

GENERAL PRINCIPLES OF ENGLISH JUSTICE

1. It is one of the most conspicuous features of English justice, that all judicial trials are held in open court, to which the public have free access, and that the parties have a right to be represented, and to have their interests defended, by skilled advisers from among the barristers and solicitors described in the preceding chapter.

This feature is so much of a commonplace to the modern Englishman, that he hardly realizes its importance. But, if he will think for a moment, of the difference between the English system and those, quite common in other countries, where the proceedings are conducted in secret, and where, in criminal cases, the accused is not necessarily entitled to be represented by skilled advisers, he will hardly fail to grasp the difference. To put it shortly, the English system ensures that the enormous force of public opinion is brought to bear on the proceedings in court, and that judge and jury are

Book of English Law by
Edward Jenks p. 73

The earliest lawsuits were, in substance, and, indeed, often in form, judicial duels; and, naturally, early law did not allow the parties to be represented by agents, unless in exceptional cases, such as those of women and children. But, as the primitive judicial combat gave way to the ordered and technical lawsuit, perhaps involving long and wearisome journeys, the privilege of being represented by an agent was increasingly sought, and was granted by the authorities of various jurisdictions. Quite naturally, the different courts in which these

p. 68

From - THE BOOK OF ENGLISH LAW - BY

Edward Jenks ©1967 - SBN

8214.0031-2

6

The Legal Profession

The administration of the law requires the co-operation not only of judges, with whom, aided by juries, the decision of disputed cases rests, but of practitioners, or trained experts, to whose hands the parties to the dispute confide their interests. At least this is so in all modern and complex systems of civilization; and indeed the legal expert can be traced very far back in human history. At the same time, almost all systems of law, and certainly the English, allow full liberty to the individual litigant to conduct his own case, both in its initial and final stages, if he thinks fit to do so. Before the establishment of the modern system by which legal assistance is given free to poor litigants, the 'plaintiff in person' or the 'defendant in person' was a not uncommon figure in the Law Courts. Even now, he is frequently to be seen, especially in the lower tribunals; the judges, with the humanity which has long distinguished them, being exceptionally patient and forbearing with such suitors.

The legal profession is, in England, the exclusive monopoly of a body of men and women who are deemed to have given evidence, in manner to be hereafter described, of their fitness for their responsible calling. Subject to the right, previously explained, of every litigant to act on his own behalf, and every person to conduct his own business, any person, not a member of the legal profession, who attempts to act as such, whether or not with a view to gain, incurs serious penalties and cannot enforce any promise of remuneration for his services which may have been made to him. The chief practical trouble is to know exactly what constitutes an attempt to act as a legal practitioner; and this depends on somewhat arbitrary enactments, founded on practical convenience rather than on intelligible principles. Thus, a person who, not being a member of the legal profession, prepares, even for reward, a will or an agreement under hand only, relating to property, is not guilty of any breach of the law, unless he actually poses as a qualified lawyer. On the other hand, a similar person who prepares a marriage settlement or a bond, incurs a penalty of fifty pounds.

For at least six centuries, the legal profession in England has been divided into two mutually exclusive branches, each performing distinct duties, though certain functions are common to them both. These are (a) barristers, or counsel, and (b) solicitors, formerly known as 'attorneys'. Both are found almost from the beginnings of the Common Law; and it is difficult to say which is the older. But their histories have been very different.

BARRISTERS

The barrister, or counsel, is characterized primarily by the fact that he speaks in court, and addresses the judge and the jury on the actual trial of the case, questioning the witnesses, protesting against any attempt of his opponent, which he deems to be unfair, or to prejudice his client's chances, and generally, taking the part which his client would have to take if he conducted his case in person. Originally, the barrister appears to have been a casual bystander who volunteered advice to a litigant, and, acquiring a taste for the practice, gradually obtained recognition by the court as suitable to be 'of counsel' with litigants. But his detached position survives in a very striking way in the modern rules of law that no barrister can make a binding contract for, or sue to recover, his fees, and that he cannot bind his client by anything he says in court.

