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OF THE LAW

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*HIS HONOUR*

SIR EDWARD  
PARRY

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**SIR EDWARD PARRY**

**THE DRAMA OF THE  
LAW**

LONDON: ERNEST BENN LTD.

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# CHAPTER ONE

## INTRODUCTORY

TO observe an analogy between the drama and the law does not seek to exalt the art or to degrade the science. It is merely a recognition that drama and law are complementary to each other and that common humanity is refreshed by the thought and satisfied that it should be so.

A history of drama would be a history of civilised society. As far as we can learn nearly all the peoples of the earth have loved drama and expressed themselves dramatically. I am not certain that the ancient Egyptians were playgoers, and of course there are the Puritans, but apart from mummies and Nonconformists humanity is nothing if not dramatic. A world without drama would be of no use to humanity, and whether we approve of it or no the fact remains that in all popular art, religion and law there is a strong element of drama. Drama, as the Victorian journalist used to say of his wares, "meets a felt want" in human nature.

It is probably for this reason that from the earliest dawn of civilisation we find that justice has seen fit to cast her manifestations in a dramatic form. Even to-day when we think of a trial or a lawsuit we picture it to ourselves in terms of drama, applauding the hero or heroine, execrating the villain of the piece, chuckling at the comedian in the witness-box and

expressing approval of the modest demeanour of the small-part man who walks on to the dim bench and gives the necessary cues to the great actors in the limelight. And as we read the report of a law case we recall the familiar scenery of a court house, the traditional costumes of the characters and that dramatic setting which we inwardly approve of as essential to the administration of justice.

All the earliest lessons in practical justice are taught in dramatic form. They are veritable dramas of the law. Every child rejoices in nursery days—at least I know that I did—to listen to that simple legal drama, with its thrilling Grand Guignol moment and admirable happy ending, so excellently staged for the groundlings by the author of the Book of Kings. Attention and imagination are captured as the curtain rises on the splendid scene of the Porch of Judgment, featuring King Solomon on the throne of justice surrounded by the learned pundits of the law and guarded by the javelin men who preceded him when he went circuit. But it is a drama, not a spectacle, we are to enjoy. Noises are heard “off,” and enter to Solomon two ladies of the Doll Tearsheet persuasion, but with sufficient human nature left in their composition to yearn for the ownership of a baby child. We see at once that we are in the presence of an action at law or legal drama.

The procedure of this simple suit seems much the same as any you will see in an urban county court or police court of to-day. The first woman or plaintiff states her case with shrill volubility and much circumstance. In representation no doubt the scriptural dialogue would have to be extended and suitably adorned with expletives, but the intimate story of the birth of the two children, the death of

one, and the alleged larceny of the surviving infant by the bereft mother, is told in sufficient detail. The second woman or defendant pleads the general issue and denies everything with sullen emphasis.

Then Solomon sums up thus: "The one saith, This is my son that liveth, and thy son is the dead: and the other saith, Nay; but thy son is the dead, and my son is the living." This modern method of repeating the evidence over again in summing up without any effort to lighten the darkness of the problem contained in it is here shown to be of great judicial antiquity. It is also very sound in dramatic construction. It tells the audience over again what they have just listened to, and this is essential in drama to enforce attention to the theme of a play. The mere dullness of the repeated words is masterly, for it leads up to the thrill of the drama when Solomon rises and calls out, "Bring me a sword!"

Solomon,

"His stature all majestic, all divine,

Straight as the palm tree, strong as is the pine,"

brandishing his sword and holding up the squalling infant by one leg, is just about to cleave it in two when a piercing shriek from the real mother stays his hand, and he listens with poised blade to her heart-rending plea that she will accept a non-suit if he will "in no wise slay it."

A more careful reading of the text in later years shows me that I was probably a victim of youthful imagination as to the actual "picture" at the fall of the curtain. Neither Scripture nor Oriental legend supports my vision of the ending of the trial. It seems clear that Solomon, like any modern judge, merely directed his Registrar to divide the estate and give a moiety to each litigant after the court fees were duly paid.

The last act of the drama is certainly ingenious and human. The real mother preferring to lose her child rather than lose its life; the King showing his wisdom in reading the riddle; and the world-renowned tag brings down the curtain with universal applause: "Give her the living child, and in no wise slay it: she is the mother thereof."

It is clear that in this legend we have a very early and remarkable drama of the law, the fame of which still lingers in the world's memory. If we accept the statements of the court historians of the day the effect of the verdict at the time was very striking. All Israel heard of the judgment the King had judged, they liked the sporting character of it and it gained Solomon a world-wide reputation as one who had the wisdom to do judgment. In fairness to our own judges, many of whom are probably at least as good as Solomon, we should remember that under the modern rules and procedure of our courts any such judgment to-day would be reversed in the Court of Appeal on the ground that the alleged mother's last statement was not evidence. To-day we have to conduct the dramas of the law in closer fetters and these Grand Guignol effects are frowned upon in the highest judicial circles. But the story is a striking example of the dramatic form of a legal action and is evidence how great truths are often best advertised to the world through the medium of drama.

An old writer on acting says: "All dramatic fictions please us the more like they are to real adventures and occurrences." This gives the clue to the intense interest that is taken by the general public in a celebrated trial. I cannot agree that this popular desire to read about trials is of a morbid character or that the interest taken in trials is un-

healthy and merely a seeking after unwholesome sensations. On the contrary I think it is natural and sensible. Trials are human documents and contain in their dossiers truths about humanity expressed in a simple form of drama that makes them easily understood of the people.

No doubt when you read a trial, as when you read a novel or a play, you are apt to portray yourself as the hero and follow him even into the dock with personal sympathy. All drama I fancy to some extent reacts or reenacts itself in the audience if it is good drama. That is one of the best qualities of it. Magistrates and schoolmasters seem to think that if a boy reads *Jack Sheppard* he wants to be Jack Sheppard, but that is not at all the truth of it. Whilst he reads no doubt he is Jack Sheppard, just as he has been Jack in the Beanstalk in earlier years, and just as every little girl is Cinderella, and just as every grown-up in his day has been Hamlet. But this spiritual enjoyment of drama does not naturally result in a child or a man making a bodily fool of himself afterwards.

No doubt there are exceptional weak, sensual and feeble-minded persons who should not be allowed to read either truth or fiction. But to normal men and women the study of human nature in recorded trials ought to be a valuable and stimulating exercise.

I remember no book in my father's library that gave me in my school days, in those hours I should have devoted to home lessons, more of the joy of life than George Borrow's excellent collection of celebrated trials. The *Newgate Calendar*, though bloodier and to that extent more satisfying and sensational, did not tell the stories so dramatically. Pitaval and the *Causes Célèbres* in later years I found



too diffuse, but John Hill Burton's *Scots Criminal Trials* are delightful reading, and H. B. Irving wrote with much insight and charm of modern criminals. Although I myself prefer actual records and really enjoy Howell's *State Trials* better than any story made up from that storehouse of social life and history, yet few of us have the time for these things, and books like Borrow's, Pitaval's, Burton's and Irving's are worthily entertaining to the desultory reader.

Because I happened on a library rich in both drama and trials in my early youth I am not urging that all children should be brought up on the *Newgate Calendar*. But I do not believe that the perusal of even that hoary collection of horrors would do any sane boy much harm. I am convinced that both young and old, when they read accounts of criminal trials, approach them with pity and sympathy for the wrongdoers much in the spirit of that good Puritan divine who, when he saw the Tyburn carts making their way westward, murmured in penitence, "But for the grace of God there goes John Bradford!"

It is this strong human interest in crime and trials and lawsuit, that has attracted so many writers of plays and novels to portray these scenes. But to succeed in this endeavour is no easy task. The real facts of these matters are well understood by the populace. Nearly everyone has some first-hand knowledge of trials and law courts, and spectators are unduly critical and alert to expose errors and omissions of ceremony and detail in the mimic scene of a trial upon the stage.

When, however, a really great dramatist puts on the stage a successful story of crime or litigation the audience accept it with greedy appetite and welcome

it with the greater enthusiasm because it is so familiar in its appeal.

Probably the best and most successful drama of crime that the world has taken to its heart is the play which we call *Punch and Judy*. It is a strange truth that this ancient story of crime and execution still remains and is likely to remain a joy for ever to all honest and simple men and women and children. There may exist superior persons who outwardly condemn this candid entertainment and turn up their eyes at the immoral glorification of this callous but successful hero. Yet even these unhappy ones you may on occasion discern at the edge of the crowd on the pitch behind the National Portrait Gallery tortured inwardly by a contest between shame and delight. No nature it seems can really abhor this great drama. The squeak of Punch is a call to humanity.

But one must honestly admit that *Punch and Judy* is a drama of crime of the most hideous and blood-thirsty character. Even Charles Lamb has not attempted to whitewash its black wickedness. Yet with what a chuckle we note our favourite hurl his tender infant from the window, thrash his wife to death with his truncheon, and slay in sequence the negro, the clown, and especially the policeman.

One of the causes of Punch's popularity is perhaps the success he has in evading the myrmidons of the law. Not only does he kill the policeman, but he out-Herods Herod by hanging the hangman by means of a trick, the subtlety of which should not have overpowered a hangman of reasonable astuteness.

Having "done in" the law and the powers that be on earth, he next tackles the Devil himself and finally disposes of that unpleasant personality. By

this feat alone he earned in the religious days of my Victorian childhood my eternal gratitude, and I felt that Providence would forgive Punch the lighter trespasses of his earlier career in recognition of his last splendid service to humanity.

The call that a great criminal like Punch has upon the interest and even the affection of mankind is universal. The Napoleon touch, the boldness, the success of a great criminal make an irresistible appeal to our instinct of hero worship. We keep the lives of the saints upon our shelves, but we burn the midnight oil studying the biographies of sinners. Perhaps it is the very enormity of Punch's crimes as well as his continued and genial success that endears the villain to our hearts.

From Shakespeare to Lewis Carroll we find that nearly every great English author attempts to portray a trial. It would be an interesting critical study to analyse these literary efforts and point out why some writers fail to bring the dusty atmosphere of the court and the scent of its humanity over the footlights. But let us at least offer thanks for the great successes that genius has achieved, since these do much to explain for us what mankind seeks and desires in dramas of the law.

The two greatest trial scenes in our literature are probably to be found in the *Merchant of Venice* and *Pickwick*. Shakespeare deals with his court scene in the most businesslike way, and when the play is well staged—as it was in Irving's day at the Lyceum—from the moment the Duke comes in and takes his seat you feel as though you were at a real trial at the Old Bailey or the Manchester Assizes.

One of the finest Shakespearian portraits in my memory is Henry Howe in the character of the Duke. I had seen him play Antonio, and he was a good

merchant, yet the character is a poor one dramatically, and legally it is contemptible—for what can be more insignificant than a judgment debtor who has run his head into bankruptcy by signing a deed without the advice of his solicitor? You cannot make a hero of such a one. But when Howe took his seat and bowed to the bar, and then left and right to his super-colleagues who silently graced the red bench of the Venetian quarter sessions, one knew that this was a real court of law.

Shakespeare and Howe between them gave you a real judge, dignified and businesslike, calling on the case at once and then putting himself right in a few well-chosen words with the anti-Jew party that leaned picturesquely over the barriers and hooted Shylock until the tipstaff called "silence." You noted with pleasure that the Duke was a judge after the Chancellor's heart, who knew that "patience and gravity of hearing is an essential part of justice, and an overspeaking judge is no well-tuned cymbal." At one moment he puts your heart in your mouth and you think the whole trial may suddenly collapse when he tries to settle the case and asks Shylock: "How shalt thou hope for mercy, rendering none?" Had Shylock jumped at this idea and taken the opportunity to withdraw a juror there would have been no trial. It is really a moment of great excitement in the drama, but the audience breathe freely when they hear Shylock, a typical obstinate plaintiff, decide to go on with the case, sure of victory and determined to ask for costs on the higher scale.

Howe's reception of the eminent "special" from the Padua bar was a model of judicial courtesy. There are some who have blamed Shakespeare for allowing his advocate to talk bad law and permitting his judge to receive it and act upon it. To my mind

this is a real touch of nature. It shows the dramatist at the height of his skill in the construction of human drama. For consider the position. Here we have a judge of first instance; the court itself I take to be some kind of Quarter Sessions Court and very likely the Duke is the unpaid Chairman. Had the counsel been a member of the local bar he would have advised the court that Shylock was in the right. But down comes this brilliant young "special" from Padua backed with a letter from old Bellario—the *bâtonnier* of the Italian Bar—putting forward this point of law on their joint authority. What, I ask you, could the Duke do but listen to it all with grave outward respect? Howe did this to perfection, nodding with grave acquiescence at Portia's worst points, as I have seen a magistrate do when Charles Russell was addressing him. As a drama of the law the whole business is real nature. And if Shylock to-day were a plaintiff in person in any of our own courts of County or Quarter Sessions, with a "special" up against him, I should expect some such procedure and result as Shakespeare portrays.

But whatever we may think of the scene, certainly no actor ever played the judge with more correct accent and gesture than Howe. From the very first you knew that whether he was a great lawyer or not he was a good judge, and you felt sure that he would not waste time, but would finish the case by the luncheon hour and invite the young "special" to feed with him and rejoice over the discomfiture of the wicked defendant. All this is fulfilled and it is absurd to cavil at the kind of law administered by the Duke. For a judge of first instance, overborne by a fashionable "special" from Padua, he gets through very creditably and without spoiling the evening's drama or the lovers' happy ending.

As for Shylock we can always remember that in real life there is a Court of Appeal.

