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OF THE SPEECHES OF Mr. HAWKINS, Q.C. (LORD BRAMPTON),
IN THE TICHBORNE PROSECUTION FOR PERJURY.
(A STUDY IN ADVOCACY.)

ALSO

## *A PREFATORY LETTER*

FROM

## THE RIGHT HON. LORD BRAMPTON.


BY

RICHARD HARRIS, K.C.,

A BENCHER OF THE MIDDLE TEMPLE,

*Author of "Hints on Advocacy,"*

ETC., ETC.




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# PREFACE,

WITH LORD BRAMPTON'S LETTERS.

THE Principles which were set forth in "Hints on Advocacy," I have in this book endeavoured to illustrate.

On the publication of a new Edition of "Illustrations in Advocacy" I am pleased to give an extract from a letter written by Lord Brampton, who, "take him for all in all," was certainly the greatest Advocate of my time. I do so with the greater satisfaction, inasmuch as the opinion was neither solicited nor expected.

"I was reading," writes Lord Brampton, "a few days ago in one of your most valuable books on Advocacy your summary of my opening speech in the *Tichborne Case*. You flatter *me* too much, but your description of it is so perfect in its composition and language that you ought to be as proud of it as a literary work, as I am for the friendly and generous expressions in which it is penned."

Having completed an analysis of the Reply in the same case, I submitted it to Lord Brampton, who wrote as follows:—

5, Tilney Street,
Park Lane.
*October 30th*, 1903.

My dear Harris,

My gratitude is due, and I heartily offer it to you, for the extreme ability and kindness you have shown in the production of these pages.

The skill and labour you have bestowed upon them are past all commendation.

You were kind enough to beg me to revise them before they were issued to the public. I was obliged to decline this honour for reasons I then gave you, and which were insuperable; but I did not really feel equal to the pleasant duty. I could not sufficiently carry back my memory to recognize each of the numerous facts before me thirty years ago. But you, I know, have freshened your own memory, and I am sure have done so with that unflinching truth and integrity which have marked all your dealings with my utterances. I can, therefore, but thank you, and trust to you to use and continue to deal with them as you feel right and just, and carefully to avoid every syllable which you think would give pain to any one who may survive that very memorable trial.

Believe me,

Ever sincerely yours,

(Signed) BRAMPTON.

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## A STUDY IN ADVOCACY.

Analysis of the Reply of Mr. Henry Hawkins, Q.C., in Tichborne Trial for Perjury.



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# ILLUSTRATIONS IN ADVOCACY.

## CHAPTER I.

### BLUNDERS OF ADVOCACY.

By far the greater number of mistakes in Advocacy are made in cross-examination, and these are mainly due to neglect or ignorance of the cardinal rule that *no question should be asked which may produce an unfavourable answer*. Bearing that rule in mind, it will be easy to avoid other dangers. One merit of the two speeches of Mr. Hawkins, Q.C., which I have deservedly called "A Study in Advocacy," is that no blunder, so far as I can judge, is to be found in that memorable case; and I may safely say that where it is easy to fail it is easy not to fail. A good advocate will take care not to blunder in this essential and most delightful phase of his Art.

Experience is the severest school, and *mistakes* are its hardest lessons; but the lessons should be learned *out of school;* let others teach you by their own errors how to avoid them yourself.

I have done my best in these Illustrations to bring home to the mind of the student the nature and effect of blunders, not one of which should have been made by any counsel who knew the facts of his case.

The first trouble in our work as advocates arises from

nervousness, which everyone must experience who is not as unintellectual as a gate-post. Happily, however, it is soon conquered.

The second difficulty often springs from conceit, or that feeling of superiority which is above being taught. Men who "know all about it" can never learn anything, while those who are most *learned* are always students. Some are "Heaven-born advocates." I have seen a good many of them, and have always thought I would prefer the earth-born persons who know something of human nature. The heaven-born *win no* verdicts. If their case goes right it is because the judge will not allow it to go wrong.

These Illustrations will help, I hope, to indicate the difficulties we have to meet and the means of avoiding them, without involving the advocate in any ignominious retreat. I have noted mistakes rather than perfections. Perfections are not so necessary as the avoidance of blunders, because if you avoid them perfection will not be far off. It will, at all events, be as near to us as the necessities of our profession require.

One great duty is watchfulness: undeviating attention. A wandering mind gathers nothing, and inattention leads often to a false move which may ruin the cause.

In cross-examination it is often necessary that your witness should be kept well in the dark. He is very often an old bird, and therefore you must not spread your net in sight of him. He is likely to be more cunning than you, therefore you should meet him with superior knowledge of the game. Cross-examination is not a mechanical arrangement, although often laid out

as such in your brief. Avoid all that, and carefully pass over "instructions." If your solicitor bobs up and down, and tells you to ask this and ask that, politely request him to allow you to carry out your own line of Advocacy; but you need not do it in the exact words of Sir Charles Russell: "Sit down, sir; you know nothing about it."

My Illustrations are *real cases* that have been tried, and the reader might excusably ask, "How could any man in his senses make such a mistake as that?"

Wait until you go into Court with only a half-knowledge of your case, and you will be able to answer the question for yourself; but I hope that time will never arrive.

## CHAPTER II.

### BREACH OF PROMISE OF MARRIAGE AGAINST A CLERGYMAN.

This is my first Illustration. The plaintiff was pretty and strong-minded. The one quality always pays in the witness-box, the other rarely succeeds. The defendant also was rather pretty, but not strong-minded. He was young, and somewhat shy.

In the junior's eyes (for the plaintiff), the case looked as winning as beauty itself. But his leader would have settled on almost any reasonable terms short of paying costs. Such is the difference between experience and enterprise.

The first mistake, however, on the part of the defendant was calculated to make even him a little more hopeful. It was no less than bringing the defendant into Court and setting him under his counsel in front of the jury-box, where, if he had happened to look *bold*, as it were, he would have seemed a wolf in sheep's clothing; and if he looked meek, he would have been considered one who would promise a poor girl anything to win her affections, and dally with them as a kind of religious pastime. He should have been kept in reserve, and not have been made an exhibit at that early stage of the proceedings.

In opening his case, the learned counsel, although a

man of sparkling humour, took care to avoid the common blunder of which so many counsel are guilty —namely, *opening with jocularity*, by way of indicating what the fun will be further on.

The pleadings stated that the promise was merely *conditional*, and that the condition had not been performed. As to that see the cross-examination hereafter.

It was a weak case, but the advocate was strong and wary. An inadvertent word uttered by his learned friend was another mistake to the debit of the defendant.

"It is not surely necessary," said he, "to read all the correspondence." "Oh, yes; I think so," was the reply. "The promise is said to have been conditional, and that there was no waiver of the condition." In fact there was so much pleading and pleader's subtlety, that they were almost enough to put the defendant out of Court, or rather pretty well into it. The defendant's counsel showing so much anxiety to avoid the correspondence, it was all read, of course, to the prejudice of the defendant, for his pious expressions of tenderness to the fair plaintiff showed how much happiness she had lost, and what a wrench to her feelings it must have been to lose so great a treasure as the writer.

The plaintiff was neatly got up for the occasion, and although she had a sufficiently strong will to command her temper, was not at times quite strong enough to control her emotions. She seemed to be of special amiability, and endowed with equally pious sentiments with the curate, such as would be particularly adapted

for a clergyman's private use. It appeared that the reverend gentleman had spoken much of the "harmony of souls," and had used many Christian endearments. He spoke of a "spiritual and a natural union of souls," and gave the tittering ladies' gallery many delightful specimens of Christian love-making which led up to the promise and its consequences.

She told how the acquaintanceship began by his being so lonely, and of his sojourning (not to say lodging) in the house of her mamma, for the sake of her mamma's companionship; and then that the plaintiff and defendant took to studying the Greek Testament together, so that in the matureness of events their platonic friendship ripened into love (*upon condition*).

Alas for the two-sidedness of human affairs! The defendant's counsel put forward this platonic friendship as *part* of the defence. But let the student bear in mind that nothing is a defence that is not a *whole* defence, any more than an alphabetic letter is even part of a *word* until the word is complete in itself. *This was another mistake.* After describing the unkind treatment by the reverend gentleman, she was asked if she was fond of him still.

Glancing at her deceiver with yearning eyes, she whispered emphatically, "Oh, yes; *very*, VERY fond!" and burst into tears to prove it. Her acting was not ludicrous, but pathetic. It was altogether the lamentation of a deceived and injured beauty, which has a special eloquence of its own.

Such was the case for the plaintiff; and, although she was a good witness in the hand of her own sympathetic counsel, I am sure she ought to have been made

into a very bad one on cross-examination. Her ideal notions of the marriage state might have been turned into delightful ridicule, and the shadowy corroboration of her statements have been dispersed by a ray or two of genuine humour. But the cross-examination was serious. The reverend defendant's counsel never made a joke in his life. It also lacked *shape* and *method;* it was conceived upon no principle whatever, but was apparently directed to satisfy his own curiosity.

"Let me ask you," said he; "did you frequently converse about marriage?"

"Oh, yes! it was his *constant* theme!"

"You liked it?"

"Oh, yes! it was very agreeable—my—future—welfare——"

She very properly paused, because you can say so much by saying nothing at all on these trying occasions; but she posed in a way that would have done no little credit to Mrs. Siddons herself. She was evidently too much for her cross-examiner, as the little ripple of laughter that went round the juniors on the back rows testified. Her emotions were rather conceivable than visible; they were not on the surface merely but deep down; and the fair plaintiff had her quiet depths which the learned counsel knew not of. But the learned judge had a deeper insight.

"You were desirous of marrying him," asked the counsel, "I suppose?"

"Oh yes, certainly: he had *promised* me, and *was always* promising me!"

"Stay," says the counsel, "we will come to that presently."

"Let her answer, please," said the plaintiff's counsel, "it is *your own question.*"

But the distressed one, encouraged by the boldness of the line of cross-examination, puts a question to her interrogator.

"Why," she asks, "*should I not?*" It was a question and an answer.

"Did he tell you his income would not permit him to marry?"

"Oh yes, many times."

"Did he say he would not marry until he had an income of his own?"

"Oh yes, many times."

"What did you say?"

"*That I would try and get him one!*"

There was laughter, of course, such as you seldom hear even in a Court of justice—the learned judge rolled back in his chair.

"But *you never got him one?*" asked the innocent leader.

"*Oh yes, I did, and he refused to accept it.*"

I cannot describe the scene: I can only say the reverend gentleman "buried his face in his hands." Whether he was laughing or crying I do not know.

"*Where* did you get him a living?" angrily asks the cross-examiner; but anger is never useful in Advocacy —you had better learn how to cross-examine than be angry because you cannot.

"At St. Swithin's," was the reply.

"Do you mean to say St. Swithin's was ever *offered?*"

"Oh yes, I have a letter here to prove it."

Letter called for by the lady's counsel.

Objected to by defendants. An unwise objection—more unwise than producing the letter; but as he did not wish to *conceal anything, withdraws the objection.* The letter was read, and there it was as plain as writing could show it. This valuable document seemed to have been fondly preserved, as also had been every scrap of paper defendant had ever written, that could throw any light on the engagement. If the promise was *conditional*, the letter proved the fulfilment of the condition; and the case was what we lawyers call "on its legs," the only remaining question being that of damages.

I need not tell the student that you should always treat this matter of damages with great care and delicacy, for they will go up or down according to your mode of dealing with them. Learn a lesson as you watch the question that follows, for it is one of a crucial kind, and had an immense effect upon the only matter now in issue.

"Is it a fact," asks the cross-examiner, "that *you and the defendant were three weeks in the house together without anyone else being there?*" It came as suddenly as an earthquake, and there was no escaping it. It bore the appearance of clerical debauchery, and the reverend gentleman hung his head like a prodigal son, but alas! without his repentance. It was an insinuation against the virtue of the plaintiff. And, as the plaintiff's counsel pointed out, in order to shield his learned friend who had rendered him such a favour, "it was the dastardly and cruel suggestion of the reverend *gentleman* himself who sat below him."

The plaintiff shrieked.

You could see that the jury were all fathers, with daughters of their own, they were so much affected.

It was an enterprising question, no doubt, especially as it was put in mitigation of damages.

When the fair plaintiff "came to," she looked beseechingly at my lord, who was full of sympathetic indignation, and then observed, with the most wonderful pathos in her voice——

"My lord!—Oh!—(wringing her hands)—Never!"

Damages one thousand pounds!

## CHAPTER III.

### ANOTHER EXAMPLE OF A BREACH OF PROMISE.

We know that Judgment and Tact are indispensable; how to illustrate this fact is not quite so easy, but probably some idea of it may be communicated in the following simple case:—

To make the right point at the right time; to call the right witness when his evidence will be most effective; to keep silence, when it is "golden" for your client: this is Tact; and not to ask dangerous questions, is Judgment.

We are to learn a lesson in these things from an uneducated layman who was the keeper of a refreshment house. He had, however, these three requisite qualities for conducting a case: quickness of perception; a knowledge of human nature; and a good share of Common Sense; he also possessed another excellent quality, that of holding his tongue.

This action was brought against the refreshment house keeper for breach of promise to marry a "young lady" whose feelings had been, it was said, *permanently injured* by "this man's inhuman conduct."

She was young and attractive—a valuable stock-in-trade in these actions.

The defendant was said to be in so excellent a

condition that he could afford to pay large damages. A splendid business, HOUSES, CONSOLS and other sources of wealth; so it was a *good case!*

You could have hardly expected a finer opening; and the orator was apparently winning all along the line. The jury seemed to feel that a man who refused so sweet a prize ought to pay for his folly, especially as he was an elderly man.

Meanwhile the defendant was in the gallery listening like the other spectators to his own case; and as the judge was about to sum up, cried out, "Hold hard!" Immediately after he entered the Court amidst no little sensation, much rebuke from the judge, and many humble apologies for his own misconduct. He said he was the defendant, and immediately there was a roar of laughter in which the judge joined with great judicial heartiness. After such a description of the gay lover and the wealthy tradesman as the learned counsel had given, to see an unshaven, shabby old man stand staring at the judge made any amount of laughter excusable. He was the most lamentable picture of a poor, broken-down respectable tradesman I ever saw. If the jury had been willing to give something for the plaintiff's beauty they would certainly give nothing for her taste. His appearance was his first point, *well made.*

The great qualification this man had to conduct his own case was that *he knew it,* which is not only the first necessity for an effective cross-examination, but one without which all other knowledge is useless.

He had also a perception of the points made against him; a knowledge of men, all desirable and indispensable in Advocacy. He knew exactly what he

wanted to prove, and asked only the questions which could bring the right answers. There was no finessing, or pretence of cleverness—it was all business.

He first informed the jury *why* the promise to marry was not fulfilled. He did not know what pleadings meant, so there was no nonsense about alternatives, or anything else. He was straightforward, whereas in most cases juries think counsel are concealing something up their sleeve whenever they try to take advantage of technicalities, and I have always observed that advocates who seem most straightforward get on best with juries, who hate what they call jockeying.

His next object was, if he *must* pay, to reduce the damages to the smallest possible amount, and with these two objects in view he set to work.

It was not his way to trifle with the jury as to whether he had *promised marriage;* he admitted it, contrary to the foolish old rule, "*Never admit anything.*" The better advice is, *admit all you can if it does you no harm.* It will often do a great amount of good. The *proof* of many things may do much more injury to your client than the admission. Showing how the breach came about involved a business-like matter that no jury could misunderstand: it could be calculated to a penny, if the breach amounted to so much.

The reason was "*Coldness*" on the part of the plaintiff—so much so that it looked like a case of jilting rather than breach of promise, which the twelve sensible heads could understand when they looked at him; for a more undesirable creature never appeared in a civil court. He must have been a sort of iceberg to this pretty plaintiff.

The way he proved that young woman's coolness was another lesson in Advocacy, and showed how well he understood what he was about—a great thing in conducting a case.

He asked if she *had a letter* in which he complained of her conduct. Yes, she had.

Of course our learned Q.C. for the plaintiff was on his legs in a moment with his objection: "No notice to produce, my Lord!" Beautiful pettifoggism this was, which told well with the jury, who concluded that the counsel did not *dare* to produce it. What else could they think? No notice!—*they*, the jury, wanted to see it. What could the Q.C. think if he thought of anything beyond the mere *technicalities* of practice? to obtain a verdict and keep back a letter which the defendant desired the jury to see as an explanation of his conduct?

"*No notice to produce!*" the counsel repeats triumphantly, with a defiant shake of the head.

The jury shook theirs too; and well they might, if *this* was Advocacy.

"You have given no notice to produce," says the judge, with a smile.

"I'm not acquainted, my lord, with the forms of law—she's got it there, I dare say, without any notice. If I had had the means of employing a lawyer, my lord, I should not have been in my predicament; but I wasn't up to this sort of thing. Then the jury mustn't see it, I suppose?"

"You will not suffer through not having counsel," says my lord, "I assure you." Which was quite true.

"I couldn't afford it, your lordship, that's why; a

solicitor wouldn't take up my case. I'm only a poor man!"

"We will see about that," says the cute counsel. "We will see about that presently."

"What is the *date* of that letter?" asks the judge.

"It was in *March*, my lord, while she was away in Cumberland. I wrote to ask when——"

"I object," emphatically cries the astute leader. "*I object!*"

"I wrote to ask when she was coming back," says the defendant, "as I got *five children*, my lord, and *nobody to look after them.*"

"Which do you object to?" inquires the judge, "to his asking her to come back or the five children?"

"Oh, my lord!" deprecatingly answers the counsel, "this is *too* bad. I object to all of it; he has given evidence of the contents of a letter which there was no notice to produce! Really, my lord!"

"How old are your children?" asks the judge; "it does not require any notice to produce them, I suppose?"

"The oldest is fifteen, my lord, and youngest two year and eight months."

"Do you object to that, Mr. ——?"

"Oh, no, my lord; it is no use my objecting, it is in now!"

"Is there anything in that letter," asks a juror, "that the counsel's *afraid of*, as he don't want it read? because if it's anything to do with the case we should like to see it."

"Oh, DEAR, no, sir!" answers the learned Queen's Counsel, with quite a ready wit; "only there was no *notice*, sir. But, of course, I should *wish* it to be read

—I *want* it read! Indeed, I should have put it in myself if you had not asked for it."

The reader will consider whether he thinks *that* a good style of Advocacy.

Part of the letter had really been quoted in *the opening speech*. And now comes the *other part*, amounting to this: The defendant could not *afford a housekeeper, there was no one to look after his motherless children*, and his business *was going to rack and ruin!* At all which there was much laughter, not at the misery but at the skill of the defendant.

"My lord," says he, "here's her answer to that letter."

Up jumps the leader once more with his lamentation. "Oh, my lord (another objection)! Ought to have had inspection—letter kept back"—and so on; making the administration of justice look more like a burlesque than a business proceeding.

But the letter was at last read. True, there was neither warmth nor feeling in it, hardly civility. It was rather the letter of a common scold than a lover. No wonder the learned gentleman *tried to conceal it behind technicalities*—not such pettifogging nonsense, after all, as they can now see.

"Now, then," said he, jumping from his seat to cross-examine, as though he would jump on the witness, "you live in a house, do you not, of a *hundred and twenty* pounds a year—*do you not?* Now be careful, sir, we know something about you."

"That's what keeps me poor," said the defendant; "that and my family leaves me without a penny. They put on twenty pounds last year to it."

"What is your business worth, sir?" sharply asks the learned gentleman. "Be careful, now."

"I am careful," says the man, "and careful as ever I can be——"

"What is your business worth, is my question," repeats the counsel. "What would you take for it?"

"Well," says the defendant, "if you like to clear up what I owes you can walk in and I'll walk out; and you'll find you won't get much of a livin' then. But perhaps you mightn't have a family, sir?"

"What about *goodwill?*" asks the now blushing counsel, amidst the laughter of the Court.

"Goodwill—well, sir—'all at.'"

"But you have other property, have you not, sir?"

"I have, and here it is," said the man, producing some pawntickets.

"Do you mean to swear, sir, that you have no other property? Come, now, be careful, sir—we have got witnesses."

"I do, sir."

"No money?"

"I might have a few shillings—*she* thought I'd a deal, no doubt."

"Why do you say she thought you had money?"

"Because they was always wanting it."

"Whom do you mean by *they?*"

"She and her mother and father."

"Do you mean to swear, sir, you have no money in the bank?"

"Not as I know of."

"She has told us you have."

"Well, if you likes to believe all she'll swear to you'll have enough to do."

"I'll have an answer, sir; haven't you money in the bank?"

"Well, sir," said the man, "here's my bank-book—that knows more about it than I do; if I have got any there I'll soon have it out."

"Let me see it," said the counsel, adjusting his spectacles so as to get a better view of his blunder.

After examining the book he handed it back without a word.

The judge wanted to look at it.

"Why," said his lordship, "the balance is the wrong way."

Then the jury looked at it, and passed it back with a toss of the head.

Another question. "Did you not break off this engagement because you wished to marry a widow with 900*l.*?"

"I wish I could find one, sir; I'd take one with a deal less than that." (Laughter.)

One would suppose the cross-examination had been effective enough, but there still might be found some property which would pay the costs of the action, for by this time the plaintiff's solicitor was getting fidgetty.

"What are your *takings?* We will see what this business is worth—What are your takings?"

"Not much, sir. Here's my book; it was made up when the landlord seized for rent, and there isn't much furniture left now, I'm sorry to say."

"When did he seize for rent?"

"This last quarter, sir."

"Well—but we have been told your takings amount to 7*l.* a day."

"I suppose *the old gentleman* told you that," answered the witness, amidst roars of laughter.

The book was handed to the judge.

"This," said his lordship, passing the book to the jury, "is the only *evidence of the value of the business.*"

The jury looked at it and the case was over.

Many advocates think common juries mere fools. When they do, however, the jury is sure to return the compliment in their verdict.

## CHAPTER IV.

### A DEFENCE IN MURDER.

#### Cross-examining a Deposition.

It need hardly be said that the most important case counsel could be engaged in is that involving the death sentence. No one should undertake to defend in such a case unless he has had considerable practice in criminal Courts, which are the real school of Advocacy.

Even after you have had such practice you will find the responsibility of defending a man for his life press heavily upon you. If you are not in a state of nervous excitement, I would give very little for your chances of success as an Advocate. Every question asked will be listened to with critical anxiety by judge, jury, counsel and spectators. Worst of all, a single mistake in cross-examination may send your client to the gallows. I have known this take place.

It will be no wonder, then, if at the last moment the words of your brief dance a little, and that your carefully-prepared notes have gone clean out of your head—apparently beyond recall. But, courage; it is merely a temporary aberration. All will be well if you *try* to be; and the first thing to help forward this desirable condition of mind is confidence in yourself. You have yet some minutes to compose your mind, and although this nervousness may increase while the jury are being sworn, it will subside as you listen to the

opening speech, and before the first witness has completed his evidence you will have perceived several openings for cross-examination.

The first question in this line will be the key to all, if you have formed, as you should have done long before this, the *plan* upon which your defence must stand or fall.

The case from which the present Illustration is taken was one of murder, and looked as hopeless on paper as any case could look. But the counsel was never hopeless: he trusted to his knowledge of *how it should be done* and to "*luck*," for there is much luck comes to skill, and it was no affectation on his part to suppose he possessed something of that excellent gift.

His advocacy displayed in this case was of an ordinary character, or what should be ordinary; that is to say, it appealed to the ordinary understanding. The jury were not puzzled with long sentences or big words. Altogether it may be said to have been the plain Advocacy of common sense.

The prisoner was indicted for the murder of his wife, and the principal evidence—if not the only evidence—against him of wilful murder was the deposition of the dying woman. Without this there could be no conviction for the capital crime: with it no defence.

It was a mistake of the most common character up to very recent times that depositions of persons absent or dead were hardly ever subjected to analytical cross-examination; counsel rarely, indeed, put the absent or dead person in the witness-box; but a new style is now becoming prevalent, much to the advantage of the accused.

The dead woman was in this case subjected to cross-

examination on every detail of her deposition. Counsel who cannot do this will not shine at the bar, however brilliant he may become elsewhere.

The statements in the deposition were closely compared and *contrasted*, when it was found that in many not immaterial particulars they contradicted one another; so the deceased wife gave some evidence in the prisoner's favour which no re-examination could affect.

The deposition stated that the woman was "in bed, had been to sleep, and was a little *the worse for drink;* that her husband came and threatened to throw her out of the window; that he took a knife from a drawer, and said he would kill her. He then struck at her; she stooped, and afterwards found she was wounded. He said, 'You have only a few hours to live,' and that he sent for a doctor and a policeman and gave himself up."

The first thing that occurred to the mind of the counsel for the prisoner as being important, before he allowed the deposition to be read, either in the opening or the evidence, was as to whether the prisoner had had *an opportunity of cross-examining the deceased—it was sworn he had, but anything can be sworn*—because if not, the deposition was useless. If even the law had contrived to get it in, common sense would have contrived to turn it out again. A statement against a person who has no means of asking a question is absolutely worthless in itself, and can scarcely be said to be improved even by corroboration, because if it is corroborated in every material particular you do not want the document at all, and if it is corroborated in some merely immaterial particulars it does not add to its value in the least.

The prosecutor argued that the prisoner had had "*ample opportunity* had he chosen to avail himself of it, *because the prisoner was present at the bedside when she made it.*" But this is what was obtained from the policeman:—

That the prisoner was hurried from his cell in the dead of night, dazed and half crazed, and taken to the woman's bedside *just before she died.*

He had not been served with any notice, and therefore could not obtain legal assistance.

The charge was not read over to him, and he could not know whether it was murder or manslaughter that he had to cross-examine to.

The woman's physical and mental condition were not such as enabled her to make *a clear or connected statement.*

It *might* have been hers, but if not as to every word entirely hers, it was not her statement at all.

There were pauses between the words as she spoke, and some of them on being examined were by no means proved to be the *actual words* uttered; only *words to that effect.* Some seemed to have a double meaning, and, to equalize that surplusage of meaning, some had no meaning at all.

So that, taken altogether, this document was not in a fit condition to be relied upon, and was therefore rejected—cross-examined out of Court.

But there was still the prisoner's "*confession*" to be relied upon: "*I have killed her.*" This was said to the policeman who apprehended him, or rather to whom he gave himself up.

"Did he say he was sorry?"

"He did, sir."

"What did you say to him?"

In the circumstances this was a proper question; in others it might have been most dangerous. But the policeman was known to have been friendly with the prisoner; and besides, his cross-examination was upon the depositions.

"I said to him, 'What, killed her, Jim?'"

"Aye," he answered; "it's too true."

It required little skirmishing after this. "Killing" is not always murder.

The prisoner was proved to be a man of humane disposition, respectable and industrious; and the doctor's evidence was to the effect that it might even have been done unintentionally. A verdict of manslaughter was returned.

How easily, I have often thought, the man might have been convicted. A wrong question would have done it to a certainty.

* * * *

Cicero says that "swearing to opposing facts is no good in the face of the strongest probabilities."

Facts, or rather *circumstances*, are not always what they seem. In a Court of justice witnesses depose to appearances, indeed it is all they can depose to; but they often take what seems to be for what is, and above all too frequently give evidence as to what they *think* was said or done, knowing nothing of either. The meaning of the dying woman, in this case, at all events, was not to be taken as positively correct when the words came in detached fragments and almost inarticulate words.

## CHAPTER V.

### MASTERY OF DETAILS.

**An Action on a Covenant respecting a Bill of Sale.**

THE benevolent looking old gentleman, so like the Duke of Wellington, who is proceeding up the steps to the Court of Queen's Bench, is the plaintiff in the well-known case of *Hawk* v. *Sparrow;* an action brought on a covenant relating to a bill of sale; the covenant being (*in the assignment* of the bill of sale) that *the said debt was a good and subsisting debt.* If it was not, contrary to the usual business between these people, Mr. Sparrow had taken in Mr. Hawk.

As the learned counsel opens the case there seems not the least chance for Sparrow, who, some years ago, was a market gardener, and had befriended a neighbourly grocer by lending him money from time to time, till at last it amounted to 150*l.*; and forasmuch as he had not to pay, he gave Sparrow a bill of sale on his household goods.

Mr. Hawk, the gentleman we have been admiring, was the *grocer's family lawyer*, and knew all about his affairs; better, in fact, than the grocer did himself. Mr. Sparrow advanced to the grocer a further sum of 30*l.*, making in all 180*l.*, for which the bill of sale was given.

Soon after, the grocer became further involved, and at last went into liquidation.

After this he continued to pay Sparrow interest on his bill of sale; legally wrong, but morally pardonable. It had been agreed that if the grocer did not pay Mr. Hawk for *drawing up the bill of sale*, Mr. Sparrow was to do so. The grocer failing to pay, Hawk applied to Sparrow. The latter was busy at the time, and said, "I can't be bothered about this thing for ever, but if you like you can have the bill itself in satisfaction of the costs of drawing it up, and a few pounds I owe you besides."

Just the thing for Hawk. He took the bill and the assignment with the covenant before mentioned.

*Twelve years passed away*, and Hawk is now suing on the covenant that the said debt *was a good and subsisting debt*. Such is the "case," and the counsel argued with good sense, no doubt, that it was neither good nor subsisting, because *all liabilities had been wiped off by the liquidation*.

This made the judge nod his head in intimation that he took it as an undefended action. He saw through it at a glance, as some judges always see farthest when there are no *facts* to obstruct their vision.

The judge was "against" the defendant.

And let me observe, that if you get the judge against you at starting, which one side or the other is almost sure to do with *some* judges, when they know nothing about the merits, you have an uphill tug until you have got so high that you are on a level with his lordship's understanding. When he really knows your facts—he will alter his opinion if you are in the right.

Give him credit for that, because every judge is strictly impartial.

At present his lordship has only got thus far: he asks, "*What answer have you got, Mr. Jones,* to this action?"

Mr. Jones is an advocate, and also a good whist player. He prefers to keep his hand up, charm the judge never so unwisely. And let the student bear in mind this lesson: *never disclose to the judge what you would not to counsel on the other side.*

"My lord," says Jones, "with great submission, I should like to see *my learned friend's case* before I show him mine."

"Very well," says his lordship, with a contemptuous toss of the head, "only it seems to me that you are bound by the covenant."

"I hope," says Jones, "to alter your lordship's opinion," with great respect, "when you have heard my case. At present my friend has not finished opening his."

"Oh, pray don't let me interfere," says his lordship, "but it seemed to me this is a case that might very well be settled."

"Afraid not, my lord," persists Jones, "with great submission."

"I say no more," despondently replies his lordship, and the case proceeds.

The benevolent plaintiff enters the box and takes the New Testament in his hand—looks at it, lays it down somewhat disdainfully, and puts on his hat. The right book is then given to him.

I never heard a witness give his evidence more fairly

and temperately. It seemed irresistible; and not to be got over or got round by any possibility of Advocacy.

But Jones is not to be got over or round either, by any possibility at all, if he has a good case; and his cross-examination will show the value of *a perfect mastery of details*, which enables him to master difficulties that are not *organic*.

He deals first, as becomes respectful Advocacy, with his lordship's "impossibility."

A covenant is a hard and solid obstacle to get over; true it is twelve years old, but none the worse for wear. The cross-examination has been carefully prepared *with the fullest knowledge of every fact in the case;* and every question is, in its *tendency*, towards its object, although by no means always in a straight direction. There are many more than *three courses* open in cross-examination, but there is only one way to do it successfully.

Jones asks Mr. Hawk if he knew a person of the name of *Isaac Jacobs*.

The witness does not know Isaac Jacobs; that is to say, he does not know how to answer. Jones sees that, and from his knowledge of the facts knows that he has Hawk at his mercy from that moment.

"Do you say yes or no, Mr. Hawk?"

"I cannot say—it is so many years ago."

"Let me help you. Was there a man who used at that time to take possession for you under bills of sale, when you put in executions?"

Question has to be repeated.

Taking down his gold-rimmed eye-glasses with a professional twirl, he says, "*He never did.*"

The learned judge now begins to see there is something in the defendant's case; and I wish most reverentially that all judges would give a fair opportunity to counsel to conduct their cases without interruption. Nothing is so disconcerting, as most of them ought to remember, and nothing more likely to produce injustice than constant interference. A client is satisfied with his counsel when an opportunity of putting his *whole case* before the jury has been afforded him, and is often *dissatisfied*, even when he succeeds, *if some important matters are omitted; for the statement of them may be of more value to his reputation than the verdict itself.*

"You say, Mr. Hawk," asks the judge, "he never did?"

"No, certainly not, my lord."

"Look at this letter," continues the counsel. "Is it your writing?"

The letter was read—*instructions to Jacobs to take possession of the goods the day after the assignment to Mr. Hawk.*

Then the plaintiff foolishly said: "But he never did take possession."

Another letter was put into his hand written by the plaintiff, *asking for an account of the goods seized.*

"Yes," says the plaintiff, "but as he did not give me an account, I concluded that he never took possession."

One more letter, and then Hawk may go; it is a copy of one written by Jacobs to Hawk, who does not produce the original, and upon it he has to confess that Jacobs wrote informing him that he had seized, but that

the goods were of little value, and would not pay expenses.

The jury at this point were prepared to return their verdict, but even the judge agreed that the witnesses for the defence should give their evidence, with a view to avoid a new trial. So defendant and Jacobs were called, and bore out every fact elicited in the cross-examination.

## CHAPTER VI.

### SIR —— ——, Q.C.

**Instructed by his Solicitor.**

In contrast to this mastery of details, it is proper to observe that all men are by no means so gifted with an appreciation of small matters. Some men's minds are too large for details. The ordinarily great man of "the Eighties," let us say, gave himself no trouble about trifles, being so unlike your Michael Angelos. His briefs poured in so fast that it was quite as much as he could do to deliver them out again. Thus, he became a kind of middleman between the attorney and the "devil."

The reader will, of course, know that I mean by this term the gentleman who ultimately held the brief without fee or reward except the prospect of becoming famous.

Every morning, in those old days to which I refer, there was a kind of *levée* at his chambers, where the distribution to the devils took place. The "*dead cases*" were always entrusted to those young gentlemen who were most eager to build up a reputation, the merely *difficult ones* to middle-aged gentlemen who could never

make a reputation, while the *easy* ones were retained by the generous benefactor himself for the purpose of keeping up his own.

In these circumstances, there could be only an occasional "look in" now and then into Court to see how the machinery was working. If it happened to be an important case—that is, with regard to the fee—the learned leader would take his seat, give his lordship a condescending *bow* and the jury a smirking smile, listen to a question, and walk away. His work was done. The client had *seen* him. The client was able to say he *had had Sir* ——, *Q.C.*, without adding that Sir ——, Q.C., had had the client—quite a sufficient honour for his fee.

I remember even so recently as the days of Mr. (afterwards Sir) —— that Advocacy was rather a trade than a profession, and the result of too much work was the following incident. Not that my friend Sir —— was anything but a hard and plodding worker, and by no means a benefactor of devils. But even he could not read *all his briefs*.

A divorce suit was being conducted before Mr. Justice ——. This celebrated advocate was for the defendant, and, endeavouring in his genial and pleasant manner to balance immoralities, put several questions at the instigation of his client. The great point in the cross-examination was to show that the petitioner, who was a solicitor, was as unfaithful to his wife as he alleged his wife had been to him. He had not made very much progress, however, for the solicitor's immaculate virtue sustained him through the trying ordeal.

The solicitor who was "instructing" Sir —— now

showed how useful it is to have an intelligent friend in the capacity of "instructor."

"Ask him," he whispered, "whether he is not a *frequenter of Corporation Street.*"

"*Frequenter*" was capital; it sounded well—a frequenter! so thought Sir ——; and, having taken this valuable hint, said—

"Now, sir, attend to me, if you please. *Are you not a frequenter of Corporation Street?*"

The witness smiled.

"It is no laughing matter, sir," said the counsel. "Do not lounge in the witness box like that; it is not respectful to the Court. I ask you again, are you not in the habit of frequenting Corporation Street? You know what I mean, sir; just answer the question."

The petitioner, with the blandest smile of innocence, answered, "Yes."

But, having got thus far, Sir —— was at a standstill; it was a forensic *cul de sac.* So he sat down, looking as if, having landed his witness in Corporation Street, there was an end to his virtue and his petition, except as to costs.

The petitioner, who was merely represented by a junior, re-examined. This was his re-examination:

"You say you are a frequenter of Corporation Street?"

"Yes, sir."

"Can you say whether *her Majesty's judges* are also in the habit of frequenting that neighbourhood?" (Here, of course, was much laughter, which *Mr. Justice* —— indulged in as freely as any.) "*Have you seen them there yourself?*"

"Many a time, sir."

"Is it not the finest street in Birmingham?"

"It is, sir."

"And is it not there that the Royal Victoria Courts of Justice are situated?"

"Yes, sir."

"And *where the Assizes are held?*"

"It is."

Sir —— looked at the bald back of his solicitor's head as if he would like to give it one good hammer with his brief, but he desisted, and then, smiling at the ludicrousness of the situation, for he was ever alive to humour, walked out of Court to *attend* to some other case, leaving this one to do itself, which it very soon did.

* * * *

It was one of the most extraordinary things that this blunder should have been made. How the learned counsel should never have heard of Corporation Street, Birmingham, I cannot conceive.

## CHAPTER VII.

### ANOTHER HOPELESS CASE.

My next illustration is a case that might well be called "hopeless," as it looked on the *depositions*, for it is in the Criminal Court. I write it because, in fact, it was a case of the greatest difficulty. It is of little advantage to the student to show how easy it is to win a good case. The best advice concerning that is to leave it alone and let it win itself; the less interference the better.

My friend, Alfred Norton, was one of the best of advocates, and had fought more bad cases, perhaps, than any counsel of my acquaintance. Whatever his case might be, *he* was never hopeless; he possessed those invaluable gifts in Advocacy, a belief in himself, a belief in his cause, and an almost superstitious belief in *luck*. "Something *might* turn up." When asked what he thought of a particular case, he usually inquired "*Who is on the other side?*" If his opponent was not a "*deadly cross-examiner*" he would say—we must wait for the cross-examination before I can say whether we have a case or not.

Three men were indicted at —— Sessions for stealing and receiving some carcases of sheep, a side of beef and a pig; *Brown*, *Wily* and *Smith*. I invite the

reader's attention to the case of *Brown*, because Norton appeared for him only.

The conference was at the Queen's Hotel. "I do not think, sir," said the solicitor, "this case will give you much trouble."

"Pleads guilty?" said the counsel.

"Well, not exactly, sir, we should hardly bring you down for that; the facts——"

"Never mind the facts, *Who is on the other side?*"

May the reader lay this to heart; because, as in racing, a good many sportsmen back the *Jockey* rather than the horse. I would often rather back the advocate than the case. The solicitor "hardly knew," he thought some one was coming "*Special.*"

"That's good," said Norton, "I do not mind your *Specials*—it is your ordinary man who knows the kind of jury he is addressing and whom *the jury know* that I have some respect for, he is far more formidable."

"It's a trumped up case, sir, I believe."

"By whom?"

