The Madras Law Journal.

PART IV.] JANUARY, 1916 [VOL. XXX.

ADMINISTRATION OF JUSTICE IN THIS PRESIDENCY.

1. THE HIGH COURT.

One of the early articles in the pages of this Journal (1 M. L. J. 569 reprint p. 591) dealt with the administration of civil justice in 1890 ; and it is remarkable how most of the observations then made, remain true and applicable even at the present day. 'In 1888, a fifth puisne judge was appointed to assist in working off the heavy and increasing arrears in the Court' and reviewing the work of the year 1890, the Local Government of the day remarked that 'the falling off in the out-turn of work on the part of the High Court is observed with regret.....the work done in the High Court during 1890 showed a decided falling off in quantity as compared with 1889' It was then deemed necessary to protest in these pages 'against the sort of criticism levelled against the High Court by the local Government.

The fifth puisne judge was made permanent in 1896, a sixth was added in 1907 and a seventh towards the end of 1909. Early in 1912 the strength of the Court was increased by the addition of 2 temporary Judges and since July 1914 we have 4 temporary judges sitting. How do we find ourselves now ? In January 1906 there were pending in the High Court 740 first appeals, 2767 second appeals, 452 Civil Revision Petitions and 218 original suits (to mention only these leading heads of work on the civil side). In January 1915, the pendency had increased to 937 first appeals from the mofussil, 157 appeals from decrees on the original side, 46 from decrees of the City Civil Court, 4631 second appeals, 1510 Civil Revision petitions and 381 original suits. There remained besides, 592 C. M. A's 172 C. M. S. A's and 333 L. P Appeals.

The average pendency of cases disposed of in 1914 is stated to have been 883 days in the case of first appeals and 570 days in the case of second appeals. Small wonder then, that the state of work in the High Court gave rise to serious uneasiness in many quarters and led to interpellations and discussion in the Legislative Council.

It nevertheless behoves us to raise our voice against ill-advised criticism however well meant. We have no doubt that 'there is not wanting in our judges an anxiety to do as large a quantity of work as possible'. They yield to none of their predecessors in the honest endeavour to get through their work, and we venture to repeat what we said on a former occasion, that 'adverse criticism regarding the speediness of disposal can only lead to perfunctory judgments'. What is even worse, it may give rise to a deplorable tendency to mutual fault-finding between the Bench and the Bar—for longwindedness and shortwittedness. Indeed we are not without doubts if recent circumstances have not already had some unwholesome effect in these directions. With reference to what we believe are the prevalent ideas as to the comparative merits of judges past and present, we would ask our readers to bear it in mind that the impression is to some extent the result of our natural tendency to seek for the golden age in the past. Not that we wish to be understood as belittling the arguments for changes in the system of recruitment for the judicial service in this country, but we would observe that any suggestion by way of an early remedy for the present state of things must rest not on *a priori* theories or calculations of judicial capacity or forensic brevity but on practicable conditions.

To begin with, we must state that the present state of work in the High Court is not one merely of 'temporary congestion' but, as observed by the Government in the recent G. O. of 'steady increase in the volume of business coming before the Court'. It is beside our present purpose to investigate the causes of that increase but we may remark in passing that they do not seem to be temporary either. The following figures (taken from the Annexure to the recent G. O.) will tell their own tale :—

ANNEXURE I.

Number of cases instituted during the years 1900 to 1914.

