JOURNAL OF AFRICAN LAW ed. by A. N. Allott [London, Butterworth's & Co. Ltd. Annual subscription £2.2.0.]

The Journal of African Law, now in its fifth year, is a curious publication. The Board of Advisers bristles with famous and eminent names, yet the publication itself is disappointing and unsatisfactory. The article section appears to be very thin. Contributions such as three pages on the "Liberian Code of Laws"; two pages on "Law Reporting in the Sudan" or three pages on "Legal Education in East Africa" hardly seem to warrant inclusion as articles. The same is also true of papers which were prepared for purposes other than inclusion in a learned periodical. Thus Professor Phillips' paper on "Marriage and Divorce Laws in East Africa" was prepared for a colloquium organised by the United Kingdom National Committee of Comparative Law at Cambridge in 1958, and the paper by the Chief Justice of the Sudan on "The Relationship between Islamic and Customary in the Sudan" prepared as an address for the London Conference on the Future of Law in Africa. These papers were doubtless admirable for the purpose for which they were prepared but they are too general in treatment really to warrant inclusion in a specialist learned periodical.

This is not to say that the Journal does not, on occasion, contain very good things indeed. Outstanding contributions have included such pieces as Professor Schapera's "The Sources of Law in Tswana Tribal Courts"; Dr. Lloyd's paper on Yoruba rules of succession and Mr. Beidelman's piece on "Kaguru Justice and the Concept of Legal Fictions". It is noteworthy that most of the worthwhile contributions seem to come from anthropologists rather than from lawyers.

By far and away the weakest section of the Journal is the section entitled "Cases". This section reports, digests or comments upon a selection of cases in each issue. There are only two courts whose decisions are regularly noted. These are the Judicial Committee of the Privy Council and the East African Court of Appeal and in the case of the latter the coverage appears to be falling off in the last few issues. West African cases, save those coming before the Privy Council are hardly touched upon. The only cases from West Africa which have received notice in the Journal are those which have been reported in either the West African Court of Appeal Reports or the West African Law Reports. The cases in these series are merely noted in what amounts to a review of the volumes of the reports. It is very far from being a digest of the cases, however, since only a small percentage of the cases reported in these volumes are mentioned in the Journal. In the five years of the Journal's existence only one case decided in the Federal Supreme Court of Nigeria has been reported and no mention has been made of either the series of Selected Judgments of the Federal Supreme Court of Nigeria or to the Law Reports of the High Court of the Federal Territory of Lagos. Central Africa is even more neglected. Practically none of the cases reported in the Rhodesia and Nyasaland Reports are even mentioned in the Journal. The same is true of the High Commission Territory Law Reports which appear never to have made an appearance in the Journal. It is difficult to see why this should be so.

Even in the case of the Privy Council and the East African Court of Appeal the treatment of cases is not very satisfactory. In the case of the Privy Council half of the cases dealt with are reported in established English series of reports. Whether the cases are reported or not has very little effect on the treatment given to the case in the Journal. Even if the case is otherwise unreported it usually receives a mention which would be inadequate even as part of a digest. We thus meet entries such as :

Anoje Igwe and others v. *Opara Ukweje and others*

(Nigeria. P.C. Appeal No. 5 of 1958. Judgment delivered on 11th October, 1959). *Land — Traditional Evidence of title — Concurrent findings of fact in courts below.*

It is difficult to see what is the value of this sort of thing. It indicates neither the nature of the problem before the court nor the solution reached.

On the other hand, even if the case is reported it is likely to receive much more extended treatment. Thus both *Mawji* v. *The Queen* and *Ross* v. *The Queen* are reported in Appeal Cases, nevertheless the Journal sets out in full the opinion of the Privy Council. What is the purpose of this repetition? Even more disastrous is the fact that the case is reported fully elsewhere is only occasionally mentioned.

The same is true of the treatment of cases in the East African Court of Appeal. For the whole of the period which we have been able to check — from June 1957 to December 1958 — every case mentioned in the Journal is reported in Eastern Africa Law Reports and yet this is nowhere indicated. Even if it purported to be a digest it would be useless unless the reference to the report were included. It cannot, however, be considered to be a digest for the simple reason that well under 10% of the reported cases are mentioned.

In those eases in which it is presumably considered that the cases have been commented upon the standard of the comment is totally inadequate. Two cases will be sufficient to illustrate this point. *Sheikh Brothers Ltd.* v. *Ochsner* is an important Privy Council pronouncement on the law relating to mistake in contract. The comment is as follows:

> Before the Judicial Committee it was argued *inter alia,* that the mistake was not as to a matter of fact essential to the agreement. The dictum of Lord Atkin in *Bell* v. *Lever Bros.* [1932] A.C. 161, 218 was considered. Their Lordships held that the mistake was fundamental and for this and other reasons affirmed the decision of the court below.

Kiriri Cotton Co. Ltd. v. *Ranchhoddas* is also an important Privy Council pronouncement on the question of recovery of money paid under an illegal contract. All that the Journal comments is:

> The Judicial Committee, whose advice was delivered by Lord Denning, observed that the dictum of Lord Ellenborough [in *Langton v. Hughes*] should be restricted to cases where a party seeking the aid of the court was endeavouring to enforce an illegal contract. In order to recover in the instant suit, the plaintiff had to show that he was not *in pari delicto* with the defendant. Counsel for the appellant had said that both parties were *in pari delicto:* the money was paid voluntarily under a mistake of law, and both were equally supposed to know the law.
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> Their Lordships rejected this argument. . . . .

There then follows a short and highly edited extract from Lord Denning's speech.

It is unnecessary to say more to show the total inadequacy of this sort of thing.

There would appear to be three most useful things that the Journal could do in connection with African cases. First, it could report in full cases which would otherwise be unreported and which in the opinion of the editors are worth preserving. Second, it could digest reported cases, although this would undoubtedly be a mammoth undertaking in view of the large number of reported cases now coming from Africa. Thirdly, it could, as is the normal practice with law reviews provide adequate case notes on those reported cases which it felt were worth such treatment. The Journal of African Law attempts none of these things — or rather it attempts all of them and achieves none of them. Much more care and consideration will have to be given to this section if it is ever to become worth while.

One of the fundamental difficulties of this Journal, a difficulty which becomes immediately apparent in considering the case section, concerns the scope of its interest. The Editorial of the first issue states the scope of the Journal as follows:

> We intend to deal with the law of British Africa south of the Sahara (other than the union of South Africa) including the general law (whether of English, colonial, Roman-Dutch or Indian origin), African customary law, and Islamic law; but we hope to publish from time to time matter relating to the rest of Africa or to comparative or colonial law generally. Special attention will be paid to customary law within these limits.

Now it is undoubtedly true that the term African law can be taken as meaning any sort of law applicable within Africa. The fact remains that the concept of African law as comprising only the law of the African peoples is more intelligible and it is this area which represents what may be regarded as a specialist discipline. Most of the general law reviews print comparative material relating to the common law and one would have thought that a comparative note on loans on the security of

chattels would be better accommodated in one of these law reviews than in a Journal of African Law. It would seem to be an impossible task to attempt to deal, in addition with African customary law, with the entire range of common law and equity as applied within Africa as well as Roman-Dutch and Islamic law, and this may account for the inadequacy of the treatment of cases such as *Sheikh* v. *Ochsner*.

Despite the wide scope of the Journal one has the impression that there is not really sufficient material of adequate standard and interest to justify a Journal which is published three times a year. The really worth while items are very few and far between, and one would have thought that an occasional volume of essays would adequately have met the need.

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