Dickens' trial scene is indeed not only a drama but "a full report of the memorable trial of Bardell against Pickwick." He has given us a pre-Raphaelite painting of a law court, each touch of colour—the piecrust hue of the law calf, the blue and crimson bags—being as accurate as is his description of the scenery of the court. All the characters in the drama are drawn with wonderful comedy and even the juryman who is given a small speaking part helps us to realise the picture.

But every scene in the trial reads as though you were sitting in some real court in dreamland where all the most characteristic incidents in a real trial are brought rapidly and clearly before your eyes in a few moments. How wonderfully true the whole scene is! The splendid eloquence of Buzfuz, the moral indignation of poor Pickwick, the narrow absurdity of Mr. Justice Stareleigh, the adorable irrelevance of Mrs. Cluppins, the degradation of Mr. Winkle and the triumph of Sam Weller—are they not all real living pictures? One can never tire of feasting on the pages of this drama of the law. It is the very household bread of English literature.

Ruskin, in the days of depression when he had a bad cold and wrote to one of the dear ladies of the Thwaite for sympathy and for "the dimmest sort of diabolical pleasure I have in thinking how miserable I shall make Susie by telling her all this," says that he has been trying to amuse himself for three days and "I tried to read *Pickwick* but found that vulgar, and, besides, I know it all by heart." I have always thought that he uses "vulgar" here in a Pickwickian sense, or rather in the original sense in which it is used in the phrase, "our vulgar tongue." Ruskin

could never have been familiar with and taken to his heart a book that was vulgar in an evil sense. This trial scene of Bardell and Pickwick has the sublime vulgarity of the drama of *Punch and Judy*. It appeals to the comic spirit of the common man, and that is doubtless the reason why it will never pass into nothingness but will remain a joy for ever to English-speaking races.

Both these examples of dramatised litigation might very easily be printed in the form of law reports, and with the genius, poetry and comedy eliminated become very humdrum trials. For trials and dramas have many essentials in common. Trials are the raw material of drama, as Robert Browning and many other writers of books have discovered.

It is essential for instance to a trial and a drama that each must have a plot, and this plot has to be illustrated and developed not so much by words as by the action of the characters. Drama should place action first and words in a subsidiary position, a truth too little understood by dramatists, who have always shrunk from sacrificing the offspring of the pen to the action of the play. In a trial words have a worthier part in the proceedings, but the gestures and demeanour of judge, advocate and witnesses are all art and part of the legal drama.

Advocates are popular favourites, regarded by the public with much the same affection that they extend to prize-fighters, jockeys, and actors. From time immemorial advocates have trained themselves to give histrionic displays in the legal dramas in which they were engaged. The bar and the stage have always been kindred professions. Cicero studied the action of *Æsopus* and *Roscius*, the theatrical stars of his day, and many advocates of modern generations have attempted the gestures,

pauses and accents of contemporary actors with varying results. Latter-day fashion is against a too theatrical display, and the modern advocate eschews the histrionics of the old actor, even at the Old Bailey, and seeks at *nisi prius* to attain the supreme unconcern of what may be called the Du Maurier touch.

The art of acting, then, is as necessary to a trial as it is to a drama. Judges, advocates, witnesses, prisoners, ushers and onlookers are all merely players in a legal drama; they have their entrances, their moments of theatrical supremacy, and to the man in the dock his manner of departure is as momentous an affair as the exit of the most self-centred actor on the boards.

Even the dialogue of a trial, which we call evidence, is not so much a matter of improvisation as the world believes. A dramatic attorney, though he does not of course write parts for his witnesses, rehearses them carefully in their proofs to see that they are letter perfect, and like Hamlet strongly urges them to "speak no more than is set down for them." Furthermore, the proud author of a brief will try to write a part for the advocate, but that star artist often rejects the written manuscript, and goes on and gags on his own, a liberty not at all unknown in the modern theatre and a proceeding that often brings about good box-office results on the stage as well as in court.

Perhaps one of the most obvious links of sympathy between the theatre and the law court is their love and use of pantomime, with which both of them achieve some of their most notable effects.

Pantomime, by which we mean a performance wherein the actors express themselves in gestures,



has always had a strong hold on popular audiences. The spoken word may be unintelligible, but appropriate movement speaks a universal language easily understood of the people. Both the Church and the law have borrowed much of their procedure from the pantomimists.

For these geniuses were our earliest actors. The Chinese and Persians and other Oriental races flocked to the pantomimes of their day, the Roman theatres played the "saltatio pantomimorum" to capacity. So popular was pantomime that Augustus was flattered to accept the authorship of this delightful form of entertainment. Mæcenas financed these shows and maybe added to his wealth thereby. Bathyllus, not the Pythagorean philosopher but Mæcenas' comic star and right-hand man, and his pupils, Pylades and Hylas, were pantomimists as honoured by the Roman aristocracy as Arthur Roberts, Dan Leno and George Robey have been beloved by the golden youth of their own generation.

In the more educated middle ages pantomime gave place to the literary drama. And now once again in the second childhood of the world we hark back again to a degraded form of pantomime, and the toothless and tasteless at each extremity of the gamut of life sit in the cinemas sucking lollipops and gaping at human shadows in exaggerated pantomime expressing crude emotions in eccentric yet orthodox gestures. So we find, as our old world rolls on, centuries of achievement discarded and a weary generation finding even human pantomime too exhausting for the intellect and seeking entertainment in the second-hand sensations of a shadow pantomime.

But pantomime of some kind the world insists

upon, and early lawyers would indeed have been negligent had they not adapted pantomime procedure to legal dramas. Thus when land is conveyed Coke tells us that "it behoveth to have livery of seisin," and he gives us in wealth of detail the stage directions of this interesting drama. "The solemnity that the law requireth for the passing of land" may be done, as we should say in theatrical parlance, by pure pantomime or by pantomime with dialogue. Thus you the feoffor may go on the land and take "the ring of the doore or turfe or twigge of the land and deliver the same upon the land to the feoffee in name of seisin of the land," or you may both hold the deed of conveyance and you the feoffor may add congratulatory expressions as you hand the feoffee the haspe or twigge or turfe such as: "Enter into this house or land and God give you joy," a pretty phrase with which to ring down the curtain upon the drama of a conveyance of lands.

There are many varieties of these pantomimes in our kingdom and some are still extant. In the old days, for conveying mills a clap and hopper were the correct properties to use; for fishing, a net and coble; for tithes, a sheaf of corn. But though most of these ceremonies are obsolete, yet once a year, when the sheriffs of London and Middlesex are presented to the Lord Chief Justice, the crier still "makes an oyez" and the senior alderman produces six horseshoes and sixty-one nails and counts them out to satisfy the Remembrancer that they are good number, and so the City still does suit and service to the Crown, as tenants and occupiers of "The Forge" in the parish of St. Clement Danes. And in the same way there is still some drama left when we execute a deed of conveyance and we go through a modified pantomime which Gilbert accurately

describes in verse in *The Sorcerer*, and Sullivan has set to appropriate music.

“*Recit.*—Counsel.

All is prepared for sealing and for signing,  
The contract has been drafted as agreed,  
Approach the table, oh ye lovers pining,  
With hand and seal come execute the deed!

*Chorus.*

See they sign without a quiver, it  
Then to seal proceed.  
They deliver it—they deliver it  
As their act and deed.

Alexis. I deliver it—I deliver it  
As my act and deed.

Aline. I deliver it—I deliver it  
As my act and deed.”

In the office of a musical attorney it would add to the “solemnitie” if this use were always adopted.

And we find that the law as well as the drama makes constant use of certain “properties,” as they are called on the stage, with which to express certain ideas. What a great “property” both on the stage and in the courts is a common hat, capellus, bonnet or other head-covering. Tradition says that Richard I in captivity handed his bonnet (pilleus) to the Emperor Henry VI, and thereby symbolically invested his enemy with his kingdom of England. This was “talking through your hat” with a vengeance! But caps have always had important legal significance. There was the red cap of liberty which was placed on the head of the Roman slave on the liberation morning, the cap and bells of the jester rendering him immune from the penalties for slander, and the statute cap which the English peasant wore on his holidays. These were all “property” caps or caps that were instilled with certain legal properties.

The cap is still a tragic symbol in use in the law when the judge assumes the black cap after the verdict of the jury and sends the prisoner to his doom. This cap is merely part of the judge's full dress and the judges used to wear the cap on November 9th, when the Lord Mayor is presented, and on other State occasions. The use of the black cap on sentence of death may have a Jewish origin, when covering the head would be a sign of mourning.

And what is true of caps is even more obviously the truth about such properties as maces, swords and staves, without which insignia the majesty of the law could never have expressed itself clearly to an illiterate people. The mace, which is a lineal descendant of the club with which the first strong cave man battered his adversaries and then administered home-made law to them, is still carried before our own Lord Chancellor to show that his legal powers are similar to those of his prehistoric ancestor. And in recent history the white staff has at the end of a State trial often been broken by the High Steward before the eyes of modern generations to show to the world that his Commission is at an end.

And leaving the property room for the wardrobe we find that in law as in drama the costume of the actors is of first importance, since the position of the player in the hierarchy of the piece is often stamped on the mind of the audience by the make-up and costume of the performer. Professor Teufelsdröckh made manifest to us a great truth when he asked: "Has not your red hanging-individual a horse-hair wig, squirrel skins and a plush gown: whereby all mortals know that he is a Judge?" The erminous splendour of our judges may not add a cubit to the stature of their learning, but it adds

a flavour to their discourse and is a substantial asset to the dignity of the law which enhances the cause of justice in the minds of mankind.

In the same way it is convenient that the small-part men, the barristers; registrars and ushers, should have some distinctive dress that may notify their degree and authority to the eye. Even a solicitor, if he casts himself for a speaking part in some suburban fit-up of a county court, does well to adorn himself with a distinctive gown lest he be mistaken for a judgment debtor and be in danger of committal.

And the great traditions of costume hold the stage in their grip as firmly as they hold the law. For if you read the history of Harlequin you will find that the evolution of his motley is as certainly traceable to the dawn of dramatic art as many details of a judge's robes are referable to the early days of the law when chancellors were princes of the Church. The basic idea of both professions being to use dress as an outward and visible sign of the position of the particular person in the drama that is passing, and to let the audience know at the sight of a character whether the actor is meant to be judge or clown, registrar or pantaloon, advocate or harlequin.

Scenery, too, is as important to a legal drama as it is to a theatrical play. The set is common form. It can be made up from the store, using the familiar "oak chamber" as the base of the affair and concluding the business with a few packing-cases draped in red cloth. In some such fit-up I have myself sat in remote county courts. If the scene be a law court there must always be a bench for the judge to sit upon where he is raised above his fellows, there must be a box for a jury, another box for the witness and a pen for the lawyers. These things

are of the essence of the matter, arrange them as uncomfortably as you may.

In the old days if you liked to deal with your drama from its earliest commencement you might have a scene within St. Paul's where the Serjeants met their clients at their allotted pillars at the parvis or outer courtyard of the church.

Chaucer tells us of

“A Serjeant of the law, ware and wise,  
That often hadde ben at the parvis.”

There they stood for hire for many a long year. Later you might see them pacing the cloisters in the Temple, which are still with us, and up to our own time the lawyers congregated in Westminster Hall, as I have seen them myself, engaged in consultation with their clients. All these places have been scenes in the first act of many a remarkable drama of the law. But in modern drama we have no Rialto and are driven back to the “oak chamber” again, and furnishing it this time with a dummy bookcase and a desk with some tin boxes and briefs and a telephone we start our play in a solicitor's consulting room or a barrister's chambers.

And though costume and scenery are art and part of a legal drama yet I cannot say that we lawyers have ever made much use of music. Like the Théâtre Français we have no orchestra, though we do not open our play with a dull thud behind the scenes, but make use of a herald of sorts to “make an oyez” and announce the coming of the judges. On some circuits they still retain the trumpeters. I remember a witty musicianer on the Northern Circuit who trolled out “Home, Sweet Home” as the judge rose for the long vacation and even ventured on “We're a' noddin'” when their lordships returned

to court after the luncheon interval. I have known a clerk of assize who intoned the oath and arraigned the prisoners in recitative, but like the ancient serious drama we have never treated music as a necessary ingredient of our practice nor have we garnished our dramas with irrelevant tunes.

It is greatly to be regretted that we have lost much excellent drama in our legal proceedings and replaced it by a verbose and less intelligible procedure. What could have been better in the old days than the wager of battle? How sane it would be if the County Court Rules Committee adopted the rubric of the *Second Part of King Henry VI* and then we could enjoy the sight of Horner *v.* Peter each with staff and sandbag thrashing the matter out in the good old way. Horner and Peter of to-day "barging" at each other with their tongues make no better job of it than they did with sandbags, and are far less edifying to the onlookers.

I have endeavoured to show that there is a real analogy between trials and dramas because in reading reports of cases I have always found myself from my earliest days making dramas of these stories for myself. There is generally some outstanding character in the dramatis personæ of a trial, not necessarily a party to the suit, round whom the story of the piece seems to revolve. These essays make no claim to be law reports or legal chronicles, but are merely human stories of recorded trials. It was in the reading of the original authorities that they seemed to group themselves under the description of Dramas of the Law, but they are, as far as their form permits, records of fact.

