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The Late Mr. H. W. Nelson.

We regret to record the death, which occurred at the Stirling House Nursing Home, Cinnamon Gardens, on Aug. 6, 1910, of Mr. Horatio William Nelson, B. A. (Cantab), Registrar of the Supreme Court, Colombo. Mr. Nelson took ill a short time ago and his case being diagnosed as one of enteric, he was removed to Stirling House, where he appeared to be doing well as a result of the skilled attention he received. During the week, however, bad symptoms set in and the last two days saw the patient in a very critical state. Since early morning of the 6th he was *in extremis*. He passed away at 1-45 p.m.

The funeral took place at the General Cemetery on Aug. 7, 1910.

The late Mr. Nelson was an English Solicitor, and a Proctor of the Supreme Court of this island. He was appointed third Deputy Registrar in July, 1903, and in July, 1906, was promoted first Deputy Registrar, becoming Registrar in January of the following year. In June, 1908, he was on a short holiday and resumed duties in September. He was very popular at Hultsdorf and his death at the early age of 39 will be much regretted.

He was the fourth son of Rear-Admiral the Hon. Maurice Horatio Nelson (and through him a nephew of the present Lord Nelson of Trafalgar, Salisbury, and descended from the "Trafalgar" hero), his father having seen service in the Black Sea (1854 and Crimean War. His mother was Emily, daughter of Admiral Sir Charles Burrard, Bart. He was the youngest of four brothers, the eldest being Commander M. H. H. Nelson, R. N., on board Admiral Egerton's flagship, the "Hermes," at the Cape; the second is Mr. Charles Burrard Nelson, of Wigton estate, Watawala—who has been in Colombo some days in view of the grave reports received; the third is the Rev. E. J. Nelson, M. A., Rector of Blendworth, Horndean, Hants. since 1902. He had two younger sisters: Miss Maud Mary Nelson and Emily Frances, who married Mr. C. M. Macausland, formerly of Templestowe, Watawala. With all his relatives and friends wide sympathy will be felt.

His Excellency the Governor's minute on Mr. Nelson's death was as follows :—

His Excellency the Governor desires that public expression may be given to the regret felt at the death on August 6, 1910, of Horatio William Nelson, Registrar of the Supreme Court. The following letter from the Chief Justice to His Excellency the Governor is published for general information :—

THE HON. THE CHIEF JUSTICE TO HIS EXCELLENCY THE GOVERNOR.

Supreme Court, August 7, 1910.

SIR,—I desire to place on record, on behalf of myself and the other Judges, our deep regret at the death of Mr. Horatio William Nelson, the Registrar of this Court, and our appreciation of the very great loss which the Colony has sustained. He was appointed Third Deputy Registrar in 1903, and Registrar on January 1, 1907. His appointment was an unqualified success. He kept every officer and every department of his in excellent order and discipline: was prompt and punctual in all his work; absolutely trustworthy; fearless and strict in dealing with any laxity or misconduct: honoured and respected by all the best of the advocates and proctors; and trusted and beloved by the Judges. He was modest, self sacrificing, and generous; and always guided by a strong resolve to do his duty.—I have, &c.

J. T. HUTCHINSON, Chief Justice.

APPRECIATION BY THEIR LORDSHIPS IN THE APPEAL COURT.

At the Appeal Court on the morning of the 18th August the first sitting after the vacation.

The Chief Justice, addressing Mr. Bawa (the senior member present) and the other members of the Bar, said:—Since we last met, the administration of Justice of this Island has suffered a heavy loss through the death of Mr. Nelson, who held the office of Registrar for about four years, and that time is long enough to show that it could not have been possible to get a man better fitted for the post. Modest, unassuming as he always seemed to be in private life, those who had official dealings with him found that when it was a question of duty he was always alert, vigorous and unsparing of himself. The Judges had long ago come to regard him as a most competent and trustworthy officer and as a friend, and I feel sure that you members of the Bar and those Proctors, who knew him, have the same feelings of confidence in his ability, fairness and integrity.

