MISLEADING CASES IN THE COMMON LAW

REPORTED BY

A. P. HERBERT

A

MISLEADING CASES
IN THE COMMON LAW

BY THE SAME AUTHOR

MORE MISLEADING CASES
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WISDOM FOR THE WISE
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WITH AN INTRODUCTION

BY

LORD HEWART

LORD CHIEF JUSTICE OF ENGLAND

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INTRODUCTION

By The Lord Chief Justice of England

IF (and it is more than possible) I were tempted to ask why in the world the bold and brilliant writer of this book invited me to add an 'Introduction' to it, at least two answers might be offered. When Catullus wondered how he should dedicate his *lepidum novum libellum*, fresh from the bookseller's, he chose his friend Cornelius Nepos—

> 'namque tu solebas
> Meas esse aliquid putare nugas.'

And, again, Mr. Herbert may have decided that it is more agreeable on the whole to suffer an 'Introduction' than to be committed for contempt of Court. But of course nobody ever was in less need of introduction than this particular discerner of the thoughts and intents of the heart. These 'Misleading Cases in the Common Law' speak for themselves. '*Res ipsa loquitur*', as the man in the street said when a sack of flour, in the best manner of the attic declension, fell upon him from an upper room. Our humorists, if we may dare to call them ours, are truly said to have realized that you must be unforced and spontaneous, if you have to lie

awake at night for it. And, although aversion to law and courts of law is naturally strong in the human mind, there are no doubt many thousands of distinctly respectable persons who will chuckle, and chuckle again and again, over the neatness, the deftness, and the dexterity—the sense, the satire, and the scholarship—of these criticisms wrapped in the pleasant disguise of parody. Occasionally grave but usually gay, the unauthorized reporter will show you in 'A Swan Song' (though the common law rarely invades the sacred precincts of probate and divorce) how a leading counsel on the eve of retirement might open for the petitioner; he will explain to you in 'The Reasonable Man' that, although what that hypothetical person would do in a given case affords the test of what amounts to actionable negligence, the law has never recognized the possibility of the existence of a reasonable woman, whose existence must therefore be regarded as impossible; and he will divert you in 'The Fish Royal' with the strange case of the dead whale washed up on the coast of Dorset, and the attempts of the inhabitants to persuade or provoke the authorities—first the Home Secretary and then the Ministry of Agriculture and Fisheries—to remove this property of the Crown and so abate the nuisance. (The tail of the animal, by the way, seems to appertain to the Queen Consort in order that Her Majesty may be furnished with the necessary whalebone for

her Royal purposes.) But enough of statistics; and, after all, this is not a Digest. When the indignant taxpayer, if the epithet be not tautologous, has pondered 'Can a Worm Turn?' when the thirsty golfer, subject to the same condition, has considered 'Is a Golfer a Gentleman?' and when the crossword fiend has mastered the problem of defamation in 'The Cross Action', they may reflect, jointly and severally, that it is the capacity for laughter which above all distinguishes mankind from the brute creation. And if perchance the book should come to the hands of a lawyer—like the attorney in *Pendennis*, 'by profession a serious man'—he may recall the words of that Master of Balliol who said that there is no road to moral or intellectual improvement like the knowledge of our own defects. Nay, perceiving as he must the indefinable quality of genius, he will assuredly predict that these 'Misleading Cases' will be read and quoted when Bullen and Leake and the Law Reports are obsolete and the name of Smith is utterly forgotten.

HEWART

THESE cases (with one exception) were recorded in the legal columns of *Punch*, to the Proprietors of which paper the editor of this text-book is indebted for their courteous permission to reprint the reports.

A. P. H.

CONTENTS

MISLEADING CASES
IN THE COMMON LAW

(I) REX *v.* GARVIN, RIDDELL, JOHNSTON, THOMAS, ROBINSON, BEETLE, PULBOROUGH, AND OTHERS

PLEASANT SUNDAY MORNINGS

THE hearing of this case was concluded to-day in the Court of Criminal Appeal.

The Lord Chief Justice, delivering judgment, said: In this painful case the defendants are the proprietors and editors of certain Sunday newspapers. They were charged at the Old Bailey, on an information laid by the Sunday Society, with certain offences under the Sunday Observance Act, 1677—an Act of the reign of Charles II, which has never been repealed. All the defendants were found guilty, and they were sentenced to fines ranging from five hundred thousand to two million pounds, or in the alternative to imprisonment for a very long time; and they have now appealed on the ground that these sentences are excessive.

That the offences were committed is not seriously disputed. By the Act it is laid down that

> *No tradesmen, artificers, workmen, labourers, or other person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day, or any part thereof.*

It was proved to the satisfaction of the judge and jury that the accused persons have for many years distributed, sold, and in some cases printed their newspapers upon the Lord's Day, or some part thereof. And it is only necessary for this Court to consider the facts of the case so far as they may affect the measure of punishment.

It was urged in evidence by the very able Secretary of the informing Society, Mr. Haddock, that the dissemination of what is called 'news' is always an anti-social and disturbing act; that 'news' consists, as to ninety per cent, of the records of human misfortune, unhappiness, and wrongdoing, as to nine per cent of personal advertisement, and as to one per cent of instructive and improving matter; that the study of the newspapers is harmful to the citizen because (*a*) by their insistence upon railway accidents, floods, divorces, murders, fires, successful robberies, the

rates of taxation and other evils, and (*b*) by the prominence which they give to exceptionally good fortune, the winners of large sweepstakes, the salaries and faces of beautiful actresses, and the occasional success of what are known, it appears, as 'outsiders', he is led to the conclusion that industry, thrift and virtue are not worth pursuing in a world so much governed by incalculable chances; and, in general, that the conditions of mind most fostered by the news of the day are curiosity, cupidity, envy, indignation, horror, and fear.

Now, whatever may be desirable or permitted upon a week-day, it is argued by Mr. Haddock that to influence great numbers of the citizens in this way for pecuniary gain on the morning of the Sabbath is clearly contrary to the intention of the Act. But evidence was called to show that there are large masses of the population who because of the existence of the defendants' journals ignore the news of the world throughout the week, and only begin to consider it at about that time on Sunday morning when the bells are summoning them to matins, from which hour until the midday meal they remain, as one witness put it, 'embedded' in the news. And numerous divines swore that they expect their largest congregations upon Christmas Day, which is one of the only two holy days in the year on which no newspapers appear to seduce their flock with

the activities of racehorses or the contents of trunks.

These are grave charges. And it is necessary to consider the particular character of the various journals in question. The defendant Garvin, who appears to possess an unusual command of language, maintained that his paper, *The Observer*, was in a class by itself and deliberately designed for the special needs of the Sabbath reader; but this defence was put forward by several others, though on different grounds. He was asked to say whether in his opinion a man of average powers could in the same morning give proper attention to bodily cleanliness, to divine service, and to one of his leading articles. The witness replied that his leading articles were half-way between a cold bath and a religious exercise, and that this was the place which they occupied, very fitly, in the life of the nation. I have here four or five columns extracted from one of these articles (Exhibit A). It is headed 'THE CATACLYSM—SANITY OR SURRENDER?—DISRAELI, THE DIE-HARD AND THE DELUGE.' It begins:

> *This week the chiaroscuro of human affairs is coloured full-blooded in the tones of madness. After Mesopotamia—Manchester. After Clynes—Catastrophe. After Baldwin—what? In this journal we have never concealed our opinion, etc.*

It was argued by Mr. Haddock, I think with some force, that on Sunday morning at eleven o'clock no Christian Englishman should be thinking about Mesopotamia or chiaroscuro. Yet this writer has at least the intention of elevating, however depressing his messages in fact may be. But what is to be said of the witnesses Ervine and Agate, who have admitted in evidence that every Sunday morning, in two columns or more, they direct the attention of their numerous followers to the performance of stage-plays, the personal appearance of actresses, the material rewards of playwrights and managers, the problems of sex, and other matters which are without doubt 'worldly' within the meaning of the Act?

And these unfortunately are not the worst. There are other papers represented in that dock which devote a considerable space to accounts of crime and criminal proceedings, the past conduct of pugilists, and the future behaviour of horses; and it was argued for the prosecution that the same law which forbids the subject to witness a play by the poet Shakespeare on Sunday evening should, *a fortiori*, protect him in the morning from the more sensational dramas of the underworld. There are papers published on Sunday morning, it appears, which many Britons are compelled to conceal from their wives; while in other households two copies are purchased in order that the

reading of neither spouse may be interrupted. In these papers an importance is attached to the crimes of passion which neither their number nor their moral teaching would seem to justify; and no governess is unwillingly caressed but some representative will be at hand to report the proceedings. I am satisfied that the purveying of these reports for money has not the educational or religious purpose which might excuse it, and that it is a 'worldly business' within the meaning of the Act.

I see no reason why any of the sentences should be reduced. These papers are not poor papers. On the contrary, they make no secret of their large circulation and extensive influence; and many of them go so far as to publish statistical records of their sales, glorying in the fact that every Sabbath they distract greater numbers of His Majesty's subjects from holy thoughts than this or that other paper. It is in the power of this Court to vary sentences either in a downward or an upward direction, and the sentences of certain of the defendants will be increased to penal servitude for terms of years calculated *pro rata* according to circulation. The defendant claiming the largest circulation will be boiled alive, and an order will be made to that effect.

These papers must not be printed again. It has been urged that this order will deprive many citizens of their weekly entertainment; but I am

satisfied that the needs of the people are amply supplied by certain papers which are published during the week and especially on Wednesdays. The appeal must be dismissed.

Frog, J., and *Batter, J.*, concurred.

(II) FARDELL *v.* POTTS

The Reasonable Man

THE Court of Appeal to-day delivered judgment in the case of *Fardell* v. *Potts*.

Lord Justice Marrow said: In this case the appellant was a Mrs. Fardell, a woman, who, while navigating a motor-launch on the River Thames, collided with the respondent, who was navigating a punt, as a result of which the respondent was immersed and caught cold. The respondent brought an action for damages, in which it was alleged that the collision and subsequent immersion were caused by the negligent navigation of the appellant. In the Court below the learned judge decided that there was evidence on which the jury might find that the defendant had not taken reasonable care, and, being of that opinion, very properly left to the jury the question whether in fact she had failed to use reasonable care or not. The jury found for the plaintiff and awarded him two hundred and fifty pounds damages. This verdict we are asked to set aside on the ground of misdirection by the learned judge, the contention being that the case should never have been allowed to go to the jury; and this contention is

supported by a somewhat novel proposition, which has been ably, but tediously, argued by Sir Ethelred Rutt.

The Common Law of England has been laboriously built about a mythical figure—the figure of 'The Reasonable Man'. In the field of jurisprudence this legendary individual occupies the place which in another science is held by the Economic Man, and in social and political discussions by the Average or Plain Man. He is an ideal, a standard, the embodiment of all those qualities which we demand of the good citizen. No matter what may be the particular department of human life which falls to be considered in these Courts, sooner or later we have to face the question: Was this or was it not the conduct of a reasonable man? Did the defendant take such care to avoid shooting the plaintiff in the stomach as might reasonably be expected of a reasonable man? (*Moocat* v. *Radley* (1883), 2 Q.B.). Did the plaintiff take such precautions to inform himself of the circumstances as any reasonable man would expect of an ordinary person having the ordinary knowledge of an ordinary person of the habits of wild bulls when goaded with garden-forks and the persistent agitation of red flags? (*Williams* v. *Dogbody*, (1841), 2 A.C.).

I need not multiply examples. It is impossible to travel anywhere or to travel for long in that confusing forest of learned judgments which

constitutes the Common Law of England without encountering the Reasonable Man. He is at every turn, an ever-present help in time of trouble, and his apparitions mark the road to equity and right. There has never been a problem, however difficult, which His Majesty's judges have not in the end been able to resolve by asking themselves the simple question, 'Was this or was it not the conduct of a reasonable man?' and leaving that question to be answered by the jury.

This noble creature stands in singular contrast to his kinsman the Economic Man, whose every action is prompted by the single spur of selfish advantage, and directed to the single end of monetary gain. The Reasonable Man is always thinking of others; prudence is his guide, and 'Safety First', if I may borrow a contemporary catchword, is his rule of life. All solid virtues are his, save only that peculiar quality by which the affection of other men is won. For it will not be pretended that socially he is much less objectionable than the Economic Man. While any given example of his behaviour must command our admiration, when taken in the mass his acts create a very different set of impressions. He is one who invariably looks where he is going, and is careful to examine the immediate foreground before he executes a leap or bound; who neither star-gazes nor is lost in meditation when approaching trap-doors or the margin of a dock; who records in

every case upon the counterfoils of cheques such ample details are as desirable, scrupulously substitutes the word 'Order' for the word 'Bearer', crosses the instrument 'a/c Payee only', and registers the package in which it is dispatched; who never mounts a moving omnibus and does not alight from any car while the train is in motion; who investigates exhaustively the *bona fides* of every mendicant before distributing alms, and will inform himself of the history and habits of a dog before administering a caress; who believes no gossip, nor repeats it, without firm basis for believing it to be true; who never drives his ball till those in front of him have definitely vacated the putting-green which is his own objective; who never from one year's end to another makes an excessive demand upon his wife, his neighbours, his servants, his ox, or his ass; who in the way of business looks only for that narrow margin of profit which twelve men such as himself would reckon to be 'fair', and contemplates his fellow-merchants, their agents, and their goods, with that degree of suspicion and distrust which the law deems admirable; who never swears, gambles, or loses his temper; who uses nothing except in moderation, and even while he flogs his child is meditating only on the golden mean. Devoid, in short, of any human weakness, with not one single saving vice, sans prejudice, procrastination, ill-nature, avarice, and absence of mind, as careful

for his own safety as he is for that of others, this excellent but odious character stands like a monument in our Courts of Justice, vainly appealing to his fellow-citizens to order their lives after his own example.

I have called him a myth; and, in so far as there are few, if any, of his mind and temperament to be found in the ranks of living men, the title is well chosen. But it is a myth which rests upon solid and even, it may be, upon permanent foundations. The Reasonable Man is fed and kept alive by the most valued and enduring of our juridical institutions—the common jury. Hateful as he must necessarily be to any ordinary citizen who privately considers him it is a curious paradox that where two or three are gathered together in one place they will with one accord pretend an admiration for him, and, when they are gathered together in the formidable surroundings of a British jury, they are easily persuaded that they themselves are, each and generally, reasonable men. And without stopping to consider how strange a chance it must have been that has picked fortuitously from a whole people no fewer than twelve examples of a species so rare, they immediately invest themselves with the attributes of the Reasonable Man, and are therefore at one with the Courts in their anxiety to support the tradition that such a being in fact exists. Thus it is that while the Economic Man has under the stress of modern conditions

almost wholly disappeared from view his Reasonable cousin has gained in power with every case in which he has figured.

To return, however, as every judge must ultimately return, to the case which is before us—it has been urged for the appellant, and my own researches incline me to agree, that in all that mass of authorities which bears upon this branch of the law *there is no single mention of a reasonable woman.* It was ably insisted before us that such an omission, extending over a century and more of judicial pronouncements, must be something more than a coincidence; that among the innumerable tributes to the reasonable man there might be expected at least some passing reference to a reasonable person of the opposite sex; that no such reference is found, for the simple reason that no such being is contemplated by the law; that legally at least there *is* no reasonable woman, and that therefore in this case the learned judge should have directed the jury that, while there was evidence on which they might find that the defendant had not come up to the standard required of a reasonable man, her conduct was only what was to be expected of a woman, as such.

It must be conceded at once that there is merit in this contention, however unpalatable it may at first appear. The appellant relies largely on *Baxter's Case*, 1639 (2 Bole, at p. 100), in which it

was held that for the purposes of *estover* the wife of a tenant by the mesne was at law in the same position as an ox or other *cattle demenant* (to which a modern parallel may perhaps be found in the statutory regulations of many railway companies, whereby, for the purposes of freight, a typewriter is counted as a musical instrument). And it is probably no mere chance that in our legal text-books the problems relating to married women are usually considered immediately after the pages devoted to idiots and lunatics. Indeed, there is respectable authority for saying that at Common Law this was the status of a woman. Recent legislation has whittled away a great part of this venerable conception, but so far as concerns the law of negligence, which is our present consideration, I am persuaded that it remains intact. It is no bad thing that the law of the land should here and there conform with the known facts of everyday experience. The view that there exists a class of beings, illogical, impulsive, careless, irresponsible, extravagant, prejudiced, and vain, free for the most part from those worthy and repellent excellences which distinguish the Reasonable Man, and devoted to the irrational arts of pleasure and attraction, is one which should be as welcome and as well accepted in our Courts as it is in our drawing-rooms. I find therefore that at Common Law a reasonable woman does not exist. The contention of the respondent fails and the

appeal must be allowed. Costs to be costs in the action, above and below, but not costs in the case.

Bungay, L. J., and *Blow, L. J.*, concurred.

(III) REX *v.* HADDOCK

Is a Golfer a Gentleman?

(*Before the Stipendiary*)

THIS case, which raised an interesting point of law upon the meaning of the word 'gentleman', was concluded to-day.