——	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.	1913.	1914.
Original Side.															
Suits ...	213	240	198	223	253	279	249	291	397	436	402	424	495	412	465
Insolvent petitions ...	273	261	256	221	127	172	250	280	300	283	244	310	319	325	354
Sessions cases ...	39	42	41	49	43	44	43	70	47	36	34	59	53	48	71
Appellate Side (Civil.)															
First appeals from mufassal ...	228	242	197	187	220	228	179	222	220	297	260	291	324	376	433
,, from Original side ...	35	41	43	29	53	75	85	52	75	63	52	39	110	104	118
,, from City Civil Court ...	25	20	7	17	48	53	17	27	37	31	31	36	33	28	29
Letters Patent appeals ...	42	22	61	69	42	102	92	89	111	166	103	144	255	199	410
Second appeals ...	1,323	1,686	1,630	3,077	1,631	1,504	1,266	1,60 ?	1,977	1,713	2,190	2,028	2,635	3,083	2,628
Appeals against orders under section 244, Civil Procedure Code. ...	69	85	76	93	78	64	67	124	89	102	85	57	118	145	157
Other appeals against orders ...	88	84	109	93	176	142	128	141	181	167	148	214	225	231	265
Appeals against appellate orders ...	71	94	66	113	110	102	00	00	00	00	06	110	130	98	148
Revision petitions ...	417	491	497	1,054	634	538	671	749	872	891	899	937	1,079	945	1,121
Miscellaneous petitions ...	1,325	1,396	1,319	1,590	1,880	2,899	2,081	2,156	2,375	2,497	2,515	2,606	2,810	3,280	3,690
Referred cases ...	27	14	21	17	24	20	9	21	22	12	16	19	19	7	19
Appellate Side (Criminal.)															
Referred trials ...	64	72	69	69	68	52	71	77	70	62	55	56	60	64	60
Appeals ...	1,022	865	832	946	796	705	779	793	928	867	715	701	780	35	715
Revision cases ...	516	534	597	491	618	549	591	531	644	738	697	768	795	850	882
Miscellaneous petitions ...	152	213	257	225	261	207	250	291	310	375	451	411	567	549	568
References under section 307, Criminal Procedure Code.	29	22	30	27	16	17	19	38	21	25	28	22	24	20	23
Total ...	5,988	6,424	6,306	8,590	7,081	7,752	6,946	7,645	8,772	8,849	9,021	9,234	10,883	11,496	12,156

ANNEXURE II.

Number of cases disposed of during the years 1900 to 1914.

—	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.	1913.	1914.
Original Side															
Suits ...	253	232	208	175	234	234	259	283	286	368	403	275	535	496	551
Insolvent petitions ...	261	218	234	129	182	141	133	179	250	334	279	238	209	274	231
Sessions cases ...	38	47	40	49	44	43	43	66	49	38	35	58	54	47	67
Appellate Side (Civil).															
First appeals from mufassal ...	139	182	212	104	151	190	152	129	151	207	311	170	330	246	513
,, from Original side ...	40	32	39	44	33	36	93	53	52	85	34	47	77	103	75
,, from City Civil Court ...	20	26	5	16	23	38	54	13	3	57	23	8	80	27	14
Letters Patent appeals ...	32	33	41	75	44	55	108	87	60	193	78	70	211	156	345
Second appeals ...	1,253	1,008	1,641	1,027	2,521	2,109	839	1,165	1,584	1,883	2,745	1,904	2,595	1,985	2,488
Appeals against orders under section 244, Civil Procedure Code ...	48	69	90	91	81	64	56	63	64	149	57	60	100	119	159
Other appeals against orders ...	86	88	99	109	86	175	114	163	151	142	169	155	179	192	230
Appeals against appellate orders ...	47	83	87	72	111	120	92	99	70	90	81	94	87	120	122
Revision petitions ...	512	341	520	545	961	632	452	608	785	895	835	704	758	1,007	1,062
Miscellaneous petitions ...	1,321	1,341	1,366	1,334	2,028	2,643	2,316	2,003	2,413	2,492	2,370	2,201	2,809	3,196	3,666
Referred cases ...	35	18	14	20	13	30	13	12	22	13	14	14	15	22	9
Appelate Side (Criminal).															
Referred trials ...	63	71	69	69	66	53	69	78	65	63	57	54	60	68	61
Appeals ...	1,059	880	812	816	149	674	824	806	847	867	751	664	803	757	726
Revision cases ...	519	510	579	505	623	545	572	535	587	672	745	763	807	883	874
Miscellaneous petitions ...	149	215	253	225	262	210	246	292	293	381	457	411	480	629	565
References under section 307, Criminal Procedure Code. ...	...	18	31	26	19	16	19	31	28	22	26	24	22	23	23
Total ...	5,875	5,412	6,385	5,431	8,426	8,038	6,454	6,615	7,760	8,951	9,470	7,914	10,211	10,360	11,781

We may add for facility of comparison the figures (of institution) for 1890, which were as follows :—First appeals (including those from the original side) 353 ; second appeals 1,408 ; Civil Revision Petitions 454 ; original suits (when there was no City Civil Court) 386. It must also be noted that the growth of arrears has been a matter of at least these 25 years if not more.

