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NOTES AND NEWS

Legal Education in Africa

Accra Conference

The first-ever conference on legal education in Africa was held at Accra from 4th to 8th January, 1962, at the invitation of the General Legal Council of Ghana. Representatives from a number of African countries, from the United Kingdom, and from the United States attended in a personal capacity.

It was obviously not possible in the short time at the disposal of delegates to explore very deeply some of the problems which are currently facing those responsible for the conduct of legal education in Africa (which category includes not only the law teachers at law faculties and schools, but the judiciary, law officers, and practitioners through their professional bodies); though it was at least possible to begin to see the dimensions of these problems and to resolve that some more permanent machinery of consultation and co-operation between African states should be established. Among the questions raised at the Conference were: the provision of law teachers for African law faculties; the scope and practical organization of legal education; and the interterritorial harmonization and mutual recognition of qualifications.

The meeting resolved that the Chief Justice of Sierra Leone, Sir Salako Benka-Coker, be entrusted with the responsibility of convening a committee representative of all interested African states and territories to examine ways and means of future co-operation in the field of legal education.

It is intended to give a full report of the membership and proceedings of the Conference in the next number of the Journal, which (as noted below) will be a special number devoted to legal education in Africa.

Summer, 1962, issue of the Journal

The Summer, 1962, issue of the *Journal of African Law* will be devoted to the special topic of legal education in Africa. It will contain a review of the existing provisions for legal education and training in African countries, as well as of facilities for the training of students from Africa in countries outside the continent. This survey will cover both university institutions providing legal education, and governmental or professional schools or institutes providing specialized training for administrators, local or African courts staffs, etc.

The number will also contain articles on special aspects of legal education in Africa.

Insolvency Law in Ghana

The most striking feature of the existing bankruptcy law in Ghana is that it is practically non-existent. For a long time commercial and other opinion in Ghana has been firmly set against the introduction of insolvency legislation. That this anomalous situation could not last became apparent to the Ghana Government during the course of the enquiry by Professor L. C. B. Gower into the reform of the company law, and the Insolvency Commission whose report is now in hand[1] is a result of this conclusion. The fact that the Commission is now able to recommend that insolvency legislation should be introduced is a tribute to the educative work of the Commission itself in showing traders and large business concerns alike the benefits that are likely to result from such legislation, both in weeding out the dishonest and unreliable trader and in rehabilitating the honest but unfortunate debtor.

The report of the Commission is a model of its kind, and the Commissioners (Messrs. A. Adomakoh, J. A. Addison, and B. Mactavish) are to be warmly congratulated on their achievement. They present us with a full historical review of the legislation governing insolvency and the settlement of debts (which includes a fascinating exposition of the customary law and its place in this vital department of daily life), as well as with a careful analysis of the deficiencies (which are many) in the law as it stands. Finally, the Commissioners append a draft Insolvency Bill embodying their proposals.

Briefly stated, the Commission's conclusions and recommendations were as follows:

(i) Insolvency legislation is urgently required, and will now meet with a favourable reception. The object of such legislation should be to distinguish between dishonest and other debtors, with the former being subjected to stringent duties and liabilities. To carry this into effect, it is proposed that insolvent debtors should be divided into two categories, bankrupts and non-bankrupts, with additional duties and liabilities attaching to bankrupts. The administration of the legislation should be in the hands of an Official Trustee.

(ii) The existing machinery for the settlement of debts is gravely inadequate and in need of radical overhaul. The procedure for levying of execution against a debtor is particularly unsatisfactory. The special Ghanaian procedure of the summons to show cause has not worked well since its introduction in 1935. In particular, there should be more effective machinery for the examination of the means of a defaulting debtor. Where a debtor has means, a court should be able to order the debtor's employer to deduct regularly a specified amount (where the debt is to be repaid by instalments) from the debtor's salary or wages and to hand it over to the creditor. It is also proposed that the Ghanaian rule that, if the judgment debtor has sufficient movable property, his immovable

[1] *Report of the Commissioners appointed to enquire into the insolvency law of Ghana* (Accra: Government Printing Department, 1961, 12s.).

property should not be levied upon in execution, should be amended so as to permit a creditor to levy execution against any property of the debtor.