The *Stipendiary*, giving judgment, said: In this case the defendant, Mr. Albert Haddock, is charged under the Profane Oaths Act, 1745, with swearing and cursing on a Cornish golf-course. The penalty under the Act is a fine of one shilling for every day-labourer, soldier, or seaman, two shillings for every other person under the degree of gentleman, and five shillings for every person of or above the degree of gentleman—a remarkable but not unfortunately unique example of a statute which lays down one law for the rich and another (more lenient) for the poor. The fine, it is clear, is leviable not upon the string or succession of oaths, but upon each individual malediction (see *Reg.* v. *Scott* (1863), 33 L.J.M. 15). The curses charged, and admitted, in this case, are over four hundred in number, and we are asked by the prosecution to inflict a fine of one hundred

pounds, assessed on the highest or gentleman's rate at five shillings a swear. The defendant admits the offences, but contends that the fine is excessive and wrongly calculated, on the curious ground that he is not a gentleman when he is playing golf.

He has reminded us in a brilliant argument that the law takes notice, in many cases, of such exceptional circumstances as will break down the normal restraints of a civilized citizen and so powerfully inflame his passions that it would be unjust and idle to apply to his conduct the ordinary standards of the law; as, for example, where without warning or preparation he discovers another man in the act of molesting his wife or family. Under such provocation the law recognizes that a reasonable man ceases for the time being to be a reasonable man; and the defendant maintains that in the special circumstances of his offence a gentleman ceases to be a gentleman and should not be judged or punished as such.

Now, what were these circumstances? Broadly speaking, they were the 12th hole on the Mullion golf course, with which most of us in this Court are familiar. At that hole the player drives (or does not drive) over an inlet of the sea which is enclosed by cliffs some sixty feet high. The defendant has told us that he never drives over, but always into, this inlet, or Chasm, as it is locally named. A steady but not sensational player on other sections of the course, before this obstacle his normal

powers invariably desert him. This, he tells us, has preyed upon his mind; he has registered, it appears, a kind of vow, and year after year, at Easter and in August, he returns to this county determined ultimately to overcome the Chasm.

Meanwhile, unfortunately, his tenacity has become notorious. It is the normal procedure, it appears, if a ball is struck into the Chasm, to strike a second, and, if that should have no better fate, to abandon the hole. The defendant tells us that in the past he has struck no fewer than six or seven balls in this way, some rolling gently over the cliff and some flying far and high out to sea. But recently, grown fatalistic, he has not thought it worth while to make even a second attempt, but has immediately followed his first ball into the Chasm, and there, among the rocks, small stones, and shingle, has hacked at his ball with the appropriate instrument until some lucky blow has lofted it on to the turf above, or, in the alternative, until he has broken his instruments or suffered some injury from flying fragments of rock. On one or two occasions a crowd of holiday-makers and local residents have gathered on the cliff and foreshore to watch the defendant's indomitable struggles and to hear the verbal observations which have accompanied them. On the date of the alleged offences a crowd of unprecedented dimensions collected, but so intense was the defendant's concentration that he did not, he tells us, notice

their presence. His ball had more nearly traversed the gulf than ever before ; it struck the opposing cliff but a few feet from the summit, and nothing but an adverse gale of exceptional ferocity prevented success. The defendant therefore, as he conducted his customary excavations among the boulders of the Chasm, was possessed, he tells us, by a more than customary fury. Oblivious of his surroundings, conscious only of the will to win, for fifteen or twenty minutes he lashed his battered ball against the stubborn cliffs, until at last it triumphantly escaped. And before, during, and after every stroke he uttered a number of imprecations of a complex character which were carefully recorded by an assiduous caddie and by one or two of the spectators. The defendant says that he recalls with shame a few of the expressions which he used, that he has never used them before, and that it was a shock to him to hear them issuing from his own lips ; and he says quite frankly that no gentleman would use such language.

Now this ingenious defence, whatever may be its legal value, has at least some support in the facts of human experience. I am a golf-player myself—(*laughter*)—but, apart from that, evidence has been called to show the subversive effect of this exercise upon the ethical and moral systems of the mildest of mankind. Elderly gentlemen, gentle in all respects, kind to animals, beloved by children, and fond of music, are found in lonely corners of

the downs, hacking at sand-pits or tussocks of grass, and muttering in a blind, ungovernable fury elaborate maledictions which could not be extracted from them by robbery or murder. Men who would face torture without a word become blasphemous at the short fourteenth. And it is clear that the game of golf may well be included in that category of intolerable provocations which may legally excuse or mitigate behaviour which is not otherwise excusable, and that under that provocation the reasonable or gentle man may reasonably act like a lunatic or lout respectively, and should legally be judged as such.

But then I have to ask myself, What does the Act intend by the words 'of or above the degree of gentleman'? Does it intend a fixed social rank or a general habit of behaviour? In other words, is a gentleman legally always a gentleman, as a duke or solicitor remains unalterably a duke or solicitor? For if this is the case the defendant's argument must fail. The prosecution says that the word 'degree' is used in the sense of 'rank'. Mr. Haddock argues that it is used in the sense of an university examination, and that, like the examiners, the Legislature divides the human race, for the purposes of swearing, into three vague intellectual or moral categories, of which they give certain rough but not infallible examples. Many a first class man has taken a third, and many a day-labourer, according to Mr. Haddock, is of so

high a character that under the Act he should rightly be included in the first 'degree'. There is certainly abundant judicial and literary authority for the view that by 'gentleman' we mean a personal quality and not a social status. We have all heard of 'Nature's gentlemen'. 'Clothes do not make the gentleman,' said Lord Mildew in *Cook* v. *The Mersey Docks and Harbour Board* (1896), 2 A.C., meaning that a true gentleman might be clad in the foul rags of an author. In the old maxim 'Manners makyth man' (see *Charles* v. *The Great Western Railway*) there is no doubt that by 'man' is meant 'gentleman', and that 'manners' is contrasted with wealth or station. Mr. Thomas, for the prosecution, has quoted against these authorities an observation of the poet Shakespeare that

> 'The Prince of Darkness is a gentleman',

but quotations from Shakespeare are generally meaningless and always unsound. This one, in my judgment, is both. I am more impressed by the saying of another author (whose name I forget) that the King can make a nobleman, but he cannot make a gentleman.

I am satisfied therefore that the argument of the defendant has substance. Just as the reasonable man who discovers his consort in the embraces of the supplanter becomes for the moment a raving

maniac, so the habitually gentle man may become in a bunker a violent, unmannerly oaf. In each case the ordinary sanctions of the law are suspended; and while it is right that a normally gentle person should in normal circumstances suffer a heavier penalty for needless imprecations than a common seaman or cattle-driver, for whom they are part of the tools of his trade, he must not be judged by the standards of the gentle in such special circumstances as provoked the defendant.

That provocation was so exceptional that I cannot think it was contemplated by the framers of the Act; and had golf at that date been a popular exercise I have no doubt that it would have been dealt with under a special section. I find therefore that this case is not governed by the Act. I find that the defendant at the time was not in law responsible for his actions or his speech and I am unable to punish him in any way. For his conduct in the Chasm he will be formally convicted of Attempted Suicide while Temporarily Insane, but he leaves the court without a stain upon his character. (*Applause.*)

(IV) TINRIB, RUMBLE, AND OTHERS *v.* THE KING AND QUEEN

Fish Royal

(Before Mr. Justice Wool)

IN this unusual action, the hearing of which was begun to-day, an interesting point is raised concerning the rights and duties of the Crown in connexion with a dead whale.

Sir Ethelred Rutt, K.C., for the plaintiffs, said: May it please your lordship, this action is brought by Mr. Tinrib, Mr. Rumble, and the other plaintiffs on behalf of the inhabitants of Pudding Magna, situated, melud, in the county of Dorset——

The Court: Where is Dorset?

Sir Ethelred: Melud, I have a map here. Dorset, melud, if your lordship will glance at the bottom left-hand corner—— Dorset, melud, is, melud, Dorset——

The Court: Quite—quite. Get on, please, Sir Ethelred.

Sir Ethelred: I am greatly obliged to your lordship. Pudding Magna, melud, is situated in the north-east corner of Pudding Bay, or the Devil's Entry. The inhabitants are mainly fisher-folk of

lowly origin and modest means, and, so far as can be ascertained, the place is not referred to in any of the works of Mr. Thomas Hardy, Mr. William Wordsworth, or any other writer——

The Court: *O si sic omnes!*

Sir Ethelred: Ha! Melud, in the night of the 21st June last a dead whale was washed up on the shore of Pudding Bay, at a point south-west by south from the township of Pudding Magna. Now, the whale, melud, together with the sturgeon and the swan, is Fish Royal, and belongs to the King; or, to be precise, the head of the whale belongs to His Majesty the King and the tail to Her Majesty the Queen. Your lordship will recall the case of *Rex* v. *Monday* (1841), 3 A.C., which decided the latter point.

The Court: I recall nothing of the kind.

Sir Ethelred: Your lordship is very good. The loyal inhabitants of Pudding Magna, melud, made haste to extract from the carcass of the whale the whalebone, the blubber, and other valuable and perishable portions, with the intention, I am instructed, of holding them in trust for the Crown. And I may say at once that any other construction of their motives will be most strenuously resisted, if necessary, by sworn evidence. Three days later, melud, the wind, which had been northerly, shifted to the prevailing quarter, which is south-east——

Sir Wilfred Knocknee, K.C.: You mean south-west.

Sir Ethelred: I am very greatly obliged to me learned friend. Me learned friend is perfectly right, melud; the prevailing wind is south-west, melud; and, melud, on the fifth day the presence of the whale began to be offensive to the inhabitants of Pudding Magna. They therefore looked with confidence to the Crown to remove to a more convenient place the remnant of the Crown's property——

Sir Wilfred (aside): For which they had no use.

Sir Ethelred: Really, melud, me learned friend must not whisper insinuations of that kind under his breath; really, melud, I am entitled to resent, melud——

The Court: Go on, Sir Ethelred.

Sir Ethelred: Your lordship is extraordinarily handsome and good. Accordingly, melud, the Mayor of Pudding Magna addressed a humble petition to the Home Secretary, melud, begging him to acquaint His Majesty with the arrival of his property and praying for its instant removal. And by a happy afterthought, melud, a copy of this petition was sent to the Minister of Agriculture and Fisheries.

Happy, melud, for this reason, that the original communication appears to have escaped the notice of the Home Secretary entirely. At the Ministry of Agriculture and Fisheries, however, the Mayor's letter was handed to a public servant

named Sleep, a new-comer to the Service, and one, it seems, who combined with a fertile imagination an unusual incapacity for the conduct of practical affairs. This gentleman has now left the public service, melud, and will be called.

It appears, melud, that, when the Mayor's letter had been lying unconsidered on Mr. Sleep's desk for several days, the following telegram was handed to him:

> *'To the King London whale referred to in previous communication now in advanced stages decomposition humbly petition prompt action.*
>
> *'Tinrib'*

Mr. Sleep, melud, according to his own account, turning the matter over in his sagacious mind, at once hit upon a solution which would be likely to satisfy the requirements of His Majesty's Treasury with regard to public economy. Two days later, therefore, a letter was addressed to the Director of the Natural History Museum informing him that an unusually fine specimen of *Balæna Biscayensis* was now lying in Pudding Bay and that the Minister was authorized by His Majesty to offer the whale to the Museum in trust for the nation, the Museum to bear the charges of collection and transport.

On July 3rd, melud, the Secretary to the Natural History Museum replied that he was asked by the

Director to express his regret that, owing to lack of space, the Museum was unable to accept His Majesty's gracious offer. He was to add that the Museum was already in possession of three fine specimens of *Balæna Biscayensis*.

Melud, for some days, it appears, Mr. Sleep took no further action. Meanwhile, melud, the whale had passed from the advanced to the penultimate stages of decomposition, and had begun to poison the sea at high-water, thereby gravely impairing the fishermen's livelihood. Mr. Tinrib, melud, was in constant, but one-sided, correspondence with Mr. Sleep; and on the 12th of July, melud, Mr. Sleep lunched with a friend and colleague at the Admiralty, Mr. Sloe. While they were engaged, melud, upon the discussion of fish, the topic of whales naturally arose, and Mr. Sleep, melud, unofficially, melud, expressed to Mr. Sloe the opinion that the Ministry of Agriculture and Fisheries would be willing to grant to the Admiralty the use of the whale for the purposes of target-practice; and he suggested that one of His Majesty's ships should be immediately detailed to tow His Majesty's whale out to sea. He also pointed out the peculiar advantages of such a target for the exercise of such vessels as were called upon to fire at submarines. Mr. Sloe, melud, undertook to explore the opinion of the Admiralty on the proposal, and the conference broke up.

That was on the 12th. On the 17th, melud, Mr. Sloe unofficially, melud, at a further lunch, intimated to Mr. Sleep that he could find no support among their Lordships of the Admiralty for the proposal of the Ministry of Agriculture and Fisheries; for, while excellent practice was to be had from a disappearing target, their Lordships could not sanction the expenditure of ammunition on a target which must, at most ranges, be quite invisible. Further, it was their opinion that by the date of the autumn firing-practices the whale would have suffered dissolution by the ordinary processes of nature.

The inhabitants of Pudding Magna, melud, did not share this view. On the 20th, melud, Mr. Tinrib and a deputation waited upon Mr. Sleep. They pointed out to Mr. Sleep that all fishing was suspended in Pudding Bay; that Pudding Magna was now barely habitable except on the rare occasions of a northerly wind; that the majority of the citizens had fled to the hills and were living in huts and caves. They further inquired, melud, whether it would be lawful for the fishermen themselves to destroy the whale, so far as that could be done, with explosives, and, if so, whether the Crown would refund the cost of the explosives, which might be considerable. As to this, melud, Mr. Sleep was unable to accept the responsibility of expressing an opinion; but the whale was undoubtedly Crown property, and he questioned

gravely whether the Treasury would sanction the expenditure of public money on the destruction of Crown property by private citizens. He also pointed out that the Treasury if approached would be likely to require a strict account of any whalebone, blubber, and other material extracted from the whale's carcass. Mention of explosives, however, had suggested to his mind that possibly the War Office might be interested in the whale, and he undertook to inquire. The deputation agreed, melud, that this perhaps would be the better course, and withdrew.

On the 24th, melud, a letter was dispatched to the War Office pointing out that the whale now lying in Pudding Bay offered excellent opportunities for the training of engineers in the removal of obstacles, and could weli be made the centre of any amphibious operations, landing-parties, invasions, etc., which might form part of the forthcoming manœuvres. The War Office would doubtless take note of the convenient proximity of the whale to the Tank Corps Depot at Lulworth.

On the 31st, melud, the War Office replied that the destruction of whales by tanks was no longer considered a practicable operation of war, and that no part of the forthcoming manœuvres would be amphibious.

From this date, melud, Mr. Sleep seems to have abandoned his efforts. At any rate, on the 4th of

August, Mr. Tinrib received the following evasive and disgraceful communication :

WHALE, CARCASS OF

'Dear Sir,

'I am desired by the Minister of Agriculture and Fisheries to observe that your representations to this Department appear to have been made under a misapprehension. It should hardly be necessary to state that the whale is not a fish but a mammal. I am therefore to express regret that the Ministry of Agriculture and Fisheries can accept no responsibility in the matter.'

In these circumstances, melud, the inhabitants, or I should say the *late* inhabitants, of Pudding Magna have been compelled to institute these proceedings, and humbly pray——

The case was adjourned.

(V) REX *v.* HADDOCK

Is It a Free Country?

THE Court of Criminal Appeal considered today an important case involving the rights and liberties of the subject, if any.

Lord Justice Frog said: This is in substance an appeal by an appellant appealing *in statu quo* against a decision of the West London Half-Sessions, confirming a conviction by the magistrates of South Hammersmith sitting in Petty Court some four or five years ago. The ancillary proceedings have included two hearings *in sessu* and an appeal rampant on the case, as a result of which the record was ordered to be torn up and the evidence reprinted backwards *ad legem*. With these transactions, however, the Court need not concern itself, except to observe that, as for our learned brother Mumble, whose judgment we have read with diligence and something approaching to nausea, it were better that a millstone should be hanged round his neck and he be cast into the uttermost depths of the sea.

The present issue is one of comparative simplicity. That is to say, the facts of the case are intelligible to the least instructed layman, and the only

persons utterly at sea are those connected with the law. But *factum clarum, jus nebulosum,* or, 'the clearer the facts the more muddled the law'. What the appellant did in fact is simple and manifest, but what offence, if any, he has committed in law is a matter of the gravest difficulty.

What he did in fact was to jump off Hammersmith Bridge in the afternoon of August 18th 1922 during the Hammersmith Regatta. The motive of the act is less clear. A bystander, named Snooker, who, like himself, was watching the regatta from the bridge, has sworn in evidence that he addressed the appellant in the following terms: 'Betcher a pound you won't jump over, mate,' that the appellant, who had had a beer or (as he frankly admitted) two, replied in these words: 'Bet you I will, then,' after which pronouncement he removed his coat, handed it to the man Snooker, climbed on to the rail, and jumped into the water below, which, as was sworn by Professor Rugg of the Royal Geographical Society, forms part of the River Thames. The appellant is a strong swimmer, and, on rising to the surface, he swam in a leisurely fashion towards the Middlesex bank. When still a few yards from the shore, however, he was overtaken by a river police boat, the officers in which had observed his entrance into the water and considered it their duty to rescue the swimmer. They therefore took

him, unwilling, it appears, into their boat, and landed him. He was then arrested by an officer of the Metropolitan Police engaged in controlling the crowds who had gathered to watch the regatta, was taken to the police station and subsequently charged before the magistrates, when he was ordered to pay a fine of two pounds.

