

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 Police 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 lives 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 ejection 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 Shivabasya 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 Boroughs 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 broker 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 assessee 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 assessee 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 detenu 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 Jalgaon 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 arises 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 pursuance 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 transferred 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 gain 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 Commissioner 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 Appellate 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 Wadhvani 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, C.J. & 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, C.J. & 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 coparcenary 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 petition 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, challengeable 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 should 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 to 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 ejection. 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 obscene 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 obscene. 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 permanent 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. Hiranman 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 adulterated 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 resell 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 ejection 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 detenu. 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 detenu, it is necessary to take into account the detenu'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 become 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 from 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 validity 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 Shivlall 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

Tanhabei 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 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 film 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 overriding 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 considered 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 1/5th 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 1/5th 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-incorporation 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 *ex parte* 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 *ex parte* 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 ejection 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 Act, 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.