What is the remedy ? The order of Government dated 5-10-1915 reviewing the Judicial administration for 1914, studiously refrains from making any reference to work in the High Court, and the later G. O., about the High Court arrears, concerns itself with justifying what has so far been done to cope with them and says little as to what is proposed to be done. The alternatives of reducing the pressure of work in the High Court by taking away the right of appeal or revision in certain classes of cases is comparable only to the proverbial suggestion of making the head fit the cap and may, we hope, be safely left out of consideration for the present. We are glad to find that government recognise what we have often pressed—that 'the power of revision which the High Court possesses is a useful safeguard and that 'there is no evidence of any abuse of the right to apply to the High Court for revision of the decisions of Small cause courts.' The proposal to increase the jurisdiction of the City Civil Court—whatever may be its own merits—does not seem likely to afford any considerable relief, in view of the proportion of its result to the total work of the High Court. The only possible remedy would therefore seem to be to increase the strength of the High Court. It is agreed on all hands that a strength of seven puisne Judges is altogether inadequate for the present needs and it is we believe equally well recognised that it is not desirable to resort to the system of temporary Judges. We hope that the authorities both here and in England will soon make up their mind to increase the permanent strength of the Court.

We have reason to believe that the question of the strength to be fixed is attended with difficulties of its own. We have all along pleaded—and all right-thinking men will admit the force of the plea—that financial considerations should not be allowed to stand in the way of such an indispensable reform; and in view of the extent of revenue for which judicial administration is responsible in this country, it is but bare justice to demand that the needs of that department shall have the first claim on

that revenue. Dealing then with the question on its own merits, the following seem to be the principal considerations to be taken into account. The number of working days in the year may be approximately taken to be between 190 and 200 and allowing on an average for the disposal by a Bench, of 7 or 8 regular appeals a week, and about 30 second appeals a week, it will require 6 Judges to cope with the annual approximate institution of over 500 first appeals (including O. S. and C.C.) and over 2,500 second appeals, after allowing for about 1,500 S. A's which may be dismissed under O. 41 R. 11. A further bench of two judges continually sitting will be barely sufficient to meet the requirements of the criminal and miscellaneous appeals and references that have to be heard by a Division Bench and it would therefore be necessary to find other means of providing for the work that has to be dealt with by a single judge. Taking the number of Civil Revision Petitions at an average of 1,200 per annum, we think that this and the criminal revision work would afford work for one judge for about three-fourths of the year and there is besides, plenty of other work to be attended to by a single judge, such as admission of cases, petitions for stay of execution and other miscellaneous work. As to the requirements of the original side, we believe we are right in stating it to be the general feeling that a single judge cannot cope with the work there. Provision has also to be made for sessions work and insolvency business and for Full Bench sittings. Over and above these items of what may be called current work, the accumulated arrears have to be slowly worked off. It only remains to add that a great deal of important work has to be done by the judges out of the court-room and their court work has to be so arranged as to permit of their having time for such work. These considerations clearly point to the conclusion that 12 judges or at least 11 will be necessary not as a temporary measure, but as the permanent strength of the High Court.

Coming now to matters of internal economy, the new system (introduced early last year) of admission of second appeals by the Judges themselves (and by a Division Bench, in cases taken under O. 41 R. 11 Civil Procedure Code) seems to have worked on the whole satisfactorily. We think it may be usefully extended to miscellaneous cases and Civil Revision Petitions as well, so that delay in admission may be almost completely avoided.

We cannot however help repeating what we have said on a former occasion (28 M. L. J. 117) that the other rules introduced in October last, as incidental to this change, can be substantially improved, without any loss of efficiency but yet greatly to the advantage of both practitioners and clients. We believe a memorial in respect of this matter was prepared by a Committee of the Vakils' Association for submission to the Honorable the Judges but we are not aware what has since happened to it.

Again, the translation and printing rules stand in urgent need of reform, if clients are not to be dealt with on the principle that they deserve to be punished for presuming to seek redress in the High Court. If printing is to continue imperative in all cases, an experiment may at least be tried of giving parties the option of making their own arrangements for getting the papers ready, according to certain standards to be prescribed. Even as regards translation, there should be little difficulty in practitioners agreeing upon the correctness of translations made by competent outsiders. Recent changes introduced in the practice of serving notices, bills etc., upon practitioners seem to us, with all respect, steps in a wrong direction, especially when one bears in mind the consequences attached by the rules to any default in due compliance with them. Neither the expense entailed by the employment of some additional clerks or peons nor even the possible delay (which has sometimes been alleged) on the part of practitioners or their clerks in receiving notices etc., seems to us sufficient justification for the change.

