their homes. The fines were ordered to be repaid.

(1885) ILR 9 BOM 279
Bai Daya v/s. Natha Govindlal
Sir Sargent, Kt. CJ & Kemball, J

The Plaintiff sued her stepson to recover arrears of maintenance as he had inherited, from her husband, several moveable and immoveable property which valued to 10000/-. The Defendant contested that the total value of the property summed to Rs.2000 and his father had left a liability worth Rs.2000. The Defendant himself had incurred a liability of Rs.1800. He further contested that, under Hindu Law, a step son is not expected to maintain his step mother.

The Court considered the texts of Manu, Chapter VI S. 2, Art. 1, p.490: “A mother and a father in their old age, a virtuous wife and an infant son must be maintained, even doing a hundred times that which ought to be done” and also the text in Mitakshara on the subtraction of gift Ch. X, fol. 69, p.1, referred in the manual of Hindu Law by Sir Thomas Strange: “Where there may be no property, but what is self-acquired, the only person whose maintenance out of such property is imperative are aged parents, wife and minor children.”

Held: The terms ‘mata’ and ‘ mata pitrau’, which meant mother and parents, should be read in their natural sense which would not include a step mother. The obligation of supporting a step mother out of the family property, should be left to the conscience of each individual, influenced more or less by the opinion of particular community to which he belongs.

(1885) ILR 9 BOM 311
Jagabhai Lallubhai v/s. Rustomji Nasarwanji
Sir Sargent, Kt. CJ & Nanabhai Haridas, J

The Plaintiff advanced monies to a firm of 2 partners engaged in construction of a barrel-house. The Plaintiff was to receive all sums which would become due on the contract under a power of attorney and to pay the balance to the firm after repaying himself all amounts due with interest. Later 1 partner alone entered into another agreement with the Plaintiff for a further sum to be advanced.

Held: The second contract was also necessary for carrying out the partnership business and hence bound the firm. The two agreements and the power of attorney constituted an assignment of all the monies to become due on the contact as security for the payment of the Plaintiff's advances with interest.

## 1886

(1886) ILR 10 BOM 152
Bai Vijli v/s. Nansa Nagar
Sir Sargent, Kt., CJ & Birdwood, J

The Respondent had advanced money to the Appellant who was a married woman in order to enable her to obtain a divorce from her husband. He promised to marry her as soon as she was divorced. He then sued to recover the advances he had made.

Held: The object of the agreement with the wife to divorce her husband and marry the Respondent was immoral and, therefore, the agreement was void. Hence the Respondent could not recover the money he had advanced.

(1886) ILR 10 BOM 167
Waghji Thakersay v/s. Khatao Rowji
Sir Scott, J

A guardian ad litem appointed for the Defendant who was of unsound mind pending the suit. He was made party to the suit for the purpose of discovery. However, in response to interrogatories he refused to make certain admissions which would be harmful to the Defendant.

Held: The guardian of a person of unsound mind cannot be called upon to make admissions against the interests of the party on whose behalf he has been appointed.

(1886) ILR 10 BOM 340
Queen-Empress v/s. Bai Rukshmoni
Birdwood & Sir Jardine, JJ

The Respondent was the wife of a lunatic who had been an inmate of a lunatic's asylum for several years. The brother of the lunatic had filed a complaint of bigamy against her.

Held: Since the brother was not a person 'aggrieved' in the matter, he could not procute the complaint.

## 1887

(1887) 11 ILR BOM 59
Queen-Empress v/s. Rakma'Kom Sadhu
Sir West & Nanabhai Haridas, JJ

The accused was a prostitute. She was charged with having communicated syphilis to the complainant and convicted under S. 269 of IPC, 1860 as a negligent act and one likely to spread any disease dangerous to life. The prosecutor had sexual connections with the accused alone during that particular phase and thus claimed that it was the accused that passed on the disease to him. She was suffering from primary syphilis on the day she had sexual connection with the prosecutor and had suppressed this fact from him. The fact that she had syphilis on the day of the intercourse was undisputed. The prosecutor contracted this disease from her.

Held: Even if it is assumed that there was dangerous disease and culpable negligence, still the act of having sexual intercourse could not have spread the infection, without the intervention of the complaining party, himself a responsible person and himself generally an accomplice. The only charge that can be made out here is that of cheating punishable under S. 417 or 420 of the IPC, 1860. To establish this, there should be evidence believed by the Magistrate that the intercourse was induced by misrepresentation on the part of the diseased.

(1887) 11 ILR BOM 69
Lakshmibai v/s. Hirabai
Sir Scott, J

A Hindu died leaving behind his widow and his adopted son. He directed by his will that they would be the heirs of all his properties. The son childless behind the Plaintiff, his widow, surviving him. His mother took possession of all of her husband's properties claiming to be joint tenant with her son under the will to be entitled by survivorship on his death. She claimed that the Plaintiff is entitled to nothing more than maintenance out of her father-in-law's property.

Held: Under the will the widow and son had been tenants-in-common and not joint tenants and that the Plaintiff as her son's widow, was entitled to his share.

In expounding Hindu wills, the Court should presume that the holder did not intend to depart from the general law beyond what he explicitly declares. When the deceased constituted his widow as one of his heirs, contrary to the general principles of Hindu law, which only gives her a right to maintenance, his act was silent as to how far her right would extend. That right was to be construed in a manner most consistent with the general principles of Hindu law and to hold that a joint tenancy had been created would be a distinct derogation of the joint family system, which is a key stone to Hindu Law. It would be, in effect, exclude the son's family, for the benefit of the widow, in total disregard to the relations and obligations of a Hindu family. The fact that Nathu died childless was not an accident which could not have been presumed to have been in testator's contemplation.

(This is the presumption in India unlike in England)

(1887) ILR 11 BOM 247
Khusalchand Lalchand v/s. Bai Mani
Sir Sargent, CJ & Birdwood, J

The Plaintiff instituted a suit against his wife, the Defendant for possession of his minor daughter and restraining his wife from giving her in marriage as arranged by her. The Court granted an injunction but the marriage was nevertheless solemnized by the mother. The Defendant, post the marriage of his daughter, amended the plaint so as to include a prayer to declare the marriage of his daughter null and void because it was conducted without his permission. The Defendant claimed that the Plaintiff had turned her out of his house eight years prior to the institution of this suit. After some years when their daughter came to be of marriageable age, she requested her husband to get their daughter betrothed, which he failed to do. She also informed him about the marriage of their daughter, once it was fixed, but he remained unresponsive.

Held: Getting a girl married is not merely a right but a duty to be discharged for the spiritual benefit of the girl. The Court supported the marriage on the principle of factum valet, there being no express authority required making the consent of both the parents as condition precedent for the validity of marriage. The plaintiff's action lacked bona fides as it was merely to assert his right over his daughter without any regard to her interest and with the sole object of annoying her mother from whom he had been long separated.

(1887) 11 ILR BOM 329
Thomas Evans v/s. Trustees of Port of Bombay
Sir Jardine, J

The 1st Defendant was the owner of the property Wellington Reclamation Land, Bombay. It had been its practice to let out the said property, in lots, for tents, which were taken down during monsoon. A public road ran along one side of the land and on the other side, furthermost from the road, was a bungalow which at the time of the accident was under the occupation of the Plaintiff. There was a road to this bungalow but since a long time people used a short cut that went diagonally through the tenting ground. This was a beaten track and it was obstructed by ropes and pegs during the tenting season. No express permission was taken by the occupants of the bungalow and other licensees to use this short cut.

The 1st Defendant leased this property to the 2nd defendant for building purpose. A hole of 8 feet square and 4 feet deep was dug on the leased land to make certain borings. This area was not lit, fenced or demarcated in any way nor was the Plaintiff informed about the dug portion of the ground. The Plaintiff passed by the short cut road to his bungalow. He returned late at night through the same road. He failed to see the hole and fell into it thereby sustaining severe injuries. He sued both the Defendants for the damages sustained by him.

Held: There was a negligence in digging the hole across a path that several licensees were using and in not placing any person or light to warn the passengers of the danger arising out of the hole and excavated earth which was heaped up. However, the 1st Defendant had given permission to the lessee to make borings only on their land. Hence the 1st defendant was not liable.

The 2nd Defendant was liable to the Plaintiff because the person who dug the hole was his servant pro hac vice, and the digging of the hole was within the course of his employment or within the scope of his authority. The Plaintiff was awarded Rs.17,000 as compensation.

(1887) 11 ILR BOM 462
Abdullah v/s. Kashi
Sir West & Birdwood, JJ

The Plaintiff and his deceased brother borrowed Rs.150 from the Defendant and, in consideration of the amount, executed a bond in the Defendant's favour whereby the the Defendant was allowed the enjoyment of a certain land for twenty years. At the end of this period it was to be restored to the Plaintiff free from all claims on account of the principal or interest on the sum borrowed. It was also agreed that at the end of twenty years if the Defendant planted vines or grew trees on the land and found it impracticable to remove them, he could retain them being the tenant of the Petitioners and paying Rs.50 as annual rent. Thus the Plaintiffs filed this suit to redeem their land.

Held: The document that embodied the contract between the parties is headed Karz Rokha or debt note. It is not the name given to a contract or to a memorial of it that determines the nature of the contract, but its contents. The jural relation constituted by it determines whether it is a lease, a conveyance, a mortgage or a contract of some other nature. The Defendants were given the right to retain occupation of the vineyard, subject to payment of a rent of Rs.50 per annum.

## 1888

(1888) ILR 12 BOM 26
Yashwantrav v/s. Kashibai
Sir Sargent, Kt., CJ & Nanabhai Haridas, J

A concubine obtained an order of maintenance after the death of the person she lived with. It was resisted on the ground that she had committed adultery and thus forfeited her right to maintenance.

Held: According to Hindu law, during the co-parcener's life-time his concubine is regarded as his wife. Hence punishment for adultery committed by the concubine with another man is the same as the punishment for the wife. Thus, continued continence was held to be a condition precedent to the deceased co-parcener's concubine claiming maintenance.

(1888) ILR 12 BOM 85
Pallonji Merwanji v/s. Kallabhai Lallubhai

West & Birdwood, JJ

Two Defendants in the original suit were both represented by one attorney. During the pendency of the proceedings, the Attorney applied to withdraw on behalf of both clients since their interests were conflicting on account of a disagreement between them. A few days after being permitted to withdraw, the Attorney appeared in a fresh suit on behalf of one of them. The other applied to restrain him from doing so.

Held: There was no unfair advantage to the applicant on account of any particular instructions or information given to him by the other Defendant in the previous suit. Therefore the Attorney was not restrained from appearing.

(1888) ILR 12 BOM 105
Hanmant Ramchandra v/s. Bhimcharya
Sir Sargent, Kt., CJ & Nanabhai Haridas, J

A Hindu died leaving behind a widow who was pregnant at the time and a son adopted by him a few days before his death. By his will, he directed that in case his wife gave birth to a son after his death, his property was to be divided equally between the natural born son and his adopted son. The guardian of the natural-born son sued to recover possession of the property from the adopted son. It was contended that the adoption was invalid since it was during his wife's pregnancy.

Held: The father cannot interfere by will, with his natural-born son's right of survivorship under Hindu law which provides that the adopted son's share in the property must be reduced to one-fourth on the birth of a natural-born son.

(1888) ILR 12 BOM 237
The Bombay and Persia Steam Navigation Co. v/s. Shepherd and Haji Ismailji
Sir Farran, J

There was a collision between the Plaintiff's steam ship 'King Arthur' and the Defendant's steam ship 'Zuari' as a result of which, the Zuari was sunk. Subsequent to the filing of the suit, the Zuari was floated and the Plaintiff applied for permission to add the ship as a joint Defendant in the suit.

Held: All persons may be joined as Defendants against whom the right to any relief is claimed. The word 'Defendant' includes a ship, which is invested with a persona for the purposes of the case. Therefore, the ship was permitted to be added as a joint Defendant.

# 1889

(1889) ILR 13 BOM 25
Ananta Balacharya v/s. Damodhar Makund
Birdwood & Parsons, JJ

The Plaintiff alleged that their father Ananta and the Defendants father Makund were brothers; that the two brothers made a memorandum of partition of family property. Whereby they agreed to divide the property in equal shares; and provided that if in future their sons did not agree and there was any partition, they should exersice ownership according to this document and not take more than mentioned in the document.

Held: This agreement constituted a partition between the brothers ,and was binding on there descendants.

(1889) ILR 13 BOM 126
Dulari v/s. Vallabdas Pragji
Sir Jardine, J

The Plaintiff claimed to recover from the Defendant a sum of Rs.2500. She alleged that a young girl was given to her when her mother died and had been maintained by her for a number of years. She arraged to get the said girl married and was to recieve Rs.2500 on the marriage as agreed by the Defendant. Before the marriage ceremony could be performed the Defendant had induced the girl to quit the Plaintiff house for immoral purposes.

Held: The alleged agreement on which the suit was bought was immoral and against public policy and hence the action was not maintainable.

(Contrast this case with the next in the context of immorality)

(1889) ILR 13 BOM 150
Khubchand v/s. Beram
Sir Sargent, Kt. CJ, & Nanabhai Haridas, J

A *Naikin* (dancing girl) died at Nasik possessed of some immoveable property. She left behind two illegitimate children who inherited the property and divided in

union. The son mortgaged the dwelling house to the Plaintiff. The bond stated that the object of the loan was to enable the mortgagor to teach his daughter singing and for household expences. It was contended that the bonds were void on the ground that the loan was for an immoral purpose as of teaching the girls to sing was to make them more attractive as prostitutes.

Held: The bond was not void, inasmuch as, amongst the community of *Naikins* the singing skill was not necessarily acquired by the women with a view of practising prostitution. It was a distinct mode of obtaining a livelihood, although it might be true that most of those who sing lead a loose life.

(1889) ILR 13 BOM 358
Gangavishnu Shrikisondas v/s. Moreshvar Hegishte
Sir Sargent, Kt. CJ & Sir Bayley, J

The Plaintiff desired to publish a new and improved edition of an old religious sanskrit text entitiled 'Vrtraj' on religious observences. He secured the assistance of 2 well-known pandits who prepared the new edition, recasting and rearranging the old materials and adding valuable footnotes. The Plaintiff registered the copyright of this work. The Defendant printed and published an edition of the same work.

Held: The Plaintiff's work was such a new arrangment of old matter as to be an original work and entitled to protection as copyright. As the Defendant had not taken their material from independent sources, he had pirated the Plaintiff's work and hence must be restrained by injunction.

(See 1890 ILR 14 BOM 586 for copyright in common law relating to translations).

(1889) ILR 13 BOM 389
Queen-Empress v/s. Murarji Gokuldas
Sir Scott & Parsons, JJ

The accused was charged with assaulting his mother with a wooden shoe. In the course of the trial the complainant's pleader offered to be bound by the oath of one specific person provided he swore on the G*ita* and gave a plain categorical denial to the alleged assault. The accused pleader also consented. That person was sworn on the G*ita*, and stated in his examination that the accused had not committed any assault, but merely held his mother by her hand.

Held: The Court was not bound to decide the case on the evidence of witness who swore the special oath.

(1889) ILR 13 BOM 681
Queen-Empress v/s. Narottamdas Motiram
Sir Scott & Sir Jardine, JJ

The accused was charged with keeping a certain shed for the purpose of a 'common gaming-house'. The accused kept the shed where a large number of people gathered for the purpose of betting on the quantity of rain which might fall in a given time. The instrument used for measuring the quantity of rainfall was a rain gauge in a gutter attached to the roof of the shed. The accused were entitled to a commision on each bet.

Held: The shed in question was undoubtedly a common betting place,and the instruments used were instruments used for betting. There is no law in India which makes betting illegal. There is a distinction between betting and gaming. There must be a game before there is gaming. To constitute a game, there must be a contest and an active partcipation is necessary. In the present case, there was no active part taken by the betters who merely watch the falling of rain. Rain-betting is, therefore, not a game and the place where it was carried on was not a 'common gaming house'.

# 1890

(1890) ILR 14 BOM 260
Queen-Empress v/s. Nana
Sir Sargent, Kt., CJ, Sir Bayley, Sir Scott, Sir Jardine and Parsons, JJ

The accused was charged under S. 411 of the IPC with dishonestly receiving stolen property. In the course of the police investigation, the accused was asked by the police where the property was. He said he had buried the property in the fields and took the police to the spot where the property was concealed, and with his own hands, disinterred the earthen pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was contended that those statements were inadmissible, having been made when the accused was in the custody of the police.

Held: The statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime, and even if not intended by the accused as a confession of guilt, they were an admission of a criminating circumstance and would form a very important part of the evidence against the accused, as showing that he had not come by the property honestly, and, therefore, properly within the rule of exclusion in regard to confessions made by a person in custody of the police. The statement of the accused that he had buried the property in the fields was admissible in evidence under S. 27 of the Evidence Act, 1872, as it set the police in motion and led to the discovery of the property. A statement is equally admissible in evidence under S. 27, whether the statement is made in such detail as to enable the police to discover the property themselves, or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed.

However, neither of above statements was admissible in evidence under Explanation 1 of S. 8 of the Evidence Act, as evidence of the conduct of the accused.

(1890) ILR 14 BOM 196
The Bombay National Manufacturing Company Limited v/s. Ahmed Bin Essa Khaliffa
Parsons, J

The Plaintiff sued for recovery of Rs.15,000 alleged to be due in respect of four calls upon fifteen shares standing in the Defendant's name. The Defendant had not subscribed to the memorandum of association of the company, but had signed the duplicate memorandum. The Defendant denied that he ever was a member of the Plaintiff's company.

Held: When a person signs a duplicate of the memorandum of association after the registration of the original memorandum, he does not thereby become a subscriber within the meaning of S. 45 of the Indian Companies Act of 1882. Such signature, however, is equivalent to a proposal to the company to take shares and if such a proposal is accepted, the person signing is a person who has agreed with the company to become a member within the terms of S. 45, and is liable to calls if entered on the register.

As the Defendant was aware of the company's acceptance of his proposal and, despite this, had never made an attempt to revoke it even after the calls were made, he was clearly a person who had agreed with the company to become a member within the meaning of the said section.

(1890) ILR 14 BOM 353

His Highness Shrimant Maharaj Yashwantrao Holkar of Indore v/s. Dadabhai Ashburner
Sir Sargent, Kt. CJ & Sir Scott, J

The Plaintif sued for specific performance of an agreement to mortgage an immovable property. The agreement was executed in Bombay.

Held: A suit for land was a suit which asked for delivery of the land. Hence a suit for specific performance is not a suit for land.

(1890) ILR 14 BOM 249
Waman Bova v/s. Krishnaji Bova
Sir Sargent, Kt. CJ, Sir Bayley, Sir Scott & Sir Jardine, JJ

The adoption of an only son was challenged.

Held: The adoption of the only son of his natural parents is invalid in Hindu law.

The judgment of the Late CJ Sir Michael Westropp and Nanabhai Haridas J. in Lakshmappa Ramava 12 BHC Rep. 376 has settled this issue. Maintaining the uniformity of decisions was of paramount importance and the Court should stick to such a practice “in the absence of very a cogent reason to the contrary.

(1890) ILR 14 BOM 25
In Re Atmaram Narayan Parab
Sir Jardine & Candy, JJ

A Magistrate First Class made an order under S. 147 of the Cr.PC prohibiting certain persons from taking part in the worship and other religious ceremonies connected with a certain temple.

Held: The matters in dispute not being adjudicable by a Civil Court, the Magistrate did not have jurisdiction to forbid the persons named in the order from taking part in the ceremonies in question.The order was also bad in form as it contained no restriction of the time during which it was to operate.

(1890) ILR 14 BOM 97
Nathji Muleshwar v/s. Lalbhai Ravidas
Sir Sargent, Kt., CJ & Candy, J

The Respondent claimed that the Appellants had published defamatory matter in an application they had filed in a suit brought by a third party. The application described the Respondent as a person "whose occupation it was to obtain his living by getting up such fraudulent actions" and stated that he induced the Appellants to make a false claim.

Held: The Appellants were privileged against a civil action for damages for what they might have said of the Respondent in the application as no action for slander lies for any statement made in the pleadings or during the conduct of a suit.

(1890) ILR 14 BOM 213
The Secretary of State for India v/s. Mathurabhai
Sir Sargent, Kt., CJ & Candy, J

The Respondents had sued to establish their right to graze cattle on the banks and dry part of a village tank and for a perpetual injunction restraining the Appellants from interfering with such right.

The Appellants contended that the tank was a waste land and that the Respondents could not acquire, as against the Government, a right of grazing by prescription.

Held: The suit should be dismissed, as it was essential that the user should have been as '*of right*' to graze cattle on the tank in question. The right of free pasturage does not necessarily confer the right of pasturage on any particular piece of land.

The rule of construction according to which the Crown is not affected by a Statute, unless specially named in it, applies to India.

(See also 1878 ILR 2 BOM 110 and AIR 1990 BOM 343)

(1890) ILR 14 BOM 282
Sheshgiri v/s. Girewa
Sir Sargent, Kt., CJ & Hart, J

The Respondent was one of 3 daughters of a Lingayat, who died in 1870, leaving immovable property. The Appellants were his illegitimate sons.

The Respondent sued to recover the property alleging that one of her sisters was disentitled from inheriting by disease, the other was rich and the Appellants' illegitimacy excluded them.

Held: The Appellants were not entitled to more than half of the property to which they succeeded immediately on the death of their father. The other half went to either the widow or the daughters.

If the other half went to the widow, she took it as one of a class of persons, who exclude the illegitimate sons' right to more than half.

If it went to the daughters, there was no evidence to show that the Appellant had adverse possession of the property of it as against the Appellants before the widow's death.

(1890) ILR 14 BOM 299
Maharana Jasvatsingji Fatesingji, Chief of Limdi v/s. The Secretary of State for India
Sir Jardine & Candy, JJ

The Thakor of Limdi possessed several *talukdari* villages, one of which was Akru. He paid a lump *jama* to the Government for his *talukdaris.* As a result of disputes between the Thakor and the *grassias* of Akru, a consent decree was passed whereby a moiety of Akru was assigned to the *grassias* with the liability to pay the *jama* remaining with the Thakor. The Thakor paid the seperate *jama* demanded by the Collector in respect to the moiety, which was in addition to the lump *jama* paid by him.

The Thakor filed a suit to recover back the payments made.

Held: Under the consent decree, the Thakor stood in relation of an insurer to the *grassias* from all exactions of Government dues. The payments of *jama* made by the Thakor on account of the *grassias* were therefore not voluntary, but made under protest and, as such, were recoverable by suit.

(1890) ILR 14 BOM 532
Kaikhusru Kabraji v/s. Jehangir Murzaban
Sir Farran, J

A newspaper called *Rajya Bhakta* published a false and defamatory statement of the Plaintiff. More than a month afterwards the Defendants published an article in their newspaper *Jam-e-Jamshed* calling attention to the statement made in *Rajya Bhakta* and repeating it, however declaring that the said statement was 'evidently false'. The Plaintiff sued for defamation.

Held: After reading the article as a whole and in its natural sense, and taking it in connection with the previous article appearing in the Defendant's paper with reference to the Plaintiff, the article was in itself defamatory of the Plaintiff.

(1890) ILR 14 BOM 586
Munshi Abdurruhman v/s. Mirza Shiraji
Parsons, J

The Plaintiff published a book called '*Moontakhebate Bahiri*' in Urdu. The Defendant later published in Persian called '*Moontakhebate Mahomedi*'. The book was almost an exact translation of a large portion of the Plaintiff's book.

The Plaintiff prayed for an injunction restraining the Defendant from selling any copies of the book.

Held: The Defendant has not infringed the Plaintiff's copyright by translating his book.

(See 1889 ILR 13 BOM 358, the earliest concept of copyright in common law for compilation of texts)

## 1891

(1891) ILR 15 BOM 160
His Highness Syed Ali, Sultan of Zanzibar v/s. A. Adib
Sir Farran, J

The Plaintiff sued for damages for breach of contract of purchase of a steamship ordered by the Defendant which was to sail from Zanzibar to Bombay. On the apprehension that the Defendan was to leave Bombay, the Plaintiff filed an Affidavit and obtained an order for Arrest before Judgement. The Defendant was arrested and brought to Court and, at once, discharged. Thereafter, the Plaintiff sold the ship at an auction. The Plaintiff applied for the withdrawal of the suit with liberty to file a fresh suit. The Defendant appeared without Service of Summons and resisted the withdrawal application and applied for compensation for his arrest on insufficient grounds.

Held: The Defendant could appear without Service of the Summons. The Defendant was arrested when he was going to leave Bombay. He did not file an Affidavit showing injury caused to him, but injury had to be imputed upon being publicly arrested and detained for some time. Hence, he was awarded compensation of Rs.10/-. The Plaintiff was allowed to withdraw the suit with liberty to file a fresh suit but upon payment of costs.

(1891) ILR 15 BOM 234
Manjappa Hegade v/s. Devappa Hegade
Sir Sargent, Kt. CJ & Telang, J

A brother died leaving a widow. His brother sold his undivided moiety of the family property to a stranger. He sued to recover possession of the property from the widow of the deceased brother. The widow claimed that the Deed of Sale was without consideration and her brother-in-law had no authority to sell.

Held: A widow of an undivided brother does not get a life interest. She is only entitled to maintenance. However, she may succeed her brother-in-law as gotraja sapinda.

(This position was altered under S. 3 of the Hindu Women's Right to Property Act, 1937)

(1891) ILR 15 BOM 236
Girianna Naik v/s. Honama Naik
Sir Sargent, Kt. CJ & Telang, J

A Hindu died leaving a will in which he provided that his widow shall be maintained in the family house. The widow left the family house. No cause was shown.

Held: A widow for whom maintenance is provided is not entitled to it if she resides elsewhere, without cause.

(1891) ILR 15 BOM 702
Queen-Empress v/s. Shivram
Birdwood & Parsons, JJ

The accused took 100 cartloads of earth from the complainant's land upon ploughing it.

Held: Earth is soil. When severed from the earth and land to which it is attached, is moveable property. If dishonestly severed by digging and ploughing and taken away, it would amount to theft. It ceases to be "land" or "attached to the earth or permanently fastened to anything which is attached to the earth" and becomes moveable property under S. 22 of the IPC and hence, becomes subject of theft under Explanation 1 to S. 378 of the IPC.

[See also (1891) ILR 15 BOM 344 in which a ferry of the complainant was taken away for plying customs]

(1891) ILR 15 BOM 585
Amiruddin v/s. Mohammed Jamal
Sir Sargent, Kt. CJ & Candy, J

The Plaintiff alleged that he was in possession of the suit room till a specified day when he was dispossessed by the Defendant. The Defendant claimed the room to have been in his possession when the Plaintiff removed the padlock. The Defendant removed that padlock and resumed possession. The Defendant claimed that the Plaintiff was a tresspassor and could not sue under S. 9 of the Specific Relief Act, 1877.

Held: A tresspassor had not acquired juridical possession. He cannot sue to recover possession.

(See S. 6 of the Specific Relief Act, 1963)

(1891) ILR 15 BOM 400
Bapuji Raghunath v/s. Kuverji Umrigar
Birdwood & Parsons, JJ

The Plaintiff sued for recovery of fazendari rent from the holder of fazendari land in the Court of Small Causes at Bombay. The Defendant pleaded that rent had not been paid since 1846 and he claimed adverse possession for over 12 years. He claimed that the suit was barred and the Plaintiff had no title. SCC declined to exercise jurisdiction upon the observation that the Defendant had raised a bona fide plea of title.

Held: It is the nature of the suit as brought by the Plaintiff that determines the jurisdiction and not the nature of the defence. The question of title may be incidentally raised. SCC cannot decline jurisdiction upon the Defendant's plea of lack of title.

# 1892

(1892) ILR 16 BOM 217
The University of Bombay v/s. The Municipal Commissioner for the City of Bombay
Sir Sargent, Kt. CJ & Sir Farran, J

On reference from the Court of Small Causes – The rateable value of the buildings occupied by the University of Bombay, viz., The Sir Cowasji Jehanghir Hall, the Library and the Rajabai Tower was to be considered.

Held: The buildings occupied by the Bombay University, viz., The Sir Cowasji Jehanghir Hall, the Library and the Rajabai Tower, in respect of which the Municipality sought to levy the general tax were not Government property for which Government paid a lump sum under S. 144 of the Bombay Municipal Act III of 1888 as they were received as benefactions intended as gifts to the University, the acceptance of which was formally voted upon with respect to each building by a Resolution of the Senate. The several buildings thus became the property of the University to be used for the purposes of the University as provided by S. 2 of the Act of Incorporation,1857. Under these circumstances it followed that they were not held by the Crown or for the Crown. It was true that the Governor of Bombay in Council had certain powers under the Act of nominating the Vice-Chancellor and Fellows, and controlling the creation of bye laws and imposition of fees. But such powers were of a visitorial character, and as was held in the case of University of Edinburgh, do not affect the question whether the property is Crown property.

These buildings were exempt from the general tax imposed on all buildings and lands in the city by virtue of the exemption in clause (a) of S. 143 of the Bombay Municipal Act III of 1888, as being “buildings exclusively occupied for charitable purposes.”

The words “charitable purposes” have acquired a technical meaning in the Presidency of Bombay, and in that sense they include all purposes within the meaning of Elizabeth's 1601 Statute of Charitable Uses.

The Preamble of the Act of Incorporation showed that the object and purpose of the Legislature in incorporating the University was to afford “encouragement to subjects of all classes in the Presidency of Bombay and other parts of India in pursuit of a regular and liberal course of education,” and therefore, although the University may not be exactly engaged in education in that it only conferred degrees on those who wished for a certificate that they had attained a certain standard of education, the special object for which it grants degrees is the advancement of education throughout India, and the University is, therefore, within the “spirit and intendment” of the statute of Elizabeth.

The Library, though not necessary for the special purpose for which the University was established, could not be regarded as sued for a charitable purpose; “a well selected library is clearly, if not necessary, at least a most useful, purpose to which such a University can appropriate a part of its buildings, affording, as it does, important assistance to those who conduct the examinations as well as to the students who are preparing for them; and thus, as was held in the analogous case of the University of Oxford furthering the great object for which the University was established, viz., the better encouragement of Her Majesty’s subjects in the pursuit of a regular and liberal course of education.”

The tower must be regarded as how it was intended to be, as an architectural building annexed to the Library, and therefore, could not be treated as distinct from it.

Hence the University buildings fell within the exemption in clause (a) of S. 143 of the Bombay Municipal Act, 1888 as being “buildings exclusively occupied for charitable

purposes", and were therefore exempt from the general tax imposed on all buildings and lands in the city.

(1892) ILR 16 BOM 353
Bapu v/s. Dhondi
Sir Jardine & Parsons, JJ

The Plaintiff sued to recover possession of mango trees on his land. The Defendant was taking fruits thereof for 12 years prior to the suit.

Held: The claim was for possession of an interest in immovable property and was governed by the limitation of twelve years prescribed by Article 144 of the Limitation Act, 1877.

(1892) ILR 16 BOM 561
Haji Abdul Rahman Allarakhia v/s. The Bombay & Persia Steam Navigation Company
Sir Farran, J

The Plaintiff required a steamer to sail from Jedda "fifteen days after the Haj" in order to convey pilgrims returning to Bombay. He chartered a steamer from the Defendants in June 1891 for that purpose. The Defendants chartered their steamers by English dates. The date inserted in the charter party was "the 10th August, 1892 (fifteen days after the Haj") "The 10th August, 1892 was given or accepted by the Plaintiff in the belief that it corresponded with the fifteenth day after the Haj. The Defendants had no belief on the subject and contracted only with respect to the English date. 19th July, 1892 and not 10th August, 1892 corresponded with the fifteenth day after the Haj.

On finding out the mistake in March 1892, the Plaintiff brought this suit for rectification of the charter party by the insertion of the correct date, 19th July, 1892, instead of the erroneous date, 10th August, 1892. Meanwhile the Defendants had let all their steamers and could not give the Plaintiff one for the 19th July, 1892.

Held: The agreement was one for the 10th August 1892, and as that date was a matter materially inducing the agreement, there could be no rectification, but only a cancellation, even if both parties were under a mistake.

The mistake was not mutual, but on the Plaintiff's part only; and therefore, there could be no rectification. A Plaintiff seeking rectification must show that there was an actual concluded contract antecedent to the instrument sought to be rectified, and that such contract is inaccurately represented in the instrument.

(1892) ILR 16 BOM 568
Ragoonathdas Gopaldas v/s. Morarji Jutha
Sir Farran, J

A partner of a firm leased a land in his own name though on behalf of the firm. Rents fell in arrears. The lessor sued all the partners.

Held: When one partner takes a lease of premises in his own name, though on behalf of the partnership and with the assent of his partners, his partners are not liable to be sued by the lessor for the rent reserved by the lease.

A lease is not as mere contract; it is a conveyance, and creates a transfer of property. The lessee can only be the person named in the lease. If that person becomes a lessee on behalf of someone else – which he may do – the law regards him as a trustee for that other person, and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to pay rent may be made on behalf of another person, but as far as the lessor is concerned, it must be deemed to be only on behalf of the person to whom the demise is made.

The other partners could not be sued also for use and occupation of the premises occupied by them as the lessor had no power to suffer or permit any one to occupy the premises during the continuance of the lease and therefore the foundation of a claim for occupation was necessarily wanting.

(1892) ILR 16 BOM 398
In the Matter of the Bombay Fire Insurance Company Limited
Sir Farran, J

The Plaintiff bought shares in the Defendant Company and applied to the directors for registration as a shareholder. The Articles of Association of the Company provided, inter alia, that any shareholder might, with the sanction of the Board of Directors, sell or dispose of and transfer all or any of his shares to any other person approved by the Board who shall not be bound to assign any reason for the withholding of such sanction. The directors refused the application giving no reason for doing so. The Plaintiff sued under S.45 of the Specific Relief Act, 1877 and S. 58 of the Indian Companies Act, 1882 for an order compelling the directors to register him as a shareholder.

Held: The application was refused as S.45 of the Specific Relief did not apply (there being another specific and adequate legal remedy, and under the Companies Act, the proper procedure had not been adopted. The title of the Plaintiff was not complete inasmuch as the requisite sanction to the transfer had not been obtained, and therefore, there was no privity between him and the directors of the Company.

(1892) ILR 16 BOM 634
In Re Jairam Luxmon
Sir Farran, J

A father sought to be appointed guardian of the property of his infant son to raise money upon mortgage.

Held: The Court had the power, irrespective of the provisions of the Guardians and Wards Act (VIII of 1890), of appointing a guardian of an infant's estate. The Court appointed the father, who was the applicant, the guardian of his infant sons for the purpose of raising money by the mortgage of his ancestral immoveable property on its appearing to the Court that by so appointing him guardian better terms were likely to be procured from the mortgagee and the infant and the whole family to that extent consequently benefited.

## 1893

(1893) ILR 17 BOM 584
Badische Aniline & Soda Fabrik v/s. Maneckji Katrak
Sir Sargent, Kt. CJ & Starling, J

The Plaintiff sued for infringement of their label used on the tins of dye that they imported into India. The label showed the picture of an elephant in the centre of a curved band. The rest of the label had coins, medals and tracing in combination of green, red and gold. The Defendant imported into Bombay tins of dye bearing a label, the chief feature of which was an elephant. The Defendant thereafter adopted a new label bearing the picture of an elephant, different in some respects from the Plaintiff's label and with new surroundings. The Plaintiff complained that its general effect was so similar to their Trademark that it amounted to a colourable imitation to be likely to deceive the purchasers.

Held: The Court does not have to see the effect on the brokers or the dealers, but how the label would be likely to strike incautious and unwary purchasers, such as are to be found more particularly in the mofussil. The Court observed that the attention of such purchasers would be arrested by the general effect of the label and would regard the labels as sympolic of the Plaintiff's goods. Even if a label has no part which is a copy of another label, it may be so like it in general appearance as to be likely to deceive purchasers. The Defendant had to be restrained by an injunction from selling the dyes.

(This position in law still prevails)

(1893) ILR 17 BOM 41
Vithal Hari Athavle v/s. Govind Thosar
Sir Sargent, Kt. CJ & Birdwood, J

The Plaintiff sued to recover amount due on a mortgage and claimed interest on the mortgage amount from the date of the institution of the suit till payment.
The amount due on the mortgage, less the amount paid by the mortgagor which was proved, was granted. The claim of interest was refused until Court Fee was paid thereon.

Held: Additional stamp fee is not required for the interest amount claimed as in mesne profits.

(See also AIR 1938 BOM 231)

(1893) ILR 17 BOM 100
Giriapa v/s. Ningapa
Sir Sargent, Kt. CJ & Telang, J

An adopted son sued to recover a share in his father's estate. A legitimate son was born to the father after the adoption.

Held: Under authority of Vyavahar Mayukha and Mitakshara that an he is entitled to a $1/5^{th}$ share.

(1893) ILR 17 BOM 114
Gojabai v/s. Shahajirao Bhonsale
Sir Jardine & Telang, JJ

A Hindu widow dies childless. She had two other co-widows. The Plaintiff was a grandson of one of her co-widows. The widow dies leaving behind a co-widow, a randson of another co-widow and a nephew of her husband. The Plaintiff as the grandson of the husband of the widow claimed the Streedhan of the widow given to her at the time of her marriage consisting of ornaments and a house.

Held: The Plaintiff was the nearest Sapinda as the grandson of the husband of the deceased and excluded the co-widow and the nephew.

(1893) ILR 17 BOM 164
Krishnarav Hasabnis v/s. Shankarrav Hasabnis
Sir Sargent, Kt. CJ & Birdwood, J

A Hindu dies leaving a widow and a son. His son died leaving a widow. The widow (mother of the son) adopted a son. He sued to recover her property.

Held: His adoption was invalid as discussed in West and Buhler 3rd Edition page 984 and accepted by the Privy Council. This was because an adoption by a mother higher in line than the son cannot be made as the son would be placed in a worse position as regards his Shraddhas than if there had been no adoption.

(1893) ILR 17 BOM 398
Manilal v/s. Bai Tara
Sir Jardine & Telang, JJ

A Hindu mortgaged his house. A suit on mortgage was decreed in his lifetime. The house was put up for auction. The mortgagee died. His widow resided in the house. The house was sold. The purchaser had knowledge of the widow's residence. The widow sued to establish her right to reside in the house.

Held: In the absence of fraud or any evidence that the mortgage was not for the benefit of the family, the purchaser took it free of the widow's right of occupation despite notice of her claim.

(The right of a wife in the matrimonial home now statutorily recognized is also not higher than a lawful contract entered into by her husband)

[See (1891) ILR 15BOM 673 – charge created by a mortgage is not extinguished on the death of a mortgagor]

(1893) ILR 17 BOM 369
Queen-Empress v/s. Khoda Uma
Sir Jardine & Telang, JJ

The accused were the subject of His Highness the Gaikwad of Baroda. They were extradited to British India for being tried for committing dacoity. The Magistrate committed to the Sessions Court under S. 398 of the IPC, 1860. The Sessions Judge amended the charge to S. 395 of the IPC. They were tried for committing dacoity and found to have committed only theft and not dacoity. The Sessions Court acquitted them of the charge of committing dacoity.

Held: The Sessions Court should have altered the charge under S. 227 of the Cr.PC and convicted the accused under S. 238 of the minor offence which the evidence established.

The extradition was proper even if it was demanded for trying the accused for the offence of dacoity, it did not mean that the conclusion of the trial must be under that charge alone. The trial could be on any charge. The Cr.PC was applicable as *Lex fori*.

(This position would prevail today)

(1893) ILR 17 BOM 485
Queen-Empress v/s. Bhima
Sir Jardine & Telang, JJ

The accused was charged under Ss. 457 and 354 of the IPC with house-breaking with intent to commit rape and assaulting the complainant to outrage her modesty. The accused made a statement to the Police Patel in front of the Panchayat.

Held: Police Patel is a police officer. Any statement made before him is inadmissible under S.25/26 of the Evidence Act, 1872 even if it is made in the presence of a Panch.

(The law remains unchanged to this day)

(1893) ILR 17 BOM 771
Govind Kulkarni v/s. Sadashiv Shet
Sir Sargent, Kt. CJ & Candy, J

The Plaintiff sued to recover his land adjacent to a temple belonging to the Defendants. The Defendants put up verandahs on that land. The land was seen to belong to the Plaintiff. The Defendant was made to pay compensation to the Plaintiff.

Held: The land being found to be of the Plaintiff, the Plaintiff cannot be given only compensation against his will, however reasonable it might appear. The Defendans had to remove the verandahs.

# 1894

(1894) ILR 19 BOM 72

In Re Mukund Babu Vethe
Sir Jardine & Ranade, JJ

The complainant was a native Indian subject to her Majesty residing at Belgaum. A criminal prosecution was filled against him in the Sangli state for criminal Breach of Trust committed within that state. Thereupon he obtained an order from the District Magistrate of Belgaum, which exempted him from arrest for the offence without a warrant issued by himself. Later a Police Officer from Sangli state arrested him on a charge of Criminal Breach of trust inspite of being informed of the order of District Magistrate; he was detained in custody till the matter came before the 1st Class Magistrate who ordered his discharge.

Held: The chief constable had no power to arrest the complainant without a warrant, and that he was guilty of the offence of wrongful confinement.

(1894) ILR 19 BOM 83
Hafizabai v/s. Kazi Karim
Starling, J

The husband of the Plaintiff left a considerable amount of property. He was a partner with his brother in business. He took charge of the properties. The Plaintiff applied for her husband's share. However, the Plaintiff's husband had left a will in which there were 3 executors, amongst them his brother. The Plaintiff prayed for the appointment of the receiver to collect and hold possession of the estate of her husband. The brother objected. Though the deceased had appointed 3 persons as executors, the Plaintiff sued only the brother.

Held: There is a danger that the estate of the deceased will be wasted in the hands of the brother. Hence this was a proper case to appoint a Court receiver. It was not necessary to add the other 2 executors as Defendants.

(1894) ILR 19 BOM 420
Hari Joshi v/s. Shankar Vithal
Sir Jardine & Ranade, JJ

The Plaintiff sued for an injunction restraining the Defendant from allowing the branches of his cashew tree to overhang the Plaintiff's ground and for an order directing him to cut off such branches. The Defendant pleaded that the branches of the tree had projected over the Plaintiff's land for 40 years and he contended that he had, therefore, acquired a prescriptive right of the nature of an easement over the Pliantiff's land.

Held: The Plaintiff was entitled to cut away the branches which overhang his land, though they had remained so for more than 40 years.

{See also (1918) ILR 43 BOM 164 and (1920) 22 BLR 790 }

(1894) ILR 19 BOM 639
Vithuldas Gober v/s. The Bombay and Persia Steam Navigation Company
Candy, J

The Plaintiff's goods were loaded in the Defendants steamer then lying in dock to be carried from Bombay to certain parts in east Africa. At the time of loading the ship was apparantly in the sound and seaworthy condition. Two days after the goods had been put on board and when the ship was still in dock, it sprung a leak and water came into the hold and damaged the Plaintiff's goods. The ship was taken to the dry dock and the leak repaired. The Plaintiff sued the Defendants for damages. The Defendants pleaded that the ship was in a seaworthy condition when the goods were put on board and they were protected by the bill of lading which contained certain exception.

Held: The Defendant was liable. While the ship was in dock it was not seaworthy, and the exception in the bill of lading did not limit the implied warranty of seaworthiness.

(1894) ILR 19 BOM 668
The Secretary of State v/s. Vakhatsangji Meghrajji
Sir Jardine & Ranade, JJ

The Plaintiff was a Talukdar of the village in Ahmedabad District. A bag containing Rs.1,525 which was stolen property was found buried under ground in that village. After this bag has been unearthed, another bag containing Rs.248 and a gold ring was also found in the ground close by. The Plaintiff claimed to be entitled to the property. His claim was rejected and the order was passed plaicing the property at the disposal of Government. The Talukdar then sued the Secretary of state for India in Council to recover the property in dispute.

Held: In the absence of any evidence to prove the Talukdar's right to treasure trove either by a grant or prescription, the property belonged to the Government. The Indian Treasure Trove Act, 1878 was inapplicable as no notice was given by the finder, nor were any proceedings taken under it.

# 1895

(1895) ILR 19 BOM 135
Kirparam Modia v/s. Modia Jhumerkaram
Sir Sargent, Kt. CJ, & Sir Candy, J

The original Plaint, as framed, contained the name of Mr. Kriparam as Plaintiff 1 and his wife and guardian as Plaintiff 2. When the Plaint was actually filed, Kriparam's name was struck out by the pleader. Subsequently, on his application his name was restored. But the period of limitation had elapsed by then.

Held: The pleader and Plaintiff 2 acted beyond their authority in striking out name of Plaintiff 1 and, therefore, the restoration of his name must date back to the filing of the suit, which was not barred.

(1895) ILR 19 BOM 207
Sakharam Mhadik v/s. Vishram
Sir Sargent, Kt. CJ, & Sir Candy, J

The Defendant sold the Plaintiff a jackfruit tree for Rs. 5/- in cash on 21st October 1885. In the document of sale, it was clearly stated that the said tree was a standing tree in the ' Kumbhar Vada' of Jhadgar village. In 1890 the Plaintiff sued for posesion of the jackfruit tree.

Held: The suit for possession was wrongly held to be for movable property. The document of sale clearly indicates the intention of the parties to sell standing jackfruit tree. Such a standing tree is immovable property irrespective of the Plaintiff's intention of cutting the tree & converting it to movable property.

Immovable property is governed by 12 years limitation and hence, the suit was held not time barred.

(1895) ILR 19 BOM 247
Queen-Empress v/s. Vasta Chela
Sir Jardine & Ranade, JJ

The acussed was charged with causing grievous hurt. The Joint Sessions Judge relying apparantly on evidence that the injured person remained in a hospital for twenty days, inferred, from the circumstance alone, that he was unable to follow his ordinary pursuits and convicted the accused under S. 326 of the IPC.

Held: In the absence of evidence that the injured person was unable to follow his ordinary pursuits during the twenty days, such inference could not be drawn.

(1895) ILR 19 BOM 352
Dorabji Randiva v/s. Muncherji Panthaki
Candy, J

In November 1869, the Plaintiff, being one year old then, his mother, the Defandant's daughter, paid the Defendant, his grandfather, a sum of Rs. 650 and at her request the amount was credited in the books of the Defendant's firm in the name of the Plaintiff. In December 1871, a further sum was credited in the account. The Plaintiff alleged, and the Court found, that these sums were presents which had been made to him on his birthday or other auspicious ocasions. The Plaintiff contended that the money was held by the Defendant in trust for him. The Defendant alleged that the money in question had been lent to him by the Plaintiff's mother and that the claim was barred by limitation.

Held: The Plaintiff's claim was not barred as the Defendant stood in a fiduciary position to the Plaintiff. The 'deposit' was within the meaning of article 60 of the Limitation Act, 1877 and limitation did not commence to run until demand.

(1895) ILR 19 BOM 614
Ramabai v/s. Rangrav
Sir Farran & Candy, JJ

A separated Hindu died possessed of certain property, a portion of which was watan land, and left him surviving a widow, a daughter and the Plaintiffs who were his brother's sons. Subsequently the widow adopted a son. The daughter did not take any steps to dispute the adoption. The Plaintiffs sued for a declaration that the adoption was invalid and that they were entitled to succeed to the property of the deceased on the death of his wife.

Held: The Plaintiffs were entitled under S. 2 of the Bombay Act to succeed to the watan property in preference to the daughter after the death of the widow.

(1895) ILR 19 BOM 571
Cursandas Natha v/s. Ladkavahu
Sir Farran, J

A Hindu directed his daughter-in-law to adopt his newphew under his will and devised the residue of his estate to him. The executors of the will brought a suit to have the will

construed and the rights of the nephew in the testator's estate ascertained and declared. A decree was made which declared that the adoption of the nephew was a condition precedent to his inheritance. The nephew filed a review stating that at the time of the decree he was a minor and he should have an opportunity of showing cause against the decree so far as it affected his interest after he attained majority.

Held: The review couldn't be granted. The Court, after deciding an issue in which an infant, a party to a suit, is interested, has no power to reserve to the infant the right to question such decision. A decree passed againt an infant properly represented is binding upon him like a decree passed against any adult, but it is open to the infant to impeach such decree by a suit in cases where his guardian has been guilty of fraud or negligence in allowing the decree to be passed against him.

(1895) 19 ILR 741
Queen-Empress v/s. Rego Montopoulo
Sir Jardine & Ranade, JJ

A Greek under British protection at Zanzibar was convicted by the British Consular Court of Culpable Homicide not amounting to murder and sentenced to 10 years rigorous imprisonment under S. 304 of the IPC, 1860. He challenged the jurisdiction.

Held: The British Consular Court exercised jurisdiction in one foreign state over subjects of another foreign state enjoying British protection by treaty, capitulation, grant, usage, sufferance or other lawful means.

(1895) 19 ILR 764
Callianji Harjivan v/s. Narsi Tricum
Sir Farran, CJ & Starling, J

The Defendant was an employee of the Plaintiff. He was indebted to the Plaintiff. He was arrested in criminal proceedings filed by the Plaintiff. He was released on bail and then employed by another person in the trade. The parties entered into an agreement that the Defendant would pay him Rs.1950/- in full settlement, serve the Plaintiff for 10 years honestly and could be dismissed for any fault. The criminal case was dismissed. The Defendant refused to be employed by the Plaintiff. The Plaintiff sued for specific performance.

Held: Specific performance or injunction could not be granted as pecuniary compensation was the proper remedy.

# 1896

(1896) ILR 20 BOM 50
Girdharlal Hargovandas v/s. Lallu Jagjivan
Sir Bayley, Acting CJ, & Fulton, J

The Plaintiff had presented his case to the Second Class Subordinate Judge who returned it for presentation to proper Court as he thought the subject-matter exceeded Rs.5000.
The Plaintiff then approached the First Class Subordinate Judge, who, finding that the subject-matter is less than Rs.5000 also returned it for presentation to proper Court.

Held: The Order of the Second Class Subordinate Judge was passed without reference to Act VII of 1887 and was erroneous.

(1896) ILR 20 BOM 124
The Municipal Corporation of Bombay v/s. Cuverji Hirji
Sir Farran, CJ & Tyabji, J

A broker sued the Municipality of Bombay for brokerage in respect of land purchased by them.

Held: If during the time that the broker was negotiating with the vendor, the latter was induced to consent to the sale, the broker is entitled to his brokerage.
To make the vendor pay brokerage, it must be shown that broker has been employed by such vendor to act for him or that in contract the vendor has agreed to pay brokerage.

1896 ILR 20 BOM 155
Dinkar v/s. Appaji
Sir Jardine and Ranade, JJ

Two managers of a Hindu family passed on a bond mortgaging certain family property for satisfaction of two money bonds which were barred by limitation.

Held: The manager of a Hindu family has no power to revive by acknowledgement a debt barred by limitation, except against himself.

(1896) ILR 20 BOM 165
Empress v/s. Lester
Sir Jardine, Acting CJ

A person under arrest on charge of murder was taken in a *tonga* from the place of the alleged offence to Godhra. He was accompanied by a friend and a police man. During the course of the journey, the policeman left the *tonga* to fetch a horse. In his absence, the accused made a communication to her friend about the alleged offence.

Held: The accused was in custody even during the temporary absence of the policeman.

(1896) ILR 20 BOM 199
Baba v/s. Shivappa
Sir Sargent, Kt., CJ & Fulton, J

A suit for possession was filed against the Appellant and her minor son. The land was mortgaged by the Appellant's husband. After his death, the Appellant sold it to the Respondent to pay off the mortgage and other debts.

Held: According to Mahomedan law, a mother not being the legal guardian of her minor child cannot do any act relating to the property of the minor so as to bind him.

(1896) ILR 20 BOM 232
Fazulbhoy Chinoy v/s. The Bombay & Persia Steam Navigation Company Limited
Sir Farran, CJ, Starling & Tyabji, JJ

The Plaintiff applied under S. 523 of the CPC, 1882 for an order that the matter in dispute between the parties should be referred to arbitration.

Held: A general agreement to refer future differences to arbitration comes within the purview of S. 523. However, an agreement which provides for the future appointment or election of arbitrators does not fall within the said section.

(1896) ILR 20 BOM 394

Queen-Empress v/s. Latifkhan

Sir Jardine & Ranade, JJ

Two constables arrested a person named Mahadu for committing theft. One of the constables beat the person, and the other constable present at the scene did not prevent such violence. Mahadu died soon after.

Held: A policeman who stands by acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, is guilty of abetment.

Under the Bombay District Police Act, 1890 every officer is bound to shelter a person in custody and arrest persons committing assault likely to cause grievous bodily injury. If he omits to perform his duty, he is guilty of abetment.

(1896) ILR 20 BOM 540

Queen-Empress v/s. Warubai

Sir Jardine and Ranade, JJ

The accused moved the High Court for a reversal of his conviction and contended that the Judge should have stated his reasons for upholding the conviction and should have given his opinion on all questions of fact in the case.

Held: In rejecting an appeal, under S. 421 of the Cr.PC the Appellate Court is not bound to write a judgment.

(1896) ILR 20 BOM 502

In Re Rodrigues

Candy & Ranade, JJ

The accused was employed by Treacher & Co Ltd. He was convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. The Magistrate was a shareholder in the company which prosecuted the accused.

Held: The Magistrate was disqualified from trying the case. As a shareholder of the company, he had a pecuniary interest in the result of the accusation, however small it may be.

(1896) ILR 20 BOM 788
Balabin Keshav Bava v/s. Maharu Valad Nagu Patil
Sir Farran, CJ & Parsons, J

The Plaintiff prayed for an order of injunction directing the Defendant to remove a building recently erected to the south of his house. The Plaintiff alleged that the building obstructed his light and air and the passage of water from his roof and from a drain situate in the south corner of the terrace of his house.

Held: A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made.

An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window.

## 1897-99

(1897) ILR 23 BOM 47
Babaji Ramji v/s. Babaji Devji
Parsons & Ranade, JJ

The Plaintiffs and Defendants were riparian proprietors of lands situated on the banks of a rivulet, the Defendant's lands being situated higher up the stream than that of the plaintiffs. There were several dams erected in the bed of the stream for the purpose of regulating the flow of water to the lands of the different riparian proprietors and that the defendant's dam has always been a sluice or passage left through which the water flowed down to the Plaintiff's damn and thus irrigated their rice lands in the hot season. However, in October 1896, the Defendants erected a solid dam without any sluice or passage in it and thereby stopped the supply of the water to the Plaintiff's lands. The Plaintiff's prayed for an injunction directing the defendants to open a sluice in their dam and thus allowing in future the passage of the water on to the Plaintiff's dam.

Held: The Court had no jurisdiction to hear such a suit and grant such an injunction, as a person can only sue when he has been dispossessed or deprived of the use or when he has been disturbed or obstructed, or when an attempt has been made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before the suit.

{See also (1905) ILR 29 BOM 357}

(1897) ILR 23 BOM 63
Ningava v/s. Bharmappa
Candy & Fulton, JJ

The Plaintiff brought this suit to recover possession of certain land. The Defendant denied the Plaintiff's title inspite of the Plaintiff having evidence of his ownership which he established by tendering a registered mortgage deed relating to adjacent land, executed prior to the date of the suit, by the owner who had since expired,in which the land in question was mentioned as one of the boundaries of the land comprised in the mortgage and was described as the property of the Plaintiff. There was no suit between the Plaintiff and the Defendant then and there was no motive on the part of the adjacent owner to make any statement in the deed on the Plaintiff's behalf.

Held: The statement in the deed was admissible under Clause 3 of S. 32 of the Indian Evidence Act, 1872.

(1897) ILR 23 BOM 22
Keshav v/s. Vinayak
Parsons & Ranade, JJ

The Plaintiff sued in the Court at Nasik to establish his share/right to a *Varshasan* (annual allowance) charged on villages in the Nizam's territory in Aurangabad and paid there.

The Plaintiff claimed that theVarshasan was granted to the common ancestor of the Plaintiff and the Defendant and enjoyed as joint ancestral properties. The Defendant contended that it was granted to his grandfather as his exclusive property and descended to his heirs only.

Held: The suit was governed by the law in force in the Nizam's dominions. The Court in British India had no jurisdiction to try it merely because the Defendant resided there.

(1897) ILR 23 BOM 54
In Re Jamnadas Harinaran
Parsons & Ranade, JJ

A paid B Rs.22. C made a memorandum; “B has received Rs.22”. The memorandum was not stamped. He was charged and convicted under S. 61 of the Indian Stamp Act, 1879 for not affixing the receipt stamp on the memorandum.

Held: The memorandum is not a receipt. Under S. 3(17) of the Stamp Act, there must be an acknowledgement of the receipt, either express or implied and not merely a statement of money received.

(1897) ILT 23 BOM 32
In Re Krishnaji Pandurang Joglekar
Parsons & Ranade, JJ

The accused was arrested. He was produced before the Magistrate. The Magistrate remanded him to police custody for 14 days under S. 167 of the Cr.PC, 1882 without recording reasons. Later, the Police asked for further remand for 14 days in police custody. The Magistrate granted it without recording reasons.

Within that period, proceedings under S. 107 of the Cr.PC were initiated. The accused was called upon to furnish security to keep peace in a bond of Rs.8,000/- and two sureties of Rs.4,000/- each. The accused failed to furnish security. He was committed to prison for 1 year.

Held: The Magistrate can continue the detention of the accused in police custody only for 15 days on the whole. Remands given from time to time cannot be in police custody. S. 344 of the Cr.PC contemplates such remands to jail.

(The position in law remains unaltered)

(1898) ILR 22 BOM 590
Laxmibai v/s. Ramchandra
Parsons & Ranade, JJ

A young widow was untonsured (absence of a shaven crown of hair) at the time of adoption. Hence, she was considered impure to participate in the ceremony of adoption. Her adoption was challenged.

It was observed that it was well known that among the Deshasta Brahmins in the Deccan widows are allowed to retain their hair.

Held: That the alleged impurity in case of the young widow that was not a disqualification so as to nullify the adoption.

(1898) ILR 22 BOM 754
Bhojabhai Allarakhia v/s. Hayem Samuel
Fulton, J

The Plaintiff sued the Defendants to recover possession of a certain house in Bombay and for arrears of rent. The Defendant pleaded that the house in question was occupied by Beni-Israel school of which he was the honorary secretary and not liable to be sued personally.

Held: The Defendant was liable for rent as there was nothing to show that the contract for the house was made on a personal credit of anyone except the Defendant.

(1898) ILR 22 BOM 693 (FB)
Heera Nema v/s. Pestonji Dossabhoy
Sir Farran, Kt. CJ, Candy & Tyabji, JJ

In 1889 the Plaintiff obtained a decree against the Defendants for Rs.941. The decree, capable of execution, was settled by the Defendants by payment of Rs.600 in cash and passing a promissory note for Rs.341 payable on demand with interest @ 3% p.m. This was not sanctioned by the Court. In 1892 and in 1895 the Defendants made up their accounts and again obtained a new promissory note. The Plaintiff sued on the note passed in 1889 which was for Rs.815 and carried interest of 3% p.m.

Held: The note was void under S. 257A of the CPC as it provided for payment of more than what was due under the decree. The consideration for the note given in 1889 was the agreement of the Plaintiffs to accept it in satisfaction of the decretal balance due to them. Since the agreement was void, the note given for void consideration was void.

The Defendant was duty bound to pay per month for the use and occupation of the house.

(1898) ILR 22 BOM 451
Stevens v/s. Bedford
Fulton, J

The Bombay Unconvenanted Service Family Pension Fund was a voluntary society established in 1850. Its object was to provide pensions for the widows of its members. One of its rules provided that the rules of the society were subject to such additions and alterations from time to time as sanctioned by the general body of subscribers. The Plaintiff became a member in 1875 during which time the pension

payable to widows in Europe was at the rate of 2 pense per rupee. In 1895 this rule changed. The Plaintiff contended that the society was not competent to alter the rules passed in 1871 which had induced him to join the society.

Held: The society had the power to alter rules and hence the Plaintiff's claim was rejected.

(1898) ILR 22 BOM 509
Bai Diwali v/s. Moti Karson
Parsons & Ranade, JJ

The Petitioner was directed by the District Judge of Ahmedabad to hand over her daughter aged about 8–9 years to her paternal uncle for the purpose of her marriage. The petitioner got her daughter married to another in defiance of the order of the District Judge. The paternal uncle claimed that he had already betrothed the girl to a suitable husband and prayed that the girl be handed over to him for the purpose of completing the marriage.

Held: Neither the disobedience of the order of the Court and nor the disregard of the preferable claims of the male relations would invalidate the marriage.

(The Child Marriage Restraint Act was enacted in 1929)

(1898) ILR 22 BOM 831
Kashinath Shimpi v/s.Narayan Shimpi
Sir Farran, Kt., CJ & Candy, J

The Plaintiff sued for a declaration entitling him to have the smoke from his house discharged through certain smoke holes in the east wall of his house over the Defendant's land and to restrain the Defendant from building on his land so as to interfere with the Plaintiff's right.

Held: The definition of easement is wide enough to embrace such an easement as a right capable of being acquired by prescription though it may pollute the air. If such right did not exist then a person after 20 years user could block up the apertures in his neighbours wall by which his kitchen is kept free of smoke.

(1898) ILR 22 BOM 715
In Re Hukumpuribava Gosavi
Parsons & Ranade, JJ

On the occasion of the *Sinhast* festival a district Superintendent of Police at Nasik issued a notification to the following effect: "*No member of any sect can be permitted to proceed naked to the tirth to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If anyone does this, he will be dealt with according to law."*
The *Gosavis* of *Trimbak* challenged it.

Held: The notification is neither illegal nor *ultra vires* as it was not in the form of any order or command as to costume, but merely a warning to the people that an indecent exposure of the person was an offence under the law and would be dealt with as such.

(1899) ILR 23 BOM 518

The Secretary of State for India in Council v/s. Sitaram Shivram
Parsons & Ranade, JJ

The *khots* of the village of Ojharkhol in the Ratnagiri District cut down a large number of teak trees growing on this land.

The Plaintiff sued to recover the value of the trees cut, alleging they were the property of the Government.

The Defendants claimed ownership of the teak trees upon a proclamation issued by the Government in 1824, known as Mr. Dunlop's proclamation, though it was rescinded in 1851:
"Upon the teak and other trees that maybe on any person's land, Government has no design. He, whose trees may now exist, or he whose trees may hereafter grow, may make such use of them as he pleases. Government will not offer that slightest obstruction.

Held: The proclamation was not a mere promise, but an actual grant or gift of the teak trees to the persons on whose lands they were then actually growing, or might thereafter grow, and the gift could not be revoked.

(1899) ILR 23 BOM 666

Mohidin Sultan v/s Shivlingappa Bandeappa

Candy & Fulton, JJ

The Plaintiff sued for an injunction restraining the Defendants from burying their dead in his land. The Defendants contended that they had acquired an easement of burying their dead in that land around a *Dargha* by a continued practice of over a 100 years.

Held: No easement was acquired as the suit land was not dependant on any dominant heritage.

The right of burial in a particular locality is one that is most dearly prized, and therefore even if the Plaintiffs land may be rendered useless due to increasing number of tombs in the land it was not sufficient to put an end to this right.

The Defendants are entitled to claim for a limited class the right of burial in one corner of a field near the *Dargha*. The mere possibility that after many years the number of tombs would increase and the Plaintiff might plausibly be deprived of the use of a part or the whole of his land was too remote a consequence for the Court to consider the custom unreasonable.

(See also 1902 ILR 26 BOM 198)

(1899) 1 BLR 191
Narayan Vengorlekar v/s. Daji Bodewa
Parsons, Acting CJ & Ranade, J

The Respondent leased a thickan (land) to the Appellant's father on rent of Rs.5/-. The tenant could plant coconut and undhi trees in consideration of which he was given 9 coconut trees and put up a house on the land. The parties renewed the lease. The tenant was allowed to plant further trees and enjoy the fruits for 3 years and in the 4$^{th}$ year the tenant was to take 1/3$^{rd}$ trees and give the landlord 2/3$^{rd}$.The tenant was to pay lease rent of Rs.14 ½ % p.a.

The Notice to quit was challenged on the ground that the tenant had a permanent tenancy and a right of perpetual management of the trees. He also claimed the right to keep his house standing on the land.

Held: Under the terms of the tenancy the tenant was to remain in management of his trees which would be the property of the landlord. The tenant who was allowed to erect the house could not retain it longer than the period of tenancy lasts. At its end, the tenant is bound to restore the land as he had received it and he cannot remain upon it when he is no longer a tenant. The house was built for the convenience of the father and can be occupied by him only so long he held the land as tenant. He can live in it while his interest in the land endured. Even the allowance to plant trees cannot create a permanent tenancy in the trees or the land.

(1899) 1 BLR 95
Yamunabai Kavade v/s. Manubai Kavade
Parsons and Ranade, JJ.

A Hindu died intestate leaving behind only self-acquired properties, which devolved on his widow.

The widow of his predeceased son, who had lived with the deceased till his own death, applied for maintenance from her mother-in-law.

Held: The self-acquired properties devolved upon the heirs of the deceased. Though it could not become ancestral property in the hands of the widow, since the deceased died intestate, all his sons would share it equally as ancestral property

Had the deceased left a Will, it would have devolved as self acquired property only to that legatee. Because of intestacy it would devolve as ancestral property to his sons as co-parceners of the HUF and his widow would be entitled to be maintained from **it.** Hence the moral obligation of the father-in-law is converted into a legal obligation when his self acquired property devolves upon his heirs.

The word ancestral in Sanskrit is Pitrajit as opposed to Swarjit or self-acquired.

2 incidents of self-acquired property are that it cannot be partitioned and the owner had unrestricted power to gift or bequeath it.

These incidents cease to attach to it when the owner has neither gifted it nor willed it. When the owner dies intestate, it becomes the joint common property of the family and all the sons share equally in it like any other ancestral property. (The sons living would share with the heirs of the pre-deceased son). Hence the daughter-in-law whose husband had lived with the deceased till his death is jointly entitled to be maintained out of such property.

(1899) 1 BLR 346
Suleman Varsi v/s. Sakinabai
Parsons & Ranade, JJ

The husband and wife were Khoja Mohmedans of the Subhania community were married according to the rules of the community known as the Bhagat community. About a year after the marriage between the parties, the whole Subhania community seceded from the *Bhagat* Community.

The wife was granted Maintenance of Rs.30 under S. 488 of the Cr.P.C.

Thereafter the husband divorced his wife by Talak Razi as per procedure. The husband offered to pay maintenance from the date of the order upto the date of the divorce and declined to pay any maintenance thereafter.

Held: The divorce was valid and put an end to the order of maintenance.

# 1900

(1900) 2 BLR 304
Queen-Empress v/s. Vinayak Bhatye
Sir Jenkins, Kt., CJ

The accused was a printer, publisher and editor of the Newspaper known as “Gurakhi”. He published an article entitled “A White man's Gun and the Death of a Native”. The accused was charged for sedition under S.124-A of the IPC.

Held: A publisher is *prima facie* liable for that which appears in his paper, and if he seeks to get rid of that liability the onus lies on him. He must establish that the paper was published without his knowledge, authority or consent, and without any acquiescence or connivance on his part. Mere absence or a want of particular authority, is insufficient to constitute an answer to the charge. The general character of the paper and the way in which it has been carried on must be looked at.

(1900) 2 BLR 130
W.A.Chambers v/s K.N.Kabraji
Russell, J.

A person sent a letter to a newspaper about a pending suit on libel making references to the parties. It was published in the newspaper. Notice was issued upon the writer to show cause why a warrant should not e issued upon him.

Held: Comments made on proceedings, civil or criminal, pending in a Court is an offence against the administration of justice and contempt of the authority of that Court. It can make no difference in principle whether those comments are made in writing or in speeches at public assemblies. Neither can it make any difference in principle whether they are made in reference to a trial actually commenced and going on or with reference to a trial which is about to take place.

In India, the powers of a Court in respect of contempt of Court are the same as those enjoyed by the inferior Courts in England.

(1900) 2 BLR 191
Gopikabai v/s. Dattatraya

Parsons & Ranade, JJ

The Respondent filed a suit to obtain a reduction in the amount of maintenance decreed to a Hindu widow on change of circumstances upon deterioration in the value of the family property.

It is competent for Civil Courts to entertain suits for reduction of maintenance allowed to a Hindu widow for sufficient reasons such as the permanent reduction of the value of the property. The fact that the property is reduced in value by having fallen into disrepair is no sufficient ground for asking for a reduction in the maintenance.

The right of maintenance of a Hindu window is not dependent on near relationship, but on the existence in the hands of her husband's heirs of the ancestral property in which he might have claimed a share. The amount of maintenance to which a window is entitled does not bear any fixed ratio to the means of the family, but these latter circumstances must govern the amount to a large degree, along with the consideration of the *status* and position of the widow in the family.

(1900) 2 BLR 533
Vasanji Bhimbhai v/s. Haribhai Monbhai
Sir Jenkins, Kt, CJ, & Candy, J

The Defendant claimed through the purchaser at an auction. The sale certificate had to be proved. The auction purchaser was not summoned.

Held: A sale certificate granted under S. 259 of the CPC, 1859 is a valid transfer of the right, title and interest and, therefore, is a document of title. Such a sale certificate, in the hands of the purchaser at an auction sale, is his title deed and he can, if he so minded, refuse to produce it in Court; but in that case secondary evidence of the same will be admissible under S. 65(c) of the Evidence Act, 1872.

A certificate of sale granted under the CPC is not a public document under the Evidence Act, 1872 so as to allow secondary evidence of it to be given under S. 65(e) of the Act.

(1900) 2 BLR 817
Queen-Empress v/s. Tukaram Chima
Ranade & Crowe, JJ

The accused, aged 40 years, dishonestly and without owner's consent stole a bag containing 55 lbs. of gram. He was charged with theft in a dwelling under S. 380 of the Indian Penal Code. He claimed leniency.

Held: Under S. 562, Cr.PC, the first offender, with a past good character and antecedents, need not necessarily be a youth: such an offender may be advanced in age. Youth, character and antecedents are the extenuating considerations which entitle a first offender to indulgence.

(1900) 2 BLR 1078
Queen-Empress v/s. Bhagi
Candy & Whitworth, JJ

The accused, who was a Vanjari by caste, admitted to have "corrupted water in a public cistern and causing the water less fit for drinking purposes under S. 61(m) of the District Police Act, IV of 1890." The accused was by caste a Vanjari.

Held: Corrupting the water requires some act which physically defiles or fouls the water. Hence, where a woman of the lower caste takes water from public cisterns of water, she cannot be convicted of defiling or fouling the water either under the Bombay District Police Act, 1890 or under the IPC, 1860.

## 1901

(1901) 3 BLR 1
Charles Heiniger v/s. Constant Droz
Batty, J

The Plaintiff sought an injunction restraining the Defendants from importing or selling watches of the kind imported by the Plaintiff or having any design or mark which would make the purchaser believe that the watches were the ones imported and sold by the Plaintiff.

Held: The Plaintiff is not entitled to such an injunction as he can only protect a trade mark representing his own reputation, but not the trade mark of another manufacturer or producer.

(1901) 3 BLR 102
In Re N.F. Bhandara
Sir Jenkins, Kt., CJ, Tyabji & Russell, JJ

Mr. N.F. Bhandara was called upon by the High Court to show cause why his name should not be removed from the roll of the Advocates of the Court on account of criminal proceedings against him with respect to forgery and criminal breach of trust framed on the complaint of his client. He was stated to have claimed a large fee of Rs. 10000 on the threat of appearing for the other side.

Held: It is highly reprehensible for an advocate of the High Court to stipulate for, or receive, a remuneration, proportioned to the result of litigation, or a claim, whether in the form of a share in the subject-matter, a percentage, or otherwise.

By acting in such a manner, an Advocate renders himself liable to disciplinary action of the High Court.

(1901) 3 BLR 164
Gopalrav Hanmant v/s. Kallappa Bin Dharmappa
Candy & Crowe, JJ

The Respondent had sued for the dissolution of a partnership claiming a certain share of money including capital and profits. The partnership related to opium and *ganja* contracts.

The Appellant pleaded that the partnership was illegal.

Held: The suit to recover even the money advanced as capital, for the purpose of a partnership which was even partly illegal, is not maintainable at law.
(Notice the prevalence of deals in contraband as much as strictness of the law since early days).

(1901) 3 BLR 188
King-Emperor v/s. Shivgowda
Candy & Crowe, JJ

The then *Swami* of the community to which the parties to the case belonged, had declared the second marriage of a women as adulterous as it was a secret *pat* marriage. Some years later, another *Swami* declared the marriage as valid. As that *Swami* took no notice of the communications of the villagers citing their disapproval, they published a notice in the newspaper stating "Jingowda having left a concubine by name Uma, has had offspring by her." The villagers were convicted of defamation.