Though there is much that points to the fact that it was originally by the recognition of the court that the barrister owed his opportunity of audience, yet for centuries the privilege of 'calling to the Bar', i.e. investing a candidate for forensic honours with the degree of barrister-at-law, has been exercised by four wealthy and powerful bodies known as the Inns of Court, viz. Lincoln's Inn, the Middle and Inner Temples, and Gray's Inn. These bodies are entirely self-governing, they are administered by co-opted bodies of 'Bencher's' or seniors, who publish no account of their proceedings, and they are practically uncontrolled by any Act of Parliament. Much about their origin still remains obscure; but it seems generally agreed, that they were originally voluntary clubs or associations of pleaders in the King's Courts at Westminster, set up, as we have seen, in the twelfth and thirteenth centuries, to administer the royal jurisdiction, and, particularly, the newly-formed Common Law. The Templars owe their ecclesiastical connection to the fact that, on the dissolution of the crusading order of the Knights Templars in the early fourteenth century, the two bodies of lawyers moved from their former hostels,

somewhere in the neighbourhood of High Holborn, to the still older abode of the Knights, with its ancient church and tilting-ground, on the banks of the Thames.

For some centuries after their foundation, the members of the Inns of Court received their clients personally, either in their chambers or at some public rendezvous like St. Paul's Cathedral, and advised them indiscriminately about their affairs as a whole, not confining themselves to appearances in court or formal consultations. Shortly after the Restoration, however, they began to adopt an exclusive attitude, both towards their lay clients, and also to the attorneys, who withdrew from their societies, and, to a large extent, from their precincts, where they had formerly lived in common, with them.

The consequences of this aristocratic policy were important. Doubtless it enhanced the social prestige of the barrister and made of him a figure which might mix with courtiers and statesmen on more or less equal terms, thus opening freely to him the road to public offices of the highest distinction. On the other hand, it threw together the attorney and the lay client in the outer world, and left the barrister, at any rate in his earlier years, very much at the mercy of the attorney, who, reversing the former condition of affairs, became the barrister's client instead of his employee. Above all, the initial stages of all business, and the complete handling of many legal transactions, fell into the hands of the attorney, whose position rapidly improved, until he became a fully independent practitioner, not only in the country town (where there was no barrister to rival him), but in London. The right of the barrister to transact business with his lay client without the intervention of an attorney (or 'solicitor' as he is now called) is still asserted by the barrister in a very few cases. In substance, the barrister, unless he is retained by the Crown or some great corporation, has no business, forensic or consultative, but that which solicitors bring him.

It must not, however, be supposed, that the important monopoly of 'call to the Bar' is exercised arbitrarily by the Inns of Court. Broadly speaking, and subject to unimportant exceptions, call to the Bar is open to every British subject who fulfils certain prescribed conditions; and, in recent years, even foreigners have become English barristers. This is possible, because, unlike a solicitor, a barrister is not, as such, an official in any sense of the word. He is simply a tested and qualified person who has the right to speak on behalf of clients before any tribunal, and to advise them in all their legal affairs. But it is understood that the Inns of Court do not

undertake, as a matter of course, to 'call' any foreigner who fulfils the prescribed qualifications, as they undoubtedly do in the case of British subjects.

These qualifications are, briefly, as follows:

1. After having passed a general educational test and given evidence of good character, the candidate must procure himself to be admitted as a student at one of the four Inns of Court above named.
2. He must then 'keep' twelve terms (covering three years) by dining in Hall six days (or, in the case of members of a university in the United Kingdom, three days) in each term – not necessarily consecutive. Students who have achieved certain academic distinctions may be dispensed from keeping two of their twelve terms.
3. He must pass certain qualifying examinations in law conducted by a body called the Council of Legal Education, formed by the co-operation of the four Inns, which also maintains a staff of Readers who give public lectures and impart other tuition to candidates for call to the Bar.

There are special regulations affecting persons who, before applying for admission, have become barristers of the Dominions or Northern Ireland.

On fulfilment of these qualifications, the candidate, if he (or she) has attained the age of twenty-one, and has paid the fees required by his Inn (about £120 in all), is entitled to present himself for 'call to the Bar' at the next 'Call Night' of his Inn. But notice of his intention is 'screened', i.e. placed in a conspicuous position on the screens or notice-boards, not only of his own, but of all the Inns of Court, for some time before the ceremony. And it is open to anyone who sees it, or hears of it, to inform the Benchers of the candidate's Inn of any circumstance alleged to disqualify the candidate from being called, e.g. that he has, during his qualification period, engaged in any of the callings which are deemed to be inconsistent with the profession of a barrister, or has been guilty of criminal or dishonourable conduct. The candidate has, of course, an opportunity of rebutting the charges; and, if he fails to do so to the satisfaction of the Benchers of his Inn, he may appeal to the Judges of the High Court as a body. If no charge is made and proved against him, the duly qualified candidate is called to the Bar by ancient ceremony at the close of dinner on Call Night, and is thenceforth entitled to exercise all the privileges and functions of a barrister. However, if he wishes to practise in England or Wales,

he will have to do a year of 'pupillage', under the supervision of an experienced barrister, before he can appear in court on his own behalf.