## CHAPTER TWO

### CONCERNING TRAGEDIES

- I. LADY ALICE LISLE. 2. WILLIAM TERRISS. 3. DR. KENEALY. 4. THE SANDYFORD MYSTERY

THERE are countless tragedies recorded in the law reports, but one does not find among the *dramatis personæ* of the legal drama many great outstanding tragic figures akin to Lear or Macbeth. The tragedy in which a man is throughout at issue with fate is not completely played out in the law courts, though the last act is often staged in the court house or on the scaffold. The tragedies of Lady Jane Grey, Anne Boleyn, Laud, Russell, Raleigh and many other historic victims of injustice and cruelty are a heritage of memory common to all.

The tragedies I have chosen are less prominent but not less poignant. The trial of Lady Lisle is an object lesson in judicial infamy, as well as an historic tragedy. The Sandyford Mystery is a drama that in its day aroused a fever of controversy, whilst to my mind the fate of poor Kenealy, ruined through mistaken loyalty to a scoundrel client, is one of the saddest pages in the history of the Bar.

#### I. LADY ALICE LISLE

H. B. Irving's ingenious effort to whitewash Judge Jeffreys was scarcely a success, but he was



essaying the impossible. It was as if Lot had attempted to turn Sodom and Gomorrah into garden cities.. Judged by the standards of his own day the man was a blackguard, and he carried his blackguardism on to the Bench and used it with joyful servility to please those from whom he expected advancement.

When he set out on the Bloody Assize he set out to enjoy himself, and in spite of a painful attack of the stone he seems to have supped his fill of bloodshed and bullying, and earned from James II, his worthy employer, the guerdon of the great seal.

That James and his faithful "man Friday" should have decided upon the judicial murder of poor Lady Alice Lisle seems to an ordinary human being unburdened by strong political and religious hatreds an almost impossible horror. But H. B. is right in admitting that "her fate had been determined before Jeffreys left London." It was thought that the savagery of it would strike terror into the opposite political party, so lovingly do weak unprincipled men hug the idea to their hearts that brutality is evidence of strength.

Jeffreys had examined one Nelthorp, a refugee and a party to the "crime," before he left London, and fully primed with the case for the prosecution he rode down to Winchester to open his campaign by convicting Lady Alice out of hand.

Lady Alice Lisle was a widowed lady of seventy years, of "gentle birth," as the older novelists used to say. She lived at Moyles Court on the edge of the New Forest, near Ellingham, in the valley of the Avon. She had taken no part whatever in the Rebellion and had been visiting in London when it took place. True, her husband years ago had been active on Cromwell's side, had fled to Lausanne and

been murdered there by Royalist mercenaries. But during the late reign Lady Alice, who had never been a political woman, had behaved with becoming loyalty and in this very Monmouth rebellion her loyal son had fought for King James. She was spoken of on all hands as a charitable Christian woman, a good neighbour to the poor, and in those troublous times had offered relief and hospitality to distressed Royalists and persecuted Nonconformists alike, remembering the word of the Master: "Inasmuch as ye have done it unto one of the least of these my brethren ye have done it unto me." This was the woman that in August, 1685, the Right Honourable Sir George Jeffreys, Lord Chief Justice of England, set out to destroy, to pleasure his lord and master, the illustrious James.

The story of the "crime" is soon told. One John Hicks, a Nonconformist minister, had been with Monmouth, and after the defeat at Sedgemoor had fled east as far as Warminster. Here he was taken care of by Dunne, a local baker, who sheltered him with his companion, Richard Nelthorp, a lawyer already outlawed for his share in the Rye-house plot. Hicks, as a minister, was probably known to Lady Lisle, and on Saturday, July 25th, he sent Dunne across country, via Chilmark, Fovant and Salisbury Plain, to see if she would give him shelter. Dissenting ministers in that day were often flying from the wrath of their brother Christians, and there is no evidence that Lady Lisle knew he had been with Monmouth. It seems also clear on the evidence that she had no idea who his friend Nelthorp was.

Unfortunately Dunne, when he got as far east as Salisbury Plain, did not know his way to Ellingham, and the road is no easy one to find across Fovant Down and Grim's Ditch to this day. He therefore

gave a fellow named John Barter half a crown to go with him, and this man overheard that Lady Lisle would receive her guests on the Tuesday. Dunne returned to Warminster and on Tuesday piloted his friends across by a somewhat different route to Moyles Court, where they arrived late at night and were given food and shelter.

Barter, being a loyal subject and having his suspicions about Dunne and his visit, went on Monday morning to Colonel Penruddock, who took some soldiers on the Wednesday and arrested Dunne, Nelthorp and Hicks and the lady of Moyles Court. Nelthorp was taken to London, Hicks was sent for trial at Taunton, and Dunne was used as a witness. Lady Lisle remained in the county jail at Southampton awaiting her trial on a charge of high treason.

The difficulties in the way of a conviction were twofold. In the first place there was a legal difficulty. Until Hicks had been convicted of treason himself it was very doubtful whether Lady Lisle could be convicted of treason in harbouring him. Lady Lisle had in those days no counsel to assist her in arguing this point. Jeffreys of course was the last man in the world to remember his duty to the prisoner in setting it out. It was left to the jury to raise their doubts on the subject, which the Chief Justice laughed to scorn, saying: "there can certainly be no doubt," though he well knew to the contrary. The matter was one of the gravest doubt and the prisoner was probably entitled to be acquitted on legal grounds alone.

But the second and chief obstacle was the hostility of Dunne, the witness, for unless he would say he had told Lady Lisle that Hicks had been with Monmouth there was no evidence that she knew

she was harbouring a rebel, for no charge was brought against her about Nelthorp, it being clear she knew nothing about him.

The drama of the case is to be found in the long dialogue between Jeffreys and Dunne, in which the judge breaks down the reticence of the witness by a masterly and powerful display of bullying, cajolery and threats.

It is a summer morning. The scene is set in the Assize Hall at Winchester. Alice Lisle, frail and old, is supported into the dock and holds up her trembling hand to listen to the long indictment charging the poor dear Christian woman with being "moved and seduced by the instigation of the Devil" to become a false traitor to that illustrious prince, James the Second. The old lady is deaf, and one Matthew Brown is allowed to stand by her and inform her of what passes in the court. She is said to have followed the proceedings with difficulty and to have slept through much of the trial, for she was comatose, old and infirm. When the poor woman tried to make a remark and informed the jury that she "abhorred that rebellion as much as anyone," Jeffreys was prompt to interrupt her with a long tirade on procedure, promising that she shall be fully heard "later on," a moment that never arrived.

But it is when the wretched Dunne enters the witness-box and Jeffreys braces himself together to give him, in his own boastful phrase, "a lick with the rough side of his tongue" that the grim drama really begins. Like the immortal Squeers, who began his half-yearly interview with his boys by mildly remarking: "Let any boy speak a word without leave and I'll take the skin off his back," Jeffreys was fond of thoughtfully explaining to a witness his true position.

Old Pollexfen for the Crown introduces Dunne as a hostile witness and "humbly desires his lordship to examine him a little the more strictly." Dunne is under no delusion as to his position. They may if they wish put him in the dock and hang him. They may if he does not give evidence to their liking convict him of perjury and whip him at the cart's tail in every market town in Hampshire. Such things have happened. And then, if his tongue slips and he betrays the innocent, how can he live and face his fellow-men and when his last hour comes die in his bed in peace?

Whilst these things are passing through his mind the awful figure of the judge in his red robe is bending to him with smooth courtesy at first: "Now mark what I say to you, friend. I would not by any means in the world endeavour to fright you into anything or any ways tempt you to tell an untruth," but remember among other religious precepts "that God of Heaven may justly strike thee into eternal flames and make thee drop into the bottomless lake of fire and brimstone if thou offer the least from the truth." And for fear this terror should be a little remote he adds in louder and more searching tones: "I assure you if I catch you prevaricating in any the least tittle—and perhaps I know more than you think I do—no, none of your saints can save your soul, nor shall you save your body neither. I will be sure to punish every variation from the truth that you are guilty of." He was more verbose than Squeers, but the spirit of the man was the same.

It was an encouraging beginning for poor Dunne, but for a while the man held his own. The examination continues through the long afternoon. When Dunne tried to escape from the ingenious

traps set for him by the Lord Chief the latter would explode with blasphemous asides to the jury.

“Jesus God!” he would shout out, “there is no sort of conversation nor human society to be kept with such people as these are who have no other religion but only in pretence.” And again with a sneer he would turn to the jury and say: “You see, gentlemen, what a precious fellow this is, a very pretty tool to be employed upon such an errand, a knave that nobody would trust for half a crown between man and man.”

John Barter was set up against him and their evidence taken in a sort of disjointed duet. It was at this stage that Dunne let fall a phrase to the effect that Lady Lisle had asked if Barter knew anything of the business he was on. Jeffreys seized upon the unfortunate word. “What business was it that Barter did not know of?”

“I cannot give an account of it, my Lord,” falters the poor wretch.

“Oh, blessed God!” thunders my lord in a towering rage. “Was there ever such a villain upon the face of the earth?”

Long tirades break over the head of the unhappy Dunne, who remains silent or utters evasive replies. Barter is put up to contradict him. Penruddock is called to speak to finding him in the house. The judge calls on the King’s Counsel to note Dunne’s demeanour and see they prefer an indictment against him for perjury and the afternoon passes into twilight and the summer sun goes down, yet Dunne remains for the present firm in denials or respectfully evasive. “Dost thou think thou canst banter with me such sham stuff as this?” yells out the learned judge. “Hold the candle to his face that we may see his brazen face.”

The tipstaff here holds a candle near his nose. As strange a stage direction in a legal drama as ever judge gave! Dunne mumbles out, "My lord, I am so baulked I do not know what I say myself; tell me what you would have me say, for I am cluttered out of my senses."

But this was more than even Jeffreys dared to take upon himself, and Dunne was removed whilst they took other witnesses.

Later on, as they sat into the night, Mr. Ramsay, one of the Crown Counsel, comes forward and says Dunne has agreed to tell all. What pressure of threat or reward had been made outside no one can now say. So in the dim candlelight enough is said to prove the case for the Crown. Poor Lady Lisle makes what defence she can and is continually interrupted by the impatient judge, who winds up a lengthy and dishonest address to the loyal jury with a careful reminder that the husband of the lady in the dock had a hand in the death of that blessed martyr, Charles I. With this parting irrelevance he bids them consider their verdict.

Three times did the jury brave the terrible judge with their difficulties and proposals of acquittal, and three times did he send them away, marvelling at their obduracy and threatening to lock them up all night if they did not hurry with their business.

At last they, too, cluttered out of their senses, agreed and came forward with their verdict.

In the dim court, lighted by guttering candles, the wretched old lady, roused from slumber, stood at the bar holding up her hand.

"Is she guilty of the treason whereof she stands indicted or not guilty?" asks the Clerk of Arraigns.

"Guilty," murmurs the foreman.

"Look to her, jailer, she is found guilty of

treason," says the clerk, turning to the dock, "and prepare yourself to die."

"If I had been among you," sneers my lord, "and she had been my own mother I should have found her guilty," and he adjourns to his lodgings for supper.

The next morning sentence is pronounced according to law and Alice Lisle is ordered "to be drawn on a hurdle to the place of execution where your body is to be burnt alive till you be dead." But this was insufficient for Jeffreys, who ordered the sheriff that he was to prepare for her execution that very afternoon, adding that she might have pen, ink and paper, and if during the two hours he remained in the town she employed them well some respite might be made. Whether this was intended to suggest a bribe of some kind or a confession implicating others is not clear.

The poor old lady wrote nothing and prepared for death. The cathedral clergy begged the judge for a few days' respite and obtained it. Later on, with great difficulty, the King was persuaded to alter the prescribed method of death to beheading, and on Wednesday, September 2nd, Lady Alice Lisle was executed on a scaffold set up in the market-place of Winchester.

She made no speech but handed a paper to the sheriff. H. B. Irving omits her farewell to Jeffreys, which should, I think, be preserved as a beautiful and resolute example of Christian charity. "I have been told the Court ought to be counsel for the prisoner, instead of which there was evidence given from thence; which, though it were but hearsay, might possibly affect my jury. My defence was such as might be expected from a weak woman: but such as it was I did not hear it repeated again to the



jury. But I forgive all persons that have done me wrong and I desire that God will do so likewise."

## 2. WILLIAM TERRISS

The tragedy of the murder of this fine actor upon the threshold of the stage is not only a sad and terrible story but it puts before us as a legal drama the problem of the treatment of the insane, and raises the question how far it is right that a man of anti-social habit should be allowed his full liberty and when he has slain an innocent victim be heard to say by way of excuse that he is not in his right mind.

It would probably be a wise reform if the question of the insanity of a person charged with a crime was tried out and settled by a strong committee of medical and legal experts before the actual trial for the offence, and not left to a jury of laymen as it is to-day.

For not only are jurymen unfitted by experience and education to decide a scientific question of this kind, but the very form and substance of the question itself is a matter of dispute and doubt between the professors of law and medicine.

The lawyers have long had a clear definition of what they mean by insanity. A judge will tell the jury that it must be clearly proved that at the time of committing the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing. This seems more or less clear and easy to understand. The medical definition of insanity carries us much further. Doctors consider that a man who is a victim of mental disease may know that a certain act is wrong and punishable by law, but an insane impulse arising

perhaps but not necessarily from delusion may overcome self-control, and an insane man may commit a crime, not because he does not know that he is thereby doing wrong, but because he cannot prevent himself doing it. The somewhat flippant answer of law to medicine on this subject is, "Would the criminal have done the deed if a policeman had been at his elbow?" It is a practical test.

To allow a human being to escape punishment for crime by pleading loss of self-control opens the gates of the dock from a lawyer's point of view far too widely and allows many real criminals to escape from justice. As a great scientist wrote: "There is a borderland between crime and insanity, near one boundary of which we meet with something of madness but more of sin, and near the other boundary of which something of sin but more of madness."