"The police."

Yes, and they generally trump them up remarkably well. "I suppose, then, you have trumped up a defence? Excuse me, there is nothing remarkable in that."

"Our man has an excellent character, sir."

"Of course, he would not be a client of yours if he had not. But really, have you nothing better than that? Almost every scoundrel has a good character till he loses it."

"But in this case, sir, it is all right—he is a livery stable keeper—lets out vehicles."

"Has he ever been convicted? that is the point."

"Well, sir, I will be quite frank with you: he has never been convicted, but he has been acquitted."

"What for?"

"I think it was *burglary*, sir; and that is why we cannot call evidence to his character; you see when a man has been acquitted——"

"It is the next thing to being convicted; now let us hear the facts."

The reader will understand I am not relating an imaginary story, but giving the *actual conference* between counsel and solicitor. It may help him, I hope, in many conferences. It is usually in the conference where the defence takes something like form and shape out of verbal chaos.

"They are very simple, sir. On the 10th March, Brown let out a horse and cart to two men. In the early morning, on going into a shed in his yard, what should he see covered over with straw but a dead pig, a side of beef, and two sheep. One of the sheep had a ticket on its inside, on the kidneys, sir. Brown, not knowing how these carcases came there, went immediately to market and sold them by description to a respectable butcher, whom he knew, at 6*d.* a pound."

"What was the market price that day?"

"Well, it *had* been a little up the day before; about 9*d.*"

"And the day before that?"

"About the same, sir. Well, he was offered less but refused to take it, because he said he was *commissioned* to take nothing under 6*d.*"

"Has he told all this to the police? if he has you

must call the man for whom he acted on commission. What is his name?"

"He did not tell the police, sir; the fact is he told the police, as you will see by the depositions, that the meat was taken away to avoid an execution by the sheriffs under a writ."

"To avoid an execution! What do you mean?"

"I mean that an execution was expected."

"Did he know the butcher to whom he sold the carcases?"

"Oh, yes; they were in the habit of drinking together, it appears, and made the bargain at the public-house in the market—quite openly, you see."

"Is the butcher indicted too?"

"Oh, no, sir, he is one of the most respectable men in the town."

"I suppose so. Has he ever been acquitted?"

"Oh dear, no, sir."

I now come to the point, sir.

Before Brown got home from market, it became known that a burglary had been committed, and these carcases stolen with the owner's name on the ticket.

The men who hired the cart were unknown to Brown, and he could not swear to them, never having seen them before.

"But did he not ask their names?"

An entry was made in his hiring book, but without names. Brown swore he quite forgot to ask their names.

The prisoners Wily and Smith lodged together. In Smith's room was found another dead sheep, part of the stolen property. They said they did not know how it came there.

An old woman lived in the same house and knew Wily. She was, in fact, his mother-in-law.

Somebody must have dropped the sheep in the room, she said, while she was sitting up, with her back to the door, waiting for her son-in-law. She did not see him, because she was a little deaf. And that was all she knew about the matter.

The man who had been robbed, hearing that his meat was at Brown's premises went there and said to Brown, "You've got meat here belonging to me."

"It's in the shed," answered Brown. "I've taken care of it for you."

The prosecutor went into the yard just as Smith and Jones were harnessing the horse.

"Who was Jones?"

"Brown's man."

"That's my meat," said Mr. Bowles, the prosecutor, "and you don't take it away."

"We'll show you," said Smith, and away they drove, Bowles following and hanging on to the tailboard. Having got to a point where the roads diverge, they beat Bowles about the head with a stick. Wily got away. Smith happened to meet a policeman and was taken into custody.

"I hope he is not going to plead guilty, or they will make him a witness for the Crown."

The police asked Brown what had become of the meat. He said the owner had come and the three men had gone away *together*.

I would like the reader to ask himself what defence he would set up for Brown? It will be no reflection on his sagacity if he cannot see his way to an acquittal.

But it will do no harm to try and work out the problem. On the facts there is no defence; it is in the handling of them where the merit lies.

It is useless merely to admire a defence as you would a play. You may scramble through a case, but that is not Advocacy; you may brow-beat a witness, but that is not cross-examination. I think Norton trusted to accident and a little manœuvring of probabilities.

The solicitor said he had not quite finished his "observations" on the brief.

"Then please do not," said Norton; "if there is one thing more than another I detest it is observations, and your 'suggestions for cross-examination.' Observations should be made by counsel, not by solicitors; and I hope the case has not been spoilt by cross-examination in the police court? Half the defences are spoilt there."

"No," said the solicitor.

"You may cross-examine ever so well at that stage," said Norton, "but the better it is done the more you show your hand; you throw away your best cards, and give the police the opportunity of undoing it at the trial."

When the case came on at sessions, Norton did what few men ever do, that is, examine the jury list. It is something to know who and what your men are, and something also to examine their faces, in the light of that knowledge.

"Challenge!" cries Jack, as the first man came to be sworn, a convicting looking fellow. Challenge to the next, and the next. Challenge to all but two, until at last a proper looking jury was secured, impartial

looking men who should true verdict give, according to the evidence as it was to be interpreted by Jack Norton.

The evidence was bad to overflowing, and wanted no assistance from a policeman. It came out less favourable in Court than at the conference.

Of course the reader will know that the cross-examination was brief as possible. It was not necessary for Norton to keep it up in order to "show he was doing something for his client." He naturally emphasized the fact of the ticket containing the owner's name and address being on the sheep, *visible to everybody*, as he very wisely brought out.

"Anybody could see it?" asked Norton, with a certainty of emphasis that made the witness jump, as he jerked out "Yessir."

Then came the fact, also well hammered into shape, that "the butcher who had stood in *that* market for thirty years was a respectable man?"

"Yes, sir."

The reader has here a perfect illustration of that immortal saying, "*how far that little candle throws its beams!*"

The butcher's respectability was made, in the hands of the advocate, to do duty for the defect of it in that of his client. It is more than likely that most of the jury knew this "respectable butcher" and had had dealings with him, which would be another great thing in Brown's favour.

It was brought out, too, with great vividness, that "it was in consequence of *Brown's superior vigilance* that *the meat was discovered at all*; and that if Brown had been a thief he could easily have sold it without

going to market at all and running the risk of malevolent suspicion."

It was through his sagacity, too, that *the police were informed* of the whereabouts of the stolen property.

This question was put in a very genial and conversational manner to the detective:

"I think, Marshall, if I understand you rightly, it was in *consequence of Brown's communication* with the butcher, that you were enabled to trace the property?"

"Quite right, sir," says the detective, much more readily, perhaps, on account of Norton's having addressed him by his surname.

But, of course, Marshall had often been cross-examined by "this counsellor" before, and would be again.

All this was making good way, and it was manifest to the jury by this time, that there was *no pretence* for saying there was any *concealment*, which, as the jury knew, is the infallible token of guilty knowledge.

It was something also in Brown's favour that the other men were so admirably defended. They did not mind taking the responsibility upon themselves so long as they could get Brown off—they were quite disinterested spectators of the scene. But, to say truth, there was no possibility of doing anything else. To rescue one was better than all going down in the same boat.

But now, curiously enough, Norton's peculiar luck was about to manifest itself. The very best thing that could happen! *Fresh evidence on the part of the prosecution!* There is no complaint at present about it, let it come. "*Raked up*," said Norton afterwards, "to

bolster up a weak case!" which indeed was true: except that it was not a weak case, only getting weaker under his quiet cross-examination.

The new evidence was that of another *detective-sergeant* (a German), with these valuable particulars: He was *present when Von Holden apprehended Brown* and heard him say, "'*Ha! ha! Chemmy*'—*yes*—yah!" (as though recollecting himself) "yes—that vas it—'Ha! ha! Chemmy, we are coourt you at larst! I said long time ago we shood af you.'" To which the innocent Brown replied, as the *detective affirmed:*

"Well, well, Mr. Von Holden, it's all for money—you know it's *a paying game!*"

I have no doubt the sagacious reader sees through this smart piece of business on the part of the Crown. A trifling dash of perjury makes *a little truth* go a long way.

But what was more important was the *mode* in which Norton turned this to his *advantage*. And let the student observe this: *if that piece of fresh evidence can be broken down*, Brown will be *acquitted*. The reason, although obvious enough, had better be stated.

It may be inferred that the prosecution would not call an additional witness unless they doubted the completeness of their evidence. At all events, they would not call a witness who added *nothing to the facts*, but only made the *prisoner* say something *against himself:* the most unsatisfactory kind of evidence that can be given, because it can be so *easily manufactured*.

This, then, is how the counsel deals with it:—

"Were you before the magistrate?"

"I was not called."

"You were there?"

"Yes."

"You think this evidence important, I suppose?"

"Yes" or "No" will do for the learned counsel; but a long time elapses before the sergeant answers.

"It is not for me to say, sir."

That was right—it was for the jury to say; but nothing was lost by the question. Now comes one by no means of a trifling character:—

"Was *Von Holden* before the magistrate?"

"I think so."

"Have you read his deposition?"

"Yes, sir."

"Do you find anything about this *conversation?*"

"I don't think there is."

"Do you not know there is *not?*"—(a pause)—no answer.

"Where is Von Holden?"

The witness did not know, but he himself had come in the absence of that remarkable detective.

"Did you" (he was asked) "make a note of the conversation?"

"No."

He was asked how he came to give this statement. The worst answer that could be given: he *had been in Court only yesterday* in another case, and meeting *the clerk to the solicitor for the prosecution*, that gentleman asked him if he knew Brown, "And then" (continued he) "I told him what I have stated in my evidence."

"You may stand down."

And then a short, clear, incisive speech is all that is required.

The jury shake their heads, and assent to the learned counsel's statement that we are not in Germany, where possibly such evidence might be credited. It was not quite an *Englishman's* notion of fair play (the jury shake their heads in assent to the laudable proposition); of course, said Norton, they might like that sort of thing in Germany, but we prefer *the laws of England and a British jury!*

Then he touched again upon the well-known Brown, the livery stable-keeper, and the fellow townsman, and his going into the *open market*, and the no concealment, and the *giving information which led to the discovery and recovery of the stolen property*, and the butcher's good character.

Although Brown called no witnesses to character, there was no necessity, after calling witnesses to that of the respectable butcher; and the jury without hesitation found a verdict of "Not guilty."

* * * *

It may be thought by rigid moralists that the arguments in this case ought not to have succeeded, but it must be remembered our laws are not administered in a Court of morals; if they were we should not find a sufficient number of immaculate people to form a jury. Advocates, like others, have to take human nature as they find it, and there is no triumph so sweet as winning a case which *they ought not to have won.* A "dead case" is one where every fact looks against you, and the art of Advocacy is (fairly and honourably, I admit) to mollify the worst features of such a case, explain others, and, if possible, even adopt the rest by drawing inferences from them in your client's favour.

In this case there was no inference that was not reasonable, and therefore, which might not have been true. It is only because the case *looked* so bad that the conclusions look so wrong. But if they were not absolutely wrong they were right, and if right the Advocacy was right; not only so, it was right *in its line*, and without a single mistake in its performance.

Manner, no doubt, played an invaluable part in this defence, but manner is part of Advocacy. Who shall quarrel with that? The manner was not mannerism, nor affectation; it was natural; there were touches of quiet humour that every now and then played round a question and gave a pleasing diversion to the stark deadness of the facts. It was a relief to the jury. But whether we will or no, the individuality of the performer ever gives tone and character to the performance. Mannerism will detract from the merits of a good case, while a pleasing and natural manner will sometimes win a bad one.

## CHAPTER VIII.

### WHAT IS A STAGE PLAY?

As my object in giving these Illustrations is not to amuse, but if possible, in my humble way, to instruct, I am sure the student of the most serious turn of mind will not consider the following example of ridiculing a case out of Court any departure from my plan, however absurd the picture may seem.

The value of humour can never be overestimated, when it can be appropriately employed, and plays a greater part in the affairs of mankind than persons of ascetic temperament would like to admit.

I know that the grave advocate dreads the man whose lighter-heartedness will sometimes perform almost miracles by means of his delightful gifts of wit and humour, even to putting the grave man's case out of its misery before its time, as was once said when a conflict of such adversaries took place.

The case I am about to give was in its nature full of humour, for it was a proceeding on behalf of the Watch Committee of a certain great town, now a city, against certain music hall proprietors for performing a stage play.

My friend Alfred Smith, one of the best advocates of my day, was in this case on behalf of the Watch Committee.

It was the writer, composer and singer of the famous Jingo song who made the mischief, whether in consequence of any political feeling or not I cannot say. But in this case were all the elements of a stage play in itself, except the actors; although, as to that, Alfred was an actor it would be hard to surpass, if acting means the adaptation of tone, manner, and speaking to the occasion.

The Watch Committee, ever watchful over its expenditure, was apparently more inclined to win the public approval for its economy, than for success in their undertaking. Most people would think that on a nice question as to what is "*a stage play*," and what performance on a public stage is not a stage play, a man versed in literature, a scholar, dramatist, journalist, poet, philosopher, or art critic would have been requested to investigate the matter and make a report to the Watch Committee.

This "Watch Committee," however, preferred that their *critic* should be a *common policeman*. They thought "*our policemen*" were equal to anything; and had no such belief in your literary lions. Nor did they deem it expedient to select any particular member of the force. All policemen, according to their theory of equality, were as much alike in intellect as they were in uniform.

So the police constable went on duty in the promenade of the music hall, took his notes, and duly reported that the performance was, in his judgment, *a stage play*. He examined the play for a number of nights, lest it might be said he came to a hasty conclusion. He was there as if to identify a suspected

person, and consequently was resolved to have a good look before he picked him out; but when he did pick him out, he swore to him through thick and thin—as became a literary critic.

No sooner had he accomplished his task than a Special Borough Sessions was called, and a strong bench of magistrates assembled, presided over by a gentleman who was by no means unacquainted with the subject-matter of the inquiry. It is unnecessary to give the name, although I should have liked to do so.

The literary policeman gave his evidence in a manner that from the first moment created a titter of laughter. His very character of dramatic critic in a Court of Justice was as grotesque as the man who plays the part of Policeman in a pantomime.

He had, however, no difficulty in the matter. He took out a huge pocket-book which contained the notes of every performance, the most laughable of all being his own performance in the pocket-book, wherein he professed to have set down the *dualogue* word for word and the characters introduced into the performance.

Alfred Smith, the counsel for the prosecution, was not altogether pleased with his dramatic critic.

"What the devil am I to do," he said, "with such a fellow as that?"

But he had such a sense of humour that he smiled at every answer that was elicited in cross-examination. It was exactly the cross-examination he himself would have administered.

"Have you had a long experience in *dramatic literature?*" asked Jones, the counsel for the defendant.

"Not till I took up this job, sir."

"Your first attempt, is it?"

"Yes, sir."

"You have read a great deal, I dare say?"

"Not a great deal, sir."

"Not a great deal. Have you read many plays?"

No answer.

"What are your favourite dramatists? Those probably of the Restoration?"

No answer.

"What, in your judgment, now, may I ask, constitutes a dramatic performance as distinguished from a music hall representation? or do you consider that a play off the stage is still a stage play or *vice versa*, or how otherwise?"

There was laughter, of course, as was intended, and such as you seldom enjoy in a Court of Justice.

"If you'll ask me a simple question, sir, I'll answer it. I was sent by the Watch Committee."

"Well, I will ask you a simple question as you wish, and give me a simple answer as I wish. What is the difference between a dramatic piece and a pantomime?"

No answer.

"Do you give it up?"

"Don't understand, sir."

Well, then, another. "What is the characteristic of the *Drama?* You say this is a dramatic representation."

No answer.

"How do you distinguish, pray, between what you describe as a stage play, and any other representation which, in your judgment, is not a stage play?"

Still the critic did not answer.

"You know," said Jones, "the Watch Committee, as you have told us, much to their honour, commissioned you to examine this performance, and to acquaint them whether it was a stage play or not. I take it, therefore, they had more confidence in your intelligence than their own."

"A drama, sir," broke in the policeman, "is something with a *tale* in it."

"Very good; what would you say, now, to a *Rabbit Pie?* Is that a dramatic performance?"

"Sometimes, sir," laughed the critic, and after a universal outburst the Court suggested that the rabbit pie suggested luncheon. The counsel went away together to the club, and after lunch informed the Bench that the case would not give their worships any further trouble.

## CHAPTER IX.

### AN ACTION AGAINST A RAILWAY COMPANY.

Not the least important class of cases is the action against railway and other carrying companies for injuries caused by alleged negligence.

As a rule every presumption, at starting, is against the company.

Negligence is nearly always assumed, and contributory negligence ignored; when it is not, the two negligences become so irretrievably entangled in the summing-up that it would take a logician of the finest water to draw the necessary distinctions. For instance, take this example: "Gentlemen, if you find there was negligence on the part of the company, and you find there was also negligence on the part of the plaintiff, then you will ask yourselves whether, notwithstanding negligence on the part of the plaintiff the defendants could, by the exercise of proper care on their part, have still avoided the accident." Repeat this proposition three or four times to the jury, and then tell them to "consider their verdict." What is the intelligent deduction to be made by a jury unused to fine distinctions?

Unfortunately companies, as a rule, are only able to call witnesses who are in their employ, and therefore whose evidence is open to some amount of distrust; the persons often have the strongest motives to give evi-

dence on the part of their employers, in order to shelter themselves from blame.

Of course in a large number of cases the companies have an honest defence; nevertheless they start with every prejudice against them, and it is one of the most difficult to conduct at *Nisi Prius* for that reason.

The Illustration I am about to give is not a sensation case, but one of the most common in this line of Advocacy. It is, however, remarkable for the circumstances attending it.

Two years before this trial the same case had been tried, and the jury had disagreed, simple as the facts were.

A working man travelling on the defendants' line between Wapping and Shoreditch met with an accident through alighting unnecessarily at Whitechapel.

His case was, that before he had time to alight the train started, and he was thrown on to the platform, receiving serious injury to his knee.

Months after the first trial there was a second, with the same result.

This, therefore, is the third trial on the simplest set of facts that could come before a Court of justice. How it was won at this time will be seen.

As a general rule if you cannot win on the outline of your case, it will not be easy to do so on the trivial details. The details will fit into their exact places if your outline is complete, the counsel judicious, and his case true.

A false point, especially at the commencement of a case, will score something for the other side. In this case the plaintiff's counsel lost no time in making one.

"The trains," said he, "on this line are *always an hour late*," a statement that every juryman *knew* to be untrue. How then could anything else be received without distrust?

The error was immediately commented upon by the judge, and the time reduced from an hour late for all trains to forty minutes late in this particular one.

The next mistake was in stating that the train, *being late, quickened its speed so as to make up three minutes* between Whitechapel and Liverpool Street.

I would observe that these errors were merely errors of judgment in stating them, so far as the learned counsel was concerned, but they were of a more serious character on the part of those who instructed him.

This second statement might have been true and by no means improbable; but the counsel's fault was in not ascertaining that it was not only *untrue*, but capable of being *absolutely proved so*. And this is the proof:

The train travelled only a mile and a quarter in five minutes. Four minutes were always allowed in timing the trains, because they had generally to wait some time outside the terminus before they could draw up. In this particular instance, however, it happened that there was no obstacle to the train running in, which it did. The three minutes, therefore, were not made up by *accelerated speed*.

Two false points were thus disposed of, as well as the probabilities to which they gave rise—a serious matter for the plaintiff, as it reflected on all his subsequent evidence.

Next, "the plaintiff would swear," so the learned counsel said, that he went to work *seventeen weeks after*

*the accident*, but for *eight* weeks could earn only twenty-two shillings instead of thirty-five shillings a week.

This was another false point, which was more unpardonable than the others, because on the previous trials the plaintiff swore that "*he was as well as ever, and earned the same money as before.*"

Looking at the evidence in chief, we shall see how poor a thing it seems alongside of that brought out by the cross-examination.

The plaintiff ceased work at half-past three, and waited for a companion till between four and five. He lived near Shoreditch Station, and was to meet his wife at *Whitechapel* to go shopping.

He had been drinking with companions, one of whom was drunk. He himself was sober. His drunken friend did not leave him.

Against this evidence, witnesses were called who had *not* been drinking.

The plaintiff, who was to meet his wife at Whitechapel, *took his ticket for the station beyond.*

The inference therefore was, either that he forgot the appointment at Whitechapel, or that the appointment was untrue.

Next, his wife never went to Whitechapel.

One cannot help asking why this useless story was told which had *nothing to do with the case.*

It was to account for a fact which he could not account for at all, or did not choose to account for. The value of it to the defendants, although worthless to the plaintiff, was that he had given a *false reason* for his conduct, because he was afraid of the true one.

It showed that, having booked for *Shoreditch*, he

suddenly resolved, as the train started, to alight at Whitechapel.

Of course, the plaintiff had to admit in cross-examination that he made no inquiry about his wife at Whitechapel; that when at the hospital he asked the nurse *whether he was sober on the night of the accident*, to which she answered, "No, *you were under the influence of drink*."

These and other facts inconsistent with his claim were elicited in cross-examination. There was no wonder, therefore, that the present jury found for the defendants when the plaintiff had concluded his evidence.

The reader may be amazed at its requiring three special juries before they could arrive at the merits of a claim like this. So am I.

Is it that the Junior Bar, with few notable exceptions, are better advocates than the Senior? Have they studied the art more closely, and in consequence do they proceed more scientifically? They certainly seldom adopt that haphazard style, or *no style*, which was wont to please attorneys so much in the old days, and which proceeded upon no system or knowledge of Advocacy. That there were great men amongst them we know, but if you read their speeches you will have no doubt as to why *they* rose to eminence: they were the only men of the day who had studied and who knew the art.

Without a thorough knowledge of Advocacy they could never have made themselves great.

The same is to be said of their cross-examination. They *knew* that it was not a trick but a science, and they

succeeded because they were advocates and not merely barristers.

It is impossible to read the great speeches from Cicero down to Cockburn and Hawkins, without perceiving that they all proceeded upon a *thoroughly scientific basis*. So that from their opening statements you may see exactly what their evidence is going to be; and from their replies exactly what their cross-examination was.

Apply this test to half a hundred speeches of indifferent performers, and not only will you not discover any system upon which they proceeded, but you will find a difficulty in some of them in understanding what the action was about.

Without some fault in the Advocacy of this railway case, the proceedings could not possibly have been kept up for three years. A few questions in cross-examination at last disposed of plaintiff, counsel and solicitor, without the least difficulty.

I can only suppose that some of the old school believed that Art needs no study, and a natural gift no cultivation.

## CHAPTER X.

### AGAINST A TRAMWAY COMPANY.

Before leaving this branch of Advocacy, I will give another Illustration, which will show how easy it is to take the wrong line. The action is against a tramway company for negligence. The reader will probably be aware that in this and omnibus cases he will almost always be confronted by witnesses who are called "*mounters*," whom I have described in another work. These gentlemen, speaking from my own experience, give their evidence remarkably well, although at times it is a little too pronounced; as when Sir Henry Hawkins, trying an omnibus case, with one or two questions elicited from a mounter the extraordinary fact that the pole of the omnibus went *through the plaintiff's chest*, pinned him against the wall, and then broke through a shop window in Cheapside. Although not told in so barefaced a manner, this was the only possible inference to draw from the evidence. A Hogarthian picture!

All depends upon the line you take, whether you act for the plaintiff or the defendant. A good many advocates, however, take no line at all. My young friends will exclaim, "Of course it does; we know all that!" I would, however, respectfully say that the

true and the false are sometimes so much alike that the most discerning can scarcely distinguish them—especially if you rely upon the "observations" in your brief; and more especially will it be true if you pay the least regard to the "suggestions for cross-examination" of this and that witness. These will conduct you to a wrong goal if anything is capable of doing so—suggestions conceived by the youthful brain, probably, of a two-year-old articled clerk.

Again, if you would know how to cross-examine, you had far better read Shakespeare or Beaumont and Fletcher than Meeson and Welsby—for you will at least learn something of human nature; and if you do not know something of that, you will never know anything of the delightful art of cross-examination.

In this Illustration there are more blunders than I hope the reader will make in the whole of his life. The case was simply this:—

The wife of a respectable builder in the country was on a visit in London. A tram-car, which she hailed, had stopped. As she was getting on to the platform at the entrance of the car, the driver started the car, which went on with a jerk, and the lady, unable to retain her footing with one foot on the ground and the other on the platform, was thrown down with considerable violence.

She was taken to a surgery, where she fainted, and was afterwards conveyed to her lodgings. There she remained under medical treatment for several weeks.

After returning to her home in Yorkshire she became worse, and was attended by a local doctor. He saw at once that she was suffering from a broken rib. This

fact he communicated to the manager of the tramway company. Their medical "adviser" ridiculed the idea of a broken rib, although the local doctor had stated in his report that if the tramway's "medical adviser" would come down he could ascertain the fact without difficulty; and that he could *hear* the rib was broken when the patient breathed. The medical gentleman, however, of the tramway company was "*perfectly certain*" *without any examination* that *the rib was not broken*, and for this most satisfactory reason, that if it had been, *he must* have discovered it! Other doctors for the company were also prepared to give evidence for the company that "*it was impossible for a rib to be broken and not be discovered on the first examination.*" The reader will bear this in mind, as it will be of some importance at a later stage.

The local doctor desired the company's medical officer might be sent down, so as to prevent its being said that "it was a hole-and-corner examination." They refused, however, to do so. Having examined the injured woman, they were quite sure that if the rib had been broken they *must have discovered it!*

The issue was simple enough. Did the car start without allowing the woman time to get in?

The cross-examination should have been directed to that issue; but the tramway's counsel, an experienced leader, thought otherwise. His first question was: "*Did you not at one time keep a greengrocer's shop?*"

Intended to show that a greengrocer's rib was not of so much value as a builder's. The first necessity of an irrelevant question is that it should be *harmless;* the second, that it be *useful.* This, as the reader sees, was neither the one nor the other.

The answer was: "Never!"

The next question was equally damaging to the defendants:

"Has not your husband MORTGAGED HIS HOUSE?"

"Not that I know of. I never heard of it, if he has."

"Be careful, madam; you are on your oath. Has not your husband mortgaged his house?"

"I have said I have never heard of it."

"Do you keep the books, madam? Now, be careful."

"Keep the books?" she said.

"That is my question."

"Do you mean his trade books?"

"Do you keep the books? was my question. Answer it, madam."

"I keep the *rent books* and let the houses."

"Has he *got* any houses, madam? Take care; you are on your oath."

"Certainly he has."

"Why, has he not applied for *donations to a friendly society, because he was hard-up?*"

"I never heard of such a thing."

"Will you swear that, madam?"

"I have sworn it."

All this, the reader will see, is *by way of showing whether there was a broken rib or not;* and I take the liberty of saying, if the learned counsel had not been a man of *eminence* in his profession, he would not have been allowed to put the questions, which had nothing, directly or indirectly, to do with the case, except by way of increasing the damages.

The learned counsel at last, however, came to the

accident itself. His object was to show a state of things too ludicrous to be imagined—namely, that a stout, middle-aged lady (of course, with several parcels) ran two hundred yards after a tram-car that was proceeding at a rate of seven or eight miles an hour, and, having overtaken it, endeavoured to enter it before it had had time to pull up!

There is something more than *Advocacy* involved here. There is a nice arithmetical question.

The jury shook their heads, and looked as if they would like to shake the learned counsel's. But they left him alone; he was a leader in the profession, and the cross-examination was not his own. He was acting *from instructions*—the curse of an advocate's life, if he has not the firmness to *ignore them!*

The next important witness was the local doctor. His evidence was merely as to the injuries; but he was subjected to the same "severe" kind of cross-examination as everybody else was who went into the witness-box.

The counsel was "instructed" to ask this and to ask that.

I wish every student would remember this truth: that *the advocate who relies upon "instructions" for cross-examination has mistaken his profession.* How can anyone tell what is passing in your mind? What does the solicitor know of cross-examination? A single interruption may put you off your line. The instructions appeared to be to ask such questions as the following:—

"Will you swear, sir, that a rib was broken? On your oath, sir?"

"Most certainly," answered the doctor.

"How did you test it?"

"It required little testing. You could hear it."

"Will you swear that? Now be careful, sir; we have doctors here."

"Yes; but they did not come to examine the plaintiff when I urged the company to send them."

"I did not ask you that, sir. Confine yourself to answering my questions, please."

That is proper advice, no doubt; but questions sometimes have a wide range, which cannot be contracted after they are asked. The time to limit them to the exact answer you wish is *before* you ask it. I do not say such a question as "Will you swear to it?" is not sometimes a needful reminder, and often a corrector of a mistake or a lie. The most honest witness may need a reminder that he ought to be careful; but it is of little use when a man *knows* he is speaking to an actual fact.

This was a fact within the doctor's own knowledge, and no one else's, and no cross-examination, severe or gentle, could change his evidence or disprove it. Such questions are useless in a case like this. Nothing is easier than circumventing a liar; but to threaten him into a correction is to make his correction worthless. Besides, you do not want the jury to feel sympathy with *him* on account of your severe treatment.

At last came a question which makes me almost wish I could doubt my own memory:

"*You have been in trouble, haven't you?*"

"Trouble!"

"Oh, you know what I mean. Come now, haven't you been in trouble? *Were you not charged with indecently assaulting a girl?*"

These were the learned counsel's "*instructions.*"

The witness, overwhelmed with anguish, admitted it. But the matter was soon set right. The doctor broke down in the witness box; but the judge came to his relief, and ascertained that *many years ago a false black-mailing charge was made against him by a dissolute girl, to whom he had gratuitously rendered service*—but it had been at once cleared up: the doctor was proved to have been *innocent* of the charge; and, retaining all his appointments in the town, retained also what was more valuable: the respect and esteem of all who knew him.

Such an attack on his character and his professional honour had its effect upon the jury, and there was no need to call further evidence. They showed their opinion in damages, not in the expression of their sympathy for the doctor.

Of course, the company could not put up with the verdict. They "moved."

"I suppose," said Mr. Justice Manisty, who was the senior judge, "*the witnesses were cross-examined?*"

"Oh, thoroughly, my lord," said the counsel for the plaintiff, "*severely* cross-examined. The doctor was asked if he had not been charged *with rape*, and the plaintiff whether her husband had not applied to a charitable society because he was 'hard up.'"

"*And did not that win over the jury?*"

"Oh, no, my lord."

"*Dear, dear!*" said the learned judge; and then, in dismissing the application, uttered these noble words:

"I have always set my face against turning the witness-box into a pillory, and I always shall do so as

long as I sit on the Bench. Witnesses come to give evidence, mostly against their will, and if they are to have their whole lives laid bare by cross-examination, and every unhappy failing or misfortune of their early days raked up for the purpose of throwing discredit, as it is called, upon their testimony, it is a form of torture that no one will voluntarily submit to, and the cause of justice will suffer. No one will come forward to give evidence, for no one will be safe. Few persons could stand an examination into the whole of the incidents and errors of their past lives. Witnesses should be protected in the performance of a public duty, and matters *which do not directly affect their credibility* should not be dragged forth to the public gaze. I repeat it: you have no right to turn the witness-box into a pillory."

No judge ever left the profession a more useful legacy than those words.

A singular coincidence happened in this case. It had been so confidently affirmed by the medical representatives of the company that "*it was perfectly impossible for a person to have a broken rib* without a doctor, on examination, immediately discovering it," that one of the judges, after the rule was dismissed, said:

"The statement of the medical gentleman for the tramway company is quite contrary *to my own experience*, for I had a broken rib for three weeks before it was discovered."

## CHAPTER XI.

### AGAINST THE PROMOTERS OF A COMPANY.

#### How to open a Case.

It has been said I might give Illustrations from the State trials. I should be sorry to do so. A State trial is not necessarily a great trial any more than a tall man is necessarily a great man.

Besides, there is no need for exceptional trials. I prefer those cases which are the every-day work of a barrister. If he only wants to excel in some great State trial, he will have plenty of time to devote to that object. I love to study *blunders:* as those who make charts look for rocks under water—things to search for and avoid; and I trust some good may be done in a homely way to all who will study the chart I am making.

It is easy enough to put on airs and be dramatically heroic on some great occasion. I do not teach that—it is a *heaven-born gift;* I only beg to show how a little common-place action should be conducted to the satisfaction of yourself and your *client.* Not your *legal* client; many things may please him which I heartily hope you may avoid for your own sake.

The present case presents a model of a good opening, and one of its characteristics was its *temperateness.* It

did not begin with indignation and end with confusion, but with a clear statement of facts, and left the indignation business to the jury—the best place in the world if you would keep it warm.

If your opponent's client is a rogue you need not call him one; *imbue the minds of the jury with his roguery.* You will be able to do a nice little business with them in that way.

That was, indeed, what was done in this case till the jury drew in their cheeks with surprise. It was an action for *fraudulent misrepresentations contained in a prospectus*, whereby the plaintiff was induced to part with his money, not unlike the means employed by the gentlemen who practise with the pea and the thimble. It was called the Sugar-plum Company, Limited.

Part of the scheme was that the shares should not be put on the market, but held by the defendants. Out of 6,800 shares allotted 6,400 were appropriated by them.

Brilliant advertisements gave publicity and vaunted the merits of the great enterprise, which was to make everyone's fortune who could be induced to put his money into it. Not only this, but the *chocolate* itself, the manufacture of which was but an incident in the manufacture of the company, was to possess seven distinct properties not vouchsafed by nature, or any other company, to any other chocolate.

The prospectus went on to show that "*subsidiary companies*" were to be formed for buying at remunerative prices "the right to use the patent for their chocolate making in foreign companies," amongst them a French company.

It stated that great success had attended this company in England, and *therefore* the directors felt themselves justified in declaring their "confident belief" that the profits would pay dividends of *at least* 50 per cent. on the nominal capital in the foreign enterprises, and even exceed the great dividends of the parent company. The gigantic success of the English company had enabled it to enter into a contract that would yield a return by annual dividend of an amount equal to the whole paid-up capital.

Such was the prospectus.

Counsel having got thus far, that is to say, having informed the jury what the action was about—for nobody on earth ever gathered what the action was about from the "opening of the pleadings"—proceeded to inform them that he must go step by step and show them what he had to prove to enable them to give him a verdict. And this he did as clearly as possible—for they had to follow along a path strewed with technical points, although, guided by common sense, they will see it clearly enough.

1. It must be proved, first, that the *defendants were responsible* for the contents of the prospectus.
2. That the contents were *false*.
3. That they were false to the knowledge of the defendants, or, to make it more clear, "that these gentlemen *knew* they were false."
4. There is one step further: Supposing that the evidence should not be so clear on the question of the *defendants' knowledge* of the falsehood of the prospectus, yet they were liable if they authorized the sending them out in reckless ignorance

whether the statement was true or false. Lies or not, it does not matter so long as we make money.

5. They must also be satisfied that the plaintiff took his shares *believing these representations to be true*, or at least some of them.

There would not be much difficulty in believing *that*, because no man, thought the jury, would be such a fool as to take the shares without such belief. Still it was necessary to be mentioned for the establishing of the plaintiff's case.

This is the time to tell the jury who and what these Sugar-plum Company, Limited, directors are.

They are, therefore, introduced one by one to the jury: all men of experience in *getting up* "*high-class companies*": all men of *intelligence* who understand what they are about, and gentlemen of the first water if you may judge by their assessments to the rates. All, in fact, first-class gentlemen!

Some were even higher than their assessments in social distinction and connections. But there was one singular circumstance that had persistently followed them through all their company promoting transactions. Misfortune ever trod on the heels of their prosperity. Failure strewed their path with ruin.

All this was admirably done, and no one could doubt that the jury understood the proceedings well enough and would have returned a verdict at once if the law had permitted them to do so.

After this came an artistic portrait of the plaintiff. He was quite a contrast in *intelligence* and *position* to "these gentlemen" directors, and knew so little of company managing that he never clearly understood

the meaning of "*paid up*" shares till the company failed.

This is the moment when he asks the jury, "Was it not wonderful that there should be so great an abundance of '*human gullibility*' in the world, that any company whatever should be able to make money out of such a prospectus?" And then the jury are informed that the only way in which the English company made *any profit at all* was by sale of their patent rights to the foreigner, by which means they had pocketed 60,000*l.* This was by capitalization of the royalties.

The profits thus having found their way into the purses of the individual directors of the parent company, and the parent company having exhausted itself of all property in the business, went into liquidation, while some of its victims went into the workhouse or the asylum. The plaintiff, who had taken a hundred shares, was, of course, called upon to pay up.

In the defence to this case, the "*honour*" of "these gentlemen" necessitated their going into *that* box and denying everything that could cast an aspersion on their noble characters. They were "*gentlemen of honour and position*," their counsel affirmed so many times that he himself seemed to believe it, and there was an *implied* slur or sneer on the plaintiff because he was not a "gentleman of position, although a man of honour." These "gentlemen," it seemed, were *totally unconscious* of any misstatement of any "sort or kind" in the prospectus, and "nothing in the world would, could, or should be farther from their minds than to deceive"! It has been insinuated, said he, that my client befooled

the plaintiff. There is not a tittle of evidence to prove it. "What," says the indignant orator, "my client guilty of *deceit and fraud?* He is a gentleman of *position*, one of the most respectable solicitors in London."

At which there was such an universal outburst of laughter that the learned gentleman sat down, indignant at the interruption, and wondering "whether this was a Court of *Justice* or a music hall."

It was the only joke I ever heard him make, for he was the gravest and most ponderous of our Queen's Counsel; I never could understand how he managed to get so much fun out of it. If his idea was to "laugh the case out of Court" I was sure he would be disappointed.

Of course, "*those gentlemen*" were called, and, as might be supposed, made their case worse by the *elaboration of details* into which they were enticed. The story drawn from them in cross-examination was simplicity itself: nothing could surpass it, except the manner in which it was told.

One of the defendants had taken out a patent for obtaining something from the seeds of a certain vegetable. Having got his patent, he became trustee to the defendants—the directors of the great enterprise. The patent rights were sold to a gentleman who was *a son of one of the directors*, in consideration of a penny a pound royalty on articles of food or beverage which might be sold under the patent, and 20,000*l.* in cash or fully paid-up shares. The nominal capital was 50,000*l.* in 5*l.* shares. They were to have the option of purchasing the royalty for 30,000*l.* It looked, therefore, likely to become a flourishing concern. There is

nothing further to state except that the solicitor, who bore such an irreproachable character, knew nothing *except as a solicitor*. They must fix him with knowledge as an *individual*. This they certainly did: not being versed in metaphysics or physiology.

I need not say there was a heavy verdict for the plaintiff.

One amusing incident in this case was the argument of the defendants' counsel, that if there were not so many greedy investors there would not be so many directors willing to meet the demand. It was the rapacity of the buyer that caused the exaggeration of the prospectus.

## CHAPTER XII.

### AN ACTION BY AN INSURANCE COMPANY.

**How not to open a Case.**

THIS case will show not only some poor Advocacy as well as good, but the fallibility of human judgment: a difficulty which sometimes counsel meets with in the best as well as the worst cause, and also the evil effects of prejudice.

