"Whether the time has yet come for making a new departure by attempting to codify native law is a question which most authorities would answer in the negative." [50]

But to-day work is already well begun upon a careful restatement of the Hindu law beginning with the "title" of Inheritance. This is all the more likely to be accomplished with success as it is recognized that it is not equally necessary or desirable in every branch of the law, and that in some branches of the law it will be more difficult than in others. Improvement, both in substance and in form, where improvement seems possible with general consent, is a practical aim which will give increasing hope of reasonableness and of uniformity. The only codification which can be expected to be simple and, at the same time, conformable to the general notions of Hindus and acceptable to the community as a whole must of necessity be the work of the legislature. To Mr. Justice Holmes, who did not "attach much importance to the codifying *furore* except in India," Sir Frederick Pollock in 1877 put the question: "Do you think codification a humbug in the sense that codified arrangement of the law is undesirable in itself or only that there is no advantage in doing it by legislative authority?"[51] Here, doubtless, is the essential question. In India there is every advantage in doing it by legislative authority and only the legislature can do what is required. In laying down and applying rules of Hindu life on very fundamental matters the tribunals have done a great work for the Hindu law but it has been to a great extent law-making and the legislature should revise it.

THE ISLE OF MAN

[*Contributed by* THE HON. R. D. FARRANT, *First Deemster*]

THE Isle of Man is an Ancient Kingdom. It has its own Constitution, its own Legislature, its own Court and judiciary, and its own laws. Subject to the Royal assent, and to the overriding jurisdiction of the Imperial Parliament, it has full and sovereign rights to enact new Legislation, and alter, amend, or repeal, existing statutes or common laws.

Whatever may have been the original status in Celtic times, the establishment of the Kingdom of Man and the Isles by the middle of the eleventh century—and may be a hundred years before—was completed and recognized by neighbouring countries, and by the King of Norway its Suzerain. The extent of the King of Man and the Isles' Dominions was stated to Henry II by the Bishop, as covering Man and all the Hebrides as far as and including Lewis. The title (still used) of that Bishop was Sodor and Man. Sodor is a corruption of Sudreyar or Southern Isles, including all the Hebrides, and as distinct from the Northern Isles of Orkney and Shetland which were under the rule of an Earl.

The Norse Kingdom lasted till 1266 when King Haco of Norway by the treaty of Perth handed over the suzerainty of Man, which became separated from the Isles, to the King of Scotland. During the wars between Edward I who took possession of Man as Lord Superior of Scotland, and the Scots Kings, the Isle of Man was claimed by England and Scotland, according to the vicissitudes of their warfare, and finally became settled in the hands of Henry IV. The Kingship of Man was conquered by Sir Wm. Montacute, first Lord of Salisbury, about 1335-1343, and was confirmed by grant from Edward III. Montacute's claim was based on his descent through the females from the Norse Kings of Man, the last male of whom was killed in battle with the Scots. Salisbury sold his royalties to Sir William Scope, Earl of Wiltshire, the transaction being recorded with a statement that "it is the law of that Island that whoever may be Lord thereof shall be called King to whom also appertains the right to be crowned with a golden crown." On Scope's execution, the

[50] *Legislative Methods and Forms*, by Sir Courtenay Ilbert (1901), p. 154.
[51] *Pollock-Holmes Letters* (1942), pp. 7, 21.

Island was forfeited to Henry IV who granted it to the Earl of Northumberland who himself forfeited it for his rising against the King. Finally in 1403 Henry granted it first for life, and subsequently in fee, to Sir John Stanley and his heirs, who under the later title of Earls of Derby held it, dropping the title of King and taking that of Lord, till 1735-1736 when it descended to the Duke of Atholl, who sold it in 1765 to the Crown of England, in whom the lordship is now vested by the Imperial Act of 5 George III, cap 26.