This truth was never better exemplified in any case than in the trial of Richard Arthur Prince for the murder of William Terriss in 1897. It is no exaggeration to say that William Terriss was at the time of his death the most popular actor on the London stage. The public had taken him to their heart. As Miss Ellen Terry says of him: "He was one of those heaven-born actors who, like kings by divine right, can up to a certain point do no wrong." For myself, as one of the audience, I should have omitted the words "up to a certain point." Terriss had the sense of the theatre so strongly imbued in him that he knew to a hair-breadth what his "certain point" was, and he never strained to reach the impossible.

I think the first part I saw him play was Squire Thornhill, at the Court, in the *Vicar of Wakefield*. Ellen Terry was Olivia, and Hermann Vezin, that admirable actor, played Dr. Primrose to my mind far

more effectively than did the chief himself when he revived the play in later years at the Lyceum. I think from the pit of the Lyceum we followed Terriss in his varied triumphs with as deep interest as we did Irving himself. His *Château Renaud* in the *Corsican Brothers* was a sound and excellent vintage of theatrical aristocracy. In *Cassio* I remember he struck a new note which endeared him further to our hearts. He made the Moor's lieutenant a picturesque figure, gallant and noble in his bearing, a natural friend of the great general, and his very weakness was almost amiable. *Mercutio*, too, was another portrait that dwells in the memory. He, too, was a very gallant gentleman. Little did we think when the actor fell back into *Benvolio's* arms crying, "I am sped. Is he gone and hath nothing?" that this was to be the real end of his own drama.

In the year 1897, though nearly fifty, Terriss was in the prime of life, strong, vigorous and alert and at the zenith of his theatrical career. He had captivated his audiences in pieces like *Harbour Lights*, in which you saw the ideal sailor man of *Marryat* and *Kingston* filling the stage with breeze and sea spray, and at the moment he was playing in an excellent melodrama, *Secret Service*.

Some years ago there had been at the Adelphi a super or small-part man who had appeared in *In the Ranks* and similar plays. He called himself *William Archer* or *William Archer Hunt*, but his real name seems to have been *Richard Arthur Prince*. He came from *Dundee*, where he had been an engineer's labourer. He was stagestruck as a lad and was a super at the *Dundee Theatre* in early life. Then he emigrated to *London* and got a small part at the *Adelphi* and toured in the provinces. He never

seems to have been an efficient actor and hardly rose above the grade of "super."

For many years this fellow seems to have nourished a hatred of Terriss. He was a vain, eccentric man and would stand at the wings watching the leading actor and muttering to himself, "Fools often succeed when men of genius fail." He certainly suffered from a delusion that he was a great actor, but this is not in itself evidence of insanity. But he deluded himself into the idea that in some way or other William Terriss stood in his way and hindered his advancement and kept him out of employment. There was of course no truth in the notion, and as a fact Terriss and many others had given the man money, and Terriss had himself stretched a point in the man's favour and written to the Actors' Benevolent Association to persuade them to help him. In so far as Terriss interfered with his career it was wholly as his benefactor.

In December the man was out of work and was constantly haunting the stage door of the Adelphi and making a nuisance of himself by his importunity. About a month before the actual murder he had bought a long, thin-bladed butcher's knife with a wooden haft. This he used to carry about, and there is no doubt that he had for some time premeditated the murder. He had been heard to threaten Terriss and he had threatened others to whom he took a dislike. Such people are unpleasant but not uncommon. On the evening of Thursday, December 17th, William Terriss and a friend came down in a hansom to the corner of Maiden Lane. Terriss walked to his private entrance to the theatre and took out his key to open the door. The assassin, who knew his movements well, was lying in wait for him and as soon as his

back was turned came up to him and stabbed him under the left shoulder-blade. He stabbed him at least twice before the actor fell to the ground, and was arrested after a short struggle with the bystanders and the police.

Doctors were summoned from Charing Cross Hospital and everything was done to save the life of his victim, but the man had planned the thing too well. He had struck to kill and had achieved his object. They carried the actor into the doorway of the theatre, but within a quarter of an hour or twenty minutes after the blow he had passed away. The curtain was just about to rise upon *Secret Service*. The manager went forward and explained that there could be no performance, and as the audience filed slowly out into the Strand they learned to their horror and amazement that their favourite actor would never tread the stage again.

The assassin was taken to Bow Street. Like all criminals he seemed vainly pleased with his success. He explained to the police that he would not attempt to run away, and no doubt was glad to be safely in their hands, as the mob that quickly gathered together were very threatening and would gladly have lost their self-control in dealing with the fellow. At the police station he said of his victim: "He has kept me out of employment for ten years; I had either got to die in the streets or take my revenge." When he handed the police the knife he remarked: "That is what I stabbed him with," and he continued to complain that Terriss had that very day prevented his getting assistance from the Benevolent Fund. This was of course absolutely without foundation.

His trial came on before Mr. Justice Channell early in January, 1898, and his advocate raised the

defence of insanity. A good deal of evidence was given to show that he had always been looked upon as more or less of a madman. He had threatened many people, including Mr. Elliston, in whose touring companies he had acted, writing him foul and offensive letters, calling him "Judas" and "hell-hound" and other wild and whirling epithets.

But if the writing of filthy epistles was always held to qualify the author for the asylum the acreage of these institutions would have to be enlarged. One of the minor evils of education is the temptation it seems to offer to a low type of humanity to read and write obscenity. Prince was foul-mouthed and handled a dirty pen when he was angry. But whilst in jail he wrote some shrewd and sensible letters to a friend, and in one of these he says: "I must see a doctor. I should like one of the best in London." He was quite sane enough to know that his best line of defence was to prove that he was insane and he was well aware of the value of good medical evidence to attain the verdict to which he looked forward.

There was some testimony that pointed to the fact that at times his mind failed him. A Newcastle manager related how he had given him a small part and found that he was unable to learn the words. Family evidence that he was passionate, ill-tempered, noisy and vain was readily forthcoming. It was said that his fellow-men in the engineering works regarded him as "soft" and teased him, and he had gained the sobriquet of "Mad Archer" in the theatre.

The doctors who were called were unanimous that the fellow was insane. They described him as excitable, incoherent in conversation, with a mind saturated with delusions of persecution. He showed no remorse and persisted in regarding what he had

done as an act of justice. This from a medical point of view seems of great importance, but to a lawyer it concludes nothing. Absence of remorse is a very common trait in all assassins. Brutus justified himself with the phrase, "Ambition's debt is paid," and the practical Lady Macbeth sets aside her troubles with the very sane observation: "Things without all remedy should be without regard." Macbeth, however, was full of remorse. It would be interesting to hear the opinions of the alienists on the comparative sanity or insanity of these characters, judging from their overt acts and spoken words before and after the murders.

Asked by the judge if he considered it made any difference if he thought the prisoner had premeditated the crime, the medical expert replied: "No, because insane persons do premeditate." He thought the prisoner had bought the knife with intention to kill Mr. Terriss and knew that he was assaulting him, but that he was mentally affected and harboured delusions until, being of weak brain power and weak control, he acted under these delusions, and in this sense he did not understand the quality of his act.

The case was left to the jury in the proper legal form, and their verdict was a very sensible one. They returned into court and their foreman gave their verdict in these words: "We find the prisoner guilty of wilful murder. We say he knew what he was doing and to whom he was doing it," and then they added, "but on the medical evidence that he was not responsible for his actions."

This was interpreted to mean that the jury found that he was not responsible at law for his actions, but the form of words they used showed that in their view as citizens the man had committed the

crime of murder and knew very well what he was doing, and should be punished for what he had done, but they felt bound to accept the medical opinion and give effect to it.

No doubt it is right and wise that in a case of this sort the medical view should prevail, but it does not seem consistent with the sacred dignity of the office of a jury to ask its decision on a fact of this nature unless that decision is intended to be accepted and acted upon. The jury did not find in fact that Prince was insane and not responsible for his actions, they only found in fact that the doctors had said so, and that the lawyers seemed disposed to accept their view.

### 3. DR. KENEALY

Had Dr. Edward Vaughan Kenealy been defending a victim of persecution, as he imagined in his heart of hearts he was doing, he would still as an advocate have been wholly unjustified in many things he said and did in his defence of Arthur Orton, the Tichborne Claimant. But before his brother members in the profession decided to cast him out from among them they should have been satisfied that the advocate had been guilty of something that was really dishonest.

The charge against him was that he put forward a perjurer named Jean Luie as an honest witness, knowing him to be a liar. The circumstances of his calling this witness are worthy of careful consideration. Many of his learned and honourable friends at the Bar, men like J. J. Powell, Q.C., of the Oxford Circuit, my father, Serjeant Parry, and others never believed that Kenealy with all his faults was guilty of any dishonest act. No one can read the story of the end of his career without tears of pity. A



profoundly religious man, a great scholar, a lawyer and advocate of standing, at the age of fifty-four, with a family dependent on his earnings, he was suddenly deprived of his right to practise his profession and thrown upon the world.

It was a sad day for Dr. Kenealy when he accepted a brief to defend the Claimant. It was a quixotic mission to undertake and Kenealy was utterly unfitted for the task. His first blunder was to believe in his client. To the day of his death he held firmly and honestly to the opinion that the Claimant was none other than Roger Tichborne and he expected that the real Arthur Orton would some day reveal himself and Sir Roger be released from jail.

He was tactless, prolix and filled with a burning zeal for what he considered a just cause. What he conceived to be his duty to his client sanctified for him the gravest lapses from the clear duty of an advocate. He insulted the judges, quarrelled with his brethren and wearied the jury with senseless repetition in spite of their continued protests against his waste of their time.

No advocate could have acquitted Arthur Orton, but skilful advocacy might have hoped to have gained a disagreement of the jury. Dr. Kenealy made conviction certain. He was guilty of every possible indiscretion, but I have never been able to convince myself that he acted dishonestly in anything that he did, or that he was treated with justice by the Bench that disbarred and ruined him.

It was known that he was suffering from disease and was doing his work under a great mental strain. Those who knew him well believed in his integrity and pardoned his gross errors as being committed out of misplaced zeal and enthusiasm. His brethren might have shown the unfortunate man more mercy.

It is true he insulted the judges ; but the judges had full power to take care of themselves. He had conducted his case with irrelevance and wasted days of valuable time ; but, alas, that has been done by counsel before and even since. He had outraged his fellow-barristers' feelings by shaking hands with Arthur Orton after his sentence. But put yourself in his place. Remember that Kenealy firmly and honestly believed that the man was Sir Roger Tichborne and the cruel victim of injustice, and then that handshake has something honourable, even heroic, about it. At the worst the gesture was only an error of taste.

It is not easy to agree that Kenealy so badly overstepped Lord Brougham's maxim that "an advocate must defend his client at all hazards" that he deserved being unfrocked by his fellow-advocates. The only charge which, to my mind, could justify the extreme penalty of depriving Kenealy of his livelihood and disgracing him in the eyes of the world was the suggestion that he had been guilty of dishonourable and even criminal conduct in asking the jury to treat Jean Luie as a witness of truth when he knew he was a perjurer. Kenealy always said that he did believe in Jean Luie at first and that when he was proved to be a liar he at once gave him up.

I am not clear that he gave him up as soon as he should have done, but I am quite satisfied that he believed in Jean Luie at first as firmly as he believed in Arthur Orton to the day of his death.

"Should the rest of the world think the Claimant a dodger, Lady Tichborne declared him her dear son Sir Roger."

Dr. Kenealy was of the same opinion and for the same reasons. He was a man of abnormal tempera-

ment, and held mystic religious views, deeming himself a "Messenger of God." And when he heard that a sailor had been found who had picked up Sir Roger Tichborne in the ocean, and was ready to say so, it came to him almost as a message in answer to prayer.

The enormous importance of Jean Luie's evidence can only be understood by remembering the position of affairs when he came forward. The Claimant was on his trial for perjury and things were going badly with him. There were still large numbers of people who believed him to be Sir Roger Tichborne. The Crown pinned their faith on the theory that the Claimant was Arthur Orton. Now there was no manner of doubt that Sir Roger Tichborne had sailed from Rio in April, 1854, in the *Bella*, which disappeared and, as far as was known, no one who had sailed in her was ever again seen alive.

The Claimant, to account for his existence as Sir Roger, had told the tale that he had been saved in a small boat which had been picked up by a vessel called the *Osprey*, which carried him to Australia. At the civil trial in which he endeavoured to oust the Tichbornes from their estates the Claimant had told this story in circumstantial detail, but he had not been able to call any witnesses to prove the truth of his statement. When he was put in the dock and tried for perjury it was clear that, if he could prove that he had in fact been rescued by the *Osprey*, then he could not possibly have been Arthur Orton and it was not improbable that he was Sir Roger Tichborne and, in any case, if the jury believed the story of the rescue the Claimant would certainly have been acquitted of perjury and been a free man again.

You can imagine the excitement and stir in court when Dr. Kenealy announced, on August 8th, 1873,

in his speech for the defence, that he was going to call a "person belonging to the *Osprey*, which took up the shipwrecked sailors of the *Bella*." He gave no name of the witness, but in answer to the Lord Chief Justice said the *Osprey* was an American ship from the port of "New Bedford," and announced that "the witness is a witness of truth that will dissipate a great many of the mists and clouds and delusions that have unfortunately existed with reference to this case." The delusions, unhappily, were Dr. Kenealy's and the Crown was put to great expense in removing them, for Jean Luie was as big a liar and scoundrel as Arthur Orton himself.