No lawyer would admit that a learned judge could entertain prejudice; and yet sometimes, even a learned judge is too quick for the occasion and comes to a conclusion before the learned counsel for the plaintiff has had an opportunity of opening his case. If I were speaking of counsel, I should say: leaping before you come to the ditch is likely to land you in the middle of it.

The present action was brought by a mechanic against a *fire insurance company* upon a *policy of insurance* for loss of tools and furniture destroyed by fire, or, as the subtle pleader had ingeniously put it, *if there was no policy*, then upon an *agreement* to issue a policy.

There had never been a policy, and there was no agreement for one. But that is of no consequence: the leading counsel for the plaintiff, an extremely eloquent

Advocate, was nevertheless at liberty to abuse "this miserable and wretched company, 'a mere family party' which traded on the widow and orphan, took premiums, denied liability and refused to pay."

The reader will see this is a different kind of opening from the last Illustration.

It was thought brilliant by the gentleman who instructed the learned counsel; probably it was, but it lacked the one essential ingredient in an opening—it had nothing whatever to do with the case. But it took with the jury. They were carried away by its adjectives and epithets—of little more value than the dust in the barn when the thresher is at work.

They even wanted to give damages without hearing the case at all: but the judge told them there might be a new trial if they did so—"better hear both sides, gentlemen."

The cross-examination rather startled judge and jury, so strong were many probabilities to which it gave rise.

Not only this, but impossibilities kept coming up and no amount of prejudice could answer them. The judge himself began to think there might be something in the defendants' case after all, notwithstanding they were an Insurance company.

These are the facts that roused so indignant a speech from the counsel for the plaintiff:

An agent of the company had asked him to insure his tools and furniture.

He was *already insured in another office*, but declared that he *was not*.

A proposal form and a printed receipt form were read to him, which stated that *the risk was not covered*

*until the proposal was accepted by the company, and the policy or notice of the acceptance were sent to him.* Five shillings deposit was paid, *to be returned if the proposal were not accepted.* This was on the 4th of February. The proposal was sent to the manager's office on the 8th. On the 14th the premises were burnt down. The directors refused to entertain the proposal to insure.

*It was clearly established* that at the time they refused they had *not heard of the fire.*

It is necessary to call attention to a mistake on the part of the judge, which gave a very unnecessary amount of trouble, and, but for the good Advocacy, judgment and patience of the counsel for the company, would in all probability have resulted in gross miscarriage of justice. It cannot be too strongly impressed on the mind of any one acting in a judicial capacity, that a judge ought not to interfere, unless stern necessity calls for it, out of season. Nothing but mischief can arise from it. He should never express an opinion on the cause of action until he knows the facts, *and these must be ascertained* from the jury. If he becomes an Advocate, he is no longer a judge.

The best judges have ever been those who allow counsel fair play.

Untimely interference upsets counsel, cause and jury. His lordship unnecessarily asked this question: "*Can any one doubt that if the fire had not occurred on that day the proposal would have been accepted?*"

It was even *irrelevant to the issue*, and suggested dishonesty in the defendant company.

The jury, of course, obsequiously agreed with his lordship's conclusion. Injustice and prejudice could

have done without evidence after that. The jury may be excused on account of their ignorance; the judge could not be, even on account of his position. He must have *known* that in law the directors would have a perfect right to refuse a proposal in the circumstances.

The jury began by being ignorant and ended in being foolish. However, the counsel for the defendants was too good an Advocate to administer a rebuke to them or a remonstrance to the judge. He waited his time, and it soon came.

He knew full well that if once the jury feel that your client is not having fair play, *or the counsel*, and see that you neither lose your temper nor forget your duty, they will do their best to remedy it. Verdicts have often gone wrong in consequence of the judge leaning too much to the other side.

No man so dislikes being "set right" as a judge. He seems to think it lessens his authority and lowers his dignity. Counsel, however, should, in these circumstances, leave the judge alone, and stand on his *own* dignity and the justice of his cause.

The Advocate for the plaintiff having pleased his solicitor by his strong language against the company, went farther than was necessary, and attempted to "prove the impossible," by attempting to show that the five shillings deposit actually *covered all risk from that date*, although his own document proved the contrary. From that moment he lost the judge's confidence. He argued with the judge right manfully; but it was useless, and showed clearly that pressing so weak a point indicated that there was little else to urge in support of his case.

It was a pity, from the plaintiff's point of view, that he could not place his legal document in the jury box and ask the jury to construe it. This *fact* that he was going to so "conclusively prove" turned out to be no fact, but a matter of law which was judicially decided against him. That was another mistake in his Advocacy.

The next *fact* that he was "absolutely to prove"—namely, that the deposit covered all risk *from the time of payment*—was another point of law.

The third fact was the only material fact, and *this* he could NOT prove—namely, that the proposal to insure *was actually accepted by the Board.*

If that had been true, there was nothing else to be said, and, what is more, the action would never have been brought.

But that was not all. The counsel would also prove that the policy *was actually made out.* The Court might take that from him, although he forgot that nothing must be taken from him, only from the witnesses, the documentary evidence, and the jury.

I will trouble the reader with another statement, and how it could have been made I am at a loss to conceive. He had no evidence of it, and could have none.

"I will show," said he, "that *the directors heard of the fire, after having made out the policy, and then had a special meeting and destroyed it.*"

This was too much even for the judge, who had sat quietly enough after his first mistake. His lordship had some idea of the fitness of things, and knew that this statement would fit in with no circumstances whatever. He was astonished, I dare say, and probably

disappointed, for the plaintiff had seemed to have a very good case until the evidence was given; and the company appeared to have taken advantage of his ignorance. The learned counsel persisted that *he would call the man* WHO HAD *received the accepted proposal from the directors*, and had been directed to *make out the policy upon it.*

Call as he did, no man answered. His "positive facts," therefore, were phantasms of somebody's brain. True, he called a witness to some matter not altogether relevant. But his evidence merely amounted to this—that he had been discharged from the company's service for misappropriating a premium. To call such a witness is to give evidence for the other side. It was altogether a collapse of indignant and injured virtue. The counsel had to withdraw all he had said against the company, including all allegations against "the family party," and content himself, if not his client, by submitting to a verdict.

Even the judge learnt a lesson, which was this: never to come to a conclusion before hearing the evidence.

I hope the student will learn more than that—these things especially:

Not to take for granted all that is in your proof.

Your proof has to be *proved*, or it is nothing.

Do not assert what you may not be *able* to prove.

To swear up to an opening statement is often impossible, and swearing short of it will sometimes endanger the verdict.

## CHAPTER XIII.

### ACTION BY A COLLIERY COMPANY.

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**The "Right to Begin."**

MISTAKES are so often fatal that I will give one more instance.

An action was brought by a colliery company against the defendant for 90*l.*

The defendant did not deny his liability, but claimed against the company for a much larger amount, for breach of contract in refusing to deliver 10,000 tons of coal during the year over which the contract extended, namely, from *September* to *September*. The refusal to supply occurred in *May*.

Mr. Keen, Q.C., was for the company. His opponent was a junior of no particular note, but with a good knowledge of the art of Advocacy, and some aptitude in its application.

Mr. Keen, with great display of shrewdness, claimed the "right to begin," because the pleadings did not admit the debt. There might be some little doubt about this contention, and probably it was a very fine point, which the defendant's counsel would not take the trouble to argue.

Let us see how this fine point works. "I don't care,

I have the right to begin," repeated the plaintiff's counsel.

In Advocacy concession sometimes gains more than it gives; but let us watch Mr. Keen, Q.C., the distinguished *Nisi Prius* Advocate, and learn a lesson from his experience.

I have already taken the liberty to observe that it is not always wise to thrust your witnesses into the box when they are not wanted. In the present case it would probably not have been necessary for Mr. Keen to call his witnesses at all; but he stood upon his "rights," and one of them was "*the right to begin.*"

It is possible, if you call your witnesses they may give evidence for the other side under the careful treatment of a skilful Advocate. It happened thus in this present case. The junior did not want to begin although he made a fair show of claiming it. What he absolutely needed was the witnesses for the coal company to prove his case.

Mr. Keen began to open—and began with *Bradshaw's Time Table*, the map of which he handed up to his lordship, with "your lordship sees Cockermouth; if your lordship pleases, there is a district *west* of Cockermouth, and there is another district which is *not* west of Cockermouth."

That having been explained with a great manifestation of taking his lordship into his confidence, the learned gentleman went on to describe a *pit's mouth*, and the mode of filling coal trucks as the coals are brought up from the pit. Altogether it was a very fine and scientific speech, but had nothing to do with the case. He spoke from "instructions."

At last came our old familiar observation, which we have heard so many hundred times: "Gentlemen, I cannot conceive what possible evidence my learned friend can suggest in support of this preposterous claim!"

Possibly not; and he would have had very little indeed, if any, had not the learned gentleman insisted on the "*right to begin.*" Presently the distinguished leader's eyes will be wider open, and he will see things by the light of common sense.

First, the manager of the coal company was called, and proved that the 90*l.* was owing; also that the contract was to supply at a certain price coals only to be delivered to a particular district *west* of Cockermouth. Hence the necessity of a Bradshaw map. All other coals were supplied not under that particular contract. That was the issue. And this is how it was proved by the *witnesses for the coal company*:—

The counsel for the defendant was "*alone*," but seemed quite capable of taking care of his client's interests.

He cross-examined the manager to this effect:

"Did the price of coals go up after the 20th September, the date of the contract?"

"Oh, yes."

"Let me take that down," says the judge—although, of course, Mr. Keen "objects" to the question without being able to say why.

"Did it continue to rise until the end of the year?"

"Quite so," said the manager, who was a nice gentlemanly witness.

"The contract was signed on the 20th, was it not?"

"On the twentieth."

"Do I understand that the defendant was only to supply the district *west of Cockermouth* under that contract?"

"That is so."

"But did you as a matter of fact deliver coals to the defendant's order to all parts of England?"

"Yes; but I did not know it till some time after."

"But the *plaintiffs* must have known it?"

"Yes, they did; but I have since learned that these coals were not supplied under that contract."

"You learnt it from them?"

"I suppose so."

"Can you tell me, then, *under what contract* they were supplied?"

There was no answer, because there was no other contract.

"Were they delivered at the contract price?"

"They were."

Thus his own witness had justified his "right to begin" by saving his opponent the trouble of calling any witness at all.

It was further proved that for eight months coals were supplied for places *outside the particular* district, and that only one order had been objected to by the company, and that because it was to one of their *own* customers.

Then the secretary of the company was called. This enabled certain letters to be got in.

The secretary corroborated the manager in every particular; but he could not say under what contract the coals were supplied if not under the only one that

was ever entered into: but he supposed the coals were delivered under the market price, because the defendant was *a friend of the directors*.

The case was now at an end, and Mr. Keen, Q.C., left the Court, muttering to his solicitor that his own witnesses "gave him away."

Rather should he have said that he sold his client by insisting on his "right to begin."

## CHAPTER XIV.

### TWO ILLUSTRATIONS IN CROSS-EXAMINATION.

Let us take an example of the bad style and the good in cross-examination: rather, it should be said, cross-examination and *not* cross-examination.

As the student reads and considers each question, he should consider and determine in his own mind whether the question belongs to the former description or the latter: this will afford, at all events, a test as to whether he appreciates the principles upon which this difficult branch of Advocacy must be conducted. Such questions as the following are not infrequently put. They may be said to be almost stereotyped, even by eminent leaders, some of whom have never made a mistake with them, so far as I have observed, while others have never made anything else. The latter do not think it necessary to make any calculation as to their value or their probable effect, either on the witness or the jury. You should remember some are put with the latter rather than the former object: and many a question unanswered does its work as well as if it were. With many advocates the wish is to please the client—I mean the solicitor—*the very worst of all reasons* for putting any question at all. Your legal client should be forgotten, and if he interrupts in your own well-considered line of cross-examination, he

should be politely ignored. Your *reputation* does not depend upon satisfying his requirements, but those of your case.

On these seven questions you may ring 5,040 changes, so you have plenty of choice as to the manner of placing them.

We will suppose a man to be charged with having years ago, at a country fair, bought a horse and paid for it with a fraudulent cheque.

The case is simple enough, and the defence will be of course that the *prisoner is not the man.* There is no foolish plea as there would be in a civil case—*he is not the man* and, *if he is*, he did not *mean to defraud;* or the *cheque was a good one;* or he was *passing it innocently* for *somebody else.*

Let us consider. Certain facts are necessary to be brought out in cross-examination to establish the defence; because the counsel for the prosecution, knowing the baldness of his own case, has stated it with great precision, and called exactly enough evidence to convict, *if left alone by the defendant's counsel.* But he has done more than that, because he has left you, if you choose to accept it, the privilege of bringing out something or letting in something, which, if you do not take care, will convict your client. And yet cross-examine you must, or confess your guilt.

We will put our seven questions in order: and on these the prisoner is condemned or acquitted.

1. *Q.*—"Had you ever seen the man who bought your horse before?" *A.*—"No."

2. "How long were you with him?"—"Several hours."

3. "Were other people present?"—"Yes, a great many."

4. "When did you next see the man after that day?"—"Not until I saw him at the police station."

5. "Did you know him at once, or pick him out?"—"I knew him directly."

6. "How did you know him?"—"From his appearance."

7. "And you undertake to swear on your solemn oath he is the man?"—"Undoubtedly."

Upon these questions the prisoner *must be convicted!* I will give the reasons.

The *first* question is right. You knew well enough what his answer would be from the depositions, but must needs bring it out before the jury. It is one point in his favour.

The *second* question is wrong; because, in the first place, you do *not* know what the answer will be, and secondly, you ought to have known that the prosecutor would give himself the best opportunity he could of identifying the prisoner, and he understood perfectly the meaning of the question, and accordingly said several hours: long enough to identify a squadron of men and their horses as well. Of course, I do not assume everybody will perjure himself; but you are to consider how you will deal with the *worst* witness, not the most truthful.

But consider, also, how easy it would have been by a little ingenuity to obtain the *object of the question*, and avoid the *question itself*. Half-a-dozen trivial and *apparently* irrelevant questions would have shown by a series of circumstances that instead of

several hours the parties were together scarcely more than *several minutes*. This was a feature in the defence of almost vital importance; spoilt by a question wrongly asked. It was *the mode of putting it* that was wrong. You were desirous of eliciting a fact in favour of your client, and drew out an answer dead against him.

*The third question* was also wrong in form; for it gave the prosecutor at once the clue to its meaning: it therefore endangered the answer. The object was to give the less *opportunity* amongst so many people of identifying the prisoner. This might have been done as if you were questioning him altogether upon a different line. The witness answered as he did, because he thought it looked particularly straightforward, and showed at the same time that he *felt no doubt whatever of his man*, crowd or no crowd.

The *fourth question* was right, no other answer in the circumstances being possible; and furthermore, because it fixed a vast space of time between the day of the fair and the police court.

The *fifth question* was wrong for several reasons, the main one, however, being that, *in the form in which it was put*, it *could not be answered in the prisoner's favour*. It was, of course, answered against him; and as if he had answered it in the negative and said: "I did not *immediately* recognize him, but, having looked at him carefully, I was quite certain."

A more dangerous question still was the "*How* did you recognise him?"

The *sixth* was wrong, because *any answer must be against you*, and it allowed the prosecutor the oppor-

tunity he wished of *giving* "*reasons*" for his belief, and making his *belief look like fact*. No witness will give a reason that is in the favour of the cross-examiner.

The *seventh* question was also wrong, for *every* reason. It was not cross-examination at all. It emphasized all he had said before; and it was only asking the witness whether he *would* "*undertake*" to do what he had already done.

If you try a different style, No. 1 will stand as above.

Instead of No. 2, ask *where* the prosecutor saw the prisoner. This *may save* the trouble of putting the third question. You will then get the answer that he was in the fair, and most likely in a public-house, full of all kinds of people, blacklegs and others.

"What time was it?" will now safely follow; and the witness, knowing nothing of your object, gives "About *twelve o'clock*" (the true time, probably).

Your next question will separate them in a few minutes, instead of leaving them together *for several hours* (which could not be true).

*The farmers' ordinary was at half-past twelve*, and the prisoner was gone before that.

The next answer will show that from the time he parted with him, after the cheque was given, he *never saw him again until* he picked him out at the police station.

An adroit question or two as to the dress of the man, or the colour of his eyes, neck-cloth, stand-up or turn-down collar, will confound the witness, and, if he have not the patience of Job, he must lose his temper, and

probably ask how he can be expected to recollect all this after such a distance of time.

A last question or two about the man's whiskers, whether he had any or not, will make him feel that he would rather be in a horse fair than a witness-box.

Of course, the prisoner must be acquitted.

## CHAPTER XV.

### A CHAPTER OF INCIDENTS.

"It is no uncommon thing," says Junius, "to see a cause mangled by Advocates who do not know the strength of it."

In a modern case the danger of cross-examination was particularly manifested by a distinguished Advocate. He cross-examined so "*closely*," as solicitors love to describe a tedious inquiry into unnecessary details, that he saved his opponent the trouble of calling several witnesses.

The case was a company-mongering fraud, in which special knowledge of that science was demanded. His opponent was master of it, and shone with a brilliancy all his own, while he himself gave forth only the reflected light of the lawyer's clerk. He who has no more knowledge than that had best let his client plead guilty, and so shorten the term of imprisonment, while he prolongs his own reputation.

In a criminal case, particularly, one should ignore the observations of the gentleman who draws the brief, and rely upon his own common sense as he studies the depositions.

* * * *

"If you press him a little more, Mr. ——," said a

judge, "you will get the answer presently that you do not want."

The two following Illustrations in the art of Re-examination are not told as anecdotes, but as examples of conspicuous errors in the conduct of cases, from which even the most simple may learn something in the pursuit of his arduous profession. The mistakes are eccentric enough in their circumstances, but do not differ except in kind from hundreds that occur at Sessions, the Central Criminal Court, and Nisi Prius. They are not generally noticeable, unless they are accompanied with humour and appeal to our sense of the ridiculous.

I have had these two particular instances treasured up for some time, and now relate them as Illustrations. In truth, they illustrate so much that they might be framed and hung up for the daily observation of those who think they know everything in an art in which no man was ever perfected by mere practice. Perfection can only come by studious observation—especially of mistakes.

It is well known that Advocacy, in so far as it consists in Examination, Cross-examination, and Re-examination, can never be learnt in the Courts of Chancery. The methods of proving facts there are amongst the worst that can be devised.

Sometimes, however, a witness is caught in the net he has spread for others when a skilful Fowler from the Common Law Courts entices him into it. One such occasion amongst others occurs to me when one of the most famous advocates of his day was "taken in" to cross-examine a gentleman on his affidavit. Chancery

does not encourage this sort of poaching on their preserves, because it has an idea that it is ungentlemanly to doubt anybody's word, especially if it is enshrined in an affidavit.

Mr. H., Q.C., asked the following questions:—"You swear that this affidavit is true in every particular?"

"Certainly."

"Let me ask: have you ever been in the witness-box before?"

"Not that I know of."

The learned judge said he "could not see the relevancy of it."

"Your lordship will allow me," said the counsel. "*Have you ever been convicted of Perjury?*"

Whether my lord or the witness, or my learned friend, a "*Chancery Advocate*," was most astonished, not to say terror-stricken, at the question, I cannot say, but they all started as if stricken with a catapult.

Of course there was a denial on the part of the indignant witness in the most emphatic terms: and the judge intimated that the learned counsel must be content with the answer: so he was.

"How do you get your living?" was the next question.

"I work for it."

Having ascertained what the occupation was and where, he was asked where he was working between the fourth of January and the fourth of July *the year before last*.

The witness could not remember: and went through the series of emotions and gestures which implied his disappointment at not being able to do so.

"Perhaps I can assist you," said the cross-examiner. "Were you *in Holloway Gaol?*"

After some wriggling the witness said: "Now you remind me of it, sir, I was."

"Very well," said the counsel soothingly; "what were you there for?"

The witness did not know—it certainly was not for perjury.

A little coaxing, however, brought out the fact that, although it was not for perjury, it was for "saying in the witness-box what they alleged was untrue," and so he got six months' hard labour.

"For speaking the truth?" asked counsel.—"Yes, sir—that's it."

"Is that the only time you have been in prison?" persisted Mr. H.

It was. He was then reminded that he had received another sentence of eight months for a similar offence.

At this revelation one of two courses should have been taken—either not to re-examine, and leave the witness to be believed or not by the judge, or to re-examine for some kind of corroboration, however slight, of his affidavit, since a witness may have committed many perjuries and yet tell the truth for once. As a friend of mine used to say, "A liar is seldom doubted unless he speaks the truth."

But the re-examining counsel was an eminent Chancery Advocate, and would no more have brooked a Common Law man's interference with his duties than have allowed his laundress to stir his tea; so he pulled up his gown in forensic fashion and with refined confidence said—

"Come, now, Mr. ——, you have frankly told my friend that you have been twice convicted of perjury; now, tell me, have you also been twice tried for the same offence—and *acquitted?*"

"I have, sir."

This was the *equity* of the situation.

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### "The Irish Alibi."

My remaining Illustration in the art of *Re-examination* contains a great deal of instruction in other matters. It is known as the "*Irish Alibi.*"

A brilliant young Irish counsel was defending a smart burglar; and upon the depositions the case was "dead" enough. If the witnesses were believed there was no answer. None could be called for the prisoner without being exposed to cross-examination and giving away "the last word."

After the case had been proved, the defending counsel was asked the usual question, "Do you call witnesses?" "No, my Lord, only to character."

An elderly farmer stepped into the box and was asked if he knew the prisoner. The old man shook his head and answered, "I know him only too well, sir."

"You have come to give him a character, I understand?"

"Yes," said the farmer, "and I'll gie un one too!"

"You can stand down," said the prisoner's counsel.

"No, no, you can't," retorted his opponent, who was watching his opportunity, and could not be content

with leaving well alone. "What character does the prisoner bear?"

"A bad un, sir."

"In what way?"

There was no objection taken to the question, so the counsel went boldly along, triumphing in his success.

"Well," said the farmer, "he broke into my house and stole a ham."

"When?"

The time turned out to be almost exactly the same as when he was said to have committed the burglary for which he was indicted, which was at least *sixty miles away*.

It was always one of the mysteries of the profession to me that so many Advocates think they *must ask something:* as if the best advocacy, nine times out of a dozen, is not *silence*.

Of course, there was an acquittal; and it afterwards transpired that the old farmer *was the prisoner's uncle*.

But all the mistakes in the administration of justice are not confined to the Bar. Judges may claim their share. A question arose as to whether a prisoner could be cross-examined to character, because he had said in answer to a question in chief that the prosecutor was *a liar*. The learned judge held that he *could be!* One would have thought that the humblest student would know why he could not. The reason is obvious: *he had not given* evidence as to his *own character*, and, therefore, could not be cross-examined upon it. There was nothing to cross-examine him *upon*. The prisoner was convicted; but the Court of Crown Cases Reserved quashed the conviction as a matter of course, one of the

judges observing that it was only because the prisoner was in Court that he did not describe the *kind of liar* the prosecutor was.

* * * *

With regard to persistent questioning and re-questioning, I am reminded that at a trial at Nisi Prius, a gentleman who never knew when to leave off, and cross-examined like a machine that was wound up by his solicitor, was proceeding in his usual way when one of the jury, wearied with the monotonous process, at last exclaimed: "Mr. ——, the more you cross-examine the heavier will be our damages."

And it was so!

He was guilty of the unpardonable sin of "*tediousness.*"

Counsel should keep steadfastly in mind that his duty is to present his case and prove it without any self-consciousness or desire to be brilliant. Self is ever in the background in the conduct of a case. It has often happened that an Advocate has been placed, not only in a false, but in a grotesque position by not observing this rule. On one occasion a gentleman who desired to "score" off a witness asked, "Were you doing so and so, sir?"

"Yes," said the witness, "I *were.*"

"You mean," retorted the Advocate, "*you was.*"

The learned gentleman, I need not say, was overwhelmed with the ridicule he had endeavoured to cast upon the witness.

Again, I would observe that it is above all things necessary to go into Court armed with law and facts so that you may be prepared to meet the attacks of your

adversary or any question from the judge. Soon after the Judicature Act of 1874, a young counsel appeared in a case without sufficient knowledge even of the *technical terms* of his art, and apparently under the impression that a good speech was all that was necessary for obtaining a verdict, especially when there was no defence.

As the defendant did not appear, the counsel for the plaintiff felt certain of his verdict, but unfortunately the question arose as to whether it was necessary to proceed under the rule applying to the case when *no* "*appearance*" had been entered, or under that where no defence had been delivered. The judge asked whether the defendant had put in "an appearance."

"Oh, yes," answered the counsel; "I saw him outside the court only ten minutes ago."

The case ended, not in a verdict, but in unextinguishable laughter. Technicalities of procedure therefore should be mastered.

Counsel should also remember that the worst form of Advocacy, when a case is tried before a judge without a jury, is that of appealing to the *sympathy of the tribunal.* Whatever sympathy a judge may feel, he must let none sway his judgment. He is bound by the rigid lines of fact and law. Not long ago a counsel appealed to the Court on the ground that his client had *a wife and three children.*

The judge, addressing the Advocate, said: "Mr. ——, let me hear no more of that kind of argument; your client has a right to his wife and three children, but he has no right to steal the plaintiff's property in order to support them."

### Danger of Cross-examination.

One of the many remarkable Illustrations of the danger of unskilful cross-examination occurred some years ago in a case of murder before a police magistrate.

The facts necessary to relate were these: A young girl had left her home in the country and come to London, where she found employment at an East End factory. The proprietor was a respectable married man with a family. Undue familiarity between them resulted in the birth of a child. A short while after the girl disappeared.

A year or so after the disappearance the employer of the girl was taken into custody with portions of a dead body which were found in his possession. There was no likelihood of identification at that time, although it was clear that the remains were those of a female. The man was charged with being in unlawful possession of the body. The father of the lost girl was brought to London; but all the evidence he could give was that he believed the remains to be those of his daughter by the *height*, the *colour of her hair*, and the smallness of the foot and leg. He could only say he *believed* it was the body of his daughter.

No question, of course, should have been put to the witness. Silence was absolute safety.

The counsel for the defence was a gentleman of the largest experience in criminal cases. Nevertheless, he put this question:—

"Have you told us *all your reasons* for saying you believe the body to be that of your daughter?"

"Yes, sir."

"*Then there was no mark of any kind that you can speak to?*"

The witness hesitated, and thought for some time. At last he said, "*Yes, now you remind me, sir, there was a mark.*"

"Where, sir?" asked the counsel, angrily.

"*On her leg,*" was the answer.

"Have you seen it?"

"Not for ten years, sir."

"Then how can you say it is there?"

"I did not say it was there on this body; I said the mark was on *my daughter's leg;* it was a burn, sir. She fell into the fire when she was a child, and it left a scar on her leg."

The position of the scar, and its appearance, size, shape and form, were elicited, with much particularity as became a close cross-examination, so that nothing should be left undone in the matter of identity if the scar was there.

As a climax to this extraordinary cross-examination, the defendant's counsel applied to the magistrate to *allow a doctor on each side to visit the body, and make an examination, so as to ascertain whether there was a scar or not!*

It had been well enough if the prosecuting counsel had made the application, because in the interests of justice it was his duty to do so. If he had not done so, his failure in this respect would have been to the advantage of the prisoner. But for the *prisoner's counsel* to make the application was certain conviction; because that the body was the body of the daughter of Lane was as certain as circumstantial evidence could

make it, morally; it wanted but the smallest possible corroboration to make it so *legally;* and that was supplied when the scar was discovered in exactly the situation described by the father.

Afterwards, and without communicating to her the fact of the finding of this fatal mark, the *sister* also described it with the same particularity as the father.

The doctors cut out the scar, and produced it at the trial, at the Old Bailey. Upon that proof of identity the murderer was found guilty and executed.

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### Looking into the Mind of the Jury.

It sometimes happens that one of the jury desires to ask a question. He is generally snubbed for his inquisitiveness, and told with judicial politeness to wait, and by-and-by he can put the question through him to the witness.

One must consider this: the answer to the juryman's question may be against you; if so, his *mind* will be against you, whether the question be put or not; if the answer should be favourable, it is important that you should have it. Indeed, the balance is so much in your favour that you ought to get it, if only for the glimpse it will give you of the juror's opinion of the case. He cannot conceal that, put the question as he may. And, besides, if it be against you, it is possible you may *meet* it. You will, at all events, not be altogether in the dark.

It may be said the other side will obtain a like advantage. It may be; or a like *disadvantage.* But it

is not inevitably so. Some people look into a window and see only *themselves;* others will obtain a view of what is going on inside. The best Advocate will make the best use of it.

To be able to look your jury in the face is a great advantage. Few Advocates can do it at first; but to see into their *minds* depends on your knowledge of human nature, and that is by no means a *gift*, but a perception, which comes of study.

Since the last edition of this book was published, a philanthropic Act has passed to enable "poor prisoners" to be defended. It is a philanthropy which will by no means be appreciated universally by those whom it was intended to benefit. If you are going to pay for experienced Advocates, well and good; but if you merely intend to give the most inexperienced a little flutter by way of trying their flight, I can only say, if I were to be so defended, I should mentally pray that Heaven would defend me from my counsel. "Younger sons" are not always the best material to make Advocates out of; and as for "looking into a juryman's mind," some persons might as advantageously look down a well and see if they can find the Truth.

"Spoke for an hour," said a solicitor to his client; "spoke for a whole hour, sir!" "Yes," said the latter, "and he might have ruined me in a good deal less time than that."

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### A Compensation Case.

This Illustration may contain something of the humorous, but I am not relating it on that account; nor is it told for its smartness, but for its application to the subject of Advocacy. I had it confirmed by the "best authority." Although I have related it at circuit mess, it has hitherto escaped publication.

When the railway company was having the amount of compensation assessed for the property comprising Old Hungerford Market, there was one shop occupied by a firm for the sale of "*medical appliances.*" It was situated in the direct route between the Strand and Hungerford Suspension Bridge.

Mr. —— opened his case for *the proprietor of the shop* in the usual way, and laid the greatest stress on the *admirable situation* of the "business premises"—that being his principal item of value. His witnesses assessed it, as usual, at an extravagant figure, the value of the situation being such that it almost seemed as if no money could compensate for its sacrifice. According to the learned counsel, there appeared to be no situation in the whole world so adapted for business. "Here they were," said he, "in the line of direct communication to the Strand, and the traffic increased hour by hour."

The counsel for the defendant company seemed hardly in his usual vein. He appeared to be a little despondent at his opponent's pile of figures, and asked hardly any questions in cross-examination. So the other side proceeded to pile up the agony of "the good situation."

And every one was delighted. Counsel had mastered his formidable opponent, *the greatest of compensation Advocates!*

The solicitor chuckled and rubbed his hands with delight, and had really a kind of "*hooray*" appearance about him.

So much confidence had they in their performance that, after consulting together, they resolved to call no more witnesses.

There having been *no cross-examination* everything was, of course, *admitted* (a very childlike conclusion, which I once heard a learned judge lay down with great simplicity). So their *figures* being undisputed the case was closed somewhat prematurely.

The learned counsel for the railway company then addressed the jury, and as nearly as possible I will give the points of his arguments.

"You will have seen," said he, "how I declined to cross-examine upon my friend's figures. I did not doubt his arithmetic; on the contrary, I agreed with it. Who can doubt that twice two are four? But what I should like to ask is:

"*Where does he get his* TWO *from?* That is the question upon which I intend to address a few observations to your intelligence. Experts may come and experts may go, but they are merely auditors, and deal with the figures placed before them in their instructions. I require no expert to tell me how to value—not a business, mark you, but a *situation* for business; for that is the point my friend has been harping upon during the whole of his speech.

"I will endeavour to indicate the basis upon which the

true calculation of the worth of these premises should rest, and then leave the matter without comment in your hands. You will have observed my friend based his exorbitant value on an exorbitant appreciation of this frontage: but what witnesses has he called to prove it? I saw many in Court, but few in the box.

"I will base my calculation upon a fair and reasonable estimate of the value of this frontage as *business premises* by the customers likely to come, and not by the number of passers-by. Let us take a test by way of illustrating my meaning:

"A frontage is valuable or not as it is or is not *necessary* to the carrying on of a particular business. I am not dealing with the landlord, whose claim can be easily estimated, but with the owner of the *business*. Now, if this had been a respectable *hotel* which the claimant was giving up, my friend's contention might have had a little reason in it—not as to *value*, but as to the principle upon which it should be based. You can imagine, in those circumstances, farmers, cattle dealers, graziers and others coming up from Surrey and Hampshire, to see the Cattle Show for instance, and having walked from Waterloo Station over the bridge, you can imagine one saying to another, 'Jim, I don't know how you feel, but I'm pretty thirsty; here's a nice public-house, what do you say to going in and having a glass?' 'Agreed!' says the other. Now, *here* the situation, I was going to say, *creates the custom* and adds to its own value. But the claimant does not keep an *hotel*. His is not a business that requires a fine situation: any place will do. On the contrary, it is a medical appliance shop—and I suppose you can hardly imagine, in the circum-

stances I have described, a couple of strong, healthy farmers from Chobham or Farnham, when they get in sight of this medical emporium, saying to one another, 'Jim, I don't know how you feel, but here's a very nice *truss* shop; what do you say to going in and having a *truss?*'

"If," said the learned counsel, "a man does not want a truss, he will never buy one because the shop happens to be where he is passing; and if he does require a truss he will go to the shop where they sell such things, whether it is in a main thoroughfare or in a little street round the corner."

Although this was said in a spirit almost of jocularity, it was nevertheless with such a tone of common sense underlying it that it had the effect of reducing the claim to a considerable extent. It provoked laughter, but when the laughter subsided it was found to have carried away a great deal of the exaggerated claim.

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### "Not enough Evidence to Convict."

There is no situation more unpleasant than having to conduct a case before an irritable judge. You may have prepared it with the greatest diligence and the most anxious care, and then find it all discomposed—and yourself too—by the judge, who will not exercise sufficient patience to master its details. His lordship has formed a *preconceived opinion from the pleadings*; or, looking at the *solicitor's name*, thinks it a speculative action; or, from some other cause not to be investigated, he is in a frame of mind which is not conducive to the ends of justice.

It is a trying situation for a beginner, and the possibility is that you will not be able to *conduct* the case, but merely scramble along in a confused manner, like a cragsman hanging on for dear life.

In this situation there is one thing I have never failed to notice: you will get *the sympathies of the jury*, not an inconsiderable set-off to your distresses if only you can preserve sufficient presence of mind to make them understand your case. In these circumstances counsel should do no more than simply hold his own, with a calmness that will contrast favourably with his lordship's perturbations. This will place him very considerably in the wrong.

An instance of this kind occurred at —— Assizes, where a jury, after considering their verdict, said:—

"We are not agreed as to the guilt of the prisoner, but are agreed that there is not sufficient evidence to convict."

This verdict should have been returned in two words. The judge should at once have told the jury that that was in reality a verdict of "Not guilty," and the jury, so understanding the law as laid down by his lordship, would instantly have done so.

But his lordship did not tell them the law, and in spite of the arguments of the learned counsel, he snapped him up with a cutting remark, and said the case must be re-tried at the next assizes.

The next assizes were held about five months after, and I need not say when the unfortunate prisoner was again placed in the dock no evidence was offered on the part of the Crown, and he was immediately acquitted.

* * * *

The Common Law of England is said to reside in the bosom of every judge. It were much to be wished, however, that this Common Law would change its abode, and take an apartment in a higher story. If it had done so, this blunder would not have happened.

In a case of murder, in which a witness had sworn to the body of the deceased by certain work which she had done to the dress in which the body was clad, the question was asked:

"Do not all dressmakers sew pretty much alike?"

Answer: "Yes."

"How, then, can you say this work is yours?"

"Because I know my work from everybody else's."

I often wonder what the fascination is that leads so many counsel to ask a hostile witness "How do you know that?" "Why do you say that?" "*How?*" "*Why?*" "*Wherefore?*" "*What is the reason?*" "What is your opinion?" are a nest of snakes for the innocent beginner to lay hold of; but I have not dealt with the blunders of innocent beginners in any part of this book, but with old unrepentant sinners.

In another case of murder, a witness was pressed in the following manner with the following result:

"Do you mean to say you know the deceased by her clothing?"

"Yes, I know every garment she wore."

"But do you mean to say you know the deceased person was the woman?"

"Yes."

"How do you know her?"

"*By her features!*"

Sentence: Death.

* * * *

Another piece of cross-examination was in a case where an *alibi* was set up. The charge was "murder."

It was alleged that the prisoner had slept, on the night of the murder, in a cottage a great many miles away from the scene; and that he was in bed by a certain hour.

Alas for the uncertainty of solicitors' proofs! The tenant of the cottage with whom the prisoner lodged was called by *the Crown*, and said that the prisoner was *not at home on the particular night*. It was considered advisable to break her down in cross-examination, which was to this effect:

"*How do you know* he did not come home that night?"

"Because I sat up."

"But might he not have come in and you not have heard him?"

"He could not."

"You might have been asleep?"

"I was not asleep."

"How long did you sit up without going to sleep?"

"Until four o'clock in the morning."

"How do you know he did not come in while you were asleep?"

"*Because I looked in his bedroom to see if he had been in, and his bed had not been slept in.*"

There was nothing more to be asked.

* * * *

As to the value of acquaintanceship with the jury, I am reminded of an incident that occurred at the

Gloucestershire Quarter Sessions, where a friend of all local jurymen practised.

It was an important case of duck stealing, and a "dead case" too. After a brisk, brilliant speech from the prisoner's counsel, and a sensible one from the chairman of quarter sessions, the jury were asked the usual question: "Do you find the prisoner guilty or not guilty?" to which the foreman answered: "*We finds for Measter Gearge, sir.*"

Master George being the neighbouring squire's son.

"You find the prisoner not guilty?"

"We finds for *Measter Gearge*, sir—that's it. *Can't goo fur wrang if us finds for Measter Gearge.*"

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**The Alibi set up by Rush, who was charged with Murder.**

In the trial of this man for the murder of Mr. Jermy, Recorder of Norwich, of Stanfield Hall, in the year 1849, Rush defended himself, and although a shrewd man was nothing of an Advocate.

His defence was an *alibi*, and the principal witness against him was the lady who had been governess to his daughter, and whom he had seduced under a promise of marriage.

The circumstances of the murder were brutal enough. He lived at "Potash Farm," some considerable distance from Stanfield Hall, and for some reason or other considered that the estate belonged of right to him, instead of to Mr. Jermy. One night, completely disguised, he

entered the grounds, shot Mr. Jermy dead as he came out of his front door, went into the hall and shot Mrs. Jermy, and the lady's maid—but not fatally.

There was no really trustworthy evidence as to his identity, although one or two witnesses believed it was Rush from the *manner in which he carried his head*, which was a little on one side.

If counsel had defended him, it is more than likely he would have called no witness, and asked no question throughout the trial—the only safe way to secure an acquittal.

Every one knows that asking questions is a dangerous performance, and that asking *none* is so difficult that only a good Advocate can accomplish it.

