

does not deign to adduce reasons, I am compelled to the conclusion that this accusation is as unfounded as that preceding it.

3. Dr Coppel finally joins issue with me over my citation of *Model Dairy Pty. Ltd. v. White*<sup>17</sup> for the proposition that a milkman is liable in conversion for using another's bottles for the purpose of delivering milk to his customers, *regardless of whether he knows or not that the bottles do not belong to him*. True it is that, on the facts of that case, it was found that the defendant knew the bottles to belong to the plaintiff, but Gavan Duffy J. explicitly stated that 'a man who bails or lets out to another a bottle is, in my opinion, asserting a right inconsistent with the rights of the owner of the bottle, even though he does so, not for direct payment, but to expedite the sale of the contents, *and this whether he knows that the bottle is another's or not*.'<sup>18</sup> Without need to enter on the debatable question of what constitutes a *ratio decidendi*, it is a little puzzling to encounter a challenge to the propriety of citing a considered judicial pronouncement in support of the proposition therein enunciated. (In *Milk Bottles Recovery Ltd. v. Camillo*<sup>19</sup> Mr Justice Gavan Duffy's opinion was approved.)

*Constitutional Problems in Pakistan*, by SIR IVOR JENNINGS, K.B.E., Q.C., Litt.D., F.B.A., formerly Constitutional Adviser to the government of Pakistan. (Cambridge University Press, 1957), pp. i-xvi, 1-378. English price £2 2s.

Pakistan came into existence as an independent member of the British Commonwealth under the terms of the Indian Independence Act 1947, which provided for the government of the State to be carried on under the Government of India Act 1935, with some modifications, until such time as a new Constitution was framed. Under the Indian Independence Act, a Governor-General was to represent the Crown, and the functions of the legislature of the Dominion, including the framing of a constitution, were to be discharged by a Constituent Assembly which also had to function as the Federal Legislature.

The Constituent Assembly met over a period of seven years until it was dissolved in October 1954 by the Governor-General, Ghulam Mohammed, during the absence of the Prime Minister, Mohammed Ali, in the United States. The Assembly failed to produce the Constitution which was its prime responsibility, and for the greater part of its life it was deadlocked on major questions touching the future of Pakistan. The great dispute was over the question whether the new State should be an Islamic theocratic organization or, in broad terms, a western liberal democratic state. During 1954 the pace of events quickened; the Muslim League was defeated in the East Bengal Provincial Assembly elections by forces which openly supported Bengali separatism. Rioting followed and the central government used this as the pretext for dismissing the East Bengal Government. In September, the Constituent Assembly voted to strip the Governor-General of his powers under the Government of India Act 1935, as amended, and to transfer these to the Prime Minister. The Governor-General countermoved, and in October dismissed the Constituent Assembly on the ground that it had lost the confidence of the people, and he directed the Prime Minister to make important changes in his cabinet.

<sup>17</sup> (1935) 41 Argus L.R. 432. <sup>18</sup> *Ibid.*, 434.

<sup>19</sup> [1948] V.L.R. 344.

These events provided the background to some very interesting legal proceedings which are the subject-matter of this book, which contains a longish introduction (pp. 1-75) followed by the judgments in four cases in the Federal Court of Pakistan: *Federation of Pakistan v. Moulvi Tamizzudin Khan; Usif Patel v. The Crown; Report on the Special Reference made by His Excellency, the Governor-General of Pakistan and Federation of Pakistan v. Ali Ahmad Hussain Shah and the Union of India*. In the first of these cases, Mr Tamizzudin Khan, the President of the dissolved Constituent Assembly, challenged the validity of the Governor-General's dissolution of the Assembly and asked for writs of *mandamus* and *quo warranto* under a section which had been written into the Government of India Act by the Government of India (Amendment) Act 1954. The difficulty was that this Act had not been submitted for and had not received the assent of the Governor-General. It was argued that the Act was therefore void, so that the court had no jurisdiction to issue the writs, and this contention was upheld by a majority in the Federal Court, reversing the Sind Chief Court. The holding was drastic and far-reaching, because it meant that the Assembly had been misinterpreting its powers for several years, and that a large number of acts, many of them of fundamental importance to the effective government and administration of the country, were bad for want of the Governor-General's assent. The dissenting judge drew attention to the appalling consequences which followed this holding, but the Chief Justice, Munir C.J., pointed to the court's obligations:

I am quite clear in my mind that we are not concerned with the consequences, however beneficial or disastrous they may be, if the undoubted legal position was that all legislation by the Legislature of the Dominion under sub-section (3) of section 8 needed the assent of the Governor-General. . . . Unless any rule of estoppel require us to pronounce merely purported legislation as complete and valid legislation, we have no option but to pronounce it void.