Jean Luie was called on October 14th. The friends of the Claimant were full of triumph and openly applauded the rascal in court. It must have been a unique experience for the Claimant to listen to this strange romancer detailing the lying story he had himself invented and adding picturesque particulars of his own. The witness certainly looked the part. He was a rough, open-featured, bearded, weather-beaten fellow who might well have sailed the blue ocean and brought home strange adventures.

The tale told by Jean Luie had the appearance of being a very honest story. He was, he said, a native of Denmark, and steward of the *Osprey* in 1852. He went to Rio in 1853 and there saw a Captain Brown. In February or April, 1854, he sailed from Staten Island, New York, on a voyage to Melbourne. It was during that voyage that they picked up a boat containing six men in dire distress. Four of these were delirious and the two who still kept their reason, Jarvis and Lewis, were feebly paddling the boat. They were lifted on board the *Osprey* and it was found that one of them was not a sailor but a

gentleman on whom he, Luie, as steward, attended until they arrived at Melbourne, which they reached in July, 1854. He thought the gentleman called himself Rogers, but he lost sight of him and never saw him again until he recognised that the Claimant was the very man who had been rescued and had sailed with him in the *Osprey* to Melbourne.

He gave full details of his career up to 1873 and said that in that year he came over from America in a vessel called the *Circassian* and had gone to Belgium to look after his wife, who had deserted him, and on July 5th, coming to London, he heard someone talking about the Tichborne trial, and it was mentioned that the Claimant had told this story about the *Bella*. At once Luie remembered the rescue on the *Osprey* and the man Rogers. He must in justice to this poor fellow get in touch with him. He tried to meet the Claimant and after a while found his solicitor, Mr. O'Brien, to whom he made a statement; he was taken to Mr. Whalley, a barrister and a magistrate who was a firm and consistent believer in the Claimant, and by him was triumphantly carried off to Bessborough Gardens to see Sir Roger. As soon as they meet, the Claimant addresses his old attendant in Spanish, "Como esta Luie!" The honest sailor is no less backward in memory and respectfully recalls the incidents of his life on board the *Osprey* when the Claimant passed as Mr. Rogers.

No one could hear the bluff fellow's story without being deeply affected. One could see him in the mind's eye twenty years ago tenderly lifting the delirious Mr. Rogers on to the deck of the *Osprey* and carefully tending him and nursing him back to health. And once again, so strange are the ways of Providence, when Mr. Rogers is standing in the dock surrounded by enemies and calumniators and on the

verge of going down in a more disastrous wreck than that of the *Bella*, here from out of the void comes this good sailor man to throw a rope of honest testimony, as it were, to the rescue of a fellow-creature overwhelmed by waves of prejudice and falsehood.

It was a dramatic moment, and to a man of high-strung imagination like Dr. Kenealy, with his incurable belief in the Claimant, it must have appeared as if the dawn of triumph was at last breaking through the grim mists in which he had been struggling to find light.

But the Crown counsel were not prepared to accept Jean Luie without the most searching investigation. Adjournments were granted and inquiries were made. Witnesses were called and, bit by bit, Jean Luie was picked to pieces and put together again, and the true story of him became known. The recital of it must have seemed a grim miracle of judgment to the simple Luie as he heard every detail of his career docketed and repeated that the jury might know what manner of man he was.

Jean Luie, a name of almost Stevensonian savour, and so entirely consonant with kindly stewardry, was but his theatrical name. Vanity and conceit were his ruin. The popular sailor man was photographed and his picture sold in thousands, to his great delight. The camera was his betrayer. Some prison warders saw his photograph and recognised an old friend. They went to court and had a look at him. The game was over. The fellow's real name was Carl Peter Lundgren and he was a native of Gothenburg. In 1852 he was a master of a vessel called the *Isabella*, and in 1853 he entered the service of a Swedish merchant at Hull as water clerk. Here he remained during 1853 and 1854. At the very

date that he swore he was on board the *Osprey*, on another voyage from Staten Island to Melbourne, the detectives had actually found a document signed by Lundgren himself, bearing date Hull, October 7th, 1854, which put the matter beyond doubt.

He then went to Cardiff and later, on April 2nd, 1855, he was married at the parish church of Melksham, in Wiltshire, and the register was there to prove it. Then he started on a sad voyage indeed, for it was discovered that in 1862 he was arrested for a criminal offence, convicted at Bristol and remained in jail until 1865. It was in 1864 that he said he had seen the captain of the *Osprey* in New York, but in truth and in fact he was at that time walking round a wheel in a common prison. In October, 1865, he was again in custody at Newcastle and remained in prison until July, 1866. He was in London in 1867 and in October of that year was sentenced to seven years' penal servitude. He remained under lock and key until 25th March, 1873, when he was released at Chatham on a ticket-of-leave. He was broke to the world and was living on borrowed money when on July 7th he presented himself at the Claimant's solicitor's office at 2 Poets' Corner. That was the true story of Jean Luie.

The scoundrel had heard talk of the Claimant's case and the way in which it was being got up and scented money in the job. He threw himself in Mr. Whalley's path at Brussels and told him the tale about the *Osprey*. Whalley jumped at the fly and swallowed it whole. He sent him to O'Brien, the Claimant's solicitor, who told the Claimant of it. Of course Arthur Orton expressed his delight at the find and the two ruffians met and must have winked the other eye at each other over the simplicity of their dupes.

Jean Luie and another perjurer, Captain Brown, who backed up his story, were both tried for perjury, after the Claimant was convicted, and sentenced to seven and five years respectively. It was, of course, a grave error of advocacy to put forward such creatures as truthful witnesses, and when Kenealy's suspicions were aroused, as they should have been after Luie's cross-examination, he should never have continued to express his faith in them. But I am convinced that when Dr. Kenealy put Jean Luie into the box he had no inkling of his true character, and his memory deserves that it should be recorded that the charge of dishonesty against him was not proven.

#### 4. THE SANDYFORD MYSTERY

One of the least satisfactory and most extraordinary criminal trials of the nineteenth century was the trial of Jessie M'Lachlan for the murder of Jessie M'Pherson, which took place at Glasgow on September 17th, 1862. The case gave rise to a small literature of its own running to several pages of bibliography, but the leading facts of the strange drama may be set down with fairness to the actors within the curtailage of a short story

No. 17 Sandyford Place was a small house in a neighbourhood of middle-class respectability. Two stories above ground, with five windows and a door, little iron balconies, a stone balustrade along the roof, stone steps into the street, and peeping coyly through the area railings the windows of Jessie M'Pherson's room in the basement where she was cruelly murdered.

She was the servant of Mr. John Fleming, a respectable accountant. This gentleman had, besides the Glasgow house, a country place on the



Clyde near Dunoon. Hither he went on Friday, July 4th, to spend the week end with his womenkind who were living there during the summer. He and his son, a young lad, left home on the Friday morning for the office, and after business hours went down the Clyde to Dunoon without returning to Sandyford Place.

In the house remained Jessie M'Pherson, the servant, who had been with the family for some time, and Mr. James Fleming, a hale, active old man, eighty-seven years old, as he said, though some declared he was but seventy-eight. He was a man of great respectability and helped his son in his business, collecting rents and doing other light jobs.

This was the scene upon which the curtain fell on the Friday morning. Three and a half days elapse and it is in that space of time that the tragedy is happening behind closed doors and drawn blinds.

On Monday afternoon the young man returned home about 4.30. He had been to the office and not finding his grandfather there came home. He knocked at the door. The old man opened it. This surprised the lad.

"Where's Jessie?" he asked.

"She's away; she's out. I have not seen her since Friday."

He asked his grandfather if he had tried the door. The old man said: "No; I thought she was away seeing her friends and that she was coming back again."

With uncanny instinct the boy replied: "Then she's off, or she's lying down there dead."

At this moment the father came in. As soon as he was told of Jessie's absence they all went down to the basement where the servant slept. Her room

door was locked. The father found that the pantry key would open the door. They entered the room. There was the half-naked body of the murdered girl lying on the bed. The old man cried out: "She's been lying there all this time and me in the house!"

John Fleming, the accountant, rushed off to Dr. Watson, with whom he returned immediately. An examination showed that the wretched woman had been deliberately murdered. There were forty wounds, apparently made by a cleaver or some similar instrument.

The state of the kitchen, where a fire was burning, showed signs of bloodstains, and the mat and the lobby were similarly stained. The floors of the kitchen and bedroom and flags of the lobby had been recently washed. So had the face, neck and chest of the corpse. In the bedroom the poor girl's box had been rifled. Her best clothes were gone and on the bedroom floor were three imprints of a bloody foot. Upstairs on a chest of drawers in which the grandfather kept his things were two of his shirts newly dressed spotted with blood. In the kitchen drawer was an iron cleaver.

This was the murder. The police and the doctors reconstructed it with no great difficulty after this fashion. The woman had been brutally murdered within three days of the discovery. There had been a severe struggle. The cleaver had probably been used, and the injuries were inflicted before or immediately after death, probably by someone standing over her as she lay fallen to the ground. The blows were not inflicted by a person of great strength. The body had been drawn along the lobby from the kitchen to the bedroom.

On the Monday night Mr. John Fleming missed

some silver and plated articles from the dining room and on Wednesday the police discovered these had been pawned between 12 and 1.0 on Saturday, the 5th, by a young woman who had given a false name and address. The murder, therefore, was probably committed on Friday night or Saturday morning.

Before this discovery the police had detained old Mr. Fleming. The case against him was of course very suspicious. All he could say on this matter was that from his bedroom on the ground floor he had heard screaming on the Friday night, and in the morning he had found the girl's door locked, and that he had lived in the house alone for three days without making any inquiry about her. But the discovery of the stolen property led to the arrest of Jessie M'Lachlan. This woman was the wife of a ship's mate. He, too, was arrested but soon released as it was clear he was in Ireland at the time of the murder.

Jessie M'Lachlan, however, was up against a lot of strange facts, and after the manner of her kind made them worse by telling numerous lies about herself and her movements. She was not allowed at that date any legal advice. But in Scots fashion she was cross-questioned and examined by police and doctors and prosecutors, and the case against her grew daily in strength and circumstance:

She had in the end to admit pawning the plate for £6 15s., and said she had done it for Fleming. The clothes of the murdered woman were found in a tin box, her property, which had been sent away to various places, but now given up by her husband to the police. Dr. Macleod was permitted to make experiments with the woman's feet, smearing them with some animal blood and thus obtaining exact

replicas of the bloodstained footmarks on the bedroom floor, the planks of which had been sawn out and made exhibits for the Crown case.

The police conduct of the case was gravely criticised later on. There was, however, something to be said in their defence. The evidence against old Fleming was only suspicion, but against Jessie M'Lachlan they could prove clandestine dealing with the property of the murdered woman. If they put both prisoners in the dock the case against both might fail and they would only get a conviction against Jessie for larceny. But if they treated the old man as a witness of truth they might convict the woman of murder. They therefore released the old man and cited him as a witness against Jessie M'Lachlan, whom they charged with murder.

In Scots law this was tantamount to an acquittal of the old man in any participation in the crime, as a Crown witness could not, after giving evidence, be put in the dock. There was a storm of indignation when it was known that Fleming was released. All Glasgow was divided into two camps, Flemingites and M'Lachlanites. Each had its party Press. The newspapers bribed the prosecutor's clerks for news from the seat of justice. Circulations rose from ten thousand to fifty thousand a day. Everyone in Glasgow read denunciations of Fleming or the prisoner and discussed the evidence.

In this unhappy atmosphere Lord Deas took his seat upon the Bench, the jury were sworn and the trial proceeded. The prisoner's counsel had put forward a special plea that "the murder alleged on the indictment was committed by James Fleming." The fact is that they held at that time a full statement of the prisoner as to what had happened on the Friday

night and Saturday morning, but it was impossible to make use of it without injuring the woman in the dock.

The old man's evidence was very inconclusive. He was treated by Lord Deas as a witness of truth, but Mr. Adam Gifford for the Crown wisely and judicially reminded the jury that they were not investigating his guilt or innocence. Certainly if he were innocent he had placed himself in a sad predicament by his strange conduct. But he seems to have given his evidence with a certain frankness and in a dialect that makes it very graphic in its description of facts.

On Friday night, he said, he had his tea and sat with Jess until 9.30 by the kitchen fire. "At that hour I said I would go and mak' ready for bed; and I went away to my bed up the stairs. I left Jess M'Pherson working away in the kitchen ye ken and in the morning I was wauken't wi' a lood squeal." Here he explained that his bedroom was in the flat above the kitchen. "Weel, I was sayin' I was wauken't i' the mornin' wi' a lood squeal; and after that followed ither two not so lood as the first ane. But it was an odd kind o' squeal I heard and I jumped oot o' bed and I heard no noise. A' was by in the coorse o' a minute's time; in a minute a' was quate and I heard naething nor saw naething. I took oot my watch, I kept the time below my pillow and looked what a clock it was. It was exactly foover o'clock, a bonny clear mornin'. I gaed awa' to my bed again. A' was quate."

Then he told the jury that he thought at the time that Jessie must have had her sister with her in her room. But that any man having heard these sounds in the night and connected them apparently with Jessie should have stayed in the house until the

Monday afternoon without making any inquiry after her seems almost impossible of belief.

The prisoner's counsel exposed many inconsistencies in his story, but Lord Deas continued to the end to treat him as a witness of truth. From the first the judge believed the woman to be the sole murderer. When he took his seat on the last morning of the trial he placed the black cap on the bench before him ready for use, and so deadly was his summing up that the jury were able to return with their verdict of guilty after only a quarter of an hour's absence. When the verdict was given the woman in the dock expressed her desire to make a statement, and this was permitted by the judge. Her advocate then read in grim detail her account of the part she had played in the tragedy.