To sum up the legal position, Lord Hardewicke held (by admission of all parties) in *Sodor and Man* v. *Derby and ors* (1751) 2 Vesey p. 337, that Man was "not part of the Realm of England; it was parcel only of the Kings Crown of England; a distinct dominion now under the Kings grants and so ever since from long time past granted and held as a feudatory dominion of liege homage of the Kings of England; the laws of England therefore as such, extend not to it, neither the Common or Statute law unless expressly named, or some necessary consequence resulting from it" (and see *Davison* v. *Farmer* (1851) 6 Excheq. 242. *Exparte Brown* (1864) 5 B & S 280).

The feudatory homage last rendered by the Duke of Atholl to George IV was the presentation of two Falcons at his Coronation. This of course is now in abeyance but would presumably revive if the Crown ever made a fresh grant ot the Lordship. Nothing is known of the internal constitution of the Island prior to the Norse invasion. Since that date i.e. some time in the 10th century. a constitution based upon the Norwegian has been in continuous operation. This originally consisted of a King or Lord acting with the advice and consent of a body of judges and legislators chosen from the seventeen parishes into which the Island is divided. From an answer given by the Deemsters (Judges) and Keys (or chosen ones) to Sir John Stanley in A.D. 1417 it would appear that the number has been and should be 24—twelve or multiples of twelve being the sacred number in the Scandinavian law. And that these persons were drawn as to 16 from Man and 8 from the outisles (or Hebrides). As the Island was divided for judicial purposes into six Sheadings (sixth parts), with three (in one case 2) parishes in each, the representatives were grouped for each Sheading as they still are. There was probably no upper chamber in the modern sense, but certain officers have subsisted from time immemorial, such as the Controller and Clerk of the Rolls who kept the records and audited the accounts, the Receiver General (formerly the most important) who collected and accounted for the revenues and acted (it is to be supposed), as Chancellor of the Exchequer, the Lords Attorney (or Attorney General) the Water Bailiff (or Admiralty judge) and the Ecclesiastical officers, i.e. the Bishop and Vicars-General. These officers in attendance on the Lord or his Governor seem from a very early date to have become an upper chamber of the legislature, by whose advice and consent with that of the House of Keys legislation was enacted. There were two other peculiarities of the Manx Legislature. The two Deemsters one for the Northside, and the other for the Southside acted not only as the Judges in all cases of litigation at Common Law, but also acted with the Keys in making declarations of the Common Law and custom at and for a long time subsequent to the coming of the Stanleys. To this day the senior Deemster fufils the task of reading out the statutes (or a short summary of them) in English, followed by a spokesman in Manx, at the annual ceremony of the promulgation of the laws at the Tynwald Hill at St. Johns. No statute passed by the Insular Legislature became of force and effect unless and until it had been so promulgated, and this is still the law, unless the statute itself provides for an earlier date.

Interesting historical and legal questions arise as to the origin of this ceremony and the composition of the participating members. To this day the seventeen Vicars or Rectors and the Captains of the Parishes form part of the Court or Assembly, although they have not, so far as is known, ever formed

part of the Legislature. I discuss these Insular questions in my book "Man" now out of print, which I hope to republish, as part of a larger work dealing with the Kingdom of Man and the Isles.

The early documents bound up in the Statutes of the Isle of Man include a number of orders by the Lord, or his Governor and Council, declarations by the Deemsters and Keys, and by the Bishop and Convocation as to the spiritual laws of the Church, Clergy and Laymen. The Church Courts as elsewhere dealt with a large number of causes of litigation. The full title of laws as enacted by the advice and consent of the Governor, Deemsters and officers and the 24 Keys is not stated till about the end of the 16th century. The existence of the Keys as the law making and law declaring authority seems however to have always existed since the days of the Norse Kingdom and probably followed regularly the composition and procedure of the Icelandic constitution as described in the Sagas, with such differences as would be inherent in a monarchy and a Republic. Tynwald Hill has also been the customary place at which to proclaim the accession of a new King, a procedure still followed. In old days the King's heir might also be proclaimed in the lifetime of his father as was the custom in Ireland under the system of Tanistry which formerly prevailed there.

It must be remembered that the system of open air Courts was universal amongst the Scandinavian nations in the Viking days and thereafter.