The charges were various, and it is difficult to say upon which of them the conviction was ultimately based. The appellant was accused of:

(*a*) Causing an obstruction.
(*b*) Being drunk and disorderly.
(*c*) Attempting to commit suicide.
(*d*) Conducting the business of a street bookmaker.
(*e*) (Under the Navigation Acts) endangering the lives of mariners.

It may be said at once that in any case no blame whatever attaches to the persons responsible for the framing of these charges, who were placed in a most difficult position by the appellant's unfortunate act, for it is a principle of English law that a person who appears in a police court has done something undesirable, and citizens who take it upon themselves to do unusual actions which attract the attention of the police should be careful to bring these actions into one of the recognized categories of crimes and offences, for it

is intolerable that the police should be put to the pains of inventing reasons for finding them undesirable.

The appellant's answer to the charges severally were these. He said that he had not caused an obstruction by doing an act which gathered a crowd together, for a crowd had already gathered to watch the regatta, both on the bridge and on the banks. He said that although he had had one beer, or even two, he was neither drunk nor disorderly. Snooker and others about him swore that he showed no signs of either condition when on the bridge, and it was powerfully argued that the fact of a man jumping from a high place into water was not *prima facie* evidence of intoxication; and witnesses were called to show that a man at Bournemouth had constantly jumped from the pier in flames without any such suggestion, and indeed with the connivance of the police and in the presence of the Mayor and Council. In the alternative the appellant said that, assuming that he was intoxicated before his immersion, which he denied, he must obviously have been, and in fact was, sober when arrested, which is admitted; while the river police in cross-examination were unable to say that he was swimming in a disorderly manner, or with any unseemly splashes or loud cries such as might have supported an accusation of riotous behaviour.

In answer to the charge of attempted suicide

the appellant said (*a*) that only the most unconventional suicide would select for his attempt an occasion on which there were numerous police boats and other craft within view, (*b*) that it is not the natural action of a suicide to remove his coat before the fatal plunge, and (*c*) that his first act on rising to the surface was in fact to swim methodically to a place of safety.

As to the betting charge, the appellant said that he had never made a bet in his life; no other person but Snooker heard or saw anything of the transaction; and since Snooker, who on his own showing had lost the wager, confessed in cross-examination that he had not in fact passed any money to the appellant, but, on the contrary, had walked off quietly with the appellant's coat, the credit of this witness was a little shaken, and this charge may be said to have fallen to the ground. The appellant himself said that he did what he did (to use his own curious phrase) 'for fun'.

Finally, as to the Navigation Acts, the appellant called overwhelming evidence to prove that, at the time of his immersion, no race was actually in progress and no craft or vessel was within fifty yards from the bridge.

But in addition to these particular answers, all of which in my judgment have substance, the appellant made the general answer that this was a free country and a man can do what he likes if he does nobody any harm. And with that

observation the appellant's case takes on at once an entirely new aspect. If I may use an expression which I have used many times before in this Court, it is like the thirteenth stroke of a crazy clock, which not only is itself discredited but casts a shade of doubt over all previous assertions. For it would be idle to deny that a man capable of that remark would be capable of the grossest forms of licence and disorder. It cannot be too clearly understood that this is *not* a free country, and it will be an evil day for the legal profession when it is. The citizens of London must realize that there is almost nothing they are allowed to do. *Prima facie* all actions are illegal, if not by Act of Parliament, by Order in Council; and if not by Order in Council, by Departmental or Police Regulations, or By-laws. They may not eat where they like, drink where they like, walk where they like, drive where they like, sing where they like, or sleep where they like. And least of all may they do unusual actions 'for fun'. People must not do things for fun. We are not here for fun. There is no reference to fun in any Act of Parliament. And if anything is said in this Court to encourage a belief that Englishmen are entitled to jump off bridges for their own amusement the next thing to go will be the Constitution. For these reasons, therefore, I have come to the conclusion that this appeal must fail. It is not for me to say what offence the appellant has committed, but I am satisfied

that he has committed *some* offence, for which he has been most properly punished.

Mudd, J., said that in his opinion the appellant had done his trousers no good and the offence was damage to property.

Adder, J., concurred.

The appeal was dismissed.

(VI) REX *v.* THE LICENSING JUSTICES OF MUDDLETOWN

'The Red Cow'

(Before Mr. Justice Wool)

STARTLING charges were made in this case to-day at the Muddletown Assizes by Sir Ethelred Rutt, K.C., in his opening speech for the prosecution. The arrest and trial of the licensing justices were brought about by the untiring efforts of Mr. Albert Haddock and have aroused great popular enthusiasm; cheering crowds surrounded the court, and the Judges have received five thousand anonymous letters, couched about equally in the language of menace and congratulation.

Sir Ethelred Rutt: Melud, in this case the defendants are seventeen Justices of the Peace who are charged under the Public Health Acts with exposing the public to an unhealthy and insanitary condition of affairs in the public bar of 'The Red Cow' inn, or, in the alternative, with conduct conducive to a public nuisance.

The facts are these. Until recent years there were two licensed houses in Sunset Street, 'The

Red Cow' at the western end and 'The Blue Swan' at the eastern. Each house had its own regular and sufficient clientèle, but neither was overcrowded. The guests took their refreshment seated comfortably on benches and watched with interest, in the case of 'The Red Cow', the game called 'darts'. 'The Red Cow' was famous for darts, and 'The Blue Swan' for skittles.

The Judge: What are skittles?

Sir Ethelred: Melud, I am instructed that skittles are a sort of ninepin.

The Judge: I thought it was a beverage.

Sir Ethelred: Perhaps your lordship is thinking of the expression 'Beer and skittles'? (*Laughter.*)

The Judge: Is not that the same as whisky-and-soda?

Sir Ethelred: No, melud, it is a game.

The Judge: Very well. Don't waste time, Sir Ethelred.

Sir Ethelred: Your lordship is very good. Well, melud, 'The Blue Swan' was famous for skittles, and on several occasions had won the challenge shield of the Skittles Association, for which forty-seven public-houses in the district annually compete. Now at the Licensing Sessions it was represented to the Justices by certain virtuous persons that two public-houses in one street was an excessive number, and out of proportion to the needs of the population. Their arguments were supported by counsel of the most learned and

expensive kind; the justices, all of whom were teetotallers, accepted them, and the licence of 'The Blue Swan' was not renewed.

Now, melud, these well-meaning persons appear to be governed by two main assumptions, both of them, in my submission, melud, fallacious: One, that the sole function and purpose of a public-house is the sale and consumption of alcohol; and two, that where there are two public-houses there will be sold and consumed a greater quantity of alcohol than where there is only one.

The Judge: Two and two make four, Sir Ethelred.

Sir Ethelred: Melud, I am prepared to argue that. (*Laughter.*)

The Judge: Are you relying on *Stagger* v. *Root*?

Sir Ethelred: No, melud; that was a *nisi prius* action.

The Judge: What has Mr. Wriggle to say to that?

Mr. Wriggle, K.C.: Melud, I ask for a ruling.

The Judge: You must not ask me for a ruling before lunch.

Sir Ethelred (continuing) said: Now, melud, neither the Licensing Justices nor the persons who appeared before them to oppose the renewal of the licence of 'The Blue Swan' had ever entered 'The Blue Swan'.

The Judge: I never went to 'The Blue Swan'.

Sir Ethelred: But possibly you were called to the bar, melud? (*Laughter.*)

The Judge: Many are called but few chosen. (*Laughter.*)

Sir Ethelred: And therefore, melud, they were wholly unacquainted with the character of 'The Blue Swan'. Both 'The Blue Swan' and 'The Red Cow' were social centres corresponding, melud, in their different ways to the Athenaeum or the Bath Club. The Bottle and Jug Department——

The Judge: What is that?

Sir Ethelred: Melud, I am instructed it is a special counter at which patrons attend with their own jugs or other vessels to purchase liquor for removal and consumption off the premises.

The Judge: Is there a Bottle and Jug Department at the Athenaeum?

Sir Ethelred: No, melud; the Athenaeum has an on-licence only.

The Judge: Then what has it got to do with this case?

Sir Ethelred: Melud, if elderly bishops were seen leaving the Athenaeum with jugs of stout in their hands the casual observer would form an impression of the character of that institution which would be largely unjust. And that is what has happened in the case of these two houses. The residents of Sunset Street gathered at these places, melud, for the exchange of ideas and to discuss the news of the day, for the relation of their

misfortunes, for mutual comfort, encouragement, and advice, and, in short, for the legitimate purposes of social intercourse. On those premises, melud, many a tired man and disappointed woman have received from the society of their fellows the spiritual contentment which arms them for the trials of the morrow and tends to develop in the mind a political outlook of a conservative rather than a revolutionary nature. 'An Englishman's home,' said Lord Mildew in *Fox* v. *The Amalgamated Society of Wood-workers*, 'is his castle'; but the public-house is a fortress of the Constitution, in which the germs of Bolshevism, melud, are imprisoned and sterilized by the loyal forces of good-fellowship and beer. And it would ill become His Majesty's judges, melud, to countenance without good cause the diminution of these strongholds and so to encourage the growth of opinions which are hostile to existing institutions.

The Judge: What has this to do with sanitation?

Sir Ethelred: I am very grateful for your lordship's interruption. Melud, what happened, in fact, was this. After the closing of 'The Blue Swan', melud, the clients of 'The Blue Swan' did not, as was anticipated, abandon the pursuit of good-fellowship and beer, but they transferred their custom to 'The Red Cow' instead. The only practice which they were forced to abandon was the innocent practice of skittles, for 'The Red Cow' has no skittle-alley. It is not possible,

melud, to drink beer and play skittles at the same time, so that the effect of the new conditions upon the former clients of 'The Blue Swan' was that they drank not less beer but more.

Melud, 'The Red Cow', catering for the clients of two houses instead of one, has become extremely overcrowded, so much so that at the busy hours of the day it is no longer possible to play darts with safety and satisfaction. Melud, a man cannot throw a dart at a small target and drink beer at the same time, so that the effect of the new conditions upon the old clients of 'The Red Cow' has been that they drink not less beer but more.

The interference, therefore, of the well-meaning persons already referred to in matters of which they had no practical understanding has resulted in a definite increase in the consumption of beer. Moreover, it is now consumed under unhealthy and degrading conditions. Most of the clients of 'The Red Cow' must now take their refreshment standing instead of sitting; men and women are crushed together in circumstances conducive to familiarity and vulgar talk, or stand pressed against the bar, where the propinquity of the bottles is a constant provocation to further indulgence. The atmosphere becomes hot, smoky, malodorous, and foul, and in place of the quiet conversation of former years there is a deafening hubbub. Women complain that when they go out into the night air they take cold, and that they suffer headaches,

not from the beer, but from the noise and the atmosphere. Moreover, the noise makes it necessary to raise the voice, the atmosphere affects the throat, and both these conditions stimulate the thirst, so that again not less alcohol is consumed, but more. The tone of 'The Red Cow' is lower, and this has attracted a rougher element. Under cover of the noise a vulgarity in conversation is possible which was never present before; vulgar talk leads to loose conduct, and the moral standards of Sunset Street have declined.

Melud, it is the prosecution's case that for all these evils the Licensing Justices are responsible. If well-meaning persons were to concentrate in the Athenaeum the members of several other clubs it is probable that the Athenaeum would suffer a similar decline in social amenities, in conversation, and in moral tone; but the haunts of the rich are left alone. Melud, the defendants have turned 'The Red Cow' into a squalid, unwholesome, and unhealthy resort; they must be taken to have foreseen the natural and necessary consequences of their unfortunate act, and they must pay the penalty.

Loud cheers greeted the conclusion of Sir Ethelred's speech.

The Court adjourned.

(VII) REX *v.* LORD OODLE

False Pretences

AT the Old Bailey to-day, before Mr. Justice Frog, the trial was concluded of Lord Oodle, M.P., who was charged with obtaining money on false pretences, namely, the sum of four hundred pounds, being the salary received by him as Member of Parliament for Pumptown (South).

Mr. Justice Frog, in his address to the jury, said: Gentlemen of the Jury, your decision in this case may have an enduring effect upon the political life of your country. The prisoner, Lord Oodle, is as you have heard, a Member of Parliament for Pumptown (South), and this prosecution, which was instigated, rightly or wrongly, by Mr. Blow, his unsuccessful rival at the last election, is based upon the statements and behaviour of the prisoner during that campaign. Twenty years ago such a prosecution would have been impossible, for the simple reason that in those days a Member of Parliament received no remuneration for his services to the State, and citizens, if any, who paid such serious attention to his promises and undertakings as to observe and resent his failure to perform them were unable to bring their complaint

to a court of law, for it could not be shown that through those undertakings he had come by any material gain; and unless it is the means of making money or destroying reputations there is no law against lying. Now, however, as you know, a Member of Parliament is paid the sum of four hundred pounds per annum, and enjoys in addition substantial monetary advantages in the shape of free railway passes. And it is therefore argued that in respect of any statements and undertakings which he may make in the course of an electoral campaign he is now subject to the same legal penalties as are applied to the private citizen, who is expected to say nothing which he does not mean and to promise nothing which he cannot perform where money is concerned.

It has been argued on the other side that such a contention, if sustained, would make public life impossible; that if politicians are to be expected to show the same accuracy in assertion, the same pedantic correlation of promise and performance as are required of private citizens in their business transactions or in the answers which they are compelled to make to His Majesty's Collectors of Taxes, then there is an end of Parliamentary Government as we know it in this country.

But with these conjectures, however well founded, this Court has little or nothing to do. It is not for you to consider how far your decision may embarrass or exhilarate the six or seven

hundred members of the House of Commons ; and if by your verdict political candidates are compelled in the future to say nothing but what they know to be true it cannot be helped. All that you have to do is to answer the simple question, ' Has the prisoner, or has he not, obtained money by false pretences, that is, by stating or suggesting something which he knew to be untrue ? ' It is not denied that he has obtained money. Now, what of the false pretences ? It is complained for one thing that on several occasions the prisoner stated before many thousands of people that the Lord Chancellor had said that what he (the Lord Chancellor) wanted was more poverty. This assertion, it is alleged, was based on an inaccurate account of a statement by the Lord Chancellor to the effect that if business did not improve in the cotton industry there would be more poverty in the cotton industry. The Lord Chancellor having denied by telegram, letter, and every available form of public proclamation that he had ever made the statement attributed to him by the prisoner, it is alleged that Lord Oodle continued to say that the Lord Chancellor was anxious for more poverty, not only in the cotton industry but in the mining, railway, and many other industries, working gradually to a climax on the day before the poll, when he is alleged to have used these words : ' The Lord Chancellor has told us that he stands for all-round poverty.'

This charge, however, though much was made of it in the earlier stages of the case, has faded almost to insignificance; indeed it was suggested in evidence that such a series of deliberate misstatements was common form among politicians of a certain kind, and that it would be laughable to attach importance to it. However that may be, a much more serious accusation has engaged the attention of the Court for the past two days, and it is to this that I wish you chiefly to address your minds.

The charge is that throughout the campaign Lord Oodle pretended and suggested that he was not of aristocratic birth. The evidence is that from the first he desired his supporters to address him not as Lord Oodle, but as 'simple Mr. Oodle'; that he constantly dissociated and distinguished himself from his father the earl; that he ostentatiously travelled in trams and omnibuses instead of in one of the capacious motor-cars in his possession; that he was careful to be seen in baggy flannel trousers a little soiled, wore soft collars, and even what is called, it seems, a 'bowler hat'; spoke with a markedly plebeian accent, and in his speeches made use of expressions and phrases of a popular and even vulgar character such as no one would expect to hear from the mouth of a nobleman's son.

Now if these charges are proved, there is no doubt that they constitute an elaborate scheme of

pretence which may well have gone to the root of the election. For in public life at the present time, it appears, nothing is more discreditable to a man than noble blood or the suspicion of culture. It has become an axiom of politics that men who have laboured from their youth with their hands will have better brains for the purposes of government than those who have wasted many years of their lives on education and the study of history and economics; and unless a man be a plumber or a boiler-maker by occupation, or be associated with one or other of the honourable professions of that character, it is useless for him to attempt the intricate business of legislation or to meddle with the delicate problems of foreign and imperial affairs.

Now the prisoner, of course, was well acquainted with this tradition. He was standing, he tells us, in the interests of the Proletariat, a word which will not be found in Dr. Johnson's Dictionary. He was cross-examined as to the meaning of this word, and I will draw your particular attention to his answers:

Q. Could you tell us what you mean by the Proletariat?
A. The Proletariat is the People.
Q. Does that include his lordship?
A. No.
Q. Does it include barristers?
A. Certainly not.