On Friday night she had gone to Sandyford Place about 10.30 and found old Fleming sitting in the kitchen with Jessie M'Pherson. They had a dram together. Jessie complained about the old man's conduct to her. About 11.0 the old man sent M'Lachlan out for more drink. When she returned the old man opened the door. She asked where Jessie was and got no reply. She went downstairs and found her lying insensible and moaning on her bed. There was a cut on her head and blood on the floor. She had nothing on but her polka and shift. The only account she could get was that the old man had not intended to hurt her. It was an accident. She got the poor woman to a bed at the kitchen fire. Fleming refused to go for a doctor.

Through the night the old man was wandering alone and the prisoner sitting near the injured woman. Early in the morning she seemed worse. The prisoner had gone upstairs to open the windows

to see if anyone was yet about. The front door was locked. Coming back again she heard screams and saw the old man striking at her with the meat chopper. She herself was then in the old man's power and at his suggestion took away the things he gave her to pawn so that it might be made to appear that a robbery had been committed. This at long length and with wealth of detail was the woman's story of the terrible night in that little house at Sandyford Place.

The crowded court heard it with breathless interest, but the judge dismissed it and sentenced the woman to death, telling her that her story was a tissue of lies.

But this is not how it appeared to the world nor to many grave jurists who expressed strong objection to the "dexterity, cunning and pettifoggery" with which the police had worked up the case against the prisoner and criticised the conduct of the prosecution. The statement may have been one wicked lie, but it was not a tissue of lies. It fitted with Defoe-like circumstance into the proved facts of the case, and it had been written and in the hands of her agents before she knew what facts were going to be proved.

The Government ordered an inquiry. Sir Archibald Alison, the Advocate Depute who had prepared the indictment, sent in a memorial. He takes pride in recording: "That the best and most elaborate law paper I ever wrote was composed in my seventieth year to shield a prisoner threatened with death from what would in the circumstances have been a judicial murder."

The conclusion he arrived at was that the woman's story was true and that the prisoner was an accidental and constrained witness of the murder. The Home

Office seem to have accepted his view, and on the ground that she was an accessory to the murder after the fact they commuted the death sentence to one of penal servitude for life.

When Jessie heard the results of his efforts she in no way shared Sir Archibald's enthusiasm and merely sniffed her disappointment, saying: "And so I'm tae be kept in jail a' my days."

As for old Mr. Fleming, he retired to Quellan and read the newspapers with peaceful interest, wrote autographs for his admirers and died in the odour of sanctity.



## CHAPTER THREE

### CONCERNING COMEDIES

1. THE JACKSON CASE.
2. THE LAW AND LADY ROSINA.
3. THE ABDUCTION OF MISTRESS PLEASANT RAWLINS

IN a sense there is no such thing as true comedy in a lawsuit. Comedy connotes a happy ending. No legal drama has a really happy ending. There are always the costs.

But without stretching the analogy to breaking-point there are many dramas of the law in which the element of comedy predominates. The story of the piece has its merry moments, and the dialogue of counsel and witness or the judicial quip moves us to laughter. The characters amuse us with their self-love, vanity and conceit, which are the basis of comedy, and we smile at their follies and caprice. We forget for a time that we are in the precincts of the law courts and allow ourselves to be entertained by the frailty of human nature.

Of the legal dramas here set down as comedies the adventures of either Mrs. Jackson or Lady Rosina might have served for the basis of a Victorian comedy of manners and social ideals, the dramatist lightly touching perhaps on the problem of woman's emancipation in the classic style of Pinero.

Remembering Lord Ogleby's maxim: "I look

upon women as the *feræ naturæ*, lawful game, and every man who is qualified has a natural right to pursue them," then you must admit that the abduction of Pleasant Rawlins is a typical eighteenth-century comedy. Had the hero been a Fainall or Mirabel, some rake-helly hero of the gentry hunting a city heiress, the pit would have whooped with pleasure at the stratagems of the chase. Even this story might well have ended with feasting and wedding bells but for the statute. Statutes, however, have neither humanity nor humour. They are in language, grammar and common sense real *biblia a-biblia*, unreadable and unread. Even in courts of law no one ever reads a statute. They are only quoted. Their disastrous effect on human happiness has made them rightly repellent to men of generous minds. Even judges, the kindest and most tolerant of creatures, can scarcely hide their contempt for statutes that enact the opposite of what their author intended and only serve to entangle the simple and innocent in a net of ruin. But for a statute turning the affair into a grim tragedy the plot against Pleasant Rawlins was a merry comedy measured by the standard of merriment set up by the dramatists and audiences of the eighteenth century.

### I. THE JACKSON CASE

Emily Emma was the heroine of a legal problem play. One can picture the expert producer racking his brains for the apt title: "The Amazing Marriage," "The Taming of the Slug," "What the Judge Said," "A Woman's Triumph." But before you clapped a title to it you had to settle what sort of play it was to be—a merry farce, a drawing-room comedy, or a melodrama? You could make it any of these things, or some of each, but you could not

leave out the problem, the legal problem, which, put in a phrase, came to this: "Does a wife belong to her husband?"

Countless generations of English mankind had lived in the fond belief that their wives belonged to them. You get the note of property in the emphasis on the pronoun when a mere man says, "My missis." Thus you are sure of your sensation in the great Court of Appeal scene where Lord Halsbury and Lord Esher bundle the legal tradition of centuries on to the rubbish heap and announce to the poor husband, who is asking if his wife belongs to him, that the answer is in the negative.

The Jackson case, as it was called, created world-wide excitement, and well it might. It was the first test match between woman and man, and the latter, who started a hot favourite, was beat to a frazzle, and is never likely to recover the ashes. In the Temple the betting was any odds against lovely woman. For a lot of lawyers, foolish fellows, really seem to have believed that a wife was under the personal dominion of her husband. They regarded Petruchio as a real heavy-weight champion and Katharine as merely his sparring partner.

One Bacon, a lawyer—not the fellow who is charged with writing Shakespeare's plays—had set it down in his Abridgment of our law that a husband may by force keep his wife within the bounds of duty and may beat her, but not in a violent manner. Blackstone tells us that "in the politer reign of Charles II this power of correction began to be doubted." Steele, writing in the *Tatler* in 1712, suggests that a wife may properly be "corrected with stripes; but one of our famous lawyers is of opinion that these ought to be used sparingly." As late as 1782 Mr. Justice Buller is said to have ruled

that a man might lawfully beat his wife with a stick if it were not thicker than his thumb. Gillray caricatured Buller as Judge Thumb, and the ruling is often referred to, though I have never been able to find a contemporary record of it.

These *dicta* remained in the text-books. The musty old law folios seemed to agree that a wife was very nearly legally akin to the other household chattels of a husband, and but for the strange happenings of Emily Emma these old legal traditions might have prevailed until this day.

The story opens on November 5th, 1887, when Emily Emma Maude Hall is clandestinely married at St. Paul's Church, Blackburn, to Edmund Haughton Jackson. Emily Emma has a fortune of £27,000, and it is said that Edmund H. is not a man of means, but both parties are of full age, the husband over forty, and why they did not walk away and enjoy their honeymoon does not transpire.

On the marriage day Emily Emma returns to her relations and Edmund H. travels to London, *en route* for New Zealand. It is arranged that she should follow him in six months, but, alas, in his absence, she changes her mind and later on writes to ask him to return to her in England. This the faithful Edmund does, but on arrival finds that his wife has again changed her mind. She refuses to live with him, refuses even to see him, and will not answer his letters.

Patient Edmund waits until July, 1889, and then seeks advice of lawyers. An application is made to the courts, and the first act of the legal drama is taken up with the merry farce of obtaining an order for the restitution of conjugal rights. This order is readily made; it is never supposed that it will be obeyed, and the court has never the slightest in-

tention of enforcing it. As in many another case, when the order was drawn up and served on Emily Emma, she snapped her fingers at it, laughed the court to scorn, and poor Edmund found that except for the privilege of paying a bill of costs there was nothing doing.

Edmund Haughton lies low and says nothing. Again he consults the lawyers and studies law books, and at length, on March 8th, 1891, with two friends, a young lawyer and a doctor, he sets forth to make history.

It is a Sunday morning. At the door of Clitheroe parish church stands a carriage and pair with a coachman in livery. The service is over. Unsuspecting Emily Emma steps out into the churchyard with her sister, Mrs. Baldwin. Three gentlemen are seen to approach the two ladies and seize one of them. There is a vigorous but brief resistance. Emily Emma is detached from her sister and carried forcibly by her husband to the waiting carriage. She is dragged backward and falls into the carriage, so that the young lawyer has to gather up her feet before he can close the door. The congregation look on indignant. The coachman whips up his horses and away they speed to Edmund H.'s house at Blackburn. In this way does the hero carry out the order for restitution of conjugal rights.

Within an hour the Baldwins and other relations have galloped to Blackburn to the rescue. But Edmund H. has barred doors and windows and refuses admittance. The Chief Constable of Blackburn is called in but refuses to make forcible entry, remembering perhaps that the Englishman's house is his castle.

The relations sit down before the castle in medieval fashion and start a siege, day and night. The

besieged inhabitants take in stores by a line through an upper window. The police patrol the street to see there is no bloodshed between the parties. The world looks on in amazement, and able editors indite leaders on the rights of husbands and the duties of wives.

It should be stated in fairness to his memory that this modern Petruchio treats his wife with every kindness. There is a nurse to wait upon her and a doctor to attend her. Her only complaint is that when they arrive at the house her lord and master pulls off his lady's bonnet and throws it in the fire. This, as I take it, was merely a symbolic action, as when one butters the paws of a kitten to keep him in the house.

But meanwhile, in the outer world, public excitement grows apace. Great lawyers in London are consulted, and some genius suggests the use of that palladium—or is it Coliseum?—of English liberty, the habeas corpus.

The world breathes a sigh of relief at the very mention of it, believing with Sam Weller “that the have-his-carcase is one of the blessedest things as was ever made.” The way the have-his-carcase is worked is as follows: You go to the King's Bench and tell them someone is imprisoned. A writ is then issued in the name of His Majesty calling upon the custodian to bring the body of his prisoner to see the judges, that they may ascertain whether his imprisonment is legal.

Emily Emma's relations made their application for a habeas corpus to Mr. Justice Cave and Mr. Justice Jeune, and to the dismay and surprise of the world at large these learned judges saw no reason why any writ should issue. As Cave J. muttered in his grumbling fashion, “a husband has a right to

the custody of his wife," and there's an end of it. A court had ordered Emily Emma to go and live with Edmund H. and he had got her. Well, what is there to argue about?

The old lawyers in the Temple nodded their heads gravely and chuckled, saying, "I told you so." Some of the younger generation, however, were doubtful, and there was great satisfaction when it was heard that the protection of the Court of Appeal was being invoked by the lady's friends.

So on March 19th, 1891, the last scene in the drama opens. Emily Emma enters a crowded court. She is dressed in a black silk dress, a sealskin jacket, with Medici collar, black bonnet and veil, and black kid gloves, as if in mourning for her lost liberty.

I have always thought it was a matter of great good fortune to the world that the Appeal Court on that morning included Lord Halsbury and Lord Esher, two of the greatest lawyers of our time, men whose eyes could pierce the fogs and mists of the law and see the sun of justice that shines eternally above.

Let us be thankful, too, that we have never cribbed and confined our common law into a narrow code, and that our great judges are still endowed with power to burst the shackles of prejudice and tradition and state the true justice of a cause in accord with a modern standard of right and wrong.

Lord Halsbury swept away the mouldy precedents that had satisfied the legal minds of Cave and Jeune. Those quaint sayings about the right of a husband to beat his wife "are not, I think, now capable of being cited in a court of justice in this or any civilised country."

It is a simple saying, uttered in the same spirit in which Lord Mansfield had decreed that slavery was

“ so odious ” that it could not have a place in English law, and it will be cited wherever English law prevails as the Magna Charta of women’s freedom. One of the sane and healthy attributes of our legal system is the power that remains with the judges to recognise that old law may become obsolete, and it is their privilege and duty to shape old precedents to new and better ends.

When Lord Halsbury had spoken and the Clerk of the Court had endorsed upon the writ, “ Return held bad and wife to go free,” the world had advanced a great stride along the highway of justice and civilisation.

## 2. THE LAW AND LADY ROSINA

Rosina Wheeler was a beautiful Irish girl. I like to picture her at Old Government House, Guernsey, in the glorious reign of her uncle, Sir John Doyle, mimicking the Duc de Bouillon and the other stately guests, the pet and hoyden of his splendid establishment.

Fate decreed that she should marry Edward Lytton Bulwer—your literary man makes but an indifferent husband—and after a short and unhappy married life they executed a mutual deed of separation and lived apart. Her sad story is set out in many memoirs. Her whole life was an embittered struggle to publish and obtain redress for her wrongs, some cruel enough, others perhaps illusions, but all painfully real to her vivid lonely imagination.

It was in 1840, when she was living alone in Paris, that she was called upon to play the leading lady in a comedy enacted in the Sixth Chamber of the Correctional Tribunal. It is interesting to-day as showing how harshly the law could treat lovely woman. It created wide excitement, not only in



the fashionable circles of Lady Bulwer's friends in Paris, but throughout England and even in America, where the decision was widely canvassed, as a gross injustice to the sex.