If Rush was at home at the time of the murder, of course he was innocent of the actual deed; and the *only person* to prove he was at home was the governess, Emily Sandford.

She was a witness for the Crown, and knew a great deal more than she told, and said a great deal more than she would have said but for the cross-examination by Rush himself, who put a series of the most scandalous questions for the purpose of showing that, although she proved his absence from home for a certain time, he could not have behaved as he did if he had just committed an atrocious murder. Every question, however, added to the certainty of his condemnation.

He elicited from her that not only was he not at home, but that when he returned he told her, *if any inquiries were made, to say that he was only absent from home ten minutes.*

In order to prove malice, he asked if she had not

said she would make him repent of not keeping his promise to marry her, after the birth of her child.

The question drew more than a mere denial.

"No," she answered; "I told you, when you broke your promise, that before you died you would repent of not keeping your word, and that you would never prosper after breaking so sacred a promise. You said I had made you a reformed man when I charged you with being unfaithful, and you promised solemnly to marry me."

I could not, if I were to ransack all the criminal trials of the country, give a better Illustration of the danger of ill-considered questions in cross-examination. But I know many as bad.

Everyone knows that an *alibi* is the best or the worst defence in a criminal case. If your *alibi* fails, it is useless to set up any other answer. It would seem, therefore, almost foolish to set up a double *alibi*. It is unbelievable that *three alibis* have been set up in the defence of a single prisoner, and yet I have known even this to be done.

It was brought about, not from want of consideration but from a slavish obedience to instructions. Those whose professional lives have been spent at *Nisi Prius* can have little aptitude for the defence of prisoners.

When the late Lord Chief Justice Cockburn was a young man, beginning to get into practice, at the conclusion of an Assize the judge sent for him. "I wonder what on earth is amiss with me now," thought Cockburn. When he arrived at the judge's lodgings his lordship said to him: "Cockburn, *I have great hopes of you; I have been watching you closely all round the*

*Circuit*, and I have observed that *you have not put one injudicious question.*" When the Chief told this story he invariably added—

"They were *judges* in those days!"

A prisoner was charged with arson. Information had been previously given to the police of this man's antecedents, and they kept him under observation. On the night of the fire a constable stationed himself near the prisoner's house. At 12.15 he was seen to leave and go with a pair of carpet slippers, tied with a string, in the direction of the house where the fire occurred. The constable followed, and the prisoner disappeared. He was seen a short time after coming away from the house which was now on fire. After a pursuit the constable returned to the burning house and rescued all the children who were within. He then visited the prisoner's house, and found the prisoner completely dressed: his trousers were wet, and the bed had not been slept in. The prisoner occupied the house by himself. His shoes and wadding, saturated with paraffin oil, were found under his bed. It was elicited in *cross-examination* that within an area of two miles from the prisoner's house *thirty fires* and *six* attempts to burn down houses had taken place within eight years, and that many dwelling houses and eight farm buildings had been destroyed. The prisoner was called, and swore he had not left his house after 7 p.m., and that he was awakened out of sleep in bed by the constable. A brother-in-law of the prisoner and a brother said it was quite clear that there was a very leaky paraffin lamp by the bed, and they gave the prisoner an excellent character. Further it was

suggested that the story told by the police was quite incredible, and that it was not likely that a man who knew he was being watched would have left the house and committed so dastardly a crime.

Sentence: twelve years' penal servitude.

A leader in an important case did what should always be done: examine the chief witness himself; for the case generally rests upon that evidence; but, having left out one important but not altogether material piece of evidence, his junior reminded him of it.

"I know," said he; "I've left it *for the other side to get in* in cross-examination; *it will come better from them;* and when they get it in it will damn their case."

It was so!

In a case tried on circuit, before Lord Justice Thesiger, the cross-examining counsel had muddled up some part of the case, which was greatly in his favour.

The counsel on the other side was addressed by his lordship:

"Now, Mr. ——."

"No question, my lord," said the counsel for the other side; and he won his case.

Dining with his lordship that night the judge said, with grave innocence, "*I thought*, ——, *you would have cleared up that matter in re-examination* in the interests of justice."

"The interests of justice, my lord," said the counsel, "*were the interests of my client;* I could not cross over to the other side without his consent, as he had not retained me to hold a brief *for his opponent.*"

The Lord Justice thought there was something in the observation.

An example of a cross-examination of an expert in handwriting who had sworn to a forged document as being *in the handwriting of the prisoner*, may be given.

"What would you say," asked the counsel for the defence, "if the man who actually signed that document came into the box and swore it?"

"*I would not believe him*," emphatically protested the expert, who never could bear his opinion to be doubted.

"What would you say if a witness came up and swore he *saw him write it?*"

"I should say the same if a hundred witnesses came forward," answered the irritated and irritable old gentleman, almost beside himself with rage. "*The peculiarities are so strong, sir*—there is *no* mistaking them."

"What would you say, sir," began once more the counsel——

"What would I say? What's the use of asking me what I would say——"

"If you *had seen him write it yourself?*" adroitly slipped in the counsel.

"I would not believe——"

"Your own eyes," laughed the counsel; and amidst a roar of laughter the old man gesticulated violently with his head and fist, and was told to stand down.

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### Cross-examining for your Opponent.

As another instance of a weak cross-examination, and the danger of what solicitors describe as a "very *close* cross-examiner," I give the following. It will show

through how small an opening a large and effective re-examination may gain admittance. This, like all other Illustrations, is from a leader of the bar.

The circumstances arose out of a case where the *validity of a will* was in dispute.

On the one side the testator was alleged to have been perfectly capable, on the other as decidedly incapable, of understanding what he was doing. Eminent advocates therefore were there, and hard-swearing witnesses, on both sides.

One witness, in the most straightforward manner, declared it to be his opinion that the testator *was* of sound mind, memory and understanding; and therefore fully equipped for the performance of the important duty of disposing of his property by will.

"I believe you were related to the testator, were you not?"

"I was."

"Nearly related?"

"Yes."

"And would have an interest in the will, if established?"

No objection seems to have been taken to this question, which was very like giving evidence as to the contents of a document which was not yet read.

"Yes."

If the Advocate had asked nothing further, it was a good point made, and would have materially affected the value of the evidence as to the soundness of the testator's mind, because the witness had *a direct interes in establishing the will.* But the learned counsel continued his cross-examination:—

"Would you take as much as ten thousand pounds if the will were established?"

"I should," said the witness.

If matters could have remained here all would have been well; but the counsel on the other side asked:—

"Have you made a calculation as to what you would be entitled to in the event of an intestacy?"

"I have."

"What would it be?"

"As next-of-kin I should be entitled to *fifty thousand pounds*."

Cross-examination, therefore, was not effective, *except* for the purpose of letting in this fact, which let in the will, and also let in the cross-examining counsel. It almost seems incredible, but that is often one of the characteristics of truth. There are so many mistakes made by counsel that one sometimes doubts whether practice does make perfect; if it do not, a careful study of human nature will bring you much nearer than any amount of practice, which is often nothing more than developing a bad style.

Shooting at a target is not much, but the careful study of the rifle, the amount of pressure on the trigger, the direction and force of the wind, the state of one's nerves, the clearness of the atmosphere, are a good deal, and no one will excel without studying them.

A man by nature may be an Advocate; he will never become one by mere practice; but he may perfect a natural gift by studying the motives that touch the springs of human action. You may not learn much Advocacy in a Court of Justice, but you may acquire

a great deal of necessary information in the market-place, which will assist you in its practice.

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### Cross-examining to the Credit of a Witness.

This, too, is a dangerous, and often a disastrous performance. Few can do it gracefully. The questions, however, are not the suggestions of the Advocate, but *the client, who will, if they fail to demolish the character of his opponent, have to pay for them.* The Advocate is responsible for the use he makes of his instructions, not for the instructions themselves.

"How is that relevant, Mr. Jones?" asks the judge, as Jones is unlimbering for the purpose of attacking the witness's character.

"Oh, my lord; it goes to the witness's credit."

He might have added: "My lord, at present my client has only succeeded in breaking up the witness's home; he is now about to ruin his character!"

"Ask him," says a money-lending plaintiff in a bill of exchange case, "*whether he isn't a Jew?*"

"What does that matter?"

"It will *prejudice the jury* against him," says the plaintiff.

"But *you* are a Jew, sir?"

"Yes; but the jury don't know that. I am not a witness."

This is the spirit in which counsel are often instructed to cross-examine "to the credit of a witness."

The greatest mistake you can make is to let your

client dictate the mode in which your case is to be conducted. Either use your own judgment, or resign your duties to the hands of the gentleman who would leave you no judgment in the matter.

There was a famous case not long ago which was extraordinary in many aspects. Extraordinary for the way in which experts swore; the enmity which was exhibited by some of the partizans as well as the defendant; and for the mode in which the character of the plaintiff was assailed.

There was no defence to the action; there could be none when plain common sense was brought to bear upon it; and there was no defence when the *law* was brought to bear upon it.

There should have been an apology; but you may always defend, even though there is no defence. The point I am about to direct attention to is the attempt to destroy the plaintiff's character in an undefended case, and the consequences resulting. Juries will make you pay for unfounded attacks upon witnesses' characters, and they put their own value upon them. Try to reduce damages if you like, but you will find it difficult if you aggravate your original wrong by abusing the plaintiff in Court. Human nature has not yet been tutored by fierce Advocates to put out of its calculation injury done by a defendant's attempt to escape liability. You may injure your adversary more by firing at him in your retreat than you did in your first attack.

The case I allude to was an action for libel. The plaintiff was asked in cross-examination whether he had not committed *theft* and *forgery*. There was not a shadow of foundation for such a charge.

After some time the defendant went into the box to prove the truth of the libel; *and by way of clearing up* the matter of the charge of theft and forgery he was asked: "Mr. ——, now you are in the box, we may as well dispose of this little matter about which there seems to be some misapprehension. Something has been said about the plaintiff and a cheque. I don't want to make too much of it, but *for his sake* it ought to be cleared up."

"Oh, yes," answered the defendant, "I remember."

"You had a cheque, had you?"

"Yes."

"Where did you keep it?"

"In my desk."

"What happened?"

"*I suppose he took it, and signed it*——"

"Did you authorize—well, you don't wish to go into it?"

"Oh, dear no!"

Counsel sits down.

Counsel for the plaintiff asks: "Have you talked this matter of the cheque over this morning?"

The witness did not expect this question any more than his counsel did; but it was *the* question to put. He *must* answer "Yes."

"Did you talk it over with your solicitor?"

"Yes."

"And *was it arranged that you were to be asked the circumstances of this alleged robbery?*"

It was not accidental therefore, but a *planned and deliberate renewal of the attack upon the plaintiff's character!* And it met with its reward.

Thus, in the *interest of the plaintiff*, it was *cleared up* at an expense of *thousands of pounds* to the defendant.

It may be as well to give the opinion of a distinguished writer on this subject.

The late Charles Reade, in a letter to the *Daily Telegraph*, entitled "The Rights and the Wisdom of Juries," says, with reference to the defence:—

"Right or wrong, they found some injurious exaggeration in the original libel, and much *malicious exaggeration in the defence*, which the defendant selected. Now, all juries argue backwards, from the animus of the defence to the animus of the original libel. As to damages, here I drop conjecture, for I think I know the ground on which they settled them. *They decupled the damages because the defence centupled the libel.*" . . .

The issue, "*thief or no thief*," was suggested, and the plaintiff was tortured. Where was his remedy for this attack, except in the jury?

The defendant chose his own defence. He could have apologized, and reduced the damages to a trifle. He preferred the bolder, the more dangerous and most expensive one; but it was not Advocacy.

Mr. Reade speaks of the danger of such a mode of examination from the public standpoint and as a malignant attack by the defendant himself. I look at it from the Advocate's position only.

Subsequently, on the motion for a new trial, the blame of putting the offensive questions was bravely accepted by the defendant's counsel. The blame might be appropriated by him, but it could not be shifted from the defendant, who *told* the learned counsel *that the plaintiff was a forger and a thief?* The original

libel could not be appropriated, nor could the subsequent slander. To relieve the defendant from the consequences, without paying the penalty, would have made matters worse, because it was an attempt to avoid the *pecuniary consequences* which must ensue.

An Advocate cannot take the responsibility of his instructions, he can only accept the responsibility of acting upon them.

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**The witness cross-examining the Counsel.**

It may not have occurred to the reader that questions often afford more information to the witness than his answers do to the learned counsel. It is so, nevertheless, and that is a good reason why Advocacy should be *thought out* and not jumped at. A cross-examiner with a mind unsophisticated by contact with the more cunning half of mankind, will give a shrewd witness more insight into his own thoughts by a single question than he would by direct statements. The *question* he is made to understand; the statement he might misinterpret. To conceal your meaning by your question is the art of Cross-examination. To expose it is the simplicity of ignorance. How few know how to put the right question in the right way and at the right time! I remember a counsel of the greatest eminence saying: "Why, he was so artful that, while I was cross-examining him, *he was cross-examining me.*" Precisely; the cross-examiner had not been schooled in the wisdom of concealing his design, or the real direction of his question. A keen-sighted witness saw the back of his mind in a moment.

The witness was picking up the information he required as he went along, and the counsel was dropping it as *he* went along. This may so easily be done that it does not require any instances to prove it. I saw it illustrated in a remarkable way in a celebrated case, where the main fault of the cross-examination, notwithstanding its otherwise brilliant skill, was being too *close* and particular. It was *argumentative*—the worst quality of cross-examination. There was too much length and too little depth. The questions were polished, but their points were dull; they did not penetrate; they lacked *conciseness*, and too often took the shape of hypothetical reasoning, losing the character of Advocacy and assuming that of debate.

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**Cross-examining**—*as you are instructed.*

A counsel who was defending a prisoner, and whose defence was an *alibi*, cross-examined, in *accordance with his instructions*, into every circumstance attending the assault and robbery, which was in a street, and upon which the prisoner was indicted. Before I finish the Illustration, I will ask the reader to put himself this question: *Was it right to do so?* And, if so, what circumstances made it right? I will not answer the question, because, with a moment's study, the answer will be obvious.

The witness was a detective, and every possible question of the usual character was asked as to the constable's *means of observation*, his *position*, the *light*

and so on, so that if one circumstance could corroborate another in the detail of the witness it was accomplished in the completest manner. There was a *map* of the whole situation engraved, as it were, on the minds of the jury, circumstantial in detail, probable in event and natural in adjustment; so that it would require an extraordinarily good *alibi* to permit of the smallest gap in the construction of the piece. You could not get the prisoner away by any *alibi* whatever.

After this elaborate performance, the *prisoner* supplemented the cross-examination of the learned counsel, and peremptorily demanded of the witness whether he meant to swear that *he was able to "identify him as being there?"*

It was an improper question according to all rules, for a prisoner to cross-examine as well as his counsel, especially after the Advocate had done all he could for him; but the judge was too prudent to check the amateur inquirer after truth.

"I do," said the officer, emphatically.

"*It's a lie!*" remarked the prisoner. "You hadn't time to indentify me, for *I worn't there half a minute.*"

This occurred at *Birmingham Sessions*, where a good many lessons in Advocacy were given some years ago. It was a regular school of Advocacy.

Justice, like Fortune, shifts her ground from time to time. Now she inspires one Advocate, and now another; but she ever looks more like herself in the mind of the judge. Combatants clash their swords while she mildly awaits the issue. But with a blush she may even *warn the defending counsel to beware!* And this she does sometimes from the judgment seat. A judge

loves to see the game even of Advocacy played according to the rules; and it is a bad Advocate indeed who will not conform to them. The racer that goes the wrong side of the flag *must* lose.

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### Raising a False Issue.

Every mistake when pointed out on paper is so easily avoidable that it almost seems unworthy of consideration. That, however, is the best reason why it should be considered with the closest attention. Mistakes are easier to make than to rectify. It is best to familiarize ourselves with their *common aspects*. That which is most easily perceivable is sometimes not perceived at all; we do not pay so much attention to the everyday occurrences of life as we do to its extraordinary incidents. A quick mind is apt to blunder even more frequently than a dull one, which never becomes derailed in consequence of its rapidity of pace. The dull mind is like a milestone, and rather shows others how far it is to the journey's end than advances a single inch on the way itself.

Raising a *false issue* is a common mistake, and should be avoided by every possible means. It often looks so right, this false issue, that until your attention is called to it you do not perceive that it is wrong.

A recent case of murder brings home this Illustration to my mind, with peculiar vividness and force. The facts were simple. The prisoner, charged with murder, was alleged to have driven the deceased lady to a railway station, ostensibly on her way to London. There was no evidence that she reached London,

either on that night or at any other time. A year afterwards her body was found buried on the farm. The examination on this point was conducted with a view of showing, by time tables and other things, that the woman could *not* have gone to London after seven o'clock, which was a perfectly irrelevant and unimportant issue, and I would say the main fault of this irregular proceeding was that, in the mind of a jury not trained to the value of evidence, *it tended to affect the relevant evidence of the prosecution.* Whether the murdered woman went to London or elsewhere was immaterial; what *was* material was the fact that she had never been seen alive from the moment she drove away from the house with the prisoner: and to that point alone the evidence in chief for the prosecution should have been directed.

It is thus with all false issues: they tend to distract the minds of the jury from the real issue, and to engender doubt where there should be certainty. The attempt to prove too much has often acted on the mind of the jury as if the prosecution or the defence, as the case may be, had produced too little evidence, and is equally bad in the one case as the other. On the part of the prosecution it may procure the acquittal of the guilty; on that of the defence the far worse result of convicting the innocent. *Main facts* once proved require *no bolstering up by uncertain evidence*, which, so far from adding strength to them, diminishes their effect by *insinuating* doubt as to the testimony which supports them. Prove a fact *once* and let it alone—it will stand without propping.

### A Theatrical Illustration.

As a mode of illustrating the science of unreason as it presents itself in the witness-box, take the voluble lady who speaks from sentimentality and acts from impulse; she has given evidence for a friend, an actress, who has brought an action for *assault and slander*. She is an actress herself; but never was so good on the stage as she is in the witness-box. The gallery she is playing to now is her *own* gallery: the audience is the stage itself.

Her vocabulary was the most wonderful that I ever heard in the force of its descriptive power: everything was "immense," or "infinite." Her friend was supernaturally *quiet*——

"*Like yourself?*" suggested the counsel, who was upon the point of cross-examining her, beginning with the last answer.

It was enough: the sluice that had hitherto confined the pent-up adjectives was broken, and forth poured what she would have called a passionate flow of volubility.

"*Let her have her head,*" whispered a sporting junior by the side of the cross-examiner. "*Let her have her head.*" And it was so.

It was a singular mode of instruction, but the manner is immaterial if the effect be good. He left her to her own capricious will, and it was wonderful how the lady denounced everybody, including the learned counsel himself. Such was the flow of her evidence that it washed away the foundations of that of the other witnesses. She little knew that her falsehoods were

but thin veils behind which the truth was visible. She was irresistible, so was her vocabulary—and so was the verdict—against her.

I may note that women are greater partisans in the witness-box than men. Imagination too frequently does duty for *fact*, and spite very frequently betrays the truth by denying it.

This kind of *multum in parvo* creature is the easiest darling in the world to cross-examine—give her a nod and out comes the snaky adjective: give her a smile and she will tell you that she *daresays* you think yourself very clever: glance at her from the brief as if you had been reading something and she will have a little denunciation on her own account, and say "It's abominable," or words to that effect. So I leave her in the box where I found her when my friend whispered:

"Let her have her head"——as——

I was the counsel she was so angry with.

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### The Old School of Nisi Prius Advocacy.

I come now to the well-known type of Advocacy of the latter half of the nineteenth century; and, if I can personify it with any accuracy, the reader will have the best Illustration of what an Advocate should *not* be: and yet he was the very best example of a popular favourite amongst a certain class of solicitors, and even amongst a certain class of society.

Lord Salisbury once said: "What hinders every public body in doing its work is the *abundance of*

*eloquence* which is displayed: *it is that which blocks the courts of law.*"

This "abundance of eloquence" follows the law of supply and demand; for it is comparatively cheap in relation to its quantity and excessively dear when rated by its quality. The Illustration of this bad school which I now present was a speaker whom shorthand writers could never follow. They have told me that after writing down long stretches of speech they could never make any sense out of them, and that even if now and then they understood a phrase it seemed to have no relevancy to the subject.

Judges long since passed into oblivion have imposed upon their successors so many *precedents* and platitudes that they have formed subjects for a school of analytical beings who used to be called "case lawyers," and who caused more litigation and mischief than all the rest of the legal fraternity combined. It was they who produced the Advocates whom I am now considering. The good old "*pleader*" lived on precedents, and revelled in distinctions without differences. He was thought as much of in the legal world as Adams in the astronomical, or the discoverer of *radium* in the chemical. He discovered non-existent resemblances. See the result in our perfected Advocate who is arguing against a rule for a new trial.

Piled around him are text books and reports innumerable, the growth of five hundred years, and notwithstanding hundreds of judges and thousands of Advocates have come and gone with all their arguments and learning during that period, no one can tell to this day what *is* false imprisonment, what is "reasonable

and probable cause," and what is *malice*, without a whole day's argument from our voluble and learned friend who is "*showing cause*," that is to say, showing what does not exist.

The three judges listen as they best can, till drowsiness overcomes them; and they hear, in their semi-somnolency, the humming eloquence on the subject of *misdirection*: a fertile theme for inquiry that, what is and what is not *misdirection*. "Authorities" innumerable. All, alas! no authority at all—only "authorities;" but they make up an hour of valuable speech: valuable only to the speaker.

Then comes the question of "reasonable and probable cause:" with decisions this way, decisions that way, and decisions no way at all; but decisions anyway having nothing to do with the merits of this particular case. The intrepid Advocate, however, marches along in noisy grandeur until one of the judges, in an unhappy moment, puts a question to him.

"Oh, my lord," says he, "I am coming to that, I have not forgotten it: I know what my learned friend will say—it's the old answer—and he'll quote the old cases no doubt, especially the Smith case, but I shall show, my lords, that the principle of the Smith case was never properly understood, even by the judges themselves."

Then come more arguments and more somnolency, until the learned gentleman is at last hurried away into another Court, where we find him addressing the jury with the same tremendous energy and the same abundance of eloquence, and this is the sum and substance of his defences and replies: "Gentlemen, can you

believe the plaintiff? You heard his evidence; you saw his manner in the box. *Can* you believe him? Is it *possible* to believe him? Where is Mr. Jones? Why is he not here? I will tell you why he is not here—they were afraid to call him—Mr. Jones would have found it very inconvenient to be here."

(A whisper from his learned friend.)

"Oh, gentlemen, I am sorry, I'm told Mr. Jones is dead—I am sorry, for I should have liked to see him in *that* box. It is very unfortunate for my client."

If you go into another Court, you will find this indomitable Advocate still at it: "Gentlemen, *can* you believe the defendant? You saw his manner in *that* box. Why is Robinson not here? I should like to have seen Robinson;" and so on throughout the whole live-long day, with now and then a witticism which did duty in the days of Curran and Sheridan; but they are new to those who never heard them, and so he is applauded as the greatest wit of the Bar.

But the old school did not contain disciples of the true pattern of Advocacy, and having presented an instance of the worst form I will, in "*A Study of Advocacy*," give an example of the best. I will conclude this sketch by an observation of Lord Chief Justice Coleridge while on a visit to America.

"The old pleader," said his lordship, "attached more importance to the statement than to the substance stated. It is high time that something was done to expedite, amend and simplify the common law, which deserves all the praise which your chief judge and Mr. Evarts have lavished upon it, and which some

thirty years ago was in serious danger. It had become associated in the minds of many men with narrow technicality and substantial injustice. This was not the fault of the common law, but it was the fault, if fault it were, of the system of pleading, which, looked at practically, was a small part of the common law, but very powerful men had contrived to make it appear that it was almost the whole of it; that the science of statement was far more important than the substance of the right, and that rights of litigants themselves were comparatively unimportant unless they illustrated some obscure, interesting and subtle point of the science of stating those rights."

Hence the difficulty in the old school of understanding what was meant by *negligence*, or *malice*, or reasonable and probable cause, or anything else that was clear enough to the common-sense mind.

It has been sometimes said that speeches at the Bar are made up of "commonplace repetitions." That phrase is capable of much distortion. The "commonplace" in Advocacy is often the very best to employ, because it is *intelligible;* while repetitions are often necessary because of the dulness of some men's understanding. A point may be quite clear at a glance to the mind of one man, but may require much holding up to the light and turning about before another can see it at all, much less appreciate its form and quality. Be commonplace so that you be understood. You are not speaking for show, therefore *repeat* the point you wish to impress upon the mind of the dullest juryman until it is legibly *stamped* there, otherwise it will be like the unreadable daub of the post town on an

envelope. An Advocate with the least knowledge of face reading will easily perceive when the last of the twelve has taken in his point.

But in repetition there may be diversity. The point may be presented in so many ways as not to be repetition at all: now enforced by statement, now by question, next by contrast, and then by simple deduction. It is in these variations in the mode of putting points that the differences in Advocates are discernible; and in the study of these differences you arrive at the development of Advocacy.

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### Mr. Wiggins.

The following Illustration, with which I close this chapter, is not related for its grotesque humour, but for the purpose of showing how excellent a thing is *self-confidence*, and how truly powerless an Advocate is without it. We are not all endowed with self-conceit, and do not all require it; but we should all possess self-confidence, because it is required above almost every other qualification in Advocacy, and because every other qualification is useless without it.

At a County Court a woman attended on behalf of her husband to "answer a summons for ejectment."

The facts were as simple as could be, and the case as strong. A smart country solicitor was for the plaintiff, and it could not be said of him that he had *no* knowledge of the art he practised, for, generally speaking, he kept clear of *cross-examining himself out of Court*. But that he was an adept in the exercise of those finer

qualities of that delightful art will appear in this Illustration.

Let the reader remember—

1. You want confidence.
2. Knowledge of your case.
3. The art of concealing your thoughts.
4. The art of unravelling those of the witness.
5. The mode of avoiding, where possible, a frontal attack.

The defendant's wife leaps into the box with an air of defiance.

Mr. Wiggins rises with great manifestation of dignity to cross-examine: that is the stage which the case has now reached. He wears a very high collar, for it was during the first Gladstone Administration, and looks through an eye-glass which he adopted when Disraeli brought in his famous Reform Bill. Suddenly, as he raises his glass to the lady in the witness-box, and pauses while he *depresses his brief* so as to give it a greater surface, a shrill voice exclaims:

"*You* may look!—but you'd better *look at home!*"

Wiggins blushes and lets down the sash.

This was a bad stroke of Advocacy, which, if the reader considers, he will perceive. It was a surrender to the adversary.

I may as well say, for the sake of clearing Wiggins' domestic character, there was nothing against him *only his blushing.* Indeed, his virtues might have been recorded on a kind of mural tablet and worn round his neck.

In Advocacy it is not the man who hesitates but the man who vegetates who is lost: the man who does

nothing. He shows that greatest of ignorance—not knowing what to do; as in a meeting upon some important question where *Coleridge* and some other functionary had agreed upon an opinion, and were only waiting for *Jessel* to confirm it, when that illustrious lawyer said, "*I entirely disagree with you!*" Coleridge asked: "Have you no doubt, Jessel?"

"None whatever," answered Jessel.

"Do you *never* doubt," asked Coleridge, "when giving an opinion?"

"Never!" said Jessel: "I *am often wrong*, but I never doubt as to my opinion."

The lady nodded at Wiggins much like a savage who plunged the dagger for the last time in the bosom of his foe.

"Pray, madam," says Wiggins, asking for information, she being neither Advocate nor defendant, "*who are you?*"

This was a supreme effort on the part of Wiggins, and he almost died of it.

"*A honest woman*, sir," says the lady, "which is more than you can say."

There was laughter, of course, because the meaning was ambiguous.

Everyone laughs occasionally at what he does not understand.

"Madam," says Wiggins in a supplicatory tone——

"And *Madam* to you!" replies the lady, with emphasis of any number of horse-power.

"You must behave yourself," says the judge, who had been listening attentively with his hand behind his ear.

"Yes," says she, with biting sarcasm, "I can behave myself quite as well as them as is *in a higher spear*."

This was a thrust for the judge, who was almost reduced to the Wiggins level. His Honour said no more.

And so this happy party went on; the woman, best of all, had everybody at her mercy, because she alone had that essential quality in the conduct of a case that allowed nothing to disconcert her.

You should never be put in the wrong but by the merits of the case itself. Judge, counsel, witness, all and everything must yield to him who knows his case; and when he falls, as one or other must, he falls with the consciousness that it is not the judge who has been too much for him, or the opposing counsel who has circumvented him, or the jury who have misunderstood him, but the *doom of uncompromising justice*.

I have recalled this simple instance of Wiggins to show how poor a figure is an Advocate without self-confidence and manly independence.

## CHAPTER XVI.

### CICERO'S DEFENCE OF ROSCIUS FOR MURDER.

ADVOCACY never changes in its principles; what it was in the days of Cicero, it is to-day, and will be as long as Courts of Justice last.

There were bad Advocates and indifferent Advocates in those classic times as there are in these; and there are good Advocates now as there were then.

The defence of *Roscius* is as simple as any duck-stealing case at Quarter Sessions; but it is a fine example of constructive ability, and shows exactly how a case should be fitted in all its parts and details. And herein is the *real* art of the whole business. You may as well mispage your lecture and then attempt to read it to your audience as try to advocate a cause the details of which are not properly pieced together.

Roscius was charged with the murder of his father; and, although any of us might have got him off at the Old Bailey, there was more difficulty in those days at Rome. The line of defence, however, was exactly the same as would be adopted by the best Advocates of our day.

We need not stay to examine Cicero's graceful apology to the judges for appearing in the case, except to glance at the skilful manner in which he does it. He almost

takes them into his confidence as he informs them of the difficulties of his situation, and more particularly as he was compelled to make an *apparent attack* on the Government, which, however, under cover of deferential respect, he obliquely charges with tyranny.

He begins with the *motives of the prosecutors*, which were that Roscius might be got out of the way, and the Director of Rome might enjoy his father's estate. Placing the motive first, it gives effect and force to everything that follows in his description of the circumstances of the tragedy.

The Advocate boldly then asks that this confiscation may not be permitted, and magnifies his cause in its after-consequences to the extent of "*the liberties of his country.*" These, he declares, would not be safe if such a prosecution as this were successful.

By this stroke of Advocacy he places the judges themselves, in a manner, on the side of the defence.

The style in which this was done was as adroit as the scheme was skilful in design, and shows that it was no haphazard thought, but a well-contrived policy.

A judgment adverse to Roscius would give to the judges themselves with others the *legal possession of the estates;* they are therefore *insulted* by the prosecutors.

His knowledge of human nature was equal to his skill in applying it.

We are next informed as to *the history of the father of the accused*, his character and position, while the differences between him and the Roscii of Ameria are glanced at.

This is how Cicero does it:—

While the accused was a farmer at Ameria, and

*Titus Roscius* was every day at Rome, the old man was murdered as he was returning from supper—which the Advocate thinks "will give a pretty good intimation of *the persons against whom the presumption of guilt is strongest.*"

Here are *probabilities*, therefore, playing their part as early as possible in the drama. So that he has now brought forward *motive*, *probability* and *presumption*—powerful factors on his side.

Next he arrays in proper order and completeness the *circumstances of suspicion* against the *prosecutors*.

After the murder, he says, a *creature and dependant of Titus Roscius* within a few hours, having travelled fifty-six miles in the dark, brought the news of the murder to *Ameria*, and told it—*not to the son*—but to his *enemy*, TITUS CAPITO. Four days after it is told to *Chrysogonus*. Then (not to take up the time of the Court, which seems to have been a consideration in those days) these several parties *entered into a confederacy*.

And then we are told what the confederates did:—

Chrysogonus bought the estate of the deceased man, who had ever been devoted to the interests of the nobility.

*Capito* takes three of the best estates, while *Titus*, in the *name of Chrysogonus*, seizes the rest.

The estates fetched very little at the auction mart, 50,000*l.* worth of property going for a few pounds.

*Titus* next appears at Ameria, seizes the estate of *Roscius* (the defendant), and drives him away "naked, my lords," from the house of his father, the seat of his ancestors, and the altars of his family; took some of

his effects *openly to his own house, secreted others*, lavished some on his confederates, and sold the rest by auction.

No wonder the people of Ameria wept, and sent a deputation to *Lucius Sylla* complaining of the conduct of these men.

Cicero is careful to inform their lordships that Sylla knew nothing of these proceedings, for the deputation never reached him.

*Chrysogonus* promises to resign the estate to the son; *Titus* does the same; but they shuffled from day to day, and never performed their promises; then, feeling that their title was somewhat shaky, they entered into a conspiracy *against the life of Roscius*, Cicero's client, who flies for protection to a lady, erstwhile his father's patroness.

She gave him her protection. His enemies then had recourse to the still more cruel device of impeaching him of the murder of his own father.

They secure a hardened impeacher, and as they knew they could not prove him actually guilty, they resolved to make him politically guilty. They supposed that the power of Chrysogonus would prevent any man's coming forward to defend him on so foul a charge as parricide.

He then asks: "Where shall I begin by way of meeting this charge?" He asks with the view of showing that there is nothing to meet. We, however, may take it in another sense to ourselves. It is a capital question to ask—"Where should I begin?" but it is almost better to know where to leave off. An anticlimax is bad; more than one peroration is bad;

too much speech is bad; needless repetition is bad; and wearying the jury worse than all.

He begins, however, as an Advocate would in the circumstances of that defence, by describing the murder, and says they improve in their wickedness by accusing the son of parricide, and bribing witnesses with *his own money* to swear to the charge.

Then he adroitly asks: "*What is there that requires a defence?*"

As the charge was the blackest of crimes, it must be shown that the defendant's career had been one of the most consummate wickedness, implying that only the worst of men could commit the worst of crimes. He begins *with his good character*, placing it side by side with the *crime*. "What," he asks, "*is* the charge? What is the *character* of the accused?" Contrast is always interesting.

As crime proceeds from *motive*, motive is placed *in the forefront of the defence*. You cannot get it in before the charge, and it will present the most startling improbability in coming immediately *after the character*.

But the prosecutors have made a false accusation as to the relations between the father and son, which had best be got out of the way at once. It was this: they alleged that there was enmity between the prisoner and his father on account of the father's intention to disinherit him. Cicero deals with it by two or three terse questions: "*Why* did he wish to disinherit his son? Did he do it? If not, what prevented him? To whom did he ever mention such intention?" These questions were the *answer* to the accusation.

The charge of parricide having been made without

showing even the semblance of motive, he addresses himself to the facts.

How was the murder committed?

To this question he brings forward every answer he can conceive of, and demolishes it forthwith. If his client was said to have done it *with his own hand*, there was a clear *alibi* which they could not dispute. He was not at Rome at the time. If he did it by the hand of others, were they *slaves* or *free?* Were they of Ameria or Rome? If of Ameria, let them be produced. If of Rome, how did this "country bumpkin," as they called him, know Roman cut-throats?—he who had not been in Rome for several years?

If he met them to arrange the murder, where was the place of meeting?

If he *hired* them, to whom did he pay the money?

Where did he get it?

And what was the amount?

If there was no answer forthcoming, all must have been conjecture, malicious conjecture, for it took all these elementary particles of knowledge to make up their *facts*.

The prosecutors themselves, not, apparently, up to our quarter sessions Advocacy, had bungled a good deal in this prosecution, because they had alleged a great deal too much for their case—namely, that the defendant was not only a *country barbarian*, but that he *held no intercourse with mankind*, and *never set foot in a town*.

If, says Cicero, this barbarian was at Ameria when the murder took place, he must have sent or written to some assassin. This necessitated another agent. Who

was he? None could be suggested even by those who brought the charge.

The slaves of the accused were in the service of *Chrysogonus*, and rewarded by him to suppress the evidence they could give for their late master, and which would have been enough of itself to clear him.

Whom, then, did *my lords* suspect of the crime? *Roscius*, reduced to poverty by his father's death, was not allowed even to inquire into it. The prosecutors, well known to *live by bloodshed*, have seized the property of the murdered man.

Whom did my lords suspect? It was an excellent question. He became now, not the defender of Roscius —the crime was gone. He became the accuser of his enemies.

"*I will show the murderers*," says the Advocate. "I will show the confederacy and the conspiracy;" and then he asks the judges: "How many presumptions are necessary to establish a single fact?"

"They can find no motive in *Sextus Roscius*, but I can find a motive in *Titus*—it was plunder! The man who was poor is now rich with the estates of the deceased."

"The prosecutor, enriched by the murder, bore the most intense hatred against the murdered man."

Cicero had shown that *Titus* had no *opportunity* of committing the crime. He now shows that *Sextus* had. "He was at Rome at the time, and acquainted with its bands of assassins, always ready to murder for hire."

Next comes the conduct of *Titus* after the murder.

He took every means to become the ACCUSER of Roscius.

His servants brought the news to Ameria.

Why did he carry the news to Ameria? and why to *Titus* first?

Why not to the family of the deceased man?

He must have *known* of the crime immediately after its committal.

The news was also carried to *Capito*, who shared the plunder with Titus.

How simple it all is! Yes; it was so simply arranged by the mind of one of the greatest Advocates who ever lived. It certainly is not too simple for a study in our profession, nor more simple than any other case when properly thought out and arranged. All confusion and complications in a case are the fault of the Advocate.

## CHAPTER XVII.

### THE STORY OF THE TICHBORNE CLAIMANT.

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**Analysis of Mr. Henry Hawkins, Q.C.'s, Speech (now Lord Brampton) for the Prosecution in the Tichborne Case.**

As the object of telling a romantic story differs from that of narrating a series of facts in Court, so the art is different. The interests also are of an opposite nature. The object of the former is to entertain without any regard to your belief, while the latter is to impress your belief without any view to your entertainment, except that an artistic Advocate will take care to rivet your attention by the entertaining manner in which he unfolds the incidents of his story; but he will not amuse you at the expense of his cause, or excite your imagination to the detriment of your judgment. The interest he excites is in *the reality of the facts* he intends to prove; the charm of the novelist depends mainly on presenting fiction, so that it *resembles* reality. The emotions are stirred by imaginary incidents, and at the emotions his art stops. The Advocate, on the contrary, if he awakens emotion, does so only the more surely to reach your belief, and when he produces a striking situation it is but for the purpose of impressing its incidents.

The novelist and the dramatist strike a situation in order to heighten the entertainment. I do not say that the Advocate will not sometimes waylay you with surprise, but when he does so it is still with the object of fixing more certainly your belief.

If these observations be true, it follows that the mode of unfolding a story containing many striking incidents will be different in the two artists. The novelist may commence where he likes, *except at the end;* the Advocate will generally commence *before* the beginning of the actual drama; that is to say, he will state the charge, if it be a criminal case, and the nature of the action, if it be a civil cause, before he comes to the incidents of the story.