Held: The conviction was proper, as even if the allegations were made for the benefit of a portion of the public, the accused had no privilege to disseminate them to a circle of readers wider than those who could possibly be interested in the allegations.

(1901) 3 BLR 220
Abdul Allibhoy v/s. Mahomedally Hyderally
Sir Jenkins, Kt, CJ, Russell & Whitworth, JJ

The Respondents were manufacturers of ink and claimed exclusive right to certain labels and trade marks. The labels with the mark “Waterloo” were made by first collecting the bottles of four European makers. The labels designed by the Plaintiff were a combination of all four labels. The name was suggested by another pen supplier. “I liked the name. So I call my ink “Waterloo”.

Held: A person, who uses a label, which is a deliberate combination of other labels with a view to represent his wares as the wares of others, cannot be allowed to take an injunction restraining some other person from imitating his label.

(1901) 3 BLR 246
Bai Fatan v/s. Emad Asla
Fulton & Sir Chandavarkar, JJ

Certain lands were conveyed and given possession of by the Respondents to the mother of the Appellants under a sale deed. The sale deed recited that the land so conveyed was obtained by the Respondents from the Government in exchange of some other land. The Appellant was ousted by two other Respondents under a Mamlatdar's decree.

Held: Possession is good defence against a wrong-doer. Possession peacebly held entitles a person to recover without further proof of title as against a mere wrong-doer.

(1901) 3 BLR 449
King-Emperor v/s. Abdul Khadir
Candy & Fulton, JJ

The accused stole a pony and sold it to a third person. He was convicted of the offence and sentenced to a term of imprisonment and fined a sum of Rs.20. It was further ordered that out of the fine, when Rs.9-12-0 was recovered and paid to the purchaser, the pony should be returned to the complainant.

Held: No condition could be imposed on the return of the pony to the complainant and that the order of the award of a portion of the fine to the purchaser should be reversed.

(1901) 3 BLR 717
Ramrao Narayan v/s. Rustumkhan
Fulton & Crowe, JJ

The land in dispute was a graveyard which was not used for 20-30 years. However, its character as such was retained.

Held: It was the custom of the country that the ground in which the human remains are interred is regarded as forever sacred. The ownership of the soil maybe vested in others, but the permission to bury in the land, carries with it the right to perform all customary rights.

## 1902

(1902) ILR 26 BOM 88
Fakiraya v/s. Gadigaya
Sir Jenkins, CJ & Candy, J

In 1888, the Defendants morgaged three fields and a house to the Plaintiff's undivided uncle for Rs.2000. In 1892, the field and the house was sold subject to this morgage in excecution of a money decree obtained by the uncle and having obtained leave to bid at the sale, the uncle purchased the fields for Rs. 340 and the 1st Defendant purchased the house for Rs.300.

Subsequently the uncle died and the Plaintiff having succeded to his estate sued to recover a proportionate share of the mortgage debt from the house of the 1st Defendant. He valued the field at Rs.3200 and the house at Rs.800 as the mortgage debts amounted to RS.4000. He claimed to recover Rs. 800 from the house. Defendent no.1 pleaded that at the time of the sale the mortgage debt was only Rs.3100 that the value of the field which the Plaintiff bought was more than sufficient to satisfy the mortgage debt, which was, therefore, wholly extinguished and that the house was no longer available for redemption.

Held: Where the Plaintiff, instead of enforcing his mortgage and bringing the property to sale free of encumbrace, brings to sale the equity of redemption in part of the mortgaged property and buys it himself, an equity arises which entitles the Defendant to require satisfaction first out of the property brought by the Plaintiff. Otherwise the action of the Plaintiff in causing the sale subject to the mortgage might almost necessarily secure to him an undue profit at the expence of the Defendant.

(1902) ILR 26 BOM 198
Ramrao Bellary v/s. Rustumkhan
Fulton & Crowe, JJ

A certain piece of land at Dharwar which had formally been used as a graveyard by the Mahomedan community there was sold by the owner to Defendant no.4, who thereupon began to prepare the foundation of the house which he intended to build upon it. The Plaintiffs, who were the members of the Mahomedan community at Dharwar, filed this suit alleging that the land was used for burying the dead and was accustomed to perform religious rites and ceremonies at the said land. They prayed for a declaration that the land was a public property and for an injunction restraining the Defendant from obstructing them.

Held: They were entitled to the declaration and injunction prayed for. The ownership of the soil may be vested in others but the permission to bury in the land granted, as it must be, subject to the custom of the community, carries with it the right to preform all customary rites.

(See also 1899 ILR 23 BOM 666)

(1902) ILR 26 BOM 533
Emperor v/s. Tribhovandas Brijbhukandas
Candy & Fulton, JJ

The accused were partners in a shop at Surat, in which obstensibly the business of cloth selling was carried on, but which was actually used for the purpose of carrying on a *satta* or wagering business. The wagers made were on the figures denoting the prices for which opium was sold at Calcutta. Information as to these sales were received by a telegragh from Calcutta. The firm kept books in which the wagers were recorded.

Held: The books kept by the firm and the telegrams received used for the purpose of recording the wagers were not 'instruments of gaming' and the wagering with which the accused was charged was not a 'game', therefore, the charge of arrest did not apply.

(1902) ILR 26 BOM 609
Cawasji Shroff v/s. The G.I.P.Railway Company
Candy & Crowe JJ

The G.I.P. Railway company carried 27 heads of cattle from Talegaon to Bombay. The cattle where put in one truck by their owner under the supervision of the company's good clerk at Talegaon and were so allowed to be put by the servant inspite of a circular issued by the Traffic Manager to prevent the overcrowding of cattle. When the cattle were detrained at the goods yard of the company at Wadi Bundar, they were found sufferring from the effects of overcrowing. The Bombay society for the Prevention of Cruelty of Aminals prosecuted the Railway Company.

Held: The accused person cannot be criminally punished unless *mens rea* is proved; nor can he be found guilty of a crime commited by his servant. A Railway Company, therefore, cannot be penally liable for the acts of its servants; inspite of the circular issued.

(1902) ILR 26 BOM 689
Harivallabhdas Haridas v/s. Bhai Jivanji
Sir Jenkins, CJ & Batty, J

The Plaintiff was the managing clerk of a firm of Solicitors in Bombay, who were acting as Solicitors for one Cursondas in a suit which he had filled in this Court to recover a large amount of property. This suit was managed for Cursondas by a friend of his, and Cursondas agreed that if he succeded he would give his friend a sum of Rs 50,000/-. The friend took the help of the Plaintiff in conducting the suit and agreed to give him half share i.e Rs 25,000/-. The Plaintiff alleged that Cursondas knew of this arrangement with the Defendant at the time the Rs 50,000/- were promised. Subsequently, that friend gave the Plaintiff a writing agreeing to pay him half share in case the litigation was successful. The suit was successful and the Plaintiff sued the Defendant for Rs 25,000 as per the agreement.

Held: If the transaction was not known to Cursondas, it was vitiated against him. So far as the Plaintiff is concerned, by the reason of secrecy of the profit sought, the transcation which forms the foundation of the Plaintiff's cliam infringes so gravely those essential principles which equity insists. He cannot be permited to profit indirectly by a transaction in which he could not have recovered from Cursondas directly.

## 1903

(1903) 5 BLR 667
Narsinha Shankar v/s. Imam Mahamad
Sir Chandavarkar & Aston, JJ

The Plaintiff's application for renewal of his license for arms was rejected and his license was cancelled. The Defendant (police officer) was instructed to attach the Plaintiff's existing gun. The Defendant, on conveying this to the Plaintiff, he (Plaintiff) immediately submitted his gun to the Defendant.

Yet the Defendant continued the search of the Plaintiff's house. The Plaintiff sued for malicious search. The Plaintiff contended that a great inconvinence was caused to him and his guests. He contended that the Defendant had done this to cause annoyance to the Plaintiff.

The Defendant contended that he suspected that the Plaintiff had another gun. Hence he searched the house, though he did not find another gun.

Held: The onus of proving that the Defendant did not act honestly but with intent to injure lies on the Plaintiff. The Plaintiff must show that the Defendant acted intentionally without a just cause or excuse.

The Defendant is not proved to have acted with an intent to injure the Plaintiff. The Defendant was acting in obedience to the lawful order of his superiors and had no malice. Hence he could not be sued.

(1903) 5 BLR 676
Rudrappa v/s. Irawa
Sir Jenkins, KCIE, CJ & Jacob, J

The deceased was survived by a sister and brother's widow. The question that arose was whether a sister or a brother's widow is preferred as an heir.

It was argued that succession governed by *mitakshara* does not name the sister as the heir. The useage that a sister succeeds as an heir outside Gujarat and the Island of Bombay and was entitled to preference even over *Gotra Sapindas* was established.

Held: The sister is entittled to preference over the brother's widow.

(1903) 5 BLR 741
Emperor v/s. Abdul Hussein
Sir Chandavarkar & Aston, JJ

The accused had a shop for several years in Poona Cantonment. He had a wooden box kept in front of his shop for use as a step to facilitate access to his ota which rose three feet above the public road.

This box was placed on a stone slab covering the gutter (drain) at the side of the road adjoining his shop.He was sentenced and convicted for *wilful obstruction to free passage of the street* under Rule 141 of the Cantonement Code, 1899.

Held: The box lay there for several years and no notice for removal of the box was given to the accused. That the obstruction was willful was not proved. Hence the accused could not be held guilty of the offence.

(1903) 5 BLR 798
Venkappa v/s. Siddapa
Sir Jenkins, KCIE, CJ & Jacob, J

A pleader entered into a compromise in a case on behalf of his client. The appeal was resisted on the ground that a decree in accordance with the compromise was

final. It was contended that upon a pleader signing a compromise on behalf of his client was to be assumed that the client was agreeing to the compromise.

Held: A pleader has not a general power of compromising a case on behalf of his client; he must be specifically authorized to that end. Even though Counsel have a general power of compromise, it does not allow them to compromise matters outside the scope of the suit.

(1903) 5 BLR 877
Emperor v/s. Mahomedally Rajbhai
Sir Chandavarkar & Jacob, JJ

The accused purchased weights from a begger boy. The accused did not make any enquiry about how and from where the boy had the weights in his possesion. It was contended that the omission to make such necessary enquiries coupled with the fact that the weights were purchased from a begger are sufficient to convict the accused as guilty for theft.

Held: The Magistrate was right in dismissing the contention that such omission of enquiry and purchase from a begger would justify the inference that the accused either knew or had a reason to believe that it was a stolen property. No circumstances hint that a reasonable man would have drawn the inference that the property being dealth with was a stolen property.

The Accused was correctly discharged.

## 1904

(1904) ILR 29 BOM 13
Satyabhamabai v/s. Ganesh Krishna
Sir Jenkins, KCIE, CJ & Aston, J.

The Plaintiff sued to recover his share in certain ancestral properties against 13 Defendants. The parties agreed that the widows would get those properties which would have gone to the share of their husbands by way of their maintenance.

After the evidence was recorded, the Plaintiff applied for withdrawal of the suit as she had settled with Defendants 1 and 2; the other Defendants objected.

Held: A Decree of Partition partly based upon an Agreement between the parties cannot be resiled by the Plaintiff later as certain rights were vested in the Defendants.

(1904) ILR 29 BOM 91
Basappa Fakirappa v/s. Rayava Basappa
Sir Jenkins, KCIE, CJ, Sir Chandavarkar, Batty, & Aston, JJ

The Appellant claimed the estate of the son of his deceased brother against the remarried widow of his brother as she would claim from two families, the family of her predeceased husband and the family of her second husband.

Held: On remarriage the widow becomes the guardian of the son. Therefore, under S. 2 of the Hindu Widow Remarriage Act, the widow is entitled to succeed to the estate of her son from her former husband.

(1904) ILR 29 BOM 85
Rashid Karmali v/s. Sher Banoo
Russell & Sir Chandavarkar, JJ

A Khoja, governed by Shia Law, married of his own volition. Later he sold his property being his share in his father's estate to his brother. Still later, he executed a Will appointing his two brothers as his Trustees. He affirmed the sale of the immovable property and bequeathed the value of his ornaments to his two brothers in equal share after payment of his funeral expenses.

His widow sued to set aside the Sale Deed and to claim the estate on intestacy.
The Sale Deed was said to be for a wholly inadequate consideration and the widow was held entitled to maintenance.

Held: A Khoja and his wife, though married according to Mohammedan rites are yet "Hindus" and are governed by the Hindu Law of Succession and Inheritance. Hence, if the brothers remained joined, their widows would be entitled to maintenance out of the estate of their father.

(Similarly, Kutchi Memons were held to be governed by Hindu Law of Succession in ILR 34 BOM 647)

(1904) ILR 29 BOM 213
Rudrappa v/s. Narsing Rao
Sir Jenkins, KCIE, CJ & Sir Batchelor, J

The tenancy of a tenant had expired. He held over. He was dispossessed by the landlord.

Held: A tenant holding over after expiry of the period of tenancy cannot be dispossessed by force. Such a tenant is still in juridical possession as he can recover possession against a third party for wrongful dispossession.

"Due process of Law" required to be followed does not mean only "legally", but only by institution of legal proceedings. Hence, he was not entitled to recover possession by himself.

(1904) ILR 29 BOM 306
Bai Motivahoo v/s. Purshottam Dayal
Sir Jenkins, KCIE, CJ & Sir Batchelor, J

After purchasing a property in the name of his wife, the Plaintiff's husband executed a document that it belonged to her. It was not registered. Later he executed a Will disposing it off.

The case of oral gift was not proved.

Held: The doctrine of Advancement does not apply to Hindus. The purchase of a property by the husband in the name of his wife does not raise any presumption of any gift to her.

In India, the ownership of the property is seen from the source of funds for purchase.

(1905) ILR 29 BOM 357
Dinkar Dongre v/s. Narayan Lohar
Sir Jenkins, KCIE, CJ & Aston, J

The Plaintiff, who lived near a stream, sued the Defendant who lived upstream and who had built a dam to use the water of the stream through a water course (pat) for injunction restraining the Defendant from erecting a dam higher than that of the Plaintiff's and for recovery of Rs.50/- as damages for diminishing the Plaintiff's water supply and causing injury to his crops and garden.

The Defendant contended that the dam was built 30 years ago by his ancestors.

Held: This was a contest between two riparian owners. Each owner had a right to the usufruct of the stream which passes through his land. That is not an absolute and exclusive right to the flow of the water, but its enjoyment subject to similar rights of other such owners.

{See also the right to fish in the sea. AIR 1929 BOM 226 and the right to waters of a stream (1897) ILR 23 BOM 47}

(1905) ILR 29 BOM 410
Lakshmibai Anant v/s. Vishnu Bele
Sir Jenkins, KCIE, CJ, & Batty, J

The deceased directed his daughter-in-law to adopt a son and thereby make him the legal heir. The Respondent sued for a declaration that he was the grandson of the deceased by virtue of his adoption and therefore the owner of certain share of the property.

Held: The deceased did not beneficially dispose of the property vested in him under such a will. The father in law's assent does not survive beyond his lifetime. Therefore, the will was held invalid. The Court saw a clear difference between consent given during the lifetime and the authority to be exercised after the death of the giver.

(1905) 7 BLR 73
Framji Shapurji v/s. Framji Edulji
Sir Chandavarkar, J

The Plaintiff had a building of ground plus two storeys with an outhouse. The building had 8 ancient honey-combed openings to its South side from which the Plaintiff received an uninterrupted supply of light and air. The outhouse was used by his family and later, by his servants. It was gutted in fire. The walls of the outhouse stood. The Plaintiff was to re-construct the outhouse. The Defendant was proceeding to construct a building close to the Plaintiff's house leaving 6-8 ft. space in between.

The Court considered the right to light and the right to air separately as also the right in a country and in a town on a different footing.

Held: The men who enjoyed the right to air, more or less, pure and free ought to be reasonably protected against any interference.

The diminution of light from $90^0$ to $20^0$ is serious though the Plaintiff could not expect to have horizontal or direct light as before. The English rule of $45^0$ is a safe one to adopt in a populous city, like Bombay, but it must be seen with other circumstances to cause an actionable nuisance. The right to light was to be enjoyed taking into consideration the daily growing demand for increased building accommodation.

The question of air stands upon a different footing. There is a greater likelihood of foul air rushing into the Plaintiff's inner room when the door of the privies constructed by the Defendants close to the Plaintiff's rooms is opened. The Court ought to consider the sanitary requirements where ventilation is even more important than light. This was held taking into account the plague that visited the city of Bombay.

The servants are also human beings and the light affecting their outhouse is also an actionable wrong even if they be a class of persons accustomed to live in dark rooms regardless of ventilation.

[See also (1993) ILR 7 BOM 95 and (1891-93) 7 BHC Rep. Unreported Judgments 177]

(1905) 7 BLR 252
Gangadhar v/s. Parasharam
Sir Jenkins, KCIE, CJ & Batty, J

A Hindu died leaving 4 sons. His estate consisted of a thikan and buildings. The title devolved upon his sons and later, his sons' sons. The predecessor of the Plaintiff left the family house in 1857 and never participated in the profits of the property. No account was rendered or demand made for 40 years.

Held: To constitute adverse possession between tenants in common, there must be an exclusion or ouster. The exclusive right of profits by one tenant in common continuously for a long period would be sufficient evidence to presume an actual ouster of the other tenant in common.

(1905) 7 BLR 324
Dady Nasserwanji Dady v/s. Acting Advocate General,
Tayabji, J

A Parsee left everything to charity under his will except for making provisions for *Baj*, *Rojgar* and *Muktad* ceremonies from the income of his properties after making his funeral expenses. Out of an income of Rs.20,000/-, Rs.7,000/- was used for his funeral expenses. The latter bequest failed.

Held: Such a bequest is void. There is no gift to charity where the fund is divided into two parts and one is devoted to an invalid purpose. Hence, everything went to charity as that was the dominating intent of the settlor.

(1905) 7 BLR 308
Balaram Budharam v/s. Ramkrishna Chilaji
Sir Jenkins, KCIE, CJ, Russell & Aston, JJ

The Plaintiff sued for possession of movable and non-movable properties. The Defendant was held entitled to a 1/3rd share in the house and the decree directed partition.

Held: A decree in terms of the report of the Commissioner for taking accounts is a final order effecting partition and must be stamped as an instrument of transfer.

Though the law requires the shares to be determined and allotted to the respective parties, the practice in many Courts is not to make a final order under S. 396 of the CPC, 1882 but to leave the determination and allotment of the shares in execution proceedings.

The suit would be considered still pending until a decree is passed. The law does not require two decrees to be made in such a case when it is possible for the Court upon the materials before it to make a final order of partition determining the respective shares of the parties, the Court is bound to make that order. When it is not so possible, the Court may appoint Commissioner under S. 396 of the CPC.

(This position must govern suits until this day for partition or administration when the share of the Plaintiff is determined and/or admitted).

# 1906

(1906) ILR 30 BOM 37
The Town Municipality of Jambusar v/s. Girjashanker Narsiram
Sir Jenkins, KCIE, CJ, & Batty, J

The Plaintiff was a member of a joint Hindu family which owned a house in Jambusar. The tax in respect of his house fell into arrears. Summary proceedings were instituted by the Municipality under the District Municipal Act. The amount was paid after the institution of the proceedings. The prosecution ended without a decision on merits. The Plaintiff sued for damages for malicious prosecution against the Municipality of

Jambusar and its officers.

Held: The object of the Municipality is “to teach a minatory lesson to other defaulters on the disadvantages of non-payment of the tax”. That could not be regarded as an indirect motive or as malice for the purposes of such a suit, it being a legitimate end of punishment to deter other evil-doers from offending in the same way.

(1906) ILR 30 BOM 122

Bai Hansa v/s. Abdulla Mustaffa
Sir Jenkins, KCIE, CJ, & Aston, J

The husband sued for restitution of conjugal rights. The wife pleaded non-payment of dower. The husband pleaded consummation of marriage.

Held: After consummation of marriage, non-payment of dower, even though proved, cannot be pleaded in defence of an action for restitution of conjugal rights.

(1906) ILR 30 BOM 126

Emperor v/s. Budhoobai
Russell & Aston, JJ

The accused, a fisherwoman, was charged under S. 410 (1) of the Bombay City Municipal Act (Bom. Act III of 1888), with selling or exposing for sale without a municipal license fish on the Chowpatty foreshore, in the City of Bombay. The sale was from a basket, which the accused had placed on the sand, at some distance from the water, between the high and low water mark. The fish sold was fresh fish and was brought from one of the boats then in Back Bay. The accused contended that it was a market sale. Back Bay was outside the municipal limits under the Municipal Act.

Held: The accused was not protected by S. 410 (2) of the Bombay City Municipal Act (III of 1888), since it was impossible in the present case to say that the fish had been sold from a vessel, when as a matter of fact it had been sold from the basket on the shore, it having been brought from the vessel which was in the water.

The onus of proving that the place in question was a “private market” lay upon the accused.

The Bombay City Municipal Act (III of 1888) applied to Back Bay because it came within the expression “City of Bombay” as defined by the Bombay General Clauses Act (I of 1904).

(1906) ILR 30 BOM 229
Bhau Gurav v/s. Raghunath Gurav
Sir Jenkins, KCIE, CJ & Aston, J

A wife bequeathed her Stridhan without her husband's consent.

Held: The bequest failed as, except the Stridhan known as Saudayik, a woman's power of disposal over her Stridhan during coverture is subject to her husband's consent and without such consent she cannot bequeath it by will when she is survived by her husband, who is not shown ever to have consented to the will.

Saudayik Stridhan is that which is obtained by a married woman or by a virgin in the house of her husband or of her father, from her brother or parents.

(1906) ILR 30 BOM 593
Krishnabai Thakur v/s. Manohar Sundurrao
Sir Jenkins, KCIE, CJ, & Sir Beaman, J

The applicant applied for the leave to file a suit in forma pauperis alleging that after her husband's death, her husband's brother possessed himself of her property including the ornaments that she ordinarily was accustomed to wear. She sued to recover these ornaments.

Held: The only point to consider was whether the applicant was possessed of sufficient means to enable her to pay the fees prescribed by law for the plaint and not whether she would have had the ornaments.

The words "other than his necessary wearing apparel" does not require that the person should not be possessed of sufficient means to enable him to pay the fee prescribed by law, but only the condition that the applicant is not entitled to property worth Rs.100.

# 1907

(1907) ILR 31 BOM 495
Tara, Father of Hari Shinde v/s. Krishna Bandu

Sir Chandavarkar & Sir Beaman, JJ

A Vaghya (male dedicated to the God Khandoba) had three daughters, one of whom was a Murali (female dedicated to the God Khandoba) and two were married. After the Vaghya's death, his Murali daughter, who lived by prostitution and had children by promiscuous intercourse, claimed her father's property as heir to the exclusion of her sisters under the rule of Hindu Law that an unmarried daughter inherits her father's property before his married daughters.

Held : A woman, who in her maiden condition becomes a prostitute, being neither a kanya (unmarried) nor a kulastri (married), but, notwithstanding her prostitution a qualified heir, would be entitled to succeed to her father's property only in default of either married or unmarried daughters.

(1907) ILR 31 BOM 366
Bai Jina v/s. Kharwa Jina Kalia
Sir Chandavarkar & Pratt, JJ

The Plaintiff, an ex-communicated member of the Mussalman Kharwa community of Broach, sued his wife for restitution of conjugal rights. At the time of their marriage, the parties were members of the caste; but subsequently the Plaintiff was ex-communicated from his caste. The Defendant contended that she should not be compelled by the Court to go and live with him as his wife before the Plaintiff was re-admitted into the caste.

Held: Upholding that contention that at the time of his marriage the Plaintiff was not only a Mahommedan by faith, but a member of the Kharwa community. Upon that status his wife married the Plaintiff. It was, therefore, of the essence of the marriage contract that they married because they were members of particular community and they must be regarded as having entered into the martial relation on the basis of the status.

(1907) ILR 31 BOM 430
Dahibai v/s. Doonderji Damji
Russell, J

The Solicitor for the Defendant in a suit brought to obtain probate of the will of the one Damji Lakhmichand set up the defence that the will was a forgery. Being unable to procure the services of an expert, he, after special study for the purpose, himself carefully studied every letter of the alleged will and, despite Counsel's opinion that he had no chance of succeeding, eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs he claimed extra

payment for the additional and unusual work incurred by him.

Held: (in review of taxation) The solicitor was entitled to be separately remunerated for the special work done by him. There was, in fact, a charge for work done which would not ordinarily fall upon a Solicitor in the preparation of the brief.

(1907) ILR 31 BOM 68
Kalidas Lalabhai v/s. Tribhuvandas Bhagvandas
Russel, Acting CJ, Sir Beaman & Sir Heaton, JJ

An award began by saying: "We decide as below. The parties should act accordingly". It went on: “The Defendant should take into his possession as below after passing a legal release." It added other directions with regard to the action of the Defendant and provided: " In connection with whatever is settled to be given to the 'Defendant' and to be taken by him, we direct that 'Defendant' should take into his possession, the properties and receive and pay money stated above after passing a release of sufficient stamp and getting it registered.

Held: The award came within the meaning of the words "an award by an arbitrator directing a partition" within the meaning of S. 2 Clause 15 of the Indian Stamp Act (II of1899).

(1907) ILR 31 BOM 218
Emperor v/s. Isap Mahomed
Batty & Sir Heaton, JJ

The accused was tried on charges under Ss. 363 (kidnapping from lawful Guardianship) and 366 (kidnapping a woman) of the IPC. At the conclusion of evidence for the defence, the Court added a charge under S. 498 (enticing a married woman) of the IPC notwithstanding the objection by the accused's counsel. The trial ended in conviction of the accused on all the three charges.

Held: The procedure adopted was not regular as the additional charge framed at the stage it was framed, notwithstanding the objection by the accused's counsel, was prejudicial to the accused.

The conviction under S.498 of the IPC was set aside and further investigation was ordered into the remaining charges.

# 1908

(1908) 10 BLR 93
Emperor v/s. Chinto Bhairava
Sir Chandarvarkar & Knight, JJ

A Municipal Secretary was convicted for corruption punishable under S.162 of the IPC. He was sentenced to pay a fine of Rs.200/- “having regard to his position as a Secretary of the Municipality and also to his age (45)”. The Court had to consider enhancement of sentence. The accused wanted to show that he was wrongly convicted.

Held: It is the practice of this Court that in cases of enhancement of sentence, conviction is accepted as conclusive and the question of enhancement is considered on that basis.

(1908) 10 BLR 811
Daji Khare v/s. Govind Bapat
Sir Macleod, J

The Commissioner for taking accounts was appointed for taking accounts of the dealings and transactions of a partnership firm. He submitted a report to Court. The Defendants filed exceptions.

Held: Where the account books are admitted in evidence under S.32 of the Evidence Act, 1872 as having been kept in the ordinary course of business by the persons deceased, the Court may, in its discretion, take them as sufficient evidence without further proof.

The entries in the books are prima facie evidence against each partner but not conclusive evidence if a person shows any error. That person would have to prove the error.

Managing Partners are principals as well as agents and cannot be compelled to prove the payments in the same way as an agent.

A sleeping or dormant partner is the one not known as a partner to third parties. Even a Managing partner may be treated as a sleeping partner if he is known only as a manager to third parties. An active partner does not have a more favourable position on the accounts of the firm.

(1908) 10 BLR 848
Emperor v/s. Bal Gangadhar Tilak
Davar, J

The accused was charged with sedition for having printed and published 2 articles in his newspaper to bring hatred or contempt for the Government or to excite or attempt to excite dissatisfaction towards the Government under S. 124A of the IPC and for having done acts promoting disharmony, or feelings of enmity, hatred or ill-will between different groups under S. 153A of the IPC upon the second article.

The 3 charges were upon 2 articles written by the accused.

The summing up to the Jury showed the object of the section being to preserve order and amity between various subjects of the Crown and the requirement of the freedom of the press available to the accused.

The Court called upon the Jury to see the intention of the accused but not his motive, the surrounding circumstances, accept the translations of certain words put by the accused for the Marathi expressions in the articles and his construction of the articles.

The Court stated that the accused was entitled to have the benefit of the most favourable construction and called upon the Jury to see whether there was transgression of the law.

The Court read out some of the contents of the articles making a reference to a bomb. An analogy was drawn to the political agitation in Ireland which led to the grant of Home Rule. The Court referred the Jury to a postcard which was produced in evidence containing the names of 2 books on explosives. They were explained that it was to study the Explosives Act, 1884.

The Jury returned the verdict of guilty on the 3 charges by a majority of 7 to 2.
The Court ascertained about the previous conviction which were affirmed.

The Court sentenced the accused to transportation for 3 years each for the first 2 charges. For the 3rd charge for which the punishment was only sentence of imprisonment and fine, the Court sentenced him to a fine of Rs.1000/-.
The prosecution withdrew the 4th charge for which the accused was acquitted.

When called upon, he last stated:

> *"All I wish to say is that in spite of the verdict of the Jury I still maintain that I am innocent. There are higher powers that rule the destinies of men and nations and I think it may be the will of Providence that the cause I represent may be benefitted more by my suffering than by my pen and tongue".*

(40 years thereafter India became free of foreign Rule. The words remain engraved outside the Courtroom. The last 3 words are substituted by the words "remaining free").

(1908) 10 BLR 107
In Re. Shah Steam Navigation Company
Davar, J

A shareholder applied for winding up the Company as 'just and equitable' under S.128 of the Indian Companies Act, 1882. Various shareholders joined the Petitioner and various others, opposed him. The Company had disputes with one Essaji Tajbhoy in the business of plying steamers. The Company was alleged to have made a loss of Rs.4.5 lakhs. It was alleged that it had no prospects of ever making a profit.

Held: The Petitioner has not made the application bona fide in the interest of the Company or its shareholders. The Company cannot be wound up as 'just and equitable' merely on the ground that it had made losses and is likely to make further losses.

(1908) 10 BLR 149
Gangu v/s. Chandrabhagabai
Sir Chandarvarkar & Knight, JJ

A property belonged to a Hindu. His widow was murdered by the son of her husband's half brother. The accused was tried, convicted and hanged in the same year. His widow sued to recover the property of her uncle-in-law's estate through her husband and, in the alternative, as a reversioner.

Held: Though her husband would be dis-inherited upon his conviction for murder, she would not suffer from the similar defect as her husband's disability to inherit, upon considering various texts in smriti of yajnavalkya. It was held that such disability must be construed strictly and must apply only to the person and not his heirs even if they claim through him.

(1908) 10 BLR 498
Rajendralal Maneklal v/s. Surat City Municipality
Sir Chandavarkar & Naik, JJ

The Municipality constructed a dam in a creek. A ditch was allowed to be connected with the creek. The ditch drained away rain water which was filled with the rubbish of the town. It got soaked up with weeds, silt and other things. The rain water which collected in the creek flooded the Plaintiff's property.

Held: The Municipality was liable for misfeasance since their negligence turned into a nuisance.

## 1909

(1909) 11 BLR 85
Sir Dinshaw Petit v/s. Sir Jamshedji Jijibhoy
Davar & Sir Beaman, JJ

The Plaintiff challenged the appointment of the Defendant as trustee of the suit trust as not having been validly appointed and applied for a scheme of the trust to be framed in a class action.

Held: The Zoroastrian religion does admit and enjoin conversion. The Indian Zoroastrians, whilst theoretically adhering to their ancient religion, erected caste barriers around themselves and gradually fell under the influence of caste idea till the expression "Parsi" distinctly meant a caste.

Even if an alien, a Juddin, is duly admitted into Zoroastrian religion, he would not be entitled to the use and benefits of the funds and institutions which were founded and endowed only for Parsis. Parsis are the persons descended from the original Persian emigrants, born of Zoroastrian parents, profess Zoroastrian religion and children of Parsi fathers by alien mothers who have been duly and properly admitted into the religion.

The decision of a suit under S. 539 of the CPC is binding on all persons affected by it.

(1909) 11 BLR 255
Raghunathji Tarachand v/s. The Bank of Bombay
Sir Chandavarkar & Sir Batchelor, JJ

The Defendant was a joint Hindu family firm consisting 2 coparceners trading in the name and style of Raghunathji Tarachand as a partnership. A minor in the family was admitted to the firm. The firm executed a Hundi and was sued thereon. The minor contended that his share was not liable.

Held: The rule of Hindu Law, that debts contracted by a managing member of the HUF are binding on the other members only when they are for a family purpose, is subject to one important exception.

Where the family carries on a profession or business, the member who manages the business has an implied authority to contract debts for the business which binds all in the family. The creditor is not bound to inquire into his authority.
In a trading family, trade is its Kulacharas, all the family members trade in union, and hence, all the incidents of trade apply to it.
The firm, including the minor's share was liable on the Hundi.
(There is no personal liability of the coparceners. See AIR 1946 BOM 396).

(1909) 11 BLR 332
Emperor v/s. Kesari Kanji
Sir Chandavarkar & Sir Heaton, JJ

One Kesari was charged with the murder of her step-daughter Mithi aged 6 years by smothering her in the mud of a Creek. The evidence against her consisted mainly of her step-son Chittio and her own confession. The accused later contended that she made a confession under pressure from the police. There is no evidence to that effect. The Jury in the District Court of Surat returned the verdict of not guilty.

Held: Whether the confession was voluntarily made has to be decided by the Judge himself for purpose of admitting it in, or excluding it from the evidence in this case. If the confession was voluntarily made and was not caused by threat or inducement, he must admit it in evidence. Once it is admitted, it is for the Jury to say whether it is true or not. If a confession made before the Magistrate is retacted, it cannot be left to the Jury to decide whether it was voluntarily made. If that is done, there is a serious misdirection to the Jury in summing up the evidence resulting in miscarriage of Justice.

(1909) 11 BLR 606
Chabildas Lallubhai v/s. Ramdas Chabildas
Sir Beaman, J

One Lallubhai died intestate in Bombay living a widow and 5 sons. Chabildas, one of the sons used to carry on business as freight broker and contributed from his earnings to the joint family funds. After the death of their mother the joint property was divided among all co-parceners. Chabildas had two sons, Ramdas, the Defendant and Karsandas and one daughter. Chabildas claimed that he had purchased various properties and amassed great wealth and therefore he has absolute right to dispose of the same. The Defendant claimed that the property also belongs to his grandfather and, therefore, it is a joint family property, in which all are entitled equal share. The rent and profits which the Plaintiff received from the ancestral immovable property were mixed together with the income of the business.

Held: If a Hindu having ancestral moneys and working independently, makes large extrinsic gains which he keeps wholly distinct, he may treat the latter as his self-acquisitions. But if he mixes his gains with his ancestral money he cannot afterwards be allowed to separate them by a mere account. Where there is an indiscriminate blending of ancestral with self acquired properties, what is purchased out of the aggragate results is ancestral. However, a bona fide reasonably fair family arrangement will be upheld by the Courts.

(1909) 11 BLR 1109
Mahipat Shamla v/s. Nathu Vithoba
Sir Basil Scott, CJ

The Plaintiff sued to redeem and recover possession of certain immovable property alleging that the sale deed which was executed was really a mortgage. The Defendant disputed this allegation and contended that evidence was not admissible for the purpose of proving that it was really a mortgage. The Plaintiff y applied to the Court for permission to withdraw the suit with liberty to bring a fresh suit.

Held: The Court should not allow a suit to be withdrawn under S. 373 of the CPC, 1882 after the parties are ready for trial, if such withdrawal may operate to the prejudice of the Defendant.

(1909) 11 BLR 926
Nandalal Thakersay v/s. The Bank of Bombay
Sir Beaman, J

The Plaintiff carried on business as a merchant and commission agent. Heentrusted certain bales of cotton to his muccadum for warehousing, but the latter pledged them to a bank, which inspite of the Plaintiff's demand did not restore the goods to him or compensate him.

The Court considered the torts of detention and conversion and distinguished them from a lawful pledge protected under S. 189 of the Indian Contract Act, 1872.

Held: Conversion arises by wrongful taking and wrongful detention. Where a person charged with the goods does acts inconsistent with ownership of the rightful owner, conversion takes place from that moment. It depends upon the intention of such person followed by the act of passing off or changing or destrying the property. His conduct would fix the responsibility. Demand by the owner and refusal by the person in having the goods is evidence of conversion.
The pledge of the goods is a separate transaction and the Bank is not liable to the

owner of the goods bona fide pledged.

(1909) ILR 33 BOM 636
Ismailji Yusufali v/s. Raghunath Lachiram Marwadi
Sir Chandavarkar CJ & Sir Heaton, J

The father of the Plaintiff obtained from the Government four salt pans on a lease for a period of five years on the condition that the lessee was not competent to sub-let the pans without the written permission of the Collector of Salt Revenue. However, the father sub-let them to the defendent without any such permission. On the expiry of the lease and the death of the father, the Plaintiff obtained a fresh lease deed on the same covenant and he also sub-let the two pans to the Plaintiff on the original terms. At the expiry of the sub-lease, the Plaintiff sued to recover the deposit money from the Defendant.

Held: The object was to enable the Plaintiff to manufacture salt without a license, and that the real object of the agreement was forbidden by law and by the terms of the license within the meaning of S. 25 of the Indian Contract Act, 1872. Thus the claim for the money to be recovered was rejected by the Court.

## 1910

(1910) 12 BLR 675
Emperor v/s. Shankar Dev
Sir Chandavarkar, Kt., & Sir Heaton, JJ

The accused made a declaration under S. 4 of Act XXV of 1867 that he was the owner of a press called The Atmaram Press. He took no part in the management of the press which was carried on by another person. A book styled Ek Shloki Gita was printed at the press. The book contained matters of metaphysics, philosophy and religion to a large extent. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was charged with the offence under S. 124 A of the IPC, 1860.

Held: The evidence is evenly balanced and equivocal. The accused should be given benefit of the doubt. It is impossible to convict a man under S.124A of the IPC unless his intention to read the seditious subject book is clear.

(1910) 12 BLR 984
Sakrappa Hebsur v/s. Shivappa Basappa
Sir Chandavarkar, Kt., & Sir Heaton, JJ

The arbitrator granted a smaller share under the award to a minor.

Held: The award was valid and binding upon the minor. The validity of the award must be determined according to the circumstances as they existed at its date; and not by what had transpired some years after it had been passed by the arbitrators.

(1910) ILR 34 BOM 278
Parami Ramayya v/s. Mahadevi Shankrappa
Sir Chandavarkar & Knight, JJ

A Hindu widow was entitled to maintenance at the rate of Rs.24 p.a. under her husband's will. After the husband's death the widow led for some time an unchaste life and gave birth to a child, but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will.

Held: According to the Shastras, the husband would have had to maintain his wife, unless she had misconducted herself with a man of a lower caste. There is no allegation against the widow of such misconduct. Hence she was entitled to the maintenance.

(1910) ILR 34 BOM 111
Mardansaheb Ratimani v/s. Rajaksaheb Kashimsaheb
Sir Chandavarkar & Sir Heaton, JJ

One Mardansaheb sued to recover possession of property of his uncle, Maulasaheb. One Miyasaheb claimed as son of Maulasaheb and Jainabi under the will of Maulasaheb in his favour. Jainabi's husband had divorced her before the child was born, but it was not known whether that was before the conception of the child.
Jainabi's marriage with Maulasaheb was subsequent to the birth of Miyasaheb.

Held: Even if she was divorced at the time of conception, the illegitimacy of the Miyasaheb and the consequent fornication and adultery is proved.

(1910) ILR 34 BOM 427
Dullabhji Sanghani v/s. The Great Indian Peninsula Railway Company
Sir Beaman, J

The Plaintiff was travelling in a local train. A mail train passed by with the door of one of its compartments open and swinging. The door caught the arms of the Plaintiff which were projecting slightly outside the carriage windows and inflicted severe injuries.

Held: The Defendant was not negligent.

The injuries complained of could not have been suffered had the Plaintiffs remained inside the carriages in which they were travelling

## 1911

(1911) 13 BLR 345
Temulji Jamsetji Joshi v/s. The Bombay Electric Supply
Davar, J

The Plaintiff sued the tramway company claiming damages for injuries sustained to his foot while attempting to board a stationary tram car when the car was suddenly started at a signal given by the conductor tilting the footboard by which he lost his balance.

Held: The footboard was not loose and the Plaintiff's fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board.

(1911) 13 BLR 296
Emperor v/s. Vinayak Damodar Savarkar
Sir Scott, Kt., Sir Chandavarkar, Kt. & Sir Heaton, JJ

The accused was charged with sedition, arrested in England and brought to India under the Fugitive Offenders Act, 1881. He made attempt to escape at Merseilles, France. He was re-arrested in Merseilles and was brought before the Court of the First Class Magistrate at Nashik. He claimed asylum of France and since he was brought to Bombay without extradition, he claimed that he was illegally re-arrested and hence the Court had no jurisdiction to try him. At the commencement of the trial the accused said that he would take no part in the trial but asked for an adjournment and for facilities to make to the British and to the French Governments representations regarding what he contended was his illegal re-arrest in Marseilles after he had escaped from the custody of police officers charged with the duty of bringing him from England to Bombay.

Held: Where a man is in a country and is charged before a Magistrate with an offence under the IPC it will not avail him to say that he was brought there illegally from a foreign country. For the offences committed in British India and in London, the jurisdiction of the Court to try him is not affected by any illegality in connection with his re-arrest that may have occurred at Merseilles.

(1911) 13 BLR 19
Aryodaya Spinning & Weaving Co. Ltd. v/s. Siva Virchand
Sir Batchelor, J

The Appellant was in the service of the Respondent. Under his contract of service, it was incumbent on him to give 15 days' notice to the company before he left the service, failing which he would not be entitled to wages due. The Appellant left the service without notice. He sued to recover wages. The rule was held to be a forfeiture clause which the Court could not enforce. Hence his claim was decreed.

Held: The employee was bound to give 15 days' notice. The company rule had nothing illegal or contrary to public policy. The employee made the contract with his eyes open and by which he was bound. The Court cannot re-write the contract. He was bound by his contract.

(1911) 13 BLR 13
In Re Rassul Haji Cassum
Sir Beaman, J

Upon the acts of insolvency committed by a firm, it was adjudicated insolvent. The property of the firm vested in the Official Assignee. The Official Assignee seized 39 buffaloes of a third party as the property of the insolvent. The party claimed release of buffaloes and damages.

Held: An Official Assignee or a Receiver does not have unlimited power to seize property and to hold it until the party from whom he had taken it could establish his rights in a civil suit. The proper remedy is the procedure under O. 21, Rs. 58, 59 and 60 of the CPC, 1908 to summarily answer that question. The Court can order return of property wrongly taken to the person justly entitled to it under such application. But the Official Assignee may file a regular suit to have the question determined.

(1911) 13 BLR 860
Ganpat Teli v/s. Tulsiram Dhangar

Sir Chandavarkar, Kt. & Sir Hayward, JJ

A Hindu died surviving him his widow and daughter. The widow sold the property and contracted a re-marriage. The brothers of the deceased sued to recover possession of the property. The widow contended that the sale was for necessary purposes being satisfying old debts, performance of pilgrimage to Pandharpur to perform *Shraddha* of her husband and the betrothal expenses of her daughter. The expense of the pilgrimage and betrothal were challenged.

Held: A Hindu widow owes duties to the soul of her husband. Hence she can make a disposition for religious purpose which is conducive to the spiritual welfare of her husband, but not others. Expenses for the performance of her husband's *Shraddha*, fulfills the conditions of legal necessity if the pilgrimage was for the spiritual benefit of her husband and are reasonable, honest and proportionate to the status of the family. The expense of the betrothal of her daughter was well within her power.

# 1912

(1912) ILR 36 BOM 94
Ghelabhai Gavrishankar v/s. Hargowan Ramji
Sir Chandavarkar Kt. & Sir Hayward, JJ

The Plaintiff sued to establish his right as the hereditary priest of the Kachhia Kunbis of the Kasba section of Surat, to officiate as the family priest of the Defendant as his family members were the hereditary priests since the time of the Defendant's ancestors.

Held: Under Hindu law, the office of hereditary family priest (*yajman vritti*) is a nibandha and is ranked among the hereditary rights of immovable property. Thus, priesthood vested in particular families is regarded as vritti or immovable property.

(1912) ILR 36 BOM 279
Rao Saheb Manaji Kalewar v/s. Khandoo Baloo
Davar, J.

A widow, Maloobai filed a suit in *forma pauperis* challenging a gift deed. Pending the hearing, Maloobai died leaving a will and appointing the Plaintiff as her Executor who continued the suit in *Forma Pauparis*.

Held: Though the original Plaintiff was allowed to sue as pauper, the Plaintiff was not shown to be such and hence cannot sue as pauper.

(1912) ILR 36 BOM 446
Himatlal Motilal v/s. Vasudev Mhasker
Sir Basil Scott Kt. CJ & Russell, J.

The village of Godadra in the district of Panch Mahals was the inam of Defendants No.1 and 2, who agreed to sell it to the Plaintiff at a certain price and delivered a Banakhat (agreement to sell) to the Plaintiff in exchange for earnest-money paid by him. Subsequently, Defendants No.1 and 2 sold the village under a registered deed to Defendants No.3 and 4 at a considerably higher price and by way of a hurried transaction.

Held: The Plaintiff under his contract had a prior equity. The title of the party claiming under the prior contract prevails against the subsequent purchaser, although the latter's purchase may have been registered. Thus, the subsequent purchasers were bound to show three things: (i) that they were purchasers for value; (ii) bona fide; and (iii) without notice of the prior agreement.

(1912) ILR 36 BOM 524
Emperor v/s. Chhotalal Babar
Sir Chandavarkar Kt., & Sir Batchelor, JJ.

The accused was a subject of the State of Cambay. He lived there and traded with his business partner, Ambalal Jethalal. Conspiring with his business partner in Cambay, the accused sent him to a professional forger at Umreth in British India, to instigate the forger to forge a valuable security. Pursuant to the instigation by Ambalal Jethalal, the forgery was committed at Umreth. The accused was charged in a Court in British India, with abetment of forgery under the IPC. The Court referred to the Bombay High Court the question of whether the accused, not being a British subject was subject to the jurisdiction of his Court.

Held: The offence was continued and completed in British territory, although it had been initiated elsewhere. Under the IPC although a conspiracy takes place beyond the jurisdiction of the Court, if the crime is committed within its jurisdiction, the co-conspirator although resident abroad, is subject to the jurisdiction of the Court.

(1912) 14 BLR 115
Mahadev Sakharam Parkar v/s. Janu Namji Hatley
Sir Basil Scott, Kt., CJ, Russell, Sir Chandavarkar, Sir Batchelor & Sir Heaton, JJ

The Plaintiff purchased 1/10$^{th}$ share in the land at a Court sale common with his co-sharers. The Plaintiff filed a suit to recover by partition his share in the village. The Defendant resisted his claim on the ground that it was barred by limitation. The suit not brought within 12 years from the date of sale, but within 12 years from the date of his taking symbolical possession.

Held: Symbolical possession is not real possession nor is it equivalent to real possession under the CPC, 1908 except where the Code expressly or by implication provides that it shall have that effect.

(1912) 14 BLR 332
Malkajeppa Bulla v/s. The Secretary of State
Russell & Sir Chandavarkar, JJ

The Plaintiff was the owner and in peaceable occupation of the suit land. He sued for an injunction to restrain the Defendant from interfering with the Plaintiff's enjoyment of the ground or extending his building thereover.

The Deputy Collectorpassed an order in respect of the land under S. 37 and 135 of the Land Revenue Code,1879 though the Government had no title whatever to the plot.

Held: Where the collector deals with the land belonging to an individual in peaceable occupation, he is not dealing with it in his official capacity, but is acting *ultra vires.*

# 1913

(1913) ILR 38 BOM 116
The Dholka Town Society v/s. Patel Desaibhai Kalidas
Sir Basil Scott, Kt. CJ & Sir Batchelor, J

The drainage water passing along a certain drainage was cut due to some default so that instead of flowing along the assigned channel it was flowing across the road into the Plaintiffs' field and caused considerable damage.

Held: This damage was found to be due to the neglect of the drainage channel which the municipality was bound to repair.

(1913) ILR 38 BOM 156
Emperor v/s. Gangappa Kardeppa
Sir Heaton & Sir Lallubhai Shah, JJ on dissent
Sir Macleod, J

Eleven accused persons were tried for the offence for dacoity. There was no direct evidence against any of them. However, seven of these confessed their crimes implicating themselves as well as the rest. A question arose whether the remaining four accused who had not confessed could be convicted solely on the confessions of their co-accused, as there was no independent evidence implicating the four of them.

Heaton J. was of the opinion that S.30 of the Evidence Act, 1872 made the confessions of the accused evidence against those persons implicated as well as the other accused. However Shah J. held that the S. 30 permitted the confessions of the co-accused to be taken into consideration only if there was other evidence in the case.

Due to difference of opinion, the case was referred to Macloed .J.

Held: There was nothing in the S. 30 of Indian Evidence Act, 1872 which prevented the Court from convicting the accused after taking the confessions of co-accused into consideration. However a conviction founded solely on the confession of a co-accused could not be sustained as there is no material before the Court to enable it to decide whether what is been said by the accused is true or false.Hence such accused had to be acquitted.

(1913) ILR 38 BOM 224
Mallik Saheb v/s. Malikarjunappa Shivamurteya
Sir Beaman & Sir Macloed, JJ

A Hindu widow who had inherited property from her husband alienated a portion of it. Her only daughter assented to the alienation a few days after by a writing which was not registered. After the death of the widow and her daughter, an heir of the daughter sued to set aside the alienation on the ground that it was not made for legal necessity.

Held: The property which the widow inherited from her husband was alienated by her own decision or assent. Hence, there is no question of legal necessity that can arise. The assent of tthe daughter was not compulsorily registrable under S. 17(d) of the Registration Act, 1908 because on that day the executor had no more than a spes successionis as an heir would.

(1913) ILR 38 BOM 377
Tuljaram Gujar v/s. Sitaram Kusar
Sir Heaton & Sir Lallubhai Shah, JJ

In 1910 a mortgage suit was filed. The Plaintiff having died, his son's name was substituted in the place of his name on 30th April, 1912. On the same day the Court issued summons for the first time to the Defendants for the disposal of the mortgage. On the day of hearing, the Court raised issues for which neither parties had witnesses ready. The Court found that the claim was not proved on the absence of evidence.

Held: There was a miscarriage of justice in the way the case was disposed of. The scheme of the CPC requires that the parties should have been given an opportunity to produce evidence relevant to the issues after ascertaining the matters which were at dispute. The lower Court should have also made summons for settlement and not for a final disposal.

(1913) 15 BLR 61
Emperor v/s. Ranchhod Bawla
Sir Batchelor & Rao, JJ

A complaint was filed for an offense of criminal breach of trust under S. 406 of the IPC. The offence is non-compoundable. The complainant later applied to the Magistrate to be allowed to withdraw the case.

Held: In respect of a non-compoundable offence, it is not competent for a Magistrate to order an acquittal on a private complainant offering to withdraw from the prosecution in a warrant case.

(1913) 15 BLR 130
Nadirshaw Sukhia v/s. Pirojshaw Ratnagar
Sir Basil Scott, Kt., CJ, & Sir Chandararkar, J

Defendant No. 1 wrote a letter to Defendant No. 2 and 3, editors and proprietors of *Jam-e-Jamshed,* who published the letter. The letter criticized the conduct of the Plaintiff who had offered himself as a candidate for the election of trustees of charitable funds of the Parsi community. The Plaintiff brought an action for libel against the Defendants.

Held: The statements made by the Defendants were not privileged as they were published in a newspaper read by the public at large and not confined to the Parsi community alone.

It is open to any member of the public to comment on true facts as regards matters of public interest. However, if any allegation of fact imputing an act of misconduct is made in the course of the comment, the defence of fair comment cannot be taken. The libel can then only be justified on the ground that the allegation is true.

(1913) 15 BLR 209

Balmukund Kesurdas v/s. Bhagvandas Kesurdas

Sir Batchelor & Rao, JJ

A suit was filed to recover possession of property held jointly with the brother of the Plaintiff against another brother. The Defendant claimed that he also held the suit property jointly with his brothers. The Plaintiff applied to the Court to add other properties also if the Court held that they were joint and for Partition of all of them as an alternative relief to the plaint. The other brother bequeathed his properties to the Defendant. The Defendant claimed also under the will. The Defendant expired.
His heirs claimed that the suit property was separate and self acquired property of the other brother and descended under his will to them.

Held: If a party to a suit defends the suit on one defence and also on an alternative defence, his legal representatives may, on his death, rely upon either of the defences.

(1913) 15 BLR 252

Jehangir Muncherji Lali v/s. B.B. & C.I. Railway Company

Davar, J

The Plaintiff was travelling by train and had occupied the corner seat. His arm was resting on the window sill and projecting about 4 inches outside. While his arm was so projected outside, it came in contact with an open door of a stationary train at a station, as a result of which he suffered a fracture. He sued the railway company for negligence.

Held: As the Plaintiff himself was guilty of negligence which contributed to the injury, he was not entitled to recover damages. The negligence on the part of the Plaintiff constituted a material part of the effective cause of the injury.

(1913) 15 BLR 307

Emperor v/s. Vishnu Puranik

Sir Batchelor & Rao, JJ

The accused was a proprietor of a large pharmacy of Indian medicines on behalf of which he prepared, printed and published a book in Marathi. It was alleged that the book contained obscene passages.

The Court laid down the test of obscenity.

Held: The test to be applied is whether the language complained of is such as is calculated to defeat or corrupt those whose minds are open to immoral influences.

If the passages are held to be obscene, then the author's liability will not be saved merely by reference to other passages in the book which may contain moral percepts of an unexceptionable character.

(1913) 15 BLR 352
Sardar Nowroji Pudumji v/s. Putlibai
Davar, J

A testator had bequeathed a portion of his property to his son and provided that if the son died "without marrying or if married without any lineal heir" his share would revert equally to his surviving sisters or their heirs.

Held: The restriction imposed by the testator was nugatory and the son took the whole of his inheritance absolutely.

(1913) 15 BLR 564
Emperor v/s. Chandkha Salabatkha
Sir Batchelor & Sir Heaton, JJ

The accused persons dug a hole during the night in the wall of the complainant's dwelling house with the intent to complete the hole and enter the house and commit theft. However, the hole could not be completed as they were interrupted.

Held: The act amounts to an act of attempt to commit house-breaking by night and not a mere preparation to do so as a distinct overt act was begun and carried out to a certain extent, though not completed due to obstruction by other people.

(1913) 15 BLR 765

Hanmant Rukhmaji v/s. Annaji Hanmant
Sir Basil Scott, Kt., CJ, Sir Beaman & Sir Lallubhai Shah, JJ

A lower Appellate Court had dismissed an appeal observing that "the appeal is summarily dismissed" under Order XLI r. 11 of the CPC.

Held: In dismissing an appeal under Order XLI, rule 11 of the CPC, the Appellate Court should write a judgment as required by Civil Circular 51 of 1890.

(1913) 15 BLR 833
The Dakore Town Municipality v/s. Anupram Travadi
Sir Basil Scott, Kt., CJ & Sir Heaton, J

There was an *otla* abutting on a public street in front of the Respondent's house. The *otla* had an embedded stone which was in that position for more than 12 years.

Contending that the stone was encroaching on a public road, the Municipality of Dakore removed the stone from the otla.

Held: If a statutory condition regulating the exercise of the Municipality's power is shown, it does not matter that the encroachment is in existence for 12 years or more. However, the Municipality was not justified in its action as it failed to show how the stone obstructed safe and convenient passage along the street.

## 1914

AIR 1914 BOM 8

Kalyanchand Lalchand v/s. Sitabai Dhanasa.

Sir Basil Scott, CJ, Sir Batchelor & Davar, JJ

In a Probate proceeding objection was raised about the validity of a will claiming that deceased executed it within 48 hours before his death when he could not have been in a sound state of mind. The Probate Court accepted the contention after taking evidence to that effect and refused to grant the probate. Another proceeding was filed to consider the same question.

Held: The Judgment in a probate proceeding does not confer upon or take away from any person any legal right or character. Yet, such proceeding, if contested, constitutes a suit within the meaning of S.11 of CPC. Therefore, its finding will operate as res judicata between the parties.

AIR 1914 BOM 128
Emperor v/s. Ganpat Sitaram
Sir Heaton & Sir Lallubhai Shah, JJ

The accused is a tooth powder manufacturer. He used general get-up of the labels resembling and identifying with labels of two other companies. He was, therefore, convicted under S. 468 of the IPC. The accused raised a contention about the difference between counterfeit trademark and false trademark. He contended that this case was not of counterfeit trademark and hence not a forgery.

Held: S. 468 IPC provides for counterfeit trademarks. When both boxes of tooth powder were compared they identically resembled each other. Therefore, the accused used a false trademark. False trademark and counterfeit trademark is the same thing under S. 468. The conviction was affirmed.

AIR 1914 BOM 28
Purushottam v/s. Rakhamabai.
Sir Heaton & Sir Lallubhai Shah, JJ

A Hindu widow, while adopting a boy, stipulated with the natural father of the boy to have all rights of management of her husband's estate in herself till her death. The son objected to the agreement on attaining the majority.

Held: Such agreement is not binding upon the adopted son as it was not fair and reasonable.

## 1915

AIR 1915 BOM 48
Jesang Motilal v/s. Emperor
Sir Beaman & Sir Macleod, JJ

A telegraph was used for wagering to see whether a person won or lost by the announcement of a telegram.

Held: Upon correct and logical analysis, the paper of the telegram was a wagering instrument as it could be used by brokers for the purpose of recording a transaction between themselves and their client. Therefore, a telegram announcing the happening of an event to show whether one has won or lost falls within the mischief of the Bombay Prevention of Gambling Act, 1887.

AIR 1915 BOM 107
Keshav Hurgovan v/s. Bal Gandi.
Sir Basil Scott, CJ & Sir Batchelor, J

Two suits were filed; one for restitution of conjugal rights by a Pakhali caste Hindu husband and the other for dissolution of marriage by the wife. A decree of divorce on the basis of custom of the caste to which party belonged, on payment of money to opposite side, was passed.

Held: A custom by which the marriage tie can be dissolved by either party against the wish of another on the payment of sum of money fixed by the caste is opposed to public policy as it is based on caprice and repugnant to Hindu lawas also under S. 23 of the Indian Contract Act, 1872.

AIR 1915 BOM 35
Vitthal Ramkrishna v/s. Prahlad Ramkrishna.
Sir Heaton & Sir Lallubhai Shah, JJ

A Hindu male died leaving behind a son and a widow, his step mother. The son died leaving behind 3 sons, one from his first wife and 2 sons from his second wife. In the partition suit amongst those 3 sons the grandmother was not made a party as it was contended that she was not entitled to share in the property upon partition amongst her grandsons.

Held: Under Mitakshara Hindu Law a step grandmother is entitled to a share in family estate on partition amongst her grandsons and hence she is a necessary party to the Partition suit.

AIR 1915 BOM 284
Bai Bhicaiji v/s. Perojshaw Jivanji
Sir Beaman, J.

The Plaintiff husband and wife lived in a house. The adjoining land, which was used for the tethering of bullocks, was obtained by the Defendant. He built a stable on it for accommodation of 75 horses. The Plaintiff sued for damages due to nuisance.

Held: Where a nuisance is of a kind to injure the health or seriously imperil the life of those who complain of it, the relief of injunction can be granted. Where nuisance merely diminishes the comfort of human life, the relief of damages is required to be granted. The Defendant has no excuse to say that he has done all the things in his power and taken all reasonable care and precaution to prevent the nuisance. In deciding the amount of damage and estimating a nuisance due regard has to be given to the station in life of the Plaintiff, locality and nature of nuisance itself.

## 1916

AIR 1916 BOM 140
Abdul Latif v/s. Pauling & Co. Ltd.
Kemp, J.

The Defendants were contractors working for the railway and constructed two lines without any gate or gate-man at crossing. Trucks and engines working on the lines were under the Defendants' control. The Defendants agreed to take precautions for safety of public by taking proper care. The Plaintiff's car approached towards level crossing at midnight. The driver saw some trucks moving along the line of crossing. To avoid collusion, he took a left turn because of which the car was damaged.

Held: The Defendants are not liable to the Plaintiff as there was no privity of contract between the Plaintiff and the Defendants. On the other hand, the Defendants were liable for the negligent act of their servants in the course of user of the railway line crossing on the road.

AIR 1916 BOM 104
Tavakalbhai Sultanbhai v/s. Imtiyazbegum Mirabanesaheb
Sir Basil Scott, CJ & Sir Heaton, J

A Mohammedan lady made a gift of her property to three persons directing that the management will remain in the hands of one of them and he should make all the payments to the others out of income of said property.

Held: The donee can take all the properties entrusted to him. But it will be binding on him to make payments as directed by the doner. He should accept the gift along with all liabilities.

AIR 1916 BOM 104

Tavakalbhai Sultanbhai v/s. Imtiyazbegam Mirabanesaheb

Sir Basil Scott, CJ & Sir Heaton, J

A Mohammedan woman purported to make a gift in favour of three persons of certain Inam lands by a document dated 5th August 1889 subject to the condition that the vahivat or management of the land should be made by one of the three and that after paying Government dues, Rs.40/- should be paid out of the residue annually to her. One of the donees died and his interest in the property passed to his heir who contended that he was absolutely entitled to the property and no more liable to pay Rs.40/- annually to her. Hence she sued to enforce her rights under the Gift Deed. The question before the Court was whether the person claiming under the donee is bound by the condition in the Gift Deed.

Held: When a Mohammedan donee accepts gift of a property subject to condition that he would pay certain sums out of income thereof to certain persons, an obligation in the nature of the Trust attaches to the property in the hands of the donees and in the hands of those claiming under them with notice and such obligation will be enforced by the Court.

AIR 1916 BOM 166

Raoji Fakira v/s. Dagdu Hanmata

Sir Batchelor Ag. CJ & Sir Lallubhai Shah, J

A civil suit was filed for declaration that the Plaintiffs are vatandars of a Mharki Vatan. It was contended by the Defendants that the civil Court has no jurisdiction to entertain the suit as the power of deciding who are the vatandars of this inferior village vatans is vested in the Collector and hence Civil Court's jurisdiction is impliedly barred.

Held: The jurisdiction of the Civil Court, if it is to be withdrawn, must be withdrawn by clear and unambiguous words and not by doubtful inferences. S. 64(a) of the Hereditary Offices Act, 1874 merely empowers the Collector to register the names of the individual vatandars as holders of the Office and does not confer any power on him to determine who are vatandars. Hence there is no reason to think that this power is withdrawn from the jurisdiction of the civil Court. Therefore it was held that the civil Court had jurisdiction to entertain the suit.

AIR 1916 BOM 167

Carolina Dos v/s. Dominic Joseph

Sir Beaman, J

The Plaintiff sued the Defendants as heirs and representatives of the deceased person on the ground that at the date of the marriage he was a domiciled subject of Goa in Portuguese India and hence their marriage with all its incidents must be governed and d etermined by the Law of Portugal. The Defendants contended that the deceased was, at the time of his two marriages, one with Defendant No.3 and the other with the Plaintiff, the domiciled subject with British India and hence none of the rights of reliefs claimed by the Plaintiff under the Law of Portugal can be granted. His domicile at the time of his marriage had to be seen.

Held: The domicile of origin is that which a person acquires at his birth from his parents. It is not necessarily in itself local, i.e., to say merely the place of birth. However, the said domicile follows him until he chooses to divest himself of it by substituting a domicile of choice, which is acquired by combination of facts of residence with the intention that residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by the fact of abandoning the residence and the intention of abandonment. The moment the domicile of choice is abandoned, the domicile of origin revives. In this case it was held that the Plaintiff's husband had, despite his intention to return to Goa, acquired a domicile of choice in Bombay. There was no evidence showing that he had abandoned that domicile and, therefore, it was held that devolution of his estate would be governed by the Indian Succession Act, 1865.

AIR 1916 BOM 228

Dattatraya Ramchandra v/s. Aminuddin Fakruddin

Sir Basil Scott, CJ & Sir Heaton, J

A Preliminary decree was passed in a Mortgage Suit on 30.7.1913. Immediately thereafter on 25.8.1913 a final decree was passed, by which the Appellant was directed to pay Rs.8000/-. On 6th November 1913 he preferred an appeal against the

preliminary decree only although his objection was as regards Rs.2000/- of the amount which he was required to pay by the final decree. The question was whether he could challenge preliminary decree only after passing of final decree when it was possible for him to challenge both the decrees together.

Held: S. 97 of the CPC, 1908 does not in terms prevent a party from filing a combined appeal against a preliminary and final decree, if the dates permit him to do so. Where, therefore, the Appellant instead of appealing against the final decree, appeals against the preliminary decree, the course is unreasonable, and the Appellant will not be permitted to avoid the provisions of the Court Fees Act, 1870 by getting what may or may not be an effective reversal of the final decree by a circuitous method when the direct method is open to him.

## 1917

AIR 1917 BOM 162
Bapuji Ramchandra v/s. Guja Mahadu
Sir Heaton & Sir Lallubhai Shah, JJ

A redemption suit was decreed directing delivery of possession to mortgagor and to pay off the mortgage debt by installments to the mortgagee. The parties did not execute the decree. The possession remained with mortgagee. The mortgagor again mortgaged the property to the present Plaintiff who brought a suit against the mortgagor and prior mortgagee to enforce the mortgage.

Held: The first suit having been heard and decided on merits, the second suit for redemption was not maintainable as it was barred by S. 11 of CPC. Even if the second suit was to be treated as based on previous decree, it was barred under S. 47 of the CPC.

AIR 1917 BOM 130
Emperor v/s. Mallangowda Parwatgowda
Sir Batchelor & Sir Lallubhai Shah, JJ

An undertrial prisoner who was in custody, was sent for medical examination to a dispensary for the malady, which involved an examination of the patient by Doctor in private. When the accused was undergoing the examination, he made a confession to Doctor while two policemen who took him to dispensary were standing outside on the

veranda.

Held: The confession of accused is inadmissible under S. 26 Indian Evidence Act, 1872, as accused was in the custody of police even while he was undergoing medical examination.

AIR 1917 BOM 61

Abdul Razzak v/s. Mohammed Hussain

Kemp, J

This was a suit for damages for breach of the contract by the Defendant to give his daughter in marriage to the Plaintiff and for the return of certain ornaments and clothes presented by the Plaintiff to the Defendant's daughter in anticipation of the proposed marriage and for expenses incurred in connection with the marriage. The issue raised for consideration was whether a suit for breach of promise of marriage will lie under Mohammedan Law.

Held: In a suit for damages for breach of contract of marriage under S.73 of Contract Act, 1872 the promisee is entitled to receive compensation for any loss or damage caused to him by the breach. He is also entitled to the return of money, ornaments, etc., given by him as consideration for the promise under S. 65 of the Act. However, there is no authority in the Mohammedan Law, unlike that of English Law, to justify the allowance of damages in case of breach of the promise of marriage.

AIR 1917 BOM 220

Laxmya Shiddappa v/s. Emperor.

Sir Batchelor and Sir Lallubhai Shah, JJ.

The accused was convicted by the Trial Court on the charge of murder on his plea of guilt and sentenced to death without recording any evidence. The matter was before the High Court for confirmation of death sentence.

Held: Merely because S.271 of the Cr.PC makes provision for convicting the accused on his plea of guilt, it is entirely in the discretion of the Judge to determine whether inspite of the plea it is or is not desirable to enter upon the evidence. The S. does not direct that in every case in which accused pleads guilty he is to be convicted. Moreover in case of the sentence of death it cannot be in accordance with the usual practice to accept the plea of guilt where the natural sequence would be a sentence of death. Hence the conviction was set aside and direction was given that the accused be tried in

accordance with law, notwithstanding his plea of guilt.

(This practice still prevails)

AIR 1917 BOM 221
Dadasaheb Dasrathrao v/s. Bai Nahani
Sir Beaman & Sir Heaton, JJ

The Plaintiff sued for possession of the house which the Plaintiff had bought under a registered sale deed from Defendant no.1 and 2. Defendant No.1 was the mother of Defendant No.2. Defendant No.2 pleaded minority. The appellate Court found that Defendant No.2 not being clearly a minor in appearance and so intentionally caused the Plaintiff to believe that he was major and on the faith of that belief to part with her money for the purchase of the house. The question for consideration was whether a minor can be a “person” within the meaning of S.115 of Evidence Act, 1872 to apply the rule of estoppel against him.

Held: The meaning of a 'person' in S.115 of the Evidence Act, 1872 cannot be contracted so as to exclude from its connotation all persons declared under the Contract Act, 1872 as incompetent to contract. Therefore, a minor definitely falls within the definition of the 'person' under S. 115 of Evidence Act, 1872 to attract the rule of estoppel against him. In this case it was held that as Defendant No.2 represented to the Plaintiff that he was a major and intentionally caused her to believe that he was major and on the faith of that belief caused her to part with money, he was estopped from subsequently pleading minority and proving it.

# 1918

(1918) ILR 43 BOM 66
Karbasappa v/s. Kallava
Sir Beaman & Sir Heaton, JJ

A Hindu widow who lived with her father applied for maintenance from her stepson @ Rs.400/- p.a. and also claimed arrears for maintenance for 6 years before the suit at the same rate.

The Trial Court awarded maintenance @ Rs.75/- p.a. for 6 years prior to the suit and @ Rs.120/- p.a. as future maintenance.

On appeal, it was observed that there was no authority and no definite principle on which cases of the kind could be decided. There was a very large discretion in Courts to grant or withhold arrears with reference to urgent needs and necessities for a widow within the period of limitation.

A demand is prima facie evidence of need, but it is not in the demand that the right if maintenance is routed. A demand is not necessary.

Held: Re: arrears @ page 68; if she lived for 6 years in her father's house, "while it would not be safe to conclude that she was not in want to continue to depend on her father's bounty, it may be ground for reasonable inference that she was not driven by absolute necessity to enforce her rights of maintenance against her husband's family".

Held: Re: quantum @ page 68 – "We generally agree with the extremely harsh and rigorous attitude of the Hindu mind towards women so unfortunately situated as Hindu widows often are".

Held: She was entitled to arrears of maintenance 3 years prior to the suit and no interference was made with regard to the quantum though observed to be "unduly liberal".

(1918) ILR 43 BOM 103

Girjashankar Vaidya v/s. The Bombay Baroda Central India Railway

Sir Basil Scott, Kt. CJ & Sir Batchelor, J

The Plaintiff and his wife were 3rd Class passengers in a train. The compartment was overcrowded. The Plaintiff pulled the chain to stop the train twice, but without success, to remedy the situation by the Railway.

After the 2nd attempt, the driver and the guard cuffed, slapped, arrested and handed over the Plaintiff to the Station Master at the next station.

The Plaintiff's statement was recorded. He was released and allowed to travel.

He sued the Railway for damages for Rs.3000/- for willful, aggravated assault, for public humiliation and agony.

Held: That the Railway was not liable for the acts of the driver and the guard as they were no within the scope of their authority or in course of their employment.

They committed a wrong exceeding the authority vested in them.

If such transgression was in the interest of the master, he would be liable.

(1918) ILR 43 BOM 164

Vishnu Joshi v/s. Vasudeo Oka

Sir Lallubhai Shah & Kemp, JJ

The Plaintiff and the Defendant owned neighbouring lands separated by a fence. There was a row of coconut trees on the Defendant's lands. The leaves of the trees overhung on the Plaintiff's land. They withered and fell there. The coconuts also fell on the Plaintiff's land.

The overhanging of the leaves was admitted. No damage was proved.

Held: The Decree of permanent Injunction against the Defendant that the overhanging portions of the trees be cut down and that the Defendant see that the leaves and fruits did not drop on the Plaintiff's land was confirmed.

{See the analogy applied in case of branches and roots of a tree standing on the suit land for many years in (1920) 22 BLR 790 and (1894) ILR 19 BOM 420}.

(1918) ILR 43 BOM 531
Emperor v/s. Haji Ghulam Mohammed Azam
Sir Heaton & Sir Hayward, JJ

The tenant of the Defendant was holding over after his tenancy had expired.
The landlord prevented him from entering the demised premises. The landlord was convicted of the offence of wrongful restraint.

Held: The accused was rightly convicted as a tenant in India holding over had a right to retain possession of the premises he occupied against the landlord until he was dispossessed in due course of law.

(1918) ILR 43 BOM 739
Emperor v/s. Sabit Khan
Sir Basil Scott, Kt. CJ, Sir Heaton & Sir Lallubhai Shah, JJ

Two brothers lived in the same village. One had no children but considerable properties. The other had a wife and child but no income. He served as a coolie.

The brother refused him all aid. The brother went out of the village and never returned. His remains were found in a pit shown by the two co-accused.

The main accused, the brother, appropriated certain crops from the land and rents from the tenants. He got certain bins of rice. The co-accused shared the proceeds. The Forest Range Officer was suspicious. He reported the absence of the brother. All 3 were arrested. The co-accused made detailed confessions of murder. They

narrated how the victim was given an assault blow first by his brother in the forest and how they all finished him.