The play opens in Lady Bulwer's apartments at No. 30 Rue de Rivoli. Sir Edward had set in motion an attorney named Lawson to watch his wife, a course as unfortunate as it was unnecessary. Lawson had a fat comedian or a clerk named Thackeray who after the manner of spies in a transpontine drama made love to the cook at No. 30. The faithful Phœbe lures him on with promises of secrets and makes an appointment with him to come and drink tea with her in her ladyship's absence.

Her ladyship now sends for her lawyer, M. Charles Ledru. A plot is formed. Letters are temptingly left on the *secrétaire*. Tea is prepared and Phœbe opens the door to the fat Thackeray, in her best cap and ribands. All goes well. The amateur spy walks into the drawing-room, and as he is handling the letters, under the subdued light of the usual red lamp, Lady Bulwer, M. Ledru and two gendarmes step forward from an inner chamber. The terrified spy is taken, *en flagrant délit*, red-handed, the pert Phœbe trills her insults at him, Lady Bulwer points to the door, and the gendarmes put their hands upon his shoulders. "Lâche! misérable! infâme!" cries out the indignant M. Ledru as the curtain falls on the end of the first act.

When the curtain rises again we learn that M. Ledru has sought for his client the protection of the law. Proceedings were taken for subornation and bribery of witnesses, trespass and attempt to purloin documents, and also for a libel published by Thackeray in the *Gazette des Tribunaux*. The court has adjourned to enable M. Odillon Barrot

to receive instructions from Sir Edward. The unchivalrous husband, Petruchio-like, refuses to allow his wife his permission to plead her case before the French Tribunal. He asserts the Saxon chattel theory of marital rights. His wife is his property and he objects to his property proceeding in a foreign court for the protection against wrongs done by his own agent.

Can the French Tribunal proceed? The court wishes to be advised. It summons Lady Bulwer to appear in person. Popular sympathy is expressed for the distressed damsel, and strong things are thought and said about the dragon of a husband. But what is the law? The lady is represented by the great M. Berryer, "with him" are Morisot, Chaix de l'Estange and Charles Ledru, a noble team of advocates. M. Blanchet is for Lawson and Thackeray. M. Barrot, the stern unbending French Radical, for Sir Edward. M. Ternaux, for the Procureur-du-Roi, watches the case in the interests of State.

On Friday, March 27th, the trial takes place. Long before the proceedings begin every corner of the court is occupied. Fashionable spectators are indulged with seats within the Bar. A dense mass of elegantly dressed ladies, the élite of English and French society, throng the court. Nothing else has been talked about in the boudoirs and drawing-rooms of Paris for many a day but "L'Affaire Bulwer." It cannot be believed that the law of France, the most courteous and chivalrous of nations, can refuse the prayer of a beautiful lady so wronged and distressed.

At eleven o'clock, as the clock strikes, enter M. Pinondel and four other judges, who take their seats on the bench. The representative of the

King's Procureur sits in a box at their right watching their proceedings with careful eye. Thackeray and Lawson sit uncomfortably below the prisoner's dock, wondering perhaps if they will later on be asked to take their seats inside.

A few preliminary legal skirmishes open the entertainment. Counsel for the accused claims that they acted under Sir Edward's instructions and are protected as mere agents working for a principal. Barrot claims that he appears for the principal, who forbids his wife to proceed in the matter. Berryer, the great Berryer, waves them aside and declares amidst murmurs of applause that no Sir Bulwer has a right to give latitude to his agents to violate the laws of the kingdom. He proposes to prove that an offence has been committed by Messieurs Lawson and Thackeray. They have broken the laws of France, and if that is proved they cannot claim protection from a foreign principal; they are personal offenders liable to the justice of the country.

The President waits until the murmurs subside. He demands in official tones whether the *partie*, the complainant, is in court. There is a breathless silence. Lady Bulwer's name is called by the usher. All eyes are turned towards the door as the heroine of the drama enters accompanied by her friend, Mrs. Trollope. Two chairs are placed for the ladies near the box of the King's Advocate. They cross the stage. Lady Bulwer is evidently moved by strange agitation. The ladies in the audience whisper that she is *élégante*, and the gentlemen gaze at the beautiful lady with manifest satisfaction. She takes her seat and answers the official questions in a low voice. Her name, her residence, and—alas, that officialism should overpower national politeness—she is even asked her age, and bravely

comes within a year or two of accuracy with the figure 35.

A great English judge once pointed out that by our law of evidence no man should be permitted to state his age, since "although it was certain that he was present at his birth, yet it is scarcely probable that he would have noted the date, and therefore his testimony on the subject is really hearsay." But in France hearsay is as good as any other evidence and to the indignation of the fashionable ladies in the court the question is put and answered.

And now the husband's letter is read. He refuses his wife permission to proceed. He is allowed to assert that he is persuaded the whole business is a put-up job (*arrangé*), managed by her ladyship for the sole purpose of provoking scandal and bringing her alleged wrongs to public notice. It is a clever letter ending with a familiar sentimental tag about the "honour of the family and the welfare of his dear children," written for a French audience in the best flamboyant Bulwig style. Trust your literary man to touch the right note.

A buzz of discussion hums through the court and then a silence. Such a silence as only inspired artists can command. For the great Antoine Pierre Berryer has risen. The advocate of brilliant imagination and splendid eloquence. The man from whose lips come pearls of wisdom, illumined by the light of passion, deftly strung together upon a golden thread of law. His commanding figure dominates the court. His remarkable head and noble expression gives added power to the beauty and sanity of each deliberate phrase. His searching and expressive eyes seem to read the unspoken thoughts of the judges. His ease and grace of action chain their attention, whilst his voice, rich,

round and melodious, vibrates on the strings of their hearts.

With such an advocate and so clear a cause of right, failure seemed impossible.

It is a melancholy thing that the triumphs of advocacy, oratory and acting come down to a new generation in the unconvincing form of description and portraiture. Those who were privileged to hear the great Berryer in court speak of him as one of the great masters of advocacy. This speech of his, as we read it in contemporary reports, is a model of clear learning and concise statement. He tells the story of the lady's wrongs, considers the laws of England and of France, and having made every point in his client's favour enforces them in an eloquent peroration.

Every mind is bent and swayed by his words as he comes to the conclusion of the matter. "You have before you," he reminds the judges, glancing at the bowed figure of his client, "a woman and a foreigner. There may be many foreigners whose wives may come to reside in France under the obligation of respecting the police laws of the country but are also entitled to their protection. In a case of injury, and for the reparation of their honour, must it be necessary to go to the heart of India perhaps to obtain the authorisation of a husband? No, a thousand times, no! The foreign woman living honourably in France, with the consent of her husband, and who has to complain of an offence against her person—who has been insulted, menaced and attacked, must surely be entitled to the protection of the laws of the country in which she has fixed her residence."

There is a murmur of approval at so sound a sentiment, but it silences itself. The advocate

raises his hands and in a voice of pity calls out : " If I were in England I would say to the tribunal, in the name of the Queen of the three kingdoms, I plead for a woman whose husband has refused her his authority to demand justice, and I would ask for that woman the reparation which the law was bound to grant her ! " and then, in an indignant outburst, he concludes : " It is said that we seek for scandal. Scandal indeed ! The scandal is in the protection which is given to the guilty. "

Who that heard this could doubt that the law has its moments of great drama ? And of a surety, if eloquence that drew tears of indignation into the eyes of the audience could have dissolved the unjust laws of the age, M. Berryer would that day have won a great victory for the cause of woman's freedom. But the audience were neither the judges nor the jury. M. Barrot has his dry-as-dust precedent to quote, old Ternaux, the Procureur, sits nodding in his box and has his say later on about the rulings of the Court of Cassation in 1807, and then, alas, the silver-tongued Berryer has, it turns out, no right of reply.

There is a wave of depression over the court when the tribunal returns and the President reads the dreary record of the findings. In a word they have decided in favour of "*non recevoir*" or, as I think we should say, "*non suit.*" The court will not hear the case. If wrong has been done it cannot be righted, for the human being is but a married woman and the common rights of a citizen are not hers.

Alas, poor Rosina, many other disappointments were to add to her sorrows, but she lived on until March, 1882, when she died in her eightieth year. After life's fitful fever she sleeps in the churchyard

of Shirley, in Surrey. Had she heard, I wonder, ere she passed over, that in that very year of 1882 Parliament had heard of her grievances and of those of other thousands of wronged women and were enacting in their quaint Norman phrases that a married woman could bring actions "in all respects as if she were a *feme sole*," which is law jargon for a spinster.

It is comforting to know that there is no injustice be it ever so ancient, widespread and long-continued that may not in the course of eternity find a Parliamentary doom.

### 3. THE ABDUCTION OF MISTRESS PLEASANT RAWLINS

I have very little doubt that Haagen Swenden was an adventurer and that Mistress Sarah Baynton was not his sister but was a woman of bad character; nevertheless, I agree with Mr. Johnson, one of the members of the jury, that it was by no means conclusively proved that Swenden did not captivate the foolish fancy of Miss Pleasant and that there was some reason for believing that she was not unwilling to marry him.

Pleasant Rawlins was the daughter of the late Mr. William Rawlins, who left her a considerable estate, about £2000 in money and £20 a year in land. She lived with her guardian's sister, Mrs. Sabina Busby, and in 1702 they had been lodging at the widow Nightingale's, near Tuttlefields (Tothill Fields) for some three years. Pleasant was now eighteen years old, and if she had not been an heiress no one would have troubled about her running away and marrying the dashing Haagen, but as Mr. Justice Powel, with legitimate patriotic pride, reminded the unwary foreigner: "Your offence hath been in a nation

where property is better preserved than in any other Government in the world." In those days to carry off and ruin a girl of eighteen was naught, but to marry an heiress might be felony punishable by death if the prosecution could satisfy the jury that the young woman was not a willing victim. Property was sacred, but the young person was a secondary consideration.

Reading between the lines of the reported evidence one may fancy that Miss Pleasant had not a very gay time of it at Tuttlefields. The constant companionship of Mrs. Sabina Busby doubtless left something to be desired. At the same time it would have been wiser, no doubt, had she patiently submitted to her fate and waited until such time as the Busbys provided her with some eligible and respectable young relative of their own to reduce into possession the heiress and her property. An heiress, like royalty, must love wisely rather than too well.

The widow Nightingale was a most particular lady, and it was not until she had received the assurances of several neighbours that Mrs. Baynton "came of a good family," and had come to town from Wiltshire to attend a lawsuit, that she consented to take her as a boarder at the very reasonable rate of 12s. for herself and 10s. for her maid. Mrs. Busby and Pleasant seem to have taken a fancy to Mrs. Baynton very rapidly, and a few days after her arrival she was visited by her brother, Haagen Swenden, and two ladies, who were entertained with wine and coffee and cribbage.

Miss Pleasant Rawlins began to enjoy herself. Haagen was a traveller and had been to sea, and had strange tales to tell of the disastrous chances he had suffered. Miss Pleasant had never met anything so



dashing as Swenden in Tuttlefields society. He was interested in Norway shipping and invited the ladies on shipboard. It was a delightful and exciting entertainment. Even the grave Sabina was fascinated by the fellow and discerned in him a likeness to the dear departed Busby, at which Miss Pleasant was scornful and amused.

Mrs. Busby certainly invited him to the house to mix a bowl of punch for dinner. It is true that the young lady denied at the trial the details of courtship to which the ungallant wretch in the dock would have had her confess. But her answers were coy and unconvincing as "I know not of any such thing," or "I don't remember any such thing." She admitted, however, that when Swenden appeared on the scene a former lover, named Pugh, was sent about his business.

Things were going very well as it seemed with Haagen and Pleasant, and I make little doubt that the rascal would have persuaded the foolish girl to run off with him if time had been given him, but unluckily widow Nightingale heard rumours that Mrs. Baynton was not all she ought to be. The truth was that Mrs. Baynton was nearly everything she ought not to be. She was not Haagen's sister; it is doubtful if there was ever a genuine Mr. Baynton, and she was ultimately saved from the gallows by a jury of matrons. Widow Nightingale made up her mind to give her notice, and Mrs. Baynton, fearing this, quieted all suspicions by informing her that her business in London was over and that she was leaving at the month-end.

It was then that Swenden and she devised as scandalous a plot as can well be imagined. At the end of the trial the man, to save Mrs. Baynton, took upon himself the whole blame of the matter and

asserted that she was not the contriver, but without the woman the wicked business could never have been carried out. Two bailiffs, named Hartwell and Spurr, were hired to enact minor parts in the conspiracy, a licence was obtained, and a parson, whose name is omitted from the report, was told to be in readiness. Then a writ was issued to arrest Miss Pleasant Rawlins for an imaginary debt of £200.

On Friday morning Mrs. Baynton, who knew that Mrs. Busby and Pleasant went every week to Oxenden Chapel on that day, came and told them she had occasion to go to Golden Square and wanted them to drive down with her, as they had done on former occasions. When they came to Dartmouth Street, where Mrs. Busby expected to get out, the fellow Hartwell jumped into the coach. Mrs. Baynton called to the coachman to drive on. Hartwell put his arms around Miss Rawlins and explained that he had a warrant of arrest for her and Mrs. Busby. The two women seemed very frightened; Mrs. Busby was undoubtedly in great terror, but Miss Rawlins took matters more calmly. They were driven to the Star and Garter at Drury Lane, where were two other bailiffs, Wakeman and Spurr, who had followed the coach. Mrs. Baynton hurried off to get help, as she told them, and Hartwell carried off Pleasant Rawlins, leaving Mrs. Busby in charge of Spurr.