But the fully-qualified barrister does not cease to be a member of his Inn, or to be subject to its jurisdiction. In all matters of professional conduct involving serious issues, and in all matters gravely affecting personal character, the barrister's Inn of Court is still the guardian of the public interest. If his conduct has been such as to disqualify him for membership of an honourable profession, he can, subject again to an appeal to the Judges of the High Court, be 'disbarred' by the Benchers of his Inn of Court, and thereby deprived of his professional standing. In matters of professional etiquette, as distinguished from morality, his conduct is watched, and, to a smaller extent, controlled, by the General Council of the Bar, a representative body, somewhat recently formed by voluntary action among barristers themselves. This body has no official authority; but it is probable, so strong is the force of professional opinion, that a barrister who defied its rulings would find himself so coldly treated by his colleagues, that he would become suspect also with his professional clients, the solicitors, and, in effect, soon lose whatever business he had. Finally, in all his conduct in court, the barrister owes courtesy and deference to the judge, in whose hands lies the control of the whole proceedings. But it is one of the most honourable and valuable traditions of the English Bench to accord to advocates, in the interests of their clients, the utmost liberty which can be made consistent with the orderly and dignified conduct of business.

Finally, it may be mentioned that, among the members of the Bar, there is a comparatively small group of senior men, enjoying certain privileges and subject to certain disabilities, known as Queen's Counsel, or (from the fact that they wear silk instead of 'stuff' gowns in court), 'silks'. In one sense these men are an anomaly; for they are, technically, Crown officials, and, until quite recently, could not appear for any client against the Crown without a special licence. But, unlike the old Serjeants-at-Law, whose place they have taken, they remain members of, and subject to the jurisdiction of, their Inns, they have no monopoly of business in any court, and they do not constitute a different Order from their brethren of the Outer Bar. They occupy the front benches in the auditorium of the court 'within the bar'; by custom they receive somewhat higher fees than the 'juniors' or ordinary barristers, for their work, and they have priority of audience. On the other hand, they are prohibited, by professional

etiquette, from undertaking certain kinds of business, which remain the monopoly of the Junior or Outer Bar. Queen's Counsel are appointed, for various reasons, on the advice of the Lord Chancellor, by Letters-Patent of the Queen.

SOLICITORS

The other branch of the legal profession is that known as 'solicitors of the Supreme Court'. Historically, they are a combination of several formerly distinct professions: the attorneys of the Common Law Courts, the solicitors of the Court of Chancery, the proctors of the old ecclesiastical jurisdictions, and the scriveners, who, until the end of the eighteenth century, were a kind of high-class law-stationers.

Of these elements the oldest, and that which has had perhaps the greatest influence in defining the position of this branch of the profession, is the attorneys. As their name implies, they were, originally, agents (*attornati*) of litigants, and, as such, can be traced back in legal history almost, if not quite, as far as barristers. The earliest lawsuits were, in substance, and, indeed, often in form, judicial duels; and, naturally, early law did not allow the parties to be represented by agents, unless in exceptional cases, such as those of women and children. But, as the primitive judicial combat gave way to the ordered and technical lawsuit, perhaps involving long and wearisome journeys, the privilege of being represented by an agent was increasingly sought, and was granted by the authorities of various jurisdictions. Quite naturally, the different courts in which these agents appeared were interested in their identity and character; and, by the end of the fourteenth century, the King's Courts of Common Law had adopted the practice of inscribing on their rolls or records the names of certain persons whom they would recognize as agents for the parties in proceedings before them. This practice naturally tended both to make the attorneys thus privileged a close profession, and to establish them as officials of the court, which, equally naturally, reserved the right to 'strike off the roll', or otherwise summarily punish, any of them found guilty of malpractices. 'Solicitors', in the strict sense of the word, were never agents, but appeared in connection with Equity proceedings towards the end of the sixteenth century, to 'solicit' the causes of the suitors which were slumbering too long in the chambers of the Masters in Chancery. By the beginning of the seventeenth century, they had come to be regarded as a profession on a footing similar to that occupied by the attorneys; and, before the