In the case now before us I have nothing to do with its merits, but only with the merits of the opening speech, and with them only so far as the skill in its construction is concerned. The mechanism of the speech first, and the mode of presenting it next. But what an ample field for criticism stretches out before us as we cross the borders of this amazing case! On every side are incidents innumerable that have to be collected, collated, separated and arranged. It is a wilderness of facts; those in the far distance bearing a near relation to those that are close at hand. Circumstances apparently unconnected have the closest relation to each other; truth and falsehood are intermingled in the wildest confusion; ignorance and imbecility, prejudice and fraud, overlay and smother minute incidents of overwhelming importance, and even twist and distort facts that can neither be hidden nor destroyed.

The panorama of a long series of years has to be

brought before the jury. To unfold it with the art of the novelist would be to produce thrilling and extraordinary effects exciting wonder and sympathy; to perform the task with the skill of the Advocate will be to fix the belief of the jury without any regard to their emotions. The former would draw from the reader the exclamation "Wonderful!" The latter must excite the jury at every stage of his progress to say "Impossible!"

The case was opened as simply and as dramatically as anything I have ever listened to; and, reading the statement as I do now after many years, it reproduces in my mind all the excitement and wonder which I so well remember to have experienced when it was delivered.

In the first place it is noteworthy that there need be no waste of words in the exordium of this "momentous case," although the jury are told that "the defendant is charged with a crime as foul as Justice ever raised her sword to strike, and that the public interests demanded the protection of the innocent as well as the punishment of the guilty." That is enough, and then comes "the substance" of all the great mass of facts which will have to be stated.

It is said in few words, and to this effect: In April, 1854, Roger Tichborne, the heir to the Tichborne baronetcy and estates, embarked at Rio on board the "Bella," which was lost, and for eleven long years nothing was known or heard of him. Suddenly, in Australia, a butcher came from the shambles and announced himself as the long-lost heir, and in the legal proceedings which were instituted by him for the recovery of the estates, he swore falsely many things in

support of his claim, of which these are the chief:—Of course he swore that he was Roger Tichborne, the son of the last baronet. In support of the story which he told he also swore that he had, while on a visit to his uncle, seduced his cousin Kate; and, it being suggested to him that he was Arthur Orton, the son of a butcher at Wapping, he swore that he was not. These three things he falsely swore, and those are the three main charges against him.

"Such is the outline of the fabric of that gigantic fraud which it is my duty to unfold to you, and now I proceed to state the story of the life of Roger Tichborne."

This is enough to tell the jury as to the charge. Now come three things necessary to clearly define, because identity or non-identity in this case is everything. If this be Roger Tichborne we shall find some likeness to his former self in his *education*, *character* and *mind*. We shall also find some knowledge of the incidents of his past life and his connection with bygone and living persons. So, if the jury are acquainted with Roger Tichborne's early life, they will see whether this man is *likely* to be he—likely, that is all, so far as these details are concerned; probabilities ever asserting their influence, as they always do in true Advocacy. The main incidents I shall give because many students will, I am sure, find them interesting as a story as well as instructive as a piece of Advocacy, who would never wade through the Tichborne trials in the newspaper reports of the time.

We are told that Roger was, in his earlier years, educated in France; that he occasionally visited this

country; and that his education was continued at Stonyhurst. Then came many details of the early incidents of his life, and as to his habits, manners and pursuits; told, says the learned counsel, in detail, *because they had been denied by the defendant* in his cross-examination, while endeavouring to support his claim to the Tichborne title and estates. Of course, if he is well caught in a good many lies hereabouts, it will go far to shake his character in the eyes of the jury for veracity. It was not omitted to be stated that Roger had been tattooed on the arm, which was to be proved by Lord Bellew; a good point, of course, in an individual's likeness to himself, because, although features change and waists enlarge, tattoo marks remain about the same "through all the changing scenes of life." Roger's good French was mentioned, as also his bad spelling in English, but a kind of spelling which *would be peculiar to a boy who had spent his early days in a French school*, and by no means likely to be acquired in a butcher's shop at Wapping.

So that there was a pretty good likeness of the outward boy on the mind of the jury so far as his habits, customs and manners were concerned, before the learned counsel proceeded to give a likeness of his character, including his heart and mind.

Roger entered the army and fell in love with his cousin Kate. To show his mind on this subject many letters were read "*to convey to the jury a thorough knowledge of this young man's character and ideas*," his way of thinking and style of writing, because the learned counsel would have to contrast these letters with those of the defendant. Not a bad test of likeness or unlike-

ness this between two minds, if two minds they were. We are next brought to the turning-point of Roger's life—his uncle's discovery of his attachment to his cousin and his disapproval thereof. In consequence of this, on the 12th January, 1852, he left Tichborne Park, where he was then staying, and wrote in melancholy terms of his intention to go abroad for ten or fifteen years. In that month he confided to a Mr. Gosford, in a "sealed packet," his instructions as to certain matters in the event of death.

The jury are asked if it were possible that such an event could be forgotten? They were then enjoined to bear in mind certain letters to Kate which were couched in the strongest terms of affection. In answer to a letter from Lady Doughty he wrote a warm epistle expressing his affection for his cousin. After spending a few days with his relations in town he visited them in Hampshire. Whilst there "he gave his cousin a document dated 22nd June, 1852, the duplicate of which he said he had deposited with Mr. Gosford in the sealed packet. That document Miss Doughty had preserved to this hour and she would produce it to the jury. It was a short statement—only four lines—*a promise to build a chapel at Tichborne if he married his cousin within three years.* And from that hour to the present she has never seen Roger Tichborne. This, I pledge myself to prove to you by overwhelming evidence. Never forget the facts and dates I have now stated; they are of vital importance in this case. Could such facts ever be forgotten by Roger? He went to Tichborne no more; he went to Upton, near Winchester, in the autumn of 1852, to hunt; sold out of the army January 6th, 1853,

and in February went to Paris to take leave of his parents, who were living there; left with his mother a lock of his hair, and returned to England. Leaving Mr. Gosford a power of attorney, on the 25th February he left London for Southampton, accompanied by Gosford, who took leave of him at Winchester. On the 4th March he sailed from Havre for Valparaiso."

Now the wanderings of Roger are traced by the aid of maps in South America. Dates of arrivals at different places, and departures, are given with a view of falsifying dates given by the defendant in the former trial. After making a tour in the interior, Roger returned to Valparaiso, stopping on his way at Lima, where he engaged one Jules Berand, who would be called to give some important evidence. From Jules Berand he purchased certain curiosities, especially a little skeleton, which Roger sent over to Gosford, and which would be produced. It was produced at the last trial, and Mr. Hawkins says he shall have to call particular attention to the evidence given on that trial by the defendant concerning this "little skeleton." It may be big evidence, although a small skeleton.

At the end of December Roger was at Santiago making preparations for a tour in the mountains.

While there two daguerreotype portraits were taken, one for his mother and one for Lady Doughty. Of this there could be no doubt, as he refers to them in a letter to Lady Doughty written in February, 1854.

In January he left Santiago for his tour in the mountains. On the 13th February he arrived at Buenos Ayres. Thence he went to Rio and engaged a passage on board the *Bella* for New York. He had,

in the meantime, written many letters to his aunts, Lady Doughty and Mrs. Seymour, and to Gosford. These will be produced, and important evidence, the learned counsel says, they will be, "because they are the evidence of Roger Tichborne himself." *In not one of these letters is Mellipilla mentioned, nor the name of the family of Castro*, with whom the defendant swore he spent three weeks. In one of these letters, too, he says he had heard from Lady Doughty of the death of his uncle, the baronet, by which the baronetcy and estates descended to his father, and he himself became next heir.

Of vast importance, too, says Mr. Hawkins, is the fact that, in one of his letters he alludes to his "*daily journal.*"

Another fact of importance was that, on the death of his uncle, he became entitled, under the settlements, to 1,000*l. a-year;* and he wrote home about it, and asked that, "as my income has increased since my uncle's death, pray go to Messrs. Glyn's to exchange the letter of credit for 2,000*l.* for three years for one for 3,000*l.* for the same period." This is considered important, as showing *the intended period of his stay abroad.* It is dated Lima, *September* 11*th*, 1853, and is addressed to Mrs. Slaughter.

Next come letters from Buenos Ayres and Monte Video in March, 1854, in which he says he is "fond of this kind of life," intends to visit other parts of South America, and then proceed to New York. On April 1st he wrote his last letter, so far as the prosecutors knew. He then went to Rio, where the *Bella* lay, bound for New York. Jules Berand saw

Roger on board, and would be called as a witness; so would two captains in the merchant service, who also saw him. The ship sailed on the *20th April*, 1854, commanded by Captain Birkett. Four days after, the long-boat of the *Bella* was picked up at sea. The ship was never heard of again nor any of the crew.

"All the world," says the learned counsel, "believed that Roger Tichborne was dead. One poor, crazy, misguided soul alone refused to listen to the voice of reason—refused to believe that her first-born son was dead. Gentlemen, I have now finished with the life of Roger Tichborne, and I shall have to ask you whether the man who sits there is the young man whose history I have given you. If he is, then he is wrongly charged in this indictment. If he is not, then he is undoubtedly guilty, for he has sworn that he is the man."

Let it be now remembered that all the story of the Tichborne family and all the material incidents in the life of Roger are before the jury. They know his education, his connections, his constitution, his character, his disposition, even his eccentricities; they know his tender feelings towards, and respect for, the lady he was villainously said to have seduced. They have daguerreotype likenesses of his features; they have more than daguerreotype likenesses of his mind. They know that he was a constant letter writer, and not the man to cease from writing for eleven years if he had been alive; and they know that his letters ceased to come after his disappearance in the *Bella*, where all were lost. They know that he was pretty keen with regard to monetary arrangements, and that he knew the exact

time when he could increase his allowance, and that he was fond of the wandering life of adventure and freedom he was leading.

Here was his portrait then, by a master hand, and I have no hesitation in saying that it could not have been surpassed by human skill. We have him from childhood to youth, from youth to the stripling officer in the Dragoons, and onward then a little further till he becomes the adventurous explorer of the South American wilds; thence onward again to his departure in the *Bella*, when we lose sight of him for ever. In all these changes and vicissitudes there is not an instance of his acting contrary to the instincts and breeding of a gentleman. We gather this from the picture of his life, and important it is to remember. We know, also, that he was not a clever, and, far less, a cunning youth, a not unimportant feature of his character to bear in mind. The face may change, but mental capacity is stamped with an unchangeable quality; it may brighten or tarnish, but it never loses its characteristics.

With this portrait closes the first act of this wonderful drama.

The next scene is also artistic, and the "arrangement" might be called an arrangement in black and white. Mr. Hawkins likes contrasts. He knows the effect of these on juries, and so he opens the next act in these words:—

"I have now to direct your attention to the life of a very different person—the life of *Arthur Orton*, the son of a respectable butcher at Wapping. If the

defendant is the man, then he certainly is guilty, for he has sworn that he is not."

A good, straight way of putting it.

Then the jury are reminded that although he may not be Orton it does not follow that he is Tichborne. But if he be Orton, as is now going to be shown, then, of course, he is guilty of both perjuries.

Arthur Orton lived at 69, High Street, Wapping, with his father, George Orton, who had a numerous family. Arthur was born on the 1st of June, 1834. He was poorly educated, could read and write, and had a little arithmetic. He was afflicted from infancy with St. Vitus's dance; and in 1848 it was suggested he should go to sea with a view to getting rid of this malady. Accordingly, he sailed *viâ* Antwerp for Valparaiso in a ship commanded by Captain Brooke. Captain Brooke was dead, but his widow, since re-married to a Mr. Howell, could be called, and she would say that the defendant, to the best of her belief, was that Arthur Orton.

In November, 1848, Orton was at Valparaiso. In January, 1849, he went there again, having deserted from his ship, and thence to Mellipilla, where he made the acquaintance of a family named *Castro*, who treated him kindly. In February, 1851, he left Chili in the name of Joseph Orton, but *with the seaman's number of Arthur Orton*. He sailed in the *Jesse Miller*, came home, and went to Wapping. He had by this time so increased in bulk that he was called "Fatty Orton." He then paid his addresses to one, *Mary Ann Loader*, the daughter of a lighterman, who would be a witness—doubtless to say that the defendant is her old lover.

In December, 1852, he sailed on board the *Middleton*, for Hobart Town; *James Lewis* captain; one *James Peebles*, boatswain; while one of the seamen was named *Owen David Lewis*. On board the ship he wrote to Miss Loader, which letter was read, and which, with other letters of the defendant, would show *the difference in handwriting and style from those of Roger of the same period*. The spelling was, indeed, remarkable; "writing" is spelt without a "g"; few is written *fue;* "enquiring" is spelt *enquireen*. But this, of course, does not matter if the defendant be not that Arthur Orton; he in that case not being responsible for the bad orthography of the Wapping Butcher. But if he is shown to have written these letters, the probability is the jury will identify him with that same butcher. Let us follow then his history. He went *in the "Middleton" as a butcher*. In April, 1853, he arrived at Hobart Town, and in that town a family connected with the Ortons was settled. Their name was *Jury*. He took a letter of recommendation to these Jurys, and Mrs. Jury would be called as a witness, not to prove merely that Orton came there, but that this defendant was that Orton; so he will have a double benefit of trial by Jury.

A Mr. Hawkes, of Hobart Town, who bought meat of him would depose to the same fact. He remained there as a butcher till 1855. The jury are asked at this stage to bear in mind that at this time Roger Tichborne was in *South America*. Orton borrowed 14*l.* from Mrs. Jury, and gave a note of hand bearing date 1855. *That, therefore, fixes his exact whereabouts at that time*. Note was due in August, but when August came Arthur was gone.

In the latter part of 1855 or beginning of 1856, Orton was in the service of a *Mr. Johnson, at Newburn Park, Gippesland, Australia.* In 1856 he was in the service of a *Mr. Foster*, where he remained till March, 1858. In that month he was at Dargo, which is proved by a document dated Dargo, *March 11th*, 1858. Orton remained here between one and two years; a Mr. Hopwood would prove this fact, for he saw him at a place called *Sale*, where he was engaged breaking horses, and this witness also will prove that he saw the same Orton in 1863 at *Wagga-Wagga*. He was in the service of a *Mr. Higgins* there, and this evidence is corroborated by *the defendant himself, who had admitted that he was in the service of Mr. Higgins in* 1865; so here is truly a matter of great importance! The man the learned counsel has been tracing all along as Arthur Orton turns out in 1865 to be Roger Tichborne! Could there possibly have been a transmigration of Roger's soul? Now, Hopwood, who had known this same defendant as Arthur Orton, and esteemed him as "his old friend," met him one day in Wagga-Wagga in Higgins' shop, and went in and spoke to him, calling him by his old name. Alas! the mutability of human names!

"I am not Orton," says the defendant, "I am *Castro*. Come and have a drink."

But whether Orton or Castro *he remembered Hopwood*. They drank; they talked of old times; Castro asked after *old friends*, and as they got more chatty, Castro tells his friend why he had changed his name—"there was a warrant out against him about some horses."

"Now," says the learned counsel, "Hopwood will tell you that *the man there is the same man he had known*

*in Gippesland*, at *Dargo*, at *Boisland*, and at *Sale*." And in addition to this, another witness would prove he saw defendant at work as a butcher in Mr. Higgins' shop. On the 20th of January, 1865, this Castro was married to a *Mary Ann Bryant*, describing himself as born in Chili, and giving his age as thirty years—same age as Arthur's. After his marriage he lived at Wagga-Wagga in a state of abject poverty, and became at last acquainted with one *Gibbes*, an attorney—a great comfort, no doubt, to one in abject poverty, and better to know than a constable with a warrant "about some horses," one would think. Now comes an apparent break in the story; but a break by no means, for it becomes the key to all the future conduct of this Castro. "Poor Lady Tichborne," says the learned counsel, "alone of all the world, clung to the belief that her son was not really dead." No tidings had been heard of the *Bella*, no news of the vessel or the crew, but still she clung to that belief. She was, moreover, not on good terms with the Tichborne family, and was not satisfied with the settlements. She had been left out in the cold, with no provision beyond her marriage settlement. Her income was limited. "Now," says the learned counsel, "such a person would be a ready tool to an impostor, supposing her own reason to be blinded by her feelings and her delusions."

A very good and striking way of putting it. No one could do it better than that, Cicero or no Cicero.

"Still, during her husband's life she took no active steps in the matter; but in 1862 her husband died. The voice of the only person who could influence or console her was thus silenced, and she at once set to

work advertising for her son. In 1863 she advertised in the *Times* and in the Australian papers, and in that year the death of her husband, James Tichborne, was announced *in the 'Home News' in Australia.* But it is not easy to ascertain the exact time when it first occurred to anyone that this slaughter-man should set up this monstrous claim to the Tichborne title and estates." But this is clear, that *it was after the advertisement* and the announcement of the death of the last baronet—an important point, which the jury note. Here springs a huge mountain range of probabilities!

This Castro had a Hampshire acquaintance who knew something of the Tichborne family. In 1865, however, he knew little of the Tichborne title or estates. Further information, therefore, would be necessary before setting up the claim, and one other matter was worth enquiring into before taking such a step: It was desirable to find out what had become of the Orton family at Wapping. It would not do to write to Wapping in his own name or in his own hand, so he went to a schoolmaster and got him to write for him in the name of *Castro.* The reader will remember that Roger never knew Castro.

Here the learned counsel uses a strong argument in the shape of an important question or two, which will require a deal of answering, "Why on earth should he have done that? Above all, *why should Roger Tichborne write in his own name or anyone else's name to enquire after the Ortons at Wapping?* Roger, who never was at Wapping in his life, and never heard of the Ortons! Yet this man wrote in a feigned name and in another person's hand, and as a stranger, to one *Richardson, at Wapping,* to enquire after the Orton family. *How*

*should he have known Richardson?*"—another important question, giving birth to a whole family of inferences.

The letter was as follows:—

"Wagga-Wagga, April 13th, 1865.

"Mr. James Richardson.

"Sir,—Although a perfect stranger, I take the liberty of addressing you, and as my residence at present is in this distant Colony, I trust you will pardon the intrusion and oblige me by granting the favour I seek. I believe there was, some years ago, living in your neighbourhood a person named Orton. To this man I wrote several letters, none of which has ever been answered. The letters are of importance to Orton or his family, and to no other, so that I must conclude he has never received them, as I am certain they would be answered; besides, as this district is, or lately was, in a very disturbed state, through a lawless set, who styled themselves Bushrangers, and who respected neither life nor property, I concluded my letters fell, perhaps, into their hands. If Orton or his family live near you still, or if you have or can give any information respecting them, I shall feel ever grateful. I beg to say here with pleasure that one of the most notorious of the Bushrangers has fallen by a rifleball, and that on the news of his death and doings being properly chronicled, I will send you the paper containing such.

"I trust you will not fail to oblige me by sending any information whatever respecting Orton or *his son Arthur.*

"I am, Sir, your old obliged servant,

"Thomas Castro."

This letter, defendant admitted, was written by his dictation, and was produced. This was shortly before the claim was set up.

"So much for the origin of this most monstrous fraud," says the counsel. There was no reply to the letter. An important fact to state when the subsequent conduct of the defendant is considered.

Then comes another curious step taken by the defendant. For eleven years no letter had been received from Roger Tichborne; but in April, 1865, defendant begins to write the initials R. T. accompanied with a certain sign or hieroglyphic which *Orton always used*, but which *Roger had never used*. Then there was a pocket-book in which was written: "Some men has plenty brains and no money; some has plenty money and no brains. Surely the men as has plenty money and no brains are made for the men as has plenty brains and no money."

"These are the sentiments," says the counsel ironically, "of R. C. Tichborne, Bart." "Then," says the document, "Rodger C. Tichborne, some day, I hope." "But Roger Tichborne never spelt his name with a 'D.'" Another entry was, "I Thomas Castro do certify that them as thinks that is my name don't no nothink about it." Then there was the name and address of "*Mary Ann Loader, Russell's Buildings, Wapping.*"

"How," asks Mr. Hawkins, "could Roger Tichborne have *her name* and address in his pocket-book?"

Then we have another important matter. At Sydney was one *Cubitt*, who kept a "missing friends' office," and issued advertisements. Lady Tichborne saw them and wrote to Cubitt. In this letter she plays into the

hands of Castro by giving certain items of information concerning her son and her family. She asks Cubitt to make enquiries concerning Roger, gives his age as 32, says he embarked at Rio on the 20th April, and had not been heard of since; affirms that part of the crew were saved—gives the name of the lost vessel—thinks her son may have married and changed his name, and asks that enquiries should be made. Advertisement accordingly issued. Orton at this time being in Wagga-Wagga.

While Gibbes the Attorney was engaged in taking Castro through the Insolvent Court, he suddenly exclaims, "I've spotted you; you are Roger Tichborne; you are advertised for, and if you don't disclose yourself, I shall."

He had seen the initials, it appears, "R. C. T." cut on a tobacco-pipe, and this led to the remarkable discovery. What could poor insolvent Castro do, being thus suddenly found out to be a baronet in disguise, and heir to thousands a year? Of course Gibbes would denounce him to the world.

This story, be it remembered, of Gibbes' discovery, was told by the defendant himself. Gibbes then writes to Cubitt, and a correspondence takes place between that gentleman and Lady Tichborne. *She gives more information*, but says she cannot send 400*l.* until her son's identity is proved. Then she tells him to *remember* that Roger was three years at the Jesuit College at Stonyhurst, and when he was nineteen years of age went into the Dragoon Guards, where he remained nearly two years: that he passed his examination well before he got into that regiment—that he never knew

his grandfather—Sir James's father having died before she married. Roger was born in Paris, she continues, and spoke French better than English, she believed; and then she says, poor deluded creature, "I enter into all these details that you may be able to know him," and she repeats that she cannot send any money until he has been identified, and that must be in England.

Here is the twilight of Castro's dawning knowledge of Roger's early life. What a feeble glimmer for ingenious fraud to work by! But even ingenious fraud requires time, so the unfortunate baronet wanders about (not able to get any money till he is identified) until *January*, 1866, and then he writes his first letter to his anxious mother. The letter is worth reading.

"Wagga-Wagga, Jan. 17th, '66.

"My dear mother.—The delay which has taken place since my last letter, dated 22nd April, '54" (He has got this date from her foolish letter telling Cubitt the *Bella* sailed on the 20th), "makes it very difficult to commence this Letter. I deeply regret the truble and anxiety I must have cause you by not writing before; but they are known to my attorney, and the more private details I will keep for your own Ear. Of one thing rest Assured, that although I have been in a humble condition of Life I have never let any act disgrace you or my Family." (He forgets the change of name in consequence of the warrant about the horses.) "I have been A poor man and nothing worse. Mr. Gibbes suggest to me as essential that I should recall to your memory things which can only be known to you and me to convince you of my Identity. I don't think it needful, My Dear Mother, although I send them

Manely the Brown Mark on my side and the card-case at Brighton. I can assure you, My Dear Mother, I have kept your promise ever since. In writing to me please enclose your letter to Mr. Gibbes, to prevent unnecessary enquiry, as I don't wish any person to know me in this Country when I take my proper position and title. Having, therefore, made up my mind to return and face the Sea once more, I must request to send me the means of doing so and paying a few outstanding debts. I would return by the Overland Mail. The passage Money and other expenses would be over Two Hundred pound, for I propose sailing from Victoria, not this Colonly, and to sail from Melbourne in my own name. Now, to annable me to do this, my dear mother, you must send me ——" The remainder of the letter was missing.

This letter came into the defendant's possession after Lady Tichborne's death, and was filed by him in Chancery.

"Now," asks the counsel, "what resemblance was there in this letter to the letters of Roger Tichborne?" A good question to ask in argument as to probability, and destroys an alleged fact. Then, he says, Roger Tichborne never had a brown mark on his side; his mother herself said so; and *she had no knowledge of any card-case at Brighton;* and she admonished him that the less he said about those matters the better. He took her advice, and never mentioned them again till he was cross-examined.

"How was it," asks Mr. Hawkins, "that he did not allude to any of the early incidents of his life?"

How, indeed, since he could have satisfied her of

his identity by a hundred of them had he been her very son. Castro, in the meantime, mentions to several persons that he had St. Vitus's dance. This, Tichborne never had in his life, but we know Orton had that disease. He said he was educated at Winchester, and that he was only in the army thirteen days, and was then "bought off."

But *before Lady Tichborne received the letter she actually wrote to him and acknowledged him as her "dearest son Roger" without a single particle of evidence of any kind.* No wonder he began to believe in himself. She writes again and again, giving "scraps of information which were made the most of, and, among other things, mentioned that one *Bogle* was at Sydney." Bogle had been an old servant in the Tichborne family. Before leaving Wagga-Wagga Castro made his will, and that will has an important bearing upon the question as to whether he was Orton or Tichborne. He mentions his mother's name as *Hannah Frances*, when, in fact, it was *Henrietta Felicité*. It left property at *Cowes*, where no Tichborne property was, and at *Hermitage, Dorsetshire*. There was no such place; but there was a farm called Hermitage in Surrey, which had been acquired *after Roger left England*. There was mention of estates at *Ryde*, where no Tichborne estates existed. The executors were *John Jones, of Bidford, an old friend of George Orton*, and *Lady Hannah Frances Tichborne*, "my mother," and *Sir John Bird, of Herts, Bart.*, an imaginary baronet.

The defendant went to Sydney and saw Bogle, who gave him information on many points. He got from him the *Tichborne Crest*, and he found the English

Baronetage. In the will no mention was made of *Upton*, and he said he made the will *purposely to deceive* the bankers to whom he applied for money. He told them he was in the *66th Regiment Light Dragoons* (*Blues*).

Next comes a letter from Lady Tichborne, telling him that he and his family were *Roman Catholics*, which rather surprised him, for having forgotten he was a Catholic, he had been married in a Wesleyan Chapel. This mistake, however, he immediately corrects, and, as a true Catholic, gets re-married *in a Roman Catholic Church* in the name of Titchborne, which he spelt with *two t's* instead of one. In answer to his mother's letter containing the information that he is a Catholic, he writes to his "dearest mamma, and *may the blessed Maria have mercy on your soul*," telling her he is *grieved she did not know his handwriting*.

Not long after this he came home, and "on Christmas Day, 1866, Arthur Orton once more set foot on familiar soil. If Roger Tichborne had arrived," continues Mr. Hawkins, "surely he would have eagerly sought his friends and relations; the Seymours, the Radcliffes, his executor Gosford, and many other familiar friends. But Arthur Orton knew none of them. There was only one home he was familiar with, and that was in *High Street, Wapping*. There he hurried, and knocked at No. 69."

"Whose house was that?" asks Mr. Justice Lush, by no means intending any dramatic surprise. But the answer came with thrilling and sensational effect:

"The house of the late *old George Orton*, my lord!"

That was truly a memorable knock! "Old George

was dead. He had left two daughters—a Mrs. Jury and a Mrs. Tredgett, and Arthur Orton went to make inquiries after them at a little public-house called the *Globe*. The burly stranger asked after the old inhabitants, and at last after the Ortons. He was told the daughters were married and gone away, and that the father was dead; and then, suddenly, the landlady exclaims, '*Why, bless me, you are rather like an Orton yourself!*' 'Oh, no, I am not an Orton,' he said, 'but I am a friend of the family.' '*You seem to know all about the people here*,' *she replied*. 'Ah,' he said, 'I have not been here for fifteen years,' which was true, for that was about the time Arthur Orton went away. Next day, very early in the morning, this illustrious baronet was down at Wapping again, making further inquiries after Arthur Orton's sisters. It has to be ascertained by him whether they will recognise in him their long-lost brother, Arthur Orton. If they do not, well and good; but if they do, the voice of affection must, if possible, be silenced."

At this point in the history of the case another change occurs, which shows again the mutability of human affairs. He is no longer Castro; he is no longer Tichborne: he plays many parts, and now comes on as one *Stephens*, a man he had met on board ship on his homeward voyage. He finds out the residence of a *Mrs. Pardon*, the sister of the husband of Mrs. Jury. After sending up his card, on which he had written "Australia," Mrs. Pardon came to him, and in answer to his inquiries for the sisters, said, "*Why, you look like an Orton yourself.*" "No," said he, "I am not one of the Ortons, but I am a very great friend of Mrs. Tredgett's

brother." He gave her a letter for Mrs. Tredgett. The letter is sent in, and Mrs. Tredgett appears. The letter was as follows:—

"Wagga-Wagga, N.S.W., June 3rd, '66.

"My dear and beloved sister,—It many year now since I heard from any of you. I have never heard a word from any one I knew since 1854. But my friend Mr. Stephens is about starting for England, and he has promised to find you all out, and write and let me know all about you. I do not intend to say much, because he can tell you all about me. Hoping my dear sister will make him welcome, has he is a dear friend of mine, so good-bye,

Arthur Orton."

.):(.

M"

It ends with the same dots and a letter *as in his letters to Mary Ann Loader*. Stephens had never seen the man until he was on board the ship.

On the 26th December he writes again, and asks for further information concerning the Ortons and *Miss Loader*, saying also that she will hear something to her advantage. The address was *Post Office, Gravesend. The sister believed him to be Orton*, and had asked for his portrait; so in a feigned hand he writes on the 7th January, 1867, and says:—

"Dear Madam—I received your kind letter this morning, and very sorry to think you should be so much mistaken *as to think I am your brother*. Your brother is a very great friend of mine, and whom I regard has a brother. And I have likewise promised to

send him all the information I can about his family. I cannot call on you at present, but will do so before long. I sent your sisters a likeness of your brother's wife and child this morning. I should have sent you one, but I have only one left, which I require for copying. I have likewise one of himself, which I intend to get some copy of. I will then send you some of each. My future address will be R. C. T., Post-office, Liverpool. Hoping to have the pleasure of making the acquaintance of my friend's sisters before long.—I remaim, yours respectfully,

W. H. STEPHENS."

Having written these letters, the defendant "subsequently *denounced them as forgeries*, and then in the witness-box *was obliged to confess that he had written them*. Besides this, he sent the portraits of *his own wife and child as that of Arthur Orton's wife and child*." An awkward circumstance if he was Tichborne, and Arthur's wife and child were his! The sisters also *recognised the handwriting of Stephens as that of Arthur Orton*. So he writes Arthur's handwriting, and has Arthur's wife and child. He swore that his object in going to Wapping was *to find out about Arthur Orton*, and when he swore this, the letter purporting *to be brought by him from Arthur had not been seen by his solicitor*. There was this further remarkable fact that he concealed these visits to Wapping from his legal advisers. He writes to his friend Rous on the 20th October, 1867:—

"We find the other side busy with another pair of sisters for me one of them been to see Mr. Holmes. They had been three days at them, and they are quite

sure of success. Only there is this difference, which they cannot make out. The brother of them young womans is very dark, and very much marked with the small-pox very much about the face. But they are still very sure I am him. I wonder who I am to be next? The man they think I am is still living in Wagga-Wagga under an assumed name. They say I was born in Wapping. I am glad they have found out a Respectable part of London for me. I never remember having been there; but Mr. Holmes tell me it a very respectiable part of London. R. C. D. TICHBORNE."

We are then told that the defendant for some time kept in hiding; "dare not even face the poor old lady herself without some little knowledge of the old place. So he left his wife and children behind, and went down to Alresford to look at it. He put 'R. C. T.' upon his trunks, no doubt as a suggestion or *invitation to recognition*. If he had been the real man, why did he not go down boldly in his own name and declare himself? Why did he not go to his attorney, or to his father's or to his old friend and executor? Instead of this he goes to an obscure public-house, and keeps himself quite concealed. Then he gets hold of the publican, takes him for walks round the Tichborne estate, and gathers from him all the information he can."

Now, you will observe, the learned counsel has arrived at a point in the case where it is advisable to show the means the defendant employed to obtain what many persons thought so wonderful, *the knowledge he possessed of the persons and incidents connected with the Tichborne family*.

Lady Tichborne, in her imbecility, was first; Bogle

was next; and now comes the publican. It was quite time to obtain the assistance of a solicitor, so he employed Mr. Holmes. Mr. Gosford went to Gravesend to see him, but he refused to be seen. Mr. Gosford went again; saw him, put questions to him, and told him he was not Roger Tichborne. Then the defendant writes to Rous in these terms:—"If my solicitor, Mr. Holmes, writes to you, give him any information you can, and depend upon perfect secrecy between us."

"Who was Mr. Rous?" asks the counsel. The question is very well placed, and the answer extremely important as clearing much ground in the future. It could not have come at a better time. "*An old clerk of Mr. Hopkins*," says Mr. Hawkins; "*the old family attorney, acquainted with the family estates.* Rous could give him much information about them, and it was all-important to obtain such information before the claimant faced Hopkins himself, as he would have to do. Hence the application to Rous, and hence the hint as to secrecy."

He then goes with a *brewer's clerk* and his attorney to see Lady Tichborne in Paris.

"Unable," says Mr. Hawkins, "to relinquish her long-cherished idea that her long-lost son was yet alive, she still had received from him such false particulars as might well have raised a doubt in any rational mind. Still, she refused to doubt. He had talked about his grandfather, *whom Roger had never seen.* He said he was a private, whereas Roger was an officer; that he was educated at Winchester instead of Stonyhurst; that he had had St. Vitus's dance, which Roger never had. '*He confuses everything as if in a dream*,' she

wrote; 'but it will not prevent me from recognising him, though his statements differ from mine.' This was the poor bewildered old lady, who was now to be confronted with her long-lost son in the company of two strangers, one of them an attorney! He did not go to see her; she had to come to find him, and she found him *lying on a bed*." It must have been rather a strong maternal instinct, one would think, to recognise her son through the bedclothes!

This was her meeting with her long-lost son. Then is given the defendant's own account of this affecting interview.

"*I was laying on a bed, and my mother was standing alongside of me. I cannot say who spoke first.* We conversed a long time. *I cannot say if she recognised me at once or after a time, or what.* There were others in the room who will be able to give a better account of it than me—Mr. Holmes and Mr. Leete (the brewer's clerk) and Dr. Shrimpton. *I believe we were both affected at the interview.* She did not express any doubt about my being her son. Oh, no, not in the slightest." Such was this first interview between mother and child. He remained three days in Paris, and then returned to London. Mr. Holmes obtained for him the Tichborne pedigree and the *Army Gazette* containing the dates of Roger's military life, and a *copy of the Tichborne will, disclosing most important particulars as to his affairs.*

Soon after this Gosford met the defendant, and said—"If you are Roger Tichborne, you can't have forgotten the sealed packet deposited with me. What were the contents of it?"

The defendant could not say. The probability, of

course, is, that if he had been Roger he could have told at once, and so have convinced Mr. Gosford of his identity. The defendant, in the course of time, we are told, filed an affidavit in Chancery, giving an account of the wreck of the *Bella*, his rescue, and voyage to Australia. But "his affidavit *was a tissue of gross and revolting absurdities.*" That is somewhat stronger than saying it was a tissue of falsehoods, because the absurdities would speak for themselves; so would the falsehoods, but they would have to be disproved, while absurdities would not. Falsehood or not is a matter of belief; absurdity or not is a matter of common sense and sight. In order to prepare himself for cross-examination, the defendant next obtained possession of all the letters of Roger that could be laid hold of.

In the meantime he was corresponding with the Ortons, and giving them money. "Whenever they wanted money," he said, "I sent them some." "Charles Orton, brother of Arthur, was carrying on business as a butcher at *Hermitage Wharf*, Wapping. He, being poor, communicated with the defendant, and from him received letters and money; 5*l.* a week, at first in the name of Tichborne, and then in the name of Brand. This continued up to September, 1868, so that Tichborne in his communications with Charles Orton becomes *Brand*. Rumours arose that he was supporting the Ortons, but he wrote to Holmes in October, 1868, *distinctly denying that he sent them money. The correspondence was burnt at defendant's instance*, and he got Charles to sign a declaration *saying he was not his brother*. Here you see blood must have been very

strong to require a declaration. But he could never get Charles to *swear* the denial. In October, 1868, he ceased to make provision for him, and Charles *went to the other side and told them the truth about the matter.* Then the defendant made an affidavit, in which he swore—"I did not know any of Arthur Orton's family until the year 1868, when, in consequence of rumours which reached me, I called upon his sisters, whom I then saw for the first time. *They both made an affidavit that I am no relative of them, and that I am not their brother Arthur, whom they last heard from in a letter dated August last from Western Australia.*"

"Who would imagine from this," asks the learned counsel, "that he had been long in communication with them; that he had been giving them money; that his *first visit on his arrival in England* (Christmas Eve, 1866) was to enquire after them; and that *for two years he had been in constant communication with them?*"

Who, indeed? Not the jury, one would suppose.

And here ends the third day of Mr. Hawkins' speech. And what a distance he has travelled! what a multitude of facts he has collected and arranged! Not one, so far as I can discover, out of place; not an episode in the whole case but is appropriately inserted. Surely no speech was ever better planned. You may walk over the ground he has traversed and find your way to any point without the slightest difficulty. Do you want Valparaiso? There are landmarks in the facts he has narrated which will take you direct. Do you want Hobart Town? There are the Jurys, the note of hand and the date, 1855. Do you wish to see him at Gippsland? Mr. Johnson will take you. Dargo? There is

a document dated and signed. Sale? Mr. Hopwood knows all about it, and so he does of Wagga-Wagga. Do you wish to see when and wherefore he changes his name to Castro? You'll find out at Mellipilla how he gets the name, and from Hopwood why he changes it. And so, after this opening you may, with the utmost ease, shift scene after scene and see the defendant pursuing his vocations, and even get occasional glimpses of him in the obscurity of the bush, where he wanders like a dark and suspicious figure in the pathless wilderness of unrevealed mysteries:—unrevealed, except by his own inadvertent observations, which shed a momentary glimmer on the scene, and show that he was engaged in business which only those with whom he consorted could divulge. Never was a figure more clearly traceable from point to point and from name to name. And it may fairly be said of him that when he takes the greatest pains to conceal his identity his identity stands most clearly revealed. It is strange that there is no point of contact between these two men. They never even cross each other's path, and there is scarcely a movement of either man in which you can mistake for a single moment the identity of the person. It is as impossible to confound their actions as it is to assimilate their minds and characters.

In the next chapter the learned counsel dwelt upon that part of the defendant's history which related to Chili.

"My case," he said, "is that Orton left Chili two years before Roger left England. It was necessary for the defendant, while making his claim, to write to Castro in Mellipilla to prepare him for the enquiries that

would inevitably be made. So he writes to say that he has got very fat and his relations dispute his identity; tells him he made use of his name in Australia, and never disgraced it in feats of horsemanship."

Commenting on all this, the learned counsel observes: "Orton left England for Chili in the early part of 1851, came back to Wapping, and left at the end of 1852 for Hobart Town. Roger Tichborne did not leave England until February, 1853; so that when the defendant speaks in his letter of being the same person whom Castro knew seventeen years ago, *he overruns himself by at least two or three years.*" That is a point of immense importance, which the jury note.