(iii) Family and stool property are for all practical purposes outside the scope of the Insolvency Bill, and do not pass for the benefit of creditors, though the " usufruct of such property " may vest in the Official Trustee if held by the debtor. This is by virtue of the combined wording of clause 37 of the Bill, which provides that on the making of a protection order " all movable . . . property vested in the debtor before the order was made " shall vest in the Official Trustee, and section 32 (1) of the Interpretation Act, 1960 (C.A. 4), where movable property is defined as property of every description, except land. The Commission believes that: " This definition, being in the widest terms possible, would clearly cover among other things trust property, and any property rights." Family and stool property, says the Commission, would not be caught by this definition, as not being trust property nor being vested in the debtor. But the Report goes on to say:[1]

> " 13. There is, however, one aspect of family and stool property that will vest in the Official Trustee. It is usual in Ghana for the management of such property to be put in the hands of an individual or individuals and it is well recognized by custom that the person in whose custody the property has been placed is entitled to the produce of such property and may in his absolute discretion dispose of this as he thinks fit. This right to what is known as the usufruct is not, however, absolute, and can be withdrawn at any time by deposing the person to whom it is granted.
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> 14. Under our proposals the right to the usufruct, being movable property and being vested in the debtor, will under the provisions of subsection (1) vest in the Official Trustee. This would be in accordance with the well-established custom whereby the creditor takes over the produce of property managed by a defaulting debtor and applies it to the reduction of his indebtedness. A typical example of this is the right, frequently exercised, of creditors to gather the cocoa harvest of defaulting cocoa farmers.
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> 15. The vesting of the usufruct in the Official Trustee will not therefore introduce any novel principle. Accordingly the family or the stool may well be content to let it remain vested. But should they object they always have their remedy of terminating the right at any time."

Even if one concedes the Commission's argument that the so-called " usufruct " is not to be considered to fall within the definition of " land " under the Interpretation Act (but it is certainly a strained use of language when what is so obviously a right or interest in land is not " land " for this purpose), one takes leave to doubt (a) whether the Commission has correctly represented the existing position in customary law regarding the management of family and stool property, or (b) whether the result they envisage is a desirable and workable one. Customary law knows nothing of bankruptcy as such, but any attempted alienation by, for example, a family member of land owned by the family would work a forfeiture of his title; and this might be applied by analogy to cases

[1] At p. 153.

where the general law would procure a compulsory alienation of his interest. (It is also difficult to understand, from the Commission's words, how the description of the " usufruct " applies to the occupation of stool land, whether by subjects of or strangers to the stool.)

(iv) The Report also makes proposals regarding the liquidation of insolvent companies, and proposes two types of liquidation only, " official liquidations " of insolvent companies by order of the court, and " private liquidations " of solvent companies by resolution of the members.

(v) The Commission recommends that the abortive Chattels Transfer Ordinance, 1952, might well be replaced by a simpler enactment for registration of charges over movables. The Commission also refers to the absence of effective legislation on the registration of title to and charges over land, " which—we are informed—is a source of great difficulty to the trading community and, by depriving a debtor of essential knowledge for the conduct of his affairs, could well contribute to his insolvency ".

LONDON COLLOQUIUM ON AFRICAN LAW, JUNE 1962

The Colloquia on African Law held at the School of Oriental and African Studies, University of London, in June have by now become a regular feature of the School's African law programme. The Colloquia provide an opportunity for a full and intimate exchange of views between judicial and legal officers, administrative officers, and law teachers interested in the topics discussed, and have been well supported in the past by participants from African countries, mainly from the English-speaking sector. In 1961 the topics selected for consideration were " The legal status of women in Africa ", and " Practice, procedure and evidence in the native, African, local or customary courts "; and the background papers circulated to participants before the Colloquium, as well as the conclusions of the Colloquium on the matters raised, have been published in the Journal (at [1961] J.A.L. 125).

The Colloquium this year will be held at the School from 12th to 22nd June, inclusive. The topics to be discussed are: (i) " Problems arising from the integration of customary courts into the general judicial system of the territory "; and (ii) " The machinery of land control, statutory and customary ". Both themes will, of course, be considered with reference to the situation in African countries. Admission to the Colloquium is by invitation only; but the organizer of the Colloquium, Dr. A. N. Allott, will be happy to receive applications to take part in the Colloquium, which should be addressed to him at: The School of Oriental and African Studies, University of London, W.C.1, England.