We have now and then heard some hints of drastic changes in rules being under contemplation. We would beg leave to remind their Lordships that rules of procedure are after all meant to be and must be but a handmaid to Justice and not a means of denying Justice. We would mention here a recent instance which to any layman must have given the impression that the ways of Justice in the High Court are strange indeed. One learned Judge dismissed an appeal, involving considerable interests, because batta for service of notice on the respondent was not paid within the seven days fixed by the rules and the appellant (the Official Assignee) did not appear, when the case was posted for orders to explain the default. Every petition conceivable under the code or the rules was afterwards attempted to set the matter right before the same

Judge, but to no purpose. The case was carried before two other learned Judges, but one of them felt himself unable to do anything in the matter because the appeal purported to be from an order passed at the later stage and not from the earlier. It required a further resort to a Full Bench, to decide whether or not the Official Assignee should be allowed an opportunity of explaining the delay in payment of batta. We are not at present concerned to say whether or not the learned Judges who dealt with the matter in its different stages, construed and applied the rules rightly. We only wish to point out how lamentable a state of things it would be if the default complained of in the case should have the result of depriving the insolvent's estate *i. e.*, his innocent creditors, of a considerable sum of money. It is sometimes suggested that the persons injured have their remedy over against the persons whose default has caused the injury; but it certainly cannot be difficult for any one to realise what a poor consolation or justification this is. Assuming even, that practitioners or their employees or sometimes the clients, are not sufficiently alive to their responsibilities in the conduct of an action, it is submitted that it rests as much upon His Majesty's Judges to see, as far as lies in their power, that justice is denied to no man for sins that are venial; and not even the oppression of the sense of accumulated arrears should induce them to deviate from this sacred duty.

As regards the constitution of Benches, we venture to press upon the attention of His Lordship the Chief Justice, the desirability of having a strength of 5 judges on Full Bench sittings arranged to decide questions of general importance or points on which there may be a marked conflict of judicial opinion. The recent practice as to the composition of the Judicial Committee when sitting to hear appeals affords a true parallel.

SUMMARY OF ENGLISH CASES.

Venners Electrical Cooking and Heating Appliances, Limited *v.* **Thorpe**: 1915, 2 Ch. 404. (C. A.)

Company—Winding up—Landlord and Tenant—Rent payable in advance—Distress for, commenced before winding up—Can be proceeded with.

Where a Company holds as a tenant under an agreement to pay rent in advance and when after the rent has accrued due, though the period for the same is yet to run, the landlord levies a distress, any subsequent winding up of the Company does not stop the further proceeding with the distress to sale to realise the rent.

The result of the authorities is that a creditor who has issued execution or a landlord who has levied a distress, before the commencement of the winding up will be allowed to proceed to sale, unless there is established the existence of special reasons rendering it inequitable that he should be permitted to do so.

In re **Peruvian Railway Construction Company Limited.** 1915 2 Ch. 442 (C. A.)

Company—Winding up—Fully paid up shares—Insolvent shareholder—Debts to the Company—Executor cannot set off against the share of surplus assets, the debts in full.

A shareholder who had fully paid-up shares in a Company and who was also indebted to the Company, died and his estate being found to be insolvent, an administration decree was passed. Under the Articles of Association, the Company had no lien on the fully paid up shares for the debts due by the shareholders; and the Company proved for the debt due by the shareholder.

Subsequently the Company was wound up and the rateable share of surplus assets was ascertained.

The liquidator could not under such circumstances claim, as against the executor of the insolvent shareholder, to retain the testator's share in the surplus assets against more than the proper dividend on the ascertained debts.

In re **Dacre. Whitaker** *v.* **Dacre.** 1915 2 Ch. 480.

Administration—Trustee in default—Retainer—Legacy under will—Original or derivative title.

Where a trustee under a will misappropriated some of the trust-moneys and his wife who was a legatee under the will died

without receiving the legacy leaving to her husband all her properties as the universal legatee, the other trustees under the will have a right of retainer over the amount of the legacy to the extent of the amount misappropriated. (It is immaterial whether the title under which the defaulter claims a benefit is an original title or a derivative title.)

The principle of the rule as laid down in the cases of *Cherry* v. *Boultbee* [1] *and In re Akerman* [2], is that a person entitled to participate in a fund and also bound to contribute to the same fund cannot receive the benefit without discharging the obligation.

Williams *v.* **Lewis**, (1915) 3 K. B. 493.