Held: Based upon the confessions along with the corroborating evidence against the accused brother, he was convicted. The conviction was upheld by majority – Shah J. dissenting - upon accepting the confessions with the corroborating evidence.

## 1919

AIR 1919 BOM 84

Pandu Vithoji v/s. Goma Ramji

Sir Heaton & Sir Hayward, JJ

There was joint family of a Hindu and his son. The father agreed to sell to the Plaintiffs a portion of the Joint Family property possessed by him and his son as coparceners. The Plaintiffs claimed that they were put in possession of the property. It was challenged. Hence the Plaintiffs sued for possession.

Held: Under the Hindu Law as recognized in the Bombay Presidency a coparcener can sell his own interest in Joint Family Property provided there is valuable consideration for the same. In such a case, however, joint possession cannot be given to the Purchaser. He can only obtain a declaration that he has acquired the interest of the Vendor in the particular property and for partition.

AIR 1919 BOM 85

Mallappa Parappa v/s. Gangava Gangappa

Sir Basil Scott, CJ & Sir Lallubhai Shah, J

The Plaintiff sued to recover possession of certain land as the next reversioner of the deceased. The defence was that the widow of the deceased had adopted a son who had alienated the property to other Defendants. The adoption was proved, but was invalid according to Hindu Law on the ground that she had adopted her husband's father's cousin which is against the sentiments of Hindus.

Held: Under Hindu Law the adoption by a widow of her husband's father's cousin is not invalid. Such an adoption is opposed to Hindu sentiment, but is not prohibited by Hindu Law.

AIR 1919 BOM 34
Dinu Yesu v/s. Shripad Baji
Sir Heaton & Sir Lallubhai Shah, JJ

The Plaintiffs had filed a fresh suit for redemption of a mortgage though earlier also a decree was passed for redemption which was not executed. The Defendant, hence, challenged the maintainability of the suit.

Held: Where a redemption decree is passed in earlier suit, a fresh suit brought after the period for executing the said decree had expired was not maintainable.

AIR 1919 BOM 162
Hira Gobar v/s. Emperor
Sir Heaton & Sir Lallubhai Shah, JJ

The accused were charged for the offence of housebreaking and theft. They were convicted for the offence relying on the evidence that the accused had pointed out various places of the offences to the Police. However, nothing was discovered in consequence of the information given by the accused.

Held: Statements made to Police Officers or to a complainant in the presence of Police Officers are inadmissible in evidence under S. 25 and 26 of the Indian Evidence Act, 1872. Only the relevant portion of the said statement can be admissible under S.27 of the Act, if some fact was discovered as a result of such statement. In this case it was held as no such fact was discovered, the statement would not be admissible. The conviction and sentence of the accused were, therefore, set aside.

# 1920

(1920) ILR 44 BOM 400
Emperor v/s. Mohidinn
Sir Lallubhai Shah & Sir Hayward, JJ

A Bench of three Special Magistrates heard the prosecution evidence on a charge of grievous hurt. However, even though one of the Magistrates was absent during the evidence of the defense, the remaining two Magistrates went ahead with the trial.

These two Magistrates heard the defense evidence and convicted the accused.

Held: The trial must be completed before the same Magistrates who commenced it or must be held afresh before a different set of Magistrates. It cannot be said that the accused was not prejudiced or there was substantial compliance with Rules of procedure. The trial was void in view of R. 4 of the Rules for Guidance of Special Magistrates Bench framed under S. 16 of the Cr.PC, 1882. The conviction was set aside.

(1920) ILR 44 BOM 496
Maneklal Motilal v/s Mohanlal Narotumdas
Sir Macleod, CJ & Sir Heaton, JJ

The Plaintiff, a resident of Ahmedabad, sued for an injunction to restrain the Defendant from invading the privacy of his bedroom, by opening a window of the additional storey constructed by the Defendant to his home.

Held: The Plaintiff had a right to privacy and the invasion of this right was an actionable wrong.

(1920) 22 BLR 790
Someshvar Jethalal v/s. Chinulal Nageshvar
Sir Macleod, CJ & Sir Heaton, JJ

The Plaintiff sued for removal of overhanging branches and penetrating roots of the tree that stood partly on his land and partly on the Defendant's land. The tree had stood on the suit land for more than 50 years and Defendant was the accepted owner of the tree who enjoyed its benefits.

Held: A person has no right to cut off branches and roots of neighbour's tree, which has grown partly on his own land for many years.

{See the analogy with regard to overhanging leaves and fruits of tress that fell on the neighbour’s land in ( 1918) lLR 43 BOM 164and (1894) ILR 19 BOM 420}

AIR 1920 BOM 29
Ramchandra Kolaji v/s. Hanmanta Laxman
Sir Macleod & Sir Heaton, JJ

The Plaintiff sued for redemption to redeem and recover his mortgaged property. He had earlier also filed a suit to redeem the mortgage, but not wishing to proceed with that suit had withdrawn it with permission to bring a fresh suit. The permission was granted provided that such suit was brought within 2 years and that the costs of the Defendants in that suit were first paid. The suit was brought 8 years after the withdrawal.

Held: The dismissal of the second suit was improper as it was not open to the Court in the first suit to impose a limitation of time within which the second suit must be brought, and that so long as the second suit was brought within the ordinary period of limitation applicable thereto, it was not barred.

AIR 1920 BOM 203

Bai Parbati v/s. Mansukh Jetha

Sir Macleod & Sir Heaton, JJ

A wife was convicted of attempting to murder her husband and had undergone sentence of 3 years rigourous imprisonment. The husband thereafter sued for restitution of conjugal rights. Upon passing the decree the Court directed the wife to go and live with her husband and to go to jail if she willfully disobeyed that order.

Held: Ordinarily, a Court passing a decree for restitution of conjugal rights against a wife ought to exercise the discretion conferred upon it by Rule 33 Order 21 of the CPC and direct that the decree shall not be executed by the detention of the wife in prison. The decree for restitution of conjugal rights accompanied by a direction that the decree shall not be executed by imprisonment, is not a nullity. It is a declaration that the marital obligation of living with her husband rests on the wife and it protects the husband against any proceeding for maintenance which the wife may institute under S. 488 of Cr.PC. Such a decree therefore does serve a really useful purpose. It is no ground for refusing to exercise the discretion given under O.21 Rule 33 that the wife has already been in jail under the sentence of criminal Court and it would be no violence to her feelings. It would be ludicrous to send her to jail for refusing to live with her husband whom she had at one time apparently attempted to murder.

AIR 1920 BOM 205

Dharma Lakshman v/s. Sakharam Ramjirao

Sir Lallubhai Shah & Sir Hayward, JJ

The Plaintiff was the illegitimate son of a sudra. He claimed to inherit the separate property of his father's legitimate son, as a brother.

Held: The illegitimate sons are not entitled to collateral succession even amongst sudras. Hence he cannot inherit the separate property of his father's illegitimate son.

AIR 1920 BOM 354
Murgeppa Basappa v/s. Kalva Golappa
Sir Macleod CJ & Sir Heaton, J

A Hindu widow of 12 years who had not reached puberty adopted a son. The adoption was challenged.

Held: If an adoption was a matter of religion and nothing more, a child would be capable of performing the adoption validly as soon as she was big and strong enough to take the adopted child in her lap. But when matter is affecting the property then a person making an adoption must be capable of volition on his or her own. Otherwise the elder members of the family would be able to induce widows of tender age to make adoptions in the interest of those persons. No ordinary child of twelve years of age is capable of volition of the kind required for adoption, unless he or she is a very exceptional person. An adoption which was invalid abinitio could not be validated later.

## 1921

(1921) ILR 45 BOM 557
Dundappa Yedal v/s. Bhimawa Patil
Sir Macleod, CJ & Sir Fawcett, J

The Respondent, a shudra, daughter of one Somawa, had mortgaged the property belonging to her mother. She claimed an account of her mother's mortgaged property. It was not proved if Somawa was married.

Held: Under Hindu Law an illegitimate child is not the father's, but a mother's child. Hence, it has a right of inheritance to the mother's property.

The illegitimate daughter of a shudra succeeds to her mother in absence of any nearer heir.

The Respondent was Somawa's nearest heir and, so as a successor of her property, was entitled to sue the Plaintiff for an account of the mortgage.

(1921) ILR 45 BOM 987
Jethabhai Patel v/s. Parshotam Kumbhar
Sir Macleod, CJ & Sir Fawcett, J

Two persons - Lallu and his wife Shiv, made a joint will few days before their death. Shiv died three days before Lallu. The Petitioners applied for the probate of the will.

Held: A will made by two persons as a 'perfectly valid will'.

(1921) ILR 45 BOM 1086
Emperor v/s. Dinanath Ravte
Sir Macleod, CJ & Sir Lallubhai Shah, JJ

The accused made a confession of his guilt of murder before a Magistrate. In the confession he admitted that he had been told the truth by Sahib i.e. the Superintendent of Police who assured him that he would be released if he told the truth.

The Sessions Judge passed this evidence to the jury and consequently jury found him guilty.

Held: The confession so made was bad under S. 24 of the Indian Evidence Act, 1872, 1872. It was under inducement. Hence it was even wrong to proceed with the evidence as it cannot be considered. The conviction was set aside and retrial was ordered based on evidences other than the confession.

AIR 1921 BOM 220
Dattaraya Purshottam v/s. Radhabai Balkrishna
Sir Macleod, CJ & Sir Fawcett, J

The question of law raised before the Court was whether the Order of return of plaint for presentation in proper Court, amounts to a preliminary decree within S. 2 and S. 97 of CPC, 1906.

Held: Issues of law on which a case may be disposed of most often raise questions of jurisdiction or of limitation. But a finding that the Court has jurisdiction or that the Plaintiff has brought his suit within the time prescribed by the law of limitation, does not determine the rights of the parties with regard to all or any of the matters in controversy in the suit; it merely enables the Court to proceed to inquire into those rights. Hence it is not a preliminary decree.

AIR 1921 BOM 205
Kulsumbi v/s. Abdur Kadir
Sir Macleod, CJ & Sir Heaton, J

The parties, who were are Sunni Mohammedans, were married. The husband agreed to pay prompt dower. Five months after the marriage the wife gave birth to a fully developed child. Though the marriage was consummated as the parties lived together for some time after the marriage, the child was begotten by an unknown father. The husband turned the Plaintiff out of his house shortly after the child was born, but had not divorced her. The wife sued to recover her dower.

Held: The concealment of pregnancy is not by itself a ground for cancelling the marriage. The law provides ample remedies to the husband who was deceived. He may divorce his wife. The marriage in this case was not invalid and hence wife was held entitled to prompt dower.

# 1922

AIR 1922 BOM 276
Senaji Kapurchand v/s. Pannaji Devichand
Sir Macleod CJ & Sir Lallubhai Shah, J

An application for interim relief was made in a suit earlier stayed under S. 10 of the CPC, 1906.

Held: An order under S. 10 of CPC regarding the stay of suit cannot prevent a Court from making the interlocutory orders like an order of receiver or injunction or even attachment before judgment if the Court is satisfied that the Defendant intends to transfer his property with a view to obstruct or delay the execution of decree which may be passed against him.

AIR 1922 BOM 397
Chimabai Malgauda Patil v/s. Mallapa Payappa
Sir Macleod CJ & Coyajee, J

The Plaintiff, a widow, who died of plague on 29th November, 1915, sued for recovery of possession of her husband's property against the Defendant who was the adopted son of her husband. She contended that as the Defendant was the son of her husband's

sister the adoption could not have taken place at all.

Held: Under the Hindu Law in Bombay Presidency a widow is bound by the adoption as made by her husband and she cannot raise the dispute regarding the same whether it was valid or invalid.

AIR 1922 BOM 222

Nowroji Hormasji v/s. Srinivas Prabhu

Sir Macleod, CJ & Sir Lallubhai Shah, J

The Plaintiff sued for eviction on the ground that he wished to use the tenanted premises for his own purpose as he had to vacate certain rented premises and hence he wanted to occupy his own premises to store his goods and to sell them. The contention advanced by the tenant was that Plaintiff was asking the Court to eject the Defendants from a greater space than the space he occupied in the rented premises. Therefore, his requirement is not reasonable and bonafide.

Held: It is for the landlord to decide whether he should occupy as much or less space for his business in his own premises. It is not for the Court to decide how much space he requires. To prevent the landlord from occupying a space in his own premises for his own business and directing him to go to another place would be going entirely beyond the jurisdiction of the Court in cases falling under the Bombay Rent (War Restrictions) Act, 1918.

AIR 1922 BOM 381

Dinshaji Edalji v/s. Jehangir Cowasji

Sir Macleod, CJ & Sir Kanga, J

The applicant herein was convicted by the Presidency Magistrate under S.500 of the IPC, 1860 for making a defamatory statement while in the witness box implicating immoral relations between his wife and the opponent Jehangir. He raised the defence that a witness cannot be prosecuted for defamation in respect of statement made by him in witness box in a judicial proceeding.

Held: The protection given by the 9th exception to S.499 IPC is only to the extent when the defamatory statement has been made in good faith for the protection of the interest of the person making it or of any other person or for public good. This protection is further available to the witness in respect of the statements made by him while giving evidence in a judicial proceeding. However, the protection which may be given upon Principles of public policy to a witness cannot be given to a complainant who, when asked by the Magistrate to state his grievance, deliberately makes a defamatory

statement without the slightest justification.

AIR 1922 BOM 3

Ratan Lal Bhola Ram v/s. Gulam Husen Abdul Ali

Sir Macleod, CJ & Sir Lallubhai Shah, J

The Plaintiff sued to restrain the Defendants from blocking certain windows of his house. The Defendants denied that the Plaintiff had acquired a complete prescriptive right to the light and air of the windows. It was contended that the Plaintiff did not have peaceable enjoyment of the light and air as an easement for 20 years as the building was burnt down in 1905 and rebuilt so during the period of rebuilding there were no windows with regard to which the light and air could be enjoyed.

Held: If the owner of the building who in the course of acquiring the right of easement by prescription is so unfortunate as to have his house burnt down begins immediately to rebuilt his house and places the windows exactly in the same position as the old ones, it may be said that he has been enjoying the access and use of light and air continuously. However, if there is any delay in rebuilding, then that might be the evidence of an intention not to resume the user.

# 1923

AIR 1923 BOM 130

Bai Monghibai v/s. Bai Nagubai

Sir Lallubhai Shah Acting, CJ, & Crump, J

The deceased had wife and two sons. Due to the conflict his wife and two sons lived in house at Mandvi and deceased lived in another house at Masjid Bundar. Since 1915 he had relationship with the Plaintiff. The Plaintiff lived at several different places in the City and deceased used to maintain her and also visited her. However, there was no evidence to show that the deceased and the Plaintiff openly lived together. The Plaintiff had her own place of residence and also used to pay its rent. It appeared that before the death of the deceased due to illness, he resided in the house of the Plaintiff. Though the said fact was not a secret, but on perusal of the evidence on record it could not be said that the Plaintiff lived with him openly as a member of his family.

Held: Under the Hindu Law, in order to get the maintenance for herself from the heirs of the Hindu, it is essential for the concubine to show that she was an avarudha stree i.e. she must show that she lived as the permanent concubine of a Hindu openly and as a

member of his family. In the absence of such evidence she was held not entitled for maintenance.

AIR 1923 BOM 148
Haji Oosaman Haji Ismail v/s. Harron Saleh Mohamed
Sir Lallubhai Shah, Acting CJ, & Pratt, J

The conveyance of the vendors of the Plaintiff who were Cutchi Memons showed that they had inherited the property from their father as his only heirs.

Held: The rules of Hindu law of custom do not apply to the Cutchi Memons in respect of the joint family property as applicable to Hindus. The rules of Hindu law of custom are applicable to Cutchi Memons in a limited sense for inheritance and succession. A son of a Cutchi Memon has no vested interest by birth in the ancestral property of his father like the Hindu son.

(See ILR 34 BOM 647)

AIR 1923 BOM 409
Kashinath Bondale v/s. Vishwanath Bondale
Sir Macleod, CJ & Crump, J

The Plaintiff sued for declaration that a certain temple was a public temple and they had the worship right there. Plaintiff applied for injunction restraining the Defendants from obstructing in the enjoyment of the right to worship. The Plaintiff also prayed for removal of certain lock put up by the Defendants on the door of the inner room of the temple. The Court granted the permanent enjoyment and then added as follows:

“As the lock has been clearly removed by the order of the Court, I order that the Defendants shall not lock the door again”.

Held: Mandatory and prohibitory injunctions must be given in general terms. There was no necessity to pass mandatory order regarding the lock. It was unnecessary and may lead to undue interference with the powers of management of the temple. The perpetual injunction is sufficient. The Plaintiff can execute the decree. The Defendants cannot be forbidden to do particular acts otherwise there would be no limit to the number of acts which might have to be mentioned.

AIR 1923 BOM 1
Emperor v/s. Narayan Gogte
Lallubhai Shah, Ag. CJ, Crump & Sir Marten, JJ

A third class railway compartment of 25 persons was reserved for European and Anglo-Indian passengers. It was vacant. Accused had purchased a third class ticket. He entered the compartment. He was arrested and convicted and sentenced to pay fine of Rs.5/- under S. 109 of the Indian Railways Act, 1890.

Held per Minority: The reservation was made under R. 47 of the Act knowing whether any passengers would travel under "working instructions" issued by the Company. The Company relied upon its inherent powers through.

A penal provision must be strictly construed. The prosecution must make out that the compartment could be legally reserved as was done. The company has the power to regulate traffic within the limits allowed by law and it is for the prosecution to establish that the limits are not transgressed.

The reservation involves an undue and unreasonable preference or advantage in favour of a particular person or an unreasonable prejudice or disadvantage for another. Hence when the Railway Administration exercised its power there would be a kind of preferences. R. 47 could require reservation within limits. In the absence of the rule it is a question of fact. Under S. 67(1) of the Act fares are accepted and ticket issued subject to the condition of there being room available in the train. If a person cannot get accommodation the fare is to be refunded. Hence it shows that the person who purchased the ticket is desirous of travelling by a particular train and he is anxious to secure accommodation. If he finds the compartment vacant and cannot travel by it, he would be put to undue disadvantage, if the vacant room is kept apart for a person who has not shown a similar desire to travel.

Overcrowd is not the rare occurrence. The vacant compartment could accommodate 25 passengers. Hence, this indirectly has element of preferential treatment.

Held per Majority: Under S. 42(2) of the Act the preference shown by railway cannot be undue. It has to be seen whether the preference to keep one compartment is undue. The accused objected it on rational discretion. The Railway knows best its own business. It will not reserve for any class accommodation yet what is reasonable. That would not pay the Railway. Undue preference would be there if there is prejudice. What is important to note is the total average number of passengers, the average number of passengers of this special class, what is the accommodation reserved for this special class and what is the accommodation available for other passengers? All that we know is that the compartment could hold 25 passengers. That is not sufficient to show undue preference without showing prejudice. The accused stated that reservation was an insult to him. That has nothing to do with undue preference.

The general power of the Railway may be exercised for actual passengers of a prospective passengers. The company is entitled to reserve individual seats or whole compartment, they may reserve for females, smokers or non-smokers, members of a Cricket or Football team for any large particular traffic, for pilgrims, for political gatherings or a race meeting or for any particular caste or sect. The general discretion rests with the Railway. The Managers may issue requisite orders for reservation of passenger accommodation. It is for each passenger to obey the orders. If each passenger is put a law unto himself, the lease can only be the result. No interference with the rule is called for.

AIR 1923 BOM 163
Gopal Avte Vs/s. Manaji Padwal
Lallubhai Shah, Ag. CJ & Crump, J

A suit was filed upon sale of a property. The owner of the property was stated to have disappeared and not heard of since.

Held: Under S. 108 of the Indian Evidence Act 1872 the presumption relates to the fact of the death and not to the date of the death. That fact of the death must be proved by any other fact by the party interested in establishing that he died on or before any particular date.

## 1924

AIR 1924 BOM 368
Ramchandra Adaram v/s. Lodha Gouri
Sir Macleod, CJ & Sir Lallubhai Shah, J

The Plaintiff's suit for possession came to be decreed for possession and rent from the date of the suit. Thereafter, the Plaintiff filed suit for recovery of rent which accrued due prior to the date of suit.

Held: The suit for possession and claim of rent prior to the suit are separate causes of action under the provisions of Order 2 of the CPC. Therefore, second suit for mesne profits is not barred.

AIR 1924 BOM 154

Babaji Ramaling v/s. Appa Vithavja

Pratt & Sir Fawcett, JJ

This was a suit for exercising the easementary right to water flowing from springs in the Defendant's land which the Plaintiffs claimed to have acquired. The Defendant obstructed this easement by constructing a dam and tapping at a distance of 14 feet from the source of water. The Court had to consider whether that would amount to an obstruction to the easementary right of taking water from the springs.

Held: The close proximity between the flow tapped by the Defendants and the Springs lead to the presumption under S. 114 of Evidence Act, 1872 and to such cases S. 7 of the Easement Act, 1882 does not apply.

AIR 1924 BOM 322

Meghji Vallabhdas v/s. Dayalji Lal & Co.

Sir Fawcett, J

The Defendants were in possession of a godown on the basis of a lease. As per the lease the Defendants were bound to vacate the leased property on 20th October 1923. They asked for permission to remain in possession. However, the Plaintiff insisted for vacating the premises. Thereafter also the Defendants continued in possession for two months. Hence the Plaintiff filed the suit claiming compensation for use and occupation of the premises with interest thereon.

Held: The possession of the Defendants in the premises amounted to holding over of tenancy in terms of S.116 of Transfer of Property Act, 1882 as the Plaintiff exercised his right of treating the Defendants as his tenants. Hence, it was held that the Plaintiff was entitled to recover from the Defendants the rent of the two months which he has claimed in the form of compensation.

AIR 1924 BOM 457

Shiddubai Rudragauda v/s. Nilapgauda Bharmagauda.

Sir Macleod, CJ & Sir Lallubhai Shah, J

The issue before the Court was about the validity of the Adoption Deed. As per the evidence of the Doctor the child who was taken in adoption was very ill on the date of the adoption. Yet the child was aware of what she was doing when she signed the adoption deed and took part in adoption ceremony. The question before the Court was the evidentiary value of the Doctor's testimony that she was very ill on that day.

Held: The opinion of the doctor who visited the patient on one day that she would not be capable of a particular action is not alone determinative, but must be seen with the other evidence.

## 1925

(1925) ILR 50 BOM 94
Vishwanath Naik v/s Ramkrishna Kesbekar
Sir Fawcett & Coyajee, JJ

The land in suit was leased to the Plaintiff by the Defendant under a Mulgeni lease. The Plaintiff had agreed to give 17 Khandis of paddy as rent per annum. The Plaintiff alleged that the Defendant's father removed earth from the Plaintiff's land and consequently the land was exposed to inundation from the sea and therefore spoilt. The produce from the land was of inferior quality. He sued that he was not liable to pay the whole rent.

Held: Unless there is any stipulation in the agreement of tenancy, a tenant is not entailed to claim abatement of rent by reason of inundation at high water. It is only when a part of the premises leased is entirely damaged, that an abatement of rent on that account can be claimed.

(1925) ILR 50 BOM 215
Bhimli Dalal v/s B.B and C.I Railways Co.
Sir Macleod, CJ & Coyajee, J

The Defendant was the holder of the season ticket entitling him to travel first class between Malad and Churchgate stations situated on the line of BB and CI Rlys. His ticket was stolen. He, therefore, asked for a duplicate pass which the company refused. The Defendant continued to travel without payment.

Held: The passenger is entitled to travel in a train with proper pass or a proper ticket with him and deliver up his pass or ticket immediately on requisition being made. The Defendant had to pay excess charge and Rs.342/- for the fare.

(1925) ILR 50 BOM 246
Emperor v/s. Tarakdas gupta
Sir Fawcett & Sir Madgavkar, JJ

The accused, who was a graduate of the Calcutta University and a trade representative in Bombay, wrote a letter containing indecent overtures to the complainant, a European nurse, with whom he was not acquainted. It was enclosed in an envelope and sent by post to her address. She filed a police complaint.

Held: The accused intended to insult the modesty of the complainant, who is an unmarried woman which amounts to an offence. Therefore, he was sentenced to suffer simple imprisonment for 3 months.

(1925) ILR 50 BOM 268
Navnithlal Hurgovandas vs Purshotam Hurjiwan
Sir Macleod, CJ & Coyajee, J

The Petitioner was married to a minor in May 1922. Thereafter, a dispute arose between the minor's father and the husband's father, with the result that in march 1923 the minor went to her father's house. The father refused to allow her to go back to the Petitioner.

Held, the fact that a girl has not matured would be a ground of refusal to give the custody to the husband and generally speaking it is in accordance with Hindu custom that a girl after marriage should reside with her parents until she attains puberty.

(1925) ILR 50 BOM 318
Suzuki and Company Ltd v/s. Uttamchand Maneklal.
Sir Macleod, CJ & Coyajee, J

By a contract, dated October 21, 1924, the Defendant agreed to buy from the Plaintiff 50 tons of Mauritius Crystal sugar, fair average quality shipment free Bombay Harbour. In performance of the contract the Plaintiff sent to the Defendant an invoice of goods but the said goods were not imported by the Plaintiff but by another firm.

The Defendant refused to accept them as according to the contract the Plaintiff had to directly import the goods.

Held: A tender of goods of the contract quality imported not by the Plaintiff but by another firm was a good tender under the terms of the contract.

## 1926

(1926) ILR 50 BOM 133
Kasamkhan Mujawar v/s Kazi Amin
Sir Fawcett & Sir Madgavkar, JJ

The dispute was whether a person had an exclusive right to officiate as kazi, based merely on heredity under Mohammedan law.

Held: A Hindu marriage is a sacrament where a priest is necessary; a Mohammedan marriage is a contract where neither priest nor kazi is needed. Hence, a claim to such a right, although supported by a custom established as existing in a particular community was not one that should be recognised by the Civil Court.

(1926) ILR 50 BOM 49
Raghunath Rithkaran v/s The Imperial Bank of India
Sir Macleod, CJ & Coyajee, J

On 22nd December, 1921 the Defendant Bank presented to the Plaintiff a hundi for payment. The Plaintiff paid the amount without reading the hundi. The Plaintiff discovered his mistake but did not give any intimation thereof to the Defendant Bank until August 9, 1924.

Held: The Plaintiff had paid money under a mistake of fact. It is the duty of the person paying money under a mistake of fact to inform other party within reasonable time. The right to recover it back was lost due to delay or gross negligence.

(1926) ILR 50 BOM 616
Mohammadalli Allabux v/s. Ismallji Abdulali
Sir Macleod, CJ & Coyajee, J

The petitioner was the father of three children under the age of 18. The petitioner

handed over the custody of two daughters to the 1st Respondent who arranged that they should remain in custody of 2nd Respondent. The girls were taken charge and send by him to the state in Kathiawar. The petitioner attempted to get back the custody of daughters, but failed. Hence he sued for custody of his daughters. The two daughters were outside the limits of Appellate Jurisdiction of the High Court.

Held: The High Court can, under its common law powers, issue a writ of Habeous Corpus for the production of person who is outside India provided it is satisfied that he is in the custody or under the control of a person within its jurisdiction.

(1926) ILR 50 BOM 635
Manchersha Sorabji v/s. Virji Jekisondas
Sir Macleod, CJ & Crump, J

The Plaintiff owned Asarwa village on the south of the Defendant's land. Near the Defendant's land was the Plaintiff's gate from which the Plaintiff used to cross the Defendant's land to go to the main road. The Defendant built a wall near the gate obstructing the Plaintiff's right to way. The Plaintiff, thereupon, sued for an injunction in respect of the alleged right of way. The Defendant said that the Plaintiff had an alternate way.

Held: The Plaintiff was allowed to use the land of the breadth of six feet for non-agricultural purposes; he had a right to do so provided that additional burden is not thereby imposed on the Defendants land.

(1926) ILR 50 BOM 692
Ramchandra Babar v/s. Shirpati Bhangire
Sir Fawcett & Sir Madgavkar, JJ

The suit plot of land belonged to the father of the Plaintiff. The Plaintiff alleged that the plot was in their 'Vahiwat'. They further alleged that 3 trees were cut down by the Defendant for which he was liable in damages. The Defendant contented that he was in possession as a mortgagee from the Plaintiff's father, that the trees were planted by him after he entered into the possession and therefore belonged to him.

Held: The mortgagee, who has planted trees on mortgaged land after entering into possession is not liable in tort for cutting down and removing them in the absence of evidence that his act was 'destructive or permanently injurious to the property '.

AIR 1926 BOM 435 (Full Bench)

Ishvar Patil v/s. Gajabai Patil

Sir Macleod CJ, Sir Lallubhai Shah, Crump, Sir Madgavkar & Coyajee, JJ

The Plaintiff claimed a declaration contending that he was the adopted son and, therefore, the owner of the joint family property. He claimed joint possession of those lands which were joint between himself and the Defendants or in alternative for separate possession of his half share by partition. The Defendant contended that the widow had no power under Hindu Law applicable to their family to make the adoption.

Held: That widow of a coparcener has no inherent power to adopt without the consent of her husband's coparcener.

AIR 1926 BOM 328

Official Trustee of Bombay v/s. Salebhai Sarutally Bhagat

Taraporewala, J

The Plaintiff sued to restrain the Defendant's servant and workman from encroaching on suit property which was a trust property for the purpose of plastering a wall. The question involved was whether the Defendants are entitled to raise the scaffolding in the open chowk of the Plaintiff for the purpose of plastering and white washing by entering through the Plaintiff's property.

Held: The right of a person to go upon the land of his neighbor and erect a scaffolding thereon for the purpose of plastering and white washing his own wall, is in the nature of an easement, though it is not an easement of necessity, and hence he is entitled to do so.

AIR 1926 BOM 90

Parvatibai Trimbakrao v/s. Vishvanath Khanderao

Sir Macleod, CJ & Coyajee, J

The Defendant was adopted in 1896. A “Tharavpatra” was executed between his natural and adoptive fathers. It was mentioned in the “Tharavpatra” that the adoptive father had made a will that the adopted boy should act as per the terms of the will and that in case the adoptive father made another will, the adopted son should behave according to the terms of that other will.

Held: The agreement between the adoptive and natural fathers of an adopted son is against the general principals of Hindu Law and so is not binding on the adoptee.

AIR 1926 BOM 258

Timmanna Parmeshwar v/s. Govind Ganpati

Sir Macleod, CJ & Coyajee, J

A partition decree was passed and the Plaintiff along with the Defendants were declared entitled to 1/6$^{th}$ share in whole property. The lands were to be got partitioned through the Collector. The Collector found some difficulty in partitioning the property.

Held: Once the Collector affects a partition, the Court cannot send the case back to him for repartition. However, if the Collector disregards the terms of the decree and divides the property in contravention of its terms, the Court is entitled to interfere.

AIR 1926 BOM 399

Bhau Laxman v/s. Budha Manku

Sir Fawcett & Coyajee, JJ

The Plaintiff filed suit for eviction of the Defendant who had long been in possession of the joint family property. Another coparcener had sold his undivided share to a stranger who had peaceably obtained possession of such share.

Held: A stranger purchaser of the undivided share of a coparcener in a Joint Hindu Family, if in possession, need not be ejected in a suit for recovery of possession by coparcener.

AIR 1926 BOM 545

Rajubhai Mohanbhai v/s. Lalbhai Mulchand

Sir Macleod, CJ & Coyajee, JJ

The Plaintiff sued to obtain an injunction restraining the Defendants from raising any construction over the open space of the suit property as it belonged to them jointly.

Held: There can be no question of easement as regards light and air in the case of joint property. Both parties were entitled to full ownership of property. Hence no relief of injunction can be granted.

AIR 1926 BOM 493

Goverdhandas Keshavlal v/s. Dhirajlal Dalsukhram

Sir Fawcett & Sir Madgavkar, JJ

The question of ownership upon construction of certain documents was considered by two Courts. Whether the High Court in the second Appellate Court can interfere with the finding of the lower Courts.

Held: If the construction of a document is necessary for deciding a material question, it is a point of law on which a second appeal can lie.

AIR 1926 BOM 13

Kishenprasad and Company Ltd. v/s. Rajaram Ramharakh

Sir Marten, J

The Plaintiff handed over to Defendant no.1, his employee two cheques of Rs. 30,000/- and 10,000/-, for being encashed. Defendant no.1 encashed the cheques but did not hand over the amounts to the Plaintiff. The other members of his family utilized the money in payment of their debts.

Held: All the Defendants were held liable for breach of trust committed by them in disposing of the money.

AIR 1926 BOM 62

Emperor v/s. Subrao Seshrao

Sir Fawcett & Sir Madgavkar, JJ

The accused was convicted under S. 380 of IPC for two offences of theft. He was sentenced to suffer rigorous imprisonment for one day and pay fine of Rs. 50/- or in default to suffer rigorous imprisonment for 3 months for each offence. The Magistrate directed that both sentences should run concurrently.

Held: The sentences of imprisonment in default of payment of the fine cannot run concurrently.

(This position in law still prevails)

AIR 1926 BOM 481

Rajaram Tukaram v/s. Central Bank of India Ltd.

Sir Fawcett, J

A suit was brought against the bank. The question of jurisdiction was directly and substantially in issue in the trial Court. The suit was decreed. Later another suit was filed contending that the decree passed therein is null and void.

Held: Where Court has decided the question of jurisdiction upon objection raised to its jurisdiction, the question becomes res judicata between the same parties in a subsequent suit.

## 1927

AIR 1927 BOM 663

Abdur Rehman v/s. Bharma Budhya

Sir Lallubhai Shah & Percival, JJ

Question raised for consideration was whether parties can by consent confer jurisdiction on a Court which it does not possess.

Held: Where the Court has no jurisdiction to entertain a suit of particular nature, the consent of the parties or failure of parties to raise the point cannot give jurisdiction to that Court.

(This legal position still prevails.)

AIR 1927 BOM 652

Yeshvadabai Vaman v/s. Ramchandra Shankar

Sir Patkar & Sir Baker, JJ

A father-in-law under a will gave authority to his widowed daughter-in-law to adopt a son. He died leaving his widow and a daughter. The daughter-in-law adopted a son after obtaining consent from the widow and daughter of the deceased father-in-law. The daughter-in-law was not the widow of the last male holder. The adoption was challenged.

Held: The adoption was valid by virtue of the consent given by the mother-in-law on whom the estate had devolved in the absence of any other male member or any other adoption in the family.

AIR 1927 BOM 655

Lakshman Punji v/s. Krishnaji Maharu

Sir Marten, CJ & Crump, J

Out of two attesting witnesses of mortgage deed one witness was dead and other witness denied his attestation. The Plaintiff called writer of mortgage deed to prove that document.The validity of the mortgage deed was challenged.

Held: When the only attesting witness denies his attestation, the document may be proved by calling its writer to depose as to the execution of the deed and as to its attestation by the two witnesses.

AIR 1927 BOM 513

Purushottam Govind Padhye v/s. Isub Mohammad Dingankar

Sir Marten, CJ & Sir Baker, J

A mortgagor sued for redemption of a single mortgage debt. The interest of the mortgagees has been divided by a gift or an assignment between co-sharers.

Held: A mortgagor cannot bring a separate redemption suit for redemption of a single mortgage debt if the interest of the mortgagees has been divided.

AIR 1927 BOM 260

Akkava Ramchandrappa v/s. Sayyed Khan Muthekhan

Sir Martin, CJ, Crump & Sir Patkar, JJ

The Plaintiff’s daughter-in-law sold the property that had belonged to the Plaintiff’s son. The daughter-in-law, being the widow of the Plaintiff's son was the immediate owner of

the property and the Plaintiff was the reversioner. The Plaintiff filed a suit to recover the property from the heirs of the purchaser after the death of her daughter-in-law. It was contended that a Hindu widow, cannot sell her husband's property without legal necessity even with the consent of the next reversioner.

Held: If a Hindu widow sells a part of her husband's property with the consent of next reversioner even if without legal necessity and subsequently dies, the said reversioner is estopped from challenging the validity of the transaction.

## 1928

AIR 1928 BOM 250

Hiralal Chimanlal v/s. Gavrishankar Ambashankar

Sir Madgavkar & Sir Patkar, JJ

A family served a donor who was the brother of the Plaintiff during his illness. The Donor transferred possession of his house property and land to his brother. Thereafter, he also executed a gift deed of the said property in favour of his brother, but it remained to be registered. He had also executed a Will bequeathing the said property to his brother. On the basis of this Will, the Plaintiff claimed possession of the said property. The question before Court was whether transfer of title and ownership was complete by handing over possession of property but without gift deed being registered.

Held: The actual transfer of possession would not make the gift complete in law. The services rendered by the donee during illness also cannot be consideration for the said document to fall it under S. 9 of Transfer of Property Act, 1882. An agreement to make a gift not being capable of specific performance, the doctrine of part performance under S. 53 of the said Act has also no application. Therefore, it was held that as the Gift deed was not a registered document it cannot be recognized in law and hence the Plaintiff was entitled to get possession of the property.

AIR 1928 BOM 526

Bhaudin Bala v/s. Ibrahim Allisaheb

Sir Fawcett, Acting CJ, & Sir Murphy, J

The Plaintiff sued the Defendant under S. 9 of Specific Relief Act, 1877 for possession.

After one year the father of the Defendant was added as a Defendant on his own Fapplication for the purpose of safeguarding his own interest. After the decree was passed against both Defendant Nos.1 and 2, it was contend by Defendant No. 2 that suit against him was barred by limitation. Hence decree cannot be sustained against him.

Held: Where a person has joined himself in the suit on his own application to protect his interest, he cannot subsequently avoid the decree eventually passed against him. As Defendant No. 2 has got the advantage of being added as party to suit, he must suffer disadvantage entailed.

AIR 1928 BOM 225

Shankar Tukaram v/s. Lakshmibai Shankarrao

Sir Patkar & Sir Baker, JJ

The Plaintiff employed one an agent to look after the management of her immovable property, collect rent, lease out land and file suits in connection only with the immovable property under a Power of Attorney. The agent was in possession of some ornaments of the Plaintif. He pawned them with the father of Defendant No. 2 to 4. The Plaintiff sued for possession of said ornaments. The question before the Court was whether the agent was not in juridical possession of the ornaments within the meaning of S. 178 of the Indian Contract Act, 1872.

Held: The Power of Attorney must be construed strictly. Unless there is an express authority in the Power of Attorney, one cannot deal with the property. The agent was not empowered by the Power of Attorney to deal with movable property. He was in custody of ornaments but not in possession. There is distinction between custody and possession. Possession connotes juridical possession as distinguished from bare custody. The agent's possession was not juridical possession. Therefore, he could not pledge it.

(Consider a pleathora of case law on the subject till the present day)

AIR 1928 BOM 158

Emperor v/s. Babulal Behari

Sir Madgavkar, J

A boy was murdered. During the investigation, one brass pot was recovered from the spot. It was bearing an impression of a palm. The impression was photographed and

enlarged by an expert. His opinion was produced in the case. It was contented by the accused that this opinion evidence cannot be admissible against him.

Held: The palm impressions are akin to finger impression. The knowledge of both is a study for the same class of expert. They are in fact a portion of the same science and therefore, expert opinion as to the identity of a palm impression is admissible under S. 45 of Evidence Act, 1872.

AIR 1928 BOM 175

Tilakram Choudhuri v/s. Kodumal Jethanand

Sir Marten, CJ & Sir Blackwell, J

The Plaintiffs were commission agents in Bombay. The Defendants were from Ludhiana. They entered into a contract that in case of any dispute arising between them, it should be filed in High Court of Judicature at Bombay or the Court of Small Causes at Bombay. The Defendant filed a suit on 13th May 1925 at Ludhiana. The Plaintiffs also filed suit against the Defendants on 19th May 1925 at Bombay. The Defendants filed an application in the Court at Bombay for stay of suit.

Held: As there was a binding contract between the parties to bring suit at a particular place, the suit filed at Ludhiana was not at all maintainable. By filing such a suit, the Defendants had committed breach of the express terms of contract. They were not entitled for relief of stay of the suit in Bombay.

## 1929

AIR 1929 BOM 72

Nurmohomed Rajmahomed V/s. Emperor

Mirza Khan & Sir Baker, JJ

A private Criminal Case was filed against three accused for the offence punishable under S. 411 and 414 of the IPC, 1860. The Court took cognizance against accused No.1 and 2 and directed investigation under S. 202 of the Cr.PC, 1898. The Magistrate proceeded with the case against accused No.3 and the trial resulted into his conviction, but the case against accused No. 1 and 2 was transferred to another Court on their application. In the transferred Court an objection was raised by accused No. 1 and 2 that the Chargesheet filed was illegal as Police were asked only to submit a Report

under S.202 Cr.PC and hence they had no authority to file the chargesheet. The Magistrate upheld the objection and discharged the accused.

Held: When complaint is sent for investigation under S. 202, the police does not have any power to arrest the accused or to file chargesheet. The police can only submit report after investigation.

AIR 1929 BOM 144

Ramchandra Trimbak v/s. Hari Martand

Mirza Khan & Sir Baker, JJ

The Plaintiff sued for a declaration of a right of way for his cattle and men to pass through the Defendant's land. The Plaintiff enjoyed this right of way for more than 20 years and thereby claimed the right of easement by prescription.

Held: In order to get the right of easement under S. 15 of the Easements Act, 1882 the Plaintiff must prove that he openly used the Defendant's land and such use was as of right. The owner of land should have knowledge of such use.

AIR 1929 BOM 206

Hamedmiya Bademiya v/s. Joseph Benjamin

Sir Patkar & Sir Murphy, JJ

The Plaintiff sued for pre-emption for getting back property sold by his brother to the Defendant who was not a Mohammedan. The question was whether law of pre-emption can be enforced against a non-Mohammedan.

Held: The right of pre-emption is not an incident of property and not applicable on the grounds of justice, equity and good conscience. It is only a contractual or a customary right. In the absence of custom, a non-Mohammedan is not bound by law of pre-emption.

AIR 1929 BOM 226

Raoji Vasudeo v/s. Tukaram Vishnu

Sir Madgavkar, J

The Plaintiff sued the Defendants for aninjunction restraining the Defendants from

causing obstruction to the Plaintiff fishing at a certain spot on the shore at Vengurla. The Defendants claimed the right by prescription and usage over 28 years.

Held: The right of the Public to fish in the sea is common and not the subject of property. Members of the Public exercising the common right to fish in the sea are bound to exercise it in a fair and reasonable manner and not so as to impede others from doing the same. Continuously using certain portion of seashore, for more that 20 years for fishing would not create any legal right of prescription to exclude others.
(See the right to use the water of a stream by a riparian owner 1905 ILR 29 BOM 357).

AIR 1929 BOM 323
Malhari Vaman v/s. Vinayak Ravji
Sir Baker, J

A Partition was effected between the Plaintiffs and the Defendants as a result of the suit but some of the properties were not included in that suit. Thereafter the Plaintiff again sued claiming a share in the said undivided property. It was the contention of the Defendants that the Plaintiff's suit was barred by principles of res-judicata. It was further contended that the Plaintiffs were never in possession of said property hence the Defendants had become owner by way of adverse possession also.

Held: Where there is partition between brothers and some property is left undivided the position of parties after partition is that of tenants in common in respect of the property which is left undivided. Such sharers in common cannot be compelled to get all the properties partitioned in one suit. Some of them may remain joint as tenants in common in respect of some properties and they may bring suit for partition in respect of those properties. Hence the principles of res-judicata are not applicable to such suit. To prove adverse possession ouster of the co-owner to his knowledge must be shown.

## 1930

AIR 1930 BOM 22
Ambashankar Uttamram v/s. Heptulla Sarafalli
Kemp, Acting CJ & Sir Murphy, J

The Petitioner Pleader entered into an Agreement with the Respondent to conduct certain litigation contemplated by a letter for a fee of Rs.125/-. After reading the papers in the case, the Petitioner called for further instructions from the Respondent in order to

properly draft the Plaint. The Respondent instead of supplying the particulars compromised his claim and then filed a suit against the Petitioner to recover the fees of Rs.125/- . On principles of “quantum meruit” the suit was decreed only for Rs.70/-.

Held: Where the Agreement between the Pleader and his client is that in return for a settled amount of fee the Pleader should conduct a litigation for the client, it does not lie in the client's power to alter the agreement by compromising the matter. It was held that Pleader is entitled to retain the whole fee which was paid to him. The Principle of quantum meruit has no application to such case.

AIR 1930 BOM 49

Emperor v/s. Ismail Hirji

Sir Patkar & Wild, JJ

The question raised by the Respondent accused was whether the passage surrounding a building and used for betting business amounts to a place as contemplated within the meaning of Ss. 3, 4 and 6 of the Bombay Prevention of Gambling Act, 1887. The issue was raised in the context of the horse racing.

Held: Where the passages are surrounded by building and are closed at night by doors and accused have appropriated them for the business of betting, the business of betting is localized and this localization converts the passages into a 'place' within the meaning of Ss. 3, 4 and 6 of the Bombay Prevention of Gambling Act.

AIR 1930 BOM 58

Shriram Pandurang v/s. Ramkrishna Shivrqm

Sir Madgavkar, J

A Hindu made a will during his last illness announcing his intention of adopting the Appellant and directing him to redeem the lands of the Respondent. Eight days thereafter the Appellant was taken in adoption and after few days the testator died. The Respondent thereafter filed a suit against the Appellant to carry out directions of the deceased contained in the will and redeem the mortgaged land. The Appellant raised three grounds to resist the suit; the will was in respect of ancestral property and hence the deceased had no power to make it, the directions were not mandatory but at the most recommendatory and these directions were void for uncertainty.

Held: On the ordinary principles of Hindu Law and the nature of the joint coparcenery, the Appellant's interest in the property began from the date of his adoption. The will, though made previously, could only take effect from the death of the testator. Hence he disposed of the property in which the Appellant had coparcenery interest and which he

could not do even with the consent of the adopted son. Hence will was not valid.

AIR 1930 BOM 68
Hari Kalkundri v/s. City Municipality of Belgaum
Kemp, Acting CJ & Sir Murphy, J

The Plaintiff claimed to recover the excess water cess levied on his house.

Held: Each tenement had separate connections with drain and separate entrances. Though 17 tenements occupy a house, each tenement is liable to pay tax as every tenement was “house”.

(1930) 32 BLR 785
Emperor v/s. Gafur Pathan
Sir Broomfield & Mirza Khan, JJ

The accused herein portrayed himself to be Director of mesmerism. Purporting to convey first lessons of mesmerism, he sent three value payable parcels to Poona, Sialkot (Punjab) and Hissar (Punjab) each of which was valued at 2-8-0. The addressees in the first two cases paid the amount which was paid to the accused. The lessons that he sent were fake. It was held that it constituted cheating. The Magistrate in Panvel filed a reference before this Court.

Held: The act of inducing delivery of properties is a composite act which begins with dropping off parcels at the Post Office for delivery. Even if the parcels were not paid for or not reached the addresses, the mere fact that the parcels were posted with dishonest intention of getting payment on them would amount to cheating. All the offences were routed from Panvel by posting the parcels at the Post Office. Thus, all the papers shall be returned to the First Class Magistrate at Panvel and he shall dispose of all the cases according to law.

# 1931

AIR 1931 BOM 195
Emperor v/s. Janardan Kashinath
Sir Beaumont, J

On the accused pleading guilty, the Magistrate recorded it by writing the words "Accused Pleaded Guilty" and proceeded to hear the evidence without mentioning for what purpose he is recording the evidence i. e. whether for giving corroboration to the plea or for deciding the case on merits. The evidence did not justify the conviction but the Magistrate convicted the accused.

Held: Where it was not made clear that the evidence was being recorded for corroborating the plea or for deciding the case on merits, the Court cannot convict the accused on the basis of his plea of guilt.

AIR 1931 BOM 206

In Re Damodar Bapuji Padvi

Sir Beaumont, CJ & Sir Murphy, J

This is an application for transferring the case from Presidency Magistrate 5th Court Dadar to any other Court. One of the reasons given was that the Magistrate is the personal friend of the Complainant.

Held: It often happens that the one party is familiar with the Judge. But Judges quite appreciate the duty of impartiality and, therefore, it is not a ground for transfer of a case. [A similar confidence was shown by this Court in a Magistrate in (1885) ILR 9 BOM 172. Consider the position today and the applicable law].

AIR 1931 BOM 309

Emperor v/s. Abla Isak

Mirza Khan, J

Two accused were originally charged for the offence of murder and abetment of murder respectively. They were found not guilty. Then they were again charged for the same act for the offence of culpable homicide not amounting to murder and abatement of culpable homicide not amounting to murder.

Held: The accused could not be retried for the subsequent charges. Even if the subsequent charges were not framed against the accused in previous trial, it would have been competent for the Court to have found the accused guilty of the subsequent charges and not of the major offences.

(This rule of Double Jeopardy is affirmed by our Constitution in Part III relating to Fundamental Rights and is recognized in S. 300 of the Cr.PC.)

AIR 1931 BOM 466
Ramchandra Balwant Tilak v/s. Narsinha Chintaman Kelkar
Sir Patkar & Sir Broomfield, JJ

The Plaintiff sued two Defendants for injunction in respect of an immovable property. During the pendency of suit one of the Defendants committed suicide & his minor son was brought on record as his legal representative for whom Defendant no.1 was appointed as guardian. After some period, the Defendant made an application giving up his defence and expressed his desire to have the suit proceeded exparte against him & the minor heir of the other Defendant. The suit was heard exparte granting certain injunctions against both Defendants.

Held: Minority per se is no ground for refusing injunction, if the acts were done by minor personally or by someone on his behalf or at his instance.

(1931) 33 BLR 663
Emperor v/s. Vadilal Devchand
Sir Madgavkar & Sir Murphy, JJ

The accused was a dealer of brass and copper utensils and occupied a shop on a public roadway. During the first five days of the Hindu New Year, he brought his wares on the public road right in front of his house. A large crowd gathered on the vendors' side of the road to purchase goods. The other side of the road was relatively vacant. When accused was charged for obstructing the traffic, he defended himself by arguing that it was customary for him and other shopkeepers to sell goods on the road on the occasion of Hindu New Year as it is considered sacred.

Held: The accused was guilty of obstructing traffic under S. 61(f) of The Bombay District Police Act, 1890. Thus, the accused was made to pay a nominal fine amounting to Re.1 as this case was a test case.

# 1932

AIR 1932 BOM 473
Tipanna Mushappa Karigar v/s. Emperor
Sir Baker & Sir Broomfield, JJ

The Appellants together with three others were tried by the second class Magistrate, Dharwar for offences under S. 448 and 323 IPC and abetment thereof. They appealed. The convictions were confirmed. The Judgment was challenged on the ground that it did not comply with the provisions of S.367 of the Cr.PC which requires that judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision.

Held: Unless and until there is some reason to believe that there has been a failure of justice, the High Court is not bound to invariably interfere in revision because there is an irregularity in the form of judgment.

AIR 1932 BOM 111

Ishwarappa Malleshappa v/s. Dhanji Bhanji

Sir Patkar & Tyabji, JJ

The Plaintiff sued for dissolution of partnership firm and for accounts. The parties entered into a compromise under which one partner was to receive Rs.6,000/- and Rs.5,000/- from the other partners.The would exceed the pecuniary jurisdiction of the Court.

Held: Valuation for the purpose of Court fees and for the purpose of jurisdiction shall be that which has been fixed by the Plaintiff. The jurisdiction of a Court in a suit for accounts is no, therefore, ousted by the fact that on taking accounts a sum more than pecuniary jurisdiction of the Court is found due. S. 6 does not interfere with the power of the Court to pass any decree in a suit for accounts although it may exceed its pecuniary jurisdiction.

AIR 1932 BOM 122 (F.B.)

Nagindas Narandas v/s. Somnath Premchand

Sir Beaumont, CJ, Sir Rangnekar & Nanavati, JJ

The Plaintiffs were members of the Lohagada section of the Lohar caste and they sued for a declaration that they have a right individually to inspect the accounts and documents of the caste.

Held: A suit to enforce such a right is not a caste question, and can be entertained by a civil Court.

AIR 1932 BOM 484

Bai Sada Parshottam v/s. Gangaram Becher

Sir Baker, J

A sued to recover possession of his property from his annual tenant. The Court refused to pass a decree for possession as the owner did not prove service of the notice to quit, but granted a decree for use and occupation. The owner subsequently brought another suit to recover possession of the land.

Held: Where in a former suit between the parties there are several issues which are found against a party, the decision on all those issues is res judicata in a subsequent suit.

AIR 1932 BOM 397

Moreshwar Pandharinath v/s. Umraosing Mahalalsing

Sir Baker & Nanavati, JJ

The only question in this appeal was whether the Respondents can be considered to be agriculturists.

The Respondents admittedly were hay merchants who dispatch large quantities of grass to Bombay from Wangao. They have themselves leased land on which they were growing grass and they had employed men to watch and cut grass.

Held: Grass is certainly an agricultural produce and a person who sells grass, provided it is produced by his own land and makes his living thereby, is an agriculturist. The criterion in such cases is whether the person claiming the benefit of the Act is a person who is in direct connection with the soil or whether he is a middleman. Where a person has leased the land on which grass is grown, which he sells, must be considered to be growing grass on his own land. In case of failure of the rains he loses the crop and therefore is dependent directly on the produce.

AIR 1932 Bom 398

Sundrabai Hanmantrao v/s. Hanmant Gurunath

Sir Beaumont, Kt., CJ, & Sir Baker, J

The validity of the adoption of a daughter's son was claimed upon a custom amongst Deshastha Smarth Brahmins in the Dharwar district.

Held: When a party relies on a custom as establishing an exception to the general law the burden is upon him to establish the custom and the custom proved must be both ancient and invariable and the evidence by which it is established must be clear and unambiguous.

## 1933

AIR 1933 BOM 478

Emperor v/s. Chhaganlal Ishwardas Shah

Sir Beaumont, Kt., CJ, & Sir Wadia, J

The petitioner was summoned to serve as an assessor in a sessions case. He appeared in a dress consisting of 'Peharan', a cap and a scarf. The Sessios Judge thought that he was not properly dressed and fined him Rs.3 as he was considered not properly dressed because he was not wearing a coat. There were no rules as to the dress to be worn by assessors. The assessor stated that the dress he wore was his best dress and the one in which he had appeared seven or eight times before the Court as an assessor and that it was the dress which he wore on ceremonial occasions. There was no evidence in answer to that and no reason to think the same untrue.

Held: The dress does not offend against any rule of public decency nor is intended to be insulting to the Court. The assessor, therefore, could not be charged as being improperly dressed. In order to bring the case within S.228 of the IPC it must be shown that an accused intentionally acted to insult the Court.

AIR 1933 Bom 479

Emperor v/s. Akbarali Karimbhai

Sir Beaumont, Kt., CJ, & Sir Wadia, J

The Deceased met with a violent death. His three nephews and one servant were charged with the offence of murder. The trial Judge discarded the evidence of the eye witnesses but by relying upon dying declaration convicted accused no.1 and 4.

Held: The Court has always to bear in mind that a declaration admissible under S. 32 Evidence Act, 1872 is not made on oath and is not subject of cross examination and therefore it is weaker type of evidence than the evidence given by a witness in the witness box. If a Judge thinks that part of a dying declaration was false, it is no doubt very improbable that in practice he would act upon the declaration, at any rate, without very definite corroboration. But at the same time it cannot be said that as something in a dying declaration is false, therefore the whole declaration must necessarily be disregarded.

(The law on this point is yet the same.)

AIR 1933 BOM 209

Sabava Yellappa v/s. Yamanappa Sabu

Sir Patkar & Sir Barlee, JJ

The Plaintiff sued to recover certain lands conveyed to Defendant No.1 by his adoptive father under Sale Deed executed prior to his adoption. The Plaintiff claimed that the sale transaction was illegal and void because Defendant no.1 was the mistress of his fatherand though the ostensible consideration was cash, the real consideration was illegal, being for past and future cohabitation. Though Defendant no.1 denied that she was the mistress, the evidence on record proved it. The question arose whether transfer was valid or void.

Held: If the consideration or object of passing the sale deed is immoral being for past or future cohabitation, the transfer would be void and not merely voidable. A consideration which is immoral at the time of the transfer as incapable of supporting an immediate promise to pay cannot become innocent by passage of time. In this case as the sale deed was executed in consideration of an illicit connection between the vendor and vendee and for immoral object, neither the vendor nor his legal representative can recover the property.

AIR 1933 BOM 266

Mazarali Inayatali v/s. Emperor

Sir Murphy & Sir Broomfield, JJ

Two Police Officers were convicted under S. 376 of the IPC for committing rape on a defenceless woman in a Police Station, one after another. They challenged their conviction on the ground, inter alia, that the joint trial was irregular, the rape by each of the accused being isolated acts not forming a single transaction.

Held: The precise definition of the expression 'the same transaction' and 'each case' must depend on its own facts. It is for the Court to decide in each case if there is sufficient continuity of purpose between the acts of the jointly tried accused, to justify it in finding that the transaction was in reality a single one though composed of separate acts by the different accused. In this case it was held that the separate acts of rape by the accused formed a part of a single transaction as they could not have committed severally unless they had either been tacitly agreed or reciprocally connived. Hence the joint trial was not illegal.

AIR 1933 BOM 364

Panaji Girdharlal v/s. Ratanchand Hajarimal

Sir Beaumont, CJ & Sir Murphy, J

A decree for the sum of Rs.1359/- alongwith costs of the suit and interest at the rate of 6% per annum from the date of the suit was passed in favour of the Plaintiff. Initially he had filed a Darkhast only for the Principal sum and costs. The Darkhast was satisfied. Thereafter the Plaintiff filed another Darkhast asking for the interest awarded to him by the original decree. The question was whether such separate Darkhast was tenable.

Held: It is not permissible to levy execution of a money decree in different stages or piecemeal. The rule is that a party having a right to execute a decree for money presently payable must enforce the whole decree at the same time and if a person having a right to recover a certain sum under a decree asks the Court to enforce that decree for a less sum he must be taken to have waived his right to levy execution for the balance.

AIR 1933 BOM 479 (2)

Emperor v/s. Akbarali Karimbhai

Sir Beaumont, CJ & Sir Wadia, J

The victim met with a violent death for which his three nephews were charged with the offence of murder. The Prosecution evidence consisted of eye witness' account, dying declaration made by Badruddin and certain other articles. The Accused were convicted relying mainly on the dying declarations.

Held: Corroboration of dying declaration is not necessary as a rule of law but its evidentiary value varies very much in accordance with the circumstances in which it is made. The Court has always to bear in mind that dying declaration is not made on oath and is not the subject of cross examination and, therefore, it is a weaker type of evidence. However, merely because some part of the dying declaration is found to be false, the whole dying declaration need not necessarily be discarded.
(The same position in law still prevails).

# 1934

AIR 1934 BOM 66
Dayavati Ramchandra v/s. Kesarbai Kasidai
Sir Beaumont, CJ, & Sir Blackwell, J

The Respondent filed a suit for maintenance against the wife of the deceased Hindu alleging that she had been in the exclusive keeping of the deceased for 12 years as a permanent concubine and that the arrangement had continued down to his death.

Held: Holding the Respondent entitled to the maintenance, the Court observed that what is necessary to be established by a concubine seeking maintenance after death of her paramour is that their relations lasted until the death of the paramour and sexual fidelity to the deceased had been preserved by her. As in this case, the Plaintiff has established that she had lived for a very large number of years with the deceased, and that he regarded her as a wife and that he intended that that relationship should be continued as it had existed in past, she was entitled to maintenance.

AIR 1934 BOM 21
Ebrahim Alibhai v/s. Bai Asi
Tyabji, J

A Mohammedan died leaving a widow and two daughters. Prior to his death, he had purported to make a gift of several lands to his daughters and executed two deeds. He called the tenants at that time and directed them to pay the rents to the two daughters, which they did. The gift was contested on the ground that it was invalid from the inception on the ground that a gift to two or more donees jointly without specifying their shares is invalid and it was also not a complete gift.

Held: Upholding the gift, the Court held that the test to decide the validity of a gift is whether the donor or the donee reaped the benefit under it. Since the tenants were paying the rent to the daughters they were reaping the benefits of the gift and hence gift was complete. Whether the shares given to the donees are equal or unequal, once the donor had parted with complete possession in favour of the donees, the donees became transferees of the property and the gift is complete. They may, if they so choose, continue to hold the property un-partitioned or may partition it.

AIR 1934 BOM 113

Bapu Appa v/s. Kashinath Balu

Sir Baker & Sir Rangnekar, JJ

A Hindu woman married twice. She had a son each for her marriages. The dispute was regarding the succession of her stridhan property. The question was whether her both the sons by the two different marriages can inherit it or whether the son from the second marriage was the sole heir to the said property.

Held: The law of succession to stridhan is based mainly upon the grounds of natural love and affection and upon the principle of equitable distribution. These grounds were in favour of both the sons being her children by two husbands. Hence both the sons are equally entitled to inherit her stridhan.

AIR 1934 BOM 193

A.B. Samant v/s. Emperor

Sir Beaumont, CJ & Sir Barlee, J

The Accused was arrested and a sum of Rs.512/- found on his person was kept by police in safe custody. Subsequently, the accused was convicted. There was no evidence before Court that the sum of Rs.512/- was stolen property. In passing sentence the trial Court imposed a fine of Rs.500/- on the accused and directed that the fine be recovered from the money seized from the accused by the Police.

Held: The Court had the power to make an order for the disposal of this money by confiscation and to recover the fine out of said amount under S.517 of the Cr.PC,1898.

# 1935

AIR 1935 BOM 186

Keshav Vasudev v/s. Emperor

Sir Beamount, CJ & Sir Wadia, J

A complaint was made to the police station by the Deputy Nazir of the Sessions Court that his predecessor and various subordinate officials had misappropriated monies

forming part of estate of a minor.

The police, found evidence against all. Yet they did not send two of them for trial apparently because they came to the conclusion that it would be convenient if they are used as witnesses.

Held: The Cr.PC gives certain powers under which evidence of an accomplice can be made available. The police have no right to take decision themselves not to charge a person against whom they have evidence on the ground that they require him as witness.

Though the conduct of police was irregular, the evidence of those witnesses is not inadmissible under any provision.

AIR 1935 BOM 343

Kamalkant Gopalji v/s. Mahavji Vaghji

Sir Wadia, J

The Plaintiff sued to recover sums under two promissory notes which were passed by the Defendant in favour of the Plaintiff's father who died intestate.

The Plaintiff, his only son, claimed the sums as the sole surviving coparcener of a joint and undivided family of which he and his father were members and in the alternative as a sole heir and legal representative of his father.

At the trial, the Plaintiff did not press his claim as the heir and legal representative of his father.

Held: A coparcener does not represent the estate of the deceased member of the joint family. He gets the property by survivorship in his own right and not as a representative of the deceased. Therefore he cannot sue on the Negotiable Instrument payable to the deceased.

# 1936

AIR 1936 BOM 3

Dahyabhai Vanmalidas v/s. Hiralal Umedram

Sir Barlee, J

On the upper portion of a joint wall the Plaintiff had erected a pankh (projection) for protection, many years ago. The question was whether the Plaintiff acquired ownership over it due to adverse possession or easement only.

Held: If the removal of projection causes injury to the building or is intended for preservation or safety of building only, then that person can obtain easement only, even though he may obtain a right by prescription to the column below the projection.

AIR 1936 BOM 151

Fakir Mahomed Ramzan v/s. Emperor

Sir Beaumont, CJ & Sir Macklin, J

The accused was convicted for the offence of theft. However there was absolutely no evidence to connect the accused with offence except the evidence of fingerprints and the deposition of the expert.

Held: The Court must satisfy itself as to the value of evidence of the expert and cannot hold anyone guilty only on the opinion of expert.

AIR 1936 BOM 289

Basawanewa Balappa v/s. Balappa Shivappa

Sir Macklin, J

In a suit for restitution of conjugal rights, the husband alleged that he had been married to his wife for many years and they had 5 children, but now she was living with another man and refused to return. The defence was that the suit was barred by the law of limitation.

Held: The failure of wife to return to her husband is a continuing wrong and as per S. 23 of Limitation Act, 1908 fresh period of limitation starts at every moment of continuing wrong.

(1936) 38 BLR 526

Talakchand Kasturchand Gujar v/s. Bhau Maruti Giranje

Sir Macklin, J

The suit was filed to recover money due on a mortgage. W was indebted to T (Plaintiff). N was indebted to W. B (Defendant) purchased sugar cane from N and to raise money to pay for this, mortgaged his land to T. The consideration money was

not paid in cash. The trial Court dismissed suit on the ground that the consideration for mortgage was not proved.

Held: Where the consideration for a mortgage consists of a havala, which has been duly carried out, it is for mortgagor to prove failure of consideration, if he wishes to escape liability under the mortgage and not for the mortgagee to prove that there was consideration. This principle applies to cases under the Dekkhan Agriculturists' Relief Act, 1879. The correct frame of such issue is, "what was the consideration for the transaction in suit" with the burden thrown neither on the Plaintiff, nor on the Defendant.

(1936) 38 BLR 535
Prahlad Madhoba Ruikar v/s. Aboobaker Abdul Rehman & Co.
Sir Beaumont, CJ & Sir Rangnekar, J

The Plaintiff obtained an Award in Bombay against the Defendants.

The Defendants executed a legal mortgage of their property in Banares in favour of the Plaintiffs in Bombay in order to secure payment which was due under the award. In another litigation in Yeotmal, the Court levied an attachment on the Defendants' immovable property.

The Plaintiffs filed a suit in the Bombay High Court for enforcing mortage against the Defendant praying that they had first charge on the property for payment of mortgage.

Held: Where immovable property situated in Benares is mortgaged in Bombay to a person residing in Bombay, a suit to enforce the mortgage can lie in the Bombay High Court and that Court has jurisdiction to decide whether the mortgage has priority over a charge on the property created by any other Court.

## 1937

AIR 1937 BOM 19
Jagannath v/s. Shivnarayan
Sir Wadia & Sir Macklin, JJ

In a dispute referred to arbitration, an award was made in favour of the Plaintiff and a charge was levied on some immovable property of the Defendant in Poona District. A

decree was passed by Ahmednagar Court in terms of the award. The Plaintiff got transferred the decree for execution in Poona Court, where the Defendant objected on the ground that the property being outside the jurisdiction of Ahmednagar Court, Ahmednagar Court had no jurisdiction.

Held: The executing Court is not entitled to question the validity of the decree upon the ground that the decreeing Court had no jurisdiction territorial, personal or pecuniary to pass it.

(1937) 39 BLR 306
Annu Bhujanga Chigare v/s. Rama Bhujanga Chigare
Sir Wadia & Sir Divatia, JJ

The father of the Petitioner and the Respondent executed a will. The will was attested by two persons, who put their thumb impression in token of attestation instead of affixing signatures. While the Petitioner applied to the Court for a letter of administration, the Respondent challenged the validity of the will on the ground that the will was not properly attested within the meaning of S.63 of the Indian Succession Act, 1925.

Held: The word 'sign' in S.63, cl. (c) of the Indian Succession Act, 1925 includes a mark. Hence, a will is validly attested if it bears only the marks even of attesting witnesses.

(1937) 39 BLR 471
Demibai Gengji Sojpal v/s. Rowji Sojpal
Sir Wadia, J

The Plaintiff filed a suit to recover maintenance from her deceased husband's brothers. The Defendants filed their written statement contesting the Plaintiff's claim. During pendency of the suit one Cooverji published four articles in a newspaper which made allegations against the Defendants. The Defendants took out a rule *nisi* for contempt of Court against Cooverji.

Held: Where a person has been charged with contempt of Court for abusing the parties to a pending suit in relation to their defence and thereby prejudicing a fair trial by publishing articles, the test is not whether the writings have in fact obstructed or interfered with administration of justice, but whether they are calculated to do so. Thus, the intention of the writer is of secondary importance.

(1937) 39 BLR 476
Abbobaker Latiff v/s. The Reception Committee of the 48th Indian National Congress
Sir Wadia, J

The petition is to set aside an award of the arbitrator. It was alleged that the arbitrator was guilty of misconduct as he made the award without giving notice of the same to the parties. The further ground was that the arbitrator mixed up the matters of the arbitration between the petitioner and the Respondent with the matters of other two arbitrations.

Held: Legal misconduct of an arbitrator does not necessarily involve any moral turpitude or dishonesty on his part. It is misconduct in the judicial sense of the word, and means an erroneous breach of duty on the part of the arbitrator, however honest, which causes miscarriage of justice. The Court does not sit in appeal from the award of an arbitrator. Its function is to see whether the grounds of misconduct alleged by the petitioner to have the award set aside are strictly proved.

(1937) 39 BLR 591
Chanbasappa Rachappa Shettar v/s. Madiwalappa Gurshiddappa Shettar
Sir Broomfield & Wassoodew, JJ

An adopted son died leaving behind him surviving two daughters as his only heirs, his wife having predeceased him. The adoptive mother thereafter adopted another son to her husband. The validity of the second adoption was challenged.

Held: Under Hindu Law, the existence of the daughters of the deceased son did not deprive the widow of her power to adopt again to her husband. Merit lies in having a son, either natural or adopted, who might under certain circumstances be competent to perform the religious ceremonies necessary for the salvation of the soul of the deceased. One adoption may not satisfy the thirst of ‘a person destitute of a son’.

Hence, the adoption of the Appellant cannot be questioned.

# 1938

(1938) 40 BLR 155
British India General Insurance Co., Ltd. v/s. Janardan Vishwanat Naik
Norman, J

The deceased was a passenger in a motor omnibus obtained by its driver from a motor agency on hire-purchase. Due to the driver's negligence, the omnibus overturned and the deceased received fatal injuries. The legal representatives of the deceased sued the driver, the motor agency and the insurance company where the omnibus was insured for damages. The Court had to decide whether the legal representatives could sue the insurance company for damages when a clause in the insurance agreement gave power to the company to enforce rights of insured against third party.

Held: The clause in the insurance policy was merely an agreement between the insurer and the insured which did not add to the rights of either party against a third person and thus representatives of the deceased who was a stranger to the contract had no right to sue. Further, the indemnity clause in the policy did not constitute the deceased as a beneficiary under an implied trust since the policy was taken out for the benefit of the insured and not for the benefit of any passenger.

(The position in law has changed upon compulsory third party insurance)

AIR 1938 BOM 325
Mahadev Balkrishna v/s. District Deputy Collector, Poona
Sir Rangnekar, J

The village was granted in Inam originally to one Damoder Karve. As per the Sanad, Inam was to be continued in the family so long as there may be in existence descendants of the original grantee in the male line. The village was partitioned under a decree of Civil Court and every Inamdar sharer was in possession of his share. The Appellant/claimant was purchaser of 2/5$^{th}$ share. In the proceedings for compulsory acquisition of land, the Land Acquisition Officer made an award directing that amount of compensation should be credited to the Government and the Inamdars should be paid certain annual cash allowance. This was done in view of condition in sanad referred above. On reference under S. 18 of the Land Acquisition Act, 1894 the District Court also directed that the amount should be deposited in Court and invested in Government Securities and the interest thereon should be paid to the Appellant during his lifetime and after his death to his descendants so long as any male descendant in his family was in existence. The Appellant appealed against this order.

Held: The person holding a limited interest cannot be said to be a person not competent to alienate the land within the meaning of S. 31(2) or S. 32(1) of the Act. A person may have limited title to convey the property but that interest is one which is capable of being valued for the purpose of the acquisition of land. The chance of the Inam coming to an end by failure of the male line was contingent and could scarcely be appreciable by a money value and government has no legal interest in awarding compensation. Hence the sharer was entitled to receive the whole amount.

AIR 1938 BOM 97

Lingo Bhimrao v/s. Dattatraya Shripad

Sir Divatia, J. on difference between Sir Barlee & Tyabji, JJ

The Plaintiff, who was the adopted son, sued for a declaration that the alienation including the gifts affected by his adoptive mother between the date of the death of her husband and the adoption were null and void and also for possession. The suit was claimed to be time barred.

Held: The period of limitation for setting aside invalid gifts starts from the date when the person discovers the true nature of the deeds sought to be set-aside and not from the date of gifts.

AIR 1938 BOM 231

Gangadhar Gopalrao v/s. Shripad Annarao

Sir Beaumont, CJ, Sir Broomfield & Wassoodew, JJ

The Plaintiff sued for mesne profits after executing a compromise decree in suit for partition of immovable property and possession. However, Compromise decree was silent about any claim of mense profits.

Held: Though the compromise decree is silent on future mesne profits, it does not bar second suit to recover the same from the institution of suit or the date of decree till delivery of possession under S. 11 Explanation IV of the CPC,1906.

(See also 1893 ILR 17 BOM 41)

AIR 1938 BOM 489

Emperor v/s. Shankar Sayaji Dalvi

Sir Beaumont, CJ & Sen, J

The Sessions Judge made a reference asking to quash the prosecution of a Police Patel of a village on the ground that no sanction from Government was obtained under S.197 of Code of Criminal Procedure.

