of an engineer on a railroad, who, seeing persons on the track at a short distance in advance of the train, takes it for granted that they will take care of themselves, gives them no warning, and makes no effort to stop his train. Undoubtedly, in such cases, the engineer very rarely, if ever, *intends* to injure any one; but it does sometimes happen that, irritated by the constant presence of intruders upon the track, he becomes indifferent to their sufferings, and feels disposed to let them take exclusive care of themselves. On the other hand, where a passenger jumps from a car, while in rapid motion, it is clear that he is indifferent to the risk which he thereby assumes; and he may be justly said to be guilty of gross negligence.

Ordinary negligence, or, if the phrase is preferred, the want of ordinary care, may be established by proof of a much lower degree. It should not be necessary, in order to establish such a case, to raise any presumption in the mind of the court or jury that the defendant was guilty of indifference to the consequence of his acts. Mere thoughtlessness or forgetfulness, and this of a kind not uncommon, might suffice to establish the want of ordinary care. This degree of care is usually defined as that which men of average prudence and common sense take, under circumstances similar to those of the particular case, and where their own interests are to be protected from a similar injury.*

Great care is perhaps more difficult of definition; and yet it is a degree of care so constantly insisted upon, particularly with reference to common carriers, that it is useless to attempt to abandon the term on account of the difficulty of giving a definition. We do not pretend to be able at present to give an explanation of the term which will meet all cases, more particularly for the reason that the courts have, in some cases, sought to lay down what may be called a fourth degree, or "the utmost care."†

It seems, however, that great care is considered to be such a degree of vigilance and caution as is not usually exercised by the average of the community, but which is known to, and practised by, persons of unusual prudence and foresight. No one seems to be required to use a degree of care which is utterly unknown to the community in which he lives; and no one can therefore be said to lack even great care, simply because he has failed to anticipate disasters which might have been foreseen as possible in an extreme case, but which the common sense of a reasonable man must have told him were improbable.*

On the other hand, the obligation to use great care is not satisfied by simply taking precautions against those dangers which are commonly regarded in the community as inevitable in the absence of such care. Thus, on the one hand, a person who is bound to take great care of property situated in the United States would not be bound to take precautions against the occurrence of an earthquake; whereas in a country where earthquakes occurred in particular districts two or three times in the year, great care might require, in respect to some kinds of property, that precautions should, if possible, be taken for its preservation even from the consequences of an earthquake; or, to take a more familiar and practical illustration, in districts which are subject to freshets, great care would require that property should be placed out of the reach of any freshet that might be considered even remotely probable, while in other districts, although such a freshet might by bare possibility occur, no one would under any circumstances be required to anticipate and provide against it.† — *American Law Review.*

EJECTMENT.

Brown v. *Cocking*, Q. B. 16 W. R. 933.

Section 11 of the County Courts Act, 1867, gives county courts jurisdiction in ejectment "where neither the value of the lands, &c., nor the rent payable in respect thereof shall exceed the sum of £20 by the year."

Brown v. *Cocking* decides that the "rent payable" means the rent between the litigant parties, and not the rent that may be payable by a sub-lessee. The case also decides that the county court judge must decide the question of fact whether the lands, &c., in question are or are not above the value of £20 per annum.

Cockburn, C.J., and Lush, J., seemed to be of opinion that the Court would not review a finding of a county court judge on this question, but Hannen, J., although agreeing that in this particular case the Court ought not to interfere with the decision of the judge, intimated that he had "some hesitation in saying that we are absolutely concluded from reviewing the decision of the judge." Probably such a finding might be treated as a finding by a jury, with which the Court will not interfere unless a very strong case be shown. If, howeer, such a case be made out, the Courts will order a new trial, or otherwise provide against any injustice. The same rules will most likely be applied in these cases from the county courts.—*Solicitors' Journal.*

* *Rochester White Lead Co.* v. *Rochester*, 3 N. Y. 463; *Duff* v. *Budd*, 3 Brod. & B. 177; *Schwartz* v. *Gilmore*, 45 Ill. 455.

† *Bowen* v. *N. Y. Central R. R. Co.*, 18 N. Y. 408; *Johnson* v. *Hudson River R. R. Co.*, 20 N. Y. 65.

* *Bowen* v. *N. Y. Central R. R. Co.*, 18 N. Y. 408; *Corman* v. *Eastern Counties Railway Co.*, 4 H. & N. 781; *Deyo* v. *N. Y. Central R. R. Co*, 34 N. Y. 9. See *Brown* v. *Kendall*, 6 Cush. 292; *Aldridge* v. *Great Western Railway Co.*, 3 M. & G. 515; *Center* v. *Finney*, 17 Barb. 94; *Blyth* v. *Birmingham Waterworks Co.*, 11 Exch. 781; *Wakeman* v. *Robinson*, 1 Bing. 213; *Vaughan* v. *Taff Vale Railway Co.*, 5 H. & N. 679; *Philadelphia & Reading R. R. Co.* v. *Yeiser*, 8 Penn. St. 366; *Boland* v. *Missouri R. R Co.*, 36 Mo. 484; *Dygert* v. *Bradley*, 8 Wend. 469; *Sawyer* v. *Hannibal, &c., R. R. Co.*, 37 Mo 240.

† *Withers* v. *North Kent Railway Co.*, 3 H. & N. (American ed.) 969. Compare *Brehm* v. *Great Western Railway Co.*, 34 Barb. 256.