Landlord and Tenant—Agricultural Land—Implied obligations on part of tenant—Breach of—Damages—Measure.

The law implies an undertaking or covenant on the part of an agricultural tenant to cultivate the land in a husbandlike manner according to the custom of the country, unless there is an express agreement dispensing with that engagement. The tenant is not under an obligation to deliver up the land at the termination of the tenancy in a clean and proper condition, properly tilled and manured; nor is he bound or entitled to leave the land in the same condition as when he took it. In the case of a breach of the obligation on the part of the tenant, the measure of damages is the injury to the reversion occasioned by the breach *i.e.*, the diminution in the rent that the landlord will get on re-letting or the allowance he will have to make to the incoming tenant.

O'Driscoll *v.* **Manchester Insurance Committee** (1915) 3 K. B. 499 (C. A.)

Rules of the Supreme Court, 1883—O. 45, R. 1—Attachment—"Debt owing or accruing" from third person to debtor—Meaning—Debt debitum in presenti *but* solvendum *in futuro.*

There is a distinction between the case where there is an existing debt, payment whereof is deferred, and the case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is not. "Debts owing or accruing" include debts *debita in presenti solvenda in futuro.*

---

1. (1839) 4 Myl. and Cr. 442. 2. 1891 3 Ch. 212.

Held, that a debt to which the debtor was absolutely and not contingently entitled at the time the garnishee order *nisi* was served was a "debt owing or accruing" within the meaning of O. 45, R. 1 of the Rules of the Supreme Court, 1883, though it was not presently payable and the amount was not ascertained.

Bradshaw *v.* **Waterlow and Sons, Ltd.**, (1915) 3 K. B. 527 (C. A.)

Malicious prosecution—Action for—Question as to want of reasonable and probable cause—Question as to honest belief of defendants—If and when may be left to jury—Practice—Fiat of Attorney-General—Effect.

Where, in an action for malicious prosecution, there is no dispute about the facts, the question whether the defendants took reasonable care to inform themselves of the facts before instituting the prosecution ought not to be left to the jury unless there is some evidence of the defendants not having made proper inquiries. In the same way the question as to the honest belief of the defendants should not be left to the jury unless there is evidence of the absence of such belief.

Where the facts had been fairly put before the Attorney General and he had granted his fiat, *held* it could not be said that there was an absence of reasonable and probable cause.

Neville *v.* **Dominion of Canada News Co. Ld.** (1915) 3 K. B. 556 (C. A.).

Agreement—Validity—Restraint of trade—Public policy—Newspaper—Undertaking not to comment under any circumstances on matter coming within legitimate scope of paper—Undertaking for consideration—Enforceability—Privilege of newspaper—Nature and extent of.

In this case a question arose as to the validity of an agreement between the proprietors of a newspaper, which dealt with Canadian affairs generally and which advised people as to investments in the Dominion, and the plaintiff, a director of a Company which was engaged in selling land in Canada. The proprietors undertook, in consideration of a sum of money to be paid to them by the plaintiff, not to make any comments at all under any circumstances on the plaintiff's Company, its directors, business

or land, or upon any company with which the proprietors had notice that the plaintiff's Company was connected or concerned. *Held* that the undertaking was unenforceable because (1) it was in restraint of trade and was wider than was reasonably necessary for the protection of the plaintiff and (2) it was opposed to public policy inasmuch as it was not consistent with the proper conduct of the defendant's newspaper.

Per *Lord Cozens-Hardy, M. R.*—It is for the Court, and not for a jury, to decide as to the reasonableness of a covenant in restraint of trade.

Per *Pickdford, L. J.* a newspaper has no more right of comment than any other member of the public.

JOTTINGS AND CUTTINGS.

Humour of the Law.—A lawyer who was sometimes forgetful, having been engaged to plead the cause of an offender, began by saying: "I know the prisoner at the bar, and he bears the character of being a most consummate and impudent scoundrel." Here somebody whispered to him that the prisoner was his client, when he immediately continued: "But what great and good man ever lived who was not calumniated by many of his contemporaries?"—Case and Comment.

***

An action was brought against a farmer for having called another a rascally lawyer. An old husbandman, being a witness, was asked if he heard the defendant call the plaintiff a lawyer.

"I did" was the reply.

"Pray," said the judge, "what is your opinion of the import of the word?"

"There can be no doubt of that," replied the fellow.

"Why, good man," said the judge; "there is no dishonor in the name, is there ?"