Held: S.14 of village Police Act enables Police Patel to try and on conviction to punish any person charged with committing certain petty offences. He gives a definitive judgment as contemplated under S.19 of the IPC, 1898. Therefore, he is a Judge within the definition of S.19 and comes within protection afforded to Judges and public servants. Hence, sanction is necessary for his prosecution.

## 1939

(1939) 41 BLR 341
Janardan Govind Gore v.s. The Advocate General
Sir Blackwell, J

The testator, a chitpavan Brahmin, made a will were by he left a sum of money towards medical relief for persons of his community or any other charitable purpose of utility to his community. A question arose whether by the expression "his community" the testator meant the chitpavan Bhramins only or the dakshini Bhramins as a whole.

Held: the words "his community" referred only to the sub community of chitpavan Brahmins only and not the community at large.

AIR 1939 BOM 129
Ramchandra Rango v/s. Emperor
Wassoodew & Sen, JJ

The prosecution was based on the charges relating to the embezzlement of funds of the Dharwar Bank Ltd. and fabrication of accounts and evidence. The Directors of the Bank were convicted under Ss. 408, 409, 193 and 477A r/w 109 IPC,1860.

Held: Merely because the Civil Court has decreed the claim of the bank to recover the sum alleged to have been embezzled, it will not amount to ratification of a criminal offence. Hence there can be no 'relating back' in case of an offence as a result of civil proceeding, although the criminal Court ought, as a rule, to take into consideration the Civil Court's judgment relating to such claim.

AIR 1939 BOM 354

Mahant Narsidasji v/s. Bai Jamna

Sir Broomfield & Sir Macklin, JJ

The Plaintiff's husband disposed off his property by way of registered will and trust deeds in favor of a charitable institution making provision for payment of certain sum by way of maintenance to her. The Plaintiff sued to challenge the validity of the deeds and for maintenance suitable to her requirements and status according to Hindu Law. The suit was challenged on the ground that suit was governed by S.92 of CPC requiring leave of the Court which was not obtained.

Held: The Plaintiff was not asking to administer the trust but administer her husband's estate for the purpose of giving her proper maintenance. Hence the suit did not fall within S.92 of the CPC and was, therefore, not liable to be dismissed.

AIR 1939 BOM 449

Nurbai v/s. Abraham Mohammad

Sir Broomfield & Sir Macklin, JJ

The mother of the Plaintiff gifted the suit house to her grandson who mortgaged the same. In execution proceedings of decree on the mortgage by mortgagee, the Plaintiff claimed the house as his property.

Held: The Parties being Sunni Bohras, are governed by Hindu law in matters of Succession and Inheritance and by Mohammedan Law in other respects. The validity of gift has, therefore, to be decided according to Mohammedan Law. Hence as the gift was without delivery of possession, it was incomplete and void and could be challenged.

## 1940

AIR 1940 BOM 22

Surajmal Deoram v/s. Motiram Kalu

Lokur, J

A decree against the Plaintiff's father was passed before the birth of the Plaintiff. Thereafter a partition had taken place. In the partition, the suit property was allotted to the Plaintiff. In execution of the decree, the property was attached and sold. The Plaintiff was not a party to the execution proceeding.

Held: If decree is to be executed against the son after partition, he must be party to the execution proceeding; otherwise decree is not binding on the son.

AIR 1940 BOM 40
Emperor v/s. Rautmal Kanumal
Sir Beaumont, CJ & Sen, J

The accused was charged under Ss.457 and 380 of the IPC. The First Class City Magistrate, Satara released him on bail. The case was transferred from the Court of City Magistrate to the Honorary Magistrate. The Prosecution applied for cancellation of bail on the ground that the accused was found tampering with witnesses. The Magistrate cancelled the bail bond and took the accused in custody.

Held: The Magistrate has inherent power to direct the arrest of accused if he is found tampering with prosecution witnesses for the ends of justice though he is earlier released on bail by another Magistrate from whose Court the case is transferred.

AIR 1940 BOM 58
Ratanchand Dhulaji v/s. Jasraj Kasturchand
Sir Beaumont, CJ & Sir Harilal Kania, J

A suit for partition was filed by the next friend of a minor. On attaining the majority he elected to not to proceed with the suit. Accordingly the suit was dismissed. Costs were demanded by the next friend of the minor as well as the Defendant.

Held: If minor on attaining the majority, elects to not to proceed with the suit, he must pay the costs of the Defendants and also the next friend.

AIR 1940 BOM 118
Irappa Lokappa v/s. Rachayya Madiwalayya
Sir Wadia & Wassoodew, JJ

The Plaintiff was the adopted son. He sued for recovery of possession of his half share in the joint family property from his parental uncle. The adoption took place after the death of his father. A partition had taken place before adoption.

Held: Once partition is made in the property, it ceases to be joint family property from the date of partition. Hence though the adoption of the Plaintiff was valid, he has no right to share in the property which was already partitioned.

AIR 1940 BOM 311

Gurusangappa Basappa v/s. Baslingappa Basappa

Sir Harilal Kania & Wassoodew, JJ

An earlier suit filed by one of the Plaintiffs for declaration of ownership of the suit property against the Defendants was dismissed. The later suit was filed by four Plaintiffs for enforcement of a mortgage.

Held: The subsequent suit against the same Defendants is not barred by principles of res judicata as it is based on a different title and constitutes entirely different cause of action.

AIR 1940 BOM 313

Malikarjunagowda Rudragowda v/s.Venkawa Ramchandrappa

Sir Beaumont, CJ & Sen, J

The property in the suit originally belonged to the husband of a widow. The widow adopted a son. She incurred a certain debt for legal necessity. She executed promissory note to secure the debt. A suit for recovery was filed against her. In execution of the decree, the suit property of widow's husband was attached and sold. Her adopted son sued to restrain the sale of property and for declaration that, the suit property was not liable to be attached in execution.

Held: The property of husband cannot be sold in execution of a personal decree passed against the widow, though the debt is for legal necessity.

(1940) 42 BLR 839

Kashavlal Tribhovandas v/s. Bai Dhabi

Sir Broomfield & Sir Macklin, JJ

A Hindu, in a joint Hindu family consisting of himself, his wife and his son, deposited a sum of money in his name and in that of his wife, under a receipt that stated that the depositor is the owner of the money. The depositer having died, the money was claimed by the son.

Held: The ownership of the money deposited depended on the source from which it came. The wife having no interest in the money when deposited, it was either the depositor's money or the joint property of himself and his son. Also the mere fact that the money was deposited in her name does not prove that the same was a gift deed. The depositor, as a Hindu father, also had no power to make a will with respect to the joint property.

(Consider how the position in law has changed under such contracts requiring payment to the survivor)

## 1941

AIR 1941 BOM 203
Govindnaik Gurunathnaik v/s. Basawannewa Parutappa
Beaumont, CJ & Sen, J

The Plaintiff No.1 as a next friend of Plaintiff No. 2 filed a suit for enforcement of the mortgage. A Preliminary decree was passed. The Final decree was to be passed. The next friend died. The minor attained majority and died in the same year. He was adopted by widow of Plaintiff No.1. She applied for the final decree. The suit was stayed under O.32 Rule 10. Question was in respect of limitation for filing application for final decree.

Held: The period during which the suit was stayed should be excluded in computing the period of limitation for making an application for final decree as the right to apply for a final decree is suspended during the period in which the suit is stayed. S.6 of Limitation Act, 1908 had no application to such a case, but S. 15 of the said Act is applicable.

AIR 1941 BOM 267
Ebrahim Mahomed v/s. Khurshedbai Ebrahim
Beaumont, CJ & Sen, J

The wife and children filed an application for maintenance against husband/father. The application of wife was rejected on the ground that the husband had not refused or neglected to maintain her and children but that the children were residing with the wife and, therefore, he was not liable to pay maintenance to them.

Held: The object of S.488 Cr.PC, 1898 was to avoid vagrancy by providing that a Magistrate may upto a limited extent see that wife and children are maintained by husband or father able to maintain them. The father cannot refuse to maintain his children on the ground that they are residing with the wife. The father can sue for their custody if he does not want to pay separate maintenance to them.

(This position in law still prevails)

AIR 1941 BOM 290

Jaijibai Pestonji v/s.Bhikhibai Chandulal

Divatia, J

The Plaintiff sued for declaration. He applied for withdrawal of suit with liberty to file a fresh suit. Accordingly the application was allowed and permission to withdraw the suit was granted with liberty to file fresh suit subject to payment of full costs of the Defendants in cash before institution of fresh suit. The Plaintiff did not wish to accept the conditions. He filed application for modification of condition and in alternate for revival of suit.

Held: The suit comes to an end when withdrawal is permitted. The Plaintiff then cannot ask the Court to modify terms for revival of the suit as the suit has already ended when the order was made. At the most the Plaintiff at the time of applying for withdrawal itself might request the Court to acquaint him with the terms which the Court wishes to impose, before the final order is made. The Court can also suo moto intimate those terms. But all these must be done before the order of withdrawal is formally made.

AIR 1941 BOM 305

Bai Jaya v/s. Ganpatram Kalidas

Divatia, J

The Plaintiff has filed suit for declaration that the Defendant widow is not entitled to get maintenance of Rs.65/- per year as settled in the consent decree in a previous suit and for injunction to restrain her from executing the decree. The suit was filed on the ground that the income of the joint family was decreased and the widow was earning Rs.45/- per month by personal service.

Held: Once amount of maintenance is fixed for the widow, it is only the permanent reduction in the income of family property which would afford a valid reason for reducing the amount. The income of the widow from personal service will not have effect on the amount of maintenance.

AIR 1941 BOM 357

Raghunath Ambaidas v/s. Dwarkabai Jagannath

Divatia, J

The Plaintiff sued for recovery of arrears of maintenance from the joint family property in which her deceased husband had a half share. The defence was that she was not entitled to recover arrears of maintenance after the death of her husband.

Held: Under the Hindu Law the right of a wife or a widow for maintenance arises not out of contract, but attaches to her status as a member of the joint family. She has the right of maintenance attached to the property itself which is taken by the surviving coparcener of her husband and it is a burden on inheritance with the result that the widow is entitled to follow such property in the hands of the coparcener taking it. This rule applies even to the arrears of maintenance accrued due. Hence it was held that the wife was entitled for arrears of maintainance and future maintenance during life time of her husband as well as thereafter as long as the property against which it can be enforced remains in the hands of coparcener. Hence the surviving coparceners are also liable to pay maintenance if they are in possession of husband's property.

AIR 1941 BOM 369

Bayabai v/s. Esmail Ahmed

Kania J.

A daughter sued for arrears of maintenance and separate residence against her father. Her mother was divorced and she was living with her mother. The Plaintiff did not want to live with father because he was remarried and a lunatic. The father had not taken any steps for getting her custody.

Held: In Mohammedan Law an unmarried daughter can claim separate maintenance from her father till her marriage as it is the responsibility of the father to maintain her.

# 1942

AIR 1942 BOM 284
Kashinath Balkrishna v/s. Anant Murlidhar
Broomfield & Sen, JJ

A Hindu adopted child at the age of 14 years. The adoption was challenged.

Held: There is no hard and fast rule that an adoption by a person who has not completed the age of 15 years is necessarily invalid. The question depends on the maturity of understanding of the person adopting.

AIR 1942 BOM 21
Shekh Zafarbhai v/s. Chhaganlal Aditram
Divatia, J

A lease for a long period was granted by the mutawalli. Its validity was challenged.

Held: Under Mohammedan Law it is competent to a Mutawalli to lease the wakf property for a longer period with the sanction of the Court and even if such sanction is not obtained the Court has power to grant retrospective sanction, if it is satisfied that the transaction is for the benefit of the institution.

AIR 1942 BOM 338
Channappa Girimalappa v/s. Bagalkot Bank
Beaumont, CJ & Sen, J

The Plaintiff sued for possession of immovable property without making any claim for mesne profits. Thereafter he filed another suit claiming mesne profits.

Held: The right to claim mesne profit rests on exactly the same facts and law as the claim to the corpus of those properties and hence where a claim for mesne profits is not included in the suit for possession, a second suit for mesne profit is barred by O2 R2 of the CPC, 1906.

(See also 1893 ILR 17 BOM 41 and AIR 1938 BOM 231)

AIR 1942 BOM 258

Sangavva Gulappa v/s. Gulappa Kariyeppa

Broomfield & Wassodew, JJ

The Respondent filed an application for cancellation of the order of maintenance passed in favour of his wife on the ground that she was living in adultery. His application was allowed. In the meanwhile wife applied for recovery of arrears of maintenance which were due before cancellation of order.

Held: On the proof that the wife is living in adultery the Magistrate is justified in refusing and indeed bound to refuse to execute an order for maintenance. As the order for maintenance is cancelled on the ground of adultery, the effect of cancellation is that even the arrears of past maintenance cannot be recovered.

# 1943

AIR 1943 BOM 272

Totappa Virbhadrappa v/s. Sharanbasappa Sanganbasappa

Divatia & Lokur, JJ

The Plaintiff sued for partition against his uncle, step brother and mother. In the same suit his mother in her written statement claimed partition and separation of her share in the joint family property.

Held: When one son separates from his brother and uncles and the latter choose to continue joint, the mother becomes entitled to her share equal to that of her separating son.

(Consider S.3 of the Hindu Married Women's Property Act, 1937)

AIR 1943 BOM 266

Gyanu Kashiba v/s. Sarubai Biru

Beaumont, CJ

The Plaintiffs were reversioners of one Biru who had died in 1935 leaving two widows i.e. Defendant No.1 and 2. Defendant No.1 had alienated a piece of land which came to her share from her husband's estate. The alienation was challenged by the Plaintiffs as

not being made for legal necessity. It was contended by the widow that she had to raise moneys for her past and future maintenance and therefore there was legal necessity to sell the property.

Held: A Hindu widow cannot sell her husband's property to provide for past or future maintenance. Hence she has no power to sell her husband's estate in return for a covenant to pay her in annuity for maintenance for the rest of her life.

(1943) 11 ITR 340
CIT v/s. Edulji F.E. Dinshaw
Beaumont, CJ & Kania, J

The judicial observation has been made on the decisions of the Income Tax Department which come up for consideration on points of law.

Held: I have been hearing Income Tax references in this Presidency for the last 13 years and I would say that in at least 90% of the cases which have come before this Court, the Assistant Commissioner has agreed with the Income-tax Officer and the Commissioner has agreed with the Assistant Commissioner, however, complicated and difficult the questions may have been. But although that may have been the result in practice of giving a right of appeal to Superior Income-tax Officers, I apprehend that that was not what was in the contemplation of the Legislature when they gave the right of appeal. I haveno doubt they contemplated that Superior Officers would exercise their powers in a judicial spirit and consider on merits the cases which came before them.

(1943) 45 BLR 633
The Government Telephones Board v/s. Hormusji Seervai
Sir Beaumont, Kt., CJ & Kania, J

The shares of Bombay Telephone Company Limited which was in the business of establishing and maintaining telephones and telephone exchanges in Bombay, Karachi and Ahmedabad under licences of the Government of India under the Indian Telegraph Act, 1885 sought to transfer its shares to the Appellant. The Government had the right to acquie the assets of the company in 1943 under the licence. The Government gave notice to exercise the option. The assets of the company were lands, buildings, works, materials and the plants of the licencees. The company was anxious that the Government take over the assets (much as the companies in Calcutta and Madras). A valuer was appointed by the company. A reconciliation statement was prepared so that instead of the assets of the company, the shares of the company could be acquired by the Appellants. An offer was accordingly made by the Appellant as the transferee company. A copy was sent to the shareholders. A meting of the shareholder was held. The Petitioners did not question the transfer. 90% of the shareholders agreed to sell

the shares at Rs.89-15-0. The Appellant Company sought to acquire the dissentients' shares. Notice under S. 153B of the Indian Companies Act, 1913 was given to the minority shareholders. They petitioned the Court to "order otherwise". They claimed that the transferee company purchased their share at Rs.134.

The Trial Court held that the powers of the Court under S.153B are limited. The Court can order not to acquire the shares of the company but not direct them to pay which they have no offered. That would be re-writing their contract. The Court directed the transferee company to disclose the confidential valuation report, considered the report and based upon the objections of the Petitioners to the report, which were not the grounds for filing the Petition, allowed their application.

Held: The Court cannot direct the transferee company to pay a particular amount upon the acquisition of shares. That would be making a contract for the parties. The Court cannot direct the disclosure of the confidential report also. The Court cannot allow the Petition on the grounds not raised in the pleadings. No fraud, misrepresentation, improper motive or conduct was pleaded in the Petition. No enquiries were also made before filing the Petition. It may be that the majority shareholders decided to have the Government take over the assets in view of the impending war situation.

The question is not whether the basis is correct but whether the acquisition ought to be accepted; the question is the reason for the acquisition.

S. 153B does not enjoin the Court to consider the merits of the contract. Hence the Court had to consider only whether the minority should be compelled to sell their shares on the same terms as accepted by the majority; whether the attitude of the minority was reasonable. The Court may not accept the decision of the majority in case of misrepresentation, unfair dealing, the interest of the majority shareholders conflicting with the minority, but not on the valuation of the company's assets, if the offer is not alleged to be unfair or unreasonable.

No evidence was led by the parties. It is an erroneous procedure to allow parties to rely upon the only evidence contained in the valuation report. That showed lack of bona fides.

# 1944

AIR 1944 BOM 331
Namdeo Margoo v/s. Emperor
Divatia & Lokur, JJ

The accused were tried for the offence of criminal conspiracy to do certain acts, if necessary by use of bombs for committing a riot. Conviction resulted from the recovery of the bomb in pursuance of the statement made by the accused under S. 27 of the Evidence Act, 1872.

Held: S.27 of Evidence Act, 1872 makes even an incriminating statement by accused person in the custody of a police officer admissible provided it has led to the discovery of a fact that is to say, a fact relevant of the inquiry and it distinctly relates to the fact thereby discovered. It is an exception to the rule that a confession made by an accused while he is in Policy custody must be excluded from evidence. It allows only so much of information, whether it is incriminating or not, as leads directly and immediately to the discovery of fact.

AIR 1944 BOM 213

Roshanbai v/s. Suleman Haji

Kania, J

The Plaintiff had filed a suit for declaration that she was married with the Defendant but the Defendant denied the relationship between them.

Held: Among Mohammedans no particulars are required for a marriage. The question whether there was a marriage or not is one of fact, which may be proved by direct evidence, by calling the witnesses who were present at the time of producing Nikahnama signed by the parties. It may also be proved by indirect evidence which may raise a presumption of marriage. The presumption does not arise merely from the fact of some years of cohabitation. It must be further proved that the man treated her as his wife with the intention and knowledge of giving her the status of his wife. When a marriage is proved, no question of acknowledgment of paternity by the man remains to be considered. Only when by reason of time or circumstances the question of marriage is in a state of being unproved, the question of acknowledgment arises and in dealing with that question satisfactory evidence of clear acknowledgement has to be led.

AIR 1944 BOM 29

Jadavkumar Liladhar v/s. Pushpabai Mainthianee

Chagla, J

The question raised for consideration was whether a statement written and signed by the officiating priest at the marriage that the essential ceremonies of the marriage were duly performed, fall within the ambit of S. 32(5) of the Evidence Act, 1872 and can be tendered in evidence under that section in proof of the marriage. In this case attempt

was made to secure the presence of the Priest to prove the statement but it was not fruitful. The argument advanced was that such statement is admissible as it pertains to existence of relationship between the parties and hence it falls under sub clause 5 of S.32, especially in view of the illustration to the said section.

Held: As the statement related to the performance of marriage ceremonies and not to the existence of any relationship, especially because these ceremonies were antecedent to the coming into existence of the relationship between the Plaintiff and the Defendant, it was held that such statement does not fall within the ambit of sub-clause 5 of S.32. Further it was held that Evidence Act, 1872 draws a distinction between relevant facts and facts in issue and the statement relating to the performance of ceremonies being of fact in issue, it cannot be admitted in evidence unless it is proved through the evidence of the Priest. Further it was held that though many of the illustrations to S.32 deal with the statements of facts in issue and not merely of relevant facts, illustrations cannot control the language of a section - they only afford guidance to its construction.

AIR 1944 BOM 125

Sumatibai Wasudeo v/s. Emperor

Beaumont CJ & Sen, J

When the house of Petitioner was raided, her husband was not present and she produced all the family keys with one of which the box could be opened. In that box, in addition to some prejudicial reports, some letters were found addressed to the Petitioner. Both the husband and the petitioner were convicted for being in possession of prejudicial reports under Rule 39(1) of the Defence of India Rules.

Held: No doubt a wife occupies the house in which she leaves with her husband. However, in Rule 39 “a person in occupation” means in legal occupation. Hence the natural presumption is that the husband is the occupier, unless it is shown that the wife is the occupier and he is mere appendix to her. If he is the occupier, the house is under his control. Merely because they are living together and the keys are with her and some letters addressed to her were found in the box does not mean that she was in joint possession. It was further held that the fact that she was literate is also irrelevant in that context.

AIR 1944 BOM 126

Khandubai Desai v/s. Emperor

Wadia & Lokur, JJ

The Applicant, who was a journalist in Bombay, had published a comments in an

editorial in a newspaper circulating in Bombay some remarks criticizing the Chief Justice of Allahabad High Court. The question before the High Court was whether it can take action for contempt of another High Court.

Held: Each High Court in India has inherent powers to punish for contempt of itself committed by a publication. That is necessary in order to ensure that the Orders of Court are enforced and that the administration of justice is not interfered with. No Court has power to deal with the contempt of another High Court.

AIR 1944 BOM 107
P.D. Shamdasani v/s. Central Bank of India Ltd.
Beaumont, CJ, Lokur & Rajadhyaksha, JJ

The Revision was preferred against an order of acquittal. The issue was referring to the lacuna in the law.

Held: It is not unusual for Courts to direct the attention of the Legislature to what appears to be a defect in the law, and to suggest that the defect might be remedied". But, method of remedying by the Court is impermissible.

## 1945

AIR 1945 BOM 338
Ramabai Govind v. Anant Daji,
Lokur, Weston & Rajadhyaksha, JJ

In a decree for partition, the decree holder filed an application under O20 R18(1) of the CPC, 1908 asking that the papers be sent to the Collector for effecting the partition. The Judgment Debtor filed the objection contending that it is barred by limitation.

Held: The effecting of partition by a Collector carrying out an order already passed by the Court is not in execution of a decree. Even if made in the form of a darkhast, it is only a request to the Court to do a ministerial act. Hence it is not governed by Article 181 of the Limitation Act, 1908.

AIR 1945 BOM 237

Mangaldas Girdhardas v. Govindlal Ishwarlal

Stone, CJ, Kania & Divatia, JJ

This was an application filed under The Bombay Rent Restriction Act, 1939 by a sub tenant to be joined as a party in the suit between the superior landlord and his own landlord. This application was objected to.

Held: There is no statutory or any other right which gives a sub tenant a title or right to intervene in proceedings between a superior landlord and his own landlord in order to seek relief against an order of forfeiture. Hence, a sub-tenant has no right to be joined as a party in the proceeding for ejectment filed by landlord against tenant.

AIR 1945 BOM 217

Akku Pralhad v/s. Ganesh Pralhad

Wadia, Lokur & Rajadhyaksha, JJ

Defendant no. 1 left her husband many years ago and lived faithfully with the Plaintiff's father as his exclusively kept mistress for a period of nearly 17 years till his death. The Court had to consider whether she could claim maintenance out of her deceased paramour's estate which was in the hands of his son.

Held: Such a woman is entitled for maintenance out of paramour's estate even though her connection with the person may have been adulterous and her husband is living, provided she preserves her sexual fidelity to her deceased paramour.

(See the law relating to a wife and a concubine (1876-77) ILR 1 BOM 97 and (1888) ILR 12 BOM 26)

AIR 1945 BOM 319

Vithoba Savlaram v/s. Shrihari Narayan

Chagla, J

The Court had to consider the admissibility of a certified copy of a public document.

Held: A certified copy only authenticates the genuineness of that copy. The Court presumes that the original document had the same contents as the copy. It certainly does not prove the actual execution of the original document.

(This has been followed in AIR 1983 BOM 1 relating to the truth of the contents of a certified copy of public documents)

## 1946

AIR 1946 BOM 439
Govinda Dhondo v/s. Godubai Dhondo
Lokur & Gajendragadkar, JJ

The claim of partition and possession by the adopted son was opposed on the ground that his adoption was by an unchaste woman and, therefore, invalid.

Held: The widow who may be unchaste and impure could make a valid adoption provided that she has performed the physical act of taking in adoption and the performance of religious ceremony. If that is done, her adopted son has a right in joint family property.

AIR 1946 BOM 109
Sumitra bai v/s Vishweshar
Hiralal Kania, Acting CJ & Gajendragadkar, J

The issue was raised that probate can be issued merely for limited purpose of collection of debt.

Held: The scope of probate is not limited to collect debt only but of complete representation and administration of the property of testator.

(The law with regard to an Heirship Certificate under Reg. VIII of 1927 is different)

AIR 1946 BOM 396
Yeshwant Dattatraya v/s. Shripad Sadhasiv
Chagla & Rahadhyaksha, JJ

The Plaintiff sued on a promissory note executed by the Defendant nos.1 to 7 for money for the business of the joint family. It was contended that the debt was incurred for the

joint family business. Therefore the shares of the Defendants are also liable for the satisfaction of the debt.

Held: The coparcener could not be held personally liable for the business of joint family unless he acted as manager of the family.

(The shares of all coparceners trading as a firm would be liable. See 1909 11BLR 255)

AIR 1946 BOM 65
In Re Dhruvarajsing Vishwanathsing
Bhagwati, J

The Petition under S.491 of the Cr.PC, 1898 was filed by detenu who was in the Worli Temporary Prison. The challenge was to improper detention.

Held: The liberty of subject can be encroached upon in certain circumstances since individual liberty must give way to national safety.

## 1947

AIR 1947 BOM 209
Janardhan Karandikar v/s Ramchandra Tilak
Stone, CJ & Kania, J

The Appellant was sued for libel. It was contended that he had published an article in the Marathi newspaper "Kesari" which was defamatory of the Respondent. The defence was taken that there was no malice to cause harm to the Respondent and the alleged article was written on privileged occasion without malice.

Held: To prove libel, malice is required to be proved. Malice means indirect motive of libel. Honest belief is protected. Mere want of sound judgment is also no evidence of malice. The Article must be read as a whole to decide whether it is accentuated by malice or not. The Article published on a privileged occasion is not libel.

AIR 1947 BOM 193
Laxmikant Shripat v/s. C.R. Gerrard

Blagden, J

The Petitioner student published an article against the Principal of his school. Hence he was expelled from the School on the ground of breach of discipline of the school. The expulsion was challenged.

Held: The publication of an Article by the student criticizing the Principal of the school is against the discipline of the school. Therefore the decision taken by the school authorities is correct.

AIR 1947 BOM 82

Ranchandra Mulchand v/s. Bhagwan Gopal

Chagla, J

The Plaintiff challenged the alienation of the joint family property which was made without legal necessity.

Held: If the coparcener alienates a portion of the ancestral property without legal necessity, the alienation is bad under Hindu Law. Other coparcener can challenge such alienation if such alienation goes beyond the share of the coparcener who had alienated the property without legal necessity.

AIR 1947 BOM 86

Ladhuram Manormal v/s. Chimniram Dongardas

Macklin & Rajadhyaksha, JJ

The Plaintiff sued for recovery of possession of the premises let to his tenant for non payment of rents. The suit was compromised on the condition that the Defendant will pay the arrears of the rent by a certain date, failing which the lease would be forfeited and the Plaintiff will have a right of re-entry. The Defendant failed to pay the agreed rent amount. An execution petition was filed. During the execution the Defendant filed an application to protect his right.

Held: The Lessee can make an application for relief against forfeiture even in a proceeding of execution of decree.

AIR 1947 BOM 4

Sitaram Motiram v/s Trimbak Ramchandra

Lokur, J

The Plaintiff, being an owner of the land situate on a lower level, filed a suit against the upper land owner for damages and contended that the Defendant collected water on his land and discharged it in the Plaintiff's land and caused damage to his land.

Held: The upper land owner is using his land in the natural way by draining it for agriculture purpose. The Plaintiff would have a right of easement if the owner of upper level used his land in an unnatural way by collecting water on his land and discharging it on the land on the lower level in an injurious manner and thus adversely affecting the land of the lower land owner.

## 1948

AIR 1948 BOM 150
Basayya Shivabasyya v/s. Lingayya Channayya
Sen & Bavdekar, JJ

The Plaintiff sued for setting aside alienation which was made by his father at the time when he was in his mother's womb.

Held: A son can challenge the alienation made by his father when son was in his mother's womb. As the right to sue accrues to him from the date of his conception and he is entitled to benefit of S. 6 and 8 of Limitation Act, 1908. The period of minority of such a son -18 years - is to be computed from the date of his birth and not from the date of his conception.

AIR 1948 BOM 313
Vasudev Ganesh v/s. Vishwanath Shripad
Macklin & Gajendragadkar, JJ

A Hindu son who was residing separately from the Joint family filed suit for a share in the self acquired property left by his father.

Held: In Hindu law, a father's self acquired property goes by succession and not by survivorship. However, a separated son is not entitled to a share in the self acquired property left by the father at his death when at such time the father was in union with his other sons.

(Consider the law under S.8 of the Hindu Succession Act, 1956)

AIR 1948 BOM 315
Lilavati Ganpatrao v/s. Takappa Bhimappa
Dixit, J

A Manager of Hindu joint family made a gift of a small portion of the Joint family immovable property to an educational institution and claimed that he made the gift for 'pious purposes' which was challenged by the Appellant.

Held: Under Mitakshara Law a Hindu father or other managing member of family has right to make a gift within reasonable limits of ancestral immovable property for pious purposes. However, gift for education purposes does not come within the expression “for pious purposes”.

AIR 1948 Bombay 412
The Commissioner of Income tax, Bombay City v/s. Navajbai N. Gamadia
Chagla, CJ & Tendolkar, J

A Parsi has made an oral trust in respect of certain securities with the object of paying the income to a Parsi Hunnarshala.

Held: A Parsi has no personal law which governs him in British India and he is either governed by the statutory law of this country and in absence of statutory law, by the common law of England. Under the common law, it is open to a person to make a revocable trust in favour of a charity.

AIR 1948 BOM 98
Municipal Borrough of Ahmedabad v/s. Jayantilal Patel
Chagla, Bavdekar & Gajendra Gadkar, JJ

The Plaintiff sued the Municipality in respect of a contract entered into with him for cleaning the streets of Ahmedabad. The sums claimed were decreed in part. Part of

the claim was forfeited by the Municipality under the terms of the contract. The question was whether the Plaintiff could maintain the suit under S. 206 of the Bombay Municipal Borroughs Act, 1925.

Held: When a Municipality obtains powers from a Municipal Act to enter into a contract, the exercise of the power is not an act in pursuance of the Municipal Act. S. 206 of the Act constitutes a restriction on the ordinary rights of litigants and hence must be strictly construed. Only those acts "in pursuance of the Act" are covered. The Municipality has to clean the streets as a statutory duty. There is no such duty on an individual. The Plaintiff sought to litigate his private right under a contract. He was not seeking to enforce a public duty cast upon the Municipality by Statute. Such a suit is not to enforce statutory obligation. The forfeiture of deposit could not be made under the provisions of the Act.

## 1949

(1949) 17 ITR 545
CIT v/s. Kolhia Hirdagarh Co. Ltd.
Chagla, CJ & Tendolkar, J

The assessee acquired certain mining rights. The assessee company was floated. An agreement to sell those rights was upon consideration in cash, fully paid-up preference shares and a minimum annual dividend of four annas for every ton of coal mined. The Articles of Association of the company were agreed upon. The Agreement of Sale came up for consideration.

Held: In taxation matters, documents need not be construed from their purely legal aspect. The Court must see the real nature of the transaction and its business aspect from the point of view of two businessmen entering into the transaction. It is not necessary to construe documents from their purely legal aspect.

AIR 1949 BOM 36
Ranchhoddas Narottamdas v/s. Emperor
Sen & Jahagirdar, JJ

The interesting question raised in this Revision was about the liability of a father under S.488 Cr.PC, 1898 to maintain his married daughter. The Magistrate refused to enhance the amount of maintenance awarded to the wife and her children, on the

ground that the eldest daughter who was 15 years old had got married and therefore father was no more liable to maintain her.

Held: The right to maintenance under S. 488 Cr.PC is a distinct statutory right irrespective of the personal law of the parties. It provides a speedy remedy against starvation for a deserted wife and children, who are unable to maintain themselves. Hence under this section a daughter does not on marriage ifso facto loose her right of maintenance from the father. The real and only test is whether that child is unable to maintain itself. It may be that the husband himself is a child or too poor to maintain her. Hence it was held that the father must continue to maintain his daughter even after her marriage, if inspite of her marriage she still remains unable to maintain herself, whatever the reason may be.

AIR 1949 BOM 242

Bai Faiba v/s. Chudasma Jorubha

Rajadhyaksha & Jahagirdar, JJ

On the death of the sole surviving coparcener the property vested in Defendant No.1 as the widow of Gotraja Sapinda as succeeding to his estate. She adopted Defendant No.2 as her son. The adoption was challenged not valid and lawful on the ground that she had no right to adopt. The Court had to consider the effect of the adoption by Hindu widow after the death of sole surviving coparcener.

Held: The coparcenery in a Joint Family does not come to an end on the death of the sole surviving coparcener and the adoption by the widow of a Gotraja Sapinda so long as such widow is a member of a Joint Family of which the deceased was the sole surviving coparcener can bring into Joint family a new member in whom the property vests immediately. Such adoption displaces any title based merely on inheritance from such coparcener.

AIR 1949 BOM 346

Yusuf H. Abbas v/s. Bhagwandas P. Nangpal

Chagla, CJ & Bhagwati, J

A broher sued his constituent to recover a sum of money due in respect of transactions put through by the broker on the stock exchange. It was pointed out that during the course of the trial before the Court the Judge has taken the witnesses into his own hand and instead of leaving counsel to discharge their functions for which they were briefed and paid assumed to himself the duties and obligations of counsel. It was contended before High Court that this conduct of the Trial has resulted into miscarriage of justice.

Held: Counsel has a duty to the Judge, but he has also the duty to himself and the duty to his client and it is entirely un-befitting the dignity of the bar for any counsel to permit himself to be made a sort of pliable instrument in the hands of the Judge. It is not for counsel merely to watch which way the wind is blowing and then to trim his sail according to that wind. The counsel has got to realise that the case does not necessarily end with the Judge. There is a higher Court. He should not have permitted the Judge to take the witnesses out of his hand for examining and cross examining himself.

AIR 1949 BOM 408

Shivprasad Ganpatram v/s. Natwarlal Harilal

Bavdekar & Jahagirdar, JJ

One Keshavlal died leaving behind him a widow Kamla, but no son. Defendant No.1 claimed to be the adopted son of Keshavlal taken in adoption by the widow. There was dispute between the parties as to whether adoption as a matter of fact had taken place and whether it was legal and valid as despite the father being alive, mother had given Defendant No.1 in adoption.

Held: Though it was urged that during the life time of the father a mother cannot give the child in adoption without his consent. When a father was found to be very much a lunatic and incapable of giving consent, on the basis of Modern Hindu Law Text Book, it was held that if the son was given by the mother in adoption in the father's absence or in case of his death or in case of his inability to give consent, it was good and valid adoption.

(1949) 51 BLR 510

Sir Fazal Rahimtulla v/s. Appabhai Desai

Chagla, CJ

The Official Liquidator (OL) was appointed liquidator of the Associated Banking Company of India. The Petitioner challenged the order under S.196 of the Indian Companies Act, 1913 for examining the Petitioner on a summons taken out by the OL as being an order without jurisdiction.

The OL made a report to Court about certain fraud committed after the winding up order was made. The OL could also make a further report under S.177B of the Act for a fraud committed in the formation or promotion of the company, or by a Director or Officer of the company.

The OL got the summons issued under S.196 but erroneously did not mention that it was under S.177B.

The Court found that the company was a family concern indebted to the Bank for Rs.13L, had liability for calls of Rs.6L, the Directors had moneys advanced to themselves and their concerns without any intention to re-pay the Bank, a loan of Rs.38L was taken upon unworthy securities, an overdraft account was opened in the name of another firm pledging the shares of one Famous Cine Laboratories and Studios Limited. The Bank had no securities to secure the loans taken.

Held: The order under S.196 is discretionary. The Appeal Court can interfere only if there was no material on which the Court could have come to any prima facie conclusion of a prima facie case for investigation of fraud. The order was proper on the above material.

Such order cannot be passed ex-parte. It has to be passed upon a Chamber Summons served upon the person charged with fraud. Only the person charged with fraud can be examined under S.196 of the Act.

The Statutory jurisdiction can be invoked only after the OL has made a report and after the report is considered.

# 1950

(1950) 52 BLR 97
R.S.Rammohan Rai Desai v/s. Somabhai Patel
Rajadhyaksha & Chainani, JJ

As per a decree passed in 1912, the Defendant would remain legal tenant of a land of the Plaintiff spread over 14 and ½ bighas so long as they keep paying the rent on time and render the services to the Plaintiff as agreed by both the parties.

The issue is whether the decree created only a personal right in favour of the Defendant or it constituted a perpetual tenancy.

Held: Applying the strict interpretation rules, the Defendant shall continue to be the lease holder in perpetuity unless he fails to perform the obligations under the decree of 1912.

(1950) 52 BLR 358
Ram Ranu Ghadge v. Hari Sambhu Ghadge
Dixit, J

A decree was passed for the sale of a property of 16 *gunthas* of land mortgaged by the Plaintiffs. In execution of the decree the whole of the survey number was put up for sale and purchased by Defendant No.1 in Aug, 1932. A certificate of sale was issued on November, 1932. In 1945, the Plaintiff sued to recover possession of the extra 8 *gunthas* of land not covered by the decree, while Defendant No. 1 contended that the suit was barred by limitation.

Held: The sale of additional 8 *gunthas,* not being covered by the decree is a nullity. The Plaintiff's title to the suit property was not lost by the auction sale. The sale was void. Hence the Plaintiff was entitled to possession of the land.

(1950) 52 BLR 424

The Scindia Steam Navigation Co. Ltd. v/s The Commissioner of Excess Profits Tax
M. C. Chagla CJ & Tendolkar, J

The assessee company was incorporated with the objects of plying ships for hire and of building ships. It carried on for several years the business of plying ships for hire only, but in the relevant charging accounting period it spent Rs.346,850/- towards the construction of a shipbuilding yard. In its assessment to excess profits tax, it contended that it was entitled to include the above sum as a capital employed in its business for computing the average amount of capital. It was found that the business of plying ships was entirely different from the business of shipbuilding.

Held: the assesse could not take the benefit of r. (1) (a) of Sch. II to the Act for the purpose of treating the aforesaid sum as a part of its capital. Also the proviso to S. 2(5) of the Act could not be availed by the assesse as the two businesses, viz. plying ships for hire and shipbuilding were not actually carried on.

(1950) 52 BLR 389
The Modern Mills Ltd. v/s. V. R. Mangalvedhekar
M. C. Chagla CJ & Bhagwati, J

In a dispute between the textile mills of Bombay and their employees the industrial Court constituted under the Bombay Industrial Relations Act, 1946, awarded bonus to ex-employees provided they submitted the claim before 21st May, 1948. The

employee sent his claim by registered post on 18th May. The same was received by the company on 24th May. The company denied the claim. As a result the employee applied to the authority under Payment of Wages Act, 1936 who held that the employee was entitled for the claim award. The mill applied for a writ of certiorari for quashing the order as having been passed without jurisdiction.
Held: The authority was acting within its Jurisdiction under Ss. 7 and 15 of the Payment of Wages Act, 1936.

AIR 1950 BOM 112
Mallawa v/s. Shiddappa
Chagla CJ & Tendolkar, J

The husband brings a concubine to live with him permanently and transfers his affection from his wife to the concubine. The wife leaves the house of husband and files maintenance application.

Held: In order to justify a Hindu wife leaving her husband's house, it is not necessary that there should be physical cruelty; mental cruelty would be sufficient.

[This legal position is confirmed in subsequent decisions till date.]

AIR 1950 BOM 178
Gajanan v. Pandurang,
Chagla CJ, Gajendragadkar & Dixit, JJ

A Hindu woman inherited property from her parents. The question raised was whether it is such stridhan as would be within the absolute dominion of the woman who inherits it, so that she can dispose of the same in any manner she likes, either by an act inter vivos or by will.

Held: The property inherited by the woman from her parents is her stridhan. She can dispose off it in any manner.

AIR 1950 BOM 202
Maledath v/s. The Commissioner of Police,
Chhagla CJ, Gajendragadkar & Dixit, JJ

The accused were arrested and detained under the provisions of the Bombay Public Security Measures Act, 1947 without producing them before Magistrate within 24 hours.

Held: It is not permissible for the authorities under the cloak and guise of Public Security Measures Act to override the ordinary criminal law of the land and to deprive the subject of safeguards provided under the law.

AIR 1950 BOM 245

Mohamad Abdul v/s. Khairunnissa,

Chagla C.J. And Bhagwati J.

A Muslim widow filed a suit against her father-in-law for maintenance. The liability of father-in-law to maintain the daughter-in-law was challenged on the ground that she is not his heir.

Held: With regard to maintenance under the Mohammedan law, the main principle is that a person is liable to maintain another when that person could be the heir of the person whom he is called upon to maintain. The father-in-law can never be the heir of his daughter-in-law. Therefore, on that principle there is no obligation on the father-in-law to maintain the widow of his son.

AIR 1950 BOM 345

Gaganmal v/s. Hongkong & Shanghai Banking Corporation

Chagla, CJ & Coyajee, J

Whether O6 R17 is controlled by O7 R11 of the CPC,1908. The question raised was if the plaint does not disclose the cause of action, whether Court can grant permission to amend the Plaint.

Held: The power of Court to allow an amendment of pleading under Order 6 Rule 17 of CPC is not in any way restricted or controlled by O7 R11(a) of CPC,1908. The Court can allow the party to add the cause of action by way of amendment.

# 1951

AIR 1951 BOM 33

In re Maganlal Jivabhai Patel

Bavdekar & Vyas, JJ

A District Magistrate passed an order of detention on 29-3-1950 and the detenue was arrested on 14-06-1950. In the meantime the Magistrate was relieved of his charge and another District Magistrate assumed charge. The order was challenged on the ground that after the Magistrate had been relieved of the charge the Order of detention passed by him ceased to have any legal effect.

Held: The order passed by a District Magistrate who is subsequently transferred and relieved of his duties, does not lose its value and cease to be an order of a District Magistrate.

AIR 1951 BOM 72

Lady Dinbai Dinshaw Petit v/s. The Dominion of India

Chagla CJ & Bhagwati, J

The Plaintiffs were in possession of certain immovable property as trustees. The Plaintiffs entered into lease of that land with Government of India. The Government passed the order of requisition and acquisition. The Plaintiffs made an application for amendment in the plaint which was disallowed as it would contravene the provision of S.80 of CPC as it would constitute a new cause of action.

Held: Where the amendment of the plaint gives further grounds in support of the contentions and allegations which constitute the Plaintiffs' cause of action, a further notice under S.80 CPC is not necessary.

AIR 1951 BOM 57

Venkanna Narsinha v/s. Laxmi Sannappa

Bhagwati & Dixit, JJ

The Plaintiff is the widow of the Defendant's son. The Defendant had already made a partition between himself and his two brothers. The two brothers of the Defendant continued joint inter se. After the death of two brothers and their heirs, the Defendant entered his name in the record of rights as he was the only heir of his brothers. The Plaintiff claimed her right to inherit as a widow of a 'Gotraja Sapinda' in the North Kanara District.

Held: The Hindu residents of North Kanara District are governed by Bombay School of Hindu Law and not by Madras School of Hindu Law. A widow of Gotraja Sapinda in North Kanara District has a right to inherit to the propositus in preference to a more remote male Gotraja Sapinda of his.

AIR 1951 BOM 22

Mirvahedali Kamudia v/s. Rashidabeg Kamudia

Chagla CJ & Gajendragadkar, J

The children of a deceased Muslim widow claimed to retain certain properties till the dower that was due to their mother had been paid.

Held: The right of Muslim wife or widow to retain property has been compared to a creditor's lien provided that she had entered into possession of property lawfully and without any force or fraud. There must be a debt due to her in respect of that dower. Her heirs are entitled to retain property till the dower debt is discharged.

## 1952

AIR 1952 BOM 382

Trustee of Port of Bombay v/s. Yamunabai

Bavdekar & Dixit, JJ

Vinayak Yenku, a carpenter, was employed in the workshop of the Appellant. During the work he died due to explosion of a bomb in the workshop. His wife filed petition for compensation.

Held: Vinayak Yenku received personal injuries as a result of an accident arising out of his employment. Therefore, his wife is entitled for compensation.

AIR 1952 BOM 84

The State of Bombay v/s. Narsu Appa Mali

Chagla CJ & Gajendragadkar, J

For the offence of bigamy in two cases accused were convicted and in two cases

accused were acquitted. The Court had to consider whether the provisions of the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 were unconstitutional.

Held: Monogamy is a very desirable and praiseworthy institution. It is the measure of social reform. Hence the provisions of Bombay Prevention of Hindu Bigamous Marriage Act, 1946 are not unconstitutional.

A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. Marriage is undoubtedly a social institution, an institution in which the State is vitally interested. If, therefore, the State of Bombay compels Hindus to become monogamists, it is a measure of social reform, and the State is empowered to legislate with regard to social reform under Article 25(2)(b).

Personal law is not included in the expression “Laws in force” used in Article 13(1) of the Constitution of India. Even if it is held that personal law falls within Article 13(1) the provisions of personal laws permitting polygamy do not amount to a discrimination against women only on the ground of sex. It is rather difficult to accept the proposition that polygamy is an integral part of Hindu religion. If the Legislature wanted to provide for a special procedure in dealing with the bigamous marriages amongst Hindus it cannot be said that the legislature is discriminative against the Hindus only on the ground of religion.

AIR 1952 BOM 299

Rama Shidappa v/s. State

Chagla CJ, Gajendragadkar & Shah, JJ

Nine Accused were tried for the offence punishable under S. 395 and 411 of IPC. The Jury held Accused nos. 5, 6, 7 and 8 guilty for the offence under S. 411 of IPC on the basis of statement of these accused under S. 27 of the Evidence Act, 1872. The question before full bench was about the admissibility of the statements of accused.

Held: The statement with regard to the authorship of concealment was admissible under S. 27 of the Indian Evidence Act, 1872.

AIR 1952 BOM 486

A - Plaintiff v/s. B – Defendant,

Tendolkar, J

At the time of marriage the wife was impotent. The husband sued for declaration of their marriage null and void or in the alternative for a decree of divorce.

Held: A Hindu marriage is a sacrament and also a civil contract. The husband is entitled to the declaration that it is a nullity as wife was unable to consummate it. Even if he is not entitled to a decree of nullity he would be entitled to a divorce under the provisions of The Bombay Hindu Divorce Act, 1947.

AIR 1952 BOM 365
Shiv Bhagvan Saraoji v/s Onkarmal Dass
Chagla, CJ & Bhagwati, J

The Plaintiff sued for partition of movable and immovable properties. All the immovable properties were outside Bombay at various places. The movable properties were in Bombay. The Plaintiff applied for leave under clause 12 of the Letters Patent. On the date of the filing of the suit, no immovable property was within the Court's jurisdiction. Leave was refused. At the time of hearing the appeal from the order refusing leave, Vikhroli was brought within the city limits of Bombay. One of the immovable properties in suit was in Vikhroli. It had to be considered whether the Court would have jurisdiction upon grant of the leave.

Held: To try a suit for land, at least some of the immovable properties must be within this Court's jurisdiction. In that case, upon leave, the Court could have jurisdiction to try the suit for all the properties.

The leave was properly refused but the Court could try the suit for the Vikhroli property and the movable properties.

(This would not be the case if even some of the properties were within the Court's jurisdiction).

[This follows the law settled in (1872) IX BHC Rep.12 that a suit for land is a suit for delivery of the land].

# 1953

(1953) BLR 55 BOM 1
Sardar Saifuddin v/s. Jyebvhai Koicha

Chagla, CJ & Bhagwati, J

A member of the Dawoodi Bohra Community sued the head priest of the Community inter alia for a declaration that the orders of excommunication passed against him by were void, illegal and of no effect. The preliminary contention raised by the plaintiff is that the excommunication of the plaintiff ceased to be effective as from November 1, 1949, when the Bombay Prevention of Excommunication Act, 1949 came into operation irrespective of any question as to the legality of the Excommunication; which the defendant denied.

Held: The Act was applicable to the case of the plaintiff inasmuch as he was deprived of his rights and privileges after November 1, 1949.

(1953) BLR 55 BOM 65
The Jalgaon Borough Municipality v/s. The Khandesh Spinning & Weaving Mill Co. Ltd.
Bhagwati & Dixit, JJ

The Khandesh Spinning and Weaving Mill Co.Ltd was a Joint Stock Company carrying on business as a spinning and weaving Mills having its registered office at Bombay. The business of the Plaintiff was carried on at Jalgoan and for that purpose it used to import charcoal within the jurisdiction of Jalgaon Borough Municipality. The Defendants were entitled to levy octroi duty on fuel oil and furnace oil under certain rules and by-laws framed by it with the sanction of the Government which provided for the levy of an octroi duty on various articles including "oils used for machinery". It was found that the Municipality was not entitled to levy any octroi duty which was not comprised within the items enumerated in the octroi rules and by-laws. The question aries whether this act could be said to be anything “done or purporting to have been done” in pursuance of the Bombay Municipal Boroughs Act, 1925.

Held: In so far as the tax had been illegally levied by the Municipality there was no question of considering whether the act which was complained of was done or purported to have been done in pursance of the Act. An illegal Act could certainly not have been "done or purported to have been done in pursuance of the Act". It is only the lawful act which comes under this question.

(1953) BLR 55 BOM 465
Govind Shanbhag v/s. Murlidhar Shanbhag
Gajendra Gadkar & Vyas, JJ

Two brothers filed a suit for accounts and possession of their properties in the Management of the Defendant. Their allegation was that the Defendant was their

guardian and had not rendered accounts. Between the guardian and the wards, a compromise decree was passed by which certain immovable property was conveyed to the wards. The decree provided that the wards and their descendants alone shall enjoy the said land and buildings and that they should not alienate the same by lease etc. The wards sold the suit property in contravention of the terms of the consent decree.

Held: It is clear that this clause amounts to an absolute restraint on alienation and is void under S.10 of the Transfer of Property Act, 1882 and, therefore, invalid and illegal. They could ignore the decree treating it as a nullity and proceed to sell the property contrary to the terms of the decree.

(1953) BLR 55 BOM 586
Bhailal Amin & Sons Ltd v/s. R.P.Dalal
Chagla CJ & Shah, J

The Petitioner was a Private Limited Company incorporated in Baroda under the Baroda State Commission Act. The Petitioners filed an appeal in the Court of the Huzur Adalat (Privy Council), Baroda. In 1949, the State of Baroda merged with India and in Dec 1949, the Taxation Laws Act 1949 was passed. By S. 3 of this Act the Income-Tax Act, 1922 extended to all merged states,. The Central Government passed an order that the first appeal under the State law shall be to the Appellate Tribunal". The appeal was accordingly heard and disposed of by the Appellate Tribunal constituted under the Income-Tax Act. The question was whether the Appellate Tribunal could exercise the jurisdiction which was conferred upon it under the Income-Tax Act, 1922.

Held: The Appellate Tribunal could perform the same functions and exercise the same jurisdiction that the Huzur Adalat would have done under the Baroda law.

(1953) BLR 55 BOM 785
The Commissioner of Income-Tax, Bombay North v/s. Tejaji Kharawala.
Chagla CJ & Tendulkar, J

The assessee was a Karta of Hindu Undivided Family. The other members were his wife and son. The assessee was the sole selling agent of dyes and chemicals. In 1947, the assessee transfered his business to Tejaji Kharawala Ltd., the shareholders of which were the assessee, his wife and his son. Under the agreement, the goodwill of the business was fixed at Rs.50,000. The Income Tax Officer computed the capital game at Rs.25,000. The family appealed to the Appellate Assistant Commissioner who confirmed the computation of the capital gain. The family appealed to the

Appellate Tribunal.

Held: The Commisioner of Income-tax is not competent to pass an order of the Income Tax Act, 1922, when an appeal against the order of the Income Tax Officer has been decided by the Appealate Assistant Commissioner. The right of the Commissioner continues so long as the order of the Income Tax Officer is not merged in the order of the Appellate Assistant Commissioner, but once the order is merged, the Commissioner cannot deal with the assessment of the assessee at all.

(1953) BLR 55 BOM 874
The Indian Trade and General Insurance Co. Ltd v/s. Bhailal Desai
Chagla, CJ & Dixit, J

One Bhailal (Plaintiff) was the sole proprietor of a business of chemists in Kaira District. The Plaintiff had asked one son-In-law to store a quantity of colours and chemicals belonging to him in the godown at Bombay who told another son-in-law of the Plaintiff to get the goods insured promptly. That son-in-law called upon the sub-agent of the Defendant company to effect the insurance of the goods. Accordingly the cover note was issued to the Plaintiff on June 18, 1951 and it was stated that the goods were insured from June 15, 1951. The goods were destroyed by fire on June 16, 1951. None of the parties were aware of it. The Defendant contended that the insurance was effected on June 18, 1951, and therefore, the risk attached from that date and not from a point of time antecedent to that date; and that the contract of insurance was void.

Held: As both the parties were ignorant of the loss at the time of making the contract and that the parties agreed that the risk should attach from June 15, 1951, and not from later date, the Defendant was liable.

# 1954

AIR 1954 BOM 1
The Province of Bombay v/s. The Municipal Corporation of Ahmedabad
Chagla CJ, Dixit & Shah, JJ

This was a suit filed by the Municipality challenging Collector's assessment on piece of land to non-agriculture tax. The preliminary objection was raised on the ground that

earlier also a similar suit was filed in respect of another piece of land and it was held that assessment of tax was not invalid and therefore, the suit was barred by res judicata.

Held: In order to decide whether the decision in earlier suit operates as res judicata the Court must look at the nature of that suit, what were the issues raised in that suit and what was actually decided in that suit. What becomes 'res judicata' is the matter which is decided and not the reason which leads the Court to decide the matter. Neither the reasoning nor the mental process can operate as res judicata. There is a distinction between a res judicata and a precedent. When a Court interprets the law or determines what the position in law is with regard to a particular matter, it constitutes a precedent. It is a decision on the question of law which binds not only the parties to the litigation but other parties also whereas res judicata operates only as a bar upon the parties to the litigation or the parties claiming under them. In this case it was held that it was not permissible in law to rely on the interpretation of the law given by the Judge in that suit for the purpose of deciding the levy of assessment with regard to a different land. Therefore, the decision in a previous suit cannot act as res judicata in subsequent suit in respect of different piece of land.

AIR 1954 BOM 139

Rangappa Kelavadeppa v/s. Rindawa Vasangouda

Bavdekar & Chainani, JJ

This was a second appeal arising out of a suit wherein the question was raised as to the applicability of S.11 of the CPC,1908 to execution proceedings as the word used in the said section is 'suit' and not 'execution proceedings'

Held: S.11 which uses the word 'suit' and not 'execution proceedings' may apply when the prior adjudication was in execution proceedings, though arising from a different former suit. The word 'suit' has been interpreted to mean execution proceedings also. Moreover, even if that section does not apply, it is well established that S.11 is not exhaustive and its principle has application apart from the limited provisions of that section.

AIR 1954 BOM 176

Ram Bahadur Thakur & Co. v/s. Devidayal (Sales) Ltd.

Chagla CJ, & Shah, J

These two appeals pertain to the interpretation of the provisions of Ss.10 and 151 of CPC, 1908 and also the question whether the consent of the parties can confer or oust the jurisdiction of the Court. The necessary question was also whether the Court has

power to grant injunction in cases other than provided for by O.39 R.1 and 2 CPC 1908.

Held: The provisions of Ss. 10 and 151 CPC must be read together and if the Court which is asked to stay a suit comes to the conclusion that by staying the suit before it, it would perpetrate an abuse of the process of Court or would enable the other party to obtain a benefit to which in view of his conduct he is not entitled, then notwithstanding the provisions of S.10, the Court would be justified in refusing to stay the suit. S.10 has no application when a suit is instituted which constitutes an abuse of process of the Court. In such case Court will have to deal with situation under S.151 CPC and issue injunction preventing the Defendant from proceeding with the suit. The Court has the power to grant injunction under S.151. It was further held that parties by their agreement cannot confer or oust the jurisdiction on a Court, though parties can by a contract prefer one of two competent Courts.

AIR 1954 BOM 479

In Re K. L. Gauba

Gajendragadkar & Vyas, JJ

This is an application under the disciplinary jurisdiction of the High Court against an Advocate. It was brought to the notice of the High Court that he had entered into an agreement with his client, which appeared to be champertous and the Court took the view that the circumstances under which the said agreement had been entered into and the terms of the agreement itself called for an investigation under the disciplinary jurisdiction, and so it was decided to refer this case to the Bar Council. The Tribunal constituted by the Bar Council held that conduct of the Advocate of entering into an Agreement with his client that he should be given half of the profit of the litigation in case of success amounted to professional misconduct.

Held: An agreement between an Advocate or a lawyer and his client that he will accept as his fees a specified share in the subject-matter of the litigation or claim upon the successful issue of such litigation is void under S.23 Contract Act, 1872 as being opposed to public policy and the conduct of such advocate or lawyer amounts to gross professional misconduct attracting the disciplinary jurisdiction of the High Court. The primary and the fundamental notions of professional ethics must always remain unimpaired. The standard of professional honesty and integrity and of rules of professional conduct must never be relaxed or scaled down. An advocate must give the best of his professional skill to the cause of his client. If an advocate enters into an agreement to charge fees on percentage basis or to share in the profits of litigation, thereby he surrenders his position as an advocate and becomes litigant in the garb of an advocate. He also becomes indifferent to the high ethical standards of his profession and does grave dis-service to the cause and course of justice. The Advocate was guilty of professional misconduct. He was suspended for six months from practice as an advocate in the High Court.

AIR 1954 BOM 305
Madholal Sindhu v/s. Asian Assurance Co. Ltd.
Bhagwati, J

The question relating to how direct evidence could be led to prove a document was to be considered.

Held: Under S.67 of the Indian Evidence Act, 1872, the contents of a document could not be proved by proving the handwriting or the signature on a document if the witness had no personal knowledge about its contents. Hence, such documents are not admissible in evidence.
(Hence, it would be futile to prove the signature on a document without calling the signatory to depose).

# 1955

AIR 1955 BOM 152
Dagdu Balu v/s. Namdeo Rakhamaji
Chagla, CJ & Dixit, J

Rakhamaji and Krishna were two brothers who constituted a joint family. Krishna died leaving behind a widow, a daughter and a son. The Widow sold her share to the Plaintiff. The Plaintiff sued for partition. The question involved was whether widow in a joint family had a right to alienate the share which her husband had in the property and which had devolved upon her under S.3 of the Hindu Women's Right to Property Act, 1937.

Held: A widow can alienate for legal necessity the share of her husband devolving on her as life interest in the joint family property and such alienee is entitled to partition of the property.

(S. 14 of the Hindu Succession Act has settled the widow’s right)

AIR 1955 BOM 390
State v/s. Kanu Dharma

Gajendragadkar & Vyas, JJ

The case against the accused was that he had committed an offence punishable under S. 4 of Bombay Harijan Temple Entry Act, 1947, in that he had prevented Chintu Rama Ambedkar, a harijan boy, from entering the temple of Shree Bhairi at Waral on 2-5-1953. The accused denied the charge. The learned Magistrate took the view that the charge brought against the accused had not been proved beyond reasonable doubt.

Held: The word 'prevent' under S.4 of the Bombay Harijan Temple Entry Act, 1947 does not necessarily denote the use of physical force or threat of physical force. If the use of strong and loud words actually results in the Harijan getting out of the temple without obtaining the Darshan of deity, that itself must be regarded as constituting an offence within the meaning of S. 4.

Undoubtedly, S. 4 is a part of penal statute and it must be construed in favour of accused. But even while construing the statute in favour of the accused the Court put a narrow and very unreasonable construction upon the material words.

AIR 1955 BOM 105

Bhagubai v/s. General Manager, Central railway

Chagla & Dixit, JJ.

The deceased was employed in the central railway at a station and he lived in the railway quarters. It was found as a fact that the only access for the deceased from his quarter to the railway station was through the compound of the railway quarters. One night the deceased left his quarter and within few minutes before his joining duty, he was stabbed by an unknown person and killed.

Held: There must be a causal connection between the accident and the employment in order to hold the employer liable for compensation as in that situation only it can be said that accident arose out of the employment. In this case it was held that as the employee in the course of his employment had to be at a particular place and because of his being in that particular place the accident had occurred, the accident arose out of the employment. Hence Railway was held liable to compensate for his death.

AIR 1955 BOM 126

Basudev Ramgovind v/s. Vachha & Co.

Chagla, CJ & Shah, J

The Plaintiff sued for recovery of Rs.35,000/- and in alternative for accounts in respects of certain carpets delivered to the Defendant. The Plaintiff took out a summons for attachment of carpets before the judgment. The Defendant deposited Rs.5,000/- in the Court as security. The claim was settled. Rs.5,000/- was agreed to be withdrawn by the Defendant's solicitor. The Plaintiff's solicitor then tried to enforce his lien on the said amount towards his costs and fees.

Held: A solicitor is entitled to proceed only against his own client for the costs which the solicitor is entitled in respect of the work done by the solicitor for his client which is called as solicitor's lien.

When an agreement is arrived at between the parties to a suit and the intention of the parties in arriving at the agreement is to deprive the solicitor of his costs, the Court will interfere in its equitable jurisdiction and prevent the fraud being perpetrated either by declaring a lien on the fund or even compel the other side to pay the costs of the solicitor. The solicitor can also give a notice to the opposite party intimating to him that he has a claim for costs against his own client. The opposite party would then pay to the client of the solicitor at his own peril because he had notice that the solicitor has a lien on the fruits of his exertion and the amount should not be paid to the other side because the solicitor has a prior claim for his costs.

Therefore, the equitable jurisdiction of the Court would only be exercised in two cases: (1) where there is collusion between the parties fraudulently to deprive the solicitor of his claim for costs, and (2) where the solicitor gives notice to the other party of the fact that he has a claim for costs against his own client.

The solicitors could withdraw s.5,000/- deposited in the Court as they were entitled to be protected against being defeated in exercising their lien over the amount deposited in Court.

Judgement dated 5th July, 1955
Reported in (2000) 126 ELT 62
Ramchand Wadhwani v/s. B.N. Banerji
Tendolkar, J

The Petitioner applied for a Writ of Mandamus restraining the Collector of Customs from levying a duty higher than 30% for release of a consignment of Sheaffers fountain pens imported by him. Fountain pens are chargeable under item 45(3) in the 1st Schedule to the Indian Tariff Act, 1934 at 30% ad valorem duty. The duty on gold or silver plated articles was 78 ¾% under article 61(8).

Held: Fountain pen is a specific article while plated articles are too numerous. The Court cannot resort to any other article for taxing. No ordinary man or anyone in trade could refer to fountain pens with gold and silver caps or gold nibs as articles plated with

gold. The value of a pen does not lie in its gold cap. It would write as well without it. If it is used as a fountain pen, it must fall within the entry.

(In appeal, in the unreported but unforgettable judgment of Chagla, CJ, he asked the Advocate General, Mr. Amin to hand him the gold topped pen which the customs had adJudged as 'gold'. "What would you call the object which I am holding in my hand"? The AG answered "Your Lordship is holding a pen" and Chagla, CJ said "Isn't that the whole of the case? Doesn't that conclude the matter?" The AG sat down and the appeal was disposed of – from "*Roses in December*", page 159).

# 1956

AIR 1956 BOM 490
Bal Keshav Thakarey v/s. Commissioner of Police
Chagla, CJ & Tendolkar, J

The Commissioner of Police, Bombay passed a detention order for maintenance of public order and peace. That order was under challenge before the Court.

Held: The Court should be vigilant to safeguard the liberty of the subject. The conflict between the security of the state and liberty of the subject is always a conflict difficult to resolve but the Constitution and Preventive Detention Act, 1950 sought to resolve it by arming the State with wide powers and at the same time providing important safeguards for the liberty of the subjects.

(1956) 30 ITR 338
New Shorrock Spinning and Manufacturing Co. Ltd. v/s. CIT
Chagla, CJ & Tendolkar, J

The assessee incurred expenditure for creating a new asset upon restoring its fixed assets.

Held: "Current repairs" means expenditure on building, machinery, plant or furniture which is not for the purpose of renewal or restoration but only for preserving and maintaining an existing asset. It should not bring into existence a new asset or give the assessee a new or different advantage.

AIR 1956 BOM 233

Bhagwaticharan Ravishankar v/s. The State

Shah & Vyas, JJ

The Petitioner was the Member of Parliament and was accused for the offence under S.332 of the IPC, 1860. As he remained absent when the case was fixed for hearing, the Magistrate issued Warrant of Arrest against him. Therefore, he filed a Transfer application before the High Court alleging that the Magistrate is prejudiced against him.

Held: The Magistrate may, if proper grounds are made out, look to the convenience of the person who is an elected representative of the Legislature and adjust the date of hearing so as to enable him to attend the Court as well as the Session of Parliament. But there is no rule which requires Criminal Court to adjourn proceeding so as to enable the Member of Parliament to attend the session of the Legislature. It was further held that in any event failure to grant adjournment in order to enable the Member of Legislature to attend the Legislature cannot by any stretch of imagination indicate that the Magistrate was prejudiced against him. Hence it cannot be a ground for transfer of case.

AIR 1956 BOM 236

Asgarali Roshanali v/s. Kayumalli Ibrahimji

Shah, J.

In a suit for eviction filed by the landlord, the Defendant denied the relationship of the landlord and tenant. The trial Court, on consideration of evidence, held that there was no such relationship. While arriving at this answer, the trial Court considered the question of title as to whether the property deed really belonged to the Plaintiff or it was property of the Plaintiff's father who had been adjudicated insolvent. The question raised before the High Court was whether the Small Causes Court has jurisdiction to decide the question of title.

Held: The Court of Small Causes is entitled to decide every question of title relating to immoveable property in a contractual relationship provided the suit does not ask for a relief relating to the title to immovable property, but is only for payment of a sum of money. Hence in a suit for rent the Court, in deciding whether there was contractual relationship of landlord and tenant between the parties, can embark upon an enquiry as to title.

(1956) 30 ITR 338

New Shorrock Spinning and Manufacturing Co. Ltd. V. CIT

Chagla, CJ. & Tendolkar, J

The assessee company, a textile mill, spent a sum of Rs. 30,557 for replacing certain parts in 646 looms out of 864 looms which the mills possessed and claimed the amount as expenditure for current repairs under S. 10(2)(v). These parts were replaced with parts of a new type which were lighter in weight, could be lifted with the toe of the foot, conformed to the international labour standard and were superior to the old parts. It also appeared that the looms could be worked and in fact had been worked with these old parts for a period of 60 years and no need had arisen during all these years for replacing the old parts.

Held: “Current Repairs” means expenditure on building, machinery, plant or furniture which is not for the purpose of renewal or restoration but which is only for the purpose of preserving or maintaining an already existing asset and which does not bring a new asset into existence or does not give to the assessee a new or different advantage. It was expenditure for "current repairs" even though it was incurred more than 60 years after the acquisition of the asset and was allowable as a deduction under S. 10(2)(v).

(1956) 59 BLR 548
CIBA Limited v/s. M. Ramalingam
Chagla, CJ & S.T. Desai, J

A company made an application for registration of a label “CIBOL”. They followed the label with the word desire which was a transliteration of a Tamil word. A company was issued notice to show cause why the registration of the mark be not refused as it was likely to confuse the public with the registered marks of CIBA Ltd. CIBA Ltd., had various trademarks which commenced with the word “CIB”.

The question was whether the trademark sought by the company was a fraudulent and dishonest admit to intimate the trademarks of the appellants.

Held: The test of identity or resemblance is to be applied. The evidence of user is irrelevant. Actions under S. 10 of the Trademarks Act are not the same as a passing of action. The Court cannot look at the two trademarks and on considering them phonetically, can decide whether they resemble each other or there is likelihood of deception. There must be evidence of deception, but if the resemblance between the two marks is clear and obvious. The mark which is likely to cause deception must be removed.

# 1957

AIR 1957 BOM 274
Ragho Sambhaji v/s. Shantabai Kisan
Mudholkar, J

One Shama effected partition in the year 1934. At the time of partition, he got his separate share. After his death question arose as to who are entitled to succeed his field amongst his heirs.

Held: The separate property left by a Hindu father did not become coparcenery property in the hands of his sons who had separated from him during his life time. After his death each son takes the property as tenant-in-common and not as a joint tenant.

AIR 1957 BOM 214
Krishtappa Venkappa v/s. Gopal Shivji
Chagla, CJ, Gajendrakar & Vyas, JJ

A joint family consisted of three brothers. One of them died and two surviving brothers effected partition. One of the brothers sold the whole of his share and other brother retained his share. Thereafter the widow of the deceased brother adopted a son to her husband who sued for partition.

Held: Whenever a partition is reopened, the shares must be allotted on a fair and equitable principle. The adopted son must have his share in the accretions to the property which remains with the dividing coparcener. He also has share in the income earned out of original joint family property.

AIR 1957 BOM 223
Shirinath v/s. State
Vyas & Palnitkar, JJ

The Sub-inspector, while recording the dying declaration of the deceased, asked questions in Hindi. She replied them in Hindi. She was in capacity to give rational answers. The Sub-inspector translated her statement in English instead of recording it in her own language.

Held: The statement of deceased is not admissible in evidence because it has to be recorded in the language stated by the deceased. The I.O. should have taken down the questions and the answers in the words of the deceased.

(1957) 59 BLR 436
W.A.G. Cuff v/s. The Commissioner of Income Tax, Bombay City
Chagla, CJ & Tendolkar, J

The assessee was appointed as an executive in charge of a newly appointed department of the company. The appointment was under the contract of service. The service could be terminated by giving him six months notice. He was issued notice that the department could not function any longer. The assessee was however, continued to be employed by the company. He drew full salary. His main job was to liquidate the department which was under his control. He received an amount from the company as "compensation equivalent to six months' salary for the termination of his employment owing to the closure of the department". The Income Tax officer held that the payment was in lieu of six months' notice.

The question was whether the amount was taxable under S. 7 of the Indian Income Tax Act 1922 or exempt under explanation 2 to S. 7 of the Act.

Held: The compensation could only be said to have been received, if the payment is made as a result of the breach of the covenants of the contract. The assessee left the services according to the terms of the employment. There was no liability on the firm to pay anything for the breach of the terms of the contract of service. What is paid to him is in the nature of gratuity which was paid at the sweet will of the employer in view of the past services rendered. It falls within the exception even if it is styled as compensation.

(1957) 59 BLR 209
The New Gujarat Cotton Mills Ltd. v/s. The Labour Appellate Tribunal
Shah & Palnitkar, JJ

The Company closed its factory after putting up a notice terminating the services of its employees. It was ordered to be wound up. The Official Liquidator sold the business assets of the company together with the goodwill, lease-hold interest, building, plant and machinery to a new company. The old company was responsible for the debts and liabilities, bonus and other emoluments due and payable to its employees. Some of the employees applied for reemployment or reinstatement in the new company. The new company declined to take employees.

Held: The absence of a direct contractual relationship between the employees and the new company is not by itself a ground on which the claim of the employees could be rejected. The subsistence of an effective contract between the transferor company of

the employees is also not the prerequisite to make such a claim. It fell within item 6 of Schedule III of the Bombay Industrial Relations Act, 1946 and the employees could make their applications under S. 42(4) of the Act.

## 1958

AIR 1958 BOM 218

Dinbai R. Wadia v/s. Farukh Mobedjna

K.T. Desai, J

The deceased was riding on the pillion seat of the motorcycle belonging to Defendant No.1. Defendant No.2 was driving the motorcycle. The motorcycle met with an accident. The widow and four children of deceased filed suit for damages.

Held: The master is jointly and severally liable for any tort committed by his servant while acting in the course of his employment. Hence Defendant No.1 was held liable alongwith Defendant No.2 to pay damages under the Fatal Accidents Act, 1855.

AIR 1958 BOM 244

Ramchandra Sitaram v/s. Sakharam

Shah & Kotval, JJ

One Sampat died leaving behind his wife, son and sister. Thereafter, his son also died. The property devolved upon his widow. The widow gifted the property to her husband's sister, Tulsa and thereafter, contracted re-marriage. The uncle and paternal cousins of Sampat filed a suit for possession.