Q. Plumbers?

A. Yes.

Q. Would it be fair to say, Lord Oodle, that by 'the People' you mean 'people who work or have worked with their hands'?

A. Yes.

Q. Then does that include surgeons?

A. No.

Q. Sculptors, painters, and writers?

A. No; they are of the bourgeois.

Q. And you, Lord Oodle, do you work with your hands?

A. No.

Q. Then you are not a member of the Proletariat?

A. No.

Q. You are not even a member of the People?

The witness hesitated and then said he was *for* the people.

Members of the jury, you will draw your own conclusions from these answers. I confess that I find them extremely unsatisfactory. For the evidence is—and whether it is credible or not is for you to say—that the prisoner throughout the campaign did by every means in his power hold out and represent himself as one of the People, as one, that is, having those special qualifications for parliamentary work which, as we have seen, are

the peculiar property of house-painters, boiler-makers, miners, porters, and other manual workers, or are believed to be so by the trustful electorate of Pumptown (South).

At any rate, so far as was possible he divested himself of the disagreeable odour of nobility. And in so doing he has brought himself into his present situation. For it is the law that a man must not obtain money by saying that he is that which he is not. It may be that many a poor Pumptonian registered his vote for Lord Oodle under the impression that he was an honest plumber instead of, as he is, the son of a peer. And if you find that, you may conclude that a cruel and heartless fraud has been practised as a result of which the prisoner is the richer. In that case gentlemen, there will be no doubt of your verdict.

The jury, without leaving the box, found the prisoner *Guilty*, and he was sentenced to wear a bowler hat for ten years.

(VIII) PRATT *v.* PRATT

A Swan Song

(Before Mr. Justice Wool)

MUCH comment was caused in legal circles to-day by an unconventional speech by Sir Oliver Slick, K.C., in opening a case in the Probate and Divorce Division. Sir Oliver is retiring from practice in a few days' time, and it is thought that he may be suffering from overstrain.

Sir Oliver said: May it please your lordship, members of the jury, in this case I appear for the petitioner, Mrs. Gladys Eleanor Pratt, who is praying for a divorce from her husband on account of—well, I mean, she wants to get rid of the man and that's all about it, milord. Milord, this is probably the last case in which I shall ever appear, so, to tell you the truth, I take a pretty detached view of the whole proceedings. Well, I mean, look at old Twopenny here (*Mr. Albert Twopenny, of the firm of Twopenny and Truelove, solicitors for the petitioner*)—he'll never give me a brief again after this, *but I don't care*! And that's what makes the whole thing so terribly *funny*!

(Sir Oliver here laughed heartily.)

The Judge: Sir Oliver, if this is your swan-song, I am sure that you would wish it to be in tune with the traditions of the Bar and with your own fine record.

Sir Oliver: Certainly, milord; you're a good sort, milord, and I don't want to offend you though you've given me a packet of trouble from time to time. Well, milord, the facts are these. The parties were married only a year ago at Westminster, and lived happily together for about three weeks, milord. Temperamentally, perhaps, they were unsuited; the husband was fond of golf and the woman of lawn tennis. However, the wife remained and is to this day devoted to her husband, but last year, milord, on July 20th—no, 21st—Mrs. Pratt noticed that Mr. Pratt's affections were cooling, and on the 24th, milord, she found him telephoning to a strange woman, a Miss Elizabeth Mugg, milord, who has been cited in this case as a co-thingummy——

The Judge: Sir Oliver, I'm not sure that I follow you.

Sir Oliver: Co-respondent, milord, that's the word I wanted. (Sir Oliver then lowered his voice and continued in tones suggestive of profound moral indignation.) Milord, there seems to be no doubt that this woman, by a protracted course of duplicity and cunning, has deliberately stolen away this husband from his wife. It is difficult, milord, to frame language strong enough to

describe a woman who, without any provocation, it appears, from her unfortunate partner in guilt, has wormed her way into the affections of an English husband, and invaded, corrupted, and finally broken up an English home. Picture, milord, the state of mind of my unfortunate client as, day by day and bit by bit, she sees that devotion which is her right transferred to the supplanter. On the 26th, milord, this poor woman had a nervous breakdown; on the 29th she had fits. Milord, do you think I've done enough of this?

The Judge: I beg your pardon, Sir Oliver?

Sir Oliver: I mean, need I give the jury any more of this gup? Because, of course, you know, the whole case is a put-up job——

The Judge: Sir Oliver, I think you are not very well. Perhaps it would be fairer to your client to adjourn.

Sir Oliver: Never was better, old boy. Fit as yourself, and fitter. Well, I wasn't playing bridge half the night, milord, as I happen to know you were!

(Sir Oliver here laughed again in a genial manner.)

The Judge: If you are in good health, Sir Oliver, we will continue the hearing, but you will please confine yourself to the facts of the case.

Sir Oliver: Well, milord, the facts are very simple. This is just one of the ordinary

trumped-up upper-class divorce cases, you know. The lady's just bored with him, that's all. Well, I mean, in these days, living with the same husband, week after week, for a whole year—Society girls can't *stand* it. There's nothing unpleasant in the case, nobody's done anything wrong, but my client wants to marry a chap in the Guards—Jack Filter, *you* know, milord, fellow with the eyeglass you met at the club the other day, so we've pitched this yarn about Pratt and Elizabeth Mugg—— Don't interrupt, Twopenny!

(Mr. Twopenny spoke earnestly to Sir Oliver at this point, and subsequently on several occasions, but Sir Oliver did not appear to hear what was said.)

Sir Oliver (continuing): I'm sorry for Pratt in a way—that's the respondent, milord—he's a very good fellow and adores Mrs. Pratt. But it's his own fault, really. The trouble was, you see, milord, that he married the girl for her money and then fell in love with her. I can tell you, between ourselves, gentlemen of the jury, we had a job to get him to agree to this divorce at all. Didn't like it, not a bit. But in the end we got him over the money. You see, he's terribly in debt, milord, and she's going to pay him a very decent alimony. Of course, technically, I know, milord, I shall ask you to make him pay Mrs. Pratt alimony, and a fat alimony, too; but that's all eyewash. Besides, we made things easy for him over Elizabeth Mugg,

and that helped to turn the scale, because he thought he had to go to Brighton with her, and he hates Brighton. But when he found he needn't even see Elizabeth Mugg he didn't mind being divorced because of her so much. In point of fact he never has seen Elizabeth Mugg. I mention that because I don't want any one here to take too seriously what I said about Elizabeth Mugg just now, because Elizabeth Mugg is really a very nice woman and knows her job thoroughly. Elizabeth has been in eighty-nine divorce cases, she tells me, under various names, and has never met one of the parties yet. In this case, of course, she went down to Brighton and stayed a night at the 'Cosmopole'. Pratt's valet stayed there the same night, and put a pair of Pratt's boots outside Elizabeth's room, and the next day he met one of the chambermaids and identified the boots, and there you are. You'll have all the evidence, of course, Pratt's bill, and the cloakroom ticket and the menu and everything, but that's all there is to the case.

The Judge: Sir Oliver, I never like to interrupt Counsel when opening a case, but are you materially assisting your client?

Sir Oliver: I should be sorry if you thought I wasn't, milord, because Mrs. Pratt is really quite a decent little woman. In fact, everybody in the case is thoroughly decent, including your lordship, if I may say so, and it seems to me a great pity

that all these decent people should be put to all this trouble and expense and publicity when the whole thing might easily be done in two minutes at a registry office or through one of the big stores. On the other hand, of course, I have to live, and you have to live, milord, and Elizabeth Mugg has to live, so we mustn't complain. Speaking for myself, I'm doing very well out of this case, because my client is not only decent but rich, and old Twopenny here knows how to make 'em cough up—well, I mean I've got one thousand pounds on the brief and a pretty good refresher for a potty little divorce. I mention these points, milord, because it is so nice to get a touch of reality in a case like this. How you can sit up there, milord, day after day, swallowing all the bogus stuff served up to you by members of the Bar like me, who ought to know better——

The Judge: Sir Oliver, this is an occasion without precedent in all my long experience, and I find a difficulty in dealing with it. But if you are unable to conduct yourself in accordance with the traditions of your profession and the interests of your client I shall be compelled to ask you to withdraw from this court.

Sir Oliver (bowing): Milord, I bow to your ruling. Milord, I have little to add at this stage of the case. My client will now go into that box and tell the tragic story of her married life. She will tell you of affection blighted, of a home made

desolate, and a heart destroyed. She will tell you that even at this late hour she is ready to hold out the hand of forgiveness and clasp to her bosom the rightful partner of her life, if he will but tear himself from the embraces of the supplanter, Mugg, a woman, milord, who, as you will shortly hear, has from first to last—from first to last, milord—played a part in the lives of these two people which is without precedent, milord, in my experience for treachery, deceit, ingratitude, and cunning. Call Gladys Pratt.

The Judge: We will now adjourn.

The Court adjourned.

(IX) TROTT *v.* TULIP

The Highbrow

(Before Mr. Justice Wool)

THIS action for defamation was to-day brought a stage nearer to its conclusion with the closing speeches of counsel and his lordship's summing up to the jury. This was the twenty-seventh day of the hearing.

His Lordship, addressing the jury, said : In the whole course of my professional career, which has included, necessarily, many warmly-contested claims for defamation of character in many different fields of society, I do not remember one which with such an appearance of simplicity has revealed upon examination such sharp and complicated differences, supported, may I say, by such stubborn animosities.

The facts are simple enough. The parties both belong to what is called the literary world, and in that world are sufficiently well known, Miss Clelia Trott as a writer and Mrs. Tulip as a critic of original works of fiction. You were invited by the plaintiff's counsel to consider upon a some what higher plane the activities of Miss Trott,

which are admittedly creative, than those of Mrs. Tulip, as being chiefly occupied in tearing to pieces the things which other men have made. But this distinction, however attractive to the lay mind, I must ask you to dismiss from your own. In many ponderous and ill-drafted enactments our ancestors have been careful to secure to the most repellent of the King's subjects the common rights of free expression so long as it takes the harmless form of venomous and enraging words. How far this is just to those of our fellows who are unhappily unable to express themselves except by blows it is not for us to inquire. And how far that condition of suppressed fury which follows a verbal but unactionable assault is socially more desirable than the healthy breach of the peace which follows a blow is also not within the scope of this inquiry. I mention these matters only to confuse you and to display the superior alertness of my intelligence. It is enough for you that before the law, at any rate, a literary or dramatic critic is as good and useful a citizen as an original author, and is entitled to the same measure of justice, if he can get it.

The facts of this case are simple enough. The defendant, Mrs. Tulip, in reviewing a recent work of Miss Clelia Trott's, a book called *Midnight*, employed the following words: 'It is no good. Miss Trott. All your murders and detectives, your vamps and mysteries, do not deceive us,

charming though they are. The truth is, Miss Trott, *you are a bit of a highbrow.*'

Miss Clelia Trott, so far from being disarmed by the sprightly and almost complimentary manner of the review, has brought an action for defamation, complaining particularly of the word 'highbrow', which is said to have prejudiced her professionally as a writer of sensational narratives for railway reading or, as they are sometimes called, it appears, 'best-sellers'.

The law of libel is exceedingly complicated and wholly unintelligible. . . .

(His lordship here gave a brief explanation of the law of libel, beginning with the Star Chamber.)

Continuing, his lordship said: The question of malice is a question of fact for the jury to determine, and the jury alone. The evidence which we have heard and the demeanour of the defendant in the box leave no doubt in my own mind that the word complained of was prompted in fact by legal malice and spleen; but it will be for you to say. Far more difficult, in my opinion, is the question, 'Is the word "highbrow" defamatory or not?' and this question also, I am glad to say, it will be for you to answer, though you will be paid one guinea for the twenty-seven days of this trial, and I am paid five thousand pounds a year.

We have had in this case the advantage of the expert testimony of nineteen well-known writers and authors, fourteen literary critics, seven

editors, and two philologists. And the one thing that emerges from this mass of informed opinion is that the expression complained of must be the most remarkable word in common use to-day. For while each of these authorities came prepared with a full and impressive theory of the origin and significance of the word, no two of these explanations were in any respects the same. Moreover, at the first hint of opposition or disagreement these ladies and gentlemen almost without exception betrayed a degree of passion and obstinacy remarkable in persons devoted to the contemplative way of life, and so excessive as to make the extraction of useful information by process of cross-examination impossible.

If, therefore, we were to place any reliance upon the expert evidence (which, fortunately, it is not the habit of these courts to do) we should be forced to the conclusion that the word 'highbrow', having a different meaning in the mouth of every authority, has in fact no meaning whatever, and you might well find that to employ such a term in connexion with another person could not be defamatory; as one man might say to another, 'You are a Bimbo' or 'You look like a Togg', without offence; for these expressions, though presumably hostile in intention, have no known significance, discourteous or otherwise.

But you, members of the jury, may not so easily escape from your responsibilities. Somehow or

other you are to answer the questions which will be put to you in the affirmative or in the negative as the case may be. And for this purpose you will do well to ignore for the most part the nebulous testimony of the literary gentlemen who have stood in that box before you.

Now it is urged by the defence that the word 'highbrow' was invented by an American journalist (who has not been called by either side) to express his natural surprise on his observing that there were persons about him more richly gifted than himself; that it means no more than one who is superior in intelligence to the average of his (or her) fellows, and is therefore, so far from being libellous, a complimentary expression, as against the opposite term 'lowbrow', which is said to signify a person having a low or shallow forehead and comparable in aspect and in mental development to an anthropoid ape. According to this theory the human race is roughly divided into two main species, the highbrow and the low-, and no person whose profession it is to provide printed reading for his fellow-men can complain with reason of being included in the former category. On the contrary (according to the defence), to say of an author that she is a highbrow is as much as to say that 'she has more brains than a monkey, and indeed than many men', and is therefore, at any rate, a statement pleasantly intended.

For the plaintiff, on the other hand, it is urged

that though this may well have been the origin of the term it has acquired by common usage a definite, or, at any rate, a definitely offensive, significance. The witnesses who supported this view (so far as any witness may be said to have supported anything in particular) seemed to suggest that highbrow means not merely a person of superior intelligence but one who is offensively conscious or indeed boastful of his (or her) superiority. And they employed, with a warmth which I was not always able to restrain, various expressions of an ethical or moral character, such as 'prig' and 'Pharisee'. One witness indeed went so far as to describe a highbrow as 'an intellectual Pharisee', and you will remember, no doubt, the disorderly scene which followed.

According to this theory the divisions of the human race are not two, but three—the lowbrow, the high-lowbrow, or broad-brow (or those of an intelligence and tolerance superior to the average), and the highbrow, who, though not necessarily more gifted than the second class, has in an intellectual sense the defects of character or outlook sufficiently suggested by the expressions 'prig', 'Pharisee', and 'smug'. The existence of such a class, it is contended, is a matter of popular tradition, however small it may actually be; and the mere suspicion of the highbrow taint is enough to alienate from public favour a writer with the peculiar appeal of the author of *Midnight*

and *Two in Pyjamas*. One witness, Mr. Snood, who controls, I understand, a number of railway bookstalls, told us that he is in the habit of selecting the books to be displayed upon his stalls by a scrupulous examination of the 'dust-covers' or paper wrappers. And he went so far as to say that he can tell at a glance from the picture on a dust-cover whether the book which it conceals is healthy and suitable for the general public, or highbrow, and not so.

We have, therefore, these two opposing interpretations of the disputed word 'highbrow'—first, that it is laudatory and signifies intelligence; and second, that it is insulting and signifies intelligence plus arrogance (and, according to the witness Frankau, plus long hair as well; or, if we adopt the words of the witness Vines, plus long hair, anaemia and moral flabbiness).

Now, if there is any substance in the former contention, we should expect to find among the members of the literary craft an eagerness, or at least a readiness, to be named by this name, for, though few writers lay claim to moral excellence, they have all, I take it, a certain confidence in their own intelligences. On the contrary, however, though every author who gave evidence was able without hesitation to name at least one among his contemporaries as a highbrow, I observed a curious reluctance, even in those writers who professedly cater for the educated orders of

society, to be themselves considered highbrows. In fact, we may here again detect a parallel in the field of morals, for all men are proud of their purity, but few will accept without demur the title of a Puritan.

It may be well to remind you of certain passages in the evidence which bear upon this part of the case. Take, for example, the witness Frankau:

Counsel: What do you mean by a 'successful' novelist, Mr. Frankau?

Witness: I mean twenty thousand.

Counsel: Twenty thousand novelists, Mr. Frankau?

Witness: A sale of twenty thousand.

Counsel: In your opinion is it possible for a highbrow to be successful in that sense?

Witness (*decidedly*): Quite impossible. He may be a successful highbrow, but a successful novelist—never.

Counsel: Why not?

Witness: There is no red blood in him. The people want red blood. Red corpuscles. He-men. You never saw a highbrow sitting a horse.

Counsel: Is that a fair test of literary merit?

Witness: It is the test of a Man.

Counsel: You are a person of high intelligence, Mr. Frankau?

Witness: One of the best.

Counsel: Then are you not a highbrow?

Witness: God forbid!

Counsel: Can you name any highbrows?