"I know nothing about that," answered he, "but this I know, if a man called me a lawyer I'd knock him down."

"Why, sir," said the judge, pointing to one of the counsel, "that gentleman is a lawyer and that I, too, am a lawyer."

"No, no," replied the fellow; "no, my Lord; you are a judge, I know; but I'm sure you are no lawyer."—

Conditions on Passenger's Tickets :—Since the decision of the House of Lords in *Henderson* v. *Stevenson* (1875) it has been generally regarded as accepted law that the mere delivery of a ticket, with conditions endorsed on it excluding liability for negligence, is not binding upon the passenger, unless there is clear evidence of the notice having been brought to his knowledge and of his having assented to it. This view displaced the older one laid down by Chief Justice Cockburn, that 'when a man takes a ticket with conditions on it he must be presumed to know the contents of it and must be bound by them. In reversing the judgment of Mr. Justice Darling in the 'Runo' case (*Cooke* v. *Wilsons* Dec. 7) the Court of Appeal seems rather to have reverted to the earlier line of authorities and introduced a fresh element of uncertainty into the relations between railway and shipping companies and the public. The defendants had admitted negligence in the departure of their ship from the route prescribed by the Admiralty for vessels crossing the North Sea, in consequence of which the vessel struck a mine and foundered, and their sole defence was a condition printed on the ticket issued to the plaintiff that they should be free from liability for loss or damage to passengers in any circumstances. On questions put to them by the judge at the trial—which the Court of Appeal agreed were the proper deciding questions—the jury found (*a*) that the defendants did not do what was reasonably sufficient to give the plaintiff notice of the conditions; (*b*) that the plaintiff was aware generally that there were conditions relating to contracts to travel, but that there was nothing to show she was aware of those printed on her ticket. These findings were substantially the same as those in the more recent House of Lords case, *Richardson* v. *Rowntree* (1894), in which the passenger was held entitled to recover, and Mr. Justice Darling entered judgment for the plaintiff accordingly. As we pointed out at the time (*ante* p. 168), whether this judgment could be upheld depended on the question whether, in view of the plaintiff's admission, the first finding of the jury could be supported. The Court of Appeal has now held that the jury were wrong in their view, and that the company, having set out their conditions on the ticket in plain type, had done all that was necessary on their part to give reasonable notice, and that the *onus* was on the passenger to read what was printed on the ticket. Having regard to the conditions of modern travel, this decision may be regarded

by many as practically a character of exemption from all liability for negligence on the part of railway and other carriers, and we do not suppose that it will be allowed to stand unchallenged.—*The Law Journal.*

CONTEMPORARY LEGAL LITERATURE.

Negligence is often defined as consisting of a breach of duty. This is wrong, says Mr. Henry Terry writing in the "Harward Law Review." The duty in such a case can be defined only as a duty to use care *i.e.*, not to act negligently. To define negligence in that way is, therefore, to define in a circle. The misconception arises from a failure to distinguish between a negligent wrong which, like all other wrongs, involves a breach of duty and the negligence itself, which is one element in the wrong. There are many cases in which the law does not require care; negligence is not legally wrong and therefore negligence. Negligence is conduct which involves an unreasonably great risk of causing damage. Due care is conduct that does not involve such risk. Negligence is conduct, not a state of mind. A man may be heedless or reckless but yet his conduct may not be negligent when viewed from the standpoint of the ordinary man. When a man is reckless and is also guilty of negligent conduct, his conduct may be characterised as wilfully negligent. Negligent conduct may consist in acts or omissions, in doing unreasonably dangerous acts or in omitting to take such precautions as reasonableness requires against danger. The test of reasonableness is what would be the conduct or judgment of what may be called the standard man in the situation of the person whose conduct is in question. A standard man does not mean an ideal or perfect man but an ordinarily careful, reasonable and prudent man. Every man, whether he is a standard man or not is required to act as a standard man would. The situation of the actor is subjective, not objective. It consists of such facts as are known to him. When however a person knows that he is ignorant of essential facts, it may be unreasonable for him to act at all. Sometimes he is charged with the knowledge of certain facts that is for instance when a person is under duty to take precautions against possibly danger, there is usually an ancillary duty to find out what precautions are needed and for the purpose of the principal dute he is charged with the knowledge of all the facts he would have known if he had performed his ancillary duty. A custom is usually