middle of that century, the two professions were virtually consolidated into one, though differences of qualifications still remained. After their withdrawal from the Inns of Court, formerly alluded to, attorneys and solicitors resorted, to a certain extent, to what were known as the Inns of Chancery, institutions perhaps even more ancient than the Inns of Court, but never attaining anything like the wealth or efficiency of the latter. Indeed, they became virtually extinct by the end of the eighteenth century, their places as professional institutions being taken by the Law Society, a chartered corporation which now occupies towards the solicitors' branch of the legal profession somewhat the same position as that of the Inns of Court towards the Bar. Meanwhile the scriveners, as a distinct profession, had become moribund by the end of the eighteenth century; their business passing into the hands of solicitors. And lastly, in the year 1857, the extinction of the matrimonial and probate jurisdiction of the Church Courts, combined with the decay of their other functions, extinguished the proctors as a separate profession, most of them joining the ranks of the solicitors; the whole of the legal profession, other than the Bar, becoming merged in one body, receiving the official designation of 'Solicitors of the Supreme Court' by the Judicature Act of 1873.

It has been stated above that the Law Society (formerly known as the 'Incorporated Law Society') stands in much the same position towards solicitors as do the Inns of Court towards barristers. That statement must, however, be qualified by the very important reservation that, whereas the qualifications for admission to the profession, admission itself, and discipline, are, in the case of barristers, entirely dependent on tradition and custom as expounded by each Inn of Court on its own authority, in the case of solicitors, such matters, except to a minor extent, are expressly fixed by Acts of Parliament, which the Law Society has to administer, and by the provisions of which it is bound. Moreover, the actual admission of a solicitor to practice is the function of the Master of the Rolls, who holds the high judicial position before described, as well as the even more interesting office of custodian of the vast stores of legal and other records accumulated in the Record Office. Consequently, the Council of the Law Society, important as its work is, has a much less free hand than the Inns of Court.

It goes, therefore, almost without saying, that though foreigners cannot, naturally, become officials of English Courts of Justice, membership of the solicitors' branch of the legal profession is open to

all British subjects who acquire the necessary qualifications. These may be set out as follows:

1. The passing of a preliminary test of general education.
2. Apprenticeship or service under articles of clerkship to a practising solicitor for a period varying from two and a half to five years, according to the previous attainments of the clerk. This service is exclusive; and, unlike the Bar student, the articled clerk cannot devote any part of his attention to matters other than the study and practice of the law.
3. Attendance (except in special cases) for a certain period at a centre of legal education approved for the purpose by the Law Society, which itself provides and maintains a Principal and teaching staff for the purpose of supplying legal education for articled clerks and intending articled clerks.
4. The passing of certain qualifying examinations in two parts, although the graduates of certain universities are not required to pass Part I.

On fulfilment of these qualifications, the articled clerk, having attained the age of twenty-one, and given evidence of good character, will be admitted, as of course, to membership of his profession. He will then be legally qualified to undertake such kinds of legal business as are open to his branch of the profession. His right of audience in court is limited, for the most part, to inferior tribunals, such as Petty Sessions and the County Courts, and to appearances in procedural matters before the Judge or Master 'in chambers', i.e. sitting privately. But the preliminary conduct of litigation is mainly the province of the solicitor; while the field of 'conveyancing', i.e. the preparation of documents dealing with the countless non-litigious legal interests of the members of the public, he shares with the barrister, having, as has been explained, a practical monopoly of direct dealing with clients. Except where a formal 'counsel's opinion' is deemed necessary, the solicitor is the sole legal adviser of the lay public in non-litigious matters. At important board and syndicate meetings, at which such a large amount of the vast financial, commercial, and industrial affairs of the country is settled, the solicitor of the institution is nearly always present, to advise upon legal questions which crop up in the course of discussion. In delicate family matters, involving reputation and property, he is, almost invariably, consulted. To the great middle ranks of the community, he is, almost more than the judge, the

representative and expounder of the law. Unlike the judiciary, and the forensic branch of the great legal profession, the solicitors' branch is not concentrated in London and a few provincial centres, but is to be found in every town, almost in every village, of the kingdom.