Witness (rapidly): Mr. Shaw, Mr. Belloc, Mr. Squire, Mr. Murry, Mr. Galsworthy, Mr. Drinkwater, Mr. Lawrence, Mr. Noyes, Mr——

Counsel: That will do for the present. Is Mr. H. G. Wells a highbrow?

Witness: No. I can see Wells sitting a horse.

Counsel: Can you not see Mr. Shaw sitting a horse?

Witness (laughing): Absurd!

Counsel: In your opinion was William Shakespeare a highbrow?

Witness: No; he made good.

This witness, therefore, makes two distinctions: (*a*) between the highbrow and the successful, and (*b*) between the highbrow and the author who can without merriment be visualized astride of a horse. How far this is helpful will be a question for the jury. He was followed by the witness Shaw, an extremely skittish old gentleman, who seemed to have no idea of the procedure, purpose,or indeed the dignity of a court of law.

Counsel: In your opinion, Mr. Shaw, what is the nature of a highbrow?

Witness: Everybody is a highbrow. The

question is nonsense. Only a civilization which spends more on vaccination than it spends on the theatre, and is more excited by a battleship than by an elementary school, could have given birth to such a word. The filthiest peasant in Russia and the stupidest statesman in Whitehall are both highbrows, because each of them knows another man who is more foolish than himself, and that man knows it. The only person alive who is not a highbrow is the stupidest man in the world, and you will find him in Harley Street, Downing Street, or——

Counsel: Stop a moment, Mr. Shaw.

Witness: Why should I stop a moment? You brought me here, presumably, to advertise myself, and advertise myself I will. There is only one division of the human race—the civilized, who appreciate my plays, and the barbarians, who don't.

With these words the witness left the court, and only his obvious inability to furnish useful information on any subject whatever prevented me from having him forcibly brought back.

We then had the assistance of a Mr. Haddock, who told us that he was a humorous writer, but produced no evidence to support the statement. He was asked:

In your opinion is 'highbrow' an offensive word?

Witness: Undoubtedly.

Counsel: Have you been called a highbrow, Mr. Haddock?

Witness: Once.

Counsel: And you resented it?

Witness: Bitterly.

Counsel: Can you give us any idea of what you mean by highbrow?

Witness: A highbrow is the kind of person who looks at a sausage and thinks of Picasso. She thinks life is nothing but a frame for art. You cannot talk to her about the weather. She has no soul for detective stories. She cannot swim. She reads in the bath. She——

Counsel: One moment, Mr. Haddock——

Witness: She quotes French writers at breakfast. She has just read a book which you have not. She says so. She cannot understand the attraction of chorus-girls. She would rather her daughters were brainy than beautiful. She has no sense of humour.

Counsel: But, Mr. Haddock——?

Witness: Wit, sometimes, Sir Ethelred, but no humour. She knows too much. She talks too much. She takes no exercise. She does not care if it snows. She drinks too

much coffee. She does not care for the Colonies. Her soul is in Florence. She cannot cook. She would be at a loss in a conversation with a bookmaker. She——

Counsel: But is the jury to understand, Mr. Haddock, that in your opinion the highbrow is necessarily of the feminine gender?

Witness: Of course. It is one of the special diseases of women.

Counsel: But are there no highbrows among men?

Witness: There are, of course. There are many feminine men, Sir Ethelred.

At this point I directed the witness to leave the box. It is fortunate, perhaps, that the plaintiff in this case is a woman, for this makes it unnecessary for us to find an answer to the difficult sex question which was raised by Mr. Haddock.

We then had the astonishing testimony of the Sitwell family, who elected to give their evidence three at a time, for the reason, I take it, that they are a family of one idea. By arrangement petween the parties this unusual course was bermitted, and Mr. Osbert Sitwell, Mr. Sacheverell Sitwell, and Miss Edith Sitwell, you will remember, entered the box together.

Counsel: You are the three Sitwells?

The Witnesses: Not three Sitwells but one

Sitwell. Milord, we have a protest to make.

The Court: What is the matter with you?

The Witnesses: We do not think that Mr. Shaw should be allowed to come here and advertise himself at his age.

The Court: Nobody must come here and advertise himself at any age.

The Witnesses: Let the New Poets have a chance.

The Court: Very well. You have made your protest. Now what have you to tell us about highbrows?

The Witnesses: All the Georgian poets are highbrows in the sense that one speaks of 'high' pheasant or 'high' grouse—obsolescent, stale, decayed.

Counsel: But is not a high grouse more pleasant than another?

The Witnesses: We can't stand Mr. J. C. Squire.

Counsel: Who would you say is the principal living——

The Witnesses: We can't stand Mr. J. C. Squire.

Counsel: Would you mind telling the Court——

The Witnesses: We can't stand Mr. J. C. Squire.

Counsel: In your view is Mr. Rudyard Kipling——

The Witnesses: We can't stand Mr. J. C. Squire.

Counsel: What is your estimate of——

The Witnesses: We can't stand Mr. J. C. Squire.

Counsel: What is your own contribution to the literature of——

The Witnesses: We can't stand Mr. J. C. Squire.

And so forth. The various obsessions of these authors, young and old, modern or out of date, however interesting in a medical sense, are singularly sterile for the purposes of this Court. But from this and other passages with which I will not weary you we may safely conclude, I think, that the word highbrow, though devoid of any exact scientific significance, has even in literary circles the general force of an abusive term; and it may not inaptly be compared with a boomerang flung by a savage, of which the direction is often uncertain, but the intention behind the throw is seldom in doubt; moreover, in the end it is as likely as not to do as much injury to the thrower as to the throwee.

This view is reinforced by the evidence (far more fruitful) which we have had from lay or non-literary quarters. The witness Vines, for example, a major, was crystal clear. The genus highbrow, in his view, has many species, and all repulsive. Moreover (which is unusual), he has seen these monsters in the flesh. They are banded together, he assured us, in secret or semi-secret societies, which have no other purpose than the performance of indecent plays on the evening of the Lord's Day; they are distinguished in the

males by long hair, Malacca canes, and curls, and in the females by tortoiseshell glasses, Spanish shawls, and shapeless Oriental garments; they have no contact with the life of the people, are incapable of cricket, unacquainted with golf, are wholly without patriotism or decent feeling, and openly praise the so-called artistic works of unknown French and Italian painters whose moral character, it is to be feared, is too often as dubious as their own. This witness gave his evidence in a manly and straightforward way, and to my mind it is convincing. The picture which he drew of the observances of these creatures is so revolting that no lady or gentleman of right feeling could well submit to be named by their name without some effort to secure such protection as the law affords. And I am satisfied that on this point at least the plaintiff has made good her case.

The learned judge had not concluded his address when the Court adjourned.

(X) REX *v.* HADDOCK

Is Magna Carta Law?

THE hearing of this appeal, which raised a novel point of law, was concluded in the High Court to-day.

Mr. Justice Lugg, delivering judgment, said: In this case the defendant, one Haddock, is appealing on a case stated from a conviction by a Court of Summary Jurisdiction under the Transport and Irritation of Motorists Act, 1920. The defendant was summoned before the Gerrard Street magistrates on a charge of causing an obstruction in a public thoroughfare by leaving his motor-car unattended for two hours and ten minutes on the night of December 31st, 1925.

The case for the defence was that the motor-car had not in fact caused an obstruction, and it was sworn in evidence that the road was not in fact a thoroughfare at all in the ordinary sense of the term, but a short blind alley terminating in a blank wall, against which wall the motor-car was left with the lights burning, according to law; and the police officer who made the charge was unable to say that during the period in question he had seen any other vehicle, or indeed any other

human being, enter the thoroughfare which the defendant's vehicle was obstructing. The magistrates, however, very properly, as I think, brushed aside this somewhat frivolous defence and ordered Mr. Haddock to pay a fine of two pounds and the costs of the prosecution, with additional costs of one pound for conducting his defence in rhymed couplets.

Mr. Haddock has now appealed on a point of law, which I confess is novel to me, under the Fourteenth Chapter of Magna Carta. The Fourteenth Chapter of Magna Carta is directed against excessive fines, and provides that

> '*A freeman shall not be amerced* [*that is, fined*] *for a small fault, but after the manner of the fault, and for a great fault after the greatness thereof. . . .*'

And it has been powerfully argued by Sir Rowland Wash that since there is nothing in the Irritation of Motorists Act or in any other statute repealing or suspending this particular Chapter, the Irritation of Motorists Act must be read in conjunction with that Chapter; that the fine of two pounds is excessive and not 'after the manner of the fault', which is a small one, and that it ought to be reduced.

Now in private and even more in public life, there is no doubt that persons are accustomed to speak loosely of Magna Carta as the enduring foundation of what are known as the liberties of

the subject, and to assume that that Charter is as potent a measure to-day as at the time of its origin. But in this Court we are not concerned with private or with public life, but with the law, which has not much relation to either. And, if we examine the Great Charter, as I did for the first time in bed this morning, we are led towards the conclusion that, if this is the foundation of the liberties of the subject, then these liberties are not so numerous as is commonly supposed; for out of the thirty-seven chapters of Magna Carta at least twenty-three have become obsolete, or have been abolished by subsequent legislation, while among the fourteen which are not definitely extinguished there are at least as many for the benefit of the Crown as for the benefit of the subject, and the remainder have only a precarious existence, if any. In Chapter 8, for example, and Chapter 18, which begins:

> *'If any that holdeth of us lay-fee do die, and our sheriff or bailiff do show our letters-patent of our summons for debt, which the dead man did owe to us, it shall be lawful to our sheriff or bailiff to attach and inroll all the goods and chattels of the dead. . . .'*

it is laid down very clearly that debts owing to Government Departments take precedence of all other debts, but it would be difficult to found upon

these chapters any extravagant description of Magna Carta as the fountain of individual freedom. Again, the ordinary citizen will extract no particular satisfaction from the assurance of Chapter 23, that :

> *'All weirs from henceforth shall be utterly pulled down in the Thames and Medway, and through all England, but only by the sea-coasts.'*

Macaulay said that the blood of the uttermost settler in the northern deserts of Australia flowed more freely in his veins as he lay beneath the Southern Cross and studied by its light the unforgettable conclusion of Chapter 29 :

> *'To no man will we sell, to no man deny, to no man delay, justice or right.'*

But we in this Court are well aware that these undertakings have very little relation to the harsh facts of experience. It is the whole business of the honourable profession of the Law to sell, delay, and deny justice—to sell it to those who can afford it, to delay it if the client has money, and deny it if he has not ; and many of us wish that we could sell more justice than we do.

Again, in Chapter 30, it is laid down that :

> *'All merchants shall have their safe and sure conduct to depart out of England, to come into*

England, to tarry in and go through England as well by land as by water, to buy and sell, without any manner of evil tolls (i.e. extortions) by the old and rightful customs.'

But he would be a bold advocate who contended that this was an accurate statement of the law, or, at any rate, the practice of the land to-day. No man, merchant or no, can depart out of England, come into England, tarry in England, or buy or sell without all manner of tolls, extortions, and hindrances by the Crown, which is very right and proper but is not Magna Carta.

Again, it was argued before me that at least that portion of Chapter 29 still has effect which reads:

'Nor will we proceed against a freeman, nor condemn him, but by lawful judgment of his peers or by the law of the land.'

But it was proved in evidence that in fact this method of condemning the freeman is the exception rather than the rule, and it was suggested that this portion of Magna Carta must be interpreted in the light of recent statutes, so that it reads:

'Nor will we proceed against a freeman, nor condemn him, but by lawful judgment of his

peers or by the law of the land, or Government Departments, or Trade Unions, or fussy Societies, or Licensing Magistrates, or officious policemen, or foolish regulations by a Clerk in the Home Office made and provided.'

And in fact in the present case the defendant was not proceeded against by the law of the land, but by regulation ; nor was he condemned by his peers, but by a policeman who expected half a crown, and by a magistrate antipathetical to the motorist.

Now, Lord Mildew said in *Klaxon* v. *Great Western Railway* (1871), 2 Q.B. : 'The whole is greater than the part', and this is undoubtedly the law. And if, on a detailed examination of a statute, as of a bicycle, it is found that nearly every part is obsolete or has been destroyed, there is a strong presumption that the whole has for practical purposes ceased to exist. And in this case I am satisfied that so little of Magna Carta is left that nothing of Magna Carta is left, and therefore that chapter on which the appellant relies must be taken to have perished with the others.

The appellant has done his country an ill service in raising this point, for but for his rash act generations of English orators might have continued in the fond belief that Magna Carta was still the abiding bulwark of our liberties, and for that act I shall

order him to pay a further fine of five pounds. But it is no part of my duty to conceal the truth, and I am reluctantly compelled to declare that Magna Carta is no longer the law.

The appeal was dismissed.

(XI) IN THE CORONER'S COURT

Are Dogs Political Animals?

Soak Riddle

A PATHETIC story was unfolded yesterday at a coroner's inquest on the body of Professor John Barr, the well-known biologist and author of *Animal Intuition, The Instinct of Animals—Is it a Fake?* and other works. Professor Barr, it will be remembered, was found dead in his drawing-room with his wolf-hound standing over him and a battered loud-speaker at his side.

Dr. Struthers, who is well known locally as an after-dinner speaker and unsuccessfully contested Soak West in the recent election, conducted the inquiry and unfolded the pathetic narrative at considerable and indeed excessive length.

'The jury,' said Dr. Struthers, 'will of course frame their verdict in accordance with the evidence; but in this case, from my personal acquaintance with the deceased and his habits of life, I am able perhaps to give you guidance to an unusual degree. Be that as it may, I do not propose that the deceased should occupy the entire stage at this inquiry. No one will deny his exceptional gifts

and character; but what is the use of publicity when a man is dead?'

Continuing, the Coroner said: 'You have heard of the experiments on which the defunct scientist was engaged concerning the instinct and intelligence, if any, of the Animal Kingdom. You have been told of his purchasing, some months ago, an expensive bi-valve wireless set. This act, this—as it now appears—fatal act, was in the first instance in no way connected with his scientific researches, though by one of those strange accidents which warp the destinies of mortal men it was to play a major part in the final drama. At the time, I am compelled to say, I myself attempted to dissuade him from the purchase. That raucous voice from the outer world, I impressed upon him, must certainly introduce an alien note into that quiet house in Soak Bottom, that house devoted to the silent pursuit of knowledge and truth, that house so familiar to you all, that house where to-day the drawn shutters record so poignantly for all of us——'

At this stage two of the witnesses, women, were overcome with emotion and withdrew.

Continuing, Dr. Struthers said: 'The Professor, however, though he honoured me with his confidence and regularly invited my opinion, paid curiously little attention to anything I said. He bought and installed the set, not, I think, for his own entertainment, but for the pleasure of that

wife, helpmate, playmate, who is to-day in all our minds and whom——'

At this point the foreman of the jury burst into tears.

'That poor woman has told you,' proceeded the Coroner, 'how day by day at the appointed hour they would adjust the instrument and, hand-in-hand, enjoy those gems of literature and flowers of song which are nightly scattered abroad among the people of our land. After a week or two, however, both wearied of the practice, and the Professor at least would have abandoned it but for a singular circumstance which must now be considered.

'The Professor noticed, we are told, that however fleeting the pleasure of himself and his wife in the nightly programmes, they appeared to give substantial and enduring satisfaction to the dog Wolf, the fierce and massive hound which for many years was the constant companion of the Professor in his scientific experiments. And he continued for some weeks, in that spirit of self-sacrifice which is the core and kernel of research, to submit himself to the nightly ordeal of radio dance-music, radio oratory, radio lectures, and so forth, in order to observe and record the reactions of the dog.

'The reactions of the dog, it appears, were various; and these variations seemed to be governed, not by any haphazard impulse or

momentary preference, but by the general character of the different items of entertainment apprehended through the loud-speaker—this suggesting, in the Professor's view, a higher degree of aesthetic discrimination and general intelligence than had previously been suspected in the lower animals.

'For example, on hearing the Savoy Havana Band the hound would betray the utmost nervous excitement, moving restlessly about the room and biting the furniture with his powerful fangs. For ballads, operatic, or other emotional music he would sit tense and erect in a corner with his back to the Professor as if slightly ashamed, but with his nose pointed to the ceiling; in which position he would from time to time give out a melancholy howl or whine. In the case of public oratory, lectures on the carburettor or prose readings of a didactic character the dog would lie prone with his eyes fixed upon the loud-speaker, listening intently and now and then wagging his tail as the speaker made his points. The Professor quickly formed the view that the dog was a moderate Conservative with no great faith in collectivist dogma; rhetoric annoyed him; and during the Children's Hour, the Women's Chat, and the humorous recitations he would express his displeasure by a series of sharp barks.

'It became clear, however, that whatever his indifference to particular items he had formed for

the entertainment as a whole a taste which amounted to a passion. There came a day when the Professor decided that not even in the cause of science could he endure another radio evening, and the instrument was not adjusted as usual. At half-past five, according to the evidence of Mrs. Barr, the dog scratched at the study door, and when admitted set up a most pitiful yelping, tugging at the Professor's trousers with his teeth. The Professor, with his trained instinct, allowed himself to be led to the drawing-room, where he switched on "Uncle Caractacus", and the dog on hearing once again the well-beloved voice became immediately his normal self.

