granted to return a copy of the rule disposing of it, but if this be so, which I do not assume, I think the true spirit of the act would be more certainly complied with by certifying a copy (if it were written) or a statement (if it were verbal) of the charge to the jury, or the judgment or decision of the learned judge. The words used, "his own charge, judgment or decision," seem to import more than a mere setting forth, as in this case, that the "judge afterwards duly gave his decision and judgment on the same rule, which was that the same should be discharged."

"It is so well established and time-honoured a practice for judges to give the reasons for their decisions, that in common understanding when we speak of the judgment or decision of any judge sitting in term, we refer to the report of what he said, when the court disposed of the matter before it, though technically speaking the *judgment* is the disposal of the matter by the court, and not the opinion of each particular judge. It may be well argued, that this is what the legislature intended.

"The superior courts have not as yet been called upon to decide this question, for the almost universal practice of the learned judges of the county courts has prevented its arising. They have in general shewn a praiseworthy anxiety to explain fully the grounds of their judgments, and I have very often derived much help from the learning and ability their judgments have displayed."

It is to be hoped that after this expression of opinion, the county court judges, one and all, will show a determination to render unnecessary the decision of the question raised. Many judges have, as mentioned by the Chief Justice, "shewn a praiseworthy anxiety to explain fully the grounds of their judgments." The few who have hitherto failed to do so, no doubt will hereafter be too glad to do what is expected of them, without waiting for a formal adjudication on the question whether or not the law is compulsory.

The judges of the superior courts evince a strong desire to support the decisions of county court judges whenever impeached. The least county court judges can do is to assist the judges of the superior courts in the discharge of a duty important in its nature and important in its results.

## SELECTIONS.

### ON THE LIABILITY OF MASTER TO SERVANT IN CASES OF ACCIDENT*

The Bill on this subject which was introduced this session by Mr. Ayrton and rejected by the House of Commons, purported to extend the liability of the master certainly to two cases where at present he is not liable, namely, (1) where the accident is caused to the servant by default of tackle or machinery, though the master is not proved to have been guilty of any personal negligence; (2) where the accident is caused by the default of a fellow-servant; and perhaps to a third case, (3) where the accident is caused to the servant by the negligence of the master in not furnishing proper machinery, the servant having undertaken or continued the work with knowledge thereof. These three cases were dealt with by the first section of the Bill in these terms: "Whenever any workman or servant shall be injured in consequence of his master, or any other person employed by his master, not doing any act or providing any thing which may be requisite or proper, or doing any act or providing any thing which may be improper, in or for carrying on the undertaking, work, or business in or about which such workman or servant shall be employed by or on account of his master, then such workman or servant shall be entitled to recover from his master damages for such injury by an action at law; provided always, such injury shall not have been suffered in consequence of any wilful act or omission of a fellow-workman or fellow-servant, for which such fellow-workman or fellow-servant is punishable as a criminal offence; and provided also, such action shall be commenced within twelve calendar months after such injury shall have occurred."

The second section extends Lord Campbell's Act to the cases described in the preceding section.

The existing law is fairly open to inquiry, because it is comparatively new. The case which is always cited as the first and leading case, *Priestley* v. *Fowler*, (3 M. & W., p. 1,) dates only in 1837. The general principles of the law relating to accidents are old enough and well established; but for several reasons the application of them to cases involving the relation of master and servant, has not, until recent times, fallen under the consideration of our Courts of law. 1st, Changes in circumstances. The general introduction of machinery has necessarily multiplied accidents, and serious accidents; thus in 1861, in factories alone, and from machinery alone, notwithstanding our special statutory precautions and our inspectors to enforce them, there were about 4,000 accidents. (Report, October, 1861.) Again, the construction of great works by "division of labour" has brought prominently forward new relations between employer, contractor, sub contractor, and the servants of all these. 2ndly, Changes in the law. The old quasi-religious law of Deodand, whereby the chattel or part of a chattel causing the death of a man was forfeited to the Crown or the lord of the franchise, was abolished in 1846 (9 & 10 Vic. c. 62); and in the same year was passed Lord Campbell's Act, (9 & 10 Vic. c. 93,) which gave for the first time a remedy to the families of persons killed by negligence. The Factory Regulation Act 1844, (7 & 8 Vic. c. 15,) and other statutes of the like kind, gave fresh rights or defined and confirmed old ones; and 3dly, the institution of County Courts, and the general cheapening of legal procedure, have rendered the means of redress far more available than formerly to the working classes.

The subject is accordingly novel, and hitherto has been brought piecemeal only before the Courts, as this or that case with its own peculiar circumstances might chance to demand consideration. The whole matter, therefore, deserves and requires discussion.

I will begin by stating shortly the general objects of a law purporting to regulate the liability of masters towards servants in cases of accident occurring in the course of the employment. The first object should be—To prevent accidents. The law should make it the interest of every person to be careful in his work, careful of himself, careful of others;—the master careful in selecting his servants, in superintending them, in choosing right methods of work, in providing sound machinery; the servant careful not only of his master's property, but also of his own life and of his fellow-servant's. For in truth it is very difficult to make men careful: the risk of injury appears so distant, so doubtful, and the very thought of it is so unpleasant; whereas the thought, trouble, and it may be expense to avoid the risk, are certain and immediate. Sheffield workmen, it is notorious, even resent improvements that render their work less dangerous, lest wages should fall; and many

* This paper was contributed by Mr Vernon Lushington, to the Jurisprudence Department of the Social Science Association.