Mr. BAWA—in reply said:—My Lords,—On behalf of the members of the Bar and myself I may say that we entirely associate ourselves with everything that has fallen from your Lordship. Mr. Nelson during his tenure of office of Registrar of this Court came very closely into association with most of the members of the Bar practising here: especially those concerned in the appeal work of this Court, and during the extremely strenuous time that we recently had when four Judges were dealing with the accumulated arrears for a long time past, there were occasions but for his tact and admirable grasp of the affairs of his office, it would have been extremely difficult to deal with the situation. We, too, my Lords, deeply deplore his loss, and feel sure, that it would be extremely difficult for the Government to adequately replace him. We wish to join your Lordships in condoling with your Lordships' Court and Mr. Nelson's relatives.

Impressions of Mr. Pinto's Court

(ON A VISITOR.)

"N SHUN!"—

This, suffering sundry phonal variations, according to the intellect and acquirements of the particular policeman on duty, is an abbreviated equivalent to the more pompous declaration, daily made in the Supreme Court, and may be paraphrased thus, "The Court of Requests of the Capitol of Ceylon doth strictly command all persons here present to hold their peace on pain of imprisonment."

The policeman has barely finished his imposing announcement and breathed relief, when the commissioner of requests of Colombo, Mr. M. S. Pinto, a short, spruce, spectacled person, ascends the seat of justice, almost always precisely at eleven of the clock. He then begins his preliminary work. There are judgments to be delivered with commendable brevity, the operative and decretal part alone being uttered. This time-saving practice might be adopted by the learned judges of other original Courts, as an excellent substitute for hearing themselves read in the presence of an inattentive and impatient Bar. Perhaps an indulgent exception might be conceded where Mr. Felix Dias or Mr. J. R. Weinman has a judgment to deliver or an order to make.

Mr. Pinto then deals with the "calling cases." During the time when cases are called, and applications for postponement are made, or proctors or counsel have to move for judgment or to say or do any other relevant thing, Mr. Pinto has invariably somewhat to remark. His observations on such occasions usually bring into prominence the following principles.

1. He is ready to oblige the lawyers as to the order and hour of trials, if applications are made at eleven.

2. A judgment by default is not forthwith entered but an opportunity is given for the possibility of the defaulter or his lawyer turning up.

3. Postponements are difficult to obtain.

It is not easy to say whether the learned commissioner or learned counsel can be blamed to be more lavish in words at so early a stage of a day's work. It must however be said to the credit of the former, that upon the trial stage of the day's duties he maintains a steady silence, except when he breaks it with an observation of mild reproof which often is more eloquently conveyed by significant side-glances at the clock.

As soon as the "motion-roll" is over—strictly it is not a "motion-roll—one is imperceptibly shifted into a quasi-criminal 'jurisdiction, by the low, bass roll-call of unfortunate women who troop in to ask for justice

against over-gallant but very unwise members of the opposite sex. Once a month the Court is distinctly criminal when a crown counsel or one taking his first lessons in "How to be a crown counsel" presents a number of indictments against sundry and diverse persons in whom His Majesty the King is stated to evince a somewhat vindictive interest.

Those who think that counsel's speeches in the Colombo Court of Requests are somewhat without regard to considerations of time would do well to remember that it is the training-ground for junior orators—at least would-be celebrities look upon it as such a place. There is undoubtedly an element of infliction of the excruciating in this circumstance of rhetorical exercises at the expense of other people's time and patience, but some allowance must be made for youthful ambition.

To appreciate the value of time in Mr. Pinto's court, one must consider how five working-hours have to be spread over eight trials on an average. The monetary value of the five hours is a matter of simple calculation. So far as the judge is concerned, since he receives Rs. 700 a month, or nearly Rs. 30 a working-day (taking the month to consist of 25 working-days,) it means Rs. 6 an hour, that is an hour between eleven and four, though Mr. Pinto very often works by lamp-light.