Held: If the remarriage of a widow is permitted in any caste and if she had inherited property from her son, it would be forfeited on re-marriage and devolve upon the next heirs of her son.

AIR 1958 BOM 251

Dama Ghusi v/s. Jagana Fagu

Mudholkar, J

The Plaintiff sued his co-sharer who was in exclusive possession of the land for claiming accounts of profits from the land.

Held: The co-sharer of the suit land, being in exclusive possession of the lands, other co-sharers may allow the former to continue in exclusive possession of the land or file a suit for joint possession. But he certainly does not have any right to ask for accounts of profit from the land. He has right to claim compensation.

AIR 1958 BOM 25
Nathu Bhivaji v/s. Ganpat Bhivaji
Mudholkar, J

The Plaintiff had agricultural land admeasuring 16 acres 6 Gunthas. During his minority, his mother, acting as his natural guardian sold some part of the land to pay her husband's debts.

Held: The transferee has to show positively that the course which the natural guardian took was the only one open to her in the circumstances of the family. In case of failure to show it, the transaction cannot be upheld.

(1958) 60 BLR 1240
Western India Theatres Limited v/s. Associated Bombay Cinemas Ltd.
Chagla, CJ & Dixit, J

A petition for winding up the Appellant Company was filed. It was accepted and made returnable for hearing. Another Judge issued directions for advertising the petiion in newspapers and Government Gazette. That directional order was challenged. The Court had to consider whether the order was made without exercising jurisdiction to hear the company before advertising the petition.

Held: The order directing advertisement of the petition for winding up is a substantive order affecting rights of parties, challengable in appeal.

Under R.733 of the High Court OS Rules (as they then were) it is obligatory to advertise the petition before final hearing. The Rule does not provide that it is imperative that it must be advertised after the petition is admitted. The petition cannot be fully heard if it is not advertised 14 days before the date of hearing. The object is that the petition should not be finally heard on merits without giving an opportunity to all the persons who are interested in the company, like creditors and shareholders, to put before the Court their point of view.

The Court has the discretion to dismiss a Petition at an early stage if no answer of the company is called for on merits. The Court may reject it as frivolous. If it is accepted, notice to the company to show cause why the petition should not be proceeded with has to be issued. If the Court is satisfied that the company shold be wound up, then it may take further steps. In that case only an advertisement may be issued.

## 1959

AIR 1959 BOM 54
Bari v/s. Tukaram Lahanu
Mudholkar, J

The Plaintiff sued for a declaration that Kumbhars of the village had a customary right to take earth from the field of the Defendants for preparing earthen pots.

It was established that the Kumbhars of the village were preparing earthen pots by taking earth from the Defendants land for about 30 years.

Held: The Kumbhars of the village exercised their right for about 30 years which was sufficient to recognize the custom. The Plaintiff had a valid customary right.

AIR 1959 BOM 63
Tukaram Suple v/s. Sonba Mali
Gokhale, J

The Plaintiffs claimed that they had exercised their right to pass through the Defendants' fields for more than 20 years. The Defendant denied the easementary right.

Held: Mere uninterrupted user of the way for more than 20 years is not sufficient to draw a presumption that the user was as of right. Before drawing such presumption, the Court has to take into consideration the circumstances of each case, such as nature and character of the servient land, the relation between the parties and circumstances and the manner of the user. It is only then that the presumption of uninterrupted user could be drawn.

AIR 1959 BOM 221

Dadu Ragu Patil v/s. Tukaram Ranaba

Shah & Gokhale, JJ

A suit for possession filed by several Plaintiffs was decreed. One of the Plaintiffs died before the appeal was decided. The Appeal came to be decided without bringing his legal heirs on record. The question was whether the decree became a nullity and whether objection to that effect can be raised in Execution or in an independent proceeding. Another question raised was whether the Appellate Court had inherent powers to bring legal heirs on record without any application being made to that effect.

Held: Where in a suit by several Plaintiffs a decree is passed and before appeal is decided one of them dies, the abatement is qua the share of that Plaintiff and not in its entirety. In view of S.47 of the CPC, 1908 the executing Court is entitled to try all questions relating of execution, discharge or satisfaction of decree. The objection that the decree is a nullity is relating to execution of the decree. It must be raised in execution proceedings and it cannot be permitted to be raised in an independent suit. Once the appeal has abated, the appellate Court cannot permit the heirs and legal representatives of the deceased Plaintiff to be brought on record in exercise of its inherent powers under S. 151 r/w O.41 R.20 of the CPC, 1908.

AIR 1959 BOM 371

Shankar Madhavrao v/s. M.K. Sarode

Mudholkar & Kotval, JJ

The interesting question raised in this Petition was whether the activity of cinema films falls within the definition of factory under the Indian Factories Act, 1881. The order of reinstatement and payment of Rs.1000/- as compensation was challenged.

Held: The word factory, unless specially defined by statute, is always used in connection with the place where some kind of manufacturing process is carried out. That is the general meaning of the word 'factory' and where the statute does not give any definition of the word factory it is this general meaning which must be accepted. In the light of this general meaning it cannot be said by any stretch of imagination or by stretch of language that exhibiting films can be included in any of the various activities classified under the expression 'manufacturing process'.

AIR 1959 BOM 401

Kurban Hussen v/s. Ratikant Nilkant

Gajendragadkar & Chainani, JJ

The Petitioner was a tenant in the suit premises. A notice of eviction was given to him on the ground of arrears of rent and bonafide requirement. The Petitioner contended that he was ready and willing to pay the standard rent. The Petitioner was in arrears of rent for two years and he had not paid the same within one month of receipt of notice.The Court had to consider whether it had any discretion to refuse to pass decree of ejectment. Hence whether the word 'may' used in S.12(3)(a) of Bombay Rent Act, 1947 means “shall” or whether it is used in its usual enabling sense giving discretion to the Court either to pass a decree for eviction or not.

Held: Usually the word 'may' is an enabling word giving discretion to the Court, but in some context it may mean 'shall' depending upon the scheme of the statute wherein the section using the word ‘may’ occurs and such other relevant considerations. In this case taking into consideration the Scheme of S.12 of the Act it was held that the word may introduces an element of obligation or compulsion and in effect means 'must' or 'shall'.

## 1960

AIR 1960 BOM 20

Surendra Shankar v/s. Laxman Shankar

Mudholkar, J

The interesting point raised was about the authority of the Advocate to compromise on behalf of the client, whether it is implicit or has to be conferred expressly.

Held: The authority of an Advocate to compromise is implicit in the appointment of the Advocate unless it is expressly countermanded by the client. However, this authority is limited to the action in which he has been engaged and does not extent to matters which are extraneous or merely collateral.

AIR 1960 BOM 289

State v/s. Gaya

Kotval, J

In the raid conducted on a brothel one bogus customer was sent with marked currency notes. He had sexual intercourse with one of the girls in the brothel on payment. After he came out of the brothel in the raid some girls, including the girl with whom he had intercourse, were arrested and produced before the Magistrate. The reference was made by the Sessions Judge to the High Court as to whether the charge should be

framed against them for the offence under S. 3 of the Suppression of Immoral Traffic in Women and Girls Act, 1956.

Held: S.3(1) of the Act penalizes the keeper or manager of the brothel. It is intended to hit at the persons who establish and maintain houses of prostitution or act or assist in keeping or maintaining them. The Act which was passed in view of the International Convention signed at the New York for suppression of immoral traffic in women and girls never intended that the women or girls used for such traffic should be liable for such punishment. In this case it was held that the girls, including the girl with whom the bogus customer had sexual intercourse were actually the victims. Hence, they can never be prosecuted. It was further held that the investigation in the present case was reprehensible as under the very auspices of the Officers charged with the duty of suppressing immoral traffic, the customer had sexual intercourse with the girl. Such investigation will not achieve the object for which the Act was enacted. The State Government was accordingly directed to take notice and act upon it.

(Consider the cases of trafficking in women that continue to this day as gross violations of Human Rights)

[See AIR 1963 BOM 17- a person soliciting prostitution was convicted]

AIR 1960 BOM 461
Loku Basappa v/s. State
Shah & Patel, JJ

In a murder trial. The issue raised before the Court was about the admissibility of notes of postmortem examination in a murder trial. The Court had to consider whether they can be exhibited directly or only after the evidence of Medical Officer who had conducted postmortem is recorded.

Held: The notes of postmortem examination are but a contemporaneous record made by the Medical Officer who performed it for forming his opinion as to the cause of death. Hence they are not intended to be mechanically admitted on the record of the case. They can be admitted only when the Medical Officer deposes about their truthfulness.

AIR 1960 BOM 290
Allijan Munshi v/s.State
Shah & Naik, JJ

A complaint in writing was made to the Police by a person expressing apprehension of death at the hands of a certain person. He died 2 months thereafter. The said person was subsequently charged with the offence of murder of the person making the complaint. In view of the gap of two months between the complaint and the death, it was argued that there was no proximate link between the two and hence the complaint cannot be admissible as dying declaration under S. 32 of Evidence Act, 1872.

Held: The complaint was admissible as relating to "the circumstances of the transaction which resulted in his death" within S. 32(1). It was held that it cannot be said in such cases that there was no proximate connection between the death of the complainant and the complaint, from the fact that complaint was made merely two months before the death. It was further held that in any event the fact that he has made such complaint is admissible as explanatory of the conduct of the complainant under S. 8 of the Evidence Act, 1872.

## 1961

AIR 1961 BOM 1

Gendalal Cotton Mills Ltd. v/s. Basant Kumaribai

Mudholkar, J

The official liquidator of a limited liability company was not permitted to institute a suit in forma pauperis for obtaining possession of the property belonging to the company.

Held: The word 'person' in the Explanation to O.33 R.1 of the CPC, 1908 includes natural as well as juristic persons. A Corporation being a person in the eye of the law is entitled to the benefit of the provisions of O.33, R.1 of the CPC, 1908 and to institute a suit in forma pauperis. Hence the Official Liquidators of a limited liability company have a right to institute a suit in forma pauperis for obtaining possession of the property belonging to the Company.

AIR 1961 BOM 154

Anjanabai Yeshwant v/s. Yeshwantrao Daulatrao

Chainani, CJ, Tambe & Patwardhan, JJ

The question referred to the Full Bench was: "Can the delay on the part of the applicant in making an application under S. 417(3) of the Cr.PC, 1898 for the grant of special

leave to appeal from the order of acquittal be condoned under the provisions of S. 5 of the Limitation Act, 1908 on proper case having been made out?

Held: The expression 'Special Law' in S. 29(2), Limitation Act, means a provision of law which is not applicable generally, but which applies to a particular or specified subject or class of subjects. The provision in S. 417(4) of the Cr.PC, 1898 does not prescribe limitation for all appeals thereunder or even for all appeals from the orders of acquittal. It is a special provision, which applies only to application made by private parties for leave to appeal from orders of acquittal and is, therefore, a special law within the meaning of S. 29(2), of the Limitation Act. Further, it is a special law which prescribes a period of limitation different from the period prescribed by the first schedule to the Limitation Act. S. 5 of the Limitation Act, therefore, does not apply to the application under S. 417(3) CPC and the delay on the part of the applicant in making the application under S. 417(3) cannot be condoned under S. 5 Limitation Act.

AIR 1961 BOM 29

Baburao Tatyaji v/.s Madho Shrihari

Kotval & Badkas, JJ

This was an Appeal in respect of Election from Nagpur Umrer Parliamentary Constituency. At election the contest was between three persons. There was also a fourth person who had filed nomination but withdrew his candidature within the time allowed. The Respondent won the election. Thereupon the Petitioner presented a Petition under S.81 of The Representation of People Act, 1951 praying that the election of the Respondent be declared void on account of the use of corrupt practices by two other persons. The election petition was dismissed for non-joinder of these two persons.

Held: The plain reading of S. 82(b) of Representation of People Act is that so long as allegations of corrupt practices are made in the election petition, against a candidate he must be made party to the election petition, whether he committed the corrupt practices in his own interest or in interest of some other candidate. Further it was held that a candidate who had withdrawn his candidature does not cease to be a candidate, therefore, so far as S. 82(b) is concerned he should also be made a party to the election petition if allegations of corrupt practices are made against him. Hence it was held that both these persons Avade and Belekar were necessary parties and hence for their non-joinder the petition was rightly dismissed.

AIR 1961 BOM 75

Sirur Municipality v/s. The Workmen Sirur Municipality

S.T. Desai & V.S. Desai, JJ

The issue raised for consideration in this Writ Petition was whether the Municipal Corporation is an Industry within the meaning of Industrial Disputes Act, 1947. The issue had arisen in respect of the Award passed by the Industrial Tribunal concerning some employees working in Municipal Corporation relating to the Pay Scale, Allowances, Leave, etc.

Held: If a service rendered by an individual or a private person would be an Industry, it would equally be an industry in the hands of a Municipal Corporation. Hence the Municipal fitter, the assistant fitter and the oilman are engaged in activities which are industrial. A Municipal Secretary who belongs to the administrative department and whose duties are clerical as well as supervisory would be workmen.

# 1962

AIR 1962 BOM 33

Janardhan Chaitu v/s. Guna Balkrishna

Abhyankar, J

A complaint under S.494 of the IPC was filed by the father on behalf of his minor daughter against her husband for marrying again during the pendency of his marriage with the minor. While filing the complaint, he prayed for leave to file the complaint on behalf of his minor daughter from the Court as required under S.198 of the Cr.PC. The trial Court, without making any order to that effect, proceeded with the trial and ultimately, convicted the accused husband.

Held: The trial Court acted without following the law. The grant of permission under S.198 of the Cr.PC cannot be implied or presumed. The record must show somewhere that the leave was applied for and was granted. Hence, the proceedings were quashed.

AIR 1962 BOM 165

State v/s. Ganpat s/o. Babaji

Kotval, J

After examining the six witnesses in a case, the Magistrate took the view that the offences disclosed were of a serious nature and, therefore, should be tried by the Court of Sessions. Hence, he passed the committal order and committed the case to the Court of Sessions.

Held: Even the High Court cannot quash the committal order unless there is an error of law. It cannot do so on a mere reappraisal of the evidence. The case was directed to be tried by the Court of Sessions.

AIR 1962 BOM 268

Ranjit D. Udeshi v/s. The State

Patel & Y.V. Chandrachud, JJ

The petitioner and three others were the joint owners of a book stall. In their book stall, they were found in possession of the very controversial book, D. H. Lawrence's novel “Lady Chatterley's Lover”. They were charged and convicted for the offence punishable under S. 292 of the IPC for selling obsene book. The question was whether the said book was obscene or not.

Held: To label any book obscene, it should be considered as a whole. The public morality and its effect should also be considered. It should be considered as to whether it can corrupt or deprave the mind of the young generation. The standards of morality differ from age to age and region to region. The Court has to take into consideration all the factors before arriving at the conclusion as to whether the book is obscene or not. The book as a whole is not required to be obsene. Even a single passage in the book may render it obscene. The Book, read as a whole, is obscene. The conviction order was perfectly valid.

AIR 1962 BOM 4

Sabastian Antonio v/s. Rodolf Minguel

Shah, J

In a suit for the partition the value of the suit property was shown to exceed Rs.10,000/-.

Held: In a suit for partition it is the value of the share, which the Plaintiff is claiming in the property of which partition is sought, which determines the pecuniary jurisdiction of the Court and not the value of the entire property. The value of the share of the Plaintiffs in this property was not exceeding Rs.10,000/-. Hence this Court had no pecuniary jurisdiction to try the case.

AIR 1962 BOM 35

Audumbar v/s. Sonubai

Naik, J

The husband sued for divorce. The suit was withdrawn on the basis of compromise between them subject to payment of maintenance to the wife till her remarriage or till her death. The husband did not pay the amount. The wife filed execution proceedings. The husband filed a suit for injunction for stay of execution proceedings as the wife was not chaste.

Held: The case fell within the mischief of S. 8(3) of the Bombay Hindu Divorce Act, 1947 which disentitles the wife to maintenance if she has not remained chaste. Hence once it was proved that the wife had been leading an immoral life, she forfeits her right of maintenance which was awarded to her under the compromise.

(1962) 2 BCR 352

Bhikamsingh v/s. Maharashtra State Road Transport

Jamdar & Mohta, JJ

The petitioner was appointed as the deputy engineer by the Respondent. His appointment was on probation. After one year his service was terminated without giving notice for extension of probationary period or of confirmation of his service.

Held: Confirmation in service depends on the satisfactory performance of the duty by the employee and employer finding him fit. There was no improvement in the performance of the Petitioner though he was given notice about his unsatisfactory performance. Hence there was no question of his confirmation in service. Hence as he was very much a probationer on the date of termination.

## 1963

AIR 1963 BOM 98

Devyani Kantilal v/s. Kantilal Gamanlal

Patel, J

The wife filed a petition for divorce on the ground of adultery. She submitted that her husband and the co-Respondent were living an adulterous life. The question involved was about the nature and onus of proof of adultery.

Held: The onus of proof in such cases is not as strict as the onus in criminal cases. As in the cases of adultery, it is very difficult to find out the direct evidence or proof, it was held sufficient to prove that the husband had an opportunity to have the intercourse with the co-Respondent.

(See AIR 1923 BOM 321 for the extent of proof of adultery required.)

AIR 1963 BOM 17

Smt. Begum d/o Hudsain Saheb v/s. The State

Patel & Palekar, JJ

The Sub-Divisional Magistrate, Sholapur directed the petitioners, who were alleged to be the prostitutes, to remove themselves from the town Barshi, under S. 20 of The Suppression of Immoral Traffic in Women and Girls Act, 1956. The petitioners challenged the validity of the said section as it being unconstitutional and ultra vires Article 19 of the Constitution.

Held: The portion of the S. 20, which enables the Magistrate to direct the prostitute to remove herself from the place where she is living is unconstitutional as it is violative to the right guaranteed under Article 19 of the Indian Constitution. So far as the other portion is concerned, it was held to be valid.

AIR 1963 BOM 21

Ramaswamy Iyer v/s. The Union of India

Tambe & Y. V. Chandrachud, JJ

The accused being an army officer was convicted by the Court Martial under S. 409 of the Indian Penal Code and was sentenced to suffer three years rigorous imprisonment and to pay a fine of Rs.40,000/-. The Military Authorities sent a copy of the sentence to the Judicial Magistrate, First Class, Nasik, for the purpose of recovering the amount of fine. The question was whether the Magistrate can recover the fine.

Held: In view of S. 174 of the Army Act, 1950 when a copy of the order of Court Martial awarding sentence of fine is sent to any Magistrate in India for levying the fine, the Magistrate gets the power to recover the same as if the said fine was imposed by him.

AIR 1963 BOM 165

Uttamrao Rajaram v/s. Sitaram Rajaram

Patel & Wagle, JJ

Plaintiff no.1 was the posthumous son of Rajaram, through his wife, having been born within 306 days after Rajaram's death. The Defendants challenged the legitimacy of Plaintiff no.1.

Held: The mere fact that 306 days had elapsed after the death of Rajaram would not be sufficient to hold that the Plaintiff No. 1 was an illegitimate son in absence of any medical or other evidence to that effect. The question of legitimacy is of grave importance as it is a matter of social status and affects the whole future of a person. The onus in such a case is heavy as it is founded upon the interest of the child as also the interest of the State.

AIR 1963 BOM 176

Hariram Dhalumal v/s. Jasoti w/o Hariram

Abhyankar, J

The Petitioner and the Respondent were the husband and wife. Their marriage was performed in Karachi prior to the partition of India as per Hindu rites. They were living separately on the ground of adulterous behaviour on the part of wife since 6 months prior to the partition. During the period of partition, both migrated to India independently, without knowing the whereabouts of each other. The husband started living in Delhi and the wife started living in Nagpur. After some time, they came to know about each other being alive and being in India. The husband filed the suit for divorce in Nagpur. The Court's territorial jurisdiction was disputed.

Held: This is an extra-ordinary circumstance. S. 19 of the Hindu Marriage Act, 1955 confers jurisdiction on the Court where the marriage was solemnized or place of residence of husband and wife. In present case, no such place was available within the territory of India. Therefore, the provisions of S. 20 of the CPC, 1908 need to be invoked which is sufficient to create jurisdiction in the ordinary Civil Court at a place where either the Defendant resides or the cause of action has been said to have arisen. It cannot be the intention of the law that in such a case party should be without remedy.

AIR 1963 BOM 94

Manalal Rikhbaji v/s. Mohanlal Rathi

K.K. Desai, J

The Plaintiff sued to enforce an English mortgage, executed in Bombay. The immovable property mortgaged to the Plaintiff was also outside Bombay. They carried on business in Bombay. The Defendants carried on business in Nasik. There was a running

account of transaction between the two. The Plaintiff sued without applying for leave under Clause 12 of the Letters Patent.

Held: This was a suit for land. The suit property was outside Bombay. Part of the cause of action arose outside Bombay. The material part of the cause of action arose in Bombay. The Plaintiff could have sued in Bombay but only upon leave being granted. That having not been done, the Court had no jurisdiction.

## 1964

AIR 1964 BOM 253
State v/s. Sheshappa Dudhappa
Patel & Gokhale, JJ

The accused was arrested for the offence punishable under S. 85 of Bombay Prohibition Act, 1949 and brought for medical test. The accused did not allow the Medical Officer to take blood samples and resisted other officers too from exercising their duties. The Trial Court sent the reference to High Court that S. 129 A of Bombay Prohibition Act is ultra virus Article 21 of Constitution as compelling the accused for giving blood samples for medical test.

Held: The collection of blood samples of accused is under the protective eye of law and done in the interest of society. It is intended to help the scientific determination of intoxication and the result of the the test may as well prove the innocence as much as the guilt of person. Hence S. 129 A of Bombay Prohibition Act is not ultra virus.

AIR 1964 BOM 155
State v/s. Premchand Kuberchand
Y. V. Chandrachud & Palekar, JJ

While conducting a secret raid with regard to the offences of immoral traffic, a police officer asked the accused what he could do for him. The accused replied saying that he could supply a girl for Rs.40/- a night. The Magistrate acquitted the accused observing that accused is not a prostitute himself and therefore cannot be convicted for the offence punishable under S. 8 (b) of the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Court had to consider whether a male individual, not being prostitute, can be convicted for S. 8(b) of the Act for soliciting any person for prostitution.

Held: A person other than prostitute can urge or solicit others for the purposes of prostitution and indeed such soliciting is indulged in often more by middlemen than by the prostitute herself. Hence accused deserved to be convicted.

(Contrast with AIR 1960 BOM 289 – a prostitute is a victim and cannot be convicted).

[After the amendment to the ITPA in 1986 substituting the word 'person' for the words 'woman or girl' the position is clear].

AIR 1964 BOM 83

Shantaram Dinkar v/s. Malti Shantaram

Shah, J

The wife was granted maintenance upon the dismissal of the husband's petition for restitution of conjugal rights.

Held: S. 25(1) of the Hindu Marriage Act, 1955 which provides for alimony or maintenance only at the time of "passing of any decree", refers only to the passing of any decree provided for in Ss.s 9 to 13 of the Act. Although technically speaking dismissal of suit or petition may be called a decree, but such decree is not contemplated by S. 25(1) of the Act. Hence the Court will not have jurisdiction to make an order for payment of alimony or maintenance in the event of a petition for any of the decrees mentioned in Ss.s 9 to 13 of the Act being dismissed.

AIR 1964 BOM 124

Banoo Jal v/s. Jal Daruwalla

Desai, J

The Plaintiff, the wife of the Defendant, claimed exclusive rights to the use of matrimonial flat together with furniture goods and other articles. She claimed division of the said flat and articles lying therein and in the Bank locker by way of permennt alimony.

Held: On a plain reading of S. 42 of the Parsee Marriage and Divorce Act, 1936 and the whole of the Scheme of the Act, it is clear that matrimonial Court constituted under the Act cannot deal with questions of title to properties and questions arising between a husband and wife as co-owners of property, except only in respect of joint properties

presented at or about the time of marriage. In respect of other questions of title to property alleged to be owned as co-owners between husband and wife only the civil Court has jurisdiction. While deciding the question of matrimonial home between a Parsi husband and wife, wherever it is practicable, it would be the duty of the Court to see that the wife is not thrown out of the home. It is within the unlimited discretion of the Court to award maintenance or alimony to a wife.

AIR 1964 BOM 155
State v/s. Premchand Kubchand
Chandrachud & Palekar, JJ

The question raised in this appeal was whether S.8(b) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 applies only to the prostitute herself or whether it also applies to those who solicit a person for the purpose of prostitution. The Respondent herewith was accosted by the Police offering that he could supply a girl for Rs.40/-.

Held: It may be that clause (a) of S.8 is capable of application only to a prostitute, particularly in view of the words “wilful exposure of her person” and also because of the context in which the language used in clause (b) contains no words which could justify the operation of that clause being restricted to the prostitute. The word 'solicit' as used in clause (b) means to urge or importune or to accost a man for immoral, purposes. Hence clause (b) which provides for a penalty for one who solicits a person for prostitution, must be held to cover every case in which a person urges or accosts another for the purposes of prostitution and whether the urging or accosting is by the prostitute herself or by any other person can make no difference to the criminality of the act. To hold that clause (b) of S.8 applies to the prostitute herself and to no one else is to add restrictive words to that clause, which are not there and is to take a view which is not warranted by the plain language used in the clause.

AIR 1964 BOM 200
Sakharam v/s. Nagpur Corporation
Abhyankar & Paranjape, JJ

A lawyer's residence-cum-office, was treated to be commercial establishment by the Corporation.

Held: An Advocate's “profession” is not a commercial activity for registration under the Bombay Shops and Establishment Act, 1948.

# 1965

AIR 1965 BOM 74
Amdas Chimna v/s. Pralhad Deorao
Kantawala, J

The oral relinquishment of the suit property made by the mother in favour of her sons was challenged on the ground that it was not written or registered.

Held: Such a relinquishment of interest in the joint family property, even though it consists of immovable properties of the value of Rs.100/- or more, can be effected without a written instrument. However, if written instrument is executed, it would require registration under S. 17 of the Registration Act, 1908. The oral relinquishment by the mother in favour of her sons is valid.

AIR 1965 BOM 187
Dr. N.A. Tendulkar v/s. Mathias
Tambe & Naik, JJ

The order passed by the State Government removing the President of a District Municipality from his office on ground of negligence and incapacity of performing his duty was challenged. The Court had to consider whether the right of a Member or Councillor to attend the meetings of the Municipality is a fundamental right.

Held: No. The Fundamental Rights of all citizens are only what are enshrined in Part III of the Constitution.

AIR 1965 BOM 154
State v/s. Hiraman Punja
Patel & Bal, JJ

The accused was charged with having committed rape on a minor girl. The victim girl was only 4 years of age and too young to give evidence and was found not able to understand the value of oath nor could she give rational answers.

Held: Even in the absence of the testimony of the child, the evidence of her mother that Child had immediately disclosed to her about the incident was relevant under the second part of S. 8 of the Evidence Act, 1872. This evidence, coupled with the circumstance that child's medical examination showed that she had been raped and the blood stains on the clothing of the accused was found was sufficient for conviction of the accused. The mere absence of semen on the clothing of vaginal swab of the Child not fatal to the prosecution case.

AIR 1965 BOM 30

Mulkraj Bodhraj v/s. Nagpur Municipal Corporation.

Abhyankar, J

The accused was convicted for not paying Octroi duty. The accused challenged the conviction on ground that the contents of the offence were not read over to him. Hence, he was liable to be acquitted.

Held: It is essential in the cases of trials held by summons procedure that accused must know what is the charge that he has to meet. The Magistrate must bear in mind this requirement of law in summons cases as non compliance thereof is likely to result in serious prejudice to one side or other. In this case as it was found that there was no record that any such particulars of the charge were read over and explained to the accused, there was no due compliance of the provisions of S. 242 of the Cr.P.C. Hence the accused was entitled to acquittal.

AIR 1965 BOM 17

State v/s. Shankar Gyanoba

Naik & Tulzapurkar, JJ

The accused was acquitted for the offence under Food Adulteration Act, 1954 for selling adulterated coconut oil as his intention to sell an adultered substance was not shown. Coconut oil is a specie of edible oil which could be used for preparation of food for human consumption.

Held: The question as to intention of the seller is entirely irrelevant for the purpose of conviction under S. 7 of Food Adulteration Act. It is sufficient that object or the article sold happens to be an article of food and it is found to be adulterated.

AIR 1965 BOM 3

Yousufali Esmail v/s. State

Gokhale, J

The accused was being tried for the offence punishable under S. 165-A of the IPC. The prosecution sought to rely upon certain conversation alleged to have taken place between the accused and complainant which was recorded on a tape by a tape recorder. The Court had to consider whether such communication recorded by police with help of complainant can be treated as statement under S. 162 of the Cr.PC.

Held: The conversation did not attract the applicability of S. 162 as it was not addressed to the Police Officer and there was no animus on the part of the maker of the statement that he is making it to the Police Officer.

AIR 1965 BOM 9
Atmaram Mahadeo v/s. State of Maharashtra.
Tarkunde & Palekar, JJ

The question whether a prosecution launched on police report for an offence alleged to have been committed by the Police under the colour of their duties is barred under S. 161 of Bombay Police Act, 1957 if the Prosecution were instituted more than 6 months after the date of the offence.

Held: Since all prosecutions are really prosecutions on behalf of State, the prosecutions covered by S. 161 cannot be intended by the legislature to be only instituted on a private complaint and not the prosecutions initiated on police reports.

# 1966

AIR 1966 BOM 19
Damayanti G. Chandiramani v/s. S. Vaney
Tambe & Naik, JJ

A contempt proceeding initiated by the High Court on the report submitted by Mr. Vimadalal, Judge, City Civil Court, Bombay in respect of an incident which took place in his Court. The Defendant threatened to prosecute the Advocate of the Plaintiff in the presence of the Judge.

Held: Although an advocate is a part of the machinery of the administration of justice, he is not a public servant within a meaning of S. 228 of the IPC. The offence under S. 228 arises only in case of a public servant while he is sitting in a judicial proceeding. S. 3 of the Contempt of Courts Act, 1952 was not ultra vires the Constitution. The apology tendered by the contemnor must be an unconditional apology. It should be borne out of repentance or remorse. The contemnor cannot enter into any kind of stipulation with the Court in that respect.

AIR 1966 BOM 48

Tejabai Shankarrao v/.s Shankarrao Baswanappa

Naik & Palekar, JJ

The Petitioner wife was married to the Respondent in about 1954 when she was a minor. The Respondent had a first wife living at that time. She was living separate from her husband on the ground that her husband has contracted marriage with another wife.

Held: When a husband is living with the first wife, it is just ground and sufficient reason on the part of the second wife to refuse to live with him even if he made an offer to the second wife inviting her to live with him in the same house with the first wife. The second wife is many a time minor when she is married. It may also happen in some cases that, a man may marry a second wife keeping her in ignorance of his first marriage. In such cases refusal of maintenance to second wife would be clearly unjustified.

(This position is now statutorily recognized in the Protection of Women against Domestic Violence Act, 2005.)

AIR 1966 BOM 54

Choithram Verhomal v/s. A.G. Kazi

Tarkunde, J.

The Petitioner carried on business of export and import. He was issued a passport and had made trips to Dubai and the Persian Gulf. His last application for the grant of new passport was, however, rejected. The Court had to consider whether the Government has an absolute and unfettered discretion to grant or refuse a passport to a citizen of India.

Held: “Personal liberty” used in Article 21 of the Constitution includes within its ambit the right to go abroad and a person cannot be deprived of this right except by following due process of law. The protection given by Article 14 extends to all discriminatory action, whether executive or legislative. To grant passport to some and not to other involves the exercise of arbitrary and unregulated discretion which is repugnant to Article 14. Hence there has to be some regulations justifying exercise of discretion in granting or refusing the passport.

AIR 1966 BOM 134

The Lasalgaon Marchants Co-op Bank Ltd. v/s. M/s Prabhudas Hathibai

Naik, J

Government officers attached and seized goods which were damaged due to heavy rains while in custody of an official. The liability of the Government in tort in seeing whether the officers were negligent in dealing with the goods while the goods were in their possession was considered.

Held: Heavy rains do not amount to an act of God. It was the duty of Government Officers to take such care as every prudent manager takes of his own goods. The Government stood in the position of a bailee and it was for the Officers to prove that they had taken as much care as possible for them and that the damage was due to reasons beyond their control and since they failed in that duty, the Government was held liable in damages.

AIR 1966 BOM 179

State of Maharashtra v/s. Gaurishankar

Wagale & Deshmukh, JJ

This was an application under S. 439 of the Cr.P.C. by State praying that the sentence of imprisonment for life be altered to a sentence of death. The accused was charged with having killed his wife by stabbing her in the abdomen. The effect of the blows was such that her intestines came out and she fell down and died. It was the contention of the accused that the act was done when accused was in an agitated mind and also that if death penalty was awarded, the question of survival of his four children would arise.

Held: 1] It is undoubtedly true that, man does not commit murder of his wife unless his mind is agitated. But the agitation of the mind does not necessarily lead to an inference that it had affected his mental capacity as to lead to an inference that the mind was unhinged or had become unsound.
2] Where the accused caused the death of his wife in a cruel, barbarous and extremely

revolting manner in broad day light, the accused had come with the knife in his hand having a blade 8 inches long, he ran after his wife immediately upon seeing her, caught hold of her hair and then went on delivering blows one after another till she died on the spot, there were no extenuating circumstances to justify the sentence of life imprisonment.
3] The fact that, the children of the accused would be orphans if death penalty was imposed could not be a consideration for extending any sympathy to the accused.

The Court altered the sentence of Life imprisonment into death penalty.

AIR 1966 BOM 187

Rambhau Jairam v/s. The President, Vinkar Co-op Soc. Ltd.

Chainani CJ, Tambe & Abhyankar, JJ

The Court had to consider whether S.91 of the Maharashtra Co-operative Societies Act, 1960 operates as a bar to a dispute between a co-operative society and its employees in regard to a demand for change in the terms of employment or for reinstatement of the employee whose service had been terminated under the Industrial Disputes Act, 1947.

Held: The Registrar of Co-operative Societies cannot grant any relief outside the contract of employment. He cannot, therefore, try any matter in which a demand is made for a change in the conditions of service or for reinstatement of employees whose service had been terminated. The Co-operative Societies Act and the Industrial Disputes Act provide for settlement of different classes of disputes. Hence S. 91 of the Co-operative Societies Act does not bar a reference of such dispute to the Industrial Court or Tribunal.

AIR 1966 BOM 240

Maharashtra Sugar Mills Ltd Vs Ashru Jaiwant

Patel & Bal, JJ

A worker in a mill met with an accident. He filed a claim for compensation under the Workmen's Compensation Act, 1923. The injury, even after recovery, made him practically unfit to do the work which he was accustomed to do. The Court had to consider whether the Commissioner was in error when he included bonus in the wages while calculating the amount of compensation to be paid to the workman.

Held: Bonus can be included in the wages it being the right of the workman, independent of the willingness or otherwise of the employer. Moreover, it being the benefit for the workman, it had to be included in his wages for the purpose of calculation of compensation payable to the workman who has suffered permanent disablement

either total or partial.

(1966) 61 ITR 518
Tribhuvandas Vallabhdas v/s. CIT
Tambe & Desai, JJ

The assessee purchased silver bars at the beginning of the war and sold it after the end of the war.

Held: The purchase was made not for making an investment but with an intention to re-sell at a profit in the expectation of rise in prices of silver. The purchase was a business venture. The transaction was in the nature of trade. Hence, the profit was a revenue receipt.

[1966] 61 ITR 518 (Bom)
Tribhuvandas Vallabhdas v. CIT
Tambe & Desai, JJ

An assessee purchased silver and was assessed to tax thereon.

Held: Purchase made with intention to resell at a profit is a business venture. Where the assessee purchased silver bars at the beginning of the war not with the intention of making investment but in expectation of rise in the price of silver and sold when the war had come to an end, it was held that the profit from the resale of gold and silver was a revenue receipt as the transaction was an adventure in the nature of trade and not one of investment.

# 1967

AIR 1967 BOM 11
Anant Janardhan v/s. State
Naik & Palekar, JJ

This was an application under S. 491 of the Cr.PC and under Art. 226 of the Constitution challenging a detention order. The Petitioner was a columnist and had

written various articles including “Gandhism and Nationalism” and "Nathuram's Conspiracy whether Maharashtrian or Inter-state".

Held: The the detention order was liable to be quashed as if the criticism in the article was fair and objective, merely because the criticism had been made of one whose memory was held dearly by millions of people, would not be a ground for concluding that the writer wanted to tarnish the name of such person.

Public safety or maintenance of public order cannot be a consideration for detention of any person.

AIR 1967 BOM 43

Jam Manufacturing Co. Ltd v/s. Sadashiv Sitaram

Patel & Bal, JJ

This was a revision application arising out of an ejectment proceeding under the Bombay Rent Act, 1947 against the tenant. A tenant died during eviction proceeding. Therefore her legal heir was brought on record. According to the legal heir his landlord could not evict him as he had acquired an independent tenancy under the Act.

Held: The Legislature has adopted the principle of transmissibility by death intestate of the tenant to such members of his family as were living with him This creates a partial right by succession. It puts the successor in place of the tenant. If it is correct, then the conclusion is that the successor steps into the shoes of the tenant from the stage where he left off. Therefore, by reading the provisions of S. 5(11)(c) of the Bombay Rent Act it could not be inferred that any such independent right is conferred upon the 'new' tenant to claim independent tenancy.

AIR 1967 BOM 80

Trimbak Narayan v/s. Smt. Kumudini Trimbak

Naik, J

The wife filed a petition for Judicial Separation on the ground of cruelty under S. 10(1)(b) of the Hindu Marriage Act, 1955 as her husband suffered from schizophrenia.

Held: Though the husband was suffering from schizophrenia, the evidence in this case does not justify the conclusion that the husband was not aware of what he was doing. The conduct of husband in this case was such as to amount to cruelty, even in the

absence of intention to be cruel. Insanity of the husband, therefore, should not bar the relief claimed by the wife.

AIR 1967 BOM 96

Gajanan Vishwanath v/s. The State

Naik & Palekar, JJ

A detention order was challenged under S.491 of the Cr.PC and Article 226 of the Constitution. The Petitioner was invited for attending a mahapooja for the cause of release of Godse and Karkare from Jail. The Petitioner and his friends made speeches justifying the assassination of Mahatma Gandhi and praising Nathuram Godse for the same. According to District Magistrate, that function was not a family function, but was a public function.

Held: Justifying the order of the Magistrate on the ground of public safety and public order, it was observed that even single instance may afford basis for drawing inference about future course of action likely to be pursued by the detenue. It was further observed that as a general rule, in order to afford a proper basis for drawing a correct inference about the possible course of conduct for a detenue, it is necessary to take into account the detenue's past conduct to draw an inference that he would repeat similar acts in future.

AIR 1967 BOM 109

Anant Baburao v/s. The State

Naik & Palekar, JJ

There were total 84 applications filed under S. 491 of the Cr.PC and under Article 226 of the Constitution challenging a detention order. It was the contention of the petitioners that the Government order of detention passed against them was invalid, as it was passed while they were in Jail under order of Government of Maharashtra.

Held: The Detention Order was justified giving guidelines that in respect of a person who is already in jail and who, in the expectation of the detaining authority, is likely to come out of jail within a short span of time is valid provided that detention order is passed with a view to forestall the indulging in of prejudicial activities by that person as soon as he regained his freedom, but such an order can be served on him only when he is a free man, free to indulge in prejudicial activities.

AIR 1967 BOM 235
A.G. Kazi v/s. C.V. Jethwani
Tambe, CJ & Bal, J

This was an appeal under the Letters Patent as to interpretation of Art. 21 of the Constitution to answer the issue (1) Whether the expression "Personal Liberty" occurring in said Article includes the "Right to Travel Abroad" and (2) Whether the refusal of a passport to the Petitioner has resulted in contravention of Art. 21 and 14 of the Constitution.

Held: Traveling abroad has an important place in the modern life of a human being. By traveling in different countries a better understanding of people is established, which in turn results in broadening the outlook of people. The right to travel abroad cannot be equated with the right to leave the country altogether forever. Therefore it was held that expression "Personal Liberty" occurring in Article 21 includes the "Right to travel abroad and to return to India" and therefore refusal to grant passport is in contravention of provisions of Articles 21 and 14 of the Constitution.

## 1968

AIR 1968 BOM 314
Jaiwanti Mafatlal v/s. Arvind Navindchandra
Thakker, J

The Petitioner claimed to be an illegitimate daughter of the deceased alleging that her mother was a concubine. She claimed maintenance and suitable provision for her marriage expenses from the estate of the deceased, which was in the hands of the Respondent. The issue involved was whether an illegitimate daughter of a person dying prior to coming in to operation of Hindu Adoption and Maintenance Act, 1956 would be entitled to claim maintenance.

Held: Under Ss. 20 and 22 of The Hindu Adoption And Maintenance Act an illegitimate daughter of person who died before the Act come into operation is not entitled to claim maintenance as both these sections are only prospective and not retrospective. It was further held that the statute should not as far as possible be interpreted so as to divest the estate already vested.

AIR 1968 BOM 57

Devi Ramchand v/s. S.V. Bastikar

Wagale, J

The Plaintiff had filed a suit for declaration that the Defendant was her licensee and the period of license has expired and she is entitled to possession of the suit premises. At the time of hearing neither the Defendant nor his counsel were present. Ex-parte decree was passed against the Defendant. Thereafter, the Defendant applied for setting aside the ex-parte decree on the ground that he was not aware of the date of hearing.

Held: If a party to a suit is unaware of date of hearing and the unawareness is not due to any of his fault and the defaulting party had taken all necessary precautions for being aware of date of hearing, it would be sufficient cause which would prevent the party from appearing in Court. Under such circumstances, the defaulting party is entitled to have the decree set aside. There is no difference at between “Sufficient cause” and “Good Cause”. If the cause is good then it would be sufficient.

AIR 1968 BOM 344

State v/s. Mahamed Hussain

Nain, J

This was an application for bail in respect of Non-bailable offences under the IPC, the Explosive Substances Act, 1908 and the Arms Act, 1959. The Court has dealt with the factors to be considered while appreciating the bail application for the non-bailable offences not punishable with death or imprisonment for life.

Held: In connection with granting bail to a person accused of non-bailable offences not punishable with death or imprisonment with life, the Court shall take into consideration the danger of the accused absconding, the evidence against accused, the nature and gravity of the offence and the severity of punishment. The Court should also take into consideration the character, means and standing of an accused person. The Court has to see that there is no punitive detention. An opportunity is to be given as far as possible to the accused person to prepare his defence.

AIR 1968 BOM 388

Ramchandra Shankar v/s. Shankar Genu

Nain, J

The Petitioner had filed a suit for partition. The Respondent resisted the suit on ground that petitioner was not his son. The Respondent made an application before trial Court praying that petitioner be directed to appear before civil surgeon for a blood grouping test. The trial Court directed both the parties to appear before civil surgeon for blood test.

Held: There is no law in India which authorizes the Court to submit or compel the parties for blood test. It was further held that Blood test has its limitation. It may exclude a certain individual as the possible father of child but it cannot possibly establish paternity.

(This scenario is now changed in view of the latest DNA technology).

AIR 1968 BOM 433
Pukhraj Pannalal v/s. K.K. Ganguly
Patel & Chitale, JJ

The revision applications were filed by the accused person contending that statement recorded under S.108 of the Customs Act, 1962 by the custom officer was not admissible in evidence it being hit by S. 25 of Indian Evidence Act, 1872. The issue before High Court was whether custom officer is the police officer for the purposes of S. 25 of Indian Evidence Act

Held: The custom officer cannot be equated with a police officer. Therefore the statement recorded by the custom officer is not hit by S. 25 of Indian Evidence Act and is admissible in evidence.

AIR 1968 BOM 112
Sir Mohammed Yusuf v/s. D
Desai & Naik, JJ

The Court had to consider the proof of the truth of the contents of a document to see its admissibility in evidence.

Held: The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like any other fact. The evidence relating thereto may be direct or circumstantial.

Signature on a document can be taken to have been proved under S. 47 of the Indian Evidence Act, 1872 by recognition but the proof of signature on the basis of opinion

evidence is not the proof of the contents of the document. The evidence of the contents of a document remain heresay evidence until the author is examined.

(See AIR 1945 BOM 319 and AIR 1983 BOM 1)

## 1969

AIR 1969 BOM 13

Union of India v/s. Sugrabai

Tarunde & Wagle, JJ

A Widow sued for damages on account of death of her deceased husband due to accident caused by the driver of a truck belonging to the military department. Union of India objected on the ground that the Union of India cannot be held liable for the tortuous act of the driver.

Held: The tortuous act of the driver being committed when he was discharging his duties as a Government servant, Union of India was held liable vicariously for the act of driver and directed to pay the damages to the widow.

AIR 1969 BOM 127

Kailas Sizing Works v/s. Municipality of Bhivandi and Nizampur

Chitale & Nain, JJ

The Defendant Municipality covered an open Nallah which was running parallel to the road without providing adequate passage to rain water. The Plaintiff sustained damage to machinery and goods kept in premises due to heavy rain water.

Held: Damage was caused due to construction of nallah being carried out without good faith and hence with wilful and wanton negligence. Accordingly, the Municipality was liable to pay compensation to the Plaintiff.

AIR 1969 BOM 310

Union of India v/s. Authority under Minimum Wages Act

Patel And Nain, JJ

This was a petition for Writs of Certiorari and Prohibition in respect of the Orders passed by Respondent No.1 under the Minimum Wages Act, 1948. Respondent No.1 had filed application of recovery of wages alleged to be due being the difference between minimum wages fixed by the Central Government under the Minimum Wages Act and the wages paid to him. The question before the Court was whether Minimum Wages Act was applicable to Respondent No.1, who was working on the construction and maintenance of the rail road. The interpretation of the words “construction or maintenance of roads” used in entry 7 Schedule 1 of Minimum Wages Act was before the Court.

Held: It is an ordinary rule of interpretation of statutes that the words of doubtful meaning have to be understood in the sense in which they best harmonize with subject and object of enactment. When words used in particular business or transactions are used, it has to be presumed that they are to be understood in the popular dictionary sense. In this case it was held that in the absence of any definition of 'road' in the Minimum Wages Act, the word ‘road’ is wide enough to include rail road, or railway track, because road is the genus of which Railway is a specie. It was further held that road does not cease to be such merely because it is exclusively used by a particular kind of vehicle so long as it is used as a line of communication between two places. Hence it was held that the employment on construction and maintenance of Railway would fall within Entry No.7 of Schedule I of the Minimum Wages Act, viz., 'construction or maintenance of roads'.

AIR 1969 BOM 337

Pramodrai Shamaldas v/s. Life Insurance Corporation of India

Patel & Wagle, JJ

The Petitioner was the employee of the LIC, a statutory corporate body. A chargesheet was served on him in respect of a misconduct. After an inquiry he was held guilty and dismissed from service. He challenged the dismissal order.

Held: LIC is a statutory corporate body created under the Life Insurance Corporation Act, 1956. On perusal of the provisions of the Act, it is clear that its activity is only business activity and it possesses no power which in any manner can be exercised to affect the activities of other citizens or any member of the public. It is purely autonomous business body as any other private company. It employs servants as any other private house does and enforces discipline amongst its employees as other private houses. Hence L.I.C. does not fall within the expression 'other authorities' in

Article 12. Hence it is not a “State”. Therefore, Article 311 is not attracted. Hence no Writ can be issued against LIC when it dismisses its employee. Its relation with its employee is governed by the ordinary law of master and servant. Hence the alternate appropriate remedy by way of suit was available to the Petitioner.

AIR 1969 BOM 351
Balu Shivling v/s. Divisional Magistrate, Pandharpur
Tarkunde & Palekar, JJ

Petitioner was resident of Pandharpur, where he was having a cycle shop, agricultural lands and also a family. On 15th June 1967 he was served with a notice to show cause why he should not be externed for a period of two years from the districts of Sholapur, Satara and Pune on the ground that because of his illegal acts an atmosphere of danger and alarm had been created in Pandharpur and surrounding areas. After conducting the inquiry an externment order was passed against him under S. 56(a) of Bombay Police Act, 1951.

Held: The Reference in S. 56 (a) to 'alarm, danger or harm' is a reference to the alarm, danger or harm to the public generally and not to one or two individuals in the public. This expression has to be read in the context of fundamental rights guaranteed under Article 19(1) (d) and (e) of the Constitution. Such an order, therefore, cannot be made on the ground that it was necessary for the preservation peace and maintenance of law and order in a particular locality. The area of externment also cannot be extended without reference to the purpose of the externment. It should be restricted only to the requirement created by the movements and acts of the person to be externed. As the authority failed to prove the grounds for extending the area outside Pandharpur and further failed to prove that the Petitioners acts might cause alarm or danger to general public, the externment order was quashed and set aside.

## 1970

AIR 1970 BOM 48
Abdul Jabbar v/s R.K. Karanjiya
Deshmukh & Nathwani, JJ

The Respondent was charged and convicted for the offence punishable under S. 294 of the IPC, 1860. The Sessions Court acquitted him. At that time there was a move made

in parliament for amending 292 of IPC and to have that offence tried by the Court higher than judicial Magistrate, first class. The Respondent wrote an article and criticized the trial Judge personally. The complaint was filed against the Respondent wherein the Respondent tendered apology before High Court.

Held: An apology which is unreserved, clear and immediately offered at the earliest opportunity is an apology which undoubtedly must be given greater weight than belated apology. If an unreserved, unconditional and unqualified apology is not tendered immediately on the realization of mistake committed, but if after some discussion in Court and after getting a possible feeling that the matter may lead to grave consequences, an apology comes to be offered, it loses much of its grace. Hence the Respondent was sentenced to simple imprisonment of 15 days and fine of Rs.2000/-.

AIR1970 BOM 67

Motilal Hirachand v/s. Sadabai Manikchand

Chitale & Nain, JJ

The Plaintiff filed a suit to recover possession of the suit premises on the basis of sale certificate issued to him. The Defendant resisted the suit on the ground that the decree in execution of which a sale was held is not binding on him as he was not party to the suit and was not brought on record as an heir in the execution proceeding.

Held: When the property of a judgment debtor is sold in execution proceedings during his lifetime, then even if the sale is confirmed subsequently after the death of judgment debtor without bringing the legal representative on record, the omission or failure to bring his legal representative on record does not affect the validity of the sale.

AIR 1970 BOM 79

Harbansingh Sardar v/s. The State

Vimadalal & Kamat, JJ

Two persons were convicted by the Sessions Court for offences under the Foreign Exchange Regulation Act, 1973 and Customs Act, 1962 for possession of gold.

Held: There is a distinction between 'arrest' and 'custody.' Arrest is a mode of formally taking a person in police custody. However, a person may be in the custody of police in other ways also. What amounts to arrest is laid down by legislature in express terms in S. 46 of the Cr.PC, 1898. The word “in custody” found in certain sections of the Evidence Act, 1872 only denote surveillance or restriction on the movement of the

person concerned, which may be complete, as in the case of an arrested person, or may be partial. The concept of being in custody cannot, therefore, be equated with the concept of formal arrest; there is a difference between the two.

AIR 1970 BOM 251
Govindram Mihamal v/s Chetumal Villardas
Deshmukh, J

The Plaintiff's father as a karta of a Joint Hindu family advanced a loan to the Defendant under a sarkat note. After the demise of father, the Plaintiff sued for recovery of the amount as a karta of the family. The Defendant resisted the suit on several grounds; one of them was that the Plaintiff's father had left behind among other heirs, two married daughters and without joining them as parties, the suit was not properly framed.

Held: The suit filed by the eldest son of the deceased without joining the daughters as parties was not maintainable. The two married sisters of the Plaintiff, who were married long prior to the institution of the suit, had vested shares in the interest of their deceased father in the joint Hindu family, of which the Plaintiff claimed to be a karta. That interest ceased to have the character of joint family and as such the Plaintiff could not represent that interest as a karta of the joint family. Since the interest of the two married daughters was not represented in the suit, the suit was held to be defective and liable to be dismissed.

AIR1970 BOM 312
Dr. Narayan Ganesh Dastane v/s. Sucheta Narayan
Vaidya, J.

The husband sued for nullity of marriage under S. 12(1)(c) of the Hindu Marriage Act, 1955 on the ground that his consent for the marriage was obtained by fraud as the fact that his wife was suffering from schizophrenia which was incurable was suppressed from him before he consented for the marriage. In the alternative, he contended that his wife also treated him with cruelty. Therefore, he is entitled for decree of divorce under S. 13(1)(iii) or Judicial separation under S. 10(1)(b) of Hindu Marriage Act, 1956.

Held: There are two tests which must be satisfied for cruelty to be established. One is that the acts of cruelty must be established beyond reasonable doubt and secondly they should be of sufficiently grave and weighty nature to warrant the reasonable apprehension of danger or injury to life. As the acts of cruelty complained of were the same as the acts of schizophrenia and as it was not established that schizophrenia was an incurable disease, the husband was held not entitled to any relief.

AIR 1970 BOM 324

M.R. Pillai v/s. M/s. Motilal Vrijbhushandas

Vaidya, J

The Government of India issued a notification prohibiting forward contracts for sale and purchase of silver. In the raid, 47 persons including petitioners were arrested for illegal forward trading in silver. The Magistrate discharged 38 out of 47 persons for insufficient evidence. The other accused filed application for discharge on the ground of discrimination.

Held: Prosecution of some accused and discharge of others on the basis of evidence collected by police cannot be said to be discrimination under Article 14 of the Constitution of India.

# 1971

AIR 1971 BOM 97

Ranbirsingh Shankarsingh v/s. Hindustan General Electric Corpn.

Bhole, J

The Plaintiff purchased a radio set of a particular make from a local distributor on hire purchase basis with a guarantee under which the distributor undertook to repair or exchange free of cost any component, except valves, which may became defective due to faulty workmanship or material within one year from the date of purchase. The history of the radio set showed that it was defective from the beginning and had to be repaired by a local distributor of the manufacturing company. Even thereafter the set was not in working order. Hence the Plaintiff declined to accept it and brought a suit claiming refund of its price.

Held: The case of the Plaintiff came within preview of S. 16(1) & (2) of Sales of Goods Act, 1923. Hence he was entitled to refund of price as there was a breach of implied warranty.

AIR 1971 BOM 164

Tukaram Sitaram v/s. State

Vimadalal, J

A beggar boy aged about 8 years was crossing the road from west to east. At that time motor lorry driven by the accused proceeding in a north to south direction, knocked down the boy just as he began to cross.

Held: High speed of motor vehicle does not by it self prove rashness or negligence of driver. Non-blowing of horn by driver of motor vehicle at particular road also does not prove negligence of driver of the motor vehicle when there was prohibition under traffic rules to cross the road.

AIR 1971 BOM 166

Shakila Banu v/s. Gulam Mustafa

Vaidya, J

The Petitioner sued for restitution conjugal rights. The husband alleged that he never ill treated the wife. She wanted him to live separately from his father. The husband refused and hence the wife went to reside with her parents. The wife contended that she wanted divorce from him and therefore filed application for maintenance. As per her case the husband was addicted to drinking and gambling and he always threatened her with injury to her person and ill treated her and sent her to reside in her father's house saying that she should never return.

Held: There is no rule of matrimonial law that even in a husband's suit for restitution of conjugal rights the wife's evidence requires corroboration. The Evidence Act, 1872 requires corroboration of a party in civil case. The rule of corroboration is generally the rule of prudence and practice to be applied reasonably having regard to all surrounding circumstances. If the wife is beaten in the house, it would not be possible for wife to produce witnesses to the beating having regard to the common course of events in such cases. It was further held that wife cannot be compelled to live with her husband if she has reasonable apprehension that it is impossible or dangerous to her life.

AIR 1971 BOM 200

Mrs. Kamlabai Chintaman v/s. Divisional Superintendent, Central Railway, Nagpur

Bhole, J.

Upon the death of a Railway engine driver while on duty, his wife filed an application for compensation under S. 3 of the Workmen’s Compensation Act, 1923.

Held: Death on duty cannot be said arising out of his employment if there is no casual connection between his death and the employment.

AIR 1971 BOM 413

Pandurang Narayan v/s. Sindhu

Chandrachud & Malvankar, JJ

A Hindu died leaving behind a widow and a daughter. The widow remarried and sold the property which was in her possession and which was inherited by her from her husband. The daughter objected on the ground that she had an interest in the property and, therefore, her mother had no right to sell the property.

Held: A Hindu widow who has inherited property from her deceased husband and who was in possession thereof became the absolute owner under S. 14 of the Hindu Succession Act, 1956. She does not, on her remarriage also, forfeit her right to sell the property.

(1971) 82 ITR 765

New India Fisheries v/s. Income Tax Officer

Tulzapurkar, J

The scope and ambit of the word "derived" was to be considered. The assessee obtained trawlers for the purposes of its business of deep-sea fishing. The trawlers were actually used for the fishing business. The assessee contended that the profits derived from the fishing business in which the trawlers were used was "derived" from the trawler. Such profits were entitled to deduction under the Income-tax Act as it then stood. But for its ships, substantial profits would not be made. Thus, assessee contended, profits were derived from the ships.

Held: If the profits and gains derived from the business activity like catching fish and selling the same are to be regarded as profits and gains derived from a ship simply because the ship is used for catching fish, then profits and gains derived from a business carried on by using a building where the business is housed will have to be regarded as profits and gains derived form the house property. The word "derived" must mean "directly originating from".

# 1972

(1972) Cri. L.J. 1564
Lokumal Kishinchand Manghnani v/s. Vivek Arya
N.D. Kamat, J.

A husband filed a criminal complaint against his in-laws under S. 342 of the IPC, 1860. The Magistrate passed an order under S. 100 of Code of Criminal Procedure directing the detention of a girl in a Rescue Home in order to have her free statement recorded. The wife denied her wrongful confinement and expressed her desire to go back to the parents.

Held: 'Such order as seems proper' does not include an order to detain a person unconnected with the offence to have her free statement in a criminal case. Such an order is not only illegal but also unconstitutional.

AIR 1972 BOM 357
Kekhasarao Irani v/s. The State of Maharashtra
Kotwal, CJ & Vaidya, J

The Petitioner was born in Bombay in 1922. His father came to Indian from Persia in 1902. The question was of domicile Certificate.

Held: At the commencement of the Constitution of India on 26 November 1949, the petitioner became the citizen of India.

(1972) 74 BLR 117
Hakam Jainwala v/s. State of Maharashtra
Vimadalal & Kania, JJ

The Court had to consider the aspects of the First Information Report.

Held: The giving of First Information and recording of the same under S. 154 of the Cr.PC, 1898 is a continuous process. It cannot be altered by the fact that investigation had commenced at the intermediate period unless there was definite evidence that was recorded after the investigation had commenced was due to some inquiry made by the Police Officer investigating the offence.

FIR is used for corroborating the witness, not contradicting him. Therefore, it does not have to be shown to the witness under S. 145 of the Indian Evidence Act, 1872. It also does not have to be explained by the witness.

(1972) 74 BLR 391
Jayantilal Mehta v/s. State of Maharashtra
Chitale & Nathwani, JJ

A complaint under S. 135 of the Customs Act, 1962, S. 5 of the Imports and Exports (Control) Act, 1947, S. 23 of the Foreign Exchange Regulations Act, 1947 and Ss. 120(B) and 417 of the IPC, 1860 was filed by the Assistant Collector of Customs, Bombay.

The Petitioner challenged the virus of the Customs Act.

Held: Ss. 135 and 137 of the Customs Act are not violative of Article 14 of the Constitution of India. The Statute conferring discretion must furnish criteria or guidelines for its exercise. In the absence of such guidelines there would be arbitrary power conferred upon the officer. The guidelines may be furnished by the Statute, its aims and objects or its policy and scheme. Sound discretion is not to be arbitrary, vague and fanciful. Discretionary power is not necessarily discriminatory. Mere possibility of abuse of power cannot invalidate a Statute.

Where the Statute relates to activities of complex nature it may leave discretion to responsible officers providing for guidance for exercise of the discretion either expressly or impliedly. The provision for sanction is one of the safeguards against exercise of power. If the discretion is conferred on high officials it may be taken to be a safeguard against arbitrary exercise of discretion.

# 1973

AIR 1973 BOM 14

C.H.Shah v/s. S.S. Malpathak

Vimadalal, J

In the course of the examination-in-chief, the Plaintiff sought to tender the originals of municipal bills cum receipts without proving those documents in the normal way. It was contended that the documents are public documents and therefore there should be a presumption of genuineness in their favour. The Court considered whether original

public documents can be admitted in evidence without proving their execution in accordance with law.

Held: A copy or an oral account of a document is admitted as secondary evidence. The execution of the original is not required to be proved, but if the original document itself is sought to be tendered, it must be duly proved and there is no reason for applying a different rule to a public document. Neither S. 67 nor 68 of Indian Evidence Act, 1872, which lays down that the signature and the handwriting on a document must be proved make any exception in case of public documents. The certified copies of public documents alone carry a presumption as to their correctness. That presumption does not extend to original documents.

AIR1973 BOM 37

Tukaram Hari v/s. Mathurabai Pundalik

Nathawani, J

Two Hindus constituted a joint Hindu Family. After death of one of them the joint Hindu Family consisted of the survivor of them, his wife and his daughter. The brother bequeathed the property under a will to his surviving brother. The surviving brother sold the property to an outsider. The wife sued for possession. The Court had to consider whether a sole surviving male coparcener has a right to dispose of the property by will.

Held: Where the sole surviving coparcener bequeathed certain properties from the Joint Family property by a will without in any way indicating in the will his intention to claim partition in respect of properties bequeathed by him, his share in the joint property, being undefined, would merge in the interest of the widow on his death and the bequests would become inoperative.

AIR 1973 BOM 27

Jaikumar Shivlal v/s. Motilal Hirachand

Malvankar, J

A Suit for recovery was filed on the basis of a pro-note alleged to have been executed by the predecessor of the Defendant. The Defendant denied both, the execution of the pro-note and the consideration. It was contended that the pro-note was a money bond and as the same had not been duly stamped, it was inadmissible in evidence.

Held: Where a document has once been admitted in evidence by the Lower Appellate

Court, in view of S. 35 of the Bombay Stamp Act, 1933, the High Court will have no alternative but to confirm the decree and grant a declaration under S. 58 of The Bombay Stamp Act, 1933.

AIR 1973 BOM 147

Someshwar Nilakhe v/s. Nivrutti Gholave

Apte, J

There was business dealing between the Plaintiff and the Defendant for the period between 03/02/1962 to 1/08/1963. On account of this dealing the Defendant owed a certain sum to the Plaintiff. This liability was acknowledged by the Defendant on 05/11/1963. To recover the said amount, the Plaintiff filed a suit on 05/11/1966. The Defendant pleaded that the suit was barred by limitation.

Held: S. 18(1) of Limitation Act, 1963 provides that the fresh period of limitation shall be computed from the time when the acknowledgment was so signed. In view of S. 12(1) of the Limitation Act and S. (1) of General Clauses Act, 1897 it was held that the day on which acknowledgment is made will have to be excluded in computing the period of limitation.

AIR 1973 BOM 40

M/s. Sanjay Cotton Co. v/s. M/s. Omprakash Shivprasad

Masodkar, J

The Plaintiff sued for recovery of an amount. The Defendant challenged the suit on all counts including the genuineness of the transaction. During the cross examination of p.w.1, the Defendant wanted to ask certain questions relating to vouchers filed by the Plaintiff. It was found that the documents were not exhibited. Therefore, the Trial Court objected to the question. Hence the Defendant consented to exhibiting the vouchers. In cross examination of p.w.2 the Defendant wanted to challenge the contents of the exhibits and Court objected it.

Held: Consent by a party to exhibit a document does not amount to an admission of its contents. A party has a right by cross-examination to show that the document is not genuine. The purpose of cross-examination is to place all the facts before the Court so as to enable it to come to a just decision on the competing cases and to enable the party to show material which would otherwise show the probability in showing his defence. This valuable right is a statutory one and is also the part of basic principle of justice and fairness.

# 1974

(1974) 76 BLR 627

Vishnu Krishna v/s. State of Maharashtra

Tulzapurkar, Deshpande & Kania JJ.

The question of law referred for decision of the Full Bench was whether the contents of 'pre- trap' and 'post-trap' panchnama prepared in investigation are hit by S.162 of Cr.PC, 1973 in case of offence under the Prevention of Corruption Act, 1947.

Held: The Statements in pre-trap and post-trap panchnamas are a mere record of what the panchas have seen and hence can be used as corroborative evidence under S.157 of the Evidence Act, 1872. It was held that ban under S.162 of the CrPC is attracted only to statements made to police during investigation and to no other statements.

AIR 1974 BOM 20

Pandurang Sakharam v/s. The Maharashtra Revenue Tribunal, Nagpur

Masodkar, J

The question of law raised was whether the order passed on law which was declared as erroneous can have a binding effect and be barred as res judicata under S. 11 CPC, 1908.

Held: Whenever the law is changed or an error in its interpretation has been declared by the Court in the same or subsequent proceedings, the prior erroneous decision unrelated to the facts of the case, but dependent only on interpretation of law cannot constitute res judicata subsequently even in the same proceedings.

AIR 1974 BOM 107

Tanhabai Jaivanta v/s. Dhondiram Pandurang

Bhasme, J

The Appellant had filed a suit for declaration and injunction of her right to take water from a well. According to her she had 3/4th share in the well and she had installed an engine at the well for irrigating the lands in her possession. The Respondent resisted the suit by

contending that the use of well water was restricted only to a particular survey number and not in respect of all other lands owned by the Plaintiff.

Held: There cannot be a hard and fast rule which would regulate the rights of co-sharers in respect of a common well. At the same time a restriction consistent with the rights of the co-sharers against each other is necessary. Therefore, a person who acquires a share in the portion of a land can irrigate that portion of the land only and not the other lands by the use of the well. It was held that such a restriction was necessary for protecting or safeguarding the rights of one co-sharer against the other.

AIR 1974 BOM 111

Vaijoba Shamrao v/s. Vasant Abaji

Vaidya, J

The Respondent herein filed a suit against the Appellant for a declaration that he is the owner of the suit property and for possession thereof with mesne profits claiming to have been the adopted son of a widow. The adoption was challenged as her husband had a son who had two sons.

Held: The foundation of the doctrine of adoption is the duty which a Hindu owes to his ancestors to continue the line for solemnization of necessary rites. The devolution of property is a secondary consideration.

When the husband died leaving behind a widow with a power to adopt, it was her duty to continue the line of succession. Her duty and power to adopt was not extinguished forever, but only remained in abeyance during the lifetime of her son and grandsons. But as her son and grandsons died without leaving behind anybody to continue the line, her power got revived and adoption by her thereafter was therefore valid.

AIR 1974 BOM 288

M/s. A. K. Porbunderwala v/s. Gulam Hussain

Naik, J

In a suit for injunction restraining the Defendant from demolishing a stall, an application for temporary interim injunction was also filed. On appearance, the Defendant filed an application under S.9-A CPC challenging jurisdiction of the Court to entertain the suit.

Held: In view of S. 9-A of the CPC, 1908 it was incumbent upon the Court to decide the issue of jurisdiction as preliminary issue before deciding the application for interim injunction.

(1974) 76 BLR 659
Union of India v/s A.K. Mathiborwala
Nathwani & S.K. Desai, JJ

This is a letters patent appeal from the judgment and Order of Justice Kania dated January 12, 1973 in a writ petition under Article 226 of the Constitution of India setting aside an order blacklisting the original petitioners (respondents), who are four partners of a firm of M/s. V.K. Mithi-borwala & Co., without giving notice or opportunity to be heard and raises an important question whether the impugned order is unconstitutional and illegal as violating Article 14 and Article 19(1)(g) of the Constitution of India and the principles of natural justice.

The principles of natural justice cannot be excluded from situations where investigation and inquiry has necessarily to be confidential and where no vested rights of the petitioner are affected. Further the Court was of the view that the consideration of alleged confidential nature of inquiry cannot extend to the extent of overriding the protection guaranteed by Article 14 against discriminatory and arbitrary Government action. However, in the above view the court did not think it necessary to determine whether the impugned order also contravenes Respondents' fundamental rights under Article 19(7)(g). Hence the Court dismissed the appeal.

## 1975

AIR 1975 BOM 115
Kesavabai v/s. Haribhau
Masodkar, J.

The Defendant had deserted the Plaintiff and kept a concubine in another residential house. The wife was given past and future maintenance.

It was admitted by the husband that he had kept the concubine.

Held: A Hindu wife is entitled to live separately from her husband and claim maintenance if her husband habitually resides with a concubine elsewhere.

Where the husband keeps a mistress in the same house in which his wife is living or where it is shown that he resides habitually with such concubine, the wife is entitled to have relief. The terms of clause (e) of S. 18(2) of Hindu Adoptions and Maintenance Act, 1956 should be so interpreted as would suppress the mischief and further the remedy.

The whole phrase "habitually resides with a concubine elsewhere" is indicative of a customary behaviour of a married man though he might not have changed his ordinary place of residence. His course of conduct spread over a period, his mental attitude in visiting the place of the concubine, his assertions, his involvement with such other woman should all enter the ken of consideration to find out whether he habitually resides with such a keep or not.

AIR 1975 BOM 5

Santoksingh v/s. Radheshyam

Chandurkar & Shah, JJ

A widow was granted permission to sue with forma pauperis. During the pendency of the Suit she died and her Legal Representative was brought on record. He was having sufficient means to pay Court Fees. Question arose whether he can continue the suit in forma pauperis.

Held: Legal Representative having sufficient means cannot continue suit initially filed by pauper Plaintiff without paying necessary Court fee or without satisfying Court that he is entitled to sue as pauper.

AIR 1975 BOM 257

Sushilabai Ramchandra v/s. Narayanrao Gopalrao

Kantawala,CJ, Tulzapurkar & Dhamadhikari, JJ

The question before the Court was the scope of S. 6 of the Hindu Succession Act, 1956 in view of the law that as a result of a notional partition contemplated by Proviso 2 to S. 6 of the Act, the shares of persons other than the deceased coparcener also became fixed as if partition had taken place during life time of deceased coparcener.

Held: The effect of the proviso to S. 6 of the Hindu Succession Act r/w. Explanation 1 is that when there is an heir of the nature specified in the provision, the share of deceased coparcener has to be determined on the assumption and deemed fiction that the partition of the property had taken place immediately before this death. This is because the Explanation points out that such legal fiction has to be given effect to irrespective of the fact whether the deceased is entitled to claim partition or not.

AIR 1975 BOM 297

Ramesh Shankar v/s. State of Maharashtra

Padhye, J

An Award was passed in a land acquisition matter. Delay was caused in moving an application before land the Land Acquisition Officer for reference to the Court. An application was moved for condonation of delay under S. 5 of the Limitation Act, 1963. The Land Acquisition Officer rejected application on the ground that Limitation Act is not applicable to proceedings before him.

Held: The Land Acquisition Officer is a Court in view of S. 18 (3) of Land Acquisition Act. Hence the provisions of Limitation Act are applicable to proceedings before him.

AIR 1975 BOM 324
Krishna Ghatate v/s The Union Of India
C.S. Dharmadhikari & Dighe, JJ

The case involved a writ petition challenging a detention order under the S. 3(1) of the Maintenance of Internal Security Act, 1971. It questioned whether the decision of the Supreme Court regarding the scope of Article 359 of the Constitution of India was binding on the High Court. Also the case questioned whether it was appropriate to test the validity of the detention order issued under S. 3 of the Maintenance of Internal Security Act in view of the confirmed declaration issued under S. 16-A of the Act by the State Government. Lastly the case debated on the effect of the amendment of the Maintenance of Internal Security Act, 1971 and Presidential Order made under Article 359 (1) of the Constitution of India on the scrutiny done by the Court when the detention order was being challenged under S. 3 of the Act

Held: The Court did not have the power to read down the import of the Supreme Court decision by drawing fine and subtle distinctions. If the provisions of the law considered by the Supreme Court are the same as considered by any of the lower courts, then the Supreme Court decision must be applied. The legality or validity of the detention order should be tested under S. 3 of the Act. The burden would be upon the petitioner to make out a prima facie case. In view of the amendment to the Act, the area and depth of the probe would be conditioned and minimised. So, unless a cogent and clear prima facie is made out by the petitioner, even a minimal look into the matter would not be possible. In view of the Presidential order a citizen would be barred from enforcing certain fundamental rights.

# 1976

AIR 1976 BOM 13
Gangadhar Sadashivrao v/s. State of Maharashtra
Chandurkar & Dharmadhikri, JJ.

The Petitioners contended that they were entitled to receive 80% of the guaranteed price for cotton tendered by them under the provisions of the Maharashtra Raw Cotton Act, 1976. The State revised the provisions of the said Act resulting into financial loss to the Petitioners. According to the Petitioners it was violative of Art. 31 of Constitution of India.