'On three other occasions, it appears, Mr. and Mrs. Barr endeavoured to make a breach in the new and distasteful routine of the household, but on each occasion the dog behaved in so violent a manner that the Professor, who was both fond and afraid of the creature, was forced to comply. Nor was the animal content to indulge his bestial appetite alone; for one evening, when the Professor adjusted the instrument as usual and stole quickly out of the room, the dog, so far from listening-in, proceeded to bark so furiously and long that neighbours rushed to the house to inquire what cruel experiment was in progress. After that Mr. and Mrs. Barr gave up the struggle; and Mrs. Barr has drawn a moving picture of that nightly session in the drawing-room—those two

old people cheerfully submitting to torture by jazz music and after-dinner speaking for the sake of their dumb friend.

'I think,' said Dr. Struthers, labouring evidently under strong emotion, 'we cannot speak too highly of Mr. and Mrs. Barr's behaviour. This martyrdom, it seems, had continued for some months when the fatal hour approached. Then, in the space of a few days, the radio authorities included in their programmes two new and widely different "features", the utterances of the Leaders of the three Great Parties on the one hand, and the utterances, on the other, of certain animals at the Zoo. To the first of these—the political speeches—the three at Soak Bottom listened as usual, and the evidence of Mrs. Barr is that by one of the speeches the dog Wolf was profoundly disturbed, and indeed infuriated, so much so that he was with difficulty prevented from destroying the loud-speaker, which Mrs. Barr with commendable courage removed at last to the top of a bookshelf. Members of the jury, there are no politics here, and I expressly desired her not to tell you which of the three speeches she had in mind.

'So much for that. Then came the Zoo. On this occasion Mrs. Barr was out of the room for some minutes, from the broadcasting of the rattlesnake's rattle (at which, by the way, the dog again showed signs of unusual cerebral disturbance) till a few moments after the tragedy.

As to what actually happened we are therefore in the region of speculation. We do not know which animal's utterance (if any) it was that led up to the catastrophe: whether the wild, harsh laugh of the jackass, the facetious cackle of the hyena, the arrogant drumming of the snipe, or the febrile bleat of the Siberian goat. But it is at least a tenable theory that to the dog Wolf, his uncanny animal instinct unnaturally alert in the atmosphere of a general election, there was something in one, or it may be in a combination, of these cries which vividly recalled that other and hateful utterance of a few days earlier; that the inflamed animal, losing all sense of political restraint, hurled himself at the offensive instrument; and in attempting to defend it the aged gentleman died.'

The jury returned a verdict of Death from Unnatural Causes, adding a rider that 'Dogs should be held on a leash when listening-in to political speeches.'

(XII) *IN RE* MACALISTER—RUNCIMAN *v.* PRIM, RUSSELL *v.* PRIM, SIMON *v.* PRIM, LLOYD GEORGE *v.* PRIM, PHILLIPS *v.* PRIM, WALTER *v.* PRIM, STEPHENSON *v.* PRIM, KENSINGTON *v.* PRIM, STANLEY *v.* PRIM, KENWORTHY *v.* PRIM, MACLEAN *v.* PRIM, BENN *v.* PRIM, HADDOCK *v.* PRIM

Legacy to the Liberal Party

THE hearing was continued to-day of an action in the Probate Division arising out of the will of the late Miss Mary Macalister, of Peebles, who left a legacy of one million pounds 'to the Liberal Party'.

Mr. Justice Tooth, in his judgment, said: Lord Mildew said in *Fox* v. *The Mayor of Swindon*, 'Dead men tell no tales'; and it were better sometimes if they made no wills. In the painful case which is now approaching its conclusion, the defendant, Mr. Prim, is the executor of a Miss Macalister, and the several plaintiffs are thirteen persons, each of whom asks for a declaration that he is or represents 'the Liberal Party' and is therefore the proper recipient of a legacy of one

million pounds. The testatrix, an unmarried woman of great age, was active in politics, it appears, at the time of Mr. Gladstone's first Home Rule Bill, and after the death of Sir Henry Campbell-Bannerman lived the life of a recluse in a mountain cottage. It is therefore not surprising that, out of touch with modern conditions, she did not describe the object of her bounty in terms of greater precision, but it is unfortunate, and testators who have similar bequests in contemplation would do well to provide some indication of the particular Liberal Party which they have in mind, such as a telephone number or a Christian name.

It has been proved in evidence before me that there are five main Liberal Parties, and the relations between them are such that no one of these parties will willingly share a taxi with any other, while each of them has at least one offshoot which is accustomed to foam at the mouth when the parent body is mentioned. Under these conditions the efforts which I made to bring about a compromise between the parties were naturally unsuccessful, and any proposal for a division of the spoils resulted only in a further division of the Israelites. Indeed, it says much for the sincerity with which these colleagues detest each other that, rather than share a common bank-balance, they would cheerfully continue with thirteen independent overdrafts.

I was asked by Mr. Carruthers, who represents the fourth Parliamentary Liberal Party from the right, to base my decision on considerations of principle, and to say that that Liberal Party is *the* Liberal Party which preserves intact and untarnished on the field the holy banner of the true Liberal faith. But when I adopted this line of inquiry I was disappointed to find that each of the plaintiffs was the one authentic repository, torch, and organ-voice of Liberal principle; and, though few of them were so far in agreement as to be able to construct a common catalogue of these principles, all of them were agreed that the other parties had consistently ignored them. Further, though many of them were insistent that principles were everything and persons nothing, the discussion of principles in this Court has invariably led to the most distressing exchange of personalities, for those who attached the most importance to principles were loudest in their denunciation of persons.

Again, I have found it difficult to arrive at any clear definition of political principle. The evidence on the whole goes to show that a man who has made up his mind on a given subject twenty-five years ago and continues to hold to his opinions after he has been proved to be wrong is a man of principle; while he who from time to time adapts his opinions to the changing circumstances of life is an opportunist. One of the plaintiffs, a Mr.

Lloyd George, in his evidence bitterly described a man of principle as 'one who religiously keeps to the left in a one-way street', while the witness Simon, who followed, described the witness George as one who drives on both sides of the road everywhere. The witness George said that he had little use for principles which wore side-whiskers and crinolines, and the witness Simon replied that these, at any rate, were preferable to principles which were naked and unashamed. I asked the witness Asquith if the widespread assertion that gentlemen prefer blondes was the kind of generalization which he had in mind when he spoke of principle. He replied that, if a man of principle had, for thirty years of Parliamentary life, endured without flinching the honest obloquy of the multitude and the insidious calumny of cabals in the conviction that men of gentle birth are, for the most part, more powerfully attracted by women of fair complexion and light colouring, then it would need more than the occasional spectacle of a public-school man in the embraces of a dark woman to extract from him a recantation of his faith. He added that, though he envied a man (such as the witness George) who was able to change his mind every ten minutes, for his own part he was unable to achieve any material alteration of opinion in less than ten years. He also said that the chameleon was endowed with the power of changing its colour for the purpose

of concealing itself from view, but there were some chameleons who changed so rapidly and often that the only effect was to attract the attention of their enemies.

These observations, however entertaining, have advanced me very little towards a just disposition of the dead woman's property. The plaintiff George and others invited me to ignore the question of principle and direct my mind to the realities of the situation. They said that the other plaintiffs consisted for the most part of collections of fossils of great age, embedded in the rocks of principle, and having none of the attributes of life except a miraculous power of polysyllabic speech, and they argued that it could not have been the intention of the testatrix to leave so much money to a number of talking fossils while there was any Liberal Party which could be said to be actually alive and possessed the substance of popular approval if not the trappings of principle. And this appeared to be a promising line of inquiry until it was sworn in evidence by the witness Runciman that the Liberal Parties referred to were supported entirely by Conservatives.

I have therefore turned my attention in another direction, which was suggested by one of the plaintiffs, a Mr. Haddock, of Hammersmith, who confesses frankly that the Liberal Party which he represents is a party of one, but insists nevertheless that it is the only Liberal Party. It has struck

me that it is odd that no one of the distinguished Liberals concerned in this case has used the word Liberty, and had it not been for the obscure Mr. Haddock the subject might never have entered my head. But Mr. Haddock has argued with some force that there must at one time have been some shadowy connexion between the Liberal Party and the idea of Liberty. What is more important, he has called evidence to show that the testatrix, Miss Macalister, was herself an earnest lover and apostle of liberty, resented strenuously all that large body of human actions which may be roughly classed as 'interferences', and attached herself to the Liberal Party on the assumption that it stood for freedom, not only in Ireland, but in England. Now, in cross-examination, the witnesses Oxford and Asquith, George, Grey, Simon, Runciman, and indeed nearly all the plaintiffs, have confessed that they have been guilty from time to time of legislation, or proposals for legislation, of which the main purpose was to make people do something which they did not wish to do, or prevent people from doing something which they did wish to do. Few of them could point to an item in their legislative programmes which had any other purpose, and, with the single exception of Mr. Haddock, they have no legislation to suggest of which the purpose is to allow people to do something which they cannot do already. On the contrary, it appears they are as

anxious as any other party in Parliament to make rules and regulations for the eating, drinking, sleeping, and breathing of the British citizen. On these grounds, therefore, Mr. Haddock has argued that these plaintiffs have not the idea of liberty in the forefront of their political equipment, and do not therefore deserve the name of Liberal as the testatrix understood it; and in my judgment that argument is well founded. Mr. Haddock's own programme is simple: (*a*) to propose no legislation unless its purpose is to allow people to do what they like, and (*b*) to support no legislation whose purpose is to stop people from doing what they like.

Here and there, he admitted, good cause being shown, he is prepared to compromise; but that, *prima facie*, is his foundation and beginning. For example, the first measures which he intends to introduce are a Bill to repeal the Marriage Act of 1886, by which a wedding may not take place after three o'clock in the afternoon, a Bill to allow the sale of Cigarettes and Chocolate at any Hour at which Anyone is Willing to Sell Them, a Bill for the Institution of the Death Penalty for Police Officers who Enter Respectable Night-Clubs Disguised in Evening Dress, and other beneficent, if minor, measures whose purpose is neither to improve, uplift, enrich, nor reform the British subject, but to increase, by however little, his liberty. I have decided therefore that Mr.

Haddock alone of these plaintiffs has made good his claim to be that Liberal Party which the testatrix had in mind, and an order will be made accordingly. The plaintiffs George and Asquith to pay Mr. Haddock's costs.

(XIII) SUET *v.* HADDOCK

Status of Authors

WITH his lordship's address to the jury this case approached its conclusion to-day. He said:

Gentlemen, in this case the plaintiff is a manufacturer, and the defendant, Mr. Haddock, is, among other things, an author, which fact should alone dispose you in the plaintiff's favour; for, while the life-blood of our country is its trade and commerce, we do not, fortunately, depend upon our literature for anything that matters.

The defendant Haddock does not appear to have been uniformly successful in any of the regular departments of writing; or at any rate he has not grown rich, which, as I ruled at an earlier stage of the case, is *prima facie* evidence of incapacity. Recently, however, he has devised and practised a style of writing which is quite new to this country, and, like other novelties, has proved most profitable. Calling himself a 'Commercial Critic', he writes each week, in a paper called *Veritas*, a reasoned article appraising the latest products of British or foreign manufacturers. He uses the style and manner of the fashionable literary or dramatic critic, and, as you have heard, he contends

that the public need for expert and impartial guidance is at least as strong in the commercial as in the literary field.

Some of his earlier notices were extremely flattering, so much so that extracts from them were widely circulated by the manufacturers in their advertisements of the goods concerned, and there was soon shown an eagerness among the other manufacturers to have their products reviewed in Mr. Haddock's column.

Mr. Haddock, however, following in everything, as he says, the model of the literary or dramatic critic, who will not 'notice' a book or play if he has to pay for it, declined to write about any article of which he had not received a free sample for review. And such is the prestige of Mr. Haddock's column that a large number of important firms have complied with this curious condition. The Rolls-Royce Company sent him for review a copy of their 1928 model, and you will remember the patronizing manner in which he wrote about it:

> *'The work shows promise. This young Company, whose name is new to me, have evidently the root of the matter in them, and, if they will try again, may well produce something which is really worth while.'*

The sometimes grudging character of his praise, however, did not prevent other firms, confident in

the excellence of their wares, from pressing them upon him. Mr. Haddock has now a small fleet of motor-cars for review, he lives in a review house, his clothes and his furniture are free samples, he has more free pianos, gramophones, billiard-tables, and wireless-sets than he is able to enjoy with comfort, and the evidence is that he subssts almost entirely on goods and services provided free of charge by traders and manufacurers anxious for his impartial but favourable opinion.

Whether or not he has been impartial it will be for you to say. There is abundant evidence that he has not been afraid to cause annoyance, though against that you must weigh the suggestion of the plaintiff that many of the goods commended by Mr. Haddock have been accompanied by large sums of money. His habit of comparing unfavourably the British manufactures of to-day with the products of past centuries and foreign countries has given especial pain. Tradesmen have complained that, if only a commodity is Russian, American, or French, it is certain of his applause. His constant references to Chippendale and Sheraton have admittedly irritated the modern furniture trade. And his comment on a British piano, 'Not a bad piano, but how much better they do these things in Germany!' was not considered helpful.

His answer to these complaints is that in this, as in everything, he is only following the traditional lines of British criticism. In the present case, as

you know, he has gone too far for the satisfaction of the plaintiff. The plaintiff manufactures, among other things, a patent medicine called 'Sinko', which is widely advertised as having the power to remove or remedy 'That Sinking Feeling'. Now what the defendant wrote about 'Sinko' was brief and blunt:

> '"*Sinko*" *does* not *remove That Sinking Feeling, for I have tried it.*'

The plaintiff says that these words are defamatory, and claims damages. The defendant says that the words are true, or in the alternative that they are in the nature of fair comment upon a matter of public interest.

You have heard the evidence. Several witnesses have sworn that, like the defendant, they took a dose of 'Sinko', and that, so far from being relieved, their condition was, if anything, worse than before.

Witnesses for the plaintiff, on the other hand, martyrs in every case to the discomforts of sinking, have sworn that no sooner was the cork removed from the bottle than they experienced a sensation of buoyancy, well-being, and general beatitude. The expert medical testimony for the plaintiff is that 'Sinko' is made of *hydrogenalin*, a new and secret chemical compound. The expert medical testimony for the defence is that 'Sinko' is made

from wood-shavings, lubricating oil, and bits of straw. All this evidence you will carefully sift, and I shall put to you the following questions:

(1) Was the defendant sinking?
(2) Did 'Sinko' relieve his 'sinking feeling'?
(3) If not, would it have relieved the sinking of a reasonable man?
(4) Damages?

Now, if the defendant has *not* established to your satisfaction that the words complained of are true in substance and in fact—and, in order to muddle you, I should explain that they may be true in fact but not in substance, as they may be correct in substance but erroneous in fact—then there remains the defence of fair comment. The defendant says that, as a critic, he has the right to make a critical statement, which, though not necessarily supported by the general experience, is a fair expression of his own individual opinion, such as any reasonable man with the same experience might make. He has quoted, I think irrelevantly, certain adverse criticisms on his own work, upon which, without success, he has taken legal proceedings. In *Haddock* v. *Thwaites* the defendant said of Mr. Haddock's book, *Daffodils*, 'Tosh! . . . drivel . . . vulgar and insincere . . .' and, although several other papers had printed more favourable opinions, it was held that these

expressions were fair comment on a matter of public interest. And the defendant now claims the same freedom of comment upon other men's wares as is permitted to the critic of his own.

This is a large and, I think, an untenable claim. It assumes that literature is as important as trade, and that the author has the same rights as the business man. But this has never been the law. It must be clearly understood that an author, as such, has no rights. At Common Law he ranked with women and *cattle demenant*, and any man, in the absence of malice, violence, or fraud, is entitled to take away his livelihood by hostile utterances however ill-founded. But it is quite another thing for an author to take away the livelihood of an honest trader by ill-considered judgments on the quality of his goods, for this is to assail the whole fabric of our Commonwealth. I shall therefore direct you that there is no evidence on which you may find that the defendant's words were in the nature of fair comment, and unless he has satisfied you that he was in fact sinking, that the prescribed dose of 'Sinko' did not relieve his sinking, and, further, that it would not have relieved the sinking of a reasonably sinking man, understanding by that a reasonable man sinking within the recognized limits of everyday experience, you will find for the plaintiff; and in that case you will award him damages of, I suggest, about ten thousand pounds.

The jury retired.

(XIV) REX *v.* HADDOCK

Can a Worm Turn?

A LARGE crowd, with bands, assembled outside the West London Police Court to-day when the trial of Albert Haddock, regarded by the Income-tax Commissioners as a test case, was concluded.

The *Chairman of the Bench* said: In this case, Mr. Albert Haddock of Hammersmith has been summoned under the Income Tax Acts for knowingly making an untrue or incorrect return of income upon Form No. 11, YEAR 1927–28, ENDING 5TH APRIL 1928, PROFITS OF TRADES, PROFESSIONS, ETC.; INTEREST, INCOME FROM ABROAD, ETC. (SCHEDULE D.). This form consists of (1) A principal form, consisting of eight pages, foolscap size; and (2) an enclosure, consisting of eight pages, foolscap size; and (3) a short slip of some six thousand words, neatly attached to the principal form with gum. The accused person wrote down in every empty space the Latin word *nil*, and in the space provided for TOTAL PROFITS OF TRADES, PROFESSIONS, ETC., the words 'Absolutely *nil*'; he then signed the form and returned it to the Inspector of

Taxes. And the present prosecution is the result of that action.