The judgment is of great interest in so far as the court in reaching its conclusion proceeded to examine the basic principles of democratic government, the character of Dominion status and the meaning of 'independent Dominion', as well as the royal prerogative in the Commonwealth and a number of other matters.

The consequences of the decision were alarming. Among other things, it appeared that many judicial decisions including those of the Federal Court itself were void. So also was legislation enacted by the Governors of Provinces which depended for constitutional support on *valid* federal legislation. As Jennings points out 'there was, in short, such legal chaos that a decision to suspend the Constitution and start again could have been defended politically'. The Governor-General attempted to order chaos by an exercise of emergency powers under the Government of India Act, but this was held bad in *Usif Patel v. The Crown* in which the Government of Sind and not the central government was directly concerned. Then the Governor-General attempted to cure the situation in another way. On April 15, 1955, he summoned a Constituent Convention for the following month and on the following day issued a proclamation assuming to himself until other provision was made by the Constituent Convention, power to validate and enforce the laws that were needed to avoid a breakdown in the constitutional and administrative machinery

of the country and to preserve the State. In the exercise of these powers he validated a number of important acts of the dissolved Assembly which had been declared invalid by the court in the earlier cases. He also purported to validate provincial Acts which suffered from the defect of incompetent authorization by the Assembly.

In the third case, *Report on the Special Reference made by His Excellency the Governor-General of Pakistan*, the court upheld this exercise of power. It did so by invoking a doctrine of necessity. As Munir C.J. said: 'We have come to the brink of a chasm with only three alternatives before us: (i) to turn back the way we came by; (ii) to cross the gap by a legal bridge; (iii) to hurtle into the chasm beyond any hope of rescue'. The bridge was found, and students of jurisprudence and constitutional law will find the case of enormous interest. As Sir Ivor Jennings observes 'it appears to be unique in the legal history of the Commonwealth [and] is the application of the common law doctrine of necessity to the conditions of emergency created by decision in *Tamizuddin Khan's* case'. It also contains an elaborate discussion of the prerogative power to summon, prorogue and dissolve legislatures.

The fourth case, *Federation of Pakistan v. Ali Ahmad Hussain Shah* is, as Jennings observes, something of an anti-climax but it has its place as part of the story and provides some further discussion of the doctrine of necessity.

Sir Ivor Jennings, who is beyond doubt the best informed British lawyer on the British Commonwealth in Asia, has written a long and carefully reasoned introduction to the four cases which provides an historical setting for the story, and, notably in *Tamizuddin's* case, examines in some detail the decision of the court below. This is a remarkable book in many ways. The story and the setting of judicial process in the story are fascinating. The cases themselves are of great interest to constitutional lawyers in Australia as elsewhere. The judgments themselves are impressive in their range of learning, argument and style. And the great problem raised by the demands on the law imposed by the extraordinary events of late 1954 is one that will excite and stimulate lawyers and non-lawyers alike.

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*Trade Union Law*, by HARRY SAMUELS, M.A., of the Middle Temple, Barrister-at-Law, 5th ed. (Stevens & Sons Ltd., London, 1956), pp. i-xv, 1-71, App. 72-89. Australian price 17s. 9d.

This is the fifth edition of a work first published as recently as 1946. Dealing with the law of the United Kingdom, it treats of the common law and legislation governing such matters as the position of trade unions and their members in the law of contract, their position in regard to civil wrongs, criminal conspiracy and intimidation, the rules of unions, procedure for registration of unions and their property, and their liabilities. The book has been designed for use by British trade unionists and the author has been at pains to be as concise as possible. In avoiding complexity he runs the risk of over-simplification. For instance, in referring to the legal status of a trade union registered under the Trade Union Act, 1871, he apparently accepts *Bonsor v. Musicians' Union*<sup>1</sup> as authority for the proposition that the rules of a registered union form a contract between the union, a legal entity distinct from the members comprising it, and a member.

<sup>1</sup> [1956] A.C. 104.