Held: The policies of Government which are expressed in the shape of legislations are to be considered by the members of the Legislature and not by the Courts of Law. A Statute cannot be challenged on the ground that it is result of some alleged wrong policy of the Government. No legal precedent has been laid down that provisions of Statute can be struck down on the ground that policy behind the enactment is either wrong or hostile.

AIR 1976 BOM 38
Dilipsingh v/s. Dhaniram
Lalit, J

In a suit filed for declaration and possession, the issue was raised about the permissibility of producing secondary evidence after the notice to that effect was given.

Held: Where a notice is given to a party to produce document in original in his possession, when the evidence satisfactorily established that the party was in possession of document, in the event of failure of such party to produce the original, the party giving such notice is entitled to lead secondary evidence under S. 65 of the Evidence Act, 1872. In such circumstances, a presumption arises under S. 89 of the Act about the execution of the document in respect of which such secondary evidence has been led. Such presumption arises in respect of attestation, execution and stamping being done in the manner required by law.

AIR 1976 BOM 433
Govindrao Ranoji v/s. Sau. Anandibai
Kania, J

The Respondent filed a suit against the Appellant for maintenance under S. 18 of the

Hindu Adoption and Maintenance Act, 1956. The Appellant resisted the suit by disputing the legality of marriage on the ground that it was void as she had entered into marriage knowing fully well that he was already married and the said marriage was subsisting. It was contended that granting maintenance to her under S. 18 of the Hindu Adoption and Maintenance Act would be inconsistent with S. 25 of Hindu Marriage Act, 1955.

Held: The Hindu Marriage Act is a social welfare legislation conferring certain rights on Hindu women. Hence it has to be construed by adopting progressive and legal approach and not a narrow pedantic approach. Where the second marriage has been contracted during the subsistence of the first, notwithstanding the nullity of the same either party is entitled to maintenance under S.25 of the said Act. It was held that in the present case it was the poverty and dire financial condition of the applicant wife which made her enter into marriage with the Appellant knowing that there was a subsisting marriage between the Appellant and his first wife. It was also not against the protest or wishes of the first wife. She stayed with him for several years, till she was driven out of the house. Therefore, she was entitled to claim maintenance and it cannot be said that she was taking advantage of her own wrong so as to dis-entitle her to obtain that relief.

(1976) 78 BLR 1
N. P. Nathwani and Others v/s The commissioner of Police
Kantawala & Tulzapurkar, JJ

The petitioners sought to hold meetings of lawyers to discuss “Civil liberties and the Rule of Law under the Constitution”. By way of caution they applied for permission of the Respondent. It was refused under S. 37(3) of the Bombay Police Act, 1951. The refusal was challenged as arbitrary and unconstitutional.

Held: Article 19 of the Constitution is not abrogated while a Proclamation of Emergency is in operation. All executive action which operates to the prejudice of any person must have authority of law to support it. The terms of Article 358 do not detract from that rule. It authorizes the State to take legislative or executive action if that was competent under Part III of the Constitution. It does not grant the State any arbitrary authority to take action to the prejudice of citizens: it only provides that during the Emergency, laws may be enacted and executive action taken in the pursuance of lawful authority, which if the provisions of Article 19 were operative, would have been invalid. Hence, even during Emergency, absolute immunity cannot be claimed from the process of Court if the Order is not supported by valid legislation or legal sanction. By the suspension of Article 19, the normal fetter under it is lifted. The State may make any law or take executive action in contravention of Article 19. The capacity of Article 19 to render such legislation or executive action void is suspended. However, the rule of Law is not suspended: it prevails even during Emergency.

"Public order" sought to be preserved under S. 37(3) must be real and proximate and not far-fetched, remote or hypothetical. Every legal power must have limits, otherwise there is dictatorship. Discretion is capable of unlawful abuse. Unfettered discretion is a contradiction in terms.

The police order must pass through the test of reasonableness. Unreasonableness invalidates any subordinate legislation. The wording of the order shows that any dinner party, a prayer meeting in a Church, a namaz in a Mosque, an uthamna ceremony, a lecture in a college, an AGM of the company cannot be permitted without permission. It only shows a mechanical reproduction of the section. It does not show that a near total prohibition was genuinely considered. Hence the order is beyond the scope of the powers under S. 37(3). Such an order is outrageous, absurd and unreasonable and consequently ultra-vires the Bombay Police Act and is deserved to be struck down.

The right of dissent has been judicially recognized even in times of Emergency. Peaceful protests and contrary opinion are powerful wholesome weapons in the democratic repertoire. Right to dissent is the very essence of democracy. Conformity to accepted norms and belief has always been the enemy of the freedom of thought.

The Police Order was struck down. The right to hold the meeting was upheld.

(1976) 78 BR 125
Binod Rao v/s. Minocher Masani
Madan & Kania, JJ

Upon the proclamation of Emergency, certain articles, reports, letters and quotations sought to be published by the Respondent in a monthly journal "Freedom First" edited by the Respondent were prohibited from being published which order was challenged.

Held: Under Article 358 of Constitution of India, rights under Article 19(1) are not suspended. The restrictions upon the power of the State to make laws and take executive action inconsistent with those rights, is. The right to freedom of speech and expression under Article 19(1)(a) is not a right created or conferred for the first time by the Article. It is the right under the Common Law of England which has been recognized and enforced by the Courts in India prior to coming into force of the Constitution and has been continued in force by the Constitution.

"Executive action" taken by the State in Article 358 is only the one which is competent for the State to take but for the provisions of Part III of the Constitution. Hence, though it can be contrary to the provisions of Part III of the Constitution, it cannot be contrary to the provisions of all other laws. The law is the sole source of governmental power.

Censorship order can be only for securing the defence of India, public safety and maintenance of public order. The censor must scrutinize the material to see if these

would be breached. It cannot be optional to the censor. It casts upon him the duty to scrutinize, apply his mind and refuse or authorize the publication with such conditions and restrictions as are necessary.

Judicial Reviewability principles are that the Court's scrutiny is not barred. Subjective satisfaction of the censor may be set aside for non-application of mind, dishonesty, mala fides, exercise for collateral purpose, exercise upon dictates of another body, application of wrong test, misconstruction of a Statute, application on extrenous grounds and unreasonable rationale.

The censor must see whether a publication would adversely affect defence of India, public safety, public order or internal security.

The press is an instrucment of disseminating information and moulding public opinion. True democracy can only thrive in a free clearing-house of competing ideologies and philosophies. Dissent makes for a healty political climate, within permissible limits. Of course, it cannot take the form of incitement to revolutionary activities, for then, instead of serving democracy, it would subvert it. Here, the censors' real work begins. His role is delicate and important. On his shoulders rests great responsibility. He has not to seek governmental favour but preserve a fine balance.

This is much like the power under S. 38 of the Defence of India and Internal Security of India Act, 1971 and Rule 36 of the Defence of India and Internal Security of India Rules.

The ban upon the publication of the resolution of the Maharashtra Bar Council requesting the President to revoke the proclamation of Emergency was an exercise of the right of dissent within permissible limits and judicially recognized. It cannot be prejudicial to internal security.

(1976) 78 BLR 623
Simi Garewal v/s. T.N. Ramachandran
Kania, J

The Plaintiff, a film actress, played the film lead of a courtesan, Kamala, in the film "*Siddharth*" which was shot in India and was released in the United Stated. The film had scenes of the Plaintiff in nude and semi-nude poses. One of the scenes was of the Plaintiff wearing only some jewellery and the hero bowing before her. The scene was proposed to be published on the cover page of the Respondent's magazine. The Plaintiff applied for an injunction restraining its publication in India.

The Plaintiff claimed that her pose was necessary for the story of the film but it was agreed that those scenes would not be exhibited in India without her permission. She alleged defamation if it was published. The Respondent contended that an article in that behalf was to be published. The photograph was to illustrate an article by an

American professor of films at the Boston University. The same photograph had been published in the Illustrated Weekly of India earlier.

The Plaintiff contended that the photograph was torn from the context of the film and amounted to distortion of truth. It would have an innuendo that she would act without her dress.

Held: To establish the plea of justification, the Defendant must prove that the statement was true in substance and fact. If so done it would be irrelevant to consider whether it is defamatory or not. The photograph correctly depicts the scene. The defence of justification was prima facie made out. The photograph could not lower the Plaintiff in the estimation of her fellow beings.

One of the scenes of the flim is depicted in the photograph. There are also other scenes from the film which are illustrated in the article of the film critic from the United States for which no complaint is made. Hence, it is not torn out of context.

The injunction was refused.

# 1977

AIR 1977 BOM 83

Kundalik Tukaram v/s. State of Maharashtra

Dighe, J

This case raised for determination was the issue relating to the number of members in the family falling under the definition of “Family Unit” as given under S.4(1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The further question was whether a child in the womb on the commencement of the Act can be considered as a member of a family.

Held: If a child born subsequent to the appointed day can be considered as a member of the family, there was no reason why child who was in the womb on the appointed day should not be considered as a member of the family. When there is more than one spouse living, all living spouses are to be looked as individual members and the benefit of S. 6 of the Act will have to be given to the family unit if thereby the number of members in the family exceeds five.

AIR 1977 BOM 163

Kamal Chintaman v/s. Ganpatrao Ramchandra

Kania, J

The suit premises were let out to the tenant who lived with his mistress and their children. The Landlord contended that as she was not his legally wedded wife she was a trespasser and hence liable to be evicted. As against it she claimed tenancy rights under S. 5 (11)(c) of the Bombay Rent Act, 1947.

Held: The mistress of a tenant who was living with him alongwith their children in the tenanted premises at the time of his death must be regarded as member of his family for the purpose of S. 5(11)(c) because the question is not so much about the legal status of wife, but whether she would have been regarded by an ordinary man as a member of the deceased tenant's family at the time when he died. It was further held that a Statutory tenant has no interest in the premises occupied by him and he has no estate to assign or transfer. Therefore, it is not the legal heirs or legal representatives who can claim tenancy rights on his death but only a member of his family who was residing with him at the time of his death who can claim tenancy rights.

AIR 1977 BOM 289

Haribai v/s. Baba Anna

Vaidya & Shimpi, JJ

The Appellant had filed a suit for possession of the suit property which was belonging to her mother. Her mother had executed a Will bequeathing property in favour of the Appellant and the husband of her second daughter. Defendant No.1, claiming to be adopted son of the mother, had taken possession of the said property. According to the Plaintiff the adoption was not valid as Defendant No.1 was more than 15 years old at the time of the alleged adoption and it was against the custom.

Held: Notwithstanding what was stated in Dharma Shastra Books, the Bombay School of Hindu Law had never recognized any age limit for adoption. That is the legal custom and lex loci generally among Hindus relating to adoption. Therefore, the adoption was held to be valid as per the customary law.

AIR 1977 BOM 313

Jagananth Yeshwant v/s. Kazi Janimiya

Vaidya & Shimpi, JJ

The legality and validity of the customary law of pre-emption was challenged in this

Petition.

Held: The customary law of pre-emption on basis of vicinage imposes unreasonable restriction on the right to acquire, hold and dispose property guaranteed by Article 19 (1) (f) of the Constitution and hence is void. It was observed that no distinction can be made between pre-emption based on custom and pre-emption based on personal law as personal law must also be read subject to the provisions of Constitution.

AIR 1977 BOM 384
Shripatrao Dajisaheb v/s. The State
Tulzapurkar Ag. CJ, Chandurkar & Shah, JJ

The ambit and scope of the power of superintendence of the High Court under Article 227 of the Constitution was the subject matter of this Writ Petition.

Held: Article 227 is not merely procedural but confers substantive right on the litigant to move High Court. It was further held that High Court's power of judicial superintendence covers not only Judgments of regular civil and criminal Courts constituted under the hierarchy of Courts but also extends to tribunals, public bodies or authorities, whatever be their label, provided that authority performs judicial function rendering definitive judgments. Such authority is subject to High Court's Appellate or Revisional Jurisdiction.

(1977) 106 ITR 884
CIT v/s. Crawford Bayley & Co.
Kantawala CJ & Tulzapurkar, J

A partnership deed provided that in case of death of a partner, the continuing active partners were to make a specific payment to the widow. In its assessment, the assessee firm claimed that the amounts paid under the deed to the widow of a former partner were not taxable. The Department took the view that these payments were mere application of income, and did not constitute a diversion of income by overridng title.

Held: The true test for applying the rule of diversion by overriding title is whether the amount sought to be deducted in truth never reached the assessee as his income. Under the deed the payment to the widow was an absolute obligation in the nature of a trust and payments to the widows had to be made by reason of an overriding title. Thus, the amounts paid to the widow could, in reality, never be considerd as an income of the assessee firm.

AIR 1977 BOM 355
Sadashiv Jamdade v/s. The State of Maharashtra
Chandurkur & Lentin, JJ

The Petitioner challenged a notification issued under S. 6 of the Land Acquisition Act. The acquisition was for public purpose. It was for resettlement of project affected persons and not for the benefit of any particular individual. The Court had to see whether the Court must not hear the Petitioner's application at all because it was for enforcement of his fundamental right to equality under Article 14 of the Constitution of India which was suspended pending the proclamation of emergency.

Held: The Presidential Proclamation under Article 359 which suspends Article 14 does not require that the proceedings have to be mechanically suspended because they refer to violation of Article 14. Article 359 (1) would be attracted when it is shown that the claim cannot be effectually adjudicated upon without examining the question as to whether the citizen sought enforcement of the article.

The word 'enforcement' in Article 359(1) contemplates an order or proceeding which compels obedience in accordance with the constitutional imperative in Article 14. When the Presidential Proclamation is in force the Court cannot compel the state to give fact to the mandate contained in Article 14 but that object would in any way be frustrated if it is found that the Petitioner has not made out any case of violation of Article 14. Hence dismissal of the Petition, on finding that there is no violation of Article 14, will not amount to any breach of the terms of the Proclamation. If enquiry is made to find out whether the breach has been established and the Court states that it is not, then it will amount to suspension of proceedings. They would be when the court refused to issue a mandamus for enforcing right under Article 14 even after the Court found that the Petitioner made out case for enforcement of that right.

In this case the acquisition was for resettlement of the project affected persons. The classification of holders was on the basis of their total holding. All persons holding an equal area in a slab were treated similarly. The slab system was passed on certain considerations of economic holding. The classification was not arbitrary but rational. There was no violation of Article 14.

# 1978

(1978) 80 BLR 305

Baban @ Madhav v/s. Parvatibai Dagadu

Apte & Sapre, JJ

The petitioner was adopted by the Respondent after the death of her husband. The Respondent filed an application under S. 125 of Cr.PC against the Petitioner for maintenance. He resisted the application mainly on the ground that the expression 'mother' used in S.125 means only natural mother and not adoptive mother.

Held: In view of S.12 of the Hindu Adoption and Maintenance Act, 1956 the adopted son occupies the same position as that of a natural son in the adoptive family. Hence the expression “mother” used in S.125 Cr.PC includes the adoptive mother as well.

(1978) Cri. LJ 888

Shankar Dhondiba v/s. Janabai Shankar.

Shah & Jahagirdar, JJ.

The husband filed the petition under S. 127 of the Cr.PC for cancellation of the order of Maintenance passed against him under S. 125 of the Cr.PC on the ground that there is change in circumstance and hence he is not in a position to pay the maintenance.

Held: It is for the husband to prove the change of circumstances after the order of maintenance is passed. No interference is warranted in the limited scope of Revisional jurisdiction, when both the sub-ordinate Courts had properly appreciated the evidence on record showing that even after the sale of his land, he has paid the amount of maintenance. He had lost his right hand long back. Hence, there was no ground to reduce the quantum of maintenance.

AIR 1978 BOM 239

Jaikumar Chaganlal v/s. Mary Jerome

Deshpande & Pratap, JJ

The deceased was crossing the road on foot when car dashed against him resulting in his instantaneous death. The extent of compensation under the Motor Vehicles Act, 1939 was to be determined.

Held: To work out the quantum of compensation one has to find out amongst other things, the net annual income of the deceased; how much of it was spent by him for himself and how much for his dependents, as to how long each dependent was required to depend on his income, how long the deceased could have supported each of them, depending on the estimate of expectancy of his future span of life, the age of the deceased at the time of accident, his health and the estimate of the years during which

he would have continued to earn, etc. In view of the estimated increase in the average longevity upto the age of 65 years, the years of purchase could be raised to 28 years. It was further held that amount received from Life Insurance Policy is liable to be deducted from the estimated amount of compensation, coupled with the deduction on lumpsum payment of compensation.

AIR 1978 BOM 255

Pravin R. Geglani v/s. M/s. Beharilal Beniprasad

Naik, J

The Plaintiff had filed a suit against the Defendant in the Supreme Court at Aden in which an exparte money decree was passed against the Defendant. The Plaintiff filed certified copy of the said decree in the City Civil Court, Bombay and sought for its execution. The Defendant resisted the execution on the ground that the City Civil Court had no jurisdiction to execute the decree and it is only the High Court on its original side could execute it.

Held: Under S.12 of the Bombay City Civil Courts Act, 1948 read with Notification dated 20th January, 1950 issued under S. 4 of the Act, the Bombay City Civil Court is the Principal Court of original civil jurisdiction and it would be the District Court referred to in S. 44 A of CPC to execute the decree passed by the Foreign Court.

AIR 1978 BOM 44

Balasaheb Anandrao v/s. Jaimala Sahaji

P. B. Sawant, J

The Petitioner applied for a Succession Certificate in respect of the property owned by his sister. The question before the Court was where the property is inherited by a female Hindu from her brother, the succession will be governed by S. 15(2)(a) or by S. 15(1) of Hindu Succession Act, 1956.

Held: The words in a statute should be interpreted in their plain literal and grammatical meaning. The plain reading of the word 'father' in S. 15(2)(a) does not in any way lead to a meaningless consequence. To interpret the words 'father' and 'mother' used in the said section as “father's side and mother's side” would involve the reading of additional words in the section and will be inconsistent with the intention of the Legislature. Hence it was held that succession to the property inherited by a female from her brother would be governed by S. 15(1) and not by S. 15(2)(a) of the Act.

(1978) 2 ELT 581

Jagdish Dengvekar v/s. Collector of Central Excise, Poona
Tulzapurkar & Shah, JJ

The Petitioner applied for licence to manufacture French polish. The licence was issued to manufacture French polish, varnish and thinners. He did not comply with the provisions of the Central Excises & Salt Act, 1944. The Petitioner was imposed penalty on the ground that he manufactured French polish which was not varnish under Tariff item 14. The Petitioner contended that French polish could not be regarded as varnish and were two distinct items.

Held: French polish must be regarded as varnish as they are both used for giving a polish or gloss to surfaces. Classification of goods must be on the basis of commercial sense in which the item is understood or in which traders understand it and not the technical or scientific sense.

[See (1982) 10 ELT 917]

## 1979

(1979) Cr. LJ 168

Mohamad Ismail v/s. E.S.I.C. Bombay

Deshpande & Sujata Manohar, JJ

This Letters Patent Appeal was filed against the summary dismissal of the Appellant's appeal under S. 82 of Employees State Insurance Act, 1948. The Appellant was employed as a skilled fitter in 'B' grade with the Premier Automobiles Ltd. He met with an accident while on duty. He set up his claim for disablement benefit under S. 46(1)(c) of the Act before the Respondent. His claim was rejected on the ground that his monthly wages of the month in which he met with an accident exceeded Rs.500/- and hence he was not an employee under S. 3(9) of the Act.

Held: Interpreting the beneficial provision of the Act entitling the employee to reap the benefits of the contributions made by him, it was held that the proviso to S. 3(9) should not work to his disadvantage.

AIR 1979 BOM 173

Dinesh Mehta v/s. Usha Mehta

Deshpande & Sujata Manohar, JJ

This Letters Patent Appeal was filed by the husband challenging the Order of interim maintenance passed by the Bombay City Civil Court in favour of the wife in a Petition for Restitution of conjugal rights. The Court had to consider whether the maintenance amount which was only 1/5$^{th}$ of the net income of the husband was computed on a correct basis given that the wife was a young educated girl living in Mumbai with a high cost of living.

Held: The practice a wife was entitled to not more than 1/5$^{th}$ of net income of husband is unreasonable, irrational and cuts at root of equality of wife as equal partner of the husband and militates against reasonableness of approach. It was held that the relevant factors for deciding the quantum of maintenance can be the income of the husband, the claim of other members in family on his net income, her requirements to lead the standard of living which she was leading in the house of her husband, etc.

AIR 1979 BOM 176

Daddo Atmaram v/s. Raghunath Atmaram

Pratap, J

A Hindu died leaving behind him his widow, two sons and daughter. A woman claimed herself to be also the lawfully wedded wife of the deceased having two sons. They filed a suit for partition. The question raised therein was whether an illegitimate son or daughter was entitled to succeed to the estate of the putative father by way of intestate succession opening after the coming into force of the Hindu Succession Act, 1956.

Held: Under the old Hindu Law the settled position was that the illegitimate son of a Shudra was entitled to succeed to the estate both separate and ancestral in the hands of his putative father, but there is no express provision in the Hindu Succession Act saving that provision and the result, therefore, is that his right of succession, if opened after the Act came into force would be governed by the provisions of the Act and no longer by the law prior thereto. Therefore, he cannot be entitled to succeed to the estate of his putative father.

AIR 1979 BOM 202

Mohanshet Purushottam v/s. Jayashri Vasantrao

S. K. Desai, J

The issue before the Court was about the authentication of a Power of Attorney on the basis of which a Sale Deed of an immovable property was executed by the principal in favour of his agent. It bore the endorsement of the Taluka Magistrate and it was marked as Exhibit by the Trial Court on the basis of S.85 of the Indian Evidence Act 1872, without examining either the principal or the agent.

Held: S. 85 contains a presumption, which may operate in favour of the party relying on the document and to the prejudice of the party alleging that the document is not a genuine one. Hence, for the purpose of such presumption to operate, authentication of the Magistrate must be clear, specific and more decisive. In case of even the slightest doubt, the Court must be loathe to rely on the presumption. It was held that in this case as the Magistrate has used his rubber stamp to authenticate the thumb impression on a Power of Attorney and put his signature on the basis of identification made by an advocate, the presumption under S. 85 for exhibiting the Power of Authority should not have been drawn.

(1979) 4 ELT 212
Subhash Chandarnishat v/s. Union of India
Kania, J

The Petitioner manufactured Vasmol Emulsified Hair Oil and Vasmol Pomade excisable under item 14(f) of the 1st Schedule of the Central Excises & Salt Act, 1944.

Held: The Excise Duty on a product must be applied according to general use by people dealing with them in the trade and not as understood in technical matters or scientific laboratories.

(1979) 81 BLR 542
Vasant Mandke v/s. The State of Maharashtra
Deshpande & Pendse, JJ on dissent
S.K. Desai, J

The Respondent imposed a new tax called profession tax under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975.

It was challenged as violative of Article 14 and Article 19(1) (g) of the Constitution of India.

Per Majority Held: Tax on avocations for augmenting the employment scheme is distinctionable from tax on land and property the extent of which can be unlimited.

Administrative inconvenience does not itself contribute to violation of Article 14. The area of practice or the years of practice can have no nexus with the basis of tax. If a tax

is imposed on a trade or profession it will have to be paid by the person practicing the trade or profession whether he realised any income from it or not.

Rs.250/- p.m. is reasonable for a fairly large number of people. It does not have to be related to the paying capacity. It cannot be assailed on the ground that certain items and persons though identically situated are not included.

A Geographical classification is permissible. Though there may be discrimination in non-corporation areas, it is so slight as not to amount to hostile discrimination. It is not irrational or absurd. Once the option for paying capacity is taken away, the Legislation can impose tax at a maximum flat rate. Because the classification does not appeal to the Court or a better classification can be made is not the reason it can be held to be discriminatory or violative of Article 14.

Per Minority Held: The persons who are grouped together belong to one class following a particular avocation. This is not founded on intelligible differentia. The policy is to collect revenue from persons in employment and also professions to help the unemployed people. The Legislation has only taken into consideration the area of operation and standing in the profession and hence it infringes Article 14. Different treatment is permissible to different classes. Mere administrative inconvenience is not a rational consideration to treat unequals equally. Hence it violates Article 14.

## 1980

AIR 1980 BOM 315

Hirabai v/s. Babu Manika

Masodkar & Rele, JJ

The adoptive mother of the Respondent had filed the suit for cancellation of the Deed of Adoption and consequent declaration of ownership in respect of certain lands. The proof of the adoption was questioned.

Held: The Deed of Adoption was registered and contained a recital that adoption ceremonies were performed according to caste custom. Thereafter, evidence on record showed that the adopted son was living with the adoptive mother and the adoptive mother had applied for Mutation to surrender property in favour of her adopted son. In the light of these proved facts it was held that presumption in favour of adoption was fortified by the conduct of the adoptive mother and other circumstances. It was further held that the adopted son got interest in the Joint family property in the hands of his adoptive mother from the date of the adoption. The enlargement of her rights under S. 14(1) of Hindu Succession Act, 1956 did not change the character of the property in her hands. For conveying the property to the adoptive child even oral relinquishment by her in his favour would be valid and effective.

AIR 1980 BOM 213

Shukar Hanan v/s. Malkappa

Kambli, J

This appeal was preferred by the Plaintiff against the concurrent decree of two Courts dismissing the suit for redemption for the mortgage and for possession of the mortgaged land upon the bar under Article 64 of the Limitation Act, 1963.

Held: A plea of adverse possession raised against the mortgagee can be sustainable against the mortgagor also, provided it is proved that the Defendant has taken possession of the property as absolute property to the knowledge of the mortgagor in denial of the rights of the mortgagor with evidence on record showing that something was done or declared, excluding the mortgagor's power to resume possession at will.

AIR 1980 BOM 250

Nivrutti Nana Waghmare v/s. Narayan Mahdeo

Sharad Manohar, J

The Petitioner was a tenant in the suit premises. A suit for eviction was filed against him in the Small Causes Court. He appeared in it through his Advocate, filed Written Statement and was depositing the rent in the Court regularly. The suit was kept for hearing on 21.1.1972. A notice of motion was taken by the Respondent for expeditious hearing of the suit. The Court ordered notices to be issued. On the statement of the Respondent himself, the Petitioner was not staying in the suit premises. Despite that notice was issued to him on the said address. There was nothing to show that notice was given to his Advocate. The suit came to be decreed ex-parte.

Held: As the Petitioner was kept in the dark as to the date of hearing through the device adopted by the Plaintiff, there is no reason why it should be assumed that he was aware of the date of exparte decree and if he was not aware for no fault of his, it is impossible to conclude that he had no sufficient ground for condonation of delay. S.5 of the Limitation Act, 1963 applies to applications for setting aside exparte decree.

AIR 1980 BOM 341

Vasant Tatoba v/s. Dikkaya Muttaya

Deshpande & Lentin, JJ

One tenant died in the tenanted premises assigning his tenancy rights in favour of the Plaintiff who sued for a declaration that he had become the tenant of the suit premises on the basis of an assignment deed. The suit was decreed. The validity of that decree was challenged on the ground that the tenant was only a statutory tenant and he was not competent to assign his tenancy rights. On this issue whether such statutory tenant can assign his tenancy rights there were two conflicting decisions of two benches of equal strength of the Supreme Court. Hence the question arose which decision will prevail.

Held: A Statutory tenant possesses only a right to remain in possession and he does not hold any transferable or heritable estate or interest in the said premises. Therefore, he is incompetent to assign his tenancy rights. Hence the Plaintiff's suit for declaration that he had become tenant on the basis of assignment deed has to be dismissed. As regards the conflict between the two decisions of the Supreme Court of two benches of equal strength it was held that later decision will prevail.

AIR 1980 BOM 369

Tejoomal Lakhmichand v/s. M. J. Talegaonkar

Bharucha, J

A suit was filed for ejectment on the ground that the Defendants were the Plaintiff's Licencees, the Licence had been terminated and they had no right to occupy the premises. The Defendants contended that they were tenants and, therefore, the civil Court has no jurisdiction to entertain the suit in view of S. 28 of Bombay Rent Act, 1947.

Held: The jurisdiction of the Court has to be decided upon the averments in the Plaint. As the averments in the Plaint were clear to show that the Defendants were licencees and the licence had been terminated, their possession became that of trespasser and therefore only the civil Court had the jurisdiction to try the suit.

AIR 1980 BOM 380
Keshavrao Girjuba v/s. Chandrabhan Bhojaji
Deshpande, J

In a trial a letter of a Manager of a bank was produced in evidence. The Defendant led evidence of a certain fraud and undue influence which was not pleaded. The Court had to decide whether the letter was a public document under S. 74 of Indian Evidence Act, 1872 and about the effect of variance between pleadings and proof.

Held: A letter written by the Manager of the District Co-operative Bank to a Customer cannot be a public document as there is no evidence to show that Manager falls within the category of a Public Officer as stated in S.2(17)(h) of the CPC, 1976. As in this case the story narrated by the Defendant in his sworn testimony about fraud and undue influence exerted by the Plaintiff in execution of sale deed was found to be totally different from the contents of the Written Statement, it was held that the variance in pleadings and proof totally demolishes the case of the Defendant.

(1980) 6 ELT 696
Sandoz India Limited v/s. Union of India
Chandurkar & Deshpande, JJ

The question was whether a formulation of a synthetic organic dye is independently chargeable to Excise Duty under the Central Excises & Salt Act, 1944. The Petitioner contended that Excise Duty was leviable on synthetic dye stuff under item 14D of the tariff.

Held: Mere change in physical form of a product does not amount to manufacture.

AIR 1980 BOM 123
Nagin Dagli v/s. Haribhai Patel
Deshmukh, CJ & Madon, J

The Plaintiff was a tenant of a flat. He allowed the defendant to occupy the flat on license. He gave notice to the defendant to remove himself from the premises. In the meantime the Bombay Rent Act was amended. The Defendant became a protected licensee. The Plaintiff claimed that the license came to an end by efflux of time. The Plaintiff sued for declaration and mandatory injunction against the defendant to remove himself from the suit flat. There was no other prayer.

Held: The mandatory injunction was in fact the suit for recovery of possession. S. 41 of the Presidency Small Causes Court Act, 1982 as amended in 1975 granted jurisdiction to the Court not only for recovery of possession but also for suits relating to the recovery of possession. The Court must read the plaint as a whole and ascertain the real substance of the suit and the legal ingenuity in drafting the plaint. The suit was actually for recovery of possession for which the Civil Court has no jurisdiction.

{See also (1988) 90 BLR 22}

# 1981

AIR 1981 BOM 95
Paritosh v/s. MSBS & HS Education
V.S. Deshpande & V.A. Mohta, JJ

The rights of the students for inspection and revaluation of their answer papers was to be considered.

Held: The students had such right to inspect their answer sheets. Inspection and verification of answer papers was permitted.

AIR 1981 BOM 244
Leong v/s. Jinabai Gulrajami
V.S. Deshpande, CJ, Chandurkar & Rege, JJ

A flat in a Co-operative society was licensed by a member to an outside. The Licensor applied to the Society for making the licensee a nominal member of the society. It was rejected by the Society. After the license expired the licensee refused to vacate. The licensor filed a dispute for possession of the flat in the cooperative Court. The society was a party defendant. It was contended that the dispute was not maintainable as this was not the business of the Society and the dispute could not be filed against the society. It was contended that the society was only a formal and idle party. The dispute between the licensor and licensee was not cognizable by the authority under S. 91 of Maharashtra Cooperative Societies Act, 1960.

It was held that since the society was interested party the dispute must be touching the business of the society U/s.91 of the Act.

(1981) 83 BLR 248
Vasant Pandit v/s. Bombay Municipal Corporation
V.S. Deshpande, CJ, Dharmadhikari & Sujata Manohar, JJ

The Plaintiff sued the defendant without serving the statutory notice under S.527 of the Bombay Municipal Corporation Act, 1888. The BMC contended that the suit was not maintainable.

Held: No suit can be filed against the BMC without giving the statutory notice since the service of statutory notice is condition precedent to the exercise of jurisdiction. However, this is only a procedural requirement and hence it does not go to the root of the jurisdiction of the Court. Upon waiver the Court gets jurisdiction. The plea of waiver can be tried by the Civil Court. Whether or not there has been waiver depends upon the facts of each case. The Written Statement of the defendants itself shows objection being waived to avoid delay. Hence the Court had jurisdiction.

AIR 1981 BOM 465
Dattaji Shinde v/s. Premanand Awale
Bharucha, J.

The Petition was filed to set aside the Election Petition of successful candidate belonging to Scheduled Caste. Though standing for the election from constituency reserved for Scheduled Caste, the candidate was a Christian. He had converted to Christianity from Hinduism.

It was held that the Election of a successful candidate should not be lightly set aside. The onus which lies upon the election petitioner alleging corrupt practises is the same in any election petition challenging the election on other grounds also. The election petition is of quasi criminal character. When the evidence is entirely circumstantial, the the burden of proving the challenge lies upon the Petitioner. The Petitioner would have to show the conscious acceptance and admission in to caste in which the parents of the elected candidate belonged before their conversion from Hinduism.

AIR 1981 BOM 517
Mavaldas Lekhawani v/s. State of Maharashtra
Sharad Manohar, J

The accused was charged having committed breach of trust in respect of an electric meter pump entrusted to him by the complainant. The meter pump was seized from the possession of the accused and was kept in the custody of the Court. An application of return of property was made under S. 452 of the Cr.PC.

It was held that an application for return of property must be determined such as to do substantial justice in a summary manner. The Court should exercise a broad jurisdiction in directing delivering of the possession of the property to the person who has better title to the same, at least prima facie. In certain cases the Court must exercise that power and duty to consider the question of title irrespective of the ultimate result of the criminal complaint. Though the accused was acquitted, prima facie the complainant established title to the pump. The accused had not come into possession of the property honestly. Hence though it was seized from the possession of the accused it must be returned to the complainant.

# 1982

AIR 1982 BOM 282

Rahimtulla Abdul Rahiman v/s. Chandrakant Anant

Jahagirdar, J

The Plaintiff sued for recovery of possession from his father's tenant as rents were in arrears. There were other legal heirs like daughters and widow of the father.The question was whether the eviction suit could be filed without joining all the co-heirs.

Held: All the co-heirs need not be joined in the Eviction suit and in the Notice of Eviction. Some co-heirs or some co-owners can sue for and on behalf of others.

AIR 1982 BOM 341

Dr. Abdur Rahim v/s. Smt. Padma Abdur

C.S. Dharmadhikari & S.J. Deshpande, JJ

The marriage was solemnized in England as per the procedure laid down by the British Marriage Act between Petitioner husband who was a Muslim and the Respondent wife who was Hindu. The question was whether it was a Nikah fasid, as two witnesses of Mohammedan faith were present at the time, or a marriage governed by the Special Marriage Act, 1954.

Held: No civil marriage validly performed and solemnized according to any law in force can be treated as a religious marriage by introducing elements of formalities of personal law. Hence the presence of two witnesses of Mohammedan faith at the time of the marriage of the Petitioner and the Respondent in England cannot ipso facto convert that civil marriage in any other form of marriage. Such marriage is governed by Special Marriage Act and not by personal law of the husband. Hence the voluntary and unilateral act of giving Talak to wife is not legal.

(1982) 10 ELT 917
Chemicals & Fibres India Limited v/s. Union of India
Chandurkar & Gadgil, JJ

The question was whether polyester chips of textile grade manufactured by the Petitioners were chargeable to Excise Duty under item 15A of Schedule 1 of the Central Excises & Salt Acy, 1944. The Petitioner manufactures synthetic fibres.

Held: Classification of goods for scientific and technical products had to be on the basis of scientific and technical understanding and not on the basis of popular and commercial understanding.

[See (1978) 2 ELT 581]

# 1983

AIR 1983 BOM 268
Vasudev Daulatram Sadarangani v/s. Sajni Lalwani
Lentin, J

The Caveator in a Testamentary Petition contended that it was barred by limitation as it was filed more than 3 years after the death of the deceased and the delay is a suspicious circumstance.

Held: A Testamentary Petition only results in the grant or refusal of a probate or a Letters of Administration to allow the Plaintiff to administer the estate of the deceased. It is only a petition for Court's permission to perform a legal duty created by a will. It is a continuous right. The Plaintiff may not have any personal interest in the administration as an executor appointed under the will of the deceased. He does not sue for any personal right. Hence, the law of limitation does not apply in a Testamentary Petition. The Plaintiff, however, must explain the delay in filing the petition. Once the delay is explained, the suspicion vanishes.

AIR 1983 BOM 1
Om Prakash Berlia v/s. Unit Trust of India
Bharucha, J

The Court had to consider the admissibility of certain documents and the proof of the contents of certified copies of Annual Reports filed by a limited company with the Registrar of Companies (ROC).

Held: Under S. 63 of the Indian Evidence Act, 1872, secondary evidence includes an oral account of the contents of a document by a person who has seen it. He gives evidence only of what he saw. Hence, he does not give evidence of the truth of the contents of the document. "The contents of the document" means only what the document states. The contents may be proved by primary or secondary evidence under S. 61 of the Act. The writer of the document must depose to the truth of its contents.

If the original document is not available, secondary evidence may be given by production of the copy. This is to prove what the document states. Upon this, the document becomes admissible. If it is signed, the signature must be proved. If it is hand written, partly or fully, the handwriting must be proved.

The production of a certified copy of a public document only proves what the document states and no more. It does not prove whether what the document states is true.

(See AIR 1945 BOM 319 and AIR 1954 BOM 305)

AIR 1983 BOM 25
Sukhdev Prasad v/s. Rambhujarat Kshampati
C.S. Dharmadhikari & Kurdukar, JJ

The Plaintiff sued for eviction of his tenant. The Defendant applied to amend the written statement challenging the Plaintiff's title to the suit property. That was allowed. Therefore, the Plaintiff filed an application to amend the plaint seeking possession also on the ground that the Defendant has denied his title. The said application was rejected.

Held: All rules of Court are nothing but the provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be exercised liberally. The amendment sought was only consequential and hence permissible.

(1983) 1 BOM. C.R. 374

Venkat Dharmaji v/s. Vishwanath Sambhaji

S.J. Deshpande, J

In a suit for specific performance of the contract, the Plaintiff sought the relief of temporary injunction restraining the Defendant from causing obstruction to his possession in certain portion of the property which was given to him on the basis of Agreement of Sale. The Defendant claimed that no possession was given and the Plaintiff was in illegal possession.

Held: A person obtaining possession under an Agreement of Sale cannot be said to be a person in wrongful possession. The question of possession cannot be confused with the question of title. Such a person is entitled to protect his possession during pendency of the suit, either under O.39 R.1 & 2 or ever under S. 151 CPC. The recitals of delivery of possession in the Agreement are sufficient prima facie proof of possession entitling the plaintif to temporary injunction to protect his possession.

(1983) 2 BOM. C.R. 558

Lt. Col. Bhimrao Raghunath v/s. Advocate Madhukar

P.S. Shah & Kantharia, JJ

This Petition was filed for quashing a Private Criminal Case filed by the Respondent in the Court of JMFC Pune. Malicious accusations were made against two sitting Judges of the High Court therein. The Respondent challenged the maintainability of the Petition on the ground that the Judges who were accused in the Criminal case were not joined in this Petition.

Held: The criminal complaint as filed by Respondent no.1 against Judges of the Court was thoroughly frivolous, vexatious and devoid of any merits whatsoever. Hence it deserved to be quashed.

In view of the malicious and false allegations made in the said complaint by the Respondent no.1 against two sitting Judges of the High Court which were per se defamatory and contemptuous, Respondent no.1 was held guilty of Criminal contempt of the Court and directed to undergo simple imprisonment for three months and fine of Rs.2000/- in default S.I. For three months. Warrant of Arrest was issued immediately against the accused and he was taken custody to serve the sentence.

(1983) 2 BCR 580

Ananthasubramaniam Jagadesan v/s. T.V.Parwani

Kurdukar, J

A licence agreement was executed between the parties. The Defendant contended that the document was camouflaged as a Licence, but the real intention of the parties was to have the relationship of landlord and tenant. The question before the High Court about the true nature of relationship.

Held: In order to determine the true nature of the transaction the intention of the parties is of a paramount importance. The distinction between the two lies in the nature of possession. If it is a right to exclusive possession it will amount to lease.

(1983) 52 STC 117
CST v/s. Agarwal & Co.
Madon & Sujata Mahonar, JJ

The Respondents are resellers in tea, coffee and skimmed milk powder. The milk powder was taxed by the Sales Tax Officer rejecting the Respondents' contention that it was covered by Entry No.36 of Schedule A to the Bombay Sales Tax Act, 1959 and exempt thereunder. The Court had to consider whether skimmed milk power fell within the entry "milk".

Held: Under S. 5 of the Bombay Sales Tax Act, 1959 the sale and purchase of goods specified in Schedule A is free from all taxes. Entry 36 thereunder is for "milk - whole or separated or reconstituted". Powder milk is obtained by a process of dehydrating the milk so that it can be preserved longer. It does not cease to be milk. The end use of milk powder is exactly the same as that of milk, therefore, milk – whole or separated – would include milk in powder form as much as liquid form.

## 1984

AIR 1984 BOM 19
Shiolalsing Gannusing v/s. Shankar Nale
Joshi, J

The Plaintiff filed suit for possession. The Defendant resisted the suit on the ground that he was owner and in support his contention filed a certified copy of sale deed which was more than 30 years old. The Court had to consider its admissibility and presumption under S. 90 of the Indian Evidence Act, 1872.

Held: The presumption regarding old documents as laid down in S. 90 of Evidence Act is not available in respect of a certified copy.

AIR 1984 BOM 114

M/s. Nav Digvijaya CHS Ltd. v/s. M/s. Sadhana Builders

Sujata Manohar, J

The Defendants had filed a caveat under S. 148 A of CPC in an application for execution made by the Plaintiff under O. 21 R 54 and O 21 R 43 of the CPC, 1976.

Held: The provisions of S. 148 A of the CPC are only attracted in proceedings where the caveator is entitled to be heard in the ordinary course or where the Court in its discretion hears the party which has filed the caveat before passing an order. An application for execution under O 21, R 43 or R 54 is not a proceeding where the judgment debtor has a right to be heard. Hence the Defendants are not entitled to file a caveat in such proceedings.

AIR 1984 BOM 208

Waman Govind v/s. Gopal Baburao

Chandurkar Ag. CJ, Pendse & Kurdukar, JJ

The Court had to consider the effect and scope of S. 18 of Hindu Succession Act, 1956.

Held: If the nature of relationship is the same in all respects, then irrespective of gender, i.e., male or female, the relations of whole blood are to be preferred to those of half blood.

AIR 1984 BOM 319

Anant Goplrao v/s. Jankibai Gopalrao

Waikar, J

The Plaintiff filed a suit for partition of a dwelling house against her son. The son resisted the suit in view of S. 23 of Hindu Succession Act claiming that the Plaintiff being female she has no legal right to ask for her share by partition of the dwelling house.

Held: Where Hindu male dies intestate leaving only one male heir and other female heirs, the right of female heirs to claim partition in dwelling house is not barred under S. 23 of the Hindu Succession Act, because in the case of single or sole male heir there is no joint family and no dwelling of joint family. Hence the devolution of interest upon the female heirs cannot be kept in abeyance.

AIR 1984 BOM 338

Anandrao v/s. Govindrao Zingraji

Joshi, J

The Respondent was the step brother of the Petitioner. Their father, during his life time, had partitioned his property between himself and two sons by a registered partition deed and certain properties were allotted to them. After the partition father had purchased another property. The Respondent claimed a half share in the properties of his father by inheritance.

Held: After the death of the father, the interest in his separate property would devolve on his widow and the two sons equally i.e. 1/3$^{rd}$ to each. The widow died after the fathr. On her death succession to her 1/3$^{rd}$ interest in the property would be governed by S. 15 (c) of Hindu Succession Act. The expression “sons and daughter” used in sub clause (a) of S. 15(1) does not include stepsons and stepdaughters. The Respondent being her stepson was not entitled to inherit equally with his brother. He would get 1/3$^{rd}$ share and remaining 2/3$^{rd}$ share would be inherited by the brother.

AIR 1984 BOM 434

Shivaji v/s. The Chairman, MPSC

Jahagirdar & Kotwal, JJ

The Petitioners succeeded in the Examination for the post of Tahsildar. 25 posts were to be filled. 80% of total posts i.e., 20 posts were reserved for economically weaker section. 10% additional marks were allotted to the people coming from rural area. The The Petitioners got the benefit of the reservation. The Petitioners were confirmed in the post of Tahsildar. In a Writ Petition the criteria of 10% additional marks was set aside. A new list of qualified candidates was prepared in which the names of Petitioners didn't appear. The Petitioners challenged the additional reservation to the extent of 46% made by the State for economically weaker section.

Held: Under clause (4) of Art. 16 of the Constitution appointments to posts could be made in favour of only backward class. Such reservation could be made only if in the opinion of the State that backward class was not adequately represented in the services under the State. Reservation should be such as to obliterate the equality of opportunity that is guaranteed to citizens under cl.1 of Article 16 of the Constitution. Such reservation should not be unreasonable, viz., it should not exceed 50% of total number of posts. Backwardness which is mentioned in Article 16(4) is social and educational backwardness. The reservation to the extent of 80% has destroyed the equality of opportunity. Hence, MPSC was directed to prepare a revised list of candidates.

## 1985

(1985) 2 BOM. C.R. 119

M/s. Vernekar Industries v/s. Starit Engineering Co.

Masodkar, J

The Plaintiff sued for recovery of a sum of Rs.10500/-. The suit was dismissed for default. The Plaintiff took out Notice of Motion for restoration of the suit, which was made absolute subject to payment of costs of Rs.500/-. The Plaintiff did not abide by the condition. Therefore, the Defendants took out the present Notice of Motion for inclusion of the costs of Rs.500/- in the Bill of Costs of Notice of Motion.

Held: The statutory object behind S.35 CPC is to secure to the litigant the expenses incurred by him in the prosecution of the matter and not to punish the party against whom the costs are awarded nor to enable a given party to make a gain or profit out of the litigation by having costs. The provision of costs provides a sort of indemnity against the expenses to which the litigant is put. The provision of S.35-B CPC applies during hearing of the suit. It does not apply to Notice of Motion for restoration of suit.

(1985) 2 BOM. C.R. 267

Amina Mohammedali v/s. Mohammedali Ramjanali

Kantharia, J

The husband's petition for Restitution of conjugal rights was ex-parte decreed. The Court had to consider whether the wife's petition for maintenance would then survive and whether it can be said that husband had refused to and neglected to maintain her within the meaning of S.125 of Cr.PC, 1973.

Held: The ex-parte decree would not show that the husband had made any genuine, honest and sincere efforts to bring his wife back. Hence it would not be proper to refuse maintenance allowance to wife.

(1985) 2 BOM. C.R. 399
National Hotel v/s. Rukaiyabai
P.S. Shah, J

The Small Causes Court fixed the standard rent of the premises under S.11 of the Rent Act, 1947 at the rate of 1017/- per month on the basis of the estimated costs of construction. Thereafter the landlord filed an application of review of the said order on the ground that he had discovered further evidence on the basis of which he wanted to prove the actual expenses of construction of the building. Maintainability of the review application was challenged in the absence of any provision of law conferring jurisdiction on the Small Causes Court to review an Order passed under S. 11 of the Act.

Held: Review was not permitted. Rule 16 of Bombay Rent Act does not ipso facto extend the provisions for review contained in the CPC, 1976 to the proceedings under the Act nor does it have the effect of overriding the provisions framed by the High Court under S.9 of the Presidency Small Causes Court Act, 1882 which are expressly made applicable to the proceedings under the Rent Act. The power of review cannot be exercised even under inherent power under S. 151 CPC, 1976.

(1985) 22 ELT 334
ITC Limited v/s. M.K. Chipkar
Lentin & P.B. Sawant, JJ - on dissent
P.S. Shah, J

The Petitioner sold its products to wholesalers, who sold them to secondary wholesalers, who sold them to retailers who in turn sold them to the consumers. The sales were bona fide in the usual course of business, on principal-to-principal basis, without deriving any extra benefit. The Petitioner followed the 'self removal procedure' under Chapter VIII-A of the Central Excise Rules. They were removing their goods after paying Excise Duty on the basis of prices charged by the wholesalers. As per an earlier Judgement in the Voltas case, excess amounts came to be paid as Excise Duty. The Petitioners applied for refund.

Held: The amounts were paid under a mistake of law. The recovery was, therefore, without authority of law. The knowledge started from the discovery of mistake. The Department cannot claim the ground of Unjust Enrichment against the Petitioner when no extra benefit has accrued. The Department must refund the amount of excess tax paid.

(1985) 88 BLR 355
Apar Pvt. Ltd. v/s. Union of India
Madhava Reddy, CJ, C.J. Shah & Sujata Manohar, JJ

The Court had to consider when goods can be said to be imported into India and at what stage they become chargeable to Customs Duty under Ss. 12 and 25 of the Customs Act, 1962

Held: The combined effect of the definitions of the words “import” and “India” under S. 2(23) and (27) of the Act, is that the import can take place as soon as goods ae brought into the territorial waters of India since “India” includes its territorial waters. Hence, the taxable event occurs as soon as the goods enter the territorial waters of India and is not postponed till they are actually off-loaded on the land mass or valued or stored in bonded warehouse.

Customs Duty is not leviable if the goods are wholly exempt from Customs Duty even if the exemption is withdrawn under S. 25(1) of the Act, before the goods are released for home consumption.

If the goods are exempt from basic Customs Duty, they would be exempt even if they are not exempt from levy of additional Duty, wholly or partially.

Withdrawal of exemption from levy of additional Duty will not affect the levy of basic Customs Duty. Likewise, withdrawal of exemption of basic Customs Duty will not affect levy of additional Duty.

(1985) 57 Company Cases 241
Escorts Limited v/s. Union of India
Madhava Reddy, CJ & Rege, J

The Government liberalized the Policy of Foreign Investment in Indian industries by companies under Foreign Exchange Regulation Act, 1973 (FERA). 51% of the ownership was to be with NRIs. Applications were received seeking purchase of shares in the Petitioner Company. Several illegalities were alleged. Transfer of shares of Indian Companies for NRIs to other persons required RBI sanction. RBI issued a press

release that Foreign Investment was to be allowed up to 60% by NRIs. To qualify for permission, NRIs should hold at least 60% interest in the Company. Each overseas body may invest up to 1% of the paid-up equity capital.

The shares were purchased by 13 NR Companies without RBI permission and violating the provisions of Ss. 19 and 29 of FERA. The Company rejected the transfer of shares.

Nine Directors were sought to be removed by LIC by requisition and other Directors sought to be appointed.

Held: FERA was to be interpreted such as to advance its object – not merely to attract Foreign Investment but to regulate, monitor, control and limit the in-flow of foreign remittances and out-flow of investment and profits from India and conserve foreign exchange. S. 29 was mandatory. None can purchase shares without RBI sanction.

Right of hearing and making representation is implicit in S. 284 of the Companies Act, 1956 for removal of a Director. The shareholders' interest is to be secured. Reasons must be given by the requisitionist. The requisition is invalid.

LIC, as an investor, can protect its interest but not take over and administer the company.

If the proposal of merger of the company with another company is linked with the registration of transfer, then alone it would demonstrate mala-fides. The decision not to register the transfer by the Board of the Company is valid subject only to the appeal under S. 111 of the Companies Act.

None of the 9 Directors shall vacate their office. None of the new Directors shall assume office.

(1985) 21 ELT 72
Glaxo Laboratories (India) Ltd. v/s. Union of India
Sujata Manohar, J

The Petitioner imported Plasdone of pharmaceutical grade. It contended that it was imprted under Tariff item 28 or residuary item 87 and not 82(3).

Held: For the purpose of classification of goods, the end use is irrelevant unless the entry specifies the end use.

# 1986

AIR 1986 BOM 46

Nishit Prabhu v/s. Chandranath Vinayak

Couto & Kamat, JJ

The Appellants had filed a suit for declaration. Summons was issued to the Defendants. They raised the objection to the maintainability of the suit without filing Written Statement. The plaint was rejected under O7 R 10 of the CPC, 1976.

Held: Once a summons for settlement of issues is served on the Defendants, they are bound to file their Written Statement and there is no provision whatsoever in the CPC, 1976 which provides that the Defendant can raise any objection to the maintainability of the suit by any application before filing his defence. If such piecemeal applications are permitted they may lead to undesirable results.

AIR 1986 BOM 101

Federal Bank Ltd. v/s. Smt. Indiradevi Kunjamma

Couto, J

The bank obtained a decree in a suit for the recovery of an amount. The question was whether monies payable under an insurance policy on the life of the judgment debtor after the latter's death can be attached.

Held: An insurance policy is meant for security of the heirs of the deceased and hence, can never be attached.

AIR 1986 BOM 147

Vidharbha Nagarpalika Parishad v/s. State of Maharashtra

Madhava Reddy CJ, Mohta & Puranik, JJ

This was reference made to a larger bench to reconsider the Constitutional validity of sec 48A of the Maharashtra Municipality Act, 1965 giving power to the State Government to supersede Municipal Councils.

Held: S. 48A does not violate the Fundamental right guaranteed to the Citizens under Article 14. The power vested in the State Government is not arbitrary. There are sufficient guidelines laid down in the Act itself for the exercise of power by the State. The councillor's right to continue in Office until fresh elections are held is not a fundamental right. It is subject to power exercisable under S. 48A of the Act.

AIR 1986 BOM 184

Ratanlal Chandiprasad v/s. Raniram Darkhan

Madhava Reddy CJ, Gadgil & Pratap, JJ

The Court had to consider whether a statutory tenant governed by the Bombay Rent Act, 1947 retains heritable or transferable interest in the premises

And could have created a valid license before 1973.

Held: A statutory tenant governed by the Bombay Rent Act retains a heritable interest in the premises only to the extent provided by S. 5(11)(c) of the Act. A statutory tenant retains a transferable interest in the premises only if he had such transferable interest as a contractual tenant and tenant could have created valid license only if original contract of tenancy had given him the right to transfer his leasehold rights.

AIR 1986 BOM 262

Raoji v/s. State of Maharashtra

Mohta & Cazi, JJ

The Petitioners were all non-tribals who had purchased occupancies from the tribals. In view of S. 36A of the Maharashtra Land Revenue Code the transactions were declared as invalid. Hence the validity of S. 36A imposing restriction on transfer of land by Tribal in favour of Non-tribal and vesting of land in State Government on such transfer was challenged before the High Court.

Held: The restriction on transfer of the land by a tribal in favour of a non tribal under S. 36A of the Maharashtra Land Revenue Code does not violate of Articles 14, 15, 19 and 31 of the Constitution as the tribals belong to weaker sections of the society and promoting their interest is one of the major items of our national goals. Hence discrimination made in favour of these sections of society by S. 36 A cannot be termed arbitrary.

# 1987

AIR 1987 BOM 123

Gopalkrishna Ramchandra v/s. State of Maharashtra

Lentin, Kurdukar & Jamdar, JJ

The question raised for consideration was of the validity and /or interpretation of Government Resolutions making reservation for Scheduled Castes, Schedules Tribes and Denotified Tribes/Nomadic Tribes in the category of Inspectors of Police and promotion from that category to that of Assistant Commissioners of Police in the Greater Bombay Police Force.

Held: Though members of the Schedule Caste renounce Hinduism and embrace Buddhism, they continue to live in the same social and economical condition of backwardness, for whom Government is entitled to make reservation. Hence the Resolutions were held to be valid, subject to the limit that percentage of reservation in any particular year must not exceed 50%.

AIR 1987 BOM 182

Shantaram Tukaram v/s. Smt.Dagubai Tukaram

Jahagirdar & C. Agarwal, JJ

The suit was for a declaration that the Defendants were not the legal heirs. The question was whether the children of a void marriage are legitimate for the purpose of succession to the property of the family in which they are born.

Held: A child of void marriage can only succeed to the property of its parents in accordance with provision of S.8 or S.15 of the Hindu Succession Act, 1956. They cannot claim share in the coparcenery property in which the parent has a share. The property to which such a child can lay the claim must be the separate property of the parent and not the coparcenery property.

AIR 1987 BOM 220

Jaishree Mohan v/s. Mohan Govind

Sharad Manohar, J

A Petition for divorce was filed by wife on the ground of cruelty. Husband in his written statement made unwarranted allegations of adultery against her. The question raised was whether unauthorized and unfounded allegations in written statement themselves amounted to grave mental cruelty so as to form basis for decree of divorce.

Held: Allegations of adultery against wife by husband in his Written Statement amount to cruelty provided those allegations are unwarranted and unfounded. They themselves can form basis for decree of divorce on the ground of cruelty.

AIR 1987 BOM 283

Percy Jal Pardiwalla v/s. The Bar Council of India

Kania, CJ & Sujata Manohar, J

Validity of Part IV of Rule 1(1)(d) of Bar Council of India Rules 1975, classifying students of law into two classes, namely students having regular employment during the course of study and students undergoing other course of instruction like Chartered Accountant, was challenged on the ground that it was discriminatory and hence violative of Article 14 of the Constitution.

Held: Rule 1(1)(d) of Bar Council of India 1975, was clearly excessive and beyond the powers given to the Bar Council of India. The restriction imposed by the Bar Council was discriminatory and violative of Article 14 of the Constitution.

AIR 1987 BOM 354

Devidas Baburao v/s. State of Maharashtra

Pratap & Kantharia, JJ

The Petitioners claimed that they belonged to Gadi-Lohar community which is included in the list of the Nomadic Tribes. The question was whether the caste certificates of blood relations can become a conclusive proof.

Held: The caste certificates of blood relatives can't become conclusive proof. At the most such caste certificates of blood relations can be used as a guideline and/or circumstances to be taken into consideration along with other evidence on record.

(1987) 1 BOM (Cri) 499
M.S. Dubal v/s. State of Maharashtra
P.B. Sawant & Kolse-Patil, JJ

The Petitioner challenged the constitutional validity of S.309 of the IPC which makes attempt to commit suicide a criminal offence for being violative of fundamental rights such as “right to life” guaranteed under Constitution of India.

Held: The Court held that “right to life” under Article 21 of the Constitution includes the ‘right to die’. One's life, one’s body with all its limbs is certainly one's property and he is the sole master of it. He should have the freedom to dispose it off as and when he desires. S. 309 of the IPC is ultra vires the Constitution being violative of Art.21 and it must be struck down.

(1987) MLJ 49
Vijay Valia v/s. State of Maharashtra
Kantharia & P.B. Sawant, JJ

The Court had to consider the role of a prosecutor under Ss. 24 and 25 of the Cr.PC, 1973. Whilst so doing, the Court considered the aspect of victim representation in a criminal trial.

Held: Criminal prosecutions are launched not only by the State but also by private parties. The role of the prosecutor in any criminal trial whether at the instance of the State or a private party is to safeguard the interests of both the complainant and the accused. The right to be heard includes the right to be represented by an able spokesman of one's confidence. This right belongs both to the accused and the complainant. It is not only the accused who is in need of assistance, and protection of his rights but also the complainant.

The Court must safeguard the interests of the accused and the complainant. The Court is not a silent spectator to the proceedings but an active participant in it. It has to hold the scales even between the complainant and the accused.

# 1988

AIR 1988 BOM 248

Pandurang Chimaji v/s. New India Life Insurance Co. Ltd.

P.B. Sawant, Kolse-Patil & Guttal, JJ

The death of the deceased took place in a motor accident in a factory compound. The legal heirs of the deceased applied for compensation under Motor Vehicles Act, 1914. The claim was resisted by the insurance company on the ground that the place where the accident took place was within the compound of factory and hence it was not a 'Public place' within meaning S. 95 of the Act.

Held: All the places where members of the public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever would be covered by the definition of 'public place' in S. 2(24) of the Act to make the Insurance company liable.

AIR 1988 BOM 278

Ramanlafl Lalbhai v/s. Central Board of Film Certification

Daud, J

This petition was under Article 226 challenging the decision of the Respondent refusing a certificate for exhibiting the feature film titled 'Bedroom story" produced by the petitioner. The film revolved around 4 characters, a professional photographer with an artistic bent of mind; the heroine, who was a model by profession, a villain of film and his mother. The film contained some scenes showing long exposure of the heroine's body, not connected in any way with the film or story. The film also depicted some superstitious practices. The certificate of exhibition was denied.

Held: The display of the heroine and long exposure of heroine's body, not in any connected with film or story was violating the prohibition contained in the guidelines issued by Central Government forbidding scenes of vulgarity, obscenity and depravity offending human sensibilities. Hence the refusal of certification was proper. However, there was nothing in the guidelines or the Cinematograph Act, 1952 to justify the distinction between permissible superstition and impermissible superstition and hence refusal to give certification on that ground was liable to be quashed.

(1988) 1 BOM. C.R. 11

Habibulla Saudagar v/s. The State of Maharashtra.

Tipnis, J

The Petitioner was arrested on 12.7.1987 for the offence of committing murder under S.302 of the IPC, 1860. On expiration of the period of 90 days he moved an application for bail under S. 167(2) of the Cr.PC at about 11.00 o'clock on 12.10.1987. The Magistrate waited for whole day but chargesheet was not filed. He rejected the application. The Petitioner applied for bail in this Court. In the meanwhile a chargesheet was filed in the Trial Court. Hence the question before the High Court was whether it can still extend the benefit of S. 167(2) of the Cr.PC to the Petitioner.

Held: The Accused has an absolute right to be released on bail on expiry of 90 days which cannot be defeated by mere filing of chargesheet before his application is considered though the Prosecution may apply for cancellation of bail.

(1988) 1 BOM. C.R. 48
Municipal Corporation of Greater Bombay v/s. Jog Constructions
Suresh, J

This Petition was filed for setting aside the Award passed by the Arbitrator in respect of the contract of execution of civil works given by the Petitioner to the Respondent after inviting tenders. The ground raised for challenging the Award was that Arbitrator had not decided the question of law properly.

Held: The Court cannot set aside Award even if there is an error of law apparent on face of it and even though the decision of Arbitrator may not accord with law as understood by the Court. The Court can interfere in the Award only under S. 30 of the Arbitration Act, 1940.

(1988) BRC 158
Hoshang Dotiwala v/s. Rustomji Dotiwala
Tated, J

The parties are son and father. The father was the tenant of the premises. The son lived with him. The parties had serious disputes. The father prayed that the son be removed from his family house as he has become a nuisance to him. The son claimed tenancy under S. 5(11)(c ) of the Bombay Rent Act, 1947 as his grandfather was a tenant before his father and he lived in the premises since his time.

Held: The son lives in the premises as a member of the family of the Respondent. He has no independent right to continue staying in the suit premises. He has no right as a tenant as there has been no succession. There is no question of succession to the tenancy and the creation of any right under S. 5(11)(c ) of the Act.
(See AIR 1995 BOM 210)

(1988) 90 BLR 22
Eknath Ogale v/s. Mansukhlal Jain
P.B. Sawant & Guttal, JJ on dissent
Pendse, J

The Plaintiff sued in the Civil Court for protection of his possession against the disturbance of the Defndant in the suit premises licensed to him.

Held: The suit is relating to recovery of possession of the licensed premises. Only the Special Court would have jurisdiction as specified in S. 41 of the Presidency Small Cause Court Act, 1882 as amended in 1976. The Bombay City Civil Court has no jurisdiction to try the suit which is by a licensee against his licensor. The words "relating to" in the section are very wide. They include suits, not only for recovery of possession, but also with regard to recovery of possession.

The plaint must be read as a whole.

(See AIR 1980 BOM 123)
[See also (2007) 5 BCR 1 relating to suits by licensor of a gratuitous licence]

# 1989

(1989) 1 BCR 99
Krishna Bajaj v/s Dorab Warden
H. Suresh, J

The Plaintiff was the co-owner with his brother in a family house constructed on the land purchased by them. After the brother's death, his wife sold his undivided half share in the property to an outsider. The purchaser came into possession of the ground floor and the Plaintiff continued in possession of the first floor. On the case of extreme inconvenience of a co-owner, the Plaintiff obtained an order of mandatory injunction virtually ousting the purchaser from his flat.

Held: The parties always lived separately. The premises could not be considered a dwelling house so as to disentitle the purchaser as stranger under S. 44 of the Transfer of Property Act, 1882. The Plaintiff was not entitled to a mandatory order of injunction.

AIR 1989 BOM 17

Chandrakant Vassudev v/s. Vaman Mahadev

Couto, J

The Plaintiff filed a suit for possession, declaration and injunction and claimed alternative relief of demarcation and partition of the properties. The Defendant contended that as the Plaintiff was claiming alternate relief, Court fee has to be paid on the larger value of both the reliefs. After giving opportunity, the Plaintiff failed to pay Court fee. Therefore, an order of partial rejection of the plaint was passed by Trial Judge under O7 R11 of the CPC, 1976.

Held: The Plaint should be rejected in toto. It cannot be rejected only partially in respect of the alternative prayer. As no cause was shown to justify extension of time for payment of Court fees, no discretion was left for the Court to reject the plaint under the mandatory provisions of O7 R11.

AIR 1989 BOM 138

M. S. Malathi v/s. The Commissioner Nagpur Division

Mookerjee, CJ, Dharmadhikari & Kurdukar, JJ

The Petitioner got the provisional admission in the Government Dental Medicine and Surgery Course. She belonged to the Adi Dravida caste which was specified as a scheduled caste in Tamil Nadu. But was not specified in Maharashtra as a scheduled caste. Hence authorities for caste verification refused her claim as of scheduled caste. She challenged it in the High Court.

Held: A member belonging to a schedule caste would be of scheduled caste only in the State in relation to which his caste is specified as a scheduled caste. In a State in relation to which his caste has not been specified as scheduled caste under Article 341, for the purpose of the Constitution, the said caste would not be deemed to be a scheduled caste.

AIR 1989 BOM 247

Baban Narayan v/s. Mahadu Bhikaji

V. A. Mohta, J

The question for consideration was whether a Civil Court has jurisdiction to issue at an interlocutory stage a mandatory injunction so as to restore the status quo anterior to the date of institution of suit.

Held: Injunctions are a form of equitable relief and they have to be adjusted and moulded in aid of equity and justice to the facts and circumstances of each particular case. The Civil Court has, therefore, undoubted jurisdiction under Order 39 Rule 1 & 2 to grant temporary mandatory injunction at interlocutory stage. Such jurisdiction can also be inferred under S. 151 CPC. However, such power is not to be executed lightly or commonly. Order in maintaining of status quo as on the date of suit as an interim measure is rare and rarer still is the order of maintenance of status quo as on the date anterior to the institution of the suit.

AIR 1989 BOM 267

Suresh Govind v/s. Raghunath Moreshwar

P.B. Sawant & Kolse-Patil, JJ

A Hindu male executed a will on 27/11/1947 and bequeathed the property to his widow for her life stipulating that after her death the property was to go to the Plaintiff. Before her death she executed a will on 15/1/1971 and bequeathed the property to the Defendant no.2. The Plaintiff challenged the will on the ground that she was not a full owner and hence could not alienate it in any manner she liked.

Held: As the widow was in possession of the property when the Hindu succession Act, 1956 came into force, she had became an absolute owner of it under S. 14 of the Act. She had, therefore, the right to alienate it in any manner she liked. The will merely recognized her pre-existing right of maintenance and even if it was not recognized it would have prevailed.

AIR 1989 BOM 331

Garware Plastics v/s.M/s. Telelink

Sujata Manohar, J

The Plaintiffs had an assignment of Video Copyright in respect of Cinematograph Films over Cable TV Network. The contention of the Defendants was that those films were to be shown only to the members of the subscribers' household or his guests and such viewing cannot be considered as broadcasting to the public.

Held: The entire audience taken together cannot be treated as members of a common household or family members. They can only be viewed as a portion of public. Hence showing video films over cable TV Network to subscribers amounts to infringement of copyright.

AIR 1989 BOM 410

Amrutlal Weljibhai v/s. Vishwasrao Devrao

Ratnaparkhi, J

On 9/9/1981 a quit notice was sent on the address of the Defendant which was refused by him and returned on 12/09/1981. On the same date the Plaintiff sent a notice determining the tenancy under certificate of posting. The question for determination was whether the quit notice was served on the Defendant.

Held: The presumption under S. 114 of Evidence Act, 1872 must be stretched to its logical extent and the Court would be justified in presuming that the letter once posted had reached the addressee when there was no evidence in rebuttal.

## 1990

AIR 1990 BOM 84

Smita Dilip v/s. Dilip Dattaram

C. S. Dharmadhikari & Chaudhary, JJ

The husband's petition for divorce on the ground of cruelty was decreed. During the pendency of the appeal the husband married a second wife.

Held: Though the marriage of the parties may have irretrievably broken down, the husband cannot be allowed to take advantage of his own wrong in marrying. It is well settled that what cannot be granted directly cannot be achieved indirectly. By distorting the passage and reading certain observations of the Supreme Court torn from context,a new ground of irretrievable breakdown of marriage cannot be made out for getting a divorce when the Law does not provide for it.

AIR 1990 BOM 343

Kisan Bhagwan v/s. The State of Maharashtra

V. A. Mohta & Cazi, JJ

Grazers of Kathewadi region were grazing their cattle on license basis in the government forest. The state of Maharashtra and its forest officers took a policy decision not to grant such licenses to any Kathewadi grazer and totally excluded that class for grant of license in future. This policy decision was challenged.

Held: Only because some members of the class of the grazers were indulging in illegal grazing in the past, the Respondent cannot exclude the whole class of persons from the grant of license. The policy decision of the State Government in that regard was held to be not valid.

(See also 1878 ILR 2)

AIR 1990 BOM 344

Siraj Sahebji v/s/. Smt. Roshan Siraj

Sugla, J

A Muslim wife with her children filed a suit inter alia for divorce and claimed maintenance for her two children who were more than two years of age. The question for determination was whether a Muslim husband is having limited obligation to pay maintenance to children maintained by the divorced wife upto two years from the date of their respective births.

Held: Under the Muslim Law the father's obligation to maintain the minor children is absolute in terms. S. 3(1)(b) of The Muslim Women (Protection of rights on Divorce) Act,1986 has nothing to do with the independent right of children to be maintained by the father under S. 370 of The Mohammedan Law. It does not affect the children's independent right to get maintenance from their father even after they become more than two years of age and are staying with their mother. At the most father may claim custody of children but if he has not done so, he cannot deny his liability to pay maintenance to them.

AIR 1990 BOM 355

Lucy D'Souza v/s. The State of Goa

V. A. Mohta & Couto, JJ

A petition was filed challenging S. 53(1)(vii) of the Goa, Daman and Diu Public Health Act, 1985 empowering the State Government to isolate persons found to be positive for AIDS. It was challenged on the ground that it was unreasonable and violative of rights under Articles 14, 19(1)(d) and 21 of The Constitution of India

Held: An individual's right has to be balanced with the public interest. Even if there is conflict between the right of an individual and public interest, the former must yield to the latter. Sec 53(1)(vii) was accordingly held to be reasonable and not violative of the Articles 14, 19(1)(d) and 21 of the Constitution of India, as it was found that isolation of the patient suffering from AIDS was not wholly unscientific or counter productive, but was in the interest of the Society. Further it was held that the power to examine correctness of policy decision has to be exercised very cautiously as the Court would be too ill equipped to doubt the correctness of the legislative wisdom.

(1990) 3 BCR 57

State of Maharashtra v/s. Editor, Nagpur Times

Cazi , J

On the basis of a report published in the local daily 'Nagpur Times' dated 12/7/1989 under caption 'Alleged rape on Minor girl-Police lenient towards accused', some businessmen were charged for committing rape on a minor girl from a brothel run in a posh residential locality. When the application for bail came for hearing before the Court, the Public Prosecutor failed to assist the Court in the true sense.

Held: The Public Prosecutor is the officer of the Court and he is expected to protect the interest of the State to the best of his ability. He is also supposed to assist the Court in dispensing justice. He cannot throw the entire burden on the Court.

[1990] 184 ITR 580

CGT v/s. Seth Arvind Mafatlal

Sujata Manohar & Sugla, JJ

The assessee took two insurance policies on his life nominating his wife for the benefit of his two sons. He paid premia from each year.

Held: The premia paid by the assessee in respect of policies of insurance on his life which were taken out by him under the provisions of the Married Women's Property Act for the benefit of his sons are in discharge of an obligation in a contract of insurance and do not amount to gifts made by the assessee to the beneficiaries of the policies.

The policy of insurance is deemed to be a trust and the payment of premium to keep alive the policy cannot be gifts to the beneficiaries each time they are paid.

## 1991

AIR 1991 BOM 145
Krishankant Dattaram v/s. Dy. Charity Commissioner
Ashok Agarwal, J

In a proceeding under S. 19 of the Bombay Public Trusts Act, 1950 an application for abatement of proceedings before the Charity Commissioner on the ground of death of the Respondent was rejected.