Now the accused, who has conducted his own case, has treated the Court with commendable frankness, and although, by his own confession, a literary man, appears to have in a rudimentary state the instincts of a Briton. And I have therefore paid more attention to his defence than I have generally time for in this Court.

His defences are numerous. Firstly, he has sworn on oath that on the slip (3) already referred to (which draws attention to the change of basis for the assessment of income-tax from the average of the three preceding years to the general basis of the profits or income of the preceding year), there is printed, at the taxpayers' expense, the following, as he says, flippant passage :

'The provisions of Section 29 (3) are as follows: "If any person who for the year 1926–27 was assessed and charged under Schedule D or according to the Rules applicable to that Schedule in respect of profits or gains or income arising from any source upon an average of a period of three years or more proves that the profits or gains or income of either of the first two of the three years upon the average of which he would, but for the provisions of this section, have been charged for the year 1927–28 were less than the profits or gains or income for one year upon an

average of the six years preceding these three years or, if he was not in possession of the source of these profits or gains or income during the six years aforesaid, upon an average of the less period preceding the three years during which he was so in possession, he shall, on giving notice in writing to the Inspector not later than the fifth day of October, nineteen hundred and twenty-seven, that he desires so to be charged, be charged to tax for both the years 1927–28 and 1928–29 in respect to the profits or gains or income arising from that source on the amount on which he would have been charged if this section had not passed." '

The evidence of the accused is that in this pronouncement (which is headed NOTE AS TO THE RELIEF WHICH MAY BE CLAIMED BY TAXPAYERS) there are nearly two hundred words; that, after reading the first fifty words, he laughed heartily; that he then began again and read the whole passage through from start to finish six or seven times, first silently, then aloud, and finally singing to a chant in B minor; that after these exhaustive experiments the words still conveyed no meaning to his mind whatever; that he concluded that not even a Government Department could with serious intent have issued to the whole body of income-tax payers two hundred words entirely devoid of sense or meaning; that

therefore his first impression was probably correct and the whole Form a base practical joke, to which he replied in the same spirit and kind.

Having myself studied the Form in question, I find this defence a good one. Unfortunately, however, Haddock has put forward certain alternative defences, which somewhat complicate the case.

Secondly he says that admittedly Section 29 (3), which I have quoted, is not yet law, and that he sees no reason why any man should split his head over it until it is.

Thirdly, he points out that he is asked to give an estimate of his profits and gains for the financial year (1927–28) which lies before us, and that his estimate of these profits is in all veracity most happily expressed by the Latin word *nil*.

Cross-examined, he said: 'There will be no profits of my trades, professions, etc., under Schedule D, because there will be no trades or professions, etc. I do not propose to work during the forthcoming financial year. I receive no encouragement to work, to earn money, or to save money. If I earn money it is sent to America; if I save money it is unearned income and immoral. If I earn no money my children will be educated by the State free of charge; if I earn money I cannot afford to send them to school. My own needs are few and I can easily exist for a year by systematic week-ends and sponging on relations.' To this extraordinary outburst the prosecution

replied that the *general basis* for the assessment of income in the current year is the profits accruing during the previous year, and that his last year's income should have been returned. The accused answered that obviously that general basis is only put forward as a rough and untrustworthy guide where the taxpayer has admittedly the intention of pursuing in the coming year the same professional activities as in the year preceding; but where, as in his case, the person assessed does not expect or propose to earn anything this general basis ceases to have importance; that income above all things is a question of fact, and that 'No Income, No Tax' is still a fundamental principle of English Liberty (see Lord Mildew in *Mucklow* v. *Mangles* (1871), 2 A.C. 314). This defence also appears to me to be unanswerable.

Fourthly, he says that, as a professional man (if writing can be called a profession), he sees no reason why any professional man should in any way assist the officers of the Crown in the collection of Revenue; that the professional man is the dog's-body of the State; that he is constantly writing to *The Times* newspaper or to Ministers to protest against injustices, or to point out the errors of His Majesty's Government; that no notice is taken of these protests; that he is referred to in Parliament contemptuously as a *direct* taxpayer, as if he were somehow immune from the payment of indirect taxes; that in fact he pays the greater

part of both; that the wine-tax is monstrous, the whisky-tax monstrous, and the tobacco-tax monstrous; that he sees no reason for the present ferocious treatment of these simple indulgences, while those poisonous pleasures with which women ruin their systems, such as tea, coffee, and sweets, are classed as 'necessaries' and go almost free; that beer is as much a necessity as tea; that there should be no representation without taxation, and that any woman may have his vote if she will take over his taxes; that the general and other strikes were responsible for the financial shortage of the country; that he was not responsible for these strikes, but, on the contrary, constantly remarked upon their futility; that the principle of retribution appears to have been forgotten; that the deficit was caused by the follies of certain persons and classes and should have been made up by such taxes as would have demonstrated to such persons and classes that strikes cost money; that he is in favour of increased taxation of the manual worker, who spends the money; that he (Haddock) has studied carefully the items of National Expenditure, and that from that eight hundred million pounds he (Haddock) receives no benefit except the agreeable spectacle of the Changing of the Guard and an occasional view of a distant battleship; that if every Government Department were to collapse in ruins at this moment he (Haddock) would not be a penny the worse; that in these

circumstances he does not propose to exhaust himself by any elaborate efforts to assist the Inland Revenue Department to collect his money; that when a tax is placed upon bookmakers Whitehall becomes impassable for the press of deputations anxious to express their views to the Chancellor of the Exchequer, and the tax is instantly reduced; that the similar heart-cries of the professional man are instantly suppressed or coldly ignored; that this must now be stopped; that he has founded a Society to stop it; that the income-tax is intolerable; and that the Income-tax Delayers' Association are paying his expenses in this case.

In my judgment all these defences, severally and collectively, are good defences, and the prisoner is acquitted.

(XV) CHICKEN *v.* HAM

The Lawyers' Dream

THE House of Lords to-day delivered judgment in the notorious Gramophone Libel Case.

The *Lord Chancellor* said: My lords, this case may well go down to history as 'The Lawyers' Dream'. From first to last it has occupied the attention of the Courts for more than four years. Two juries have disagreed about it and one was imprisoned; there have been two trials of the action in the King's Bench and two appeals to the Court of Appeal, while for the past fourteen days it has monopolized the attention of your lordships' House. Twenty-five King's Counsel have been from time to time concerned in the case, each of them accompanied by a member of the Junior Bar, which juniors have received by custom a remuneration equal to two-thirds of their leaders' fees. These fees have with few exceptions been a thousand guineas marked on each brief, plus a daily payment by way of stimulus of one hundred guineas or more; and there are present at the moment no fewer than eight learned counsel who will receive between them a sum of about six hundred and fifty pounds for sitting quietly in

their places to-day and listening as attentively as they are able to your lordships' learned judgments. These judgments are five in number, and each of these, therefore, lasting an hour or less, will cost somebody about one hundred and fifty pounds, a figure for which it is possible to engage the most expensive variety artist for a week.

It is not therefore astonishing that the costs of this case are estimated already at a figure between two and three hundred thousand pounds. But it would be very wrong to suppose that this sum has not been expended for the benefit of the community. The point which your lordships are required to decide has never been decided before, and, if your lordships are able to decide it now, it need never be decided again, nor can it be decided otherwise. It is never likely to arise again, but that is another matter. Your lordships' House is almost the only authority in this mortal world whose word on any subject is the last word for ever. Your pronouncements have the unalterable force of a law of nature; and if we are able by taking pains to add a single grain of certitude to the shifting sands of human affairs, is there any one who is prepared pedantically to count the cost? 'It is something,' as Lord Mildew said in *Rex* v. *Badger*, 'to dot an "i" in perpetuity.'

This is an appeal by one Ham against a decision of the Court of Appeal sitting *in ludo*, reversing a judgment by the Divisional Court (Adder, J., and

Mudd, J.), reversing a decision by Judge Brewer in the Shepherd's Bush County Court. The facts are these. The man Ham made a gramophone record, which consisted of a number of uncomplimentary statements, composed and uttered by himself, concerning the private life and personal appearance of Mr. Ebenezer Chicken, the head and father of the well-known multiple stores. This record he sent as a Christmas present to Mr. Chicken, who, at a gathering of his friends and relations, put the record on his own gramophone, when there issued from the instrument, to the astonishment, horror, and satisfaction of the company, a series of defamatory and abusive expressions directed unmistakably against the head of the household. Mr. Chicken, therefore, brought a suit for defamation against Mr. Ham. Now, my lords, you are aware that by the mysterious provisions of the English law a defamatory statement may be either a slander or a libel, a slander being, shortly, a defamation by word of mouth, and a libel by the written or printed word; and the legal consequences are in the two cases very different. A layman, with the narrow outlook of a layman on these affairs, might rashly suppose that it is equally injurious to say at a public meeting, 'Mr. Chicken is a toad', and to write upon a post card, 'Mr. Chicken is a toad'. But the unselfish labours of generations of British jurists have discovered between the two some profound and

curious distinctions; for example, in order to succeed in an action for slander the injured party must prove that he has suffered some actual and special damage, whereas the victim of a written defamation need not; so that we have this curious result, that in practice it is safer to insult a man at a public meeting than to insult him on a post card, and that which is written in the corner of a letter is in law more deadly than that which is shouted from the house-tops. My lords, it is not for us to boggle at the wisdom of our ancestors, and this is only one of a great body of juridical refinements handed down to us by them, without which few of our profession would be able to keep body and soul together. *Jus varium, judex opulentus.*

Now in this case it was held by the County Court judge that Mr. Ham's utterance through the gramophone was a verbal slander, and that therefore the plaintiff must prove that he has suffered some special and material damage. This he was unable to do, for, on the contrary, his friends have visited him with even greater persistency, and as a result of the publicity which the case received the business of Chicken's stores was actually augmented. Mr. Chicken, therefore, appealed to the Divisional Court, which held that the utterance complained of was libel and not slander; but the Court of Appeal by a majority reversed this decision and held that it was slander and not libel; but, for reasons which I am wholly unable

to follow, a new trial was ordered; and Mr. Chicken added a new wing to his stores.

With the proceedings of the next few years we need not concern ourselves in detail; they culminated in a second hearing by the Court of Appeal, which held on this occasion that Mr. Ham's action was libel and not slander. Mr. Ham appealed. Mr. Chicken added another wing to his stores, and a large new issue of capital was made.

Now, my lords, we are called upon to decide whether the words complained of, which are without doubt defamatory, and have so been found, are in the nature of a libel or a slander. I have myself no doubt as to the answer. The law is that the spoken word, if defamatory, is a slander, and I do not follow the Master of the Rolls when he says that by 'spoken' we are to understand 'spoken' in the sense in which the word was understood at the date when 'spoken' became the essential element in the definition of slander, that is, spoken by the vocal organs of the human frame without the intervention or assistance of a machine. It is clear that these words were spoken by Mr. Ham through this instrument, and the absurdity of any suggestion that they were not is apparent if we accept the only other alternative and say they were *written* through the gramophone. The law is clear. The appeal must be allowed.

Lord Lick said: I do not agree. This is a

libel and not a slander. The law is clear. *Potts* v. *The Metropolitan Water Board* shows that the distinction in law is not between the spoken and the written insult, but between that which is uttered once, and once only, and that which is uttered in such a form that it is capable of indefinite repetition or publication at the will of others than the original utterer. A statue is not a slander, neither is it written (*Fish* v. *Mulligan*). There is nothing absurd in speaking of writing on a gramophone. Indeed, the first half of the word is derived from a Greek word meaning 'I write'. In *Silvertop* v. *The Stepney Guardians* a man trained a parrot to say three times after meals, 'Councillor Wart has not washed to-day'. It was held that this was a libel. The appeal must be dismissed.

Lord Arrowroot said: I do not agree. The law is clear. The appeal must be allowed.

Lord Sheep said: I do not agree. In my judgment this case has been from the first a brilliant and elaborate advertising manœuvre for the advancement of Mr. Chicken's stores, which this year, I notice, declared a dividend of fifty-six per cent. It is clear to me that the man Ham is in this case the tool and servant of the man Chicken; that the defamatory utterances of Ham were made at Chicken's own instigation and in a manner ingeniously calculated to provoke prolonged discussion and disagreement among His Majesty's

judges; that this object having been attained, to the great notoriety and advantage of Mr. Chicken's business, Mr. Chicken in any event will cheerfully pay the costs of the entire proceedings; and that your lordships' House has for the first time been employed as an advertising agent for a multiple store. But as to the point ostensibly at issue, I concur with my learned brother Lord Lick. The law is clear. This is a libel and the appeal must be dismissed.

Lord Goat said: The law is clear—— (At this point, however, his lordship suffered a heart attack, and succumbed.)

The *Lord Chancellor* said: Our learned brother's unexpected demise is particularly unfortunate at the present time, two of your lordships having held for the appellant and two for the respondent. Opinion therefore is equally divided, and this House is unable to say whether the words complained of are a libel or a slander, and the judgment of the Court of Appeal must stand.

The House then adjourned.

[NOTE.—But *quaere*—in view of the fact that the two decisions of the Court of Appeal are contradictory it is doubtful whether it can be taken that the point is definitely settled.]

(XVI) REX *v.* THE COMMISSIONER OF POLICE, CHIEF INSPECTOR CHARLES, INSPECTOR SMART, SERGEANT OLIPHANT, AND CONSTABLE BOOT

Are Constables Quite Nice?

AT the Old Bailey the hearing of this case approached its conclusion to-day when Mr. Justice Swallow began his address to the jury. He said:

Gentlemen of the Jury, the facts of this distressing and important case have already been put before you some four or five times, twice by the prosecuting counsel, twice by the counsel for the defence, and once at least by each of the various witnesses who have been heard; but so low is my opinion of your understanding that I think it necessary, in the simplest language, to tell you the facts again.

The prisoners are officers in the London Police Force, and, at the instigation of a public-minded citizen, Mr. Albert Haddock, they are accused of conspiring to do certain unlawful acts. Now it is my duty to inform you that, although a given offence by a single individual may be a trifling one, a conspiracy by a number of persons to commit that offence in concert may be a much

more serious affair; and in view of the stupidity which I see carved upon your faces I will explain that by an illustration which should be intelligible to the most bovine member of the jury, and may even penetrate to the slumbering consciousness of the fourth gentleman from the left in the back row. For any member of a quartet to sing out of tune is undesirable; but if by arrangement they *all* sing out of tune, the act is many more than four times more deplorable.

Some of the offences alleged in this case appear trifling in themselves. By the wise ordinances of our land it is unlawful to buy or sell chocolates after the hour of half-past nine o'clock in the evening or to buy cigarettes, cigars, or matches after the hour of eight. It is not for the subject to question or comment on these provisions. It is about the hour of half-past nine that the thought of chocolate first enters the minds of large numbers of the citizens, and it is right and proper that at that precise hour the supply of chocolate should be sternly cut off by a maternal Government. As for the cigarettes, these regulations are in line with the ancient tradition of this island, which has always been to discourage and irritate the foreign visitor by every form of inconvenience and restriction, and so dispose him to return to his own country.

Now the evidence for the prosecution is that at eight-five p.m. on April 14th the defendant Boot,

being in plain clothes, entered the bar of the Folliseum Theatre and asked the barmaid for a packet of Anodyne cigarettes. Miss Perceval, as she has told you, replied that the magic hour was past, but Boot pleaded with her, and, no one else being present except the vigilant Haddock, who happened, it appears, to be preparing his mind for the performance, Miss Perceval at last relented. As you have seen, Boot has a pleasant countenance and manly figure, and Miss Perceval liked the look of him. Her evidence is that he put her in mind of a Mr. Thomas Mix, a gentleman who has not been called in evidence and is not known to the police. At nine-thirty-five the defendant Boot again entered the bar and asked for a box of chocolates. Miss Perceval, who had just refused a number of similar requests, was moved by the spectacle of this strong man pleading for sweetmeats, and as a personal favour made him a surreptitious sale at the end of the interval, when every one had left the bar except, as it happened, Mr. Haddock, who was refreshing his mind for the second act, and had been intensely irritated by Miss Perceval's refusal to sell him chocolates, of which, as he told you, he is passionately fond.

Boot then took Miss Perceval's name and address and informed her that a charge would be made. The management was prosecuted and fined, and the tender-hearted Miss Perceval was dismissed from their employment. There is no doubt upon

the evidence that Boot deliberately broke or procured a breach of the law, and he has told you that what he did he did by the general or specific instructions of his co-defendants.