evidence that conduct in accordance with it is reasonable. In emergencies, which would perturb an ordinary man's judgment he is excused certain things for which in ordinary circumstances he would not be excused. In certain cases, skill or special knowledge is an element in the case, if it is unreasonable for a person who has not competent knowledge or skill to do certain acts. There is a negative duty of due care of very great generality resting upon all persons and owed regularly to all persons not to do negligent acts *i. e.*, acts which are unreasonably dangerous to persons or tangible property. There is some conflict of opinion as to whether this duty is owed to persons in the position of trespassers or licensees. There is no affirmative duty of equal generality that is to say no general duty to do acts, take precautions to prevent injury to others The following are the cases in which there is such a duty (1) A person who has done or is doing an act that will be unreasonably dangerous unless precautions are taken against the danger, must use due care to take such precautions as reasonableness requires.

(ii) A person who delivers a thing to another or furnishes a thing for another's use, has a duty not to deliver or furnish a thing which is unreasonably dangerous or to take the necessary precautions against the danger.

(iii) In some circumstances, a person having a dangerous thing in his possession in a place attractive to children or animals is bound to take reasonable precautions against its proving dangerous. There is a conflict as to whether this duty extends to trespassers.

(iv) The possessor of a dangerous thing must take due care to prevent its doing harm.

(v) A person who invites another to a place of danger must take all reasonable precautions to protect him against the danger.

(vi) Bailees owe certain duties even apart from contract Similarly people standing in certain relationships as husband and wife, parent and child etc.

(vii) Such duties may be imposed by contract.

(viii) Many equitable duties are of this kind *e.g*, duties of trustees.

A writer in the *University of Penysylvania Law Review* describes the part taken by the United states *in the expansion of the law between nations.* The right and the duty of the neutral to prevent

one of the belligerents in making the neutral country serve as basis for operations against the enemy was first asserted by the United states during Napoleonic war. Similarly the right to trade with the enemy subject in the case of arms or munitions, to the risk of being captured by the other side. The extent of the territorial sea, was, for the first time, fixed by Secretary Jefferson at three miles and it was subsequently adopted in the treaty between England and America in 1818. The United States were also first to substitute judicial machinery for the settlement of disputes between nations. But this machinery is possible only in cases where the dispute is *legal* and cannot avail when the dispute is *political*, that is to say as in the present great war, where each nation is striving for mastery. The foreign jurists who had great influence in America were *Grotius* and *Vattel*.

In the Central Law Journal for December 10th, we have an interesting discussion on the state of the law in America as to the relevancy of blood hound evidence in criminal cases. While certain courts admit it subject to all the preliminaries such as the training and the capacity of the blood hound, and that the hound was properly laid on the trail etc. being strictly proved other courts altogether reject it. The writer is afraid that on account of the unknown exercise of the mysterious power by the hounds, not possessed by man, there is a direct tendency to enhance the impressiveness of the performance and this influence might tend to prejudice the jurors against the accused. Such evidence is at best of a dangerous and unsafe nature and of no substantial value asa means of arriving at ultimate facts.

BOOK REVIEW.

THE LAW OF LAND ACQUISITION—*Lawyer's Companion Series Published at the Law Printing House, Madras.*

This book is a fitting complement to the other books in the same series and places within easy reach of the legal profession and all others who have anything to do with land acquisition, a ready reference to the precedents on the subject.

[The following changes have been introduced in the Rules of Practice.]

Under the provisions of Part X of the Code of Civil Procedure, 1908, and all other powers hereunto enabling, and with the previous sanction of His Excellency the Governor in Council, the High Court has made the following additions to, and amendments of, the Civil Rules of Practice, 1905, the Appellate Side Rules, 1905, and the Code of Civil Procedure, 1908; *viz.*:—

I. At the end of sub-rule (2) of Rule 10 of the Civil Rules of Practice, 1905, *insert* the following words "in which the same is filed or of the District Court in which the party ordinarily resides."

II. *Insert* the following rule after Rule 29 of the Civil Rules of Practice, 1905:—

"*29-A. Address for Service.*

(1) Every party who intends to appear and defend any suit, appeal or original petition, shall, before the date fixed in the summons or notice served on him as the date of hearing, file in Court a proceeding stating his address for service.

(2) Such address for service shall be within the local limits of the Court in which the suit, appeal or petition is filed, or of the District Court in which the party ordinarily resides.

(3) Where any party fails to file an address for service, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, be liable to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and any party may apply for an order to that effect, and the Court may make such order as it thinks just.