Held: The provisions of O22 R 4 of the CPC do not apply to proceedings under S. 19 of Bombay Public Trusts Act. The inquiry contemplated under S. 19 of the Act is in public interest and the same cannot be thwarted on such technical pleas as abatement. It is incumbent upon the Charity Commissioner to continue these proceedings as if these proceedings were initiated on his own motion.

AIR 1991 BOM 164
Alka Bakre v/s. Bhaskar Bakre
Ashok Agarwal, J

The husband's petition for divorce under S. 13(1)(ia) and 13(1)(ib) of The Hindu Marriage Act,1955 was decreed on the ground of cruelty and desertion as the wife had refused to join him by leaving her job on his transfer to another place.

Held: The parties to a marriage are equal partners in all respects and there is no justification to hold that it is only the place of posting or the original place of the residence of the husband that will be the matrimonial home. The wife has an equal right of having a say in the matter of determining the place of their matrimonial home and if there has been an estrangement between the parties on that score, the husband is wholly responsible. The wife had, on two earlier occasions, resigned her job and accompanied her husband at the place of his service. There was reasonable cause for her to refuse to join him or to reside with her in-laws in his absence. This conduct of the wife neither amounts to desertion nor cruelty.

(1991) 4 BCR 251
Shriram Narayan v/s. Demu Surya
Da Silva, J

The Respondent filed a civil suit for permanent injunction. He made an application for temporary injunction. The application was rejected. That order was not challenged. The Respondent filed another civil suit for permanent injunction with regard to the same property in which temporary injunction was allowed.

Held: The scope of the principle of res judicata is not limited only to suits only under S. 11 of the CPC, 1976. It would apply even to different stages of the same suit.

(1991) 3 BCR 229
Mary Dowling v/s. Margaret Merwan
Variava, J

The Respondent, who was a step daughter, filed a petition for Succession Certificate claiming that she is the only heir of the deceased. Her Petition was allowed. The Petitioner, who was real sister of the deceased, challenged the same contending that she and one other sister were the only heirs of the deceased and the Respondent being a step daughter would not be an heir to succeed to estate of the deceased.

Held: Part IV of the Indian Succession Act, 1925 lays down that for the purposes of succession there must be a relationship by blood. S. 27 of the Act also makes no difference to this rule. Therefore, where S.27(b) refers to a relationship, it must be understood as reference to relationship by full blood or half blood. The step daughter, not being related to the deceased either by full blood or half blood, would not be entitled to succeed to the estate of her deceased step father.

1991 AIR 301 BOM
Bombay Environment Action Group v/s. State of Maharashtra
Gokhale & Devadhar, JJ

Large scale illegal construction activities and deforestation work was going on in hill stations like Mahabaleshwar and Panchgani which had been declared as eco-sensitive area. It resulted in widespread ecological problems. The Bhatia committee submitted its report and identified more than 100 buildings of illegal construction and many other violations in hill station.

Held: No one can carry out illegal construction activities and deforestation on hill stations which are declared as eco-sensitive area. The Court directed the

Mahabaleshwar Municipal Council to take action against illegal construction and deforestation.

[1991] 188 ITR 293
CIT v/s. Himalayan Tiles & Marbles (P.) Ltd.
Bharucha & Sugla, JJ

The assessee took over a business of another person as sole proprietor of the assessee's concern for consideration. A suit was pending against the firm. An award was made in favour of the firm against Union of India.

Held: Purchase of a claim pending arbitration is a business venture. Where the assessee took over claims from a person against a company in respect of which an arbitration suit was pending and on settlement of the claim made a profit, the said profit was assessable as income accruing to the assessee from an adventure in the nature of trade.

(1991) 189 ITR 774
Sadhichha Chitra V. CIT
Sujata Manohar & D.R. Dhanuka, JJ

The Court had to consider under what circumstances a subsidy (or similar financial assistance) given by the government is taxable as a revenue in the hands of the recipients. The assessee was a producer of motion pictures in Marathi language.

By a Government resolution bearing No. ENT 1075-F dated February 19, 1975, the Government of Maharashtra sanctioned its subsidy scheme for grant of financial assistance to Marathi film producers for their ensuing ventures. By the said resolution, it was decided by the Government of Maharashtra that its total receipts on account of entertainment duty on Marathi films exhibited in the previous year shall be earmarked for implementation of the said scheme.

Held: The Court laid down the test thus : " *We are of the view that the answer to the question whether the receipt of a particular subsidy amounts to a capital receipt or a revenue receipt would depend upon the nature and content of the subsidy, the scheme, its objectives and the purpose for which the subsidy is granted...*" Applying this test, the subsidy was held to be a capital receipt.

# 1992

(1992) 2 BCR 56
Rama Sidram v/s. State of Maharashtra
B.N. Deshmukh & Dani, JJ

The Petitioner, who was commited to jail sent an application to the Court raising grievance of ill-treatment at the hands of jail authorities. His main grievance was that while fixing the scale of ration, the requirement of each individual prisoner was not taken into consideration in respect of diet. The food provided on the basis of general scale is violative of Article 21 of the Constitution of India.

Held: A prisoner has right to get more diet as per his requirement by approaching the medical officer. He can avail extra or special diet on the recommendation of the medical officer. The Maharashtra Prison (Diet for prisoners) Rules prescribing general scale of diet therefore, do not offend Article 21 of the Constitution of India.

(1992) 2 BCR 478
Narendra Govinda v/s. The Inspector of Police
Pendse & Mane, JJ

The Police found the Petitioner in possession of a country revolver and 3 live cartridges without license. The Police registered an offence under S. 25(1)(C) of Indian Arms Act, 1959. His bail application was rejected as Police had also invoked the provisions of S. 5 of TADA Act, 1987. The Petitioner then challenged the Constitutional validity of S. 5 and S. 2(f) of the said Act.

Held: For the offence under S. 5 of TADA, the classification of persons within a Notified area cannot be treated as reasonable. Mere possession of unauthorized arms in the notified area is not sufficient to invoke provisions under S. 5 of the Act. It is attracted only when such possession relates to the terrorist acts or the disruptive activities. It is not necessary that a person in possession of unauthorized arms in a notified area should be personally involved in such activities. However, if it is found that there is any material indicating that person found in possession of unauthorized arms in a Notified area has previous history of indulging in terrorist acts or disruptive activities, then the invocation of S. 5 of the Act cannot be faulted.

(1992) 2 BCR 58
V. M. Bhandari v/s. State of Maharashtra

Sukumaran & Dr. Saraf, JJ

A public grievance was raised concerning allotment of the Cross Maiden for conduct of an exhibition of Adivasi Seva Samiti headed by a Cabinet Minister.

Held: As Exhibition was aimed at promoting the welfare of a down trodden community and otherwise legal. It did not incur any infirmity just because a Minister happened to be a Chairman of the organization. The practice of filing frivolous petitions in name of public interest was deprecated by the High Court.

(1992) 1 BCR 85

Chagunabai Chanoo v/s. Khatau Makanji Mills

P.D. Desai, CJ & Sukumaran, JJ

The Petitioner was employed in the Respondent Company. She remained absent due to strike. The strike was declared as illegal. The Chief Minister made an appeal to the employees to resume duty. The petitioner was not allowed to resume though she reported for duty. The Petitioner was dismissed.

Held: It is necessary to determine whether there is actual participation of the workman in the illegal strike before taking any disciplinary action. If her participation is passive, even if the strike is held illegal, the dismissal of employee is not legal. The dismissal of an employee without holding individual inquiry would not be just and proper.

(1992) 1 BCR 514

Meena Anilkumar v/s. Anilkumar Govind

Cazi, J

The parties were married at Pune and later resided at Thane. Subsequently they went to the USA. The husband filed a petition for divorce on the ground of cruelty in the Court at Thane. The wife raised question of jurisdiction of Thane Court on the ground that they had last resided together in the USA.

Held: S. 19 of the Hindu Marriage Act, 1955 confers jurisdiction on the Court within whose ordinary local jurisdiction the parties last resided together. It was not the intention of the Act to confer jurisdiction on a foreign Court. As before moving to the USA, the parties had last resided together at Thane, the Court at Thane had jurisdiction.

AIR 1992 BOM 375
Minoo Balsara v/s. Union of India
Bharucha & Srikrishna, JJ

The Petitioners challenged the constitutional validity of the Public Premises (eviction of Unauthorised Occupants) Act, 1980 [PP Act] under Articles 14 of the Constitution of India as it discriminates between two classes of tenants, the tenants of private landlords and tenants of government companies.

It is liable to abuse as it confers unfettered power and unguided discretion upon the Estate Officer. The Estate Officer was to form an opinion about unauthorized occupation. There was no defence to eviction.

The Petitioners challenged the Act as violative of Article 19(1)(f) of the Constitution as there is repugnancy between the Bombay Rent Act 1947 and the PP Act. The Rent Act would prevail to the extent of the repugnancy.

Held: There is no discrimination under Article 14. The two Acts operate in respect of different tenants.

The President's assent was sought to overcome repugnancy between the Transfer of Property Act and the Rent Act. It is not the basis for according precedence to Rent Act over PP Act. The Rent Act cannot prevail over the PP Act. The Act is not ultra vires Article 19(1)(f) of the Constitution. The constitutionality should not be adjudicated, except when necessary. Hence, the challenge to constitutionality was not considered.

The Act was read considering the words as they stood. It was neither reading down the legislation nor reading words into them.

# 1993

(1993) 201 ITR 348
Commercial Corporation of India Ltd. v/s. ITO
G.D. Kamat & Dr. DeSilva

The petitioner is a company having its registered office at Manipal. The company entered into an agreement with the Government of Goa to organize lotteries on behalf of the State of Goa on All-India basis except within the State. Under that agreement, the company is required to cause the lottery tickets to be printed at its own cost against payment of guaranteed profit to the Government. The company is to deposit the prize money and the cost of the draw. The company conducted the lotteries for a

considerable period without any difficulty under the agreement when, all of a sudden, the Ex-officio Director of Lotteries, Government of Goa demanded a sum of Rs.2,53,78,080 by way of Income Tax.

The petitioner-company claimed that what is credited to the petitioner under clause 15 of the agreement is nothing but return of monies deposited with the Government towards prize monies on lottery tickets remaining unsold with the company. There is no purchase of the lottery tickets or participation in the draws.

Held: A lottery is a chance for a prize against a price. Hence, an element of purchase is present. The purchaser of a lottery ticket must have a right to participate in the draw. That is sale of goods. The income is liable to tax.

AIR 1993 BOM 87
State Bank of India v/s. Javed Akhtar Hussain
Mutalik, J

The suit of the Petitioner Bank was decreed. The Bank filed an execution application. Thereafter, the Judgment debtor deposited a sum in a FDR in another branch of the Petitioner in the joint names of himself and his wife. He also had a joint Recurring Deposit account. The Petitioner enforced lien on both these accounts without exhausting any remedy against the Respondent. An order releasing the lien was challenged.

Held: It is not proper for a bank in whose favour a decree is passed to unilaterally enforce a lien on the amount deposited subsequently by defaulter by way of fix deposits in joint account with his wife in another branch of Petitioner bank.

(1994) 1 Mh.LJ 21
Goa Foundation v/s. Konkan Railway Corporation
Pendse & G.D. Kamat, JJ

The Petitioner challenged the proposed alignment of the Konkan Railway Project passing through the State of Goa as having been planned and undertaken without any environmental clearance from the Ministry of Environment and Forests under the Environment Protection Act (EPA), 1986. The Petitioner also claimed that the proposed alignment was wholly destructive of the environment and the ecosystem and violated his Right to Life under Article 21 of Constitution of India.

Held: The environmental clearance was not required under the Railways Act, 1989. Development of the country is not possible without some adverse effect on the

environment and ecology. The project of public utility cannot be abandoned even if there are some adverse effects. It is equally important to adjust the interest of the people and to maintain the environment.

(1993) 204 ITR 93 (BOM)
CIT v/s. Lallubhai Nagardas & Sons
Dr. Saraf & U.T. Shah, JJ

The assessee, a firm of stock brokers claimed that its firm carried on a profession as distinguished from business.

Held: Stock-broking is not a profession. A stock broker cannot be said to be engaged in the practice of a profession. The real job of a stock broker is to make arrangements for sale of the shares or securities of others. Such activity clearly falls within the expression ‘business’ and not ‘profession’.

‘Profession’ has to be distinguished even from `occupation' which tantamounts to `business' viz., an occupation which is substantially the arrangement for sale of commodities. This is much like the distinction between a `dealer' and a `broker'. A dealer sells his own goods whereas a broker sells or arranges the sale of the goods of others through there may be cases where the same person does both the acts.

(1993) 2 BCR 301
Bomi Mistry v/s. Kesharwani CHS
Daud, J

The agreement of the original owners contained two restrictive covenants; vertical expansion on the land and a free central passage. The Defendant society building was constructed in breach of the covenants. Their agreement was ante dated for the purpose of evasion of tax. It violated the rights of the covenantee as a citizen and a tax payer. The agreement was registered. The Plaintiff sued for cancellation of the agreement more than 3 years after its registration but within 3 years of it having been first used against him. The Court had to consider, inter alia, whether the Plaintiff sued within limitation and whether the agreement could be cancelled as not bona fide.

Held: Ante dating an agreement for defrauding the Revenue is forbidden by law and against public policy. The object of an agreement is its purpose and design. S. 23 of the Indian Contract Act, 1872 relates to only the object or consideration and not the reasons or motive which prompted it.

A cloud on title is created by a party impairing the value of the property.

The period of limitation begins when an ante dated document is first used against the Plaintiff, that is, when the right to sue first accrues under Article 58 of the Limitation Act, 1963 though the registration of the document would be notice to “the wide world”.

The ante dated document put up to evade tax is declared ineffective.

(1993) Cr.LJ 977
Abdul Wahid v/s. State of Maharashtra
Saldanha & Daud, JJ

The accused raped his 7 year old daughter. She was sleeping with his other children last in a hut. He went to the bathroom to wash his clothes. The CA report showed the blood group and the semen matched on the clothes of the victim child. The medical report showed her vagina being swollen, inflamed on touch and her hymen being tender. The report was that she was subjected to recent sexual intercourse.

Held: The offence of rape is an affront to a woman’s dignity. It has to be dealt with ruthlessly as it is abhorrent, heinous and atrocious, especially when committed on a minor girl. The crime must be punished severely for deterrence to be achieved.

Yet, the Court took a view of the complete circumstances. The accused was in the weakest strata of society. He was a hutment dweller. He had no place to sleep. His wife had left him. He cared for his children and sent them to school. It was a crime of passion on an irresistible impulse.

The imprisonment for life was converted to imprisonment for 10 years for rape under S. 376 of the IPC and for 1 year under the Bombay Children Act, 1948.

[See also (2001) Cri.LJ 1579]

## 1994

(1994) 2 BCR 219
Hari Om v/s. State of Maharashtra
Kantharia & Moharir, JJ

The Accused was convicted for the offence of robbery punishable under S. 392 read with S.397 of IPC in several cases. It was found that accused had indulged in several acts of endangering property and even human life. An order of concurrent sentence in all those cases was challenged.

Held: Order of concurrent sentence should not be passed casually as otherwise it would make sentences ineffective and crimes inconsequential. If habitual and hardened criminals are awarded concurrent sentences they escape punishment and dangerous criminals may be let loose on the Society.

(1994) 2 BCR 480

Arun Shankarrao v/s. District & Session Judge, Akola.

Dhabe & Chavan, JJ

The Petitioner offered to voluntarily retire. His application was accepted. Thereafter he applied for withdrwal of his application. That was rejected. The rejection was challenged under Rule 66(5) of the Maharashtra Civil Services (Pension) Rules, 1981.

Held: Rule 66(5) of said Rules is not unconstitutional. Its object is to confer upon benefit upon Government employees. The Rule is to prevent its abuse. The notice cannot be withdrawn.

(1994) 4 BCR 51

Abdul Hamid v/s. State of Maharashtra.

Ashok Agrawal & I.G. Shah, JJ

The Petitioner file the writ petition invoking extraordinary jurisdiction of the High Court for quashing the proceeding initiated against him under the Terrorist And Destructive Activities Act, 1987 contending that there was no sufficient material against him to satisfy the ingredients of S. 3 of the Act except for the allegation that he was found in possession of AK56 rifles and 12 empty magazines.

Held: Issuance of writs is a prerogative right of the High Court. It cannot be controlled or taken away by any enactment. However, this power of High Court to issue Writs is to be exercised sparingly and not as an alternative remedy for reliefs which may be obtained by the mode prescribed in a statute. As there was no sufficient material to prove the ingredients of S. 3(1)(3) of TADA, it was fit case to quash the proceedings initiated against the Petitioner under the said Act.

(1994) 3 BCR 321
Gangabai Bala v/s. Jagannath Parashram
V.A. Mohta, J

A widow sued for declaration of title to the half portion of house property where she was residing and three acres of agricultural land which were in her cultivation.

Held: Physical possession of the property by Hindu female is not a sine qua non for attracting S. 14(1) of the Hindu Succession Act, 1956. As the field in question was given to the widow in lieu of her pre-existing right of maintenance, she had acquired absolute ownership over the same under S. 14(1) of the Act.

(1994) 3 BCR 53
Prakash Totaram v/s. Union of India
Dr. Saraf, J

The Petitioner was the owner of the certain premises given on lease for the period of 5 years to the Respondent. After completion of 5 years the petitioner sent notice to the Respondent inquiring whether the Respondent wanted to continue the lease. In reply to the Notice, the Respondent stated it was interested in continuing the lease but offered the rent which was not as per the contract.

Held: Under Article 226 Writ Courts do not entertain disputes arising out contractual obligations even if one party happens to be the State. However, if the State acts arbitrarily, which it is not supposed to do, then even in contractual obligations the power of Judicial Review cannot be denied to the citizen. The attitude of the Government Officers to persist with litigation like ordinary citizens was deprecable.

# 1995

(1995) 216 ITR 376
CIT v/s. Hilla Wadia
Sujata Manohar & U.T. Shah, JJ

The assessee paid for the cost of construction of a new house. The Court had to consider whether the assessee could claim exemption under S.54 of the Income-tax Act, 1961 even if the construction is not completed within the period specified therein.

Held: If the assessee has acquired substantial domain over the new house and has made substantial payment towards the cost of construction within the specified period for claiming exemption of Capital Gains Tax, the assessee can be said to have complied with the requirements of the section even if the construction of the building was not completed within the stipulated time.

(1995) 4 BCR 263

Rekha Kholkar v/s. State of Goa

Da Silva & A.P. Shah, JJ

On the complaint of theft the Petitioner, a domestic servant, was called in the police station for inquiry. There she was subjected to ill-treatment. She was undressed and beaten mercilessly. She was admitted to the hospital due to injuries sustained. She filed writ petition claiming compensation

Held: As the Police had violated the fundamental right guaranteed under Articles 21, 14 and 22 of the Constitution, an action can be taken in light of departmental Inquiry. Compensation of Rs.30000/- was granted to the petitioner. The provision of S.160 (1) of the Cr.PC be strictly complied in all cases involving interrogation of women.

(1995) 1 BCR 358

Bhalchandra Narayan v/s. State of Maharashtra

Vishnu Sahai, J

The Petitioners were convicted of offences punishable under Ss. 324, 147 and 148 of the IPC. The conviction and sentence was upheld by the Appeal Court. Being aggrieved by the said order, the Petitioners filed this appeal.

Held: As only one common statement was recorded of 7 accused, it was held that this was not a proper way of recording statement under S.313 of the Cr.PC It was further held that this was a most casual unsatisfactory perfunctory and wholly illegal way of recording statement; this infirmity has introduced illegality in the conviction. Accordingly, convictions were set aside.

(1995) 97 BLR 957

Bayer (India) Ltd. v/s. State of Maharashtra

Kantharia & Saldanha, JJ

There was dispute over a land situated in the industrial zone. The land was designated for industrial use by Thane Municipal Corporation. The Developers proposed construction of multistoried residential buildings in the industrial zone. It was rejected by Thane Municipal Corporation.

Held: No residential development projects within the radius of 1km around industrial zone can be put up. Thane Municipal Corporation could not to permit any residential development within that zone.

AIR 1995 BOM 210
Conrad Dias v/s. Joseph Dias
Vaidyanathan, J

A father sued for injunction to restrain his son from entering into his residential premises on the ground of nuisance created by the son. The son defended the action claiming tenancy, licence, adverse possession and joint possession.

Held: The sn had none of those rights. The premises belonged exclusively to the father. The son lived there only as a member of his family, nothing more and nothing less. Hence, the son had to vacate, when called upon.
(See 1998 BRC 158)

## 1996

(1996) Cr. L.J. 1419
Ibrahim v/s. State of Maharashtra
Vishnu Sahai, J

The accused in this case was a hardened criminal involved in 22 cases. On account of this reason his application for bail in a case for offence punishable under S. 395 of the IPC was rejected.

Held: Criminal history of the accused could not be a sole ground to refuse bail. The accused has been in jail for over 9 years and 4 months. His trial had not yet commenced. Therefore, detaining him further in jail was infraction of his fundamental right to an expeditious and speedy trial implicit in Article 21 of Constitution of India. He was entitled to bail.

(1996) 4 BCR 264
Basantibai v/s Narayan
Lodha, J

A widow transferred her tenancy rights in her land by executing a will in favour of a distant nephew.

Held: The statutory tenancy is a personal right. It can be transferred only as per S.54 of the Bombay Tenancy and Agricultural Act, 1948. Therefore it cannot be transferred by Will.

(1996) 3 BCR 743
State of Maharashtra v/s. Kiran @ Karna
Vishnu Sahai, J

The accused arrested for the offence punishable under S.302 of IPC was released on bail by the Metropolitan Magistrate on the ground that he was aged only 17 years and his confinement in jail would be an obstacle in his education.

Held: In view of the provision of S.437(1) of the Cr.PC the Magistrate had no jurisdiction to grant bail as the offence was punishable with death or imprisonment for life and accused was neither below the age of 16 years, a woman, sick or infirm. If the order is sustained, it would be setting a bad precedent and providing an impetus for judicial anarchy. Under Article 227 of the Constitution of India, as the High Court is the guardian of the subordinate Courts, if it sustains the orders which are without jurisdiction it would be abdicating the function as guardian. Order of bail had to be set aside.

(1996) 1 BCR 22
Vasant Dagdu v/s. State of Maharashtra
Majithia & Vishnu Sahai, JJ

Accused was convicted for the murder of his wife for the offence punishable under S. 302 of IPC. The daughter testified.

Held: As the witness was the own daughter of the accused she would be the last person to falsely implicate the accused, her own father. The circumstances that the own daughter of the accused was deposing against him speaks volumes in favour of the truthfulness of Prosecution's case. Her evidence was also corroborated on material aspects. Hence it was held that her testimony cannot be rejected merely because she is an interested witness.

(1996) 1 BCR 28
Khandu Pandu v/s. State of Maharashtra
Majithia & Vishnu Sahai, JJ

The accused was convicted on the basis of circumstantial evidence for the offence punishable under S.302 of the IPC.

Held: Circumstantial evidence must unerringly point to the guilt of accused and should be wholly incompatible with the innocence of the accused and must be incapable of being explained on any other hypothesis except of the guilt of the accused.

AIR 1996 BOM 304
Sopan Maruti Thopte v/s. Pune Municipal Corporation
M.B. Shah, CJ & A.V. Savant, J

The scope of personal hearing for demolition of unauthorized structures under S. 351 of the Bombay Municipal Corporation Act, 1888 and the Bombay Provincial Municipal Corporation Act, 1949 was considered. Ex-parte ad-interim injunctions were granted.

Held: Directions for demolition procedure were laid down: personal hearing was not a must in every case; *audi alteram partem* cannot be applied when it would cause injustice to parties. The Corporation must give notice of 15 days to reply. The Corporation must consider the reply. If no sufficient cause is shown, the Corporation may give short reasons for not accepting the reply and demolish the unauthorized structure 15 days thereafter. If any assistance is required, the Corporation may grant oral hearing. If construction is in progress, the Corporation may demolish after 24 hours' notice. If any demolished structure is re-constructed, the Corporation may demolish after 24 hours' notice.

The practice of granting ex-parte ad-interim injunctions was deprecated.

# 1997

(1997) Cr. L.J. 3489
Nana Chormale v/s State of Maharashtra
Mane & Barde, JJ

The Accused was convicted for the offence punishable under S.302 of the IPC and was sentenced to death. The order was maintained upto the Supreme Court. His mercy petition before the President of India was granted and sentence of death was commuted to life imprisonment. After completion of 14 years in jail, the petitioner filed this petition for premature release under "Fourteen Years" rule as laid down under the government Letter No. RLP/1092/13/352/RPS- 13 dated 11th May, 1992.

Held: Remission Rules have a limited scope and do not acquire significance until the sentence is remitted under S.432. As per the revised guidelines of the Government which are in consonance with S. 433A of the Cr.PC the period of imprisonment to be undergone by the prisoner whose death sentence is commuted to life imprisonment is 30 years including remissions. Therefore, his application of release on completion of 14 years imprisonment being immature was rejected.

AIR 1997 Bom 406
X v/s Y
Tipnis & Trivedi, JJ

An employee was tested HIV+ve by his employer, a public sector corporation, prior to being regularized to a permanent position. The employee, though otherwise fit, was rejected from being regularized and his contract was terminated. He challenged his termination.

Held: A Government/public sector employer cannot deny employment or terminate the service of an HIV+ve employee solely because of his medical status, and any act of discrimination towards an employee on the basis of his HIV+ve status is a violation of his fundamental rights.
The name of the employee may be concealed.

AIR 1997 BOM 349:
Pragati Varghese v/s. Cyril George Varghese
Ashok Agarwal, A.V. Savant & Patankar, JJ

The Indian Divorce Act, 1869 denied a Christian woman the right to dissolve marriage on grounds of cruelty even when the marital relations were ugly. It required the ground of adultery to be coupled with the grounds of desertion or cruelty.

Held: S. 10 of the Indian Divorce Act violates Article Article 14 (Right to Equality), Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and Article 21 (Right to Life) of Constitution and hence is ultravires. The Court ordered the Legislature to intervene and carry out suitable amendments.

1997 AIR 342 BOM
Dr. Navin Kumar v/s. The Bombay Municipal Corporation
M.B. Shah, CJ & Patel, J

The issue is whether the Municipal Corporation should be permitted to construct toilet blocks near 'Gateway of India'. The Petitioners have prayed prevention for constructing toilet blocks, which violates the provisions of Coastal Regulation Zone.

Held: Toilet blocks could be constructed as they provide a facility indispensable to human beings at a place which is visited by thousands of persons every day. It also prevents nuisance arising because of unauthorized use of the open space to answer natural calls by people visiting the area.

1997 (4) Bom. C. R. 171
Public at Large v/s. State of Maharashtra.
M.B. Shah, CJ & Rebello, J

The Court took suo moto notice of an article appearing in the daily Indian Express disclosing a very shocking and alarming state of affairs regarding sex workers in the city of Mumbai, highlighting that minor girls were illegally confined and were forced to be sex workers and 65% of them were already infected with AIDS and had been tested HIV +ve. Based on this article Show Cause notices were issued to various authorities and thereafter the directions were issued.

Held: Though Immoral Traffic Prevention Act, 1986 contains provisions for closing down brothels, no attempts had been made to do so, though they are functioning to the knowledge of the Government Authorities. Directions were given to the Government to shrug off its lack of interest and tackle the problem of immoral trafficking seriously by keeping a strict vigil to prevent forcible sale and purchase of girls. The Government was

also directed to carry out AIDS awareness programmes, set up Advisory Committees and Rehabilitation Homes, helping the inmates therein to acquire alternative skills to eradicate child prostitution.

AIR 1997 BOM 79
Centre of Indian Trade Unions v/s. Union of India
Dr. Saraf & Rane, JJ

The Petitioners challenged the original Power Project Agreement (PPA), Dabhol on the ground that it was unreasonable, against public interest and fraught with fraud.

Held: The Court cannot determine policy or go into the policy decision. It cannot lightly assume that the Government's action is unreasonable or against public interest. A Petition filed many years after obtaining knowledge of the agreement cannot be entertained. Parameters of Judicial Review considered.

AIR 1997 BOM 225
Central Bank of India v/s. Tarseema Compress Wood Mfg. Co.
Vaidyanathan, J

The Plaintiff sued for recovery of amounts under a loan granted by the Plaintiff Bank upon a Promissory Note and other documents executed by the Defendant. The Defendant denied the liability under the Negotiable Instrument and challenged the rate of interest charged by the Bank as also the competence of the witness of the Bank.

Held: There is a presumption of the passing of consideration under the Negotiable Instrument. The onus lies on the executants to rebut the presumption.
The Bank can charge interest at quarterly, yearly or half-yearly rate as agreed upon between the parties.
Any officer of the Bank can give evidence of the transaction.

# 1998

(1998) 2 BCR 815
Pramod v/s. State of Maharashtra
Mane & Marlapalle, JJ

The Court had to consider who would have preferencial right of admission to the reserved seat in the D.Ed. course for Project affected people's wards - a son or a grandson.

Held: While considering a seat for reservation, the closest relation should be taken into consideration. Hence the son has got preferential right over a grandson.

(1998) 5 BCR 265

Manjula v/s Shivshakti Enterprises

Lodha, J

The question involved was whether a lady litigant is exempted from payment of Court fees in a suit for specific performance of contract.

Held: The Government Notification issued under Article 7 of Schedule I of the Bombay Court Fees Act, 1959 exempts women from payment of Court fees for obtaining any substantive relief. A suit for specific performance is a suit to obtain substantive relief capable of being evaluated in terms of money and as such covered by the Residuary Article 7. Hence the Petitioner is exempted from payment of Court Fees for the suit for specific performance.

(See also AIR 2000 BOM 474 which granted exemption only to the extent of the benefit to females).
(This position in law has been altered in (2008) 110 BLR 1524 consequent upon a further clarificatory Notification).

(1998) 3 BCR 9

Sandhya Kulkarni v/s. Union of India

A.A. Desai & Parkar, JJ

The Petitioners in this case were prevented from taking in adoption a female child for the second time in view of S. 11(i)(ii) of the Hindu Adoption and Maintenance, 1956. They challenged the validity of the said section. The Court had to consider whether the restriction on adoption of only one male or female child violates the fundamental rights under Article 14 and 21 of the Constitution.

Held: Right to life has many facets but every personal desire, even if laudable, could not be included therein. A person has right to family. But the Constitution does not provide the right to have unlimited families; that too by adoption. A person may have any number of biological children, but a person is not entitled to adopt as many children as he can. Such right is not recognized by Hindu Law also. Moreover, it being a State

policy it is for the Parliament to find the solution and judicial interference is not justified.

(It may be noted that the restriction was put to avoid adoptions of 2 male children).

(1998) 3 MLJ 940
Meher Singh v/s. Deepak Sawhny
M.B. Shah, CJ & Y.S. Jahagirdar, J

An issue of jurisdiction came to be framed. It was to be decided as a preliminary issue under S. 9A of the CPC, 1976. The Court had to consider how the preliminary issue could be decided.

Held: The determination of such issue would require adjudication as per procedure of law. This would mean that it would be after giving an opportunity to the parties to lead evidence.

AIR 1998 BOM 102
Essel Packaging Ltd. v/s Essel Tea Exports Ltd.
Kapadia, J

The Plaintiffs applied for injunction against the Defendant from using the word or mark "Essel" in its corporate name or products to pass off its goods as that of the Plaintiff's. The Plaintiffs used the word "Essel world" and "Essel vision" in the course of their business. The Defendants claimed that the parties did not operate in a common field of activity.

Held: The Plaintiffs were entitled to an injunction if confusion or deception resulted by any misrepresentation. That was the test to be applied in the interest of fair trading. The law of 'common field of activity' had undergone a change and extended to use of names in different fields of activities also if it resulted in confusion or deception.

AIR 1998 BOM 118
Bombay Gas Co. Ltd. v/s. Parmeshwar Mittal
A.P. Shah, J

The Defendant filed an application for stay of proceedings under S. 34 of the Arbitration Act, 1940. Thereafter, Arbitration & Conciliation Act, 1996 came into force. The Defendant applied for reference to arbitration under S. 8 of the new Act. The Plaintiff contended that the first application commenced arbitraton proceedings under the old Act. Hence the second application was not maintainable.

Held: The application under S. 34 of the old Act did not amount to notice of arbitration. Therefore, arbitration proceedings could not have commenced under S. 21 of the new Act. The parties could be referred to arbitration.

The 'vested right' theory under S. 6 of the General Clauses Act, 1904 did not apply because there was a material difference between S. 34 of the old Act and S. 8 of the new Act.

## 1999

AIR 1999 BOM 120
Ganesh v/s. Mithalal
Gundewar, J

The Plaintiff had advanced amounts to the Defendant. The Defendant contended that the Plaintiff is a Money lender and the suit was hit by S.10 of the Bombay Moneylenders Act, 1946 as the Plaintiff was not having the Money Lending Licence.

Held: Mere one or two casual money lending transactions do not make a person a professional money lender. The burden lies on the person who alleged the other person to be a money lender to prove the said fact.

AIR 1999 BOM 379
Bhimabai Eknath v/s. Suresh Dayanand.
Vagyani, J

In a suit for recovery of loan amount, the Court ignored the damaging admissions given by the Defendant in the matter of outstanding dues on the presumption that the Defendant being a School Teacher would not tell a falsehood.

Held: The respectability and veracity of a witness does not depend upon his status in life. A school teacher cannot be presumed to be telling the Gospel truth. The credibility of the witness is not to be decided on his status or profession, otherwise people of low status or having no status will not find any place in the temple of justice. The quest of the Court should be for the truth rather than the status of a person. Weight of witness is to be considered on the basis of his cross examination and yardstick of probability.

(1999) 1 BCR 574

Shri Pratapsingh Rane v/s. Governor of Goa

Batta & J.A.Patil, JJ

The Speaker of State Legislative Assembly, Goa had expelled 10 MLA's from the house as they were disqualified having defected from the parent party. Immediately thereafter the Chief Minister of Goa obtained a vote of confidence. He had the vote of 16 MLAs, whereas 13 MLAs were in his opposition. On the same day the Governor issued a letter to the Petitioner dismissing him as the Chief Minister and appointed another Chief Minister in exercise of the powers vested in him under Article 164(1) of the Constitution and administered oath to him. This Order of the Governor was challenged. Hence the question involved was whether the discretion of the Governor of the State in the matters like appointment and dismissal of Chief Minister is subject to Judicial Review.

Held: Though the Governor acts on the advice of the Chief Minister and his council of Ministers, the power of appointing or dismissing the Chief Minister lies with the Governor. It is the purely Constitutional job of the Governor. Hence the matters falling within the discretionary powers of the Governor cannot be subject to Judicial Review even if malafides is proved because there are other effective remedies of approaching the President against Governor's action and the Ministry will fall if it fails to command the majority in the Legislative Assembly.

(1999) 1 BCR 660

Sangli Bank v/s. Kanishka Investment

Deshpande, J

The suit was filed by a Bank. It was contended that plaint is not signed by a duly authorized person. Evidence was produced showing that the officer of the Bank was authorized by a resolution of the Board of Directors and a power of attorney was signed by two directors in his favour.

Held: As per the Power of Attorney Act, 1882, the instrument a creating Power of Attorney is to be deposited with the District Court. The person depositing will have to file an affidavit about its execution and declaration. The District Court, after satisfying itself about it, will take a note of it in a separate register and then issue a certified copy bearing its seal on the Power of Attorney and such document shall be treated as evidence in any Court.

AIR 1999 BOM 385
Ramagauri Virani v/s. Om Walkeshwar Triveni Co-op HSL
D.G. Deshpande, J

The Builder sold a common terrace to a buyer. Two bedrooms of another buyer's flat had their opening on the terrace. That buyer sued for the security of their flat and the enjoyment of the other members over the common terrace.

Held: The terrace is for the benefit of all the members of the society and the builder cannot allot the terrace to anyone as it would curb the other members' right over the common terrace.

AIR 1999 BOM 291
Rekha Malhotra v/s. Deepak Malhotra
Nijjar, J

The Plaintiff sued for maintenance under S. 18 of the Hindu Adoptions and Maintenance Act, 1956.

Held: The amount of maintenance would have to be fixed by taking a rational and balanced view of various factors. The Court has to be guided by the relevant provisions of the Act and the object of Ss.s 18 and 23.

The Court has to bear in mind the status of the parties, reasonable wants of the claimant, the income and property of the claimant and the number of persons whom the husband has to maintain.

Whilst it is important to ensure that the maintenance amount is sufficient to enable the wife to live in somewhat the same degree of comfort, as in the matrimonial home, the amount of maintenance should not be so exorbitant that the husband is unable to pay. By adoption of such a course, no purpose would be served. In other words, the amount of maintenance should not be punitive in nature. It should aid the wife to live in a similar style as she enjoyed in the matrimonial home. It should not expose the husband to unjustified contempt or other coercive proceedings.

On the other hand the amount of maintenance should not be so low, as to make the order meaningless.

There can be no mathematical exactitude, in these matters. The Court has to take a general view, and try to fix an amount which would be by and large acceptable to both the husband and the wife.

From the life style of the parties seen from the "restaurants visited and the shops frequented" the Court observed what could be the possible income of the parties. "The

husband could not be enjoying such a high standard of living unless he was earning extremely well. On the other hand the wife could not possibly afford to keep a chauffeur if her income was only Rs. 12,500/-. It would however be difficult to put a figure on the income of both the parties".

The Court granted maintenance though the wife was seen to have her own income also and lived in style in her parental home such as to put the parties on par.

AIR 1999 BOM 25
Irfan Shaikh v/s. Mumtaz w/o Abdul Karim Sarfani
Kochar, J

A mother had custody of her minor child. She re-married a stranger unknown to the child. The father claimed custody on the ground that the mother dis-entitled herself to custod under Mohammedan Law. The Court interpreted the provisions of Mohammedan Law on the subject.

Held: This principle in the Mohammedan law is based on practical experience based on considerations which are conducive to the proper growth of the child. It cannot be disputed that a child of that tender age would feel psychologically most secure in the company of the mother rather than the father. No one can compete with the mother in that respect ordinarily.

The Mohammedan Law does not take any pedantic view of the matter. It does not lay down that in any circumstance and at any cost the mother would be disqualified for the custody of a child, the moment she gets remarried. The underlying principle of Mohammedan Law like any other law is kindness towards the human being. It can never be expected that any personal law would be so harsh to ignore the welfare of the minor child. The underlying principles of Mohammedan Law on this aspect are also the welfare of child. There is no dogmatic insistence that the child must remain with the father even against the wishes of the child the moment the mother gets remarried to a stranger.

Hence the minor's interest is the paramount law.

WRIT PETITION NO.1762 OF 1999
Bombay Environmental Action Group v/s. Municipal Corporation of Greater Bombay
Various benches - Sabharwal, CJ & Kapadia, J to Mohit Shah, CJ & Jamdar, J

The Petition was filed for relief against pollution in the city of Mumbai. This was from garbage and dumping grounds as also vehicular pollution.

Various orders were passed from time to time.

These related to conversion of diesel taxis and buses into the CNG taxis by use of green engines, the establishment and maintenance of CNG stations, having the vehicular Euro compliant and later Bharat Stage (I) to (IV) compliant engines.

The orders have been passed since 15th December, 1999 for violation of emission norms. Various directions have been given to the monitoring commissions of the State Authrities. Road Transport Officers (RTOs) have been set up. Under the order dated 2nd February, 2003 emission norms came to be prescribed and fines to vehicles which did not comply with the emissions norms were sought to be levied. Directions were passed on 20th October, 2000 to constitute a flying squad to ensure compliance of the directions. Directions for imposing fines were passed on 20th August, 2002.

Various other parties sought to be joined in. They were heard as the order affected them. Consequently the Bombay Electricity Supply and Transport undertaking (BEST) Taxi Men Union, Fire Brigade, Truck Owners, Bombay Port Trust (BPT) etc came to make applications and were heard and directions passed on those applications also.

An application was taken out for directions with regard to car pulling or elimination of certain car on certain dates of the week. This yet to be heard and disposed off.

## 2000

(2000) 5 BCR 116

Bhau Shankarrao v/s. State of Maharashtra

Barde & Vagyani, JJ

The petitioner has filed a case under S. 295 A of IPC contending that the photographs of God and Goddess of Hindu Religion are printed on the coverings of the Fire Crackers and when the Fire Crackers burst those photographs are destroyed and this causes mental agony to the Hindu community.

Held: The printing of photographs of God and Goddess on crackers is a common state of affairs as in different newspapers and invitation cards. However, there is no intention of disrespecting them. If Petitioner feels that by bursting of fire crackers on which such photographs are printed his feelings are hurt, he may stop himself using such fire crackers because only his feelings are being hurt. But he should not take upon himself the responsibility of whole society.

(2000) 1 BCR 142

Sunil Mirchandani v/s. Reena Mirchandani

Lodha, J

Husband sued under S. 12 (1) (a) of the Hindu Marriage Act, 1955 for nullity of marriage on the ground that his wife did not allow him consummation of marriage on one pretext or another.The wife had denied the allegation, but did not enter the witness box.

Held: The evidence on record showed that both of them had stayed together for five months and the husband had written long letter to her requesting her to return to matrimonial home forgetting her differences with her mother-in-law. This evidence belied the inference of non consummation of marriage.

(2000) 4 BCR 207

Sanjay Chandrakant v/s. Malaben Sanjay.

A.P. Shah & J.A. Patil, JJ

The Appellant had filed a Petition of divorce on the ground of cruelty under S. 13(2) of Hindu Marriage Act. As there was variance between the pleadings and proof, Family Court rejected the Petition. Hence he had filed the Appeal before the High Court.

Held: The evidence showed that acts of cruelty alleged in the Petition were not at all deposed by the Petitioner in the Court. What was stated before the Court was altogether a different story. Hence it was held that as there was total variance between the pleadings and proof. In view of the basic law of pleading that what is sought to be proved must first be pleaded, the Petition was held to be rightly dismissed.

(2000) 5 BCR 288

Anand Vithoba v/s. State of Maharashtra

Sinha, J

The accused had pleaded guilty to the charges for the offence under S. 4, 5 and 12 of Bombay Prevention of Gambling Act, 1887. He was convicted and sentenced by the Trial Court without explaining the particulars of the offence separately and properly in the language understood by him.

Held: Even though accused had pleaded guilty, the Magistrate should have framed separate charges against him and explained the particulars of the offences to him in the language understood by him. As it was not done in this case, conviction was held to be illegal and case was remanded.

(2000) 5 BCR 758
Karim Shaikh v/s. Shehnaz Shaikh
A.P. Shah, Ranjana Desai & J.A. Patil, JJ

A question arose whether a Muslim woman could apply for maintenance during iddat period and even post iddat period.

Held: A Muslim divorced woman may apply for maintenance under S. 3 of Muslim Women Act, 1986. Maintenance is payable to her only during iddat but such as would take care of her needs, if she is unable to maintain herself, by way of a permenant settlement in the post iddat period.

[See also a similar view since 1976 in (1976) 78 BLR 240]

(2000) 1 ALL MR 39
Manuel & Lourdes D'Souza & Gordon & Jane Tone - Petitioners
Rebello, J

Two Christian couples applied to the Court for being appointed guardians of children under the Guardian & Wards Act, 1890. They amended their petition to seek the prayer for adoption. There was no law under which they could adopt.

Held: Every abandoned, orphaned, destitute or similarly situated child had the right to be adopted as a part of its fundamental Right to Life. The Preamble to the Constitution, as also Article 14, ensured equality before the Law to all citizens. The International Conventions on the rights of a child gave the children their basic rights, the right to a home, name and nationality was implicit in these. The right to be adopted is, therefore, guaranteed under Article 21 of the Constitution.

The Court had to see the welfare of the child. A period of two years must elapse after a guardian is appointed to enable the Court to see the financial position, the home study report and the progress report of the child befofe passing the final order of adoption.

AIR 2000 BOM 1
Tabassum Shaikh v/s. S.J. Shaikh
Nijjar, J

A wife alleged acts of cruelty and demand for dowry. She left the matrimonial hom and applied for maintenance under the Dissolution of Muslim Marriages Act, 1939.

Held: A Mohammedan husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders (Article 277). The refusal of the wife to obey must be unjustified and that she does not leave her husband's home on account of cruelty (Article 278).

Hence, just as the wife does not have an absolute right to maintenance, the husband also does not have the licence to treat the wife with cruelty. If he neglects or refuses to maintain her, the wife may sue for maintenance.

She may sue for past maintenance only under an agreement.

## 2001

(2001) 3 BCR 14
Jyotsna v/s. Suresh
Srikrishna & A.P. Shah, JJ.

The petition was under S. 10 Indian Divorce Act, 1869 for divorce on the ground of cruelty coupled with adultery. The Family Court decreed the petition but sent it for confirmation to High Court.

Held: In view of S.7(1)(a), 8 and 20 of Family Courts Act, 1984, after coming into force of the said Act, the decrees passed by the Family Court under Indian Divorce Act, would not require confirmation as it would operate as final decree subject to appeal under S.19 of Family Courts Act.

(2001) (Supp) BCR 546

Nandkishor v/s. State of Maharashtra

Kulkarni, J

The question was whether private complaint made under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was to be made to the Court of J.M.F.C or to the Special Court.

Held: As the cognizance of the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is to be taken by the Special Court, complaint has to be filed in the Special Court only. If it is filed in the Magistrates Court then it should be returned to the Complainant for presentation before the Special Court.

(2001) 1 BCR 390

Gulab Babusaheb v/s. Executive Engineer, MSEB

Chandrashekhar Das, J

The Petitioner sought certain reliefs relating to disconnection of electricity supply to his premises. Some persons were allowed to be impleaded as Defendants as the electricity meter was standing in their names. The Petitioner contended that he was the dominus litus and so without his concurrence no party should be allowed to be impleaded in the suit.

Held: The concept of locus standi and natural justice are closely intertwined. One cannot be separated from another as the opportunity of being heard is the main attribute of locus standi. When a third party approaches the Court with the contention that he is interested in the subject matter, the Court shall ordinarily give an opportunity to such party to put his case. This course is naturally consistent with principles of natural justice and fairplay. Hence the Court will not refuse his impleadment, unless the Court feels that he is totally a stranger and employing delaying tactics. As the Electricity meter was standing in the names of Respondent no.3 and 4, they were essential parties to the suit.

(2001) 1 BCR 406

Narendra Kumar v/s. S. Gopalkrishnan

B.P. Singh, CJ & Radhakrishnan, J

Petitioner who was working as Deputy General Manager in the Bank and as Chief Executive Officer at Tokyo, Japan was held guilty by Competent Court of Law in Japan for molesting and committing rape on his sub-ordinate female employees and directed to pay damages. Disciplinary proceedings were initiated against him in India, calling upon him to show cause as to why the major penalty of dismissal from service should not be imposed upon him in view of the findings of the Court in Japan. He challenged the same in High Court, contending that the Foreign decree passed by the Court in Japan and making him liable to pay damages was not conclusive because the procedure adopted by the Court in Japan was different in as much as it allowed re-examination and cross examination of the Plaintiff's witnesses even after the defence had closed the case.

Held: Even if the procedure adopted by Courts in Japan is not exactly the same as in our Country, it is not the requirement of S. 13 of CPC that the procedure followed by the foreign Court which has rendered the Judgment must be identical as the procedure followed in our country. It is also not shown to be opposed to Principles of Natural Justice. It also cannot be said that it has resulted into unfair trial or miscarriage of justice. It is also not shown that Judgment is contrary to International or Indian law. Hence mere difference in procedure will not take away the conclusiveness of foreign Judgment, especially when it is complying with all other requirements laid down in S.13 of CPC.

(Consider the Lex fori that applies to matters of procedure in private International law).

(2001) 1 BCR 423

Afcons Infrastructure v/s. Babu Fakira

Nijjar, J

The Respondent was working in the Petitioner Company as an employee. He was denied permanency in the service on the ground that he was declared HIV positive by Dr. Palia of M/s. Clinical Diagnostic Centre. However, thereafter the report of J.J. Hospital declared him HIV negative. Even then as Petitioner Company refused to grant him permanency in the job. He approached the Industrial Court which directed the Petitioner Company not to insist on the Petitioner to be medically reexamined again by Dr. Palia of M/s. Clinical Diagnostic Centre.

Held: The attitude adopted by the Petitioner Company was totally unbecoming, unjustified and unwarranted, betraying total ignorance about the condition of being HIV positive status. It is surprising that a person who is merely to work on a construction site is sought to be denied permanency on a job on the ground that he is HIV positive. The attitude is based on a fear psychosis and has to be deprecated in strong terms. After the J. J. Hospital had declared the Respondent to be free from the disease, the Petitioner had absolutely no justification in not making him permanent.

(2001) Cri.LJ 1579
Ramesh Jagtap v/s. State of Maharashtra
Vishnu Sahai & Chandrashekhar Das, JJ

The accused, a 28 year old man, was known to the family of the victim child as their neighbor. He took the child out for a Pepsi drink. They returned with blood stains on his shirt and her frock and legs. She was crying. The medical report showed no external injury except injury to the vagina. The report was that it was possible by a hard object, like a finger. The CA report matched the blood group of the victim with the blood on the shirt of the accused. The sentence of 10 years rigorous imprisonment was challenged. No appeal for enhancement was filed by the State.

Held: There can be no soft pedaling policy for an offence upon a victim child. The punishment was not reduced, but it was observed that though suo motu notice could have been issued, it was not so done at a belated stage. Hence, the conviction and sentence were confirmed.

[See also (1993) Cri.LJ 977]

(2001) 3 BCR 31
Ganpat Waghmare Vs. Anjalibai Waghmare
Khanwilkar, J.

The Respondent had disobeyed order of the Court. Her defence was struck off under O. 39 R. 1 of the CPC. She sought to cross examine the Petitioner.

Held: O. 39 R. 11 (1) entitles the Court to dismiss the suit or to strike off the defence for non compliance of any directions of order of the Court. Such a party cannot be get any indulgence from the court. That would include his right to cross examine the witness of the other side. The Court may condone the default and permit the party to persue remedy only if sufficient cause is shown. When that has not been done, the party in breach of the order cannot cross examine the other side when the defence is struck off.

## 2002

(2002) 1 BCR 57
Anand Chintamani v/s. State of Maharashtra
B.P. Singh, CJ, Radhakrishnan & Dr. Chandrachud, JJ

The Petitioner has challenged the action taken by the State Government banning the performance of play “Mee Nathuram Godse Boltoy” and forfeiting the scripts of the said play on the ground that it would create hatred between different communities and is likely to disturb public tranquility.

Held: The Government's action has to be in strict compliance of the conditions laid down under S.95 (1) of Cr.PC and has to be subject to strict safeguards like setting out grounds for the Government's opinion, which may stand scrutiny of Judicial review. It must appear to the Government that printed material is such as could be punishable under Ss.124-A, 153-A, 153-B, 292, 293, 295-A of the IPC. The Government has not shown which words and which part of the play was offensive and likely to cause disharmony or disturb public tranquility. The power under S.95 (1) and 96 (2) of the Cr.PC is of drastic nature and has to be strictly conditioned. A society wedded to the rule of law cannot trample upon the rights of those who assert views that are contrary to the views of majority. Hence Governments action was ultra vires and illegal as violating the right of freedom of Expression under Article 19 (1) of the Constitution.

(2002) 1 BCR 152

Pushpa Suresh v/s. Subhash Bansilal

Khanwilkar, J

The dispute was essentially between sisters on one side and brothers and mother on the other. It was for declaration and partition of family properties. In view of this, the parties were told to explore the possibility of settlement. However, the Respondents had taken a stand that they were not interested in settling the matter with the Appellants. The Court therefore expressed opinion that it would refer the matter to Lok Adalat so that an independent forum manned by experienced men would make an attempt to persuade the parties and educate them to accept some workable arrangement which would be in the interest of all including expeditious disposal of their suit at lesser cost. The Respondents, however, objected on the ground that unless there is a possibility of settlement, the Court cannot refer the matter to Lok Adalat nor the Lok Adalat can take cognizance of the case.

Held: The plain language of S. 20 of the Legal Services Authority Act, 1987 makes it clear that the Court before whom the case is instituted and pending shall refer the case to the Lok Adalat for settlement if the parties agreed. Even if one of the parties agrees then also Court shall refer the dispute for settlement provided it is satisfied that there are chances of such settlement. Clause ii of S. 20(1) enables the Court to refer the case to Lok Adalat on its own, if it is satisfied that the matter is an appropriate one to be taken cognizance by the Lok Adalat. The only requirement is that the Court shall give reasonable opportunity to both the parties of being heard. It is wholly unnecessary for the Court to investigate whether there are chances of a settlement. In the present case it was held that it was the bounden duty of the Court to explore the possibility of settlement by sending the matter to Lok Adalat. Such approach alone would serve the legislative intent of creating Lok Adalats.

(2002) 1 BCR 586

Yeshaswinee Merchant v/s. Air India Ltd.

A.P. Shah & Vazifdar, JJ

A Circular was issued by Air India directing grounding of female air hostesses at the age of 50 years, whereas male cabin crew was allowed upto the age of 58 years to carry on flight duties. The distinction was also made between the air hostesses in Air India and Indian Airlines in respect of retirement age.

Held: Difference in age of retirement between the air hostesses in Air India and Indian Airlines was obviously discriminatory and hence forbidden by Article 14 and 15 of Constitution of India. Similarly it was held that increasing the age of retirement of female air hostesses to 58 years but not allowing them to carry on flight duties after the age of 50 years, whereas male cabin crew was allowed to do so, was a classification not satisfying the twin tests, viz., intelligible differentia and differentia having rational nexus to the object sought to be achieved.

(2002) 5 BCR 596

Nirav Deepak v/s. State of Maharashtra

Radhakrishnan & Bhosale, JJ

The Petitioners were students who had appeared for MH-CET 2002 entrance test for Medical admission. As they were not satisfied with the result. They sought the direction to provide them the question papers of the said test with further direction to correct the marks of the Petitioners after ascertaining the correct model answers and key fed into the computer.

Held: There is nothing irrational and arbitrary on the part of the Respondents declining to provide question papers. Students do not have right to demand question paper and they also do not have the right to be a part of the evaluation system of their performance or to verify the correctness of evaluation made by the Examiners. Certain amount of secrecy and confidentiality will have to be maintained. When almost 83000 students have appeared, if there is no finality in such examination, it may lead to gross and indefinite uncertainty which would be a cause for chaotic state of affairs.

AIR 2002 BOM 449
Bank of India v/s. Harshad Odecha
Bobde, J

The Plaintiff bank obtained a decree from an English Court against the defendant. It sought to execute the decree in this Court under S. 44(A) of the CPC as the decree was passed in UK being a reciprocating territory. When the execution application was pending, the Debt Recovery Tribunal (DRT) was constituted. The bank suits were to be transferred to the DRT. The question before Court was whether the decree could be executed under S. 44(A) or under the Recovery of Debts due to Banks and financial Institutions Act, 1993 (DRT Act).

The Court considered the definition of debt as any liability claimed to be due from any person by a bank during the course of its business, secured or otherwise. It also considered the jurisdiction, powers and authority of the tribunal U/s.17 and the overriding effect of the Act S.34 thereof.

Held: Both the laws are special laws governing execution of decrees. The principle that the later law must prevail must be applied. S. 17 of the DRT Act is the later law. That would prevail in execution since it would have overriding effect.

AIR 2002 BOM 502
Rhodia Ltd. v/s. Neon Laboratories Ltd.
Khanwilkar, J

The parties to an international contract were an English and Indian companies. It was agreed that the agreement would be governed by English laws and any dispute that may arise will be triable by English Courts. The agreement was signed in France. A civil suit was filed in Panvel where the respondent's plant was situated. The Court had to consider the proper law of contract.

Held: The parties are governed by the laws of the country chosen by them in terms of the agreement executed by them. Proper law is the law which the parties have expressly or impliedly chosen. The agreement between the parties provided that the language of the agreement would be English. It further provided that the formation and

performance under the agreement would be governed by English law. That is the proper law of contract. Foreign law ought to be pleaded like any other fact and must be proved in evidence by an expert in that law.

## 2003

(2003) 260 ITR 491
Chaturbhuj Kapadia v/s. CIT
Kapadia & Devadhar, JJ

The assessee had an undivided 44/192 share in an immovable property consisting of land and 10 buildings. One building was not tenanted. The assessee sold his share to develop the property under the MHADA. The assessee gave a limited power of attorney to the developer to develop subject to MMC, ULC and CRZ permissions. Upon the developer obtaining these, he granted an irrevocable licence to the developer to enter upon the land. The Court had to consider whether the assessee was to be charged Capital Gains in the year when the contract was executed or in the year when the irrevocable licence was granted.

Held: Under the terms of the development agreement between the assessee and the developer, a limited power of attorney was intended to be given. The contract, read as a whole, indicated the passing or transferring complete control over the property in favour of the developer, the date of the contract would decide the year of chargeability.

2003 AIR 316 BOM
Dhawal Chotai v/s. Union Of India
Gokhale & Deshpande, JJ

Petitioner who was a physically disabled candidate suffering from 'Cerebral Palsy' (Paralysis resulting from brain damage before or after birth) sought permission for three extra hours to write the C.A examination.

Held: Under the Persons with Disabilities (Equal opportunities, protection of right and full participation) Act, 1995 the directions were given to the Respondent institution to permit the petitioner to write his C.A exam with extra three hours time, subsequent to the scheduled time in continuity on same day.

2003 AIR 75 BOM
Fathema Hussain Sayed v/s. Bharat Education Society
Lodha & Bhosale, JJ

The petitioner studied in exclusive girls section. The principal directed her not to sit in class and attend lectures if she wore a scarf or covered her head.

Held: It is not obligatory by Muslim religion that an Islamic girl studying in all girls section must wear head scarf. It does not violate Article 25 of the Constitution which guarantees the Right to practice any Religion. It is not inconsistent with the verses of Holy Quran.

(2003) 1 Bom. C.R. 740
Dagdu Pathan v/s. Rahimbi Dagdu
Marlapalle, Dabholkar & J.A. Patil, JJ

A Muslim wife filed an application for maintenance under S.125 of Cr.PC for herself and her three children. The Petitioner husband put up the plea of Talaq alleging that he has already divorced her. His plea was rejected by the Magistrate and maintenance order was passed against the Petitioner. He challenged it. The Court considered the procedure prescribed for giving Talaq and the essential requisites of a valid Talaq.

Held: Under Mohammedan Law the process of reaching to the marital tie is certainly a civil contract, but once the marriage is solemnized, it becomes a lifelong institution for both, the husband and wife. The husband cannot throw out his wife at his whim and caprice and without assigning any reason. Mere existence of documents called as Talaqnama or mere statement made in writing before the Court in any form or in oral depositions regarding Talaq having been pronounced sometimes in the past is not sufficient to hold that husband has divorced his wife. Such a divorce is not in keeping with the dictates of Islam. For a Talaq to become valid it must be for a reasonable cause and it must be preceded by a process of reconciliation by two Arbitrators, one from wife and one from husband's side. The stage of conciliation with the intervention of arbitrators is a condition precedent for effecting Talaq. Even in case of irrevocable Talaq in presence of Kazi or wife's father or two witnesses the factum of this form of Talaq is required to be proved.

(2003) 2 Mh. L. J. 105
Prerna v/s. The State of Maharashtra
A.P. Shah & Ranjana Desai, JJ

The Petitioner which is a registered organization working in the red light areas of Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution, had filed this Public Interest Litigation to protect children and minor girls rescued from the flesh trade against pimps and brothel keepers keen on re-acquiring possessions of those girls. Considering the plight of minor girls caught in the flesh trade, the Court has issued several directions to protect them.

Held: As in almost all the cases where the girls are rescued from the brothel, it is found that they are forced to prostitution by brothel keepers. Such girls, if minor, more aptly fall under S. 2(b)(v) of the Juvenile Justice (Care and Protection of Children) Act, 2000 as children in need of care and protection and hence they have to be produced before the Child Welfare Committee. The provisions of Juvenile Justice Act will have to be followed strictly. Their reformation and rehabilitation must be the object. The Magistrate before whom such minor girls are produced must transfer the said girls before Child Welfare Committee after ascertaining their age. Such Juveniles should only be released under the custody of their genuine parent or guardian. No advocate can appear before CWC or JJB to represent those girls. Only the parents or guardians of such Juveniles would represent them. The Advocate appearing for the Pimp or Brothel keeper should be barred from appearing in the same case for the victims rescued under the Act.

(Further directions setting out the entire process of recue and rehabilitation came to be passed again in 2006 in the same Petition)

AIR 2003 BOM 355
Bharat Mithaiwala v/s. Union of India
Bobde, J

The petitioner was in occupation of an unauthorized structure on the railway line since 1978. S. 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was brought into force from 20.12.1980. The petitioner’s structure was sought to be removed as an unauthorized construction. It was contended that the Act would apply in respect of the structure which was unauthorizedly constructed after the Act came into force.

Held: S. 5A (2) relates to the structure which 'has been erected'. The Estate Officer is empowered to remove the structure after issuing notice if the occupant does not comply. He is empowered to remove all existing unauthorized structures on that date. There is no warrant for construing the section in such a manner that it empowers the Estate Officer to remove only unauthorized structures brought into existence after the section was brought into force. The rule against retrospective construction is not applicable to the statute merely because a part of the requisite for its action is drawn from a time antecedent to its passing. A legislature is entitled to take note of

antecedent facts and enforce the law in the present. That would not be characterized as retrospective in operation. Retrospectivity would mean operation with regard to past time.

## 2004

(2004) 1 BCR 300

Rajendraprasad v/s. Municipal Corporation of Gr. Bombay

Karnik, J

The Court had to consider whether an ad interim order was appealable.

Held: There is no qualitative difference between interim and ad-interim order except the period for which they operate and stage at which they are passed. Hence order refusing ad-interim injunction is as much appealable as the order refusing interim injunction. As sometimes an order declining to grant ex-parte ad-interim injunction may virtually amount to denial of justice as suit may be rendered infructuous.

(2004) 5 BCR 214

Ramesh Pimple v/s. Central Board of Film Certification

A.P. Shah & S.C. Dharmadhikari, JJ

The petitioner, an activist and filmmaker, had produced a documentary named 'Aakrosh' revealing the communal riots that took place in Gujarat in the year 2002 and applied for 'U' Certificate for unrestricted exhibition of film. The permission was rejected by Central Board on the the ground that the film was one sided version of one particular community and would provoke communal feelings.

Held: The right of freedom of expression guaranteed under Article 19(1) of the Constitution is of cardinal value in Democratic Government. It was held that the yardstick which is to be applied is of the standard of a reasonable, strongminded, firm and courageous man and not of weak or hypersensitive man. After viewing the Documentary it was held that it will not incite further violence but the Documentary was a message of peace, co-existence and of compassion for those who suffered in the riots.

(2004) 3 BCR 226
Nirabai J. Patil v/s. Narayan
Oka, J

Police protection for the implementation of order of temporary injunction was refused on the ground that there was no provision in the CPC, 2002 for granting of police aid.

Held: S.151 of the CPC, 2002 saves the inherent powers of the civil Court to make such orders as may be necessary for meeting the ends of justice. Hence it was held that the Court had the power to direct the Police Authorities to give necessary aid for implementation of order of temporary injunction under S. 151 of the CPC.

(2004)1 BCR 821
Suresh Balkrishna v/s. State of Maharashtra
Kochar & Kharche, JJ

The post of sarpanch was reserved for the women of general category. As no candidate was available the Petitioner applied for the post. The question raised was whether de-reservation is possible in absence of eligible candidate in view of Rule 4-A of proviso of Bombay Village Panchayat Election Rules.

Held: The said Rules do not make provision for such contingency. No male candidate can take the place of a female candidate of general category even if she was not available for election to the said post. De-reservation of such post can only be done by the Legislature.

(2004) 1 BCR. (Cri.) 657
Ramchandra Ram Reddy v/s. The State of Maharashtra
Palshikar & Kakade, JJ

The Petitioner contended that certain physical tests such as narco analysis, polygraph, finger printing and brain mapping are not only unknown to law but also not acceptable to it and violate the fundamental right against self-incrimination under Art.20 (3) of Constitution of India which enjoins that no person accused of any offence shall be compelled to be a witness against himself.

Held: Certain physical tests involving minimal body harm like narco analysis and brain mapping does not violate Article 20(3) or compromise the constitutional protection against self- incrimination.

AIR 2004 BOM 345
Geeta Satish v/s. Satish Shankarrao
Rebello & Sathe, JJ

The marriage between the Petitioner and the Respondent was dissolved by mutual consent under S. 13B of Hindu Marriage Act, 1955. In the consent terms the Petitioner wife agreed not to claim alimony but thereafter she filed an application under S. 25 of the Act for permanent maintenance. The said application was resisted by the husband on the ground that she had already relinquished her right of maintenance and hence she was not entitled to get it. The Family Court rejected his contention and allowed the application. The question before the High Court was whether under S.25 (1) of the Act a party who has been divorced is entitled to maintenance even if in the consent terms she had agreed not to claim it.

Held: The language of S. 25 shows that it is a power conferred on the Court at the time of passing of the decree or at any time subsequent thereto on an application made to award alimony or maintenance. This is a jurisdiction to be exercised by the Court. The parties, therefore, cannot by an agreement between themselves, agree to oust the jurisdiction of the Court which otherwise Parliament has conferred. Permanent alimony and maintenance are a larger part of the right to life. Therefore, any clause in a contract or consent terms providing to the contrary would be against public policy. Hence such contract or agreement cannot be legal, valid or binding.

# 2005

(2005) 5 BCR 52
Inamdar v/s. State of Maharashtra
A.P. Shah, Dr. Chandrachud, JJ

The Government of Maharashtra issued a resolution by which the management quota for all minority run educational institutions in the State was fixed at 50% for academic year 2004. Many Petitions were filed for the enhancement of the management quota. Meanwhile Pravesh Niyantran Samiti (established by the govt. of Maharashtra) arrived at a decision on 10th June 2005 and declined to enhance the management quota for admissions at professional institutions established and administered by minorities for the academic year 2005.

Held: The Court set aside the decision taken by the Samiti which was directed to reconsider the matter and render its decision as soon as possible since admissions have to be completed at an early date.

(2005) Cri. L.J. 3408
Vinod Soni v/s. Union of India
Palshikar & Daga, JJ

The Petitioners, who were a married couple, challenged the Constitutional validity of Preconception Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. It was contended that Article 21 includes Right to Personal Liberty which in turn includes the liberty of choosing the sex of the offspring and to determine the nature of the family. Hence a couple is entitled to undertake any such medical procedure which provides for determination or selection of sex. The Act which prohibits the couple from doing so, is therefore, violative of Article 21.

Held: The right to liberty even expanded to the extremes of the possible elasticity of the provisions of Article 21 cannot include right to selection of sex, whether pre-conception or post conception. A child conceived is entitled to full development under Article 21, whatever be the sex of that child and the Act was enacted to further the right of the child to full development.

(2005) 279 ITR 377 (Bom)
CIT v/s. Behram B. Dubash
Daga & Aguiar, JJ

Under a decree of divorce Rs.550000 came to be settled upon Trust for the benefit of the minor child of the parties. On the minor completing the age of thirty years, the trustees were to deliver the entire trust fund to her. The income generated by the trust was paid by the Trustees as per the directions of the settlor This came to be assessed by the Income-tax Officer under S. 64(1)(vii) of the Income-tax Act, 1961.

Held: As per the divorce decree, the assessee created a trust for the benefit of the minor child. The income from the trust was not includible in total income of assessee.

(2005) 6 BCR 574
Bombay Environment Action Group v/s. State of Maharashtra
Radhakrishnan & S.C. Dharmadhikari, JJ

The Petitioners challenged the validity of Ruls 58 of the Development Control Regulations, 2001 as violative of Article 14, 21 and 48A of Constitution of India. Rule 58 was violative of S. 37 of the Maharashtra Regional & Town Planning Act, 1966.

Rule 58 was enacted to facilitate revival of sick / closed mills by utilizing their undeveloped and surplus land.

The Petitioners challenged the Government clarification that open lands were restricted to existing open space and not space becoming open subsequently. Theis resulted in substantial reduction in the land to be surrendered by the mills.

Environmental clearance under the Environmental Protection Act, 1986 was not obtained by most mills before construction on the mill lands. Hence, 'stop work' notice was issued by the Municipality.

Held: Upon the principle of harmonious construction, Rule 58 is not required to be struck down.

The Government as well as the environmental authority exhibited a lackadaisical approach.

Open lands include lands becoming open after demolishen of existing structures. Thus the clarification relating to open lands was invalid.

The surrender of mill land to MHADA and MMC was to be for each mill out of the land of such mill itself and not some other mill. Hence, the integrated scheme approved by the MMC is contrary to the sanctioned scheme.

AIR 2005 BOM 172
Nanik Alimchandani v/s. Savitri Mirchandani
A.P. Shah & Vazifdar, JJ

The Appellant challenged the consent decree on the ground that he signed the consent decree pursuant to the certain observations made by the Judge.

Held: Even if the Judge strongly expressed an opinion adverse to the appellant, the appellant would be required to convince the Judge to the contrary or await the judgment and challenge the same in appeal. Judges make observation and express their views during the course of hearing. Till the judgment is delivered and pronounced the Judge is entitled to change his mind. A litigant cannot challenge a consent order as that would lead to disastrous consequences.

# 2006

(2006) 6 ALL MR 48
Rupali Mehta v/s. Tina Mehta
D.K. Deshmukh, J

In a Testamentary Petition for grant of probate the partis had dispute with regard to the immovable property forming a part of the estate of the deceased. An application for interim reliefs for injunction and appointment of Court Receiver was made.

Held: A Testamentary Petition is only concerned with the grant or refusal of probate. That would be the only ultimate relief in the suit. The title of the parties cannot be gone into. Hence, pending that relief, no injunction can be granted and Court Receiver cannot be appointed.

[See also AIR 2011 BOM 136]

(2006) 3 BCR 705
Indian Hotel & Restaurants Association (AHAR) v/s. State of Maharashtra
Rebello & Roshan Dalvi, JJ.

The Maharashtra State Legislature amended the Bombay Police Act, 1951, which banned dance performances in eating houses, permit rooms and beer bars but allowed hotels of three stars and above, gymkhanas and clubs to hold such performances to 'promote culture' and 'boost tourism' due to which an estimated 75,000 girls, mainly from the lower economic strata, lost their means of livelihood and challenged the amendment .

Held: The Amendment against the dance bar ban was struck down as unconstitutional as being violative of Articles. 14 and 19 of Constitution of India. The exemption given to certain categories of hotels as well as clubs is arbitrary and demonstrated that the purpose was not to curb the exploitation of women or avoid vulgarity,but which violated the right to equality and fundamental freedom of the bar owners and the bar dancers to practice any occupation or profession of their choice.

However, since the statistics showed that several minors hailing from other parts of the country were dancers, they would be taken to have been trafficked in the trade. All minors found or rescued had to be rehabilitated.

**(**2006) 4 MHLJ 834
Manjit Singh v/s. Maharashtra Assembly
Palshikar, Radhakrishnan & Kanade, JJ

The Petitioner challenged the 90 days jail term for breach of privilege of the House and the procedure adopted thereat.

Held: The Fundamental Right under Article 19(1)(a) of Constitution of India cannot override the right given to the Legislature under Article 194. The Court can examine whether order which is passed is ex facie malafide or utterly capricious, though it cannot consider the correctness of the decision taken by the House in view of the express bar laid down under Article 212 as the procedure followed in the House cannot be subject matter of inquiry in any Court of law.

2006(4) BCR 478, 2006(2) MHLJ 654
Sunil Eknath Trambake v/s. Leelavati Sunil Trambake
Bhosale, J

In a Divorce Petition filed under S. 13 of the Hindu Marriage Act, 1955 the wife pleaded that the husband performed a second marriage. The paternity of child born after the second marriage had to be proved by DNA test.

Held: DNA test is useful to determine the question of disputed paternity. Though the Court was empowered it cannot order a person to submit to such a test as a matter of routine. The Court is expected to exercise such discretion/power, in, matrimonial cases, only when such a test in the best interest of the child. The Courts should exercise this discretion to find out the truth. However, in the event of refusal it was open for the Court to draw an adverse inference.

(2006) 280 ITR 136
BASF (India) Ltd. v/s. CIT
Daga & Devadhar, JJ

The assessee entered into a collaboration agreement with M/s. BASF AG, Germany for increasing the capacity of its existing plant. The assessee, was required to pay a running royalty at 2 % on the domestic net sale price. The royalty was remitted and tax thereon was deducted and claimed to have been deposited. Thereafter, the assessee realised that during the period the production was not in excess as contemplated in the contract and, therefore, claimed refund of the royalty which was, subsequently, received. The assessee, therefore, had sought refund of the TDS amount as per the circular for the later period.