Hartwell carried off the girl by a back door and brought her to his own house, threatening to lock her up in Newgate if she did not get bail. Whilst she was there kind Mrs. Baynton appears quite promiscuous-like. She is most desirous to help her to find bail, and in a moment of inspiration sends for her brother Haagen. He makes a jest of the girl's fright and arrest and tells her in fun that he had a

good mind to arrest her himself. With that he and she and Mrs. Baynton peaceably go forth in a coach to the Vine Tavern in Holborn. What happened afterwards is not greatly in dispute, though how far the young lady was a consenting party to all that occurred seems doubtful.

They appear to have had a dinner at the Vine of a roast fowl, and after dinner Mrs. Baynton begins to try to persuade Miss Pleasant to marry Swenden, the suggestion being that if she does not she will be carried off to Newgate. A ring is obtained, a parson arrives and the marriage takes place in the parlour of the Vine. The landlady, the servants and the parson and his clerk did not perceive any discontent or distress about the young woman. After the marriage they went back to a Mrs. Blake's house, where they retired to bed and afterwards had supper.

That evening they are disturbed by Mr. Bennett, a constable who has traced the couple to Blake's, and arrives with some of Miss Rawlins' relations, and requests them to come before a magistrate. Miss Rawlins, hearing the noise, comes out of her room and tells her cousin that she has married Swenden of her own free consent, and displays her wedding ring with not unnatural pride. As the constable has no warrant the party crack a flask or two of wine with the bridegroom and go their way. Swenden, however, is uneasy about it and takes his wife across to Mr. Baber's house in York Buildings, where he is eager that she should take a voluntary oath that she was married by her own consent. Baber, however, was very loth to meddle with the matter, as the young lady appeared in very great disorder and in a very confused condition.

They appear to have spent the night at Blake's

house, and on the next morning Swenden goes to his barber's with his wife, and this witness testifies to her apparent pleasure and satisfaction with her husband, as do several of Blake's friends, no very reputable persons certainly, but their evidence bears out that of the parson that however foolish and frightened she may have been she was not wholly averse to the proceedings, to which she was an apparently consenting party.

By seven o'clock on this evening a constable arrives at Blake's house, armed on this occasion with a warrant to arrest Swenden and all his associates who had helped him to carry off the heiress. With the constable is a friend of Miss Rawlins. This gentleman asks her: "Are you married?"

She replies: "Yes, there is my husband."

The constable says that she seemed very pleased about it, and showed them her ring. She herself, in giving evidence of this occasion, does not deny that she may have said to the constable: "I am very well content with the marriage and this is the ring that married us." They are now carried before the Recorder. At first Miss Rawlins asserts that she was married to Swenden without force or compulsion. She was then holding her husband's hand. The Recorder shakes his head and says, "he is afraid she was drawn in by this man, who he feared was a spark and bully of the town." Swenden was withdrawn, and after that Pleasant Rawlins seems to have changed her mind and asserted to her guardian that everything that had happened to her had been the result of threats and force.

The suggestion of the Recorder that Swenden was a mere town bully was not borne out by the evidence. He was able to call respectable witnesses who had traded with him and found him "a very honest and

ingenious man." One trader had consigned goods to him when he was in Norway to the amount of £3000 and better, and others spoke of him as a man of good repute and credit in commercial circles in Norway. They testified that they had had large transactions with him and found him just and fair in his dealings.

It would have been interesting to have heard Swenden's own account of the plot. That it was a plot, and a very dastardly one, there is no doubt. That Swenden had arranged the whole thing with intent to trap the girl into marrying him is beyond all question, and the very fact that he found it necessary to make this show of force goes to prove that he had not won her affections sufficiently to be sure of her consenting to run away with him. His conduct was wicked enough, but the evidence certainly did not go to the length of proving that the young woman was not a consenting party to the marriage.

But as to that, Lord Chief Justice Holt told the jury very plainly: "You are to know that if she be taken away by force, and afterwards married, though by her consent, yet is he guilty of felony." And if this was good law, and there was in those days no counsel to argue the point for the prisoner and no Court of Criminal Appeal to criticise it, then there is no doubt whatever that Haagen Swenden was guilty under the statute of Henry VII of taking away an heiress contrary to her will and afterwards marrying her.

Both Swenden and Mrs. Baynton were found guilty of felony, and Hartwell and Spurr, the bailiffs, were congratulated by the judges on a merciful jury and a lucky escape from the gallows. Mr. Justice Powel, in his speech to the delinquents, is inclined

to sympathise with Swenden, whom he regards as a man of good means and position brought low by his association with Sarah Baynton, "such a woman," he says, "as will make a rich merchant quickly poor and will soon reduce a wealthy man to a morsel of bread." So he states the matter over again in full detail to the wretches in the dock that they may be satisfied that they "can expect no other than an award of the punishment the Law requires, that is—Death."

Mrs. Baynton remained in jail until her child was born, when she was reprieved. As for Pleasant Rawlins, let us hope she found some less adventurous husband satisfactory to herself and her relations. Haagen Swenden in his dying speech made a reference to her that seems to me shrewd and kindly. "As for my wife," he says, "I am so much in charity with her that I cannot believe the severity extended to me did altogether proceed from herself." His summing up of his own fate is business-like and accurate. "As for myself," he says, "I am now a-going to suffer an ignominious death for a crime which my own conscience doth not accuse me of, but the rigour of the law hath made it my unpardonable crime."

I close the pages of poor Swenden's trial with a sad doubt. Had we then?—have we even yet?—a legal machine capable of realising our high ideal, the discovery of "the truth, the whole truth and nothing but the truth"?

## CHAPTER FOUR

### CONCERNING THE ETERNAL TRIANGLE

- I. CATHERINE OGILVIE.
2. THE MAYBRICK CASE.
3. THE THAW CASE

SCHOLARS and scientists will talk to you very learnedly about the eternity of triangles. Pythagoras and Archimedes knew all about it, they say. "The triangle is the last sub-division of a continuously sub-divided polygon." You take the idea? To put it another way, one may "sub-divide the triangle by drawing a line from any angle to the opposite side, the result will be two triangles," and so on to eternity.

That is the geometrical view of the matter, but then there is the folk-lore man who will have it that the idea of the eternal triangle dates back to the mystical Egyptian reverence for their Trinity, Isis, Osiris and Horus, and they remind you that Xenocrates wrote of the triangle as an eternal symbol of divinity and that it is so used.

Others, again, refer you to Solomon's seal, with its interlaced triangles, symbolic of the mystic union of body and soul, and it is when you read of these sacred origins of the eternal triangle that you wonder the more at the sublime impudence of that unknown young lion of Fleet Street who took it into his head to shoot the phrase into the heart of the vocabulary of theatrical slang.

Who first, in English writing, used the words "the eternal triangle" to fit the story of two men and a woman, or two women and a man, I have failed to discover. Yet the phrase caught on in journalism towards the end of the last century, and seems to have come to stay. It is an apt form of words, and the triangle described is certainly as eternal as any worldly triangle can be, since it is as old as the Garden of Eden. In that eligible but somewhat dull demesne you find two straight lives living together lovingly in an earthly paradise until there enters furtively to the wife, whose time lies idle on her hands, a *tertium quid*, disguised in a gaudy snake-skin, whom we recognise at once as a satanic villain bent on the woman's destruction.

Two lives can, it appears, even in a garden with no gardening to do and with no house or household tasks to worry about, manage to live in dull respectable ease. But three lives apparently can never be satisfied with mere common law straightness, but in an endeavour to enclose forbidden spaces must join together in a medley of angular and triangular adventures of a risky and exciting character destructive of their own happiness, but giving intense delight to those who read their story.

Give your romancer two men and a woman, or two women and a man, and if he has any craft in him he will straightway weave you an adventure of love, folly and crime that will keep you awake burning the midnight volts and amperes. The miracle cannot be achieved with two puppets—at least not by modern writers—there must be the mystic number of three. The common citizen is satisfied to say that there are two sides to every question. The troubadour knows that there are three. It is the perfect number expressing the



beginning, middle and end, the three acts of the drama, during which each side of the triangle is displayed with such convincing skill that whilst the master playwright is exhibiting his figures on the stage he convinces his audience that each side of his triangle is at the moment greater and better than the other two. Which is absurd.

### I. CATHERINE OGILVIE

If, as many believed, Catherine Ogilvie was wholly innocent of the crime of poisoning her husband, she was indeed a much-wronged woman. The case created widespread excitement, both in England and Scotland. Sides were taken, pamphlets were written and the conduct of the case was seriously impugned by legal critics.

Catherine's romance can to some extent be reconstructed. Far north of Perth, in the remote hill country of Glen Isla, which lies between Alyth and Braemar, there lived one Thomas Ogilvie, a middle-aged yeoman of forty, on his small estate, called Eastmiln. He was a man who suffered from ill-health and does not seem to have had either personal attractions or wealth.

To the surprise of the countryside this confirmed bachelor, in January, 1765, married a young and beautiful girl of nineteen, Catherine, daughter of the late Sir Thomas Nairne, of Dunsinane, Baronet, and carried her off to his lonely hill-side farm. Her relations were indignant at the match, and there seems no doubt that she married him against their will, out of sincere love and affection.

The household of Thomas Ogilvie, or "Eastmiln," as he was called by the neighbours, consisted of his mother, an old and infirm lady, and a woman called Anne Clark. This woman is said to have been a former mistress of the youngest brother,

Alexander Ogilvie. She was a very important witness at the trial, and the theory of the defence was that Thomas having died a natural death her evidence was prompted by a desire to destroy Catherine and thereby assist Alexander to obtain the Eastmiln property. Old Lady Eastmiln disliked and distrusted her daughter-in-law from the first, and in this enmity had an active ally in Anne Clark.

Within a month or two of the marriage, in the spring or early summer, there arrived as a visitor to Eastmiln the second brother, Lieutenant Patrick Ogilvie, of the 8th Regiment of Foot, on leave from the East Indies. From this moment there seems to have commenced one of those triangular dramas of waning love and duty that in real life seldom attain to a happy curtain. Patrick loves his young and beautiful sister-in-law; she, I fear, returns his love but too ardently. The husband is indignant, quarrelsome and sulky. The old lady and Anne Clark look on with grim hatred and satisfaction, pouring oil on the troubled fire. After weeks of misery and provocation Thomas turns his brother out of the house. He leaves on May 23rd, and on June 6th the laird of Eastmiln is dead.

From the first the wretched girl is accused by Anne Clark of having poisoned her husband. The story spreads through the countryside. All the friends and relations of the deceased have no doubt that Thomas Ogilvie was poisoned by his wife, and that Patrick Ogilvie, his brother, was, in the old law phrase, "actor, art and part" in the murder. The two are arrested and put upon their trial for incest and murder. John Hill Burton, the Scots historian, and other critics of the verdict of the jury considered the result of the trial was "a reproach on the jurisprudential science of Scotland." They

claimed that there was no evidence that poison existed or was in the house or that the deceased died of it. Let us consider this matter.

Now the two main themes to which the Crown directed their evidence were motive and opportunity, It is impossible to shut one's eyes to the overwhelming evidence of motive. Within a few months of marriage the deceased husband had openly charged his young wife with carrying on a criminal intrigue with young Patrick and had turned his brother out of the house. The evidence of their familiarity was but too convincing. Apart from the testimony of Anne Clark, which was very hostile to the prisoners, servants described scenes in the house during the husband's temporary absence, and neighbours spoke to meeting the couple in the country walking and acting as careless foolish lovers. The evidence would have been more than sufficient to satisfy the most lenient divorce court.

But whatever had actually happened the husband had certainly believed her guilty, and had insulted her by declaring that "she and the lieutenant were as common as the bell that rings on Sabbath." The wife declared her innocence and expressed fierce indignation at Patrick's dismissal, and continued to correspond with him. Now if Patrick, when he left Eastmiln, had gone away to Edinburgh it may be that no tragedy would have happened, but he merely withdrew to the little town of Brechin, within twenty or thirty miles of his brother's house. And here, like Romeo, but it is to be feared from different motives, he sought an apothecary, and much turns upon what view you take of this witness's evidence. The apothecary, or surgeon, was named James Carnegie, and some day at the end of May, Patrick sent for him to a tavern and asked him for

some laudanum for the gripes, and told him he wanted to buy some arsenic in order to destroy some dogs which spoiled the game. Carnegie returned to his surgery, found that he had some of both of these substances, and the next day went and dined at the tavern with Lieutenant Ogilvie and a friend, Lieutenant Campbell. Ogilvie took him apart into another room and received the drugs and paid a shilling for them. Carnegie said that he usually took a receipt for arsenic, but he did not press for it from a gentleman in Ogilvie's position.

Ogilvie, in his written declaration when arrested, admitted having been in company with Carnegie at Brechin, but he denied having received from him any laudanum or arsenic. He also sent a man named Dickson to see the surgeon, and, when he heard what Carnegie was going to say, wanted to alter his declaration, but the Scots law did not admit that, though he might have added to it if he had wished. He wanted then to admit a purchase of laudanum at a date after his brother's death.

A strong effort was made in Carnegie's cross-examination to show that what he had sold was not arsenic. The surgeon himself knew nothing about the powder he had sold. All he could say was that he bought it as arsenic from a Dundee druggist, it was sent to him in a package marked arsenic, he had sold it to people in the neighbourhood to kill rats, and they told him that it did kill rats. This evidence could easily have been strengthened by production and analysis of the rest of the package at the surgery. Those who contended for the prisoners' innocence laid great stress on the point that there was no real proof that they ever had any arsenic. But at least Patrick bought a white powder called arsenic which killed rats. What became of it?