The sixteen suitors in the eight trials (Plaintiff and Defendant in 8 trials a day) cannot get, on a very strict calculation, more than sixteen minutes, that is Rs. 1·60 worth of judicial attention. This calculation assumes that all the hours from eleven to four are exclusively devoted to trials. In practice suitors often absorb more than one hour, even in those cases where learned counsel had assured the court that the matter in dispute would not exceed twenty minutes in adjudication. It has been found that examination, cross-examination, interruption, re-examination, opening speech, reply, and an attempt to smuggle in a reply to the reply, frequently take up considerably more than a suitor in all strictness deserves, and Mr. Pinto is more tolerant than he would wish to appear.

What does a case cost a suitor?

	Rs.	Cts.		Rs.	Cts.
Under Rs. 50					
Plaint	00	50	Answer	00	50
Proxy	00	50	Proxy	00	50
Summons	00	50			
Two witnesses	1	00	Two witnesses	1	00
Binder	00	25	Binder	00	25
Proctor	10	00	Proctor	10	00
	12	75		12	25

Each case instituted of the Rs. 50 class brings into the revenue Rs. 5.

	Rs.	Cts.		Rs.	Cts.
Higher Class					
Plaint	1	00	Answer	1	00
Proxy	1	00	Proxy	1	00
Summons	1	00			
Binder	0	25	Binder	0	25
Two witnesses	2	00	Two witnesses	2	00
Proctor	15	00	Proctor	15	00
	20	25		19	25

Income to the revenue on high-class institution is Rs. 9·50. Of the income to the revenue of Re. 14·50 as above, Rs. 1 goes to the binder, there must be at least seven low-class institutions a day, to pay the commissioner for that day, the rest of the institutions of both classes going towards the staff and up-keep.

If the suitor retains counsel at a Rs. 21 minimum for a case, it costs him Rs. 33·75, Rs. 33·25 in the lower class of cases, and Rs. 41·25, Rs. 40·25 in the higher class of cases. Does the suitor get his money's worth of time? Calculation must drive him to despair, when he finds what he actually gets in minutes for his rupees and cents.

As a court from whose decisions on facts there is no appeal as of right, the Court of Requests is as important in consequences, as the Supreme Court. Considering the amount of work to be gone through and the time at the judge's disposal for his daily work, it is entirely unjust to complain that trials in the Court of Requests of Colombo are not accorded, as a matter of fact, a fair and generous share of what the clock on the wall can measure out. The importance of this court is enhanced by the circumstance, that very frequently important questions of law and practice come up for adjudication and receive liberal and learned treatment at the hands of counsel and judge, though the man in the street may be justified in the wish that some of those learned arguments might profitably be adorned with the graces of brevity and relevancy. However, one is not quite sure that the feelings of a paying suitor are altogether those of contentment at an economy of forensic display and deliverance. A suitor to whom one of Mr. Pinto's judgments spells disaster often finds comfort and consolation in the remembrance of the multiplicity of his counsel's words, and the hope that a higher tribunal might sometimes find in them or their appellate equivalents—wisdom.

An Interesting Judgment.

(C. R. MATARA 5469, SET ASIDE 22, 2, 10.)

One G. P. Louis owned half of the field in dispute. Plaintiffs say that he had only one wife, and that the children of that wife, including themselves, are entitled to that half of the land.

Defendants 1-3 say Louis had a second wife and that they as children of that 2nd wife are entitled to half of Don Louis' half.