In Iceland the Island was divided for administrative purposes into four quarters each of which had its Ting or Court, and in Man the main division was two, Northside and Southside, each with its head Ting, at Cronk Urleigh for the Northside and Keeil Abban in Braddan for the Southside, with an occasional sitting in the Gateway of Castle Rushen the residence of the King. In Iceland there were also local Tings at which certain cases were taken, appeals lying to the quarter Court of the district. Eventually in 930 a fifth Court was established at Tingvalla, and became the Althing or Supreme Legislature and legal tribunal for the Island. One of their principal duties was to entertain cases when the verdicts of the quarter Courts, which were judged by 12, 24 or 36 judges, who acted as jurors now act, were challenged on various grounds. The establishment of the Ting at St. Johns in the Isle of Man appears also to have established it as the Supreme Court and it is significant that up to 60 or 70 years ago, the House of Keys sitting with one of the Deemsters was the supreme Court of appeal in jury cases, and that the proceeding was known as a Traverse, the Keys sitting to decide on points which were in form challenges to the action and procedure of the Sheading jury. The system of land tenure also has traces of the old Norse land tenure with its inalienability of land of quarterland of descent and its right of family redemption in 60 years or three generations. Till quite lately the Intacks or land enclosed from the Common did not become inalienable property until after 3 descents.

Originally there were a number of Baronies in the Island all of which were in the hands of various Ecclesiastical Corporations in Sir John Stanley's days and all of which, except that of the Bishop of Sodor and Man which still subsists, fell into the hands of the Lord by forfeiture for non rendering of homage, or at the Reformation.

Returning to the House of Keys, this body was up to the year of 1866 self elected. On a vacancy occurring through death or bankruptcy or forfeiture for treason or outlawry, the House elected two persons whose names were submitted to the Governor who chose one to be the new Key. In 1866 this process was swept away and a system of election by the people on the same lines as then prevailed in England was set up. This has been amended from time to time and is now the same as in England.

The reason for this was as follows: Up to the date of the vesting of the

lordship in the Crown in 1765, in accordance with the original practice of almost all countries which had a legislature, the Lord received all public revenues, and paid all the expenses of Government. He received all the customary rents paid by the proprietors of land, all customs, fines, forfeitures, escheats, wrecks, waifs and strays, mineral royalties and other payments and customs, out of which he maintained ports and harbours, public buildings and all salaries and other outgoings. The legislature had no revenues and did no administration except that they took over the Highways, and imposed rates and certain licence fees which were administered by a Committee of the legislature called the Highway Board. When the Crown succeeded to the Lordship the revenues were all collected by and the outgoings paid from the Imperial Treasury. Finally in 1866 an arrangement was made by which after providing for the expenses of Government, judiciary, police and the like—called the Reserved Services—the surplus revenues were placed at the disposal of the Insular legislature or Tynwald (as the Legislative Council and Keys sitting together are called) who could deal with these by resolution subject to the veto of the Governor and the approval of the Treasury. And that is substantially the legal position to-day as embodied in the Imperial Act Isle of Man Customs, etc., Act 1866 (29 & 30 Victoria, cap. 23). Since then a number of Committees of Tynwald have been set up by Statute:—the Harbour Board (created by the Imperial Act), The Highway Board (already existing), the Local Government Board, the Council of Education, the Mental Hospital and Assessment Board, the Fisheries Board, the Board of Agriculture, the Forestry Board, the National Health Insurance and Old Age Pensions Board, the War Pensions Board, and the Publicity Board. These bodies are mostly elected by Tynwald out of its own members and hold office for various periods, have their own offices and staffs and administer the grants of public money (including in some cases rates levied by them) voted by Tynwald.

The system of Government prevailing in the Island is then as follows:

The Lieut. Governor is the sole Minister. He is Chancellor of the Exchequer whose approval must be obtained to all money grants, he initiates Government legislation, he controls the Police and directs the Government Office through the Government Secretary, presides over sittings of the legislative Council and of the Tynwald Court, and acts generally under his Commission and instructions from the Home Secretary.