Unlike the barrister too, the solicitor deals with his clients on a strictly business basis. His fees, it is true, are regulated by Act of Parliament; but he may bring actions to recover such as are due to him. Moreover, unlike the barrister, he, as his client's agent, can bind the client within the scope of his ostensible authority, and is, on the other hand, legally liable for the consequences of negligence in the conduct of his client's affairs. He shares with the barrister a complete legal immunity in the lawful conduct of his client's lawsuits; nor can he be compelled (nor is he, indeed, entitled) to divulge, even as a witness in court, any facts which may have come to his knowledge affecting his client's interests, in the course of, or preparatory to, litigation.

Finally, like the barrister, the solicitor is liable, not only to the penalties of the law for all illegal conduct, but also to professional censure for conduct prejudicial to the reputation of his profession. The solicitor is, indeed, under the control of a double professional authority. As an official of the Supreme Court, he can be struck off the Roll of Solicitors by the Master of the Rolls for professional misconduct – a process equivalent to professional death. But he is also subject to the disciplinary control of the Council of the Law Society, whose Discipline Committee, appointed by the Master of the Rolls, has, by recent statute, power to apply, subject to an appeal to the Supreme Court, the same drastic penalty, as well as to inflict minor professional punishments for lesser offences.

The Administration of Justice

We now come to that process for which the preceding chapters on the Courts of Law and the legal profession have been but a preparation, viz. the actual application of the law to the affairs of the everyday life of the men and women of whom the community is composed. This is, of course, the supreme practical test of the virtue of a legal system. An ideal body of law, though it may have its value as an inspiration and a model, is not of much practical use unless it is effectively and justly administered. Indeed, it might even be urged, that an illogical and otherwise imperfect body of law, effectively, dispassionately, honestly, and humanely administered, is of more value as an instrument of social peace and prosperity than an ideal system badly administered.

The actual process by which the administration of justice is carried on in England is by the carrying out of what are known as Rules of Procedure – i.e. a body of regulations binding alike on all who resort to the courts for redress of grievances as well as those who preside or practise therein. These Rules of Procedure, bulky and highly technical in character, though resting, ultimately, on parliamentary authority, are, in effect, the work of the judges, assisted by committees representative of both branches of the legal profession. In addition to these formally enunciated rules, there are a large number of so-called 'rules of etiquette' which very largely govern the conduct of legal proceedings. For breach of these there is no precise penalty; but, so strong is the corporate feeling of the legal profession, that offenders against them seldom have the opportunity of repeating their offences.

It would obviously be out of place, in a work like the present, to attempt even a summary of these numerous Rules of Procedure. They are matter for experts, i.e. those who actually practise, or intend to practise, the profession of the law. Nor would it be of particular value, in a work intended to insist on the civic rather than the professional aspects of law, even to reconstruct the different stages of a typical lawsuit. There are plenty of admirable works in which this is

done in great detail. It is proposed in this chapter rather to bring out those salient and characteristic features of English legal procedure which have given to the English administration of justice its peculiar and, indeed, almost unique position in the civilized world. It is a matter for legitimate pride to English men and women that experts come from all the ends of the earth to study the working of English justice; and it is right that English citizens should be able to recognize the features which have aroused the interest of intelligent critics from other civilizations.

It is proposed to set out, first, the dominating features common to the administration of justice generally in England; and then the distinctive features peculiar to the administration of the criminal law and the civil law respectively. It will be understood that, in what follows, reference is made only to the ordinary tribunals which administer the law to ordinary citizens. The military tribunals (or 'courts-martial') set up under the Naval Discipline Act and the Army and Air Force Acts, deal only with professional combatants, or with auxiliary troops when called out for active service. They have nothing to do with the affairs of the civilian community. These military tribunals, admittedly, differ in some ways in their procedure from the rest of the King's Courts of Justice, though it is not a little interesting to note how many of the best features of the civilian tribunals have been adopted by them. However, this book does not profess to deal with them, nor, for similar reasons, with ecclesiastical tribunals.

GENERAL PRINCIPLES OF ENGLISH JUSTICE

1. It is one of the most conspicuous features of English justice, that all judicial trials are held in open court, to which the public have free access, and that the parties have a right to be represented, and to have their interests defended, by skilled advisers from among the barristers and solicitors described in the preceding chapter.