One of Plaintiff's principal witnesses—the Police officer Don Salman gave evidence in favour of defendant. He says 1st defendant had possession of a share of the land in 1905, 1906 and this year. The field is cultivated in tattumaru, and 1st defendant would cultivate twice each four years—along with plaintiffs if his story is correct, owing to the defection of this witness and the vagueness of others, plaintiffs' case looked very weak at the end of his evidence. But it lay on 1st defendant to prove that Don Louis was his father, and his evidence on that point, is just as unsatisfactory as plaintiffs on the other, one of his witnesses, Don Siman giving evidence as flatly contradictory to his case, as Salman had done in Pltff's case.

The latter witness had clearly learnt a lesson and—forgotten it. The positi n at the end of pltff's case was that 1st defendant, claimed to be the son of Louis. If he was Louis' son one would expect him to have been in poossession of a share of this land, and other lands belonging to Louis. Plaintiffs' witnesses admitted he had been in possession since 1905 at least. It was likely then that 1st defendant was what he claimed to be and with a little good evidence he should have been able easily to establish his case. Now that evidence has not been given I cannot say that I am convinced that 1st defendant is the son of Louis. Much less can I assert from his evidence that he is the legitimate son of Louis. There is a little vague hearsay to that effect and 1st defendant seems to have lived with or stayed, or frequented Juwanis' (Louis' sons) house for, sometime I say "frequented" for I am not quite sure that he lived in that house. The story of going to the field when ten years old and fetching the paddy with Juwanis is far-fetched at least in the sense 1st defdt. wished to give it. He would certainly not go as a coowner jealously watching over his own interest. Louis did not die so long ago that proper evidence of his marriage could not be forthcoming. That evidence is not produced. This case and finding affects other lands of the same estate, to some of which 1st defendant appears to have made no claim even. I cannot go on mere probabi-

lities therefore-I cannot say defendant appears to have had some possession, therefore his case is probable, and his evidence of paternity though vague is enough. We should make out his right to the land through Louis quite clearly-at least sufficiently clearly for me to be enable to assert that I believe he is the legitimate son of Louis. On the evidence I might go so far as to say it is very probable that he is the son of Louis. His relation with Juwanis seems to indicate as much—But I would not go furthur-and say I believe he is the legitimate son of Louis by a 2nd wife. If he was so, there must be clearer and better evidence to prove it than the really vague evidence produced.

Possession since 1905 will not prove his case. I am not absolutely sure even about that possession. When a witness called by one party gives evidence categorically opposed to the side that calls him his evidence is certainly suspicious. You have to consider (A) that if he is speaking the truth as far as he knows it, he may be mistaken. If the side calling him, has not even spoken to him about the case, and learnt from him what he will say, either they had the utmost confidence in the truth of that case or they relied utterly on his favouring them. They must have had some reason for that belief, and in the majority of the cases, if the belief is belied it will not be through the honesty of the witnesses (b) In many cases the witnesses are clearly lying. People will not summon adverse witnesses nor any witness without speaking to them and being assured that they are favourable. If after that the witness changes either before, or afterwards, he was a liar or a deceiver at least, and so more or less unreliable. I think however that in this case the witness is speaking the truth or part of it at any rate. and that 1st defendant did assert claim to the field about 1905. Plaintiffs may in over confidence as to the goodness of their own case, have failed to question him. On the other hand I may be mistaken as to the witnesses' apparent naiveness. He pointed out 1st defendant-did not know his name, but he pointed him not rapidly and without hesitation. It is very easy in a lot of true evidence to insert a particular brief false-hood which in its very vaguenesss and naiveness appears very much like the truth-however taking that evidence as true it will not establish 1st defendant's right to the land by prescriptive possession. After hearing defendant's case with the strong leaning in his favour which the weakness of plaintiff's case naturally produced, I am unable to say that I believe 1st defendant is the legitimate son of Louis. The probability is in fact that he is the son of a later and more or less casual connection, who has been

half tolerated and half encouraged in an easy going fashion, because 'apparently' (with proper evidence an "apparently" ought not to be necessary-the very identity of his mother is disputed and obscure) he and his brothers and sisters were orphans and left orphans when they were children. Charity tolerated them and helped them and now he wishes to use its appearances to found a claim to a number of lands which belonged to Louis. I find that it is not proved that Louis Appu married a second time. Or that 1st 2nd and 3rd defendants are his children-the children of a second marriage and that 1st 2nd and 3rd defendants have not had prescriptive possession of the land in dispute.