(4) Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(5) Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Order

III, Rule 5, unless the Court directs service at the address for service given by the party.

(6) A party who desires to change the address for service given by him as aforesaid shall file a verified petition and the Court may direct the amendment of the record accordingly. Notice of every such petition shall be given to all the other parties to the suit.

(7) Nothing in this rule shall prevent the Court from directing the service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so.

(8) Nothing contained in this rule shall apply to the notice prescribed by O. XXI, R. 22 of the Code of Civil Procedure, 1908.

III. *Insert* the following rule after rule 276 of the Civil Rules of Practice, 1905, namely :—

"276-A. Every vakalat shall unless otherwise ordered by the Court be in Form No. 121 and shall authorise the pleader to appear in all execution and miscellaneous proceedings in the suit or matter subsequent to the final decree or order passed therein."

IV. *Insert* the following as Form No. 121 in Appendix II to the Civil Rules of Practice, 1905, namely :—

FORM No. 121.

RULE 276-A—VAKALAT.

(*Cause-title.*)

I do hereby appoint and retain to appear for me in the above $\frac{\text{Suit}}{\text{Original}}$ Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I empower my Vakil to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents and draw any moneys that might be payable to me in the said suit or matter.

Accepted. The address for service of the said (pleader) is ."

V. *Substitute* the following rule *for* the present Rule 21 of the Appellate Side Rules, 1905, namely :—

"21. No Vakil or Attorney of the Court shall be entitled to act or be heard in any civil case unless he files a Vakalatnama in

the form appended hereto. Such Vakalatnama shall authorise the Vakil or Attorney to appear in the appeal, petition, or other proceeding including all interlocutory or miscellaneous proceedings connected with or arising out of the same matter and also in appeals under S. 15 of the Letters Patent and in applications for leave to appeal to His Majesty in Council.

FORM OF VAKALAT.

(Cause-title.)

I, $\frac{\text{Appellant}}{\text{Respondent}}$ in the above $\frac{\text{Appeal}}{\text{Petition}}$ do hereby appoint and retain $\frac{\text{Vakil}}{\text{Attorney}}$ of the High Court to appear for me in the above $\frac{\text{Appeal}}{\text{Petition}}$ and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including all applications for return of documents or the receipt of any moneys that may be payable to me in the said $\frac{\text{Appeal}}{\text{Petition}}$

Accepted. The address for service of the said $\frac{\text{Vakil}}{\text{Attorney}}$ is ."

VI. *Add* the following as Chapter III-A after Chapter III in the Appellate Side Rules 1905 :—

CHAPTER III-A.

Address for Service.

33-B. (1) Every appellant or petitioner shall in his memorandum of appeal or petition also state an address for service which shall be within the Town of Madras or within the district, as defined by the Code of Civil Procedure, 1908, in which he ordinarily resides.

(2) Every party who intends to appear and defend any appeal or petition or other proceeding shall, before the date fixed in the summons or notice served on him as the date of hearing, file in Court a proceeding stating his address for service. Such address for service shall be within the Town of Madras or within the district in which he ordinarily resides.

(3) Where any party on being served with summons or notice as aforesaid fails to file an address for service, he shall, if an

appellant or petitioner, be liable to have his appeal or petition returned for amendment or dismissed for want of prosecution, and, if a respondent, to be placed in the same position as if he had not appeared; and any party may apply for an order to that effect, and the Court may make such order as it thinks just.

(4) Where a party is not found at the address given by him for service, and no agent or adult male member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(5) Where a party who has given an address for service, engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Order III, Rule 5, of the Code of Civil Procedure, unless the Court directs service at the address for service given by the party.

(6) A party who desires to change the address for service given by him as aforesaid shall file a verified petition and the Court may direct the amendment of the Record accordingly. Notice of every such petition shall be given to all the other parties to the suit, appeal or petition.

(7) Nothing in this rule shall prevent the Court from directing service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so. "

VII. *Insert* the following note in red ink in Form No. 1 of Appendix B to Schedule 1 of the Code of Civil Procedure, 1908; namely—

" Also take notice that in default of your filing an address for service before the day bofore mentioned you are liable to have your defence struck out."

VIII. *Insert* the following note in red ink in Form No. 6 of Appendix G to Schedule 1 of the Code of Civil Procedure, 1908, namely :—

" Also take notice that if an address for service is not filed before the aforesaid date, this appeal is liable to be heard and decided as if you had not made an appearance."