Now comes a letter which, the learned counsel says, "speaks volumes." It was from the *real Castro, of Mellipilla*, in answer to one from the defendant, who had signed his name as Tichborne. As the letter is described as a "crucial test" as to who the defendant really was, it is read and its main point commented on in these words: "See what it conveyed to the mind of the man who received it! 'I have received from you a letter, signed Tichborne; I assume it is your name; but the man who was staying here *bore the name of Orton, and described himself as the son of a butcher;* but there is nothing in that, and you may have mistaken the two Spanish words *canciller* and *carnicero*—the one meaning chancellor, the other butcher.'"

Next Holmes writes to Castro asking him whether he really knew Orton or whether Barra, the agent of the Tichborne family, had mentioned the name to him first. He says also that *he has clear evidence that Orton is in Western Australia.* The answer came that, although

the defendant "had borne the names Arthur Orton he had stated they were not his own; that he belonged to the English aristocracy, and that he had played with the Queen's children." Presumably, while his father was Chancellor.

*The defendant had repeatedly on oath denied that he had ever passed as Arthur Orton.*

It is next proposed that the defendant should go to Chili to be seen by the people there. He is reluctant, but consents; and, in the meantime to prepare Castro for the interview, Holmes writes and tells him that "his client has *completely gained his suit in the Court of Chancery.*"

Then the defendant writes to Castro, "*I have never passed under the name of Orton, so do not allow my opponents to persuade my friends that I have.*"

Holmes also writes to Castro and says:—"Orton's brother and sister have seen Sir Roger, and declare he is not Arthur, and that the proceedings are the result of malice." He also sends a portrait of "*Sir Roger*," this, of course, being the defendant's own likeness. So all is arranged for Sir Roger's departure for Chili to be seen by the Chilian witnesses.

"And now," says the counsel, "you will see how he met them. There were two commissions for taking evidence—one in Chili and one in Australia; he got that for Australia postponed, on the ground that he desired to attend the Chili commission. He swore that he was advised to do so—very good advice and very necessary, if the man were really Sir Roger. But the defendant never meant to follow it. He sailed indeed, and arrived at Rio in October, 1868; from Rio he and

his companions went to Monte Video, but there they separated, his companions to follow their pre-arranged course by sea to Valparaiso, while he preferred to go by land. It was very necessary for him to do so, for this was a journey Sir Roger had taken and he had not. *He intended to study the route from Rio to Valparaiso*, but had no idea of ever presenting himself there. Conscious that he was Arthur Orton, he took care never to stand face to face with Castro. So he never went to Chili after all. The commission was delayed till December, but he never came. The evidence was taken in his absence, but in the presence of his counsel. From that time the defendant had no communication with Castro or any of his Chilian friends.

Having got thus far with the case; having traced his sinuous course till "the burly stranger knocked at the door of the late George Orton, my lord," and having shown his suspicious and false dealings since that memorable knock, the learned counsel now takes up evidence which comes in here like the capital on a pillar. His edifice is nearly complete. He is not about to deal with evidence which his own witnesses are to prove, but with that which comes from the mouth of the defendant himself. Evidence not to be contradicted or explained away, and which will remain for ever as facts fitting in with the case for the prosecution, but by no manner of means capable of finding a resting-place in that of the defendant. This part, therefore, will be complete in itself, and finds its appropriate position in this part of the opening. This evidence consists in certain answers of the defendant in his cross-examination by Sir John Coleridge, contradicting

many absolute irrefutable facts, and disclosing such astounding ignorance of the prominent features of Roger's life, that the idle tale will appear utterly unbelievable upon these admissions, even before other evidence in proof of the imposture can be given.

In this cross-examination came the defendant's account of the contents of the "sealed packet" which he foolishly and wickedly connected with *the alleged seduction of his cousin*—"the most foul and detestable perjury ever committed," says Mr. Hawkins. The paper deposited was this :—

"Tichborne Park, *June 22nd*, 1852.

"I make on this day a promise that if I marry my cousin Catherine Doughty this year, before three years are over at the latest, to build a church or chapel at Tichborne to the Holy Virgin, in thanksgiving for the protection which she has thrown over us, and in praying God that our wishes may be fulfilled.

"R. C. TICHBORNE."

In the witness-box the defendant had feigned a reluctance to disclose it. Mr. Hawkins pertinently asks "why?" There had been two copies of this document; one was given to Mr. Gosford and the other to Miss Doughty. The defendant did not know that one had been given to her, and, finding out that Gosford's was destroyed, and thinking no copy of it could be produced, he, in February, 1868, made an affidavit, in which he says, "that before leaving England in March, 1853, I placed in the hands of Gosford the document, with instructions not to open it except in certain events, one of which I know has not happened, and the other I hope has not happened."

The engagement, be it remembered, was broken off between the cousins in 1852. He was asked *what the first event was.* He answered: "My return before my marriage." He was pressed upon the point, and then said: "*I don't know; I think it was my death.*"

He was then asked as to the other. He professed extreme reluctance, but at last said, "*the confinement of my cousin!*" "He was asked solemnly," said Mr. Hawkins, "do you mean this lady sitting beneath me?"

"Yes."

"Do you mean to swear that you seduced this lady?"

He answered, "I most solemnly to my God swear it!"

"When?"

"In *July or August*, 1852."

In August, 1868, the defendant gave his attorney the following as the document he had deposited with Gosford:—

"In the event of my father being in possession before my return, or dying before my return, he (Gosford) was to act for him according to instructions contained in the document. In the first place, he was to have Upton to live at and there to manage the whole of the estate. He was to keep the farm in hand and show the greatest kindness to my cousin Kate and let her have anything she required. My cousin gave me to understand *she was enceinte*, and pressed me very hard to marry her at once. I did not believe such was the case, nor have I since heard it was. I always believe it was said to get me to marry her at once. For this my father tried to persuade me." It also refers to the village at Prior Dene. He (Gosford) was to have the cottages repaired

and also to improve the estate in general. Was also to make arrangements for Kate to leave England if that was true. "Both Gosford and wife pressed me very hard to marry her at once. I do not think Mrs. Gosford knew about Kate.

"R. C. D. TICHBORNE."

Pressed at the first trial to give his recollections of it, he wrote the following:—

"If it be true that my cousin Kate D—— should prove to be *enceinte* you are to make all necessary arrangements for going to Scotland, and you are to see that Upton is properly prepared for her until I return or she marries. You are to show great kindness to her and let her have everything she requires. If she remains single until I come back I will marry her. In the event of my cousin's death you are to take charge of the estates on my behalf, to keep the home farm and to repair the cottages at Prior Dene.

"R. C. D. TICHBORNE."

This incredible story was to be disproved by evidence; not merely by evidence which added to the improbabilities, but which would prove it to be impossible to be true. And this would be accomplished by means of dates, to which the defendant had been pinned. Then the learned counsel marshalled facts and dates in the history of Roger which *proved the impossibility of the defendant's story being true*. Not only would the story be proved impossible out of the defendant's own mouth, but it would be contradicted by a body of trustworthy evidence which could not be disbelieved. "If this evidence will not satisfy the jury," said the learned

counsel, "I declare to God I do not know what evidence would be required, or by what evidence a lady of honour and character could vindicate her virtue against a foul aspersion."

No wonder the learned counsel rose to this height, seeing the issue which loomed through this dark cloud of lies. It was not merely whether the defendant was Tichborne, but whether a lady, hitherto regarded as a virtuous woman, would be degraded, and perjured in the eyes of the jury, her husband, her children and the world. So, says Mr. Hawkins, not liking to leave this point without thoroughly exhausting everything he could say upon the subject, he *will prove by Roger's letters that he was not at Tichborne at the time or anything near the time when the seduction was alleged to have taken place.* After a certain date, which was long before the time alleged by the defendant, Roger never was at Tichborne again. The sealed packet was given to Gosford in *January*, 1852, while defendant in his affidavit swore it was *November*, 1852.

Next came the incredible story of the wreck, in itself *an impossibility*, as told; and let the reader bear in mind that no true story can have an impossibility in it—a false story frequently has.

Then came another impossibility. Roger's letters showed that he never could have been at Mellipilla; but Orton undoubtedly was, and his presence there gave birth to the Castro episode. In 1854, Roger sent home two daguerreotypes, and they were in the possession of the Tichborne family; yet the defendant denied that he had ever sent them—a strange and shortsighted denial truly!

Now comes another point relating to the wreck. During all the nineteen years that had elapsed since the loss of the *Bella*, no living being had ever been heard of as having been saved. The ship that, according to the defendant's account, had saved him was the *Themis*, which was changed to the *Osprey*, because, doubtless, he had learned that an *Osprey* had reached Melbourne about the time that would have fitted in with his story. But there are other things required to fit in with such a story before it can be accepted as true, and to these the learned counsel calls the attention of the jury. First the size of the vessel, as stated by the defendant, was as large as the *Bella*—1,800 tons—but the *Osprey* that came into Melbourne was a little vessel under 100 tons; it had no passengers and only a small crew, while the defendant's *Osprey* had a crew of ten men. He was asked the names of the captain and the crew, but he could not give one. He was pressed in cross-examination, with this remarkable result, that he gave the names of J. Lewis, J. Peebles and Owen David Lewis, which, strange to say, *were the names of the men on board the Middleton—Orton's vessel in* 1852! What a poor uninventive mind! And yet what a remarkable memory he must have had! On reaching Melbourne he said he gave the captain a cheque, which had reached home and been acknowledged by his relatives as genuine, but had been dishonoured. This was all self-evidently untrue, and required no reasoning upon whatever, but it was as well to give the defendant's own version, which was as follows:—

"Mr. Hopkins told me that during my absence a cheque came to Glyn, and that the money had been

taken from Glyn's previously. The cheque was sent to Hampshire, and Mr. Hopkins got it. *He told me* it was between 17*l.* and 18*l.* He sent it to Mr. Greenwood, who acknowledged it was mine, but it was dishonoured."

It was necessary for him to dishonour it, otherwise the bankers' books would have been in his way. But the counsel deals with it in one argument: "This was all a fabrication and an absurd fabrication, for, of course, had any such cheque really arrived, it would have shown that he was alive."

Moreover, the log-book of the *Osprey* contained no account of the picking up of a shipwrecked passenger, or any reference in any way to such an incident of her voyage as he described. But the defendant had tried to meet this impossibility by another—he said it was *another Osprey*, and then he said it must have been the *Themis;* but he further swore that *eight sailors were saved with him.* Not one of these had ever been heard of.

It was thought proper to give the jury the key to the story of the 17*l.* or 18*l.* cheque, and it was this: the defendant had heard that the *Themis* had picked up a shipwrecked man at sea, so this poor shipwrecked Claimant, driven to his wit's end, and eager to catch at any straw, goes down to Liverpool to see the owner, and is so elated with his success that he writes:—

"*It is now beyond a doubt it was the 'Themis' picked me up.* The owners and agents are doing all they can to find me evidence."

So the log-book is entrusted to one of the defendant's agents, but, strange to say, there was no trace in it of

any shipwrecked passenger having been saved. It was, however, discovered that a ship called the *Themis* had taken a second-class passenger to Melbourne, who had disappeared after giving the captain a cheque for 17*l.* or 18*l.* This was the origin of the story of the cheque. But in a short time "the mate of the *Themis* turned up, and declared it was all wrong, and then the *Themis* was dropped, and the *Osprey* taken up again."

As to the life in Australia, the defendant admitted that he had changed his name to *Morgan*, but declined to say why, on the ground that it *might tend to criminate him;* that he knew Arthur Orton, who had changed his name to Alfred Smith, because "he had done something not in accordance with law." "He admitted that his friend was charged with bushranging, which meant highway robbery; and on being asked if he was charged with Orton for that offence, he declined to say. He admitted his intimacy with Morgan, a bushranger, shot in 1865, and his intimacy with another bushranger named Tote. He was also charged in the name of Orton with *horse stealing. This he admitted.* "What more," asks the learned counsel, "need I say?"

Just one or two words, perhaps. Upon Roger there were tattoo marks not found upon this man, and upon this man there were fabricated marks, which never had existed on Roger. All the different physical peculiarities were referred to which existed in Roger, and which did not exist in the defendant; so that, according to the description, no two men could be more dissimilar with regard to unchanging signs of identity; one important sign being that the ears of Roger adhered closely to his cheeks, while this man had pendent lobes.

So having contrasted the two men's personal peculiarities, as he had contrasted their histories, manners, characters, sentiments, education and minds, he concludes with a peroration useful to the student as a study of the arrangement of a case. His last observation was as to handwriting, which he said could not deceive. The defendant's writing and spelling were writing and spelling exactly resembling Arthur Orton's, but totally dissimilar to the writing and spelling of Roger Tichborne.

It was true that he had endeavoured to imitate Roger's writing after he had come to England, and after he had written to the dowager, saying—"*I hope you have got some of the letters;*" but that would not affect the judgment of the jury in any way, except by showing that the apparent resemblance of these later letters was the result of imitation. He then concludes:—

"Gentlemen, I have shown you the life, habits, education, the correspondence, the sentiments, the dealings of Roger Charles Tichborne, whom the defendant is charged with fraudulently attempting to personate. I have shown you also the life, habits, education, correspondence, conduct and career of Arthur Orton, whom we allege this man to be. No two persons could be possibly more unlike each other. I have also called your attention to the various accounts given by the defendant of his past life and career. How he would have you to believe that this high-born English gentleman, who had rank and fortune at his command, descended so low as to forget every tie of duty and sacred affection towards those to whom he owed both;

how, with birth and education, which would have enabled him to move in the highest station of society, he chose to associate with slaughtermen, highwaymen and thieves; how, from a man of honour and truth, he condescended to become a trickster and a knave; how, with audacity unparalleled, for his own ends, and to cover his ignorance of the one tender secret of the man whose name he had assumed, he did not hesitate to impute to him the baseness, ingratitude and cruelty of assailing the honour of an English lady. I have shown you, moreover, how the defendant would have you believe that, with a memory said to be so marvellous as to enable him to relate with accuracy the most puerile trifles, he has nevertheless forgotten his own mother tongue, and has become oblivious of events which, once known, could never have been effaced from the memory of the man who had witnessed them. I have called your attention to the mass of living testimony which I propose to offer to you. I shall lay before you also the evidence of the dead. In December last the late Lady Doughty, with intellect unclouded, closed her eyes in death. She ended her days in peace, and ere she died, in the hour of her death, and with the consciousness that in a few short moments she would enter into the presence of her God, to whom she swore, she recorded her oath that the defendant was not the man he had falsely sworn himself to be. With such testimony, added to those inferences which I invite you to draw, as reasoning men, from matters to which I have called your attention, I believe I shall abundantly satisfy you that the defendant is not Roger Charles Tichborne, as he has falsely sworn himself to be, and that he is Arthur

Orton, whom I allege him to be; and, lastly, that in this foul aspersion which he has made on the character and reputation of the lady whose name has been so often mentioned, he committed perjury the most daring and detestable."

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### The Cross-examination of "Old Bogle."

Many readers, who do not remember the Tichborne case, will wonder who "Old Bogle" was. Very few persons comparatively have read the Tichborne case, or know the Tichborne story. They will think probably it means the "old gentleman" himself. If it did, I believe Mr. Hawkins could have effectively cross-examined him. But if the thoughtful student has perused the analysis of the opening speech in the prosecution of Orton he will know that Old Bogle was an old black servant of the Tichborne family; that he was at Sydney at the time Castro commenced to make his claim to the estates; and that Roger's mother, "the poor deluded creature," had written and told Castro that fact. It was from Bogle the Claimant obtained almost his earliest information of the family of the Tichbornes.

The cross-examination of this witness is interesting from many points of view. It affords specimens of artistic workmanship and of variations of style employed for the purpose of producing different effects, but always with a view of minimising his evidence or discrediting it by eliciting contradictions. I shall give only two Illustrations, opposite in their character and widely different in their objects; the purpose of the one being to lay before the jury the sources from

whence the alleged impostor obtained the knowledge which he undoubtedly possessed of many incidents in the Tichborne family; the design of the other being to break down the witness on the ground of his unreliability, and especially when speaking to the identity of the Claimant, and the circumstances attending the earlier years of Roger's life. The reader will see how humour and ridicule may sometimes be made to play an important part in cross-examination. The following is the general nature of the evidence which the cross-examination was directed to elicit:—

1. That Bogle and his son had been ever since their return to England *dependents on the Claimant for support;* that they had shared his home and lived upon his hospitality; and therefore the natural inference would be at the outset that Old Bogle was a zealous and prejudiced partisan.

2. Bogle's intimate knowledge of the Tichborne family and its history; his acquaintance with innumerable details of the life and character of Roger; his recollection of the minor incidents of Roger's childhood and boyhood up to the period of his leaving England on his ill-fated expedition.

3. His intimate knowledge of the situation and character of the Tichborne estates; of Upton; of the rooms in Tichborne House, their furniture and pictures; of the names of Roger's nurses and the neighbours with whom he had been acquainted; even the trivial and minuter details were to be shown as within his recollection, such as the kind of frocks the child wore, and the childish frolics he used to indulge in.

All this would be of immense importance, as the

reader will see, so much stock-in-trade to a man who was about to set himself up in the business of personating that child grown into manhood. It had been said over and over again by persons who had not read the case, and their name was legion, "This must be the right man, or *how could he have known all these things?*"

This is precisely what Mr. Hawkins's cross-examination is about to be directed to—namely, *to show that the Claimant's knowledge was the knowledge of Old Bogle*, and not his own; and if I mistake not, it will show that the pretended recollection of the Claimant is *not the recollection of a child grown into a man, but of one who was a man when the incidents occurred!* The Claimant, as I read the evidence, *knew somewhat more* than he would have recollected if he had been the real Roger. He recollected with the crammed mind of a man, and not with the artless memory of a child. Hence we have another category of objects to which the cross-examination was directed. It was this:—

Godwin's Farm and its occupants.

Old Etheridge, the blacksmith of Upton.

The Nobles, who kept the "Dairy Farm."

Mr. Baigent, who called himself "a connection of the Tichborne family," and came to clean the pictures —to wash, in fact, the faces of remote ancestors.

Mr. Hopkins, the family lawyer.

Mr. Slaughter, and many others.

All these had doubtless been known to the *boy*, but they were far better known to Old Bogle, and his recollection of them would be keener than that of the real man, who knew them only as a child. Just imagine for a moment a clever, cunning man like the Claimant

gathering materials from so boundless a store as this, and can you wonder that he should show *a surprising knowledge of some incidents in Roger's early life?*

There was another group of things which Bogle was asked about and gave information upon, showing again the acquired knowledge of the man, and that of the most minute and circumstantial kind, *such as no grown-up child would recollect.*

Miss *Doughty's bay mare*, *Roger's dog "Spring,"* *Powell*, who taught Roger the French horn, and the visits of Lady Tichborne to the family seat. Bogle also knew the *Nangles; Walter Strickland*, a friend of Roger's; *Tom Muston*, the groom; *Moore*, a servant; *Carter*, another servant, and *McCann*. He had also heard of Clarke, Roger's servant in Ireland, having been killed — a most important fact for Roger to remember, even if he had forgotten the name of the man who had given him a lesson or two on the French horn, or had forgotten the name of one of the grooms, or those of the other servants, with whom he would not be familiar, although Bogle would. So it was a good thing in the cross-examination that Old Bogle let slip the fact that *he had heard all about Roger's servant having been killed.* And let the reader note where it comes in—*all in the midst of a lot of unimportant matters of detail* which are poured upon him like corn out of a sack. Poor Old Bogle did not think he was doing any harm. Even the French horn did not seem to him an instrument out of which anything could be made to turn against the Claimant; "because," thought Bogle, "Roger ought to recollect about the French horn, he couldn't forget it," although

it was mixed up in cross-examination with such a variety of small matters as tended to show *whose* memory it was—Bogle's or the boy's.

Thus the cross-examination was directed to the *sources* from whence the Claimant obtained the information which he so adroitly used to prove he was the heir to the estates.

The next point was to show that after Bogle left England and took up his residence in Australia, his two sons followed in the course of two or three years, *bringing with them information up to date.*

It was one of these two sons, Andrew, who, as the cross-examination shows, gave the witness a piece of paper. This paper showed clearly enough that when Old Bogle went to the hotel where the Claimant was staying in Australia he *went to greet Sir Roger rather than to ascertain whether or no it was he.* He went "possessed with the idea" that the person he was to meet was in fact the veritable Roger; and then one of two things must follow—if he went as a rogue to assist in the perpetration of a fraud, he would willingly communicate all he knew of the family and estates, and if he went as a fool he could easily be drawn by a cunning impostor to impart the same information.

Then we get the cross-examination as to Bogle's first interview with the Claimant, and a very interesting cross-examination it is from an Advocate's point of view.

"You knew the defendant at once?" asks Mr. Hawkins.

"Yes," answers Bogle.

"He was exactly like?"

"Yes; I knew him from his likeness to his uncle."

"And that was how you recognized him?"

"Yes."

"At first sight?"

"At first sight."

"Not from his likeness to Roger?"

"Not exactly."

"There's a good deal of difference between him and Roger, is there not?"

This question was a sort of petard, and Bogle, having been got ready by the previous questions, must be hoisted upon it, struggle as he may; he struggles thus:

"He is stouter," says Bogle.

"A great deal stouter?" repeats Mr. Hawkins.

"No; not a great deal."

"What, was Roger stout?"—The "what" startles Bogle.

"No."

"Was he thin?"

"Yes."

"Very thin?"

"Yes."

"Narrow-chested; pigeon-breasted?"

"They say so; but I didn't think he was by measurement."

"Don't talk of measurement. Was he not narrow in the front part of the chest?"

"He appeared so."

"Did you think the defendant narrow and pigeon-breasted?"

"No; he was stouter."

"And broader?"

"Yes."

"Taller?"

"No; about the same height."

"Had Roger a long neck?"

"Well, I don't know if longer than usual. As he was thin it appeared to be so."

"The defendant's did not appear so? did it?"

"It appeared stouter because he was stout."

"As to the face?"

"The upper part was like Roger's."

"What do you say to the lower part?"

"Well, his nose was injured."

"But the lower part—the chin?"

"*It was shorter.*"

"Roger's was long?"

"Rather."

"And pointed?"

"*Yes, I think so.*"

Now a direct point-blank contradiction of what the defendant had sworn in the former trial is obtained in this way:

"Do you know whether he had heard you were in Sydney?"

"He had seen Guilfoyle (the old family gardener). I don't know whether Guilfoyle had told him anything." (The dowager's letters to the defendant had *mentioned that Bogle was in Sydney, and was quite black.*)

"Did he tell you he knew you were in Sydney?"

"Yes, he did."

"Did he show you a letter of Lady Tichborne?"

"He did."

"Did he ask you if you knew her handwriting?"

"He did."

"Did he put the letter into your hand?"

"Yes."

"Did you read it?"

"I couldn't, as I had not got my glasses."

"Did he ask you if you knew the handwriting?"

"Yes; and he told me his mother had written and told him I was there."

"Did he say he had been making enquiries about you?"

"He said he was going to advertise for me."

The course thus clear, the cross-examination of the defendant is now referred to, and that portion of it read where the defendant swore that *the name of Bogle never had been mentioned to him until he saw him.*

"But you knew at the time that Bogle was there?"

"*I did not,*" swore the defendant in his previous examination.

"Had not you received your mother's letter?"

"No, not at that time."

We have then up to this point, upon the facts, Bogle's absolute contradiction of himself with reference to his recognition of the Claimant, and his direct contradiction of the Claimant with regard to Lady Tichborne's letter, *which had informed him that Bogle was in Sydney.*

I will now give another example from the cross-examination of this witness. It refers to the important subject of *the tattoo marks* which were proved to have been upon Roger's arms before he left England. As the defendant had no such marks, Bogle swore that if Roger had ever had such a thing he, Bogle, *must have seen them,* for Bogle *had been with Roger on three occa-*

*sions, and had seen Roger's arms bare, and no tattoo mark was there.* Positive point-blank swearing this, dealt with in the following manner:—

"You say," asks Mr. Hawkins, "that on each of these occasions Roger had on a pair of black trousers, with his braces tied round his waist?"

"Yes."

"Was the night shirt buttoned up to the throat?"

"Yes."

"The sleeves, how were they?"

"Loose."

"Well?"

"Well," said Bogle.

"What then? What did you see?"

"I saw him rub his arm."

"Simply rubbing his arm, like this?"

"He just rubbed one arm and then the other."

"Both at the same time?"

"No, not both at the same time; first one and then the other."

"Do you know why he rubbed his arm?"

"I suppose it itched! I don't know."

"But what did you think when you saw him rubbing his arm?"

"I thought he'd got a flea," says the innocent Bogle, little dreaming how big a flea that was.

"A flea!" says Mr. Hawkins, amid immense laughter.

"Yes, I thought so."

"Did you see it?"

"No, of course not, Mr. Hawkins."

"Whereabouts was it? Just show me."

Bogle points out the place, just about two inches above the elbow.

"Can you tell me what time this was?"

"About ten minutes past eleven," says Bogle.

"That's the first occasion."

"Yes; but it occurred three times, I've told you."

"And on each occasion you had the same opportunity of seeing his naked arms?"

"Just the same."

"Now let's come to the second occasion. Did he do the same thing?"

"He did the same thing."

"Was this about the same time?"

"About the same time."

"About ten minutes past eleven?"

"Yes; because I left him about——"

"I don't want to know your reasons. Did he just rub one arm so, and then the other so?"

"Yes; he was rubbing his naked arm."

"And each time you had the opportunity of seeing it?"

"Each time I saw it."

"Rubbed it outside?"

"I don't know what you mean by outside."

"Did he always put his hand inside?"

"Inside of a shirt," says the confused Bogle; "always put his hand in—I don't know."

"But I want you to know—you recollect it, you say?"

"If your shirt was unbuttoned, and you was rubbin' your arm, Mr. Hawkins, you would draw your sleeve up."

"Never mind what I should do. I want to know what you say Roger did. Why do you think he rubbed his arm this time?"

"I suppose the same as before."

"A flea?"

"I suppose so."

"But did you see him, Bogle?"

"I told you, Mr. Hawkins, I did not."

"Excuse me, that was the first one."

"Well, this was the same."

They had to wait some time, because the laughter was perfectly irresistible, and no amount of usher power could restrain it. And upon so important a point this laughter was as good as many witnesses against the theory of there being no tattoo marks, and Bogle's evidence of their non-existence. At length Mr. Hawkins continues:—

"You say there were no buttons on the sleeves, Bogle?"

"I don't believe there was, Mr. Hawkins."

That is a good fair start for witness and counsel. It begins like a nice friendly conversation, as calmly as possible.

"Do you know," asks the counsel, "whether there were buttons or not?"

"I don't believe it."

"But do you *know?*"

"I do not know."

"But I daresay you know this—that if a man has no shirt-buttons his sleeves would fall open a good deal?"

"I know every man has shirt-buttons, but they come off."

"Were the sleeves made to button?"

"Yes, of course."

"And on every one of the three occasions it happened to be unbuttoned?"

"Each time I saw it."

"Now let us come to the third occasion. Do you recollect that?"

"I do."

"Do you recollect which arm you saw?"

"I saw both."

"Both arms up to the elbow?"

"Occasionally."

"Just point out where it was you saw him rubbing." Bogle points out the spot.

"That's the same place as before?"

"The same place."

"The same place on all three occasions?"

"Yes."

"With sleeves unbuttoned?"

"Yes."

"Why did you notice them particularly?"

"If you pull up your sleeves," says Bogle, "I can see it without noticing it particularly."

"But you would not notice my arm?"

"If I was sitting with you, and there was two sleeves, and if you rubbed your arms, would I not see you?"

"You would look at my arm and notice it particularly, so as to recollect the circumstance for five-and-twenty years, would you?"

"I would be noticing what you was doing."

"Do you seriously mean to say you took notice of his arms?"

"I seriously mean to say I saw him rubbing his arms, and saw no marks on them."

"When did you first recall these circumstances to memory?"

"What circumstances?"

"These summer evening rubbings of his arms in 1851."

"I don't know."

"When did you first of all remember it?"

"I thought of it when I first heard the tattoo marks mentioned."

"Yes?"

"And I said if he was tattooed I ought to have seen it."

"On the last occasion, did you think it was the flea again?"

"I suppose so."

"What time was it? About the same time?"

"Yes."

"Ten minutes past eleven?"

"Yes."

"Then all I can say is he must have *been a very punctual old flea.*"

Which observation is enough for Bogle and his evidence. It explodes amid a peal of laughter.

**A Portion of the Cross-Examination of Baigent in the First Trial by Mr. Hawkins, Q.C., and commented upon in his Reply.**

Another actor now enters upon the scene, a fine performer, whose name was Francis Joseph Baigent. His cross-examination had occupied Mr. Hawkins about ten days in the first trial, and Mr. Pitt Taylor in his "Evidence" says of it:—

"In the Tichborne Trial of 1871 the cross-examination of Baigent by Mr. Hawkins should be carefully studied as being the best modern example of forensic ability in that line."

I give here a small fraction of it as coming into this reply, and prefer to give it *verbatim* rather than to condense it, because it will show the wonderful skill which really characterized the whole of that performance. I think it contained every kind of style of cross-examination. Baigent was a clever man, but the cleverest man must be armed with truth if he is to remain unscathed in the witness-box when attacked with anything like forensic ability.

"I do not comprehend what you are driving at, Mr. Hawkins," he complained.

"Whether you comprehend what I am driving at or not," said the counsel, "you can comprehend my question, and I want an answer."

It must be remembered that Baigent was an archæologist, genealogist and historian, and picture-cleaner of the Tichborne family, and was supposed to know more of the family than the family knew of itself. At

all events, he said so himself in the witness-box. He could tell a Tichborne as well as a picture-dealer could tell a Raffaelle. He said he knew Roger well before he left Tichborne, and that Roger also knew him intimately. But it will be seen there was a conscientiousness about this witness that prevented a too early recognition, as was the case with Bogle. To secure his services a visit was projected, and it is to the circumstances of the first appearance of Baigent and the defendant upon the stage that this cross-examination is directed.

Baigent said that he went to Tichborne to make copies of armorial bearings and seals.

That there was some feeling against the Tichborne family on account of his marrying an old woman; that he had entertained a belief that Roger would "turn up," and often talked it over with Lady Tichborne, who was "flighty," and used to have lights in the garden in case her son should come home in the dark.

"Did you look upon him as a truthful, honourable gentleman when you knew him?"

"I don't know that I looked upon him as a truthful, honourable gentleman, but I looked upon him as the heir of Tichborne."

"You knew that Lady Tichborne was anxious to see him in Paris?"

"Yes."

"And yet you would not allow him to go?"

"I thought he would like to see a friend of the family first."

"Did it occur to you that Gosford would be a very proper person to see him first?"

"Yes."

"Did you think Gosford would know him better than his own mother?"

"Not better: but his mother had strong objections to his seeing any friend or relative first."

It was made clear that Baigent would not allow the mother to see him until he had obtained some knowledge of the Tichborne family and estates.

The cross-examination is next directed to Baigent's first sight of the Claimant.

"Hopkins introduced me to Rous, and I saw a man there. Bogle had been telegraphed for, and we went to the railway station to meet him: he arrived at 10.20 p.m. When I first saw the Claimant he was about twice the length of this Court from me. I did not look at him particularly as we passed him—so that I did not really see his face."

"But did you not go expressly to see him?"

"Yes, but Mr. Rous told us he did not wish anyone to see him, and we paid some deference to his wishes. I had only a passing inspection, so as to get an idea of his *height*."

"You were there many hours?"

"Yes, but that was all I saw of him."

"But you went to see if you could recognize him?"

"Yes, but that was all we did."

"Did Hopkins say, '*That is Sir Roger Tichborne*'?"

"Yes."

"Was there the least resemblance to the man you had known as Roger Tichborne?"

"No: except height!"

"You did not believe he was Roger Tichborne?"

"No, and I told Hopkins so—not from *seeing* him, mind."

Mr. Hawkins: "I'll take your answers. Now let me ask you: Did you *believe* he was the man until you had seen *Bogle?*"

"I did not; but I was under the impression he answered the description given by *Cator*."

"You say he wore a cap with a peak that shaded the upper part of his face, while a handkerchief was held to the lower part?"

"Yes."

"So that the whole of his face was concealed?"

"Yes, nearly so."

A few more questions in a conversational tone led up to this one:

"You could see he was looking at you?"

"His face was turned towards us."

"Did he remain looking at you for some time?"

"Four seconds, perhaps, as we were coming nearer and nearer."

"Did he attempt to recognize you?"

"No."

"Did he avoid being seen?"

"No."

The reader will not fail to see the point to which these questions were directed, although Baigent, cunning as he was, never did. So the enquiry was pursued towards the inevitable conclusion that the *defendant no more recognized Baigent* than that gentleman recognized the defendant. "If he had been Roger Tichborne," said Mr. Hawkins, "he must *have known Francis Baigent at once*, and could not have forgotten him, as he had

previously sworn that they were on familiar terms before he left Tichborne."

"I suppose Mr. Hopkins has not altered so much that one would not recognize him?" (The witness did not see the drift of this question.)

"He has altered very much since 1853. But a client would know him."

This doubly evasive answer was fatal, and would have been so, answer it as he would: for the question was two-edged. Suddenly comes this question:

"Have *you* altered much since 1853?"

"*As little as any man!*"

"What I want to know is, have you altered at all?"

"Well, I consider I have altered very little."

"That," says Mr. Hawkins, "is sufficient for my purpose."

"Well, I hope it is," says Baigent.

"Your wish is gratified."

There is an interval between this point and the questions that follow.

"He did not recognize you?"

"He may have done: I wore glasses on that occasion, but I did not when I knew him in 1853."

"But you have altered so little?"

"My photograph shows that I have; but in my opinion I have not."

"Up to this time Rous had had no opportunity of speaking to him?"

"No."

"Did it occur to you that if he did not wish to be recognized it was strange he should go to Alresford, where Roger Tichborne was so well known?"

"I told you before, Mr. Hawkins, it did not seem strange."

Speaking of a letter the Claimant was to write, he was asked—

"Was not that to be the *test* letter, as to whether you would see him or not?"

"Yes."

"And whether you would receive him as Roger Tichborne?"

"Yes."

"Did you recognize the handwriting?"

"No, I never examined it."

"Do you mean to swear you did not?"

"I cannot say."

"I want an answer to my question."

"I may or may not have done so."

"When the letter was shown to you by Mr. Hopkins, I want to know whether you *recognized the handwriting?*"

"I rather think so."

"Don't you know? Can you give me nothing more than that you rather think so?"

"Mr. Hopkins was walking along and showed it to me."

"Did you not have it in your hand?"

"I believe not."

"You had some of Roger Tichborne's put into your hand for the purpose of comparison?"

"Yes."

"Do you mean to say that when this letter was put into your hand for the purpose of comparison you did not look to see whether it was Roger Tichborne's or not? You saw it?"

"Yes."

"And were struck by it?"

"I can only express my belief."

"Have you seen it since?"

"Not since it was shown to me in the churchyard at Alresford."

He then told the jury that at his first meeting with the Claimant *he never asked him a single question about any friend, person, or place he had ever known.*

# A STUDY IN ADVOCACY.

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## Analysis of the Reply

OF

## HENRY HAWKINS, Q.C.

(NOW LORD BRAMPTON)

IN

*THE TICHBORNE TRIAL FOR PERJURY.*

# Mr. HAWKINS' REPLY IN THE TICHBORNE PERJURY CASE.

## CHAPTER I.

### ARTHUR ORTON.

ELOQUENCE alone could not have produced the Reply in the Tichborne case any more than loquacity can make a statesman. I am quite sure it is the greatest forensic performance of the latter half of the nineteenth century, as well as one of the most artistic in the highest sense; and worthy, therefore, the attention of every aspirant to distinction in his profession as an Advocate.

The indictment on which the notorious Claimant was arraigned contained three assignments of perjury—(1) That he swore he was Roger Tichborne. (2) That he had seduced his cousin. (3) That he was *not* Arthur Orton.

The object of the "opening speech" had been to suggest proofs of the *first* of these assignments; the reply involved the absolute proof of them all. The order in which they are taken is not unimportant to observe, nor was it done without the fullest consideration.

The story is not only full of legal interest for the young Advocate, but, as a romance, it is equal to any novel of the century. Its plot was worked out with an amount of cunning, subtlety, fraud, talent and *ignorance* never before acting in such malignant combination. Two men in totally different spheres of life: the one

heir to a baronetcy, and the other to a butcher: the very contrast of each other in appearance, manner, disposition, temperament, character and education: the one a refined gentleman, the other an ignorant boor with low instincts and a brutal mind: two men whose paths never were parallel and never crossed each other: whose spheres of action were often thousands of miles apart: who had never seen or heard of one another. These two men thus went on their several ways till the one died and the other fraudulently claimed to take his place, and brought an action to obtain possession of estate and title.

Notwithstanding the difference between these men, it took years to determine that *Orton* was not *Tichborne;* that the butcher was not the baronet; that the hopelessly ignorant clown was not the gentleman who had been educated in *Paris* and at *Stonyhurst*. I am not sure the Claimant would not have succeeded but for the remarkable skill with which the final trial was conducted; nay, I feel certain that truth and justice would not have triumphed unless they had been championed by the skill and, let me say, the *even temper of the Advocate* who conducted the prosecution.

In considering this great case, I would point out what might be overlooked by young Advocates—that the opening speech contained nothing that was not afterwards *supported by evidence;* and while its great object was to *outline* the evidence, the object of the reply was to fill in details which the evidence had supplied, and to build up the whole case from the multitudinous parts which had been brought together by the witnesses.

And now the opening may be dismissed; it has accomplished its purpose, and the minds of the jury must be concentrated on the facts and natural inferences from them.

Let the reader remember that months have passed away since that opening speech, and yet it has stood the test of time; hundreds of witnesses have been called, and yet it has stood the test of truth and falsehood, prejudice and perjury. The story has been amplified, expanded into enormous proportions and dimensions; it has been fitted with all its details, and is now presented to the jury a natural picture of human life, in keeping with all its surroundings whenever and wherever we can meet Roger Tichborne; whereas monstrosity, deformity, ignorance and self-betraying falsehood encounter us wherever the figure of *Arthur Orton* is visible.

What was vague is now clear; what was doubtful has been proved; what was foreshadowed, realized. Suggestions have become proofs; surmises living facts.

But now comes the putting of this tremendous mass of details together so as to form a structure that shall show no incongruities, and no want of adaptation in its multiplicity of parts.

The startling difficulty, and the greatest, was that *the Dowager Lady Tichborne* had declared that the Claimant was her *very son Roger!* Here the theory of "*maternal instinct*" was made to do duty for *fact*, and worked with remorseless vigour, like a pump that keeps the ship from sinking for the time being. Maternal instinct appealed to the ignorance, the cupidity and the villainy of mankind.

In addition to this: troops of Carabiniers have sworn to the defendant; magistrates, members of Parliament and old servants of the family; old neighbours and old friends; above all, nearly all the fools in the country believed in him, and probably all the rogues.

The key of Mr. Hawkins' design was this: the greatest fool will never believe that one man could be two men, or be in two different places at the same time.