I give judgment for plaintiff as prayed for with costs and damages Rr 10 a year.

Appeal Court Notes.

(*By W. Sansoni and V. Grenier, Advocates*)

93. Binding over to keep the peace and be of good behaviour Complainant—"Call upon to shew Cause"

A person must be called upon to shew cause why he should not be bound over to keep the peace before he is dealt with under secs. 80 and 81 which procedure is in accordance with the most elementary principle that an accused prisoner is not to be dealt with without being charged or heard in his defence.

Middleton, J., Andris de Silva, v D. P. Hinimeratuage 159, P. C. Galle 48322. 15. July, 1910.

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94. Clearing Crown Land Without a Permit—sec. 2122 of Ordinance 16 of 1907—Proof—Rules under secs.

The Rule under which an accused person is convicted must be produced in evidence and proved—if such rule is one framed under a statute—The effect the words "not included in a reserved or village forest" and except as provided by rules. . . . . or unless with the permission in writing of a Forest Officer is to afford to the persons accused an opportunity of justifying their act. 9 S. C. C. 60 referred to where the evidence proving that the land was Crown land was held to be insufficent. The case being a serious one with aggravating circumstances it was sent back for proof of the necessary fact.

383 P. C. Gampola, 2389. Wood Renton, J., 5. 7. 10.

95. **Theft—Evidence—Proceedings Irregular.—**

Two accused were charged with theft of cocoanuts and the defence admitting the plucking alleged that they did so under the orders of a witness for the defence, Omuru Lebbe who deposed to that fact on the strength of his ownership of the land—This witness too was forthwith made an accused. The P. M. found all the accused guilty—Then when the petition of appeal was filed the P. M. on the back of the conviction sheet made certain observations to support the conviction—*Held* such proceeding was entirely irregular and improper and ought not to have been done by him—Held also the conviction of Omuru Lebbe was entirely irregular ; no charge was made against him under the Code and he had no opportunity of making a defence.—

Middleton, J., 371 P. C. Panadure 335 13. S. C. M. 15 July, 1910.

96. **Criminal Intimidation—Threat of Injury Knife.**

The offence of criminal intimidation is established when it is proved that the accused has threatened another with injrry to his person with intent to cause alarm to that person—

Where an accused person rushed up to complainant upbraiding him with having given information to the police and holding in his hand a knife. *Held* he was guilty of the offence of criminal intimidation. It is of the utmost importance that the threatened as well as the actual use of the knife should be strenuously discountenanced by courts of Law.

401 P. C. Tangalle 27823. 15 July 1910. *Wood Renton, J.*

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97. **Public Nuisances—Chap. IX Criminal Procedure Code Sec. 105.**

The proceedings under chapter IX (headed Public Nuisances) of the Criminal Procedure code section 105 clearly contemplate the obstruction or nuisance caused to a public way and do not affect any infringement of private rights of way.

366 A—368 P. C. Panadure 33493. 15. 7. 10. *Middleton, J.*,

98. **Cheating—Criminal Breech of Trust -Sec. 398 and 401 Penal Code.**

Where accused received money and materials from complainant promising to construct a coffin and failed to do so. In the absence of proof of any dishonest intention on the part of accused-at the time he received the advance and the materials, the accused-is not guilty of cheating. But having made the coffin his subsequent conduct in not delivering it to complainant but in selling it to a third party, amounted to a criminal breach of trust in that he clearly misappropriated the money and the materials which belonged to the complainant.

Grenier, J., 384 P. C. Panadure 33543. 13. 7. 10.