For a good many years efforts have been made by the House of Keys to introduce a larger measure of control by the legislature into the Government of the Island. From time to time amendments have been made. For instance the legislative Council, which consisted entirely of persons holding certain offices, was reformed so that the officials are reduced to four—the Bishop, the two Deemsters and the Attorney General—there are four members elected by the Keys, and two nominated by the Governor.

Originally the legislative Council was the Governor's Executive Council and it is still called together at intervals in that capacity. The actual executive work of Government however was carried on by the Governor himself with the assistance of the Government Secretary and his staff.

For the last 30/40 years the House of Keys have been pressing for the creation of a Committee or Council in which some of the peoples representatives should be included to act as a Committee of Government, and a proposal to that effect was submitted to a Commission appointed by the then Home Secretary, presided over by the late Lord McDonnell, which sat in the Island in 1908, but was by them turned down. The matter has been raised at intervals since, and some years ago an arrangement was made whereby the House of Keys appointed a standing Committee to whom the Governor undertook—and has since observed—that all important matters involving financial grants should be submitted for discussion before being brought before Tynwald. The

legislative Council in its executive capacity was to be similarly consulted. During this war the question became acute again, and a further arrangement was made by which the Governor nominated for approval by Tynwald a War Committee of seven members drawn from the Council and Keys who meet in private every week with the Governor, the Attorney General and the Government Secretary, to advise the Governor, who presides, on all matters of government and administration, and this has worked successfully. Latterly however the Keys petitioned the Home Secretary to make this Committee permanent and a deputation discussed it with Mr. Herbert Morrison in London and later in the Isle of Man, and the final decision is pending. It will be seen therefore that the working of the Manx Constitution is peculiar to itself, but the prosperity and success of the Island's economic life seems to indicate that it works well in local circumstances though theoretically not in accordance with the latest democratic opinion.

Great satisfaction was given to the Manx people by the visit this year of the King and Queen. His Majesty took part in and presided over the Annual ceremony of the promulgation of the laws at Tynwald Hill on July 5. This is the first time in history that an English Sovereign has done so, and it will be and remain a cherished incident in the history of this Ancient Constitution.

STATUTORY RIGHTS *IN REM* IN ENGLISH ADMIRALTY LAW

[*Contributed by* GRIFFITH PRICE, ESQ., M.A., LL.D.]

STATUTORY rights *in rem* are peculiar to English Admiralty law. Nothing similar is to be found in the law of the United States or, it is believed, in any foreign system. Such rights are given for claims for necessaries supplied to a vessel, for breach of the contract of affreightment, and for other claims for which, in American law, a maritime lien is granted. In one important respect statutory rights *in rem* resemble maritime liens in that they involve a proceeding against a *res*, as distinct from a person, the action being *in rem*, not *in personam*. Both in English and American law there exists a series of rights called maritime liens, or claims against a vessel[1], according to which the ship is personified, the action being directed against the vessel itself which is, so to speak, regarded as "the guilty thing." This special form of procedure is peculiar to the Admiralty law of England and the United States. It is employed to give effect to maritime liens in both these countries and, in England, to enforce statutory rights *in rem*. It is true that an action *in rem* is found in the Continental law of Europe, but in those Courts proceedings are never directed against a *res*, but always against a person.

Nevertheless, the personification of the vessel is a conception found also in European law. There are two standard examples of such personification in the latter, both indicating a method of limiting the shipowner's liability. In French law the owner of a vessel may rid himself of personal liability by abandoning the vessel and freight, or his *fortune de mer*, to his creditors. In Germany there is no abandonment, but wherever the owner's liability is limited to the vessel and freight, or his *fortune de mer*, the ship creditor or claimant has, generally speaking, a maritime lien on the ship and freight, and if the *res* is lost the owner is not liable to pay anything, unless he is in some way personally responsible. This device of the personification of the vessel appears to have its root in the early law of deodand and the *noxae datio* of Roman Law[2]. A curious instance of it existed in the old law prevailing in Hamburg

[1] The maritime *res* to which the liens attach may be the vessel, the cargo, the proceeds of their sale, and the freight.

[2] The theory held by the English Courts is that the procedure *in rem* arose out of the practice of arresting a vessel to compel appearance by the owner: see *The Dictator* [1892], P. 304.