The first thing, therefore, after examining the situation, was to introduce, if I may so express myself, a charge of dynamite which at one blow shattered the line of defence. It was done in this way:

"What do you think, gentlemen, of a defence that has to be made by allegations of perjury, bribery and conspiracy, to all of which the Government itself is made a party, for the purpose of depriving a man of his rightful inheritance? But I will not do you the injustice of supposing that you have lent an ear to these wild and slanderous denunciations."

"Nearly twenty years ago the Tichborne family were plunged in grief by the news of the loss of Roger Tichborne in the wreck of the *Bella*. Fifteen humble homes were also rendered desolate by the same catastrophe: and no news of anyone on board that ship has been heard from that time to the present moment. But in 1863 Lady Tichborne issued advertisements, and in 1865 the defendant, then a butcher at Wagga-Wagga, came forward with his claim. The circumstances under which he did so, however, were calculated to excite suspicion. Enquiries were made, and at last a clue was discovered by which his history could be traced, and it

was found that he was Arthur Orton, the son of a respectable butcher at Wapping, who had not been heard of since 1854."

The Claimant instituted proceedings in Chancery, and in those proceedings swore the three things upon which he is now indicted.

*Is this man Arthur Orton?* Who *was* Arthur Orton? He was born in 1834; was the youngest son of a large family; was an awkward youth, without education, and accustomed to play in the streets.

When he was ten years old a fire occurred opposite his father's house, which gave his nervous system a shock and seems to have produced a disease known as "St. Vitus's Dance." The medical practitioner who attended him at that time recommended a sea voyage: and that gentleman will speak positively to the defendant as being the patient who was under his care; about that he has no doubt whatever.

This small matter, microscopic as it seems, will not be without importance hereafter, but takes its place here in the natural order of events.

There were two friends of the Orton family, one named *Angell* and the other Jervis (Jervis of Bridport); names to be remembered. They were "master mariners," and knew the youth Arthur well: Angell swore that the defendant was his old friend.

Jervis was dead; but a brother of his had been called by the defendant, who proved rather more than was necessary for his case: he proved that Arthur once took a trip with him to *Bridport*, where there was a butcher named *Hallet*, with whom Arthur was acquainted.

I ask the reader to remember this small incident also,

as it was the name given by the defendant claiming to be Roger Tichborne as *the name of his father's agent!*

In April, 1848, Arthur was apprenticed to the master of a ship called the *Ocean*. The master's widow knew him well, and swore to the defendant as the same Arthur Orton. The vessel was bound for Valparaiso, where she arrived at the close of 1848. She left on the 25th of June, 1849; and so did Arthur, who left the ship, and was reported to the consul as a deserter.

On the 18th February, 1850, he shipped at Valparaiso on board the *Jessie Miller*, bound for London, describing himself as Joseph Orton, 18 years of age. The *Jessie Miller* is also worth remembering.

"Where," asks Mr. Hawkins, "was Arthur Orton during those eighteen months, from the time he deserted from the *Ocean* to the time he shipped on board the *Jessie Miller?*"

To answer this question we have to go to *Mellipilla*, a distance of forty miles from Valparaiso, a small place, but big enough for the purpose of the prosecution, for at Mellipilla resided, in the principal house, an English doctor of the name of Hayley; Donna Hayley was his wife, and she told the jury that in 1848 an English "sailor lad" asked for hospitality. He said his name was *Arthur Orton*, and gave the names of his sisters. While at her house he picked up a little Spanish; showed her the initials *A. O. tattooed on his arm;* told her he had been sent abroad for his health, and when he went away left a lock of his hair—an important lock as it turned out.

These simple facts are stored up in the minds of the jury never to be forgotten; and as they bear the hall-

mark of truth never to be questioned, so far as they prove that *somebody* who gave Arthur Orton's name, and knew Arthur Orton's sisters, came to Mellipilla.

Three months after he went to another man's house, that of Don Thomas Castro, with whose son *Pedro* he had afterwards a "remarkable correspondence." There he remained for about a year and a half.

We now come to another branch of the narrative. On the 11th June, 1850, the *Jessie Miller* arrived in London, and Arthur went to his old friends and his old home at Wapping. He asked after a man named *Cronins* and his old friend Angell, the master mariner, and for the latter, such was his affection that he put his name into his will as the cheapest way of showing it. He met, too, a friend of the name of *Leaver*, who showed his friendship by weighing him, when it was found he scaled *thirteen stone and a half*. This may seem as unimportant as a man weighing himself at a station, but in Advocacy nothing is unimportant that is relative to *the issue*.

Of all who knew Arthur at this time none was better acquainted with him than *Mary Ann Loader*. He was her lover; he told her all about his having deserted his ship at Valparaiso; so that her story will fit in by-and-by with Donna Hayley's.

About Christmas, 1852, he told her he should go to *Hobart Town*, and asked her to go with him. Here another little piece of evidence comes; in his register certificate he signed his own name, adding *Butcher*, *5ft. 9½in., fair complexion; no marks on his person*. Therefore, let the reader bear in mind, *no scar on his face*

*extending from the corner of his mouth to the corner of his eye.* "No marks!"

In November he sailed for Hobart Town in the *Middleton*, another name to be remembered in his after life.

At this time while Arthur is paying his addresses to Mary Ann Loader, Roger Tichborne is paying his addresses to *Miss Kate Doughty, his cousin.* Nothing was ever more clearly established in this world, not the creation itself, than that at this time, 1852, these two men were respectively engaged as described in this reply.

The question, therefore, at this point comes to this: Which of these two men was the *defendant?* One of them he was by clear admission on both sides. Both of them he could not be, by admission or otherwise; although the public voice cried, "What a shame to deprive the poor man of his rights because he was the son of a butcher!"

On board the *Middleton* were three men employed, *Henry Allen, Peebles* and *Lewis.* This is important, because years after, when questioned about the wreck of the *Bella*, he gave the names of *Peebles* and *Lewis* as two of the men who were with him when they were wrecked. These two names were valuable without their owners. Orton had shipped as butcher, Henry Allen as cook. Allen, therefore, would have a good opportunity of knowing and remembering him.

At this exact time Roger Tichborne was clearly proved to be at Upton. Allen, the cook, noticed the defendant's "*twitching eye*"—he saw it twitch for *five months.* Arthur wrote several letters on board to Miss Loader, all of which became useful in identifying his

handwriting. Roger never had any twitching eye, and never wrote to Mary Ann Loader; singularly enough the letters of Arthur Orton remained and the defendant had a twitching eye.

Arthur took two Shetland ponies on board the *Middleton*, and was known thereby at Hobart Town as "*the man with the ponies.*" They were an article of merchandise at Wapping, being conveyed thither from Dundee. These also are points for remembrance. A man named *Hawkes* knew him as "the man with the ponies," and two years after as a butcher at a stall at Hobart Town, where Angell knew him too.

There was another witness of still more importance who lived at Hobart Town, a *Mrs. Mina Jury*, a widow, who produced at the trial a letter of introduction which Arthur had brought with him, and which had been given by Mr. Jury, of Wapping, brother-in-law of one of Arthur's sisters.

Another cause for recollecting him had Mrs. Mina Jury, for she had lent him 14*l.* on his promissory note, to enable him to take his butcher's stall. When the day of payment came, Arthur went away, leaving the promissory note in Mrs. Jury's hands to produce in Court at this trial. He went to Port Albert in a vessel belonging to a Mr. Johnson, of Gippesland. This was in August, 1855. He had often talked to Mrs. Jury of his sister, Mary Ann Tredgett, and she also had seen the tattoo on his arm.

Arthur confessed to two witnesses that he had been with *Mr. Johnson*, of Mewburn Park, so that he is well traced, not only by witnesses, but by his own confession. He was with Mr. Johnson a year, and told a

fellow-servant, named Hopwood, that he had been a butcher on board ship. Hopwood was now a farmer on his own account. He next entered the service of Mr. Foster, of Boisdale, a station adjoining Mr. Johnson's. The defendant admitted that he went to this place after landing (as Roger Tichborne) in 1854. I ought to have mentioned that Arthur told Hopwood that while at Johnson's he owned a horse named Plimpo, which had "belonged to him at Tichborne." A mythical horse, so far as Tichborne is concerned.

Now comes a remarkable link in the evidence. Arthur cannot leave himself behind, go where he will. Mrs. McAlister was the wife of Mr. Foster's manager. Arthur was there from 1856 to 1858, as stockman and butcher. Mrs. McAlister kept a little library and lent books. She had lent a book to Arthur, and he had returned it *with his signature*, which signature was in the same handwriting as that on Mrs. Mina Jury's promissory note. The date was March, 1858.

(In April, 1857, he had been transferred to another station of Mr. Foster's, named Dargo. The writing in the book was dated at that place, and there his old friend Hopwood saw him again.)

On the 1st of July, 1858, he suddenly reappeared at Boisdale, his explanation being that, "*after the death of 'Ballarat Harry,*' the place was too lonely." Ballarat Harry had been murdered! and, the defendant said by a man named *Toke*. No one else ever heard what Toke said, or if Toke found it lonely, or that there ever was a man named Toke at the spot.

There was a law suit between the defendant and Foster, the date of the plaint showing it was in November, 1858.

Notwithstanding all this evidence and a great deal more, defendant swore he never was at Hobart Town in his life. And well he might, for if he was he was not Roger Tichborne, for Roger Tichborne was certainly never there.

Mr. Hawkins next proceeds to connect the defendant with this Arthur Orton of Hobart Town and Boisdale.

Hopwood swore that in 1864, having seen Orton at *Sale* at the end of 1858, he saw the *defendant* while passing under the name of *Castro* in a butcher's shop at Wagga-Wagga.

"Halloa, Arthur! is that you?" he asks: (strangely enough, the very question for the jury). Arthur made a sign, and beckoned him into the shop. "I've changed my name," he said, "about a horse, and don't want to be known as Orton any more."

"What is the effect of all this evidence?" asks Mr. Hawkins. "Can anyone doubt that Orton of Wapping was the Orton of Mellipilla? or that Orton of Hobart Town was the Orton of Wapping? and that the same man was at Johnson's at Mewburn Park, at Foster's at Boisdale, and at Wagga-Wagga as Castro?"

His affidavit was now read, in which he swore that he went to Boisdale when he landed, *after the shipwreck of the Bella*, in the *Osprey* in 1854. He had, however, shifted the date of landing, two years back; but so impossible is it to maintain a lie if you can only get at the surrounding circumstances, that this one failed because Mr. Foster, whose service he was in, did not go to Boisdale till 1856. At the former date Foster was at Melbourne, and, further, no one of the name of Castro was ever in his service. His story therefore

collapses, for he swore he was in Foster's service in the name of Castro in 1854.

He also said that he, "Roger," was *with Arthur together in Foster's service*, which could not be in 1854; and that they afterwards were together till their final separation at Wagga-Wagga in 1865.

The defendant's case thus far is so weak that it cannot sustain the weight of its own evidence, which often happens when you call more witnesses than you require to prove your case.

With the next scene the curtain will fall on the first act. "Sir Roger," as his counsel calls him, was married in January, 1865. This Sir Roger does not marry in his own name, strange to say, but in that of *Arthur Orton;* he gives, not his own age, which would be thirty-six, but that of Orton, which was thirty; and, being a devout Roman Catholic, he was married at a *Wesleyan chapel by a Wesleyan minister.*

By-and-by we shall see how he discovered that he belonged to the Roman Catholic Church.

But he had a reason for this strange conduct, and it was this: "Because everything I did was false."

## CHAPTER II.

### WAPPING.

One of the great features of this drama is the suddenness of its transitions. In the first act there was much of the picturesque, but nothing fanciful. Everything was real. It is the Advocate's duty in a reply to state what he considers has been proved by the evidence, while in the opening it was to state so much only as he knew was capable of proof. I mention this because I have known Advocates anticipate their reply before a witness has been called.

It is to be remembered that the defendant has proved not *one* Arthur Orton, but several; they "devilled" for him, apparently, when he did not wish to appear himself; but there was amongst them one characteristic common to all—that they differed in height and appearance from the defendant.

The curtain rises once more, and the scene is *Wapping*—72, High Street, the house of a *Mr. James Richardson*, who is discovered reading a letter, which bears the postmark "*Wagga-Wagga*"; it is dated 13*th April*, 1865. "Wagga-Wagga!" says Richardson. "Where is Wagga-Wagga? I never heard of the place:" but he

may know the writer. It must be from somebody who knows *Wapping*. This is the letter:—

"Mr. James Richardson, Sir,—

"Although a perfect stranger, I take the liberty of addressing you, and as my residence is at present in this distant colony, I trust you will pardon the intrusion, and oblige me by granting the favour I seek. I believe there was some years ago living in your neighbourhood a person named Orton. To this man I wrote several letters, none of which has ever been answered. The letters are of importance to Orton or his family, and to no other; so that I must conclude he has never received them, as I am certain they would be answered. Besides, as this district is, or lately was, in a very disturbed state through a lawless set, who styled themselves 'Bushrangers,' and who respected neither life nor property, I concluded my letters fell, perhaps, into their hands. If Orton or his family live near you still, or if you have or can give any information respecting them, I shall feel ever grateful. I beg to say here, with pleasure, that one of the most notorious of the bushrangers has fallen by a rifle ball, and that on the news of his death and doings being properly chronicled, I will send you the paper containing such. I trust you will not fail to oblige me by sending any information whatever respecting Orton or his son Arthur.—I am, Sir, your old obliged servant, *Thomas Castro*. Should you write, address Thomas Castro, care of R. J. Higgins, Esq., Australia Hotel, Wagga-Wagga, N. S. Wales."

This letter was *admittedly* written at the *defendant's* dictation! So that he would have the jury believe that

*Roger Tichborne* was sending a letter to a man he had never known, to a place he had never heard of, and inquiring about a family of total strangers. But this same writer had written several other letters to the *Orton family*, all unanswered, as appears from this communication.

"Now," says Mr. Hawkins, "ask yourselves with what object this letter was written? Orton had not written to his family for ten years; but if he were to return engaged in this enormous fraud, it was important to ascertain how the family stood. Who but Arthur Orton knew where *Richardson lived?* How could Sir Roger Tichborne know it?"

But this mysterious, double-fronted and two-faced being seems never to be occupied except in the work of deception. Instead of writing in his own hand, he gets the village schoolmaster to write for him, for the simple reason that his handwriting would be known at once by the Orton family.

The defendant's counsel's explanation of the letter was that it was nonsense; nevertheless, it was the first step in one of the greatest attempts at fraud ever brought before a Court of Justice.

The defendant's explanation, after much puzzling of his brain in the witness-box, was that he was "anxious to know *where Arthur Orton was*": the very man he swore he had been living with at *Wagga-Wagga*. Arthur *had told him he was going home*, so he was anxious to know if he had arrived. He also said he had written to old Orton; then he denied it. Confronted with his own letter, he said he must have written it.

This was a good opportunity to put in a piece of evidence as to his ignorance. His wife was about to be confined, and he wrote that he was "more like a *manic* than a B.B.K." (Baronet of the British Kingdom) "to think he should have a child born in that hovel."

It was the legal mind of Gibbes, his solicitor in the Insolvent Court, that discovered under that rough exterior of a butcher the refined English gentleman of family, or, as they sometimes say, "gentle blood," so seldom found in a slaughter-house! We shall learn presently how Gibbes made his extraordinary discovery. At present I deal only with Gibbes' *surprise* at the baronet's want of education. The defendant, however, was a man of resources; he knew why he was ignorant, and explained the phenomena by saying it was in consequence of his having been afflicted with *St. Vitus' dance*, not at that time knowing that Roger Tichborne never had that complaint. But how St. Vitus' dance caused him to spell breast "brest," trouble "trubble," and maniac "manic" must be left to the faculty to decide!

The manner of Gibbes' discovery was in this wise: The pretended Roger, being an insolvent whose debts amounted to 200*l.*, asked Gibbes whether he need put into his schedule estates that he possessed in Hampshire, which, in fact, were producing, although the defendant did not know it, 15,000*l.* to 20,000*l.* a year. Nor did he know that at that time he would be entitled to draw upon Glyn's for almost any amount. In 1854 Roger had credit for 2,000*l.* for three years.

About this time, not wishing to be known, he nevertheless dropped mysterious hints about his romantic

adventures, and cut the initials "R. C. T." on trees—probably on the butcher's block—so that curiosity began to awake concerning him all over Wagga-Wagga.

It became a subject of conversation amongst the gossips. One cool afternoon in July the defendant was sitting with Gibbes in the verandah smoking a large wooden pipe, on the bowl of which were carved the letters "*R. C. T.*" Presently Gibbes said, in his innocent way, "I wish I were at sea; it is so beautiful!"

"Oh!" exclaimed our hero, in *his* innocent way; "if you had been shipwrecked as I have been, you would soon be tired of the sea."

"Shall I call you by your name?" asks Gibbes.

"Oh, for G—d's sake, don't!" implores the defendant; alarmed, probably, lest the discovery should wake the baby.

"Oh, but," says Gibbes, "*I've* spotted you—you are *Sir Roger Tichborne!*"

Much pleasant talk followed the discovery; and after the explosion had subsided, he confided to Gibbes that if he succeeded in getting possession of his estates, he should purchase the Metropolitan Hotel and set up the largest butchering establishment in Wagga-Wagga—just what a baronet would do.

Gibbes asked him who his father's agent was. *Allen, of Bridport*, meaning *Hallet*, the friend of *Jervis*, whose brother was one of the master mariners he knew at Wapping! One day, as Gibbes and he were walking in the woods, a pathetic scene occurred, which Gibbes, years after, told in the witness-box, and with so

much pathos in his voice that the Court roared with laughter, in which he was good enough to join.

He had never heard of Alfred Tichborne, and the first he ever heard of him was that he was dead. This news had been communicated to Gibbes by Lady Tichborne, "And when I broke it out to him," says Gibbes, "he was very much affected."

"In what way?" asks Mr. Hawkins.

"Oh, he went behind a tree and wept."

"Did he really cry?"

"Well, his eyes were red; but you must remember," continued the Wagga-Wagga attorney, "he had been rubbing them with a towel, and perhaps some of the soap got into his eyes."

The defendant said, continued Mr. Gibbes, "I was in the 66th Light Dragoons Blue, sword and carbine, and the colonel's name was Wilson."

And the jury could easily see where that lesson was learnt, although there was no such colonel.

The acuteness of Gibbes having drawn from him a confession of his true position and rank, he desired to make his will. No less anxious, you may be sure, was Gibbes to make it for him. This was June, 1860, forgetful of the fact that Roger had made *his* will in 1852. In this solemn document he mentioned none of Tichborne's friends, but two old friends of Arthur Orton instead, namely, *Jervis*, of Bridport, and *Angell, of the "Jessie Miller,"* the same vessel that had taken Orton home from Valparaiso. He gave also, in an affidavit, the exact date when she sailed down the Thames—28th November, 1852.

The pocket-book of the defendant, which became

more famous than most books of that year, contained the name and address of *Mary Ann Loader*, as well as the date of Arthur Orton's arrival at *Hobart Town*—namely, August, 1855—in his (the defendant's) own handwriting.

At length he set out on his homeward voyage, knowing full well that Roger Tichborne would be received with inexpressible feelings of joy by all who knew him, and arrived in England in 1866.

As the good ship makes for her native shores, another remarkable incident occurred. He made the acquaintance of a man of the name of *Stephens*, whose name we shall meet with again presently.

As the ship is off Gravesend the pilot comes on board, and the baronet suddenly asks him about another pilot who, in the old days, used to bring *Shetland ponies from Dundee to old Orton, the butcher, at Wapping.* This was an exhibition of memory which the whole baronetage of England could not surpass. If he were Arthur Orton it would not have been anything other than the most natural thing in the world.

Having disembarked, he did not go to Tichborne or to the members of his family or friends. He kept himself aloof, and although rooms had been taken for him at Ford's Hotel, he never went there. But on the eve of Christmas went disguised to *Wapping*, and entered the "Old Swan" public-house, kept by a Mrs. ——. The scene was a homely one: There was the baronet standing before the parlour fire, with the landlady looking at him. Suddenly, as if a thought had struck him, he inquired about the *Ortons*. "I see the shop is closed," he observed.

"Oh, yes," said the landlady; "poor old Mr. Orton's dead, and Mrs. Orton, too—she've gone, and he, too, poor man!"

"So I've heard," said he. "How's *Mary Ann Orton* getting on?"

"Oh, she've married a man of the name of Tredgett; but he've died, too. But you can get her address, sir, from her brother, *Charles Orton*." But he did not want Charles Orton yet.

Then he asked about *a great many of the old friends* and neighbours of the Orton family, and added: "The old place has not altered a bit. There's old Cronin's house, I see: are the Cronins still there? Does *John Warwick* still keep the butcher's shop?"

"Oh, no, sir; old Mr. Warwick have been dead some time now, and the daughter carry it on."

"What, Sophy!" exclaims Sir Roger.

The landlady could contain herself no longer. "Why," she exclaimed, "*you're the Orton who left this place fourteen or fifteen years ago!*"

"No, no," said he; "I'm a friend of his." (A strange reason for a likeness.)

"You seem to know the place pretty well, at all events," rejoined the woman.

"Yes," he answered; "*I was here fourteen or fifteen years ago!*"

He then left the inn and called on Mrs. Tredgett, Arthur's widowed sister. This lady was not at home, so he went to the house of a Mrs. Pardon. There he sent in, not his own card, but that of *Mr. Stephens*, whom he met on board ship after leaving New York. He is now *Mr. Stephens*. On the card he wrote "Aus-

tralia," where Stephens had never been. When he saw Mrs. Pardon, he told her that he *knew* Arthur Orton, and at the same time inquired kindly after *Mrs. Tredgett.*

Mrs. Pardon suddenly said: "How like an Orton you are!"

"No," he said, "I am not an Orton; but I have Orton's likeness in my pocket, and that of his wife and child, and here is a letter for Mrs. Tredgett from her brother Arthur." Then he left.

When Mrs. Tredgett received the letter she knew the handwriting, and said, "It must be from my brother."

1. The points, therefore, made were that defendant admitted that the letter was in his handwriting.

2. That Mrs. Tredgett instantly recognised her brother's *writing*, and swore to it.

3. It could not have been written from Australia, for it was in *Stephens'* name, whom he met for the first time after leaving New York.

4. It was dated "Wagga-Wagga," and speaks of Stephens leaving for England, and that he has promised to find out all about you and to let me know. There was also Arthur Orton's secret hieroglyphic on the letter—the same sign that characterised his letters to Mary Ann Loader.

The next day he wrote to Mrs. Pardon asking her to inform the lady for whom he left the letter that, if she will kindly "*comicate*" with him, she will hear something to her advantage, and asking for information about a Miss Loader, and what became of her brother Thomas's children. Letter signed, "*Stephens*, Post Office, Gravesend."

He then sent to Arthur Orton's sisters portraits of his (the Claimant's) wife and child, saying they were Arthur's wife and child, the only voluntary statement of truth I have known him make.

His next letter to the sister expresses his sorrow that they should think he is their brother, and at once gives the explanation of the resemblance, both in feature and handwriting, that he is a very great friend of Arthur's.

But the man who came to seek the sisters for Arthur and to let him know about them, would not see them till 1868.

Alas for the weakness of human nature! He ultimately bought off his relationship for money, and induced them by money payment to commit perjury in their affidavits by swearing that he was *not* their brother! In the same manner he bought off Charles, who had communicated with him under the name of *Brand*, to whom he promised to allow 5*l.* a week for his support, but which, fortunately for the ends of justice, he forgot to pay.

Mr. Holmes, however, the defendant's solicitor in London, said it was "*unfortunate*," and regretted that "*the fellow Brand*" had told him (the solicitor) *with his own lips* that *the Claimant was his brother!* He also regretted that Brand had sworn an affidavit to that effect.

Notwithstanding this huge mass of evidence, the mass of public and private ignorance was even greater, and thousands, nay, even millions, believed the Claimant when he swore that he had never been to Wapping in his life!

Another singular incident comes in here. The defendant, in February, 1868, wrote to the Dowager Lady Tichborne, informing her that "they were trying to make out he was not *himself*, but *Horton*."

It happened that the owners of the *Bella*, wrecked so many years ago, were anxious to hear something of their ill-fated vessel from the survivor, and especially to learn if any others were saved with him. Accordingly, in February, 1868, they wrote to the defendant, who was at that time staying with his solicitor, *Mr. Hopkins*.

In answer to that letter Mr. Hopkins, writing for his guest, said that Sir Roger knew the names of only *four persons* on board the *Bella*—namely, Shears, Williams, Dobbin *Peebles*, and Lewis Owen or Owen Lewis. It was strange that none of these belonged to anyone on board the *Bella;* but on board Arthur Orton's ship, the *Middleton*, there was a man of the name of *Peebles*, and another of the name of *Lewis*. The learned counsel might well ask, who but Arthur Orton could have known that *Lewis and Peebles* were on board the *Middleton?* Certainly Roger Tichborne could not.

Sometimes, as we know, one politician is permitted to explain the meaning of another politician's speech, but the most remarkable explanation of another man's meaning was that given by *Don Pedro Castro* as to the meaning of Sir Roger, when he said he was the son of a butcher: "Not being perfect in the Spanish language," he writes, "was the cause of your saying '*Carnicero*,' which means *butcher*, instead of '*Canceller*,' by which *you intended to inform us that your father was Chancellor to the Queen!*" This was stated as contained

in the "remarkable correspondence" referred to earlier in the reply, and the public generally believed it.

A commission to take evidence having been sent out to Mellipilla, the defendant refused to go. He would neither face *Don Pedro* nor *Donna Hayley*, two of his old familiar friends, in that little town. The Don had already said that the name of Roger Tichborne had never been mentioned at Mellipilla: so also said Donna Hayley.

Another commission was also issued to take evidence in Chili, where *Roger Tichborne* had stayed, and was well known. There the real man could have established his identity beyond question; but the defendant feared to face the ordeal. Thither he pretended to go, went a little way on the road which the real Roger must have travelled, and then "turned tail, leaving his attorney in the lurch."

He afterwards owned that he never meant to go.

## CHAPTER III.

### IDENTIFICATION.

We are taken now to that interesting proceeding which may be described as the ceremony of identification, and upon this mystery turns the whole question as to whether he is Arthur Orton or Roger Tichborne. If this process shows perjury or mere deception, he is guilty of swearing he was not Arthur Orton. So this part of the reply is framed with the view of determining that important object. As he would not face those who knew Roger Tichborne in Chili, his friends called a meeting at Alresford in 1868. The letters which he admitted on oath to have written to Orton's sisters were read, and he then declared they were *not* in his handwriting. Although his old love for Miss Loader seemed to have revived when his foot was on the pavement of his native Wapping, he would never see that lady, and she caught no glimpse of his familiar features. After the disappointment he had sustained by being recognised by Mrs. Fairhead, Mrs. Pardon, and Mrs. Jackson, it would never do to trust the loving memory of Mary Ann Loader.

But there was far more useful work to be done than showing his face to those who knew him: and that was to pass in review before those who did not. It was to get

as many people as possible, not only not to think he was Arthur Orton, but to swear he was *Roger Tichborne;* and herein, in proper sequence and order, come in those unknown quantities called affidavits, which are equivalent in legal warfare to shooting at you from behind a hedge.

There was a certain gentleman, who, no doubt, with all honesty of purpose, took the greatest interest in this case, for he had got a good deal of money on *Sir Roger*. We learn so much of his enthusiasm from a letter which he wrote to his "*Dear McEvoy*" in March, 1867:—

"Oblige me," he writes, "and your own curiosity, in going to Essex Lodge, Croydon, and calling on *your old friend*, Sir Roger Tichborne, who is living there with your brother officers, and let me know what you think of him. I have got 600*l.* on his being the man. Don't be misled at first by appearances, as he is so altered. From circumstances, I am as certain of him as I am of myself."

"Dear McEvoy" was not to be misled at first: there was plenty of time—and no little money.

*Lipscomb*, the doctor, did not wait to be misled by first appearances: he recognised him before there was any appearance to mislead; and *Bulpit* was so sure that, "unsight, unseen," he lent him *five hundred pounds!* Who would not be a "B. of B.K." (a baronet of British Kingdom)? Another kind gentleman, of the name of *Kingston*, *bet* several hundreds on him; so that it was like to be a sporting transaction rather than a judicial inquiry. *Tucker*, the money-lender, also had his eye on the occasion, and was not deceived. *Bloxam*

had been engaged by *Kingston* to speculate on the favourite.

He was a "dark horse," because the people of Tichborne had not seen him since 1852, a good many years ago. Some of them had not "set eyes on him" since 1848, and others not at all! No wonder, therefore, so many of them should feel "sure as death" he was *not* Arthur Orton, especially as so many "*gentlefolks*" had backed him as Sir Roger Tichborne.

All these arguments were sound and convincing. A man named *Page*, brother-in-law to the sportsman who had advanced 500*l.*, and was therefore likely to be an impartial witness, had seen the defendant in Croydon early in 1868. There was no little strain, therefore, on Page's memory, observation and affection; but he was equal to the occasion.

He was taken to see Sir Roger by his brother-in-law (who had advanced the money merely on seeing *his signature to the will of Roger Tichborne*, and comparing it with that of the *Claimant*).

Page had not seen Orton since 1851, and yet his memory was so exquisite that he recalled his *hair*, *eyes* and *cheekbones* in a moment, but admitted that the mouth of the defendant was not unlike *Orton's mouth*, and that he had something of the *voice* of old Thomas Orton! But his conclusive reason for being convinced that he was *not* Orton was that *his hands were not horney as a sailor's would be.*

This was the thin strand of evidence upon which was to depend the title to the Tichborne estates, pedigree and posterity! I say this, because it is really as strong and as weak as any other evidence the Claimant produced;

and it was stronger in this respect—it could not be broken in cross-examination, however much you might despise it as ridiculous and absurd.

"It was," said Mr. Hawkins, "by deception, concealment and falsehood that the defendant had got the evidence of *Mr. Page*."

Let the student consider what now comes, and what an excellent summing up and analysis of the defendant's case it is!

"Out of the whole number of the defendant's Wapping witnesses, *only eight had seen him before the former trial*, and of these eight most of them had sworn to *minute circumstances* and features which they *could not have recollected*."

That one sentence disposes of *all* the witnesses from Wapping; and it comes in exactly at the right place, as we shall see in the further development of the reply.

"To the rest of the witnesses," he had been introduced *as Sir Roger!* "Mr. Whalley and Mr. Onslow being present"; and their presence, of course, producing a deep impression on ignorant and servile minds. But, happily, they also produced an effect on the minds of the jury!

There is one meeting to which it is necessary to advert, and one only. It was on the 10th of July, at Creighton's public-house, under the auspices of that indefatigable pair, Whalley and Onslow, who were present.

A circular had previously been issued, which said that the notice of the meeting was "*To all who wished to give evidence in the defendant's favour!* Mr. Whalley in the chair!" There was also present Captain Brown,

"the perjured proprietor of the pudding-shop," who assured the meeting that he had known Sir Roger at *Rio, and that this was the man.* Then the chairman went round and asked them individually, "*Well, what do you think?*"

Think! What could they think, but that, if he was Sir Roger, he could not be Orton; and such opinion was unanimous. "Why," said Brown, "I *know* he is Sir Roger, for I saw the brown mark upon him."

"But," said the learned counsel, "the brown mark was on his left side, while the captain was on his right, and he must, therefore, have seen right through Sir Roger—*we also see through him now.*" There was naturally much laughter, in which the three Judges innocently joined, until they were suppressed by the Usher commanding them to silence.

Yes, and Brown's brown mark was also seen through, because Roger's mother had never seen one, and told the Claimant so.

This "perjured proprietor of the pudding-shop" also saw the malformed *thumb*, and the mark on his arm, and declared he was the last man who saw Roger when he went on board the *Bella*. After him was the *mate of the "Osprey,"* who picked him up at sea. Louis was afterwards rewarded for his humane act, not with the Royal Society's medal, but with penal servitude.

Such was the evidence secured at that meeting under the auspices of the defendant's two illustrious supporters. One man, twenty-five years ago, had seen him in a fight when they were both drunk, and yet noticed his hands, eyes, feet and the pock mark.

It may be stated that when, at last, Mary Ann

Loader heard the defendant's voice, she was convinced he was Arthur Orton. No "maternal instinct" would persuade her to the contrary. "The defendant's counsel was right," said Mr. Hawkins, "when he admitted that Mary Ann 'could not be mistaken,' and he was driven afterwards to the hard necessity of accusing her of wilful perjury, in order to get rid of her testimony."

Donna Hayley saw the tattoo marks on Orton's arm at Mellipilla, so did Mrs. Mina Jury, so did Hopwood. The marks were *not there now*, but there was a small cauterized scar where once they had been. Strangely enough, the defendant did not know how that cauterized mark came. No doubt Don Pedro could explain it; but perhaps someone else will do so, by-and-by.

Mr. Hawkins next called attention to the identical mode of bad spelling in the defendant's writing and in that of Arthur Orton, and to the fact that there were witnesses who *might have been called* to *disprove* the identity of the defendant with Arthur, such as *Charles Orton*, *Mrs. Jury* and *Mrs. Tredgett*. Charles, however, was not reliable, because he had sworn both ways; but the others were available. He, Mr. Hawkins, was a little surprised to hear the defendant's counsel challenge the prosecution to call them. "Why was I to call them?" he asked. "It was suggested they had been tampered with; but it was a wicked invention. Those who gave the defendant's counsel instructions to say that, knew it to be false. They had been the adherents of the defendant's cause down to the last trial; and why were they not called at this by the defendant? They could have said whether he was their brother or whether he was not."

The defendant at the last trial had sworn that *he had seen Arthur Orton* in June, 1866, and had written to him; yet the defendant's counsel did not think it his duty to ask him where Arthur Orton was. The reason was obvious—*his client is Arthur Orton!* There sits the man who says he is Roger Tichborne, and that he *knows all about Arthur Orton;* and yet his counsel says, "Why should I ask him where Arthur Orton is?" Perhaps Arthur Orton would not like to be asked the question. I have now done with the Orton case.

And the conclusion of it is, fittingly enough, a burst of laughter, amidst which the curtain falls.

## CHAPTER IV.

### MR. BIDDULPH, MR. BAIGENT AND MISS BRAINE.

THE assignment which alleged that the defendant was guilty of perjury in swearing that he was *Roger Tichborne* was the subject of this portion of the reply. Of course, if he was *Arthur Orton*, this assignment would necessarily be proved; but it might have been that the jury could not be satisfied beyond a doubt that he was Orton, in which event this part of the argument was necessary.

Mr. Hawkins said he should place particular reliance on the conduct, letters, language and spelling of the defendant himself.

"Recall," said he, "Roger Tichborne's Paris life: his sixteen years with his tutors, *Chatillon* and *Jollival;* with his friend and confessor, the *Père Lefevre;* his father's intimate friends, the *Comte de Mandeville* and *M. D'Aranga.*"

Of all these people the defendant knew nothing! Sixteen years of a young life completely blotted out!

Let the jury recall Roger's Stonyhurst life of *three years;* his tutors and his fellow-pupils; his visits to Knowle, the seat of his maternal grandfather, Mr. Seymour; his uncle, Sir Edward Doughty, at Tichborne; his army life; his life in Dublin, his fellow-

officers, and the friends he visited; his tastes, pursuits, pleasures, as represented *in his own letters—of all of which* the defendant was *wholly ignorant!* Then his tender attachment to his young cousin; his capacity for business, as displayed in his conferences with the conveyancer as to his will, in the year 1852, which commenced so auspiciously but closed so sadly; the disappointment of his hopes as to his cousin; his resolution to go abroad; his latest visit to Tichborne, in *June*, 1852; his resolute absence from the place during his stay in England; his autumnal visit at Upton; his visit to Paris; his voyage to South America; his last letter to Gosford, on the 1st April, 1854; his embarkation on board the *Bella*, its wreck and loss, and the dead silence of twelve long years!"

By way of contrast, the effect of which no man better understood than Mr. Hawkins, he asked the jury to remember the circumstances of a claim set up in a land of which Roger Tichborne had never dreamed, by a man in the midst of the coarsest associations, engaged in the most repulsive occupations and plunged in the lowest depths of poverty and distress! A claim set up by a man in all things and ways the very opposite of the man he represented himself to be!

We now come to the inception of this gigantic fraud once more. In 1862 the death of the last Tichborne baronet was announced in the *Illustrated London News*. In *July*, 1865, appeared an advertisement in the Australian papers, describing the heir, but omitting to state that he was *thin*, and describing his hair as *light*. It said he was lost off Rio in *April*, 1854, and that there was a rumour that he had been picked up and carried

to Melbourne. The most curious part of the advertisement was, that where it was erroneous in description of Roger, the errors, such as related to his stature, age and light hair, corresponded with the age, stature and light hair of the defendant. For instance, it is stated that Roger's age was *thirty-two*, which was exactly the age of Arthur Orton, while the age of Roger was *thirty-six*.

In the employ of the same butcher with Orton was a man from Hampshire of the name of *Slater*, who would, of course, know something, however little, about the Tichborne family. At this time Orton was at *Wagga-Wagga*. It was this Hampshire man who called his attention to the advertisement, and, no doubt, gave him some information which, added to the particulars furnished by the *Illustrated News* and the advertisement in the *Sydney Herald*, enabled him to start on his nefarious course, for soon after he came forward with his claim to the baronetcy.

At this time Gibbes was engaged in his insolvency, his debts amounting to 200*l.*, while the Tichborne estates produced 15,000*l.* to 20,000*l.* a year. The reader may observe that in a reply the Advocate does not follow the course of the *novelist*. A continuous narrative is nothing to him. His probabilities arise from a proper classification of evidence, especially when there are many witnesses; as, for instance, if he desired to show the cause of a suspected incendiary fire, he would not attempt to impress the jury with an account from the daily papers which described the course of "*the devouring element*." Classifying the evidence lies at the root of a reply, with necessary accompaniments of order and arrangement. Hence the defendant was suddenly

transported from *Wagga-Wagga* to *Wapping*, in order to show the tendencies of his mind. That part of the case having been accomplished, we return once more to *Gibbes* and *Wagga-Wagga*, in order to find out how it was that he obtained the necessary knowledge, infinitesimal as it was, to enable him to carry on his scheme—enough, at all events, to impose on weak-minded persons, who thought no harm in putting their hand to a thing called an affidavit.

Gibbes, naturally, was elated with his discovery: people do not gather figs from thistles, or find the heirs of thirty thousand a year and a baronetcy in a Wagga-Wagga slaughterhouse. But he was somewhat startled at the butcher's ignorance; he was really ignorant for a butcher, as his letter about his "pair of sisters," "these young womans," and "that they say I was born at Wapping," and "I am glad they have found out a respectiable part of London for me," will show; as also his writing to his dear mamma the letter set out in the opening speech, in which he says, "i have been in A humble condition." In this letter he suggests the two things known only to his mother and himself: the brown mark and the Brighton card case. But his dear mamma repudiated both, and said he had better not mention them again. Gibbes was also surprised when the baronet showed his ignorance of his mother's Christian names, and of his ignorance as to where the family property was situated. But, as he said afterwards, on oath, "The will I made was all false, for the purpose of deceiving the bankers."