This feature is so much of a commonplace to the modern Englishman, that he hardly realizes its importance. But, if he will think for a moment, of the difference between the English system and those, quite common in other countries, where the proceedings are conducted in secret, and where, in criminal cases, the accused is not necessarily entitled to be represented by skilled advisers, he will hardly fail to grasp the difference. To put it shortly, the English system ensures that the enormous force of public opinion is brought to bear on the proceedings in court, and that judge and jury are

compelled to hear both sides of the case. The former appears to have been the rule in England from time immemorial; and much of the effectiveness of English public opinion, whether expressed by word of mouth or in the Press, may be said to be due to it. Only in rare instances, of which the notorious Court of Star Chamber is the most conspicuous, has the rule been violated; and the unpopularity of such exceptions is the best proof of the value attached by the nation to the general rule. The latter feature (the necessity for hearing both sides of a case) is so essential a feature of English justice, that, as we have seen, it is even enforced on those domestic and professional tribunals which are not Courts of Justice at all, but 'merely administrative bodies having quasi-judicial duties to perform.

It must be admitted that the rule, that every accused person may be represented by skilled advisers, is by no means so old in English Law as the rule of open administration of justice. Down to the end of the seventeenth century, no counsel was allowed to appear on behalf of a person accused of felony at the suit of the Crown, except when a point of law arose for discussion. This was, of course, a grave blot on English justice, the origin of which it would take too long to explain. Suffice it to say, that the first effort to remove it was due to the magnanimous attitude of King William III, who, in spite of the fact that he was peculiarly exposed to the attacks of traitors, gave his consent to the Treason Act of 1695, which allowed persons accused of High Treason to be defended by counsel. But the rule was not made universal till 1836.

The exceptions to the rule of open court are very rare, consisting, practically, only of four cases: (1) where children are, unhappily, involved in judicial proceedings, either as witnesses or as accused persons or in wardship proceedings, although any order for committal to prison must be pronounced in open court; (2) where the case involves 'secret processes' (i.e. trade secrets unprotected by patent rights, which would disappear if they were discussed in public); (3) in prosecutions under the Official Secrets Acts, where the publication of the evidence, or statements made in the course of the proceedings, would be prejudicial to the national interest; and (4) in proceedings for nullity of marriage, where evidence on the question of sexual capacity is heard in secret, unless the judge otherwise orders. It is undoubtedly true that, in the year 1908, an Act passed for the punishment of incest laid it down that all proceedings under it should be held *in camera*, i.e. secret. But, owing to the strong representations of the judges, the secrecy clause was repealed in 1922.

It must, of course, be remembered, that the principle of publicity only applies to the actual trial of a case, not necessarily to the preliminary or prefatory stages of the proceedings, such, for example, as the preliminary inquiry which takes place before an accused person is 'committed for trial' on the charge of an indictable offence.

Finally, it is an essential principle of English criminal law that, with rare exceptions, a criminal trial can only take place in the presence of the accused.

2. The burden of proof is, in almost every case, upon the accuser. That is to say, the person making a charge that his opponent has broken the law must, whether in a criminal or in a civil case, bring evidence to prove, or at least to raise a strong presumption of proof, that the accused person was in fact guilty of the offence charged. Of the nature of 'evidence' something will be said later. Here it is sufficient to state that, in an English Court of Justice, the attitude of the tribunal is, not that the accused must give proof of his innocence, but that the accuser must establish, if not with scientific completeness at least with practical certainty, the guilt of the accused, and especially in criminal cases. Should he fail to do so, the accused may, without offering any explanations as to his own conduct, simply submit that there is 'no case' against him, and will thereupon be entitled, as a matter of course, to be discharged. He is not required, as in some other systems, to give an account of his doings and movements, in order to free himself from the charge. The mere fact that he is made to appear in court does not raise the slightest presumption in law that he is guilty; and, whatever may be the private opinion, or even the knowledge, of the judge or the jury, every person is presumed to be innocent until he has been proved to be guilty.

From this fundamental rule of English justice, the exceptions are singularly few.

One of the most important is the doctrine of what is called 'judicial notice'. Judges are human beings, of more than average intelligence and knowledge; and it would be farcical to assume that they do not know the facts with which the least intelligent member of the community is acquainted. Thus, for example, if the charge against an accused man is that he was found loitering in the dark in suspicious circumstances, it would be absurd to require the prosecutor to prove that it was dark out of doors between midnight and 2 a.m. in December, or that there was a General Election in 1964, or that a war was going on from September 1939 until the summer of 1945. Such facts as who are the reigning monarchs, at any rate of European countries,