Held: Only the circulars which are in force during the relevant Assessment Year are applicable. Subsequent circulars, either withdrawing or modifying the earlier circular, have no application.

AIR 2006 BOM 111
Savitri Gaonkar v/s. Jaganath Bhomkar
Kanade, J

An auction sale was held. The suit property was not the matter of sale and the auction. The maintainability of the suit was challenged under O.21 R.92 (3) of the CPC, 2002.

Held: In a suit challenging confirmation of sale of wrong property the Court was bound to consider that issue upon evidence. The Court could not consider maintainability as a preliminary issue. Rules 89, 91 or 92 would not at all apply and the executing Court would not be justified in including a property which was not auctioned or sold in auction in the order of confirmation of sale. The order is non est.

PIL (WP) 142 OF 2006
Project Smita v/s. State of Maharashtra
Gokhale & Kanade, JJ

The Petitioners filed the petition consequent upon the torrential rains in Mumbai on 26th July, 2005 resulting in unprecedented floods. The Petitioners alleged failure on the part of State machinery to take adequate steps which ought to have been taken to avoid such situation. The Petitioner alleged that Ward-wise Disaster Management Plan for Mumbai (DMP) was not activated which resulted in floods. The Petition was filed so that the same scenario is not repeated in future. It was contended by the Respondent that the DMP is in place and adequate steps are taken against spread of diseases and epidemic and for compensation to the victims.

The Court passed directional orders from time to time. Report was called for relating to the compensation payable and the steps taken. Ultimately on 15th February, 2007 the Court passed the order setting out that the reply of the government was filed by the Joint Secretary, Rehabilitation, State of Maharashtra placing on record as to who had not given compensation and who had been given compensation and for what reason. It was also stated that the government had taken appropriate measures which were necessary to be taken immediately. But it was possible that there was might have been some errors. The petitioners were directed to make representation, if required to the concerned officer in rehabilitation department who would look into grievance of the petition. The Court made reference to a related petition having been filed being Writ Petition No.2116 of 2005. The Court observed that that was not a matter in which the Court would interfere on the judicial side.

PIL – WP No.2116 of 2006 (along with WP No.37 of 2006)
Kirit Somaiya v/s. State of Maharashtra
Dalveer Bhandari, CJ & Dr. Chandrachud to Lodha & Anoop Mohta, JJ

The Petiition was filed by a social worker to redress the problem of pollution and degeneration of Mithi River against by discharge of Industrial Effluents, Industrial Manufacturing and processing units, oil processors, solid waste, illegal diversion of solid waste, encroachments by hutments, bottlenecks by unauthorised construction, de-silting of the river bed and illegal diversion of the river made by Airport Authority of India, MMRDA and private developers. Mithi River which starts in Vihar Lake Mumbai and falls into Arabian Sea within the Mahim Bay went into spate due to the torrential rains since the water could not smoothly flow into the sea.

The Petition set out the various grievance redressal measures and the action plan to be implemented by the various authorities.

The Court passed the directional orders from time to time and called for various progress reports for deepening, widening and de-silting Mithi river and for resettlement and rehabilitation of the project affected persons. The court took on record and accepted various progress reports of the Mithi River Development works.

On 17th January, 2007 the Court passed its ultimate order setting out that the affidavit of the officer and Member Secretary of Mithi River Development and protection authority that debris to the tune of 12,98,000 cubic meters was removed. The bottlenecks in the river and the Vakola Nala were also removed. 3984 illegal residential and commercial structures were demolished. The carrying capacity of the river has since been increased upto 3 times. Thereafter beautification and consolidation measures were taken at the banks of the river. The first stage was completed. A court hoped that the second stage would be completed in due course and accordingly the Petition was disposed off.

(2006) 286 ITR 596
CIT v/s. Associated Cables Pvt. Ltd.
Gokhale & Kingaonkar, JJ

The question for consideration was whether retention money would be income of the assessee in the year in which it is retained.

Held: Retention money accrues to a contractor only when obligations under the contract are met. Therefore it would not amount to an income in the year in which the amount was retained.

# 2007

(2007) 3 BCR 134
Surupsingh Naik v/s. State of Maharashtra
Rebello & Savant, JJ

The Supreme Court had imposed imprisonment of one month on the petitioner in contempt proceedings. During the period of imprisonment petitioner was admitted to J.J. Hospital on account of suspected heart problem, low sugar and blood pressure. The petitioner though being a convict was admitted in an air conditioned room. The Respondent No.5 filed application to the Public Information Officer of the hospital seeking information as to why convict/petitioner was allowed to stay in air conditioned comfort. This application was allowed. Hence the Petitioner challenged it on the ground that it being private information it should not be furnished to anyone without his consent.

Held: The confidentiality required to be maintained of medical records of a patient including a convict under the Regulations framed by the Medical Council of India cannot override the provisions of the Right to Information Act, 2005. The medical records of a person sentenced or convicted or remanded to police or judicial custody, maintained by the State or Public Authority, should normally be made available to person asking for such information. Only in rare and exceptional cases and for good and valid reasons recorded in writing such information may be denied. In this case as the order was passed without hearing Petitioner same was set aside and matter was remitted for taking a decision after giving opportunity of hearing to the petitioner.

**(**2007) 5 BCR 47
Sonali Chandak v/s. NIL
Chaudhari, J

The Petitioners filed a petition for divorce by mutual consent under S. 13B of the Hindu Marriage Act, 1955 and an application to waive the statutory period of six months to pass decree of divorce by mutual consent.

Held: Waiver of the statutory period could be allowed when the application was made by both the spouses, who were aged 29 and 33 years in this case, and their decision was mature and well considered and not arrived at by any external influence.

**(**2007) 1 BCR (Cri) 26
Sherbahadur Khan v/s. The State of Maharashtra
Palshikar & Nishita Mhatre, JJ

The Accused were arrested under S. 143 to 149, 202 and 34 of IPC, 1860 as well as S. 23(2) of Maharashtra Control of Organised Crime Act, 1999. Some of the accused were not seen to have obtained any pecuniary or undue economic or other advantage, either for the accused himself or for any other person.

Held: Merely stating that a person was a gang leader and his associates run a crime syndicate with a view to gain pecuniary benefits and advantages and supremacy over rival gangs by violence, intimation and other coercive means is not sufficient to maintain a prosecution under the MCOC Act. The accused can only be prosecuted under the general law.

(2007) 4 BCR 345
Surendra Kapoor v/s. Prabir Kumar
Khandeparkar & Karnik, JJ

Parties had disputes. They had not agreed to refer their dispute to arbitration. They, nevertheless, appeared before an Arbitral Tribunal and participated in arbitration proceedings before the Tribunal. An award came to be passed which was challenged on the ground of lack of jurisdiction.

Held: When a party proceeds to participate in arbitration proceedings before the Tribunal even in the absence of an agreement to refer his dispute to arbitration, he is deemed to have waived his right to raise an objection either to the judisdiction or to the plea of absence of agreement under Ss. 16(2) and 4 of the Arbitration & Conciliation Act, 1996 and loses his right to raise such an issue subsequently.

(2007) 4 Mah.LJ 517
Jyotsna Valia v/s. T.S. Parekh & Co.
Rebello, Vijaya Tahilramani & Oka, JJ

The Court had to consider whether a Summary Suit would lie under Order 37, Rule 2 on:

(i) a settled account duly confirmed by the Defendants;
(ii) a settled account which is not confirmed by the Defendants;
(iii) an acknowledgment of liability;
(iv) an honoured cheque; and
(v) a mere writing or a receipt

Held, summary suit would not lie on a settled account, which is not confirmed by the Defendant and "on honoured cheque".

A Summary suit lies where a concluded contract exists in writing containing express or implied promise to pay. The written contract as contemplated in Order 37 need not be signed by both parties, but the writing between parties mustreflect an agreement. Where document is not duly stamped and defect is curable, summary suit will be maintainable.

(1) There must be a concluded contract;

(2) The contract must be in writing;

(3) The contract must contain an express or implied promise to pay i.e.an implied term in a written contract.

A Summary Suit lies on a settled account duly confirmed by the Defendants.

A Summary Suit would lie on an acknowledgement writing or receipt. That would depend firstly on the document itself, the practice, usage and customs of the trade as also the facts of each case.

The Defendant would have leave to defend thus :

(a) If the Defendant satisfies the Court that he has a good defence to the claim on merits, the Defendant is entitled to unconditional leave to defend.

(b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the Defendant is entitled to unconditional leave to defend.

(c) If the Defendant discloses such facts may be sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the Plaintiffs claim the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment in to Court or furnishing security.

(d) If the Defendant has no defence, or if the defence is sham or illusory or practically moon-shine, the Defendant is not entitled to leave to defend.

(e) If the Defendant has no defence or the defence is illusory or sham or practically moon-shine, the Court may show mercy to the Defendant by enabling him to try to prove a defence but at the same time protect the Plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

(2007) 5 BCR 1
Prabhudas Damodar Kotecha v/s. Manharbala Damodar
Radhakrishnan, Bhosale & Vijaya Tahilramani, JJ

The Plaintiff permitted the Defendant to use and occupy his premises without consideration. The Plaintiff called upon the Defendant to vacate. The Defendant held over. The Plaintiff sued on trespass in Civil Court.

Held: The Plaintiff has sued upon a gratuitous licence. The suit is not on trespass since the entry into the suit property was permitted. Only the Bombay Samll Causes Court has jurisdiction to try the suit.

[See also (1988) 90 BLR 22 relating to suit by a licensee for protection of possession]

## 2008

AIR 2008 BOM 29

Vijay Sharma v/s. Union of India

Swantanter Kumar, CJ & Ranjana Desai, JJ

The petitioners were married couple having two daughters. They filed the present petition seeking permission to select the sex of their next child on the ground that they wanted to enjoy the love and affection of both a son and daughter so that their daughters can also enjoy growing in the company of their own brother. It was contended that the provisions of the Pre-Conception Pre-Natal Diagnostic Techniques Act, 2003 (PCPNDT Act) was not permitting them to do so. It was further contended that though Medical Termination of Pregnancy Act, 2003 permits termination of pregnancy under certain circumstances, there is no reason why PCPNDT Act does not allow it. Hence it violates Article 14 of Constitution.

Held: Sex selection insults and humiliates womanhood. It violates the women's right to life and it is also against the spirit of the Law and Constitution of India and affects the dignity of women.

(See also 2005 CrLJ 3408)

(2008) 1 BCR 196

Prakash Jayawant v/s. State of Maharashtra

Swatanter Kumar, CJ & Dr. Chandrachud, J

The petitioner claimed that he belonged to Mahadeo Koli caste. The Caste Certificate was issued when he was 10 years old. The petitioner was appointed without verification of Caste Certificate. The promotion was granted subject to verification of Caste Certificate. On the Scrutiny of the Caste Certificate the Committee appointed for the purpose, his services were terminated. Hence he approached the High Court.

Held: A person, who has obtained the benefit of employment on the basis of an incorrect certificate or a certificate obtained by misrepresentation or fraud, cannot be permitted to avail the benefit thereof once it comes to the notice of the concerned authorities. Mere fact that there is some delay in noticing the said fraud or mistake would not give the petitioner any advantage. Hence his termination was held to be proper.

(2008) 1 BCR 422

Rajaram Waman v/s. Lokmanya Shikshan Prasarak Mandal.

Swatanter Kumar, CJ & S.C. Dharmadhikari, J

Reference in this case was made on the legal issue as to whether in a Contempt Petition Order of dismissal for default of Petitioner can be recalled.

Held: Though Contempt of Court Rules framed by Bombay High Court are silent as to Restoration of petitionsdismissed for default, the Court can evolve or adopt its own procedure which may not be strictly confirming to Civil or Cr.PCs and restore the Petition. Even otherwise the power of High Court to punish for contempt is de hors the Rules of Contempt Proceedings. The High Court has also inherent powers to see that its dignity is not undermined, which is the essence of contempt proceedings. The jurisdiction of High Court in this respect is pervasive in its scope.

(2008) 1 BCR 815

Raghunath Narayanl v/s. Vithal Sawala

Kanade, J

A tenant accepted half portion of the land of which he claimed tenancy and gave up his claim in respect of the remaining half portion.

Held: The Tenant, having accepted in writing the claim of the landlord in respect of half portion and claiming only remaining half portion of the land, cannot re-agitate the issue by filing second application under S. 37 of Bombay Tenancy and Agricultural Lands Act, 1948.

(2008) 4 BCR 820
Margappa Shethappa v/s. Proctor and Gamble India
Oka, J

The wife of the Appellant was carrying a 28 weeks old foetus when she succumbed to the injuries sustained in an accident. Compensation on account of the demise of his wife and the unborn child. The question was whether compensation can be granted for the loss of foetus as a result of an accident arising out of the use of motor vehicle.

Held: S.165 of the Motor Vehicles Act, 1988 refers to a 'person' which means a human being which exists in this world. A foetus or a child in the womb becomes a human being or a 'person' only after he or she is born. A foetus may have signs of life but the same is not born. Therefore, the claim petition filed by father on account of loss/death of foetus in the womb of the mother is not maintainable under the provisions of the Act.

**(**2008) 6 BCR 1
Arati Gavandi v/s. Tata Metaliks Limited
Ranjana Desai & Dr. Chandrachud, JJ

The Petitioner challenged inadequate compliance of the Respondent-company to the law laid down by Supreme Court with regard to constitution of Complaints Mechanism for probing allegation of sexual harassment meted out to Petitioner at the Respondent-Company workplace. The Company had appointed an Advocate to probe the allegations of sexual harassment meted out to the Petitioner.

Held: Every employer in the territory of India is bound to abide by the Judgment of the Supreme Court which is the law under Article 141 of the Constitution. Appointing an Advocate as an Enquiry Officer does not constitute valid or adequate compliance with the Judgment of the Supreme Court. The employer at the work place must constitute a complaints mechanism to deal with complaints of victims. Any breach of the requirement constitutes a violation of Gender Equality under Articles 15 and 21 of Constitution of India. The right to life comprehends the right to live with dignity. A dignified existence includes the right to earn one’s livelihood in conditions that are fair and gender neutral.

(2008) 110 BLR 1238
Dr. Celsa Pinto v/s The Goa State Information Officer
Bobde, J

A citizen applied under The Right to Information Act, 2005 for supply of the seniority list of a Department and why the post of a Curator was not filled up and why a particular Librarian was not considered for promotion. The Petitioner answered the three requisitions, as "N.A." (not available). She explained that that meant "I don't know". An order was passed against her imposing penalty under the Act for furnishing incorrect, incomplete, misleading and false information.

Held: Information under S. 2(f) of the Act does not include answers to questions why a particular thing was not done. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification, because a citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot be classified as information.

(2008) 110 BLR 1524
Girish Munshi v/s. Sudha Munshi
Radhakrishna & Anoop Mohta, JJ

The Respondent applied for probate of a will claiming exemption from payment of Court Fee upon a notification issued by the State allowing women litigants exemption in case of suits or applications relating to maintenance and matrimonial property. She claimed her right to probate the will as analogous to her right to maintenance.

Held: The initial circular allowed the women to sue in respect of all properties. The amended circular restricted her right only to claims relating to maintenance. The petition for probate or letters of administration falls outside the amended notification. She is not exempt from payment of Court Fee.

{See (2001) 4 All MR 1 in which Succession Certificate was granted to a widow when the estate was employment benefit meant for her maintenance.
See also Testamentary Petition Lodging No.455 of 2011 in which the Succession Certificate was not granted when the estate was shares and securities not meant for her maintenance}

## 2009

(2009) 1 BCR 501
People for Elimination of Stray Troubles v/s. State of Goa

Radhakrishnan, Bhosale & Vijaya Tahilramani, JJ

The Animal Birth Control (Dogs) Rules, 2001 had been enacted under Prevention of cruelty to Animals Act (POCA), 1960 with a scheme to reduce the dog population by sterilization and minimization of stray dogs and provided for controlling and killing of only incurably ill, mortally wounded and rabid dogs. Bombay, Maharashtra and Goa Municipalities Acts provided for killing of all the stray dogs. The Petitioner challenged the Rule 9 and 10 of the aforesaid Rules, 2001. The question raised was whether the danger posed and the menace caused by the stray dogs can be rid of by killing them or whether the killing of stray dogs has to be totally prohibited.

Held: Stray dogs which are critically ill, mortally wounded and rabid or dogs which are source of nuisance can be killed in lethal chambers and it would not amount to an offence under S. 11(1) of the Prevention of Cruelty to Animals Act, but it cannot be done so with other dogs.

The civic chiefs of Mumbai and the Municipalities in Maharashtra and Goa could use their discretionary powers to kill dogs which are found or reported to be a source of public 'nuisance.' But the Judgment did not specify what 'nuisance' would be, in the context of dogs.

(2009) 3 BCR 301

Subhash Narsappa v/s. Sidramappa Jagdevappa

Anoop Mohta, J

The Respondent filed a complaint against the Petitioner under S. 138 of the Negotiable Instruments Act, 1881. The said complaint was transferred to Lok-adalat and a compromise was affected there. Therefore, the Respondent filed an execution proceeding. The Petitioner objected to the maintainability on the ground that Darkhast is not maintainable in respect of a criminal matter.

Held: As per S. 21 of the Legal Services Authority Act, 1987 every award passed by the Lok-adalat is deemed to be the decree of civil Court. It is final and binding on the parties and is executable in the manner provided by the CPC, 2002. Hence a Darkhast was maintainable.

(2009) 3 BCR 347

Manager, Solapur Municipal Corporation v/s Devidas Potdar

Dr. Chandrachud, J

The Pensioners moved the Court on the ground that the pension which accrued to them has not been released on time and generally there was an inordinate delay in the

disbursal of their pension payments.

Held: Pension is a vital aspect of social security and that the right to receive it constitutes a right to life under the Constitution. It was also held that pensions must be paid regularly in the first week of the month. The pensioners cannot be left to the mercy of the administration to receive what is a matter of right.

(2009) 317 ITR 47
Sind Co-op. Housing Society v/s. ITO
Rebello & Bhatia, JJ

The question before the Court was whether transfer fees received by a Co-operative Housing Society from its outgoing and incoming members would be liable to tax. The Court had to consider the principle of mutuality.

Held: Bye Laws 38 and 40 show the rate fixed by the Society for charging transfer fees which is subject to the circular of the Department of Co-operation. A transferee is entitled to the rights of membership subject to the Maharashtra Co-operative Societies Act, 1960 and the Rules, 1961. Transfer fee can be charged from the transferor as well as transferee. Such transfer fee is not liable to tax on the ground of mutuality.

(2009) 313 ITR 340
CIT v/s. Reliance Utilities and Power Limited
Rebellow & Mohite, JJ

The assessee invested partly from its own funds and partly from borrowed funds in other companies. The assessee was in the sector of generation of power. The companies in which investments were made were in the energy sector.

The question was whether the assessee had sufficient funds of its own for investment without the use of interest bearing funds, even if its Balance Sheet showed no funds or reserves and borrowed funds were utilized.

Held: If there were funds available, both interest-free and overdraft and loans were taken, a presumption would arise that the investment would be out of interest-free funds generated or available with the company.

(2009) All MR (Cri.) 1047
Tejram v/s. State of Maharashtra
Sinha & Bhangale, JJ

The accused returned home drunk and poured kerosene on his wife and set her on fire. Her mother was at her home at that time. She tried to pull her daughter. She also sustained burn injuries. Both were hospitalized. The victim wife gave a Dying Declaration stating these facts.

Held: The acceptability of the Dying Declaration depends on the circumstances of each case. The fact that the victim's mother also sustained burn injuries is a strongest corroborative evidence to accept the Dying Declaration. The victim must be in a fit condition. Even if that fact is not mentioned in the Dying Declaration, but is seen from other evidence, the Dying Declaration must be accepted. The Dying Declaration may even be recorded by a Police Officer. When the victim has no hope of living, what she states must be taken as the truth.

[See also (1998) 5 BCR 178]

## 2010

(2010) 3 BCR (Cr) 761
New India Assurance Company v/s. Mona Girish
Pangarkar, J

The husband of the Respondent had expired in an accident. She claimed compensation of Rs.6,00,000/-. The Insurance Company urged that lesser multiplier should be applied for deciding the claim as the Respondent had remarried within 4-5 years of the accident.

Held: The claim arises out of tort. As soon as the tort is committed, the person against whom such tort is committed becomes liable to pay compensation. Therefore, if on the date the tort was committed the claimant was entitled to certain compensation, the subsequent act cannot deprive him or her of the said entitlement. The provision in the form of S. 166 of the Motor Vehicles Act, 1988 is a social legislation. Hence it must be interpreted to further the objective of the said section. The law does not prohibit a widow from remarrying. Remarriage cannot be an impediment in claiming the compensation to which the widow is otherwise, entitled to nor can it be a ground to reduce the compensation by applying lesser multiplier.

(2010) 1 BCR (Cri.) 497
Rajendra Shrivastava v/s. State of Maharashtra

Marlapalle, Oka & Ganoo, JJ

The Petitioner argued that if a lady belonging to the schedule caste/schedule tribe, has married a person belonging to forward caste, and then is abused in the name of her caste by her husband or his relatives, it does not constitute any offence under the provisions of the Prevention of Atrocities Act, 1989.

Held: A woman born into a Scheduled caste or a scheduled tribe, on marrying a person belonging to a Forward caste, is not automatically transplanted into the caste of the husband by virtue of her marriage.

(2010) 1 Bom. C. R. 434

In the matter of adoption of Payal alias Sharene Vinay Pathak

Dr. Chandrachud, J

The Petitioners were Hindus having a daughter of their own. They wanted to take another female child in adoption. One of the essential conditions of Hindu Adoption and Maintenance Act, 1956 is that if the adoption is of a daughter, the father or mother who wishes to adopt a child must not have a daughter or a son's daughter living at the time of adoption. The question was whether Petitioners could be permitted in such a situation to take a female child in adoption when they were already having a daughter.

Held: Adoption is a facet of the right to life under Article 21 of the Constitution. This is the right of parents who seek to adopt a child to give meaning and content to their lives and it is also the right of the children who are in need of special care and protection to be rehabilitated and one of the ways of rehabilitation is being given in adoption. Hence Juvenile Justice (Care and Protection of Children) Act, 2006 which is a secular law enabling rehabilitation of orphaned, abandoned and surrendered children through adoption and which permit the adoption of the child of the same sex, would prevail over the Hindu Adoption and Maintenance Act, a personal law that has placed certain restrictions on adoption.

(2010) Cri. L. J. 751

Archana Naik v/s. Urmilaben Naik

Oka, J

An application was made under S.12 of the Protection of Women from Domestic Violence Act, 2005 against female Respondents who were the mother-in-law and sister-in-law of the Petitioner. The Respondents contended that the order under S.12 and 19 can be passed only against the husband or male partner but not against female relatives.

Held: In view of the proviso to S.2(q) of the Act the aggrieved wife or female living in relationship in the nature of marriage can file a complaint against female relatives of her husband or male partner as the proviso refers to a relative and not a male relative. A narrow interpretation would make the provision meaningless.

**(**2010) 323 ITR 59
Commissioner of Income Tax 4 v/s. Techno Shares and Stocks Limited
Daga & Devadhar, JJ

The assessee contended that the BSE card acquired by him on or after 1st April, 1998 is covered under the expression "licences" enumerated under S. 32(1)(ii) of the Income-tax Act, 1961. The Income Tax department contended that it is only a personal privilege granted to a member to trade in shares and cannot be equated with licences or any other business or commercial right of similar nature in S. 32 of the Act.

Held: The expression "licence" is a very wide term and includes permission to carry on any trade, business, profession, etc. including the right to acquire the intellectual property rights. A BSE card is not a business or commercial right and, therefore, not entitled to depreciation under S. 32(1)(ii) of the Act which is restricted to a class of tangible/ intangible assets being intellectual properties and will not cover all categories of business or commercial rights.

(2010) 322 ITR 246
Breach Candy Hospital Trust v/s. CCIT
Rebello & Karnik, JJ

Till the year 2001-02 the petitioner-trust was exempted from payment of Income Tax as an institution existing solely for philanthropic purpose. It filed an application to the Chief Commissioner for renewal of the approval under S. 10(23C)(via) of the Income-tax Act, 1961. The application was rejected on the grounds that: (i) after comparing the total receipts of the hospital and the total expenses incurred for the years 2001 to 2008 the Chief Commissioner found that only for one year, the expenses exceeded the receipts. For very other year, the receipts exceeded the expenses and the excess of receipts over the expenditure was between 2.58% to 22.08% of the total receipts. The Chief Commissioner also noticed that the assets of the petitioner had increased during this period and, therefore, he deduced that the petitioner had used the excess of receipts over expenses for creating the assets and thereby strengthening its capacity to earn more. Therefore, he inferred that the petitioner did not exist solely for philanthropic purpose but there existed some profit motive; and (ii) concessional treatment provided to the staff members could not be regarded as philanthropic purpose.

Held: Philanthropy is not restricted to giving a free treatment only to the extreme poor but also to giving treatment at a concessional rate to those who are not poor but cannot afford normal cost. Further, there is also no bar on the concessional treatment to staff members. The application for exemption cannot be rejected on such grounds.

(2010) 329 ITR 126
Vodafone International Holdings B.V. v/s. Union of India
Dr. Chandrachud & Devadhar, JJ

Vodafone, a UK listed company bought 67% stake in Hutchison Essar which was a mobile operator in India. The company was further renamed as Vodafone Essar. The Income Tax Department contended that the sale was taxable as the assets acquired by Vodafone are based in India and the company failed to deduct capital gains tax during purchase.

Held: The transaction had significant nexus with India and essence of the transaction was a change in controlling interest which constituted a source of income in India. A controlling interest does not, for the purpose of the Income-tax Act, 1961 constitute a distinct capital asset. A genuine transaction within the framework of law cannot be impeached.
The business, undertaking and assets of a corporation is not the business, undertaking and assets of its shareholders.
The jurisdiction of the State to tax non-residents is based on the existence of a nexus connecting the person sought to be taxed with the jurisdiction which seeks to tax. The nexus of a non-resident with the taxing jurisdiction arises where the source of income originates in the jurisdiction. A need for apportioning income arises when the source rule applies and the income can be taxed in more than one jurisdiction. Given a sufficient territorial connection or nexus between the person sought to be charged and the country seeking to tax him, Income Tax may extend to that person in respect of his foreign income.

(2010) 1 Mah.LJ 402
Harish Kulkarni v/s. Pradeep Sabnis
Swatanter Kumar, CJ, Khanwilkar & Mridula Bhatkar, JJ

The Court had to consider the parameters of the procedure for recording evidence on commission under O.18 R.4 of the CPC, 2002.

Held: The reference by the Court to a commissioner for recording the cross examination in a suit upon the Affidavit of Exaxmination-in-Chief being filed is entirely in

the judicial discretion of the Court. No straight-jacket formula can be laid down for such reference.

AIR 2010 BOM 53
Puran Maharashtra Automobiles v/s. Sub-Divisional Magistrate
Nishita Mhatre & Gavai, JJ

The Bank had granted a loan to a customer. The loan was not repaid. The bank invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). The bank issued notice and required the Chief Metropolitan Magistrate to take possession of the properties of the borrower. The perview of S. 14 of the Act came up for consideration.

Held: S. 14 is purely executionery in nature. The authority is only required to take action of taking possession. He has to assist the secured creditor to take possession of the secured assets. If the two conditions in that section are satisfied there is no other option but to take possession. Hence, S. 14 action does not involve any quasi judicial function and does not require application of mind.

(See also AIR 2010 BOM 150).

AIR 2010 BOM 150
Union Bank of India v/s. State of Mahrashtra
Sinha & Mridula Bhatkar, JJ

The bank granted a loan to the borrowers who defaulted in repayment. They were called upon to deliver possession. That not having been done, symbolic possession was taken. The notice was issued U/s.13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The borrower applied for stay of the proposed action. The auction notice was issued and just before the auction the relevant Magistrate pass an order directing Petitioner to cancel the public auction as the lands were agricultural lands and could not have been auctioned.

Held: The powers were in excess of jurisdiction of the Magistrate. Under S. 14 of the Act he had no power to adjudicate any claim in respect of any title to the land. No adjudication of any kind is permissible by law by the Magistrate. He has to only verify whether the notice under S. 13 has been given or not. He cannot adjudicate any issue of any kind pertaining to secured assets. S. 14 is merely procedural in nature to assist the secured creditor to take possession of the secured assets.

(See also AIR 2010 BOM 52)

AIR 2010 BOM 131
Vijlendra Singh v/s. Uma Singh
Oka, J

A decree of restitution of conjugal rights was passed against husband. He failed to obey. The decree was sought to be executed under O. 21 R. 33 of the CPC.

Held: Aside from the execution under O. 21 R. 32 it can be executed also under R. 33 of the CPC by making periodical payments as may be just. The nature of payment contemplated under the rule is not a penalty. Hence the quantum of payment must be to compensate the wife Decree-holder on account of non-compliance of the decree. If the decree were implemented she would have enjoyed the status of the husband. Under execution she cannot obtain amount such that after payment to her the husband retains a lesser amount.

## 2011

(2011) 4 BCR 293
Dr. Suhasini Umesh v/s. Kolhapur Municipal Corporation
Mohit Shah, CJ, Dr. Chandrachud & Karnik, JJ

The Petitioner was a Gynaechologist running a Maternity and Surgical Hospital at Kolhapur with an Ultra Sound clinic. On the complaint that the Petitioner was using the said machine for conducting sonography on pregnant women for determination of sex of foetus, the Appropriate Authority seized and sealed the said machine. The seizure was challenged on the ground of lack of authority under S.30 of the PC and PNDT Act.

Held: S. 30 of the Act has to be read with Rule 12 framed under the Act, which clearly provides that the Appropriate Authority has power to seize 'any other material object' which includes a Sonography machine.
(See also AIR 2011 BOM 171 in which the right to install a device called ‘silent observer’ in sonograghy machines was upheld to enhance the objects of the Act circumscribing the right to privacy by compelling public interest.)

(2011) 5 BCR 198
Oil and Natural Gas Corporation Limited, v/s. Oil Country Tubular Limited
Anoop Mohta, J

The award of damages for breach of contract was challenged.

Held: The Court's power and the scope under S. 34 are limited. A reasoned award after due scrutiny of the evidence and the documents and in accordance with law cannot be interfered with. An arbitrator must decide according to law.

(2011) 333 ITR 289
CIT v/s. Brahma Associates
Devadhar & Mridula Bhatkar, JJ

The assessee developed a residential cum commercial project of fifteen residential buildings and two commercial buildings under the plan approved by the Municipality. The percentage of the commercial area to the total area of the plot was 20.83%. The assessee claimed special deduction in respect of the profits. The Income Tax Department contended that deduction under S. 80-IB(10) would be allowable only if the total built-up area used for residential units in the project was 90% or more, where the commercial user was more than 10% of the total built-up area and the profits of the residential units can be worked out on stand alone basis, the deduction under S. 80-IB(10) would be allowable only on the residential units.

Held: Prior to A.Y. 05-06, a project approved as "housing project" by local authority is eligible for deduction under S. 80-IB(10) irrespective of extent of commercial user.

(2011) 1 Mah.LJ 641
Madhuvihar CHS v/s. Jayantilal Investments
Gavai, J

The developer developed the plot of land on which the Appellant society building was constructed under a layout plan revised from time to time. The plan had initially 5 wings in one building and later amendments putting up additional wings and additional floors upon additional FSI. Agreements with flat purchasers were entered into between 1986 and 2001. The Society was registered in 1993. Plans were amended in 1994, 1997 and 2001. Conveyance was not executed in favour of the Society.

The question before the Court was the applicability of S.7 (1)(ii) or S.7-A of the Maharashtra Ownership Flats Act, 1963.

Held: The object of S.7-A was to give maximum weightage to exploitation of development rights. The Court is required to balance the rights of the promoter to make additions and alterations in accordance with the layout plan vis-à-vis the obligation of full disclosure. The concept of developability is to be harmoniously read with the requirement of the registration of the Society and the conveyance to the Society.

The model agreement must comply with Ss.3 and 4 of the Act. The promoter must disclose the FSI made available after the registration of the Society for the entire project.

No additional utilization of FSI which is not a part of the layout shown to the flat purchaser can be made without the written consent of all the flat purchasers/Society.

No blanket consent given in the agreement is valid.

Consent cannot be implied by conduct, acquiescence or circumstance. It must be positive consent for specific work.

(2011) 113 BLR 2117
Sanjiv Punalekar v/s. Union of India
Mohit Shah, CJ & Karnik, J

The Petitioner challenged the "merit–cum–means scholarship scheme for students of minority communities" dtated 1st April, 2008 as discriminatory on the ground of religion and, therefore, unconstitutional. The scheme is for students from minority community who secured at least 50% marks in the previous final examination and whose parent/ guardian's income does not exceed Rs.1 Lakh, 30% being reserved for girl students. Similar scheme is for professional degree at post graduate level with the income criteria being Rs.2.5 Lakhs.

It is available for all students who are from socially and exconomically backward class. The weightage for selection is given to poverty rather than marks but it is available to poor and meritorious students.

The Respondent contended that the main objective of the scheme is for inclusive growth. It is not based only on grounds of religion. It is an effective affirmative action on the grounds of poverty, merit, gender, minority status and State-wise population distribution. Unlike cases of reservation for admissions, it has no impact on students of other communities.

The Court took into account aspect of the Sachar Committee Report showing inter alia, the reasons why Muslims in India are socially and economically backward, being ghettoism, identity related concerns, security and poor access to schools, employment, educational and economic conditions.

Held: The schemes are special provision made under Article 15(4) of Constitution of India. Articles 14, 15 and 16 ae part of a string of constitutionally guaranteed rights and together form a comprehensive scheme to ensure equality in all spheres. Articles 15(4) and 16(4) are not exceptions to Articles 15(1) and 16(1). Hence, classification can be

made even apart from those Articles. Articles 14 and 15(1) constitute reasonable classification between two classes upon intelligible differentia having a nexus to the object of the scheme. Under Article 15(4) only when a special provision is made for the benefit of one class at the cost of or to the detrement of another class, can it be discriminatory. The schemes do not take away any benefits or cause any adverse impact on the majority community.

Out of Rs.33954 crores spent on education, only Rs.446 crores would be used by the schemes. Out of Rs.15402 crores for higher education, only Rs.229 crores would be used by the schemes.

Hence, the schemes are covered under by the permissible classification under Article 14 and 15(1) and not under Article 15(4). The discrimination is not only on the ground of religion. The backwardness is also not only attributable to religion. The student would quality not only on the ground of religion but on all the above grounds taken together. The schemes fall within Article 46 as they promote educational and economic interests of weaker sections of the people, who may be more specially, the Muslims because of their backwardness as compared with other minority communities. The outlay under the schemes is also proportionate, the total number of scholarships granted being 1084, 617, 112, 23 and 4 for Muslims, Buddhists, Christians, Sikhs and Parsis, respectively.

(2011) 2 Mah.LJ 953
Vatsala Srinivasan v/s. Narisimha Raghunathan (Deceased)
Dr. Chandrachud & Anoop Mohta, JJ

An Executor of a will applied for probate of a will. After the caveat was filed, the suit proceeded to trial. Several witnesses were examined by the Executor as well as the Caveatrix. The Executor died. The Caveatrix contended that the Petition abated and the beneficiary under the will cannot amend the Petition and prosecute it further.

Held: The sole beneficiary under a will can seek substitution in place of the Executor who died pending a Testamentary proceeding. This would guard against multiplicity of proceedings and the consequent delay and expense if the beneficiary is enjoined to file a fresh Petition for Letters of Administration with the will annexed thereto and proceed de novo.

Criminal Appeal No.991 of 2011
Balasaheb Rangnath Khade v/s. State of Maharashtra
Kanade & Thipsay, JJ on dissent,
Roshan Dalvi, J

The question referred to Cout was whether a victim of crime can file an appeal under S. 372 in Chapter 29 of the Cr.PC without obtaining leave of Court.

Held per Majority: The Court considered the Heydon's Rule and the Mischief Rule. The Court must consider the settled principles of interpretation of Statutes for reading a clear provision as per its own terms, reading it along with every other provision in the Chapter in which it appears, reading the Statute as a whole and deciphering the intention of the Legislature that propelled the enactment seeing the state of affairs that prevailed, the mischief that was apparent and how the Legislature sought to remedy it.

The Court considered the right of the victim under S.372 alongside that of the accused under S. 374, that of the State under S. 378(1) and that of the complainant under S.378(4) of the Cr.PC. The Court also considered the definition of the victim and the rights of victims being victim protection, victim representation and victim rehabilitation which constitute the jurisprudence of victimology.

The Court observed that it was time the victims are given their due share of criminal prosecution when the State has often failed to prosecute the crime on behalf of the victims satisfactorily or successfully.

Held per Minority: A victim cannot be put on a higher pedestal than the State as the State prosecutes all crimes. Such a position has never been envisaged in the criminal jurisprudence. The victim cannot be put on par with the acused, though put on par with the State and may, at best, be put on par with the complainant, in a private complaint, who requires special leave to file an appeal. This is though a complainant himself is a victim of a crime, sometimes.

The Court also considered the requirement of having to obtain the presence of the accused under S. 390 of the Cr.PC. The Court also considered the plurality of appeals which would be the consequence.

Writ petition (L) No.2866 of 2011
Jagrut Nagrik Manch v/s The State of Maharashtra
Majumdar & Mridula Bhatkar, JJ

The Petitioner challenged MMRDA's decision asking them to pay Rs 1.13 lakh per day as rent for the venue of Anna Hazare's proposed three-day fast and applied for its waiver as a direction to open all the gates of Azad Maidan to accommodate more than 50,000 protesters to uphold their constitutional right to protest.

Held: The Court cannot allow 'Parallel Canvassing' when parliament is debating the issue.

AIR 2011 BOM 58
Varsha Maheshwari v/s. Bhushan Steel Ltd.
Bobde & Vijaya Tahilramani

The husband of the petitioner sought to appear in Court and argue on behalf of his wife under a power of attorney which empowered him “to act and appear” on her behalf. The Court considered whether that constituted the conformant of the right of audience. It was contended that pleading is included in the expression “appear” or “act”.

Held: There was no right of audience conferred upon an attorney. Pleading includes the right of audience, the right to address the Court, the right to examine and cross-examine the witness. Order 3 of the CPC does not deal with these aspects at all. It deals with restricted class of acts and permits the agents to be appointed only for such acts.

AIR 2011 BOM 119
Prakash Kalandari v/s. Jahnavi Kalandari
Khanwilkar & Mridula Bhatkar, JJ

The parties had dispute. The wife had filed a complaint under S. 498-A of the IPC. The husband was committed to prison. The parties filed a petition for divorce by mutual consent. The wife acted on the consent terms and gave up her rights to maintenance as also her stridhan. The husband withdrew the consent as he was not granted access to his children.

Held: Consent can be only withdrawn for just cause. The access was not denied to the husband by his wife. It was because he was in prison and the children were unwilling to meet him. Hence there was not sufficient and just cause to permit him to withdraw the consent.

# 2012

(2012) 3 Mah.LJ 841
Jet Airways India Ltd. v/s. Municipal Corporation of Greater Mumbai
Bobde & Dhanuka, JJ

The Petitioners imported and brought into Mumbai certain aircrafts. They obtained registration of the aircrafts in Delhi. The aircrafts were parked at Mumbai airport until the registration was obtained. Thereafter, they were flown out of Mumbai according to the schedule of Air Transport Service. The Respondent levied Octroi since the aircrafts

had entered the Municipal limits. It claimed that the entry was a first time entry of the aircraft and was for use or consumption of the aircrafts.

It was contended by the Petitioners that the aircrafts were not meant for being located within Mumbai but only for transit through Mumbai and there is no repose within Mumbai.

The Court considered that the aircrafts were used for transport of passengers by flight from Mumbai to outside Mumbai in various places. They were not used for flying within Municipal limits. The use was by way of disembarkation of passengers, fueling, servicing, transport of new passengers and their flight outside Mumbai.

The question before the Court was whether the entry or the import of aircrafts within Mumbai was for use, consumption or sale therein so as to be liable to Octroi.

Held: Mere entry of goods is not enough to attract Octroi. The entry must be for consumption, use or sale. The argument that the aircrafts were consumed was fanciful and rejected. It was not contended that it was for sale. Use of the aircraft cannot be for a transient period of time while not flying which is what it is designed and meant for. When it is landed and parked, the aircraft ceases to be used for flying. The use is much like a railway train entering or leaving a railway station. The fundamental test of the use is the repose for an indefinite period or permanently. The intent of the Legislature and the object to be accomplished was to tax goods used within the city.

S. 192 of the Municipal Corporation Act, 1888 is for entry of articles into Brihan Mumbai for consumption, use or sale therein. Hence, it must be shown that the aircrafts were used for the purpose fof which it was meant, viz., flying within Mumbai that not being so, it was not liable to Octroi.

(2012) Manu/MH 189
Sanjay Dinanath Tiwari v/s. Director General of Police (Anti-Corruption)
Mohit Shah, CJ & Roshan Dalvi, J

The Petitioner sought investigation into the financial affairs of a Minister and members of his family under the Prevention of Corruption Act, 1988, Money Laundering Act, 2002, Income-tax Act, 1961 and IPC, 1860. The Minister had amassed a vast fortune after he was elected Minister in his name and in the name of various members of his family. Despite a lot of information provided by the Petitioner, satisfactory investigation was not carried out. Explanation was sought from the Minister and his family members. The explanation was accepted. The extent of disproportion was shown to be only 11.69% of his known source of income. FIR was not lodged.

Held: When the authorities have not acted as per procedure of law, despite the citizen's information and entreaties, investigation must be ordered by the Court. The report of

ACB was rejected. A special Officer was appointed. The Petition was treated as the FIR. The officer was directed to calculate the disproportion based upon the properties of the Minister and his families, seize and attach his movable and immovable properties, obtain sanction to prosecute him and report back to Court.

(2012) 4 Mah.LJ 431
Baburao Aglawe v/s. State of Maharashtra
Bobde & Varale, JJ

Four tigers sneaked into a banana field and caused damage to the banana crop spread over five acres land. The Petitioner, a farmer, applied for getting compensation but his application was rejected by the State Finance department stating that they have no such policy. The Petitioner argued that when he could get compensation when a tiger killed his cow, why would the same policy not apply to his crops?

Held: Wild animals including tiger should be treated as 'Government property for all purposes' and any damage caused by them should be compensated by the Government. If a wild animal causes loss to an agriculturist or a citizen, it would be the responsibility of the appropriate Government to make good the loss. Hence damages were payable.

(2012) 1 BCR 127
Gajanan Lasure v/s The Central Board of Film Certification
Sinha, J

The validity of the Censorship Certificate issued under the Cinematograph Act, 1952 to the film, Aarakshan was challenged on the ground that it would create a law and order problem without any reference to any incident in the film. The Petition was filed without seeing the film. The Censorship Board followed the prescribed procedure which included comments from distinguished experts and members of the SC/ST community.

Held: Democratic form of government itself demands from its citizens an active and intelligent participation in the affairs of the community. Democracy can neither work, nor prosper unless people share their views. It is for the Petitioner to establish that the individual citizen or class of citizens while exercising their fundamental right of freedom of speech and expression have affected the sovereignty and integrity of India, security of the State, etc.

The Cinematograph Act and the Rules therein is a comprehensive enactment which provides a well drawn procedure before certificate of public exhibition of the film is given and censorship is permitted. The Censor Board is the only appropriate authority

which has the right to Judge the film in light of objectives of the Act of 1952 and the Rules of 1983.

(2012) 3 BCR (Cri.) 121
Indian Harm Reduction Network v/s. Union of India
Khanwilkar & Bhangale, JJ

The Petitioner challenged the constitutional validity of S. 31 A of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 which prescribes a mandatory death sentence for certain drug offences upon subsequent conviction as it takes away the discretion from the Judge on sentencing the convict.

Held: S. 31A of the Narcotics Drugs and Psychotropic Substances (NDPS) Act is violative of Article 21 of the constitution granting the Right to Life. Hence a second conviction need not be death penalty.

(2012) Manu/MH 1090
Pramila Ghante v/s. Shanker Ghante
Khanvilkar & A.R. Joshi, JJ

The husband filed a Petition for nullity of his marriage under S. 12 and for cruelty and desertion under S. 13(1)(ia) and (ib)of the Hindu Marriage Act,1955. After 16 years of marriage and unsuccessful medical treatment, the parties had no issue. However, their marriage was consummated.

Held: Non-consummation of marriage may be due to several circumstances to make the marriage a practical impossibility. The husband and wife may be unable to be party to normal coitus. However, after the medical treatment, the parties continued their relationship. Hence, cruelty was condoned. There is a distinction between impotency and infertility. They cannot be put on par. The marriage cannot be annulled on the ground of infertility.

Writ Petition No.977 of 2010
Judgment dated 11th May, 2012
Bombay Dyeing & Manufacturing Co. Ltd. v/s. The Monitoring Committee through Member Secretary, Municipal Corporation of Greater Mumbai
Mohit Shah, CJ & Roshan Dalvi, J

The Petitioner was a cotton textile mill which was putting up development and construction of the open land and FSI of the mill and which was modernizing its other

mill. The Petitioner was issued notice under S. 354A of the Mumbai Municipal Corporation Act, 1888 to stop the work of construction because the Petitioner had not handed over the part of its land upon approval of the layout under which the constrction was put up. The notice was challenged.

It was contended that the Petitioner needs to hand over any part of its land under regulation 58(1) of the Development Control Regulations, 1991 (DC Rules) only after its construction exceeded 30% of the open land and balance FSI.

It was contended by the BMC that the interpretation put by the Petitioner cannot be accepted as then the Petitioner would never hand over any part of its land though the entire layout has been sanctioned under a plan to defeat the rights of the beneficiaries under the DC Rules.

The Court had to consider the object and import of DC Rule 58(1)(a) & (b) note VII read with Rule 58(2).

Held: The DC Rules must be interpreted to enhance its object which was to maintain a balance between the rights of the mill owners to develop its land or modernize the mill vis-à-vis the rights of the city in having open spaces and the rights of the mill workers in obtaining residential accommodation.

The Court held that the expression “immediately after approval of layout” in Note VII of Rule 58(1) read with Rule 58(2) implied that when the mill chose to develop its land under the DC Rules by exploiting its open land and the available FSI and was allowed to develop that under a sanctioned layout plan, the mill must first hand over the specified extent of the land to MHADA for housing the mill workers and to the MMC as recreational ground. Until possession of that land is handed over, no development can commence.

E&OE

# SCHEDULE – IA

## HON'BLE CHIEF JUSTICES OF THE BOMBAY HIGH COURT

1. Sir Mathew Richard Sausse
2. Sir Richard Couch
3. Sir Michael Roberts Westropp
4. Sir Charles Sargent
5. Sir Charles Frederick Farran
6. Sir Louis Addin Kershaw
7. Sir Lawrence H. Jenkins
8. Sir Basil Scott
9. Sir Norman Cranstoun Macleod
10. Sir Amberson Barrington Marten
11. Sir John William Fisher Beaumont
12. Sir Leonard Stone
13. Mr. M. C. Chagla
14. Mr. H. K. Chainani
15. Mr. Y. S. Tambe
16. Mr. S. P. Kotval
17. Mr. K. K. Desai
18. Mr. R. M. Kantawala
19. Mr. B. N. Deshmukh
20. Mr. V. S. Deshpande
21. Mr. D. P. Madon
22. Mr. M. N. Chandurkar
23. Mr. K. M. Reddy
24. Mr. M. H. Kania
25. Mr. Chittatosh Mookerjee
26. Mr. P. D. Desai
27. Mr. M. K. Mukherjee
28. Mrs. S. V. Manohar
29. Mr. A. A. Bhattacharjee
30. Mr. M. B. Shah
31. Mr. Y. K. Sabharwal
32. Mr. B. P. Singh
33. Mr. C. K. Thakker
34. Mr. D. C. Bhandari
35. Mr. K. R. Vyas.
36. Mr. H. S. Bedi
37. Mr. Swatanter Kumar
38. Mr. Anil Dave
39. Mr. Mohit Shah

## Schedule I-B

PUISNE JUDGES OF THE BOMBAY HIGH COURT

| Name of Judge | Period |
|---|---|
| Sir Joseph Arnould | 1862-1869 |
| Sir Richard Couch | 1862-1866 |
| Mr Henry Herbert | |
| Mr Claudius James Erskine | 1862-1865 |
| Mr Alexander Kinloch Forbes | 1862-1866 |
| Mr Henry Newton | 1862-1871 |
| Mr Augustus Brooke Warden | 1863-1871 |
| Mr Henry Pendock St George Tucker | 1863-1869 |
| Sir Michael Roberts Westropp | 1863-1870 |
| Mr J. S. Hore | |
| Mr T. C. Anstey | |
| Mr Janardhan Wassodewji | |
| Mr James Gibbs | 1866-1871 |
| Sir Charles Sargent | 1866-1882 |
| Mr Francis Lloyd | 1869-1873 |
| Sir Lyttelton Holyoake Bayley | 1869-1895 |
| Sir Maxwell Melvill | 1871-1884 |
| Mr Charles Gordon Kemball | 1871-1885 |
| Sir Raymond West | 1873-1887 |
| Mr J. P. Green | 1873-1881 |
| Mr R. H. Pinhey | 1873-1885 |
| Mr Nanabhai Haridas | 1883-1889 |
| Mr John Marriott | |
| Mr Baron De H Larpent | |
| Mr G. Atkinson | |
| Mr F. D. Melvill | |
| Mr F. L. Latham | |
| Sir John Scott | 1882-1890 |
| Mr H. M. Birdwood | 1885-1892 |
| Mr W. E. Hart | |
| Sir W. Wedderburn | |
| Sir John Jardine | 1885-1897 |

| Name of Judge | Period |
|---|---|
| Sir Charles Farran | 1890-1895 |
| Mr H. J. Parsons | 1887-1900 |
| Mr E.T. Candy | 1892-1903 |
| Mr K.T. Telang | 1889-1893 |
| Mr E. M. H. Fulton | 1897-1902 |
| Mr M. H. Starling | |
| Mr M. G. Ranade | 1893-1901 |
| Mr A. Strachey | 1895-1908 |
| Mr. Baddrudin Tyabji | 1895-1906 |
| Mr E. Hosking | |
| Mr L. P. Russell | 1898-1912 |
| Mr W. H. Crowe | 1900-1904 |
| Mr H. Batty | 1902-1908 |
| Mr G. C. Whitworth | |
| Sir Narayan Ganesh Chandavarkar | 1901-1913 |
| Mr V. J. Kirtikar | |
| Mr H. F. Aston | 1902-1906 |
| Mr J. Jacob | |
| Sir Stanley Batchelor | 1904-1918 |
| Sir Basil Scott | 1906-1908 |
| Sir Dinshaw D. Davar | 1906-1916 |
| Sir Frank C. O. Beaman | 1907-1918 |
| Sir Joseph J. Heaton | 1908-1920 |
| Mr M. P. Khareghat | |
| Mr R. Knight | |
| Sir Norman C. Macleod | 1910-1919 |
| Sir Mahadev Bhaskar Chaubal | |
| Mr L. J. Robertson | |
| Mr G. S. Rao | |
| Sir Lallubhai Asharam Shah | 1913-1926 |
| Sir Amberson B. Marten | 1916-1926 |
| Sir Maurice Hayward | 1918-1920 |
| Mr E. M. Pratt | 1918-1925 |
| Mr A. M. Kajiji | 1919-1926 |
| Mr C. G. Hill Fawcett | 1920-1929 |
| Mr L. C. Crump | 1921-1929 |
| Sir Chimanlal Harilal Setalvad | |
| Sir Jamshedji Byramji Kanga | |
| Mr Norman Wright Kemp | 1923-1931 |

| Name of Judge | Period |
|---|---|
| Mr Charles Augustus Kincaid | |
| Mr Hormazdiar Cuvarji Coyajee | |
| The Rt Hon'ble Sir Dinshaw Mulla | |
| Mr V. F. Taraporwala | |
| Sir Govind D. Madgavkar | 1925-1931 |
| Mr Mirza Ali Akbar Khan | 1926-1934 |
| Mr P. E. Percival | |
| Sir Patrick Blackwell | 1926-1942 |
| Mr F. S. Talyarkhan | |
| Sir Sitaram S. Patkar | 1927-1933 |
| Sir William Baker | 1929-1933 |
| Sir Sajba Rangnekar | 1929-1938 |
| Mr J. D. Davar | |
| Mr K. Mc I Kemp | |
| Mr K. M. Jhaveri | |
| Sir Bomanji Wadia | 1931-1941 |
| Sir Stephen Murphy | 1929-1935 |
| Mr Balak Ram | |
| Mr A. C. Wild | |
| Mr F. W. Allison | |
| Sir Robert Broomfield | 1930-1942 |
| Diwan Bahadur P. B. Shingne | |
| Sir Kenneth Barlee | 1931-1937 |
| Sir Harilal Jekisondas Kania | 1933-1946 |
| Mr D. D. Nanavati | |
| Mr F. B. Tyabji | |
| Sir Nawroji Wadia | 1933-1944 |
| Sir Harshadbhai Divatia | 1934-1946 |
| Sir Albert Macklin | 1935-1947 |
| Mr K. C. Sen | 1941-1948 |
| Mr A. A. Chitre | |
| Mr K. B. Wassoodew | 1937-1943 |
| Mr N. P. Engineer | |
| Mr M. A. Somjee | 1938-1942 |
| Mr D. R. Norman | |
| Mr G. N. Thakore | |
| Mr N. S. Lokur | 1942-1947 |
| Mr Indranarayan Brijmohanlal | |
| Mr M. C. Chagla | 1942-1948 |

| Name of Judge | Period |
|---|---|
| Mr Eric Weston | 1943-1950 |
| Mr N. H. C. Coyajee | 1943-1957 |
| Mr J. B. Blagden | |
| Mr K. A. Somjee | |
| Mr G. S. Rajadhyaksha | 1944-1955 |
| Mr N. H. Bhagwati | 1946-1957 |
| Mr R. S. Bavdekar | 1946-1957 |
| Mr P. B. Gajendragadkar | 1947-1957 |
| Mr Y. V. Dixit | 1947-1958 |
| Mr S. R. Tendolkar | 1947-1958 |
| Mr M. V. Desai | |
| Mr R. A. Jahagirdar | |
| Mr K. T. Mangalmurti | 1956-1957 |
| Mr H. K. Chainani | 1948-1958 |
| Mr J. C. Shah | 1949-1959 |
| Mr J. R. Mudholkar | 1956-1960 |
| Mr D. V. Vyas | 1950-1958 |
| Mr M. C. Shah | 1956-1957 |
| Mr S. T. Desai | 1956-1965 |
| Mr Y. S. Tambe | |
| Mr B. N. Gokhale | 1955-1961 |
| Mr S. Palnitkar | 1956-1957 |
| Mr S. P. Kotval | 1956-1966 |
| Mr K. G. Datar | 1957-1961 |
| Mr K. T. Desai | 1957-1960 |
| Mr J. M. Shelat | 1957-1960 |
| Mr N. A. Mody | 1957-1972 |
| Mr N. M. Miabhoy | 1957-1960 |
| Mr G. B. Badkas | 1957-1961 |
| Mr V. M. Tarkunde | 1957-1969 |
| Mr D. V. Patel | 1957-1969 |
| Mr V. S. Desai | 1958-1969 |
| Mr K. K. Desai | 1958-1972 |
| Mr V. A. Naik | 1959-1967 |
| Mr V. B. Raju | |
| Mr S. G. Patwardhan | |
| Mr S. M. Shah | |
| Mr N. L. Abhyankar | 1960-1969 |
| Mr M. G. Chitale | 1960-1972 |

| Name of Judge | Period |
|---|---|
| Mr Y. V. Chandrachud | 1961-1972 |
| Mr D. P. Shikhare | |
| Mr D. G. Palekar | 1961-1971 |
| Mr R. M. Kantawala | 1962-1972 |
| Mr V. G. Wagle | 1962-1972 |
| Mr H. R. Gokhale | 1962-1966 |
| Mr L. M. Paranjpe | 1962-1967 |
| Mr V. D. Tulzapurkar | 1963-1977 |
| Mr B. D. Bal | 1964-1970 |
| Mr B. S. Deshmukh | 1965-1978 |
| Mr D. B. Padhey | 1965-1975 |
| Mr M. V. Paranjape | |
| Mr G. A. Thakker | |
| Mr J. R. Vimadalal | 1967-1977 |
| Mr V. S. Deshpande | 1967-1980 |
| Mr N. P. Nathwani | 1967-1975 |
| Mr J. L. Nain | 1967-1973 |
| Mr D. P. Madon | 1967-1983 |
| Mr M. N. Chandurkar | 1967-1984 |
| Mr D. G. Gatne | 1968-1972 |
| Mr M. S. Apte | 1969-1978 |
| Mr R. R. Bhole | 1969-1975 |
| Mr G. N. Vaidya | 1970-1978 |
| Mr N. D. Kamat | 1970-1976 |
| Mr S. B. Bhasme | 1970-1978 |
| Mr M. H. Kania | 1970-1976 |
| Mr S. K. Desai | 1972-1990 |
| Mr M. A. R. Khan | |
| Mr S. M. Hajarnavis | 1972-1977 |
| Mr P. S. Malvankar | 1972-1974 |
| Mr P. K. Joshi | 1972-1977 |
| Mr B. A. Masodkar | *1972-1986* |
| Mr C. S. Dharmadhikari | *1972-1989* |
| Mr P. M. Mukhi | *1973-1976* |
| Mr P. S. Shah | *1973-1988* |
| Mr G. G. Bhojraj | |
| Mr B. M. Sapre | *1974-1978* |
| Mr N. B. Naik | *1974-1979* |
| Mr D. M. Rege | *1974-1985* |

| Name of Judge | Period |
|---|---|
| Mr J. M. Gandhi | *1974-1977* |
| Mr C. L. Dudhia | |
| Mr R. L. Aggarwal | *1975-1987* |
| Mr B. Lentin | *1975-1989* |
| Mr P. B. Sawant | *1975-1989* |
| Mr A. R. Shimpi | *1974-1978* |
| Mr R. P. Bhatt | |
| Mr U. R. Lalit | |
| Mr C. T. Dighe | *1974-1978* |
| Mr P. R. Mridul | |
| Mr B. C. Gadgil | *1976-1985* |
| Mr M. D. Kamble | *1976-1980* |
| Mr A. A. Ginwala | *1976-1984* |
| Mr R. A. Jahagirdar | *1976-1990* |
| Mr S. C. Pratap | *1977-1991* |
| Mr M. P. Kanade | *1977-1983* |
| Mr S. P. Bharucha | *1977-1992* |
| Mr R. D. Tulpule | *1978-1983* |
| Mr V. V. Joshi | *1978-1983* |
| Mrs Sujata V. Manohar | *1978-1994* |
| Mr M. L. Pendse | 1978-1996 |
| Mr S. P. Kurdukar | *1978-1994* |
| Mr D. N. Mehta | *1979-1990* |
| Mr V. S. Kotwal | *1979-1991* |
| Mr M. S. Jamdar | *1981-1986* |
| Mr M. R. Waikar | *1981-1984* |
| Mr S. G. Manohar | *1982-1990* |
| Mr D. B. Deshpande | *1982-1984* |
| Mr R. S. Padhye | |
| Mr V. A. Mohta | *1982-1995* |
| Mr B. J. Rele | |
| Mr N. K. Parekh | *1982-1988* |
| Mr R. S. Bhonsale | |
| Mr A. N. Mody | |
| Mr P. G. Palshikar | |
| Mr S. W. Puranik | *1982-1993* |
| Mr K. Sukumaran | 1992- |
| Mr S. J. Deshpande | *1982-1986* |
| Mr M. M. Qazi | *1982-1992* |

| Name of Judge | Period |
|---|---|
| Mr G. M. Khandekar | *1982-1986* |
| Dr G. F. Couto | *1982-1990* |
| Mr S. N. Khatri | *1982-1989* |
| Mr H. W. Dhabe | *1983-1995* |
| Mr A. D. Tated | *1983-1989* |
| Mr H. H. Kantharia | *1983-1994* |
| Mr G. A. Paunikar | *1983-1986* |
| Mr H. D. Patel | *1983-1993* |
| Mr V. V. Vaze | *1983-1988* |
| Mr G. D. Kamat | *1983-1997* |
| Mr M. S. Deshpande | *1984-1992* |
| Mr B. G. Deo | *1985-1989* |
| Mr R. R. Jahagirdar | *1985-1986* |
| Mr S. M. Daud | *1985-1993* |
| Mr V. P. Salve | *1985-1988* |
| Mr G. G. Loney | *1985-1989* |
| Mr B. G. Kolse-Patil | *1985-1988* |
| Mr M. S. Ratnaparkhi | *1985-1990* |
| Mr T. D. Sugla | *1986-1991* |
| Mr Hosbet Suresh | *1987-1991* |
| Mr A. C. Agarwal | *1987-1999* |
| Mr B. N. Deshmukh | *1987-1997* |
| Mr S. N. Variava | *1987-1999* |
| Mr W. N. Sambre | *1987-1994* |
| Mr A. A. Desai | *1987-1999* |
| Mr G. H. Guttal | *1988-1994* |
| Mr P. V. Nirgudkar | *1989-1990* |
| Mr K. N. Patil | *1988-1992* |
| Mr M. P. Kenia | *1989-1999* |
| Mr V. P. Tipnis | *1989-1999* |
| Mr G. R. Majithia | *1994-1996* |
| Mr M. B. Ghodeswar | 1989 -2000 |
| Mr B. P. Saraf | 1991 - 2001 |
| Mr M. G. Chaudhari | 1989-1994 |
| Mr V. H. Bhairavia | 1994-1998 |
| Mr A. A. Cazi | 1989-1993 |
| Mr D. J. Moharir | 1989-1993 |
| Mr I. G. Shah | 1989-1994 |
| Mr A. D. Mane | 1989-1999 |

| Name of Judge | Period |
|---|---|
| Mr M. L. Dudhat | 1989-1997 |
| Mr V. V. Kamat | 1989-1999 |
| Mr B. U. Wahane | 1989-1996 |
| Mr B. V. Chavan | 1989-1993 |
| Mr A. A. Halbe | 1989-1994 |
| Mr R. G. Sindhakar | 1989-1992 |
| Mr L. Manoharan | 1994-1997 |
| Mr N. P. Chapalgaonkar | 1990-1999 |
| Mr K. G. Shah | 1994-1997 |
| Mr N. U. Arumugham | 1997-1999 |
| Mr N. J. Pandya | 1997-2000 |
| Mr M. S. Vaidya | 1990-1994 |
| Mr D. R. Dhanuka | 1990-1996 |
| Mr A. V. Savant | 1990-2000 |
| Mr Dr. E. D. S. DaSilva | 1990-1995 |
| Mr S. M. Jhunjhunwala | 1990-1996 |
| Mr B. N. Srikrishna | 1990-2001 |
| Mr M. F. Saldanha | 1990-1994 |
| Mr G. D. Patil | 1990-2003 |
| Mr S. S. Dani | 1990-1998 |
| Mr P. S. Patankar | 1991-2002 |
| Mr N. D. Vyas | 1991-1996 |
| Mr S. H. Kapadia | 1991-2003 |
| Mr Vijay Bahuguna | 1994-1995 |
| Mr S. G. Mutalik | 1992-1997 |
| Mr B. N. Naik | 1992-1994 |
| Mr V. S. Sirpurkar | 1992-1997 |
| Mr M. S. Rane | 1992-1999 |
| Mr A. P. Shah | 1992-2005 |
| Mr D. K. Trivedi | 1994-2001 |
| Mr V. G. Palshikar | 2001-2007 |
| Mr H. L. Gokhale | 1999-2011 |
| Mr J. G. Chitre | 2001-2004 |
| Mr R. M. Lodha | 1994-2007 |
| Mr Vishnu Sahai | 1994-2002 |
| Mr R. G. Vaidyanatha | 1994-1997 |
| Mr T. K. Chandra Shekhar Das | 1994-2001 |
| Smt K. K. Baam | 1994-2002 |
| Mr S. C. Malte | 1994 |

| Name of Judge | Period |
|---|---|
| Mr A. S. Venkatachala Moorthy | 1994 |
| Mr Bilal Nazki | |
| Mr S. P. Kulkarni | 1995-2001 |
| Mr V. R. Datar | 1995-1999 |
| Mr V. K. Barde | 1995-2002 |
| Mr R. K. Batta | 1995-2003 |
| Dr (Mrs) P. D. Upasani | 1996-2002 |
| Mr J. N. Patel | 1996-2010 |
| Mr D. G. Deshpande | 1996-2007 |
| Mr S. S. Nijjar | 1996-2000 |
| Mr S. S. Parkar | 1996-2005 |
| Mr R. G. Deshpande | 1996-2003 |
| Mr S. B. Mhase | 1996-2009 |
| Mr S. Radhakrishan | 1996-2008 |
| Mr R. M. S. Khandeparkar | 1996-2008 |
| Mr F. I. Rebello | 1996-2010 |
| Mrs Ranjana P. Desai | 1996-2011 |
| Mr D. K. Deshmukh | 1996-2012 |
| Mr D. D. Sinha | 1996 |
| Mr A. Y. Sakhare | 1997 |
| Mr Y. S. Jahagirdar | 1997 |
| Mr B. H. Marlapalle | 1997 |
| Mr J. A. Patil | 1997-2003 |
| Mr A. B. Palkar | 1997-2003 |
| Mr S. D. Gundewar | 1997-2003 |
| Mr B. B. Vagyani | 1997-2004 |
| Mr R. J. Kochar | 1997-2003 |
| Mr P. B. Majmudar | 2008 |
| Mr S. G. Mahajan | 1999-2004 |
| Mr P. S. Brahme | 1999-2007 |
| Mr S. K. Shah | 1999-2007 |
| Mr N. V. Dabholkar | 1999-2009 |
| Mr A. S. Bagga | 1999-2007 |
| Mr D. S. Zoting | 1999-2006 |
| Mr V. C. Daga | 1999-2011 |
| Mr P. V. Kakade | 1999-2008 |
| Mr S. A. Bobde | 2000 |
| Mr A. M. Khanwilkar | 2000 |
| Dr D. Y. Chandrachud | 2000 |

| Name of Judge | Period |
|---|---|
| Mr A. B. Naik | 2001-2005 |
| Mr A. P. Deshpande | |
| Mr D. B. Bhosale | |
| Mr S. J. Vazifdar | 2001 |
| Smt N. N. Mhatre | 2001 |
| Mr A. S. Aguiar | 2001-2005 |
| Mr P. V. Hardas | 2001 |
| Mrs V. K. Tahilramani | 2001 |
| Mr D. G. Karnik | 2001-2012 |
| Mr J. P. Devadhar | 2001 |
| Mr R. S. Mohite | 2001 |
| Mr V. M. Kanade | 2001 |
| Mr N. H. Patil | 2001 |
| Mr S. T. Kharche | 2002-2006 |
| Mr V. G. Munshi | 2002-2007 |
| Mr P. B. Gaikwad | 2002-2006 |
| Mr S. B. Deshmukh | 2003 |
| Mr A. S. Oka | 2003 |
| Mr K. J. Rohee | 2003-2009 |
| Mr S. R. Sathe | 2003-2007 |
| Mr M. G. Gaikwad | 2003-2007 |
| Mr A. V. Mohta | 2003 |
| Mr S. C. Dharmadhikari | 2003 |
| Mr B. R. Gavai | 2003 |
| Mr A. P. Lavande | 2004 |
| Mr A. H. Joshi | 2004 |
| Mr B. P. Dharmadhikari | 2004 |
| Mr S. U. Kamdar | |
| Mr N. A. Britto | 2004 |
| Mr S. P. Kukday | 2005 |
| Mrs V. A. Naik | 2005 |
| Mr J. H. Bhatia | 2005-2012 |
| Mr R. C. Chavan | 2005 |
| Mrs Roshan S. Dalvi | 2005 |
| Mr S. R. Dongaonkar | 2006- |
| Mr V. R. Kingaonkar | 2006- |
| Mr A. B. Chaudhari | 2006 |
| Mr R. M. Borde | 2006 |
| Mr R. V. More | 2006 |

| Name of Judge | Period |
|---|---|
| Mr R. M. Savant | 2006 |
| Mr P. R. Borkar | 2006 |
| Mr C. L. Pangarkar | 2006 |
| Mr A. A. Sayed | 2007 |
| Mr S. S. Shinde | 2008 |
| Mr A. P. Bhangale | 2008 |
| Mr A. V. Nirgude | 2008 |
| Mr R. Y. Ganoo | 2008 |
| Mr N. D. Deshpande | |
| Smt R. P. SondurBaldota | 2008 |
| Mr K. U. Chandiwal | 2008 |
| Mr S. C. Bora | |
| Mr A. A. Kumbhakoni | |
| Mr K. K. Tated | 2008 |
| Mr P. B. Varale | 2008 |
| Mr S. J. Kathawalla | 2008 |
| Mr P. D. Kode | 2009 |
| Mr U. D. Salvi | 2009 |
| Mr S. P. Davare | 2009 |
| Mr A. R. Joshi | 2009 |
| Mrs Mridula R. Bhatkar | 2009 |
| Mr A. V. Potdar | 2009 |
| Mr F. M. Reis | 2009 |
| Mr R. G. Ketkar | 2009 |
| Mr R. K. Deshpande | 2009 |
| Mr S. V. Gangapurwala | 2010 |
| Mr T. V. Nalawade | 2011 |
| Mr M. N. Gilani | 2011 |
| Mr M. T. Joshi | 2011 |
| Mr M. L. Tahaliyani | 2011 |
| Mr A. M. Thipsay | 2011 |
| Mr U. V. Bakre | 2011 |
| Mr G. S. Godbole | 2011 |
| Mr M. S. Sanklecha | 2012 |
| Mr R. D. Dhanuka | 2012 |
| Mr S. P. Deshmukh | 2012 |
| Mr N. M. Jamdar | 2012 |
| Mrs S. S. Jadhav | 2012 |

# SCHEDULE - II

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# ACKNOWLEDGMENTS

I would like to begin with an admission that this work would not have taken off without the gracious consent and unstinted support of the Hon'ble Chief Justice Mr. Mohit Shah. I deeply appreciate the support of Dr. Justice D. Y. Chandrachud and his assistance in ensuring the smooth culmination of the project. Justice A. V. Mohta's contribution in assimilating various judgments, which have been incorporated in the compilation, was indeed an added asset. I also acknowledge the contribution of Justice Sanklecha and Justice Tated who called out judgments in specific disciplines. I cannot forget Justice Mridula Bhatkar who conceived the idea and which propelled me to take it to its fruition.

I must express my deep gratitude to Judge Shalini Phansalkar-Joshi, District Judge, presently on deputation as the Joint Director of the Maharashtra Judicial Academy who, aside from calling out judgments personally known to her, involved 50 young judicial officers training at the Academy to undertake serious search work to contribute their mite to this project whose effort & appreciate. She was supported in her work by her Assistant, Judge Atul Kurhekar. This was a true exemplification of how a person can make an example out of an opportunity.

This compilation is the fruit of a joint collaboration. Apart from those whose signal contribution has been acknowledged above, several interns and law students have worked with me. The student were recommended by District Judge Mallik, presently Principal of Government Law College, and Professor Kishore Daswani, Principal Dr. Nilima Chandiramani, who also partook in the research. They have manually researched the judgments of the earlier period. I commend the effort of all these, especially Aditi Tralshawala, Shweta Anantnarayan, Pooja Motla, Kripashankar Pandey, Apurva Thipsay, Neha Shah, Sandhya Lokhande, Arjun Gupta,Namrata Jani, Karishma Mehta, Aashika Sadh, Amal Sethi,

Nanki Grewal, Megha Agarwal, Kim D'Souza, Shruti Rajgarhia, Diksha Idnani, Darshan Shah, Sachin Shukla, Fatema Kalyaniwala and Priyanka Ruparel. Their effort in selecting several very interesting judgments is laudable.

The earliest law reports have been taken out from the High Court Judges Library, the High Court Law Library (Original Side) and the Library of Government Law College. I would not fail to thank Mr. Rohit Kapadia, Senior Counsel and the President of Bombay Bar Association who instantaneously agreed to my request to use some of the oldest books from the Bar library and the librarian Prakash Berde and his assistants who tirelessly worked with my interns to supply books and assist them in finding judgments. I would thank the librarian of the Judge's Library, Uma Narayan and her assistant Nilima Deo who attended to my need to be fed with law reports through the years.

The making of the entire CD would not be completed without the diligent work of my unitary staff Meenakshi Mandlekar, Arjun Kadam, Jitendra Nijasure, Suresh Mane and Subhash Raut. The final product is the result of the quiet work of Shakeel Shaikh in the Computer Section of this Court who got the CDs prepared.

The work that spanned months was the result of the effort as well support of my family.

Justice Roshan Dalvi

18th August, 2012