His mamma, although she repudiated the brown

mark, told him there was a black man at Sydney, an old valet of the family, who could give him a good deal of information. So to Sydney he went. After which Gibbes was more and more surprised. He received a letter from the dowager, which stated that Roger was for three years at a Jesuits' College at Stonyhurst, whereas this man told him he never learnt anything till he was sixteen, and then went to the high school in Southampton. The letter also said he passed his examinations well in the Dragoon Guards; that he spoke French better than English, and never knew his grandfather, Sir James, because he was dead before I married—a very good reason!

Here was the foundation for the monstrous edifice of fraud.

It is due, however, to the defendant to say that he contradicted his mother as to his having been at Stonyhurst, and stood up manfully for Southampton High School. He also affirmed that he was not an officer, but a private in the Dragoons, and was discharged after thirteen days' service. On being asked what kind of lady his mother was, stout or thin: "Oh," he said, "a very stout lady; that is the reason 'I am so fond of Mrs. Butts, of the Metropolitan Hotel,' she being a tall, stout, buxom woman, and like Mrs. Mina Jury, because she was so like my mother."

But all this is only the beginning of wonders. Evidence is coming up, although only in a seedling condition at present; but with good watering and strong swearing we hope for the best. He puts into an affidavit the fact that Roger sailed from England on the very date that *Arthur Orton left;* and, when picked

up by the *Osprey*, says the captain's name was Owens, the very name of a man on board Arthur Orton's ship, the *Middleton*.

When his mother informed him that he was a Roman Catholic, he eased his conscience by getting re-married by a priest, and wrote commending his mother to the care of the Blessed Maria—himself afterwards being commended to the care of the "*Black Maria*" and a proper escort.

But now one of the stars of the drama appears on the stage, and a new light dawns upon the Claimant, although it dawns from a black man. This is the famous Bogle, from whom so much useful information is to be picked up. But, while Roger was looking out the old valet, Bogle was looking out for the long-lost heir of the Tichborne estates. They met in an inn yard, and there was an instantaneous mutual recognition.

"Is that you, Bogle?" "How do you do, Sir Roger?"

Bogle naturally wants to get him to England, and tells him there are many old friends who would be glad to see him. He now learns there is a place called *Upton*, and a lady named Doughty, and a gentleman named Sir Edward Doughty; and in this way he gets prepared to answer questions that may be put to him in England.

On his arrival it was necessary, before seeing his mother, that he should see his family estates. He therefore went down disguised to Alresford, where a man of the name of Rous, who kept the inn, seems to have known him, for he drove the heir round the

place, which made an old woman, who had never seen him before, recognise him on the spot as Sir Roger. This was merely through driving with Rous.

As he strolled about the scene of his boyish days, he comes upon the old village blacksmith, of the name of Etheridge, and at once started a conversation by asking the way to Tichborne.

"Tichborne!" laughed old Etheridge; "why, there's the church right afore you."

They both laughed, and then had further conversation.

"You've heard of Roger Tichborne coming back, I suppose?" said the Claimant.

"He'll never come back," answers Etheridge.

"You don't think I'm Sir Roger, do you?" asks the Claimant.

"No," says the blacksmith; "I'm damned if you are!"

Mr. Gosford was Roger's executor under the will of 1852; he was also his oldest and most familiar friend. Accordingly, he went down to Gravesend to see him, but when he arrived his old friend ran away, refused to see him and locked himself in his room.

After a time, however, he succeeded in meeting him, and saw at once that he was an impostor. "He knew absolutely nothing of the events of Roger Tichborne's life."

The Claimant went to Paris to see his mamma, and when he arrived refused to call on her, so that, after many messages, the poor lady had to go to him. Even then he did not face his mother, but turned his back on her and lay on a couch with his face to the wall. But

this affecting scene is best told by Lady Tichborne's servant, Coyne, whose evidence was not even cross-examined to, and was corroborated by the defendant himself.

"He was lying," says the witness, "with his face to the wall; the mother, standing by, kissed him, and said 'He looks like his father and his ears are like his uncle's.'" Holmes said to Coyne: "There, you see how she recognises her son!"

"Yes," said Coyne, "he's lucky."

"And then her ladyship called to me to take off his coat and waistcoat and undo his braces for fear he should be suffocated."

As there was no cross-examination, Mr. Hawkins said, "Well, if you do not want to cross-examine, don't. No one wishes you to. This is a free country, and you can leave him alone if you like." (Laughter.)

On being asked the question, the defendant said he believed "we were both affected at the interview"; but how he could tell that was a question even Coyne could not answer, for the mother only saw her son's back and the son saw nothing but the wall-paper.

The great classification of the defendant's witnesses was this: those who pretended to recognise him after twenty years' absence, from his features, and those who came to the conclusion that he was Sir Roger because he seemed to remember incidents in his life which they remembered. But no counsel could deal with them individually, so they were again sub-divided, arranged, stood up and shot down in groups.

There was another distinction: there were those who had never been told the facts about the mother's inter-

view or the Orton letters, such as Lushington and Scott, who were, therefore, fraudulently deceived; and there were others, again, who fraudulently deceived themselves. But arrange them in whatsoever groups he did, the learned counsel included all and dealt with all the hundreds of witnesses for the defence.

"Do you remember giving me a pipe o' baccy?" asks a poor country greenhorn.

"I do," said the defendant.

"Then you're the man"; and down it goes into an affidavit.

There is one witness who must not be passed over so lightly. He was a relation of the family, a county magistrate, and a man of honour. The Dowager Lady Tichborne implored him to recognise her son. The good-natured friend implored to be let off. "Get someone else," said he, "who knew him better than I did; I really did not know him."

It was all no good. Mr. Biddulph, such was the gentleman's name, was invited to a little dinner at Norris's, "the party being composed of a county magistrate, a money-lender, a lawyer, and a humbug." So the defendant had termed them.

"Gentlemen," says Mr. Hawkins, "can't you imagine the scene?" Norris would say to Biddulph, "You know you have had great experience at Petty Sessions in cross-examination as a county magistrate; now, cross-examine this man *firmly*. But, first of all, what do you *know* about him?"

"Well, not very much," says Biddulph. "He stayed at Bath for a fortnight when my mother was there."

"Pass Mr. Biddulph the champagne." (Laughter.) "How did you amuse yourselves?"

"Well, we used to smoke together at the hotel—the 'White' something, it was called."

"Did you smoke cigars or pipes?"

"Well, I remember we had some curious pipes."

"What sort of pipes—death's-head pipes? Another glass of champagne for Mr. Biddulph." (Laughter.) "What sort of pipes?"

Then Mr. Biddulph remembers they were "death's-head pipes, or something of the sort." And thus was the amiable magistrate prepared for the firm cross-examination he was to administer to the Claimant.

"But," said he, candidly enough, "I did not recognise him by his features, walk, voice or twitch in his eye; but I was struck with his apparent recollection of having met me at Bath."

"The death's-head pipes settled him."

As a contrast to this, Mr. Hawkins takes a witness of a very different kind, and reviews her evidence in this manner:—

"As for the cold-blooded, crafty Miss Braine, the governess in the Tichborne family four-and-twenty years ago, she is of a different order from Mr. Biddulph. She told us that she had listened to the defendant when he solemnly swore that he had seduced her former pupil, and that he had stood in the dock for horse stealing; that he had been the associate of bush-rangers and highwaymen; that he had made a will for the purposes of fraud; and yet this woman took him by the hand and was not ashamed of his companionship—she even went to his bedroom and sat with him. This

is the woman the defendant's counsel describes as a 'ministering angel.' Heaven defend me from ministering angels if Miss Braine is one!"

After this, well might the counsel for the defendant describe his client as "a sort of colossal bullock hectoring about the streets."

"What necessity," asks Mr. Hawkins, "if the defendant were Roger Tichborne, would there have been for avoiding Arthur Orton's sisters? He would have said: 'Why, they will be glad to see me and hear me tell them about the camp fire under the canopy of heaven, as his counsel said, where he told me all about Fergusson, the old pilot of the Dundee boat, who kept the public-house at Wapping, and the Shetland ponies, and the Shottles of "The Nook," at Wapping, and wished me to ask who kept Wright's public-house, and the Cronins, and Mrs. Macfarlane of the "Globe."'"

The Judges fell back with laughter and the Court rose.

## CHAPTER V.

### THE CARABINIERS.

**How Mr. Hawkins Captured the 66th Dragoon Guards.**

"I SHALL attack the noble army of Carabiniers single-handed," said Mr. Hawkins in an earlier part of his reply.

Of all the ludicrous spectacles afforded by any trial that of the identification of the Claimant was the most grotesque.

A Mr. Hewlestone was introduced to the defendant by the indefatigable master of the ceremonies, Baigent, assisted by Spofforth. Said Hewlestome, "I never saw such an alteration in my life; there is no hump on his nose and his hair is lighter."

"What is the value," asks the counsel, "of such a witness as that?"

The value is much, for it adds to the strength of the case for the prosecution in proportion to the diminution of its value in its own.

*Angelina Homer* was of the same class. More than four-and-twenty years ago she was a laundrymaid at *Upton*, a place, it must be remembered, the *defendant had never heard of*, and she swore that she saw him while she was hanging out her clothes, and that, although she

had not seen him again till 1868, she was sure the defendant was the same man. She was now in the defendant's service (helping him in the laundry business), only this time in public.

It was necessary to account for a mark produced by cautery on the defendant's arm; it was exactly in the spot where Arthur Orton had shown the letters A. O., and had been made between the years 1871 and 1873. The defendant himself could not account for it, although it must have caused a good deal of pain. At last, a valiant young linen-draper stepped into the box—at least, he must have been young at the time he spoke of, namely, 1852—and he declared that when young Roger returned from Paris Miss Doughty introduced him, the linen-draper, to Roger, and in his delight, he prodded the heir of Tichborne in the arm with his *umbrella!*

Another recognition of a remarkable character was by a man of the name of *Bailey*, who kept the inn at Ropley. I cannot find that Roger ever spoke to him before he left England; but Bailey says: "I was at the station, with my back to the railway carriage where the defendant was, when suddenly down went the window, and a voice saluted me in these words, '*Como esta, Bailey?*'" (Laughter.)

"Gentlemen, you heard him described by his counsel as 'An Arab seeking independence in the desert, under a beautiful climate, glorious night and stars and sunshine, which seemed like entering within the gates of Paradise'! Gentlemen, his Paradise was the *bush;* his heaven, the *stockman's slaughterhouse;* and his kindred angels, *bushrangers* and *highwaymen.*"

Of course, it was absolutely necessary for the de-

fendant's case that he should know something of military life: and the mode, not only of attaining that knowledge, but also of disposing of the witnesses who were cheated into a belief of his identity by it, is here displayed.

While defendant was in Australia, his account was that he had been in the 66th Dragoons for a *few* days, and that he had been at the Curragh of Kildare, where the regiment never was in Roger's time; and that he was discharged from the regiment at Canterbury.

It became necessary, however, to supplement his *Southampton education*, and to do this a tutor was necessary.

They found a very excellent one in a soldier of the name of *Carter*, who had been servant to Captain Pinkey and Captain Norbury. Carter was taken into the defendant's service at Croydon. But an assistant tutor was necessary, and a man named McCann was installed into that office. To supplement these learned professors, Mr. Holmes obtained from the War Office list of officers' names, the dates of their movements and the places where they were stationed.

This education gave the defendant such scraps of knowledge as would be common to the regiment, but it did not in the least assist him to a knowledge of private incidents known only to the officers. Nor is it surprising that there was a good deal of blundering about things that were current in the regiment; and, said Mr. Hawkins, "A man might forget a great deal that had happened, but to remember things that never occurred is, indeed, surprising, and the *strongest evidence of fraud.*" To remember the number of a trooper's horse after so

many years, and to forget every atom of Roger's drill, must draw wonderfully on the credulity of the jury if they can believe it.

The mode of deception practised on those who were to identify the Claimant from his *recollection of events in their career* was this:—Before any Carabinier was allowed to see the Claimant, he had to undergo an interview with Carter and McCann. But it became necessary for Carter himself to supplement his knowledge, and consequently he was sent to Sandhurst to pick up information and recruits. He improved his mind by drinking with the old Carabiniers. Two of them he captured, and took them off to London to be sworn in at Poets' Corner, a shady place under the foliage of affidavits. Of course, these identifying Carabiniers, having been closeted with the old comrades for an hour or two, were perfectly astonished on being introduced to the Claimant to find how many things he knew that had happened in the regiment, and lost no time in consecrating their belief in an affidavit.

One of the Carabiniers, named Cairns, coming into the room where he was, the Claimant in an instant, without so much as a steady glance at him, asked, "*How's your arm?*"

This settled Cairns, for everybody knew he had hurt his arm when Tichborne was in the regiment.

But Cairns was not only a believer himself; he was desirous to convert others, and was sent to try his hand on old Colonel Norbury and some others. "I have no doubt," said he, "I shall convince them after a few words."

Colonel Cunliffe was a specimen of his missionary labour, although he became somewhat of a backslider,

for when he went into the box he said the Roger *he* knew had a narrrow head, a soft, clear voice, and was a truthful, honourable man. He clearly, then, could not be the defendant.

There was a bandmaster, McGleny, of the 44th Regiment, who had taught Roger the French horn. The defendant got hold of this, and mentioned it to the bandmaster, who no sooner heard it than he swore an affidavit that he was Tichborne.

Baigent wrote a letter about this to a Sergeant Manton, another old Carabinier, but at this time librarian at the Westminster Hospital, and mentioned what a wonderful thing it was about the French horn; and asked him if *he* knew anything about Tichborne. Manton, never suspecting the voice of the charmer, remembered how one day he was afraid Roger would be dashed to pieces, adding, "he cannot have forgotten that?" Baigent tells Roger all about this, and then goes off to see Manton. "You'll find him very stout," he tells him, "but I have no doubt you'll recognise him instantly by his features."

Manton, innocent even for a librarian, goes off at once to have the honour of an interview with Sir Roger, accompanied by the lively escort of McCann, Carter, Bogle and Baigent—the whole committee of identification—powerful enough to identify the man in the moon if it should ever become necessary for the purposes of justice.

Alas for that uncertainty surrounding all things human!

Manton could *not* recognise his old officer. Then the Claimant began to talk about the incident that *Manton*

*himself had communicated to Baigent*, and the librarian was *struck with the man's marvellous recollection!* The Claimant then began to read *affidavits*. The voice did not strike Manton as being that of the Claimant, but the *recollection* was perfect.

Now mark the mode of obtaining an affidavit.

Baigent said, "The Claimant's voice is stronger than Roger's was, and has less foreign accent." And this having been written down, Manton was induced to swear as follows: "*I recognise his voice, which is firmer than it used to be*, and, on *hearing him read*, I found his voice and pronunciation to be *the same as Roger Tichborne's* when I knew him as an officer."

One cannot help thinking what a very agreeable man Sergeant Manton was! Nor can we wonder that his intellectual gifts procured him the distinction of being librarian at the Westminster Hospital.

Observing on the change of appearance that the defendant presented since he was Roger Tichborne in 1854, Mr. Hawkins said: "The defendant's counsel had struggled with many theories—none seemed to answer until he fell upon this: that it was a kind of law of nature *that fat boys became lean men*, and thin boys fat men. So it follows, undoubtedly, that a good boy becomes a bad man; and, in that sense, the defendant may be entitled to your verdict."

Dealing with a witness who described himself as a pharmaceutical chemist, and spoke to the great scar on Arthur Orton's face, he said he lived in an unknown house in an unknown street, practising a profession in which he was himself unknown; that he swore he had dressed a wound which left an indelible scar that no one else

had ever seen; while his recollection of the youth's features was that "his cheeks were *puffed out as if he was always blowing a clarionet!*"

Sir Walter Strickland declined to see the defendant, and was roundly abused by his counsel. One of the jury asked *if he was alive.* "Yes; but I think," said the Lord Chief Justice, "the defendant expressed a hope that they would all die who would not recognise him."

"Yes," said Mr. Hawkins; "it was in a letter to Rous, in which he said, '*I see I have one enemy the less in Harris's death. Captain Strickland, who made himself so great on the other side*, went to stay at Stonyhurst with his brother, and *died* there. He called on me a week before, and abused me shamefully. So they will all go some day.'"

"This," said Mr. Hawkins, "was not exhibiting the same charitable spirit that he showed when he said, '*God help those poor pergured sailors!*'" (laughter).

Gentlemen, you saw Mrs. Stubbs, the lady who had a picture of her great great grandfather's great great grandfather (laughter), and was so proud of it. Probably it was mentioned in Francis Joseph's history of the Tichborne family: perhaps he had cleaned it. What could be more likely to impress *Mrs. Stubbs*, when the defendant called on her, than his observation while he looked on *another* picture, "Ah, Mrs. Stubbs, that is not the *old* picture!" "No," says Mrs. Stubbs, struck at once with his recollection; "no, sir, but walk into my parlour——"

"Ah!" says the defendant, "*there's* the old picture!"

"God bless my soul!" cries the old lady; "it *must be Sir Roger!* to remember my old picture!"

She did not know old Stubbs had been interviewed by Baigent. The learned counsel next dealt with the defendant's escape from the *Bella*, in which you can hear that every word was a falsehood; the provisions being put into one boat and the defendant in another, the "nautical pic-nic," when, night and morning the latter pulls alongside for supplies, the ignorance of the name of the vessel that picked him up, whether *Themis* or *Osprey*, his ignorance of the port she hailed from, of the captain's name and the names of the crew, except those he borrowed from *Arthur Orton's ships:* all was invention and falsehood.

Then the account of Luie differed materially from that of the defendant himself, but his fortunate discovery of the proceedings in the case was more remarkable than his discovery of the boat of the *Bella*. He had just returned from sea, and was in a public-house, when, hearing the Tichborne case mentioned, he said at once, "*Why, I picked Sir Roger up!*" upon which joyful recollection he had some more beer and went on talking. Not long after leaving the public-house he met a cab driver, who told him he was just the man that was wanted to "blow the case into a thousand atoms," as the defendant's counsel said he meant to do. Luie wandered about all that Saturday night, full of anxiety and not knowing what to do, until he took refuge in a house where they had roast chickens in the window, as Mr. Hawkins said, on their roosts. He was asked what he did on Sunday. "Did you look up Roger?" "No," said Luie, "I am a great observer of the Sabbath! but

seeing the people streaming down to Victoria Station I followed, and took a ticket for Brighton." The next day he found his way to that Sanctuary of Perjury, Poets' Corner, and made his confession. "*Como esta, Luie?*" exclaims the defendant after an absence of many years.

Luie was told that they had the *pilot* and *sailors of the Bella and the Osprey* ready to support his story of the wreck. Alas, he was never permitted to see one of them: so Luie's story was uncorroborated and even contradicted by the defendant, who was hard beset in the witness-box by one of the jury, and had to confess that no entry was read to him from the log-book as to the picking up of the *Bella's* crew; that the *Bella's* boat was taken to Sydney; that he never wrote to his friends that no vessel was spoken; no report was made of the voyage or of the finding of the boat; that the oars and fittings were branded with the ship's name; there was no settlement, no receipt, no acknowledgment to the captain, beyond a cheque for 17*l.*, which was never heard of after; that he signed no statement of having been three months on board; that he went to the Custom House, but nothing was done, so far as he knew; and that he went away without taking leave of the captain; all which needed no evidence to show its falsehood.

Luie the Dane, said, "While the defendant was on board I used to *wash him* all over," and so was able to corroborate Brown as to the brown mark which was an inch long. He thought the defendant was a runaway bankrupt, and added that he amused himself by picking oakum and reading the "Garden of the Soul."

The defendant's counsel had asked why Mr. Hawkins

had not called the *Captain of the "Osprey"* to contradict one or the other stories of the wreck. "We don't know which *Osprey* you rely on," was the answer. "No matter which," rejoined the counsel for the defendant; "take any one."

"It was," said Mr. Hawkins, "like the defence of a man charged with stealing a duck, and, having given seven different accounts as to how he came by it, his counsel was asked which story he relied on; he said, 'Oh, never mind which, I shall be much obliged if you will adopt any of them.'"

"Roger," continued Mr. Hawkins, "was said to be painfully thin. No one can say the *defendant* is painfully thin, nor can anyone but his own counsel find that 'dreamy and pensive look in his blue eyes' which he spoke of; while his feet are at least two inches longer than Roger's." Again, there were marks on the defendant's feet made to imitate the "bleeding marks" of Roger Tichborne's, but they were *in the wrong place*, the defendant not knowing whereabouts the "*Saphena vein*" was situated. Neither was there anything like an imitation of the seton or issue which was on *Roger's arm;* besides all which, he had no cross, anchor or heart on it, or the initials which Lord Bellew tattooed, and to which the only answer was that Lord Bellew was a perjurer. True, Bogle said *he* saw no marks on Roger's arm in 1850, when Roger was wheeling a barrow with his shirt-sleeves tucked up, and this was the more remarkable because Roger was not there at that time; and, further, Old Bogle remembered distinctly seeing him rubbing his arm on three occasions, when the "same particular flea was biting night after night the same particular spot *at ten minutes past nine.*"

"You remember the touching words in which the defendant's counsel spoke of this witness: 'He is one of those negroes described by the author of "Paul and Virginia," who are faithful to the death, true as gold itself. If ever a witness of truth came into the box, that witness was Bogle.'

"Well, you have seen him—*Old Bogle!* What do you think of him? Was there ever a better specimen of feigned simplicity than he? 'Bogle,' cries the defendant, after all those years of estrangement, 'is *that* you?' 'Yes, Sir Roger,' answers Bogle; 'how do you do?'"

Having demolished the evidence of the witnesses who had been called, the learned counsel inquires for those who had given evidence on the first trial, but had kept away from this. Where was Dr. Lipscombe, the Alresford doctor, who might have said whether he had seen the defendant's arm, and whether there were tattoo marks on it or not? Where was Mr. Guildford Onslow, whom "I might have questioned about many things? Dr. Lipscombe's books, for instance, and as to who had made the suggestion as to the infamous questions asked of Lady Radcliffe (Kate), and the hint given to the defendant to recognise the Ropley publican: '*Como esta, Bailey?*' And what his business was at Poets' Corner day by day, with his own clerk in the solicitor's office." Then there were Baigent and Sir Talbot Constable, both called on the first trial, but absent from this. The defendant, you will remember, wrote to his mamma about a letter Sir Talbot had written to him, asking her to answer it, because he "did not *lick* the way he writes, and if he should say he don't know me it might *ingur* my case very much."

## CHAPTER VI.

### PERORATION.

We enter upon the last scene of this great drama before the curtain falls and the actors vanish.

"If I wanted even stronger evidence still that this man was an impostor," said Mr. Hawkins, "I would appeal to his conduct in Court. Would Sir Roger Tichborne have sat and listened while all those whom he most loved were being vilified and reviled by his own counsel?"

Reserved for the last came next "*The Sealed Packet*," long ago admitted to be the real test of the truth or falsehood of the case. The defendant, however, now that it is no longer evidence in his behalf, complains that it is irrelevant; so may he complain of the verdict by-and-by.

The sealed packet contained the innocent secret of Roger Tichborne's love for his cousin, and his resolution to build a church to the blessed Virgin if they were married within a certain time. In the mouth of the defendant this had become the story of seduction and a secret of unutterable shame. He could not remember at first what the packet contained; but when he found that Mr. Gosford had destroyed it, he invented a memory of the most wicked and malignant kind, only to be equalled by the subtle ingenuity of the circumstantiality of the details; all, however, afterwards

proved to be as impossible as Luie's story of the wreck. Notwithstanding the clearest proofs that could be given in a Court of justice (Mr. Gosford's evidence of the contents of the sealed packet being absolutely confirmed by a document which was almost a copy of the one he had destroyed, and which was in the possession of Lady Radcliffe herself), the counsel who defended him was instructed to call Mr. Gosford, the villain of the piece.

"If," said Mr. Hawkins indignantly, "I were asked to name the villain of the piece, I would name the man, whoever he be, who suggested the infamous questions to Lady Radcliffe, the cousin of Roger, as to the prescriptions being given to her by Dr. Lipscombe, whom they have not called, questions intended to convey the foulest insinuations. From the same source came the question to *Père le Fevre*, Roger's confessor; and this was it.

"'Did he confess to you that he had been intimate with his cousin?' They hoped the Père le Fevre would have declined to answer, as it was a secret of the confessional; then they would have suggested that the charge was true. Fortunately, however, he did not refuse to answer, but replied: '*He never said it.*' It was an infamy to ask such a question with the wicked object with which it was put. Gentlemen, if I were to be asked to name the villain of the piece, I should include the man who instructed the defendant's counsel to suggest an inference of guilt from the correspondence of Roger and Lady Doughty; for whoever made that suggestion must have read the letters, and therefore have known the suggestion was as wicked as it was false. The truth was obvious. Lady Doughty desired

that it should not be supposed there was any engagement between Roger and her daughter lest it should deter other suitors. This was the plain meaning of the allusion to 'reports' or 'rumours,' and it was shocking to find a foul meaning attached to them.

"Gentlemen, I have no fear of you. I know that you will guard her honour and character as you would guard your own. My task is done. I have striven to unravel the meshes of this most abominable fraud and to show you that no plot can stand before the bright clear light of truth. I have pointed out the grounds on which I submit that the great interests confided to my care are established by an overwhelming weight of evidence. In the course of this long trial I have been more pained than I can find language to express. I have seen the great privileges of my own order abused, and men and women, whose bounden duty it has been to give their testimony in aid of the administration of justice, branded, without the shadow of a reason, as wickedly and corruptly perjured. I have seen justice insulted in the persons of the judges; and the bench, whom from my earliest youth I have been taught to reverence and respect, wantonly assailed in the discharge of their sacred duties, in tones and in language which almost made me blush for the order to which I have the honour to belong. Until this trial I had thought there were some limits to patience and endurance; but under unparalleled and unprovoked assaults I have seen the judges still dignified and forbearing, as if patience had no limits and endurance no bounds. It would ill become me to say more of the judges. To those who

are with me in this case, I have to return my warmest thanks for the assistance they have rendered me. The time has come when my voice will be no more heard. He whose duty it is impartially to hold the scales of justice will render you unprejudiced in your deliberations; and ere long, you, on whom alone it devolves to declare by your verdict the truth on this great issue, will be called upon to pronounce that verdict; and I can but pray that God will guide you to the truth; and if you believe that the stupendous fraud, the monstrous perjuries charged against the defendant have been established by the evidence, mindful of the sanctity of the oath you have taken, you will fearlessly pronounce the verdict which justice and our common safety demand. I have faithfully and fearlessly discharged my duty, and you in like manner will discharge yours."

It will be observed that the second assignment of perjury is last dealt with; it was its proper position in the reply as it appealed in the strongest manner to every manly instinct—a fit setting for the last portrait of the criminal before he disappeared from the public gaze into the solitude of his cell.

This reply is not only one of the most interesting on record, but the most instructive, on account of the enormous number of witnesses, and the unparalleled mass of details which were heaped around the case. Minute and scattered as so many were, they had to be collected, examined and assigned every one to its proper position; order had to be evolved from chaos, arrangement from confusion, and truth from the entanglements of fraud and falsehood. This was the task for the counsel for the prosecution, and he accomplished it.

## A SUPPLEMENTAL ILLUSTRATION.



While this edition was passing through the press, I met the following story told by *His Honour Judge Parry* in "*A Day of my Life in the Court*"; and, by his kind permission and that of *Messrs. Smith, Elder & Co.*, of the *Cornhill Magazine*, I have the pleasure of inserting it. I do so not because of its humour, amusing as it is, but as an apt illustration of a principle in the administration of justice. *A judge should know nothing of a case until he has the evidence before him.* Judge Parry has held this point with dexterity and wisdom.

It has often happened that a learned judge with an irritable temperament has interrupted counsel repeatedly before he has had an opportunity of opening his case, and interrupted the witness while giving his evidence as well as the cross-examination because he has not understood its points, so that everybody has been either unnerved or irritated in return. No justice can be done in those circumstances, except by accident, and much injury has often resulted from so unfortunate a state of things. Patience is the first necessity in a judge; the very foremost requirement of his office, and his continuous obligation in the cause. Without patience, learning and ability are but mere tyrants,

who cannot be tamed sufficiently to go through even a decent performance in imitation of a trial.

The Illustration is from the *Cornhill Magazine*, March, 1904.

"The women are the best advocates. Here, for instance, is a case in point.

"A woman plaintiff with a shawl over her head comes into the box, and an elderly collier, the defendant, is opposite to her. The action is brought for nine shillings. I ask her to state her case.

"'I lent yon mon's missus my mon's Sunday trousers to pay 'is rent, an' I want 'em back.'

"That seems to me, as a matter of pleading, as crisp and sound as can be. If the trousers had been worth five hundred pounds, a barrister would have printed several pages of statement of claim over them, but could not have stated his case better. My sympathies are with the lady. I know well the kindness of the poor to each other, and, won by the businesslike statement of the case, I turn round to the defendant and ask him why the trousers are not returned, and what his defence may be.

"He smiles and shakes his head. He is a rough, stupid fellow, and something amuses him. I ask him to stop chuckling and tell me his defence.

"'There's nowt in it all,' is his answer.

"I point out that this is vague and unsatisfactory, and that the words do not embody any defence to an action of detinue known to the law.

"He is not disturbed. The lady gazes at him triumphantly. He is a slow man, and casually mentions, 'The 'ole street knows about them trousers.'

"I point out to him that I have never lived in the street, and know nothing about it. He seems to disbelieve this, and says with a chuckle, 'Everyone knows about them trousers.'

"I press him to tell me the story, but he can scarcely believe that I do not know all about it. At length he satisfies my curiosity.

"'Why, yon woman an' my missus drunk them trousers.'

"The woman vociferates, desires to be struck dead and continues to live, but bit by bit the story is got at. Two ladies pawn the husband's trousers, and quench an afternoon's thirst with the proceeds. The owner of the Sunday trousers is told by his wife a story of destitution and want of rent, and the generous loan of garments. Everyone in the street but the husband enjoys the joke. The indignant husband, believing in his wife, sues for the trousers and sends his wife to Court. The street comes down to see the fun, and when I decide for the defendant there is an uprising of men, women, and babies, and the parties and their friends disappear while we call the next case. These are the little matters where it is easy to make a blunder, and where patience and attention and a knowledge of the ways and customs of the ''ole street' are worth much legal learning."

## CONCLUSION.

I HAVE now, by as apt Illustrations as I could find, endeavoured to present the reader with every phase of Advocacy. Not that by any means I have embraced all that could be procured. No one could do that. In support of all I have said and the Illustrations I have given, I would say more cases are lost than won; and when it comes to the *turn of the scale in weighing the evidence, the best Advocate will win.* I am leaving out the influence of the judge on the jury in such circumstances, because I take it for granted that, as he holds the balance, he will be too impartial to make either scale preponderate, especially as regards evidence, which is within the province of the jury alone. No judge will take upon himself (for he must be the soul of honour) to convert evidence into facts. He must not be an Advocate, and still less the jury.

As the jury may not instruct him in law, so he may not tell the jury what the *facts* are; but simply what the *evidence is*, and what *may* reasonably be deduced from it on the one hand or the other.

I should like to say that nothing is more destructive of good Advocacy than a judge's unnecessary interference with a case. He may disconcert a young Advocate, and spoil not only him, but his case too, by putting a question in the wrong place, or making an

observation that is unnecessary or at the wrong time. It is exactly in its effect like what would happen to a musician who was blowing a solo, and some one interrupted him by asking what he had for breakfast.

Some judges, without for a moment considering the nervous excitement of the Advocate, are anxious to display their marvellous powers of discernment, and boldly ask questions, not with a view of informing their ignorance, but apparently, with the object of exposing it.

The first rule, and the greatest, for a judge to learn and obey is, *Do not interrupt, unless it is absolutely necessary to do so.*

The second rule should be, *Have mercy on the Advocate*, if you have none on the prisoner; for it often happens that on the Advocate depends the question as to whether the prisoner will need it.

Thirdly: *Keep your temper:* this is also a rule for judges; for as it is the very grace of all perfections, the loss of it will leave you destitute of the rag that conceals your defects.

Unless a judge does his duty with the dignity and grace conformable to his office, Advocacy is worthless, and all the Illustrations of its beauty and deformity will be thrown away; indeed, the Bar itself might be abolished if it is not allowed fair play in the exercise of its arduous duties. And let it be remembered that in that exercise the liberties of every individual is concerned, and the rights of our vaunted empire itself secured.

Whenever a judge thinks more of himself than his office, his vanity will lessen its dignity and impair its influence.

Every man knows from his own experience how difficult it is for a young man to commence his probationary course of Advocacy. If he has studied its principles, that will not establish his confidence; and, speaking as one who knows, I say that confidence is the first necessity and the last accomplishment in this supreme art.

Lord Brampton once said, and there is so much force in the remark that I would lay it down as the very fundamental accomplishment of an Advocate: "A man must learn to think '*on his legs*.'"

Let the reader consider what this means, which he can only do by analogy to other trying situations in life, some of them humble enough, and he will arrive at some idea of its necessity.

The very best cricketer who ever wielded a bat, unless he arrives at the cool condition of thinking at the wicket, will score no runs. If a man is unable to think in the water on a sudden emergency, he will probably be drowned; while the best jockey, on the favourite, coming round Tattenham Corner, if he lost his head, would lose the race.

I use these Illustrations because readers will appreciate all I would say, but cannot, on the subject which must be dearest to their hearts when they stand up before the severest of critics and the most unsympathising of audiences, in their early career. At that time we seem to have no friend in the world. If we are counsel for the prisoner we are in a more wretched state of mind than the prisoner himself, who, in all probability, does not care a button for the result of the trial, which, after all, is only one of the chances of the game he has

played all his life. The counsel has probably thought out a beautiful speech in his sleepless bed; alas! it has all vanished when he sees the judge bow first to the jury and then to the Bar; and thus finds himself helpless and almost hopeless, not the creature of his own will, but drifting with the miserable tide of circumstances in which he is involved, lucky if he escapes the catastrophe which too often attends inexperience.

I have the greatest sympathy with the youthful Advocate; he may have in him the germ of future excellence and future greatness; it may be destroyed by want of encouragement from the *Bench*. There have been judges, such as Pollock, Kelly, Hawkins, Fitzjames Stephen, Field and Lush, who have assisted in the development even of those who have not been possessed of shining qualities, but only endowed with careful, thoughtful application to the work allotted to them. There have been other counsel of great talent who have been *crushed by judges* destitute of all sympathy and without a particle of sensibility, having an eye only to their self-importance. To the men of fine nature, nervous, sensitive and quick susceptibility, and therefore the more likely to be disconcerted, I address this one word of advice: be firm and cautious, strong in the knowledge of your law and facts, and determined that they shall have, in spite of all obstacles, their full and free influence on behalf of your case.

The Advocate should remember that *he* knows his case, and that the judge does not. He is therefore master of the situation, and the judge is not. If the Advocate is wrong, he is entitled to put forth his best arguments and his facts: he may lose, but he will lose with honour *if*

*he succeeds in being heard;* if he is right, he cannot but succeed if he adapts both law and facts to the exigencies of the situation.

In these Illustrations he will see where he *may* fail, even if he has a good case; but he will also perceive how he may win, even if he has what sometimes seems to be a bad one.

Look out for accidents, because they always come. Be your case ever so doubtful, fortune has great influence on the chances of the game, and there is so much in "*luck*," even on the merits of a case, that I have more than once said: "The verdict was won by a lucky accident." The verdict may have been a righteous one, nevertheless.

This leads me to say that, in any case, counsel should never be off his guard; he should be ever on the watch from the first moment to the last to take advantage of every slip on the part of the adversary, whether in the opening, examination-in-chief, or cross-examination—nay, even in the remarks of a judge, who sometimes goes out of his judicial way in making an observation which *you may sometimes turn in your favour, even when made against you.*

I say this with much emphasis, because I have known it done.

LONDON:

C. F. BOWORTH, GREAT NEW STREET, FETTER LANE, E.C.

THE "LAW JOURNAL," *April 25th*, 1885,

ON

# "ILLUSTRATIONS IN ADVOCACY."

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"We are prejudiced in favour of this book from a vivid and pleasant recollection of Mr. Harris's 'Hints on Advocacy'—a book which might be read with profit by every one at the Bar, as no one can afford to despise its suggestions or warnings. It is true that there are advocates great not only in their own estimation, but in that of no few solicitors, who commit as many blunders as a frantic rider in a steeplechase, and the fall unluckily hurts their clients more often than themselves. These are the turbulent, self-asserting, truculent, 'untactical' gentlemen whom Mr. Harris castigates with his ridicule in these 'Illustrations.' They gain admiration, and sometimes business, because those who retain them see their 'power,' but fail to discern their mistakes. These counsel fight their battles exactly as Lord Gough fought Chillian Wallah, and with about the same results. They do not find any favour with Mr. Harris. Above all things he warns the beginner against 'going in with the bayonet.' The temptation to handle a witness roughly, or to make a scathing attack on the plaintiff, is almost irresistible to a young practitioner who has audacity and a loud voice, and who sees from examples the advantage of a glaring advertisement. That, of course, is not advocacy, but passes for it in the eyes of the managing clerk, who goes back to the office and reports that the verdict is lost, but that the other side 'got it very hot' from the counsel. For enlightenment on the reasons why this heroic method is not advocacy, and on the question what advocacy is, Mr. Harris's book may well be read. The reader will have his eyes opened to his own errors, and to their inevitable results, and he will find out exactly why it is that, while Scarletts win verdicts even Broughams lose them. All this will be conveyed to him, not by dry precept, but by pertinent, graphic, and humorous illustration. He will find out why and when he ought not to cross-examine to credit, irritate a witness, vilify his adversary, insist on his 'right to begin,' or pursue inquiry when he already has a sufficient answer. These lessons are inculcated by sketches of trials of an action for breach of promise of marriage, of an action on a covenant, an admirable picture of a case of stealing and receiving, of an action against a railway company for negligence, of an action concerning Jones's Gatling Gun, &c. Then we are told how the game should be played, for which purpose analyses of the Tichborne prosecution and of the oration of Cicero pro Roscio are furnished, and these deserve attentive study. The former analysis is the most perfect annihilation of Arthur Orton we have ever seen, and it is remarkable for its brevity."

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c. 52; 45 Geo. 3, c. 28; 55 Geo. 3, c. 184; and 16 & 17 Vict. c. 51; the Customs and Inland Revenue Acts, 43 Vict. c. 14, and 44 Vict. c. 12; also the NEW ESTATE DUTY FINANCE ACTS, 57 & 58 Vict. c. 30; and 59 & 60 Vict. c. 28; with an Introduction and copious Notes, together with an Appendix of Statutes, and a full Index. By Sir LEWIS T. DIBDIN, M.A., D.C.L., and F. H. L. ERRINGTON, M.A., Barrister-at-Law.