Now this is only one of a number of similar episodes. In recent years, it appears, there has entered for the first time, systematically and unashamed, into the administration of British justice the repellent figure of the *agent provocateur*, which is a French expression signifying an official spy who causes an offence to secure a conviction; and I use that phrase partly to impress upon you your own profound ignorance and partly because there is no other. There is no other phrase, and for a very good reason; the idea is so repugnant to British notions of fair play and decency that it has never found expression in our language. I have seen no comment, judicial or other, upon the importation of this loathsome practice; it has stolen in, unblessed and almost unobserved, and has taken a firm place in the national life. It is not employed for the suppression of the major crimes, where official dishonour might be forgiven in a noble cause; no constable causes himself to be murdered or robbed for the protection of the public by the apprehension of a dangerous person. But it is the constant support of small prosecutions for small offences wisely invented by righteous people for the hindrance or prevention of public enjoyment.

The defendant Boot has been prominent in many of these. In one of his exploits, as you have heard, a humble tobacconist had a cigarette-machine in his shop; Boot invited him to place a sixpence in the slot for him, and, on the man obligingly doing so, he was gloriously prosecuted for an offence against the Shop Acts. Boot, it is said, has more automatic-machine prosecutions to his credit and has deprived more barmaids of their livelihood than any officer in the Force. Boot is always in disguise. With the defendants Charles and Smart, as you have heard, he lurks in theatres and in public-houses, in sweet-shops and night-clubs, in borrowed overalls or chartered evening-dress as the occasion demands; he endears himself to women, is affable to men, and at last, by a shameless exploitation of his personality, demands and is granted, at the public expense, tobacco, chocolates, matches, beer, snuff, champagne, and barley-sugar, or whatever other commodity it may be unlawful at that time and place to purchase. The ordinary citizen, however rich, contents himself with an occasional lapse, but Boot is constantly breaking the law. And this is the more shocking from the honest aspect of the man. If the evidence is to be believed, seldom in the history of wrongdoing can a countenance so open and engaging have been associated with so much duplicity.

It is urged for the defence that these officers have broken the law for the law's good; but this

is as much as to say that the police may break a man's head if he complains of headache. This, however, is a matter to be considered in mitigation of sentence, if any ; though I may say at once that I shall not consider it. It cannot be too clearly understood that the police are not entitled to break the law, and so long as I am on this Bench I shall do what I can to discourage the hateful practices of the *agent provocateur*. If the public cannot be prevented from enjoying themselves in an honest and straightforward manner they had better be allowed to enjoy themselves. And if you find, as you had better find, that these officers, high and low, have been guilty of conspiring together to do things which the good Mr. Haddock is not allowed to do, then you will return a verdict of ' Guilty '. If, on the other hand, you find that, on the weight of the evidence, adding one thing to another and taking this away from that, looking upwards and downwards and sideways and all round, they have not been guilty of the acts alleged, then you will return a verdict of ' Not Guilty ' ; and I shall ignore your verdict. Now, gentlemen, I have done my duty. Do yours.

The jury retired.

(XVII) THE BISHOP OF BOWL, EARL RUBBLE, EVADNE LADY SMAIL, JOHN LICKSPITTLE, GENERAL GLUE, AND OTHERS *v.* HADDOCK

A Cross Action

(*Before Mr. Justice Snubb*)

THIS action, which raises a novel point in the law of libel, drew a large house yesterday.

Sir Antony Dewlap, K.C., in opening the case for the plaintiffs, said: This action for defamation is brought by a number of distinguished citizens suing in conjunction in respect of an ingenious series of malicious libels composed, written, and published by the defendant, Mr. Albert Haddock, an author and journalist of loathsome antecedents and inconsiderable income. The action is unusual, melud, not by reason of the expressions complained of, which are no more than the ordinary envious outpourings of an unsuccessful man, but by reason of the channel which the defendant has selected for his abuse. Melud, that channel is no other than the innocent and familiar 'Cross-word'——

Mr. Justice Snubb: What is that?

Sir Antony Dewlap: Forgive me, melud. Melud, with great respect, melud, a cross-word puzzle is a form of puzzle, melud, in which a number of numbered squares in a chequered arrangement of—er—squares, melud, have to be filled in with letters, melud, these letters forming words, melud, which words are read both horizontally and vertically, melud—that is, both across and down, if your lordship follows me—and which words may be deduced from certain descriptions or clues which are provided with the puzzle, melud, these descriptions having numbers, melud, and these numbers referring to the squares having the corresponding numbers, melud, which are to be filled in with the correct letters and words according to the descriptions which have the corresponding numbers, melud, whether horizontally or vertically, as the case may be. Does your lordship follow me?

Mr. Justice Snubb: No.

Sir Antony Dewlap: Melud, I have here an easy example which will perhaps assist your lordship; and, if I may amplify that in this way, melud—melud, if I were to ask you to give me the name of a learned and sagacious High Court judge in five letters, beginning with S, I think your lordship would readily arrive at a solution? (*Laughter.*)

Mr. Justice Snubb (*benevolently*): I should give you the name of my learned brother Slugg. (*Laughter.*)

Sir Antony: Your lordship is too modest. (*Laughter.*) That, however, melud, is the principle of these puzzles. Now as a rule, melud, the descriptions or clues provided are brief and the correct solutions are the names of mythical animals and Biblical characters, prepositions, foreign towns, classical writers, obscure musical instruments, little-known adjectives, and so forth. In the puzzle, however, or series of puzzles, which the defendant has written and published in *The Cross-Word Times*, most of the clues are wordy and long, and all of them refer or are alleged to refer, in terms which whether directly or by implication are grossly offensive, to living persons, and as a rule to living persons of position and distinction. The first puzzle, melud, to take a few examples, included the following descriptions:

Across.

2. Bibulous bishop.
4. Titled lady, banting at Nice.
5. Peer. Powders his face.
6. The favourite indulgence of No. 2 (above).
7. No. 4's next husband—if he's not careful.

Down.

4. Political. A time-server. Or so they say.
5. An English humorist. Or so he says.
7. That clever young dramatic critic with the toupet.

Now, at first sight, melud (and this is the case for the defence), these 'descriptions', though deplorable in tone, are innocent enough so far as any individual is concerned. No. 2 (across) for example, says simply, 'Bibulous bishop'; no particular bishop is indicated, and, *prima facie*, melud, we might take it to refer to any of the bishops. In the same way, melud, with regard to No. 4 (across), it might be said that there were at any moment any number of titled ladies staying on the south coast of France for the benefit of their health. And, to turn to the 'down' clues, there are hundreds of public men and women of whom a malicious person might with equal plausibility employ the words 'Political. A time-server. Or so they say.'

But, melud, we have to consider this puzzle as a *whole*; we have to consider each of the words to which the clues direct us not in isolation but in relation to some other word, whether vertical or horizontal; and we have to remember that each of these words is exactly limited in length, and must have neither more nor fewer letters than there are squares provided for it. And, if your lordship has followed me so far, you will see that these limitations divest the clues of much of their innocent vagueness and impersonality.

Melud, to take a distasteful example, there are very few bishops in four letters. Melud, in fact there are only three, if we except, as surely in this

connexion we must except, the venerable Bishop of Bung. There are the aged Bishop of Bowl, the Bishop of Moat, and Bishop Loon of Huddersfield. Here again the suggestion, nay, the accusation, is so preposterous and vile in every case that, as the defence maintains, no reasonable man will immediately attach it to any one of the three. Say to me, melud, 'A bibulous bishop in four letters', and I do not think particularly of the Bishop of Moat, the aged Bishop of Bowl, or even of Bishop Loon. Each of these names will enter my mind, only of course to be indignantly expelled. So much is true.

But take the thing a stage farther, melud. Take the 'Down' clues. Take No. 7. The clever young dramatic critic, melud, is in eleven letters, and it is unhappily a fact, melud, that we have only one well-known and comparatively youthful dramatic critic in eleven letters—namely, melud, Mr. Lickspittle.

Now take a farther and a most disquieting step. The first letter of the dramatic critic, melud, must, if the puzzle be correctly conceived, be the last letter of the intemperate divine. And if, as seems only too clear, Mr. Lickspittle is the only solution to No. 7 (down) we are driven reluctantly to the hypothesis that by No. 2 (across) may be intended the aged Bishop of Bowl. And when we find that No. 5 (down)—'An English humorist. Or so he says'—is in seven letters, and, if in seven letters,

must almost certainly begin with 'W', for the well-known Mr. Wagwise, we are inclined to invest that hypothesis with the certainty of a scientific proof. After this, the fact that a plausible solution for No. 6 (across) is

P O R T

is of small consequence, for the majority of bishops take port wine for their health, though it is true that the aged Bishop of Bowl is, if anything, more delicate than the others. More serious is the fact that the name of Evadne Lady S M A I L may be fitted with sinister exactitude into the space provided for No. 4 (across), and that 'No. 4's next husband—if he is not careful', in three letters, has suggested to many competitors the name of Major B A T.

But, melud, I will not weary you with the detailed working out of the puzzle. It is enough to say that a number of citizens *have* assiduously worked it out on these lines, and have been forced, however reluctantly, to fill these scandalous squares with such honoured names as Bowl, Smail, Lickspittle, Lord Tiptree, Sir Thomas Tick, the Right Honourable Mr. James Rusk, Father Mahony, and many others.

Nor was the defendant content, melud, with defaming these ladies and gentlemen in a single puzzle. Nearly all of them have appeared, melud,

in each of the six puzzles of the series, though with different but equally objectionable 'clues' attached to them. The Bishop of Bowl, melud, invariably appears—as 'a prosy humbug', as 'an intolerably hearty and overpaid clergyman', 'the world's worst golfer', 'canting Tommy', 'the sniffing parson', and other vile expressions of the kind. Indeed, melud, I am informed that to those who followed the whole series the name of Bowl quickly became a regular starting-point or foundation from which they would proceed to build up the whole structure. In the last two puzzles, melud, this unhappy victim of the defendant's spite had not even the satisfaction of a principal (and horizontal) place in the puzzle, but was degraded to the position of a word in four letters, reading downward, an indignity intolerable, melud, to a man of his years and sensibility.

It will be suggested by the defence, melud—impudently suggested, melud—that in all this the various plaintiffs have nothing to complain of but a coincidence or series of coincidences; that the defendant has made no use of their names directly or indirectly; that all he has done is to construct a series of puzzles entirely concerned with imaginary or historical figures; and, as evidence of his innocent intentions, he will produce what purport to be the correct solutions of his puzzles.

These, melud, consist of colourless or invented names, such as Otho, Freg, Xerxes, Smith,

Thompson, Brown, and so forth, and need not, I submit, melud, be taken very seriously. In any case, melud, it is well settled that the intention in this class of case is immaterial, that he who publishes a defamatory statement concerning another person is liable, melud, though he had no intention of referring to that other and no knowledge that his statement would be supposed to refer to that other. To this, however, the defendant will reply that he has not in fact published any statement whatever; that the words he has written, '2. Bibulous bishop', are not, by him at least, connected with the aged Bishop of Bowl, and that if any persons have chosen to write down in a space so labelled the word 'Bowl' those persons and not he are the publishers of the libel, if any, and it is against them that this action should have been brought.

This will show you, melud, the kind of man we have to deal with. I will now call, melud, the unfortunate Bishop of Bowl.

The Judge: We will now adjourn.

(XVIII) REX *v.* FIGG, FIGG, AND CROLE

Romance

THIS case was brought a stage nearer to its conclusion to-day when the Attorney-General began his closing speech for the Crown.

Sir Richard said: This trial has been so prolonged and the issues are so complex that it will be well if I begin by briefly recapitulating the story of the case as it has been related in evidence.

The prisoners, Jasper and Eliza Figg, are, or were, a married couple in reduced circumstances. Mr. Figg is by profession a writer of detective stories, and his wife kept an old curiosity shop. Neither was successful and twelve months ago by their own admission they were on the brink of ruin. They are now rich. And they stand in that dock before you to face the charge that they have acquired that wealth by conspiracy and fraud.

The story is a remarkable one. Twelve months ago Mrs. Figg suddenly disappeared from Battersea, where the Figgs resided, and Mr. Figg informed the police. Mr. Figg's manner and bearing were such that the police caused inquiries to be made

concerning his mode of life; and these inquiries disclosed a strong suspicion in the neighbourhood that Mrs. Figg had fallen a victim to the violence of her husband. They were last seen together in the dusk of evening in Battersea Park, and a nursemaid testified to their having 'words'.

This in itself was not necessarily incriminating, but further inquiries pointed to the existence of a strong attachment between the prisoner Figg and the other female prisoner, Lydia Crole, who is an adventuress and was already known to the police. This woman had for some weeks been a regular visitor at the Figgs' flat, and such was the nature of her appearance and the shape and colour of her hats that in the minds of the Figgs' friends and neighbours there was little doubt that the relations between Figg and Crole were irregular.

Some weeks later the body of a woman was found dead in the Thames at Wapping. The body was considerably decomposed and battered, but Mr. Figg, though he found himself unable to swear to its identity, inclined to the opinion that the body was that of his wife.

At the inquest, which was very well attended, though clashing by an unhappy chance with the University Match, Mr. Figg confessed to his guilty relations with the prisoner Crole, but denied that he had murdered his wife. Crole also, though not till she had suffered the ordeal of a severe but thoroughly entertaining cross-examination,

admitted that for many months she had been Figg's paramour. But she swore that she had seen Mrs. Figg alive some hours after the alleged quarrel in Battersea Park.

The coroner's jury found a verdict of 'Wilful Murder' against Figg, and he was arrested. At the Old Bailey, however, the grand jury, to the general disappointment, threw out the bill on the ground that there was not sufficient evidence to show that Mrs. Figg had been murdered, or that, if she had, Mr. Figg murdered her.

There was left, however, in the public mind a very strong impression that Mr. Figg had foully taken the life of his wife for the sake of another woman, and after his release he became a national hero. During the period of his incarceration his brothers and sisters, his aged Nanny, and various domestics who from time to time had been in his service earned small but steady sums from the newspapers for little anecdotes of his early life, his taste in hats, and his personal habits, while the sale of his detective stories (which are admitted by both sides to be quite unusually bad) had risen by leaps and bounds; indeed, you have heard in evidence that the printers, though working overtime, were wholly unable to keep pace with the demand.

And now that he was released, technically blameless but happily still suspected, Fortune opened her generous arms still wider to the

widower. With what was then thought to be a singular stroke of heartlessness he placed the adventuress Crole in charge of his wife's little curiosity shop, and, though vast crowds gathered daily outside the shop to make a Christian protest, and strong bodies of police and eventually the military were required to keep order in the street, the woman was rewarded for these inconveniences by the endless stream of purchasers which flowed all day through the establishment. Van after van of old curiosities rolled up to the door, yet many times in the succeeding months her stock was in danger of exhaustion. To lighten the labours of the police she trebled and quadrupled her prices, but this, if anything, increased the throng, and you have heard that citizens were prepared to pay four and five guineas for a counterfeit stamp or an old-fashioned pincushion if only it was sold by the hand of Lydia Crole.

Meanwhile, Mr. Figg was rapidly acquiring a fortune. The world film-rights of all his seventeen books were sold in a day for many thousands of pounds. The Sunday newspapers besieged his door inviting him to name his own figure for a series of reminiscences or articles on any subject or no subject at all. An enterprising publisher offered him two thousand pounds to write a book entitled *Three Days in the Dock*, and this he contracted to do, with the stipulation that the same publisher should publish his entire output for the

next five years at highly exorbitant rates. Editors telegraphed from all over the country soliciting his views on marriage, on cricket, on the Epstein panel. He was invited to act for the films, to appear at music-halls. But he had now no time for any profession but his own. His account of the 'romance' between himself and the prisoner Crole was syndicated in twenty-seven newspapers. A bishop preached a sermon on his sin. In a word he became rich.

How long this condition of things would have continued, or what were the ultimate intentions of the man, it is not possible to say. But in April of this year, by an unfortunate accident, Mrs. Figg was discovered alive and well, but using a false name and wig, in furnished lodgings at Hastings. It was then revealed that not only had Mr. Figg not murdered his wife, but Mrs. Figg had never been murdered at all; there had never been a quarrel in Battersea Park, there had been no romance, intrigue, or liaison with the woman Crole; their relations were purely of a business character, and even these they sustained with difficulty, for, as both have confessed in cross-examination, they loathed each other from the first. The Figgs, on the other hand, were devoted to each other. In fact, for the best part of a year the male prisoner has been leading a double life, and, while the whole Press of England was ringing with his shame, was actually, each week-end,

secretly visiting his wife at Hastings, where no doubt they chuckled affectionately together on the Sabbath morning over his racy accounts of their unhappy union. In short, gentlemen, you will have no difficulty in deciding, that morally at any rate, a most heartless fraud has been committed, a fraud upon the innocent public, and upon those enterprising purveyors who satisfy the people's healthy appetite for stories of romance.

Civil actions, we understand, are being instituted against Figg by the various newspapers, film companies and publishers who find themselves bound for many years to come by contracts which, now that the bottom has been knocked out of Mr. Figg's pretensions, hold out for them no promise of gain. With these we are not concerned. We have to determine whether this moral act of deceit is criminal and punishable. You have heard the case for the defence—in my opinion the most outrageous defence that was ever supported by a responsible advocate in a British court of justice. The prisoner Figg says in effect that he has committed no fraud; that everything he did was in the normal exercise of his profession, which is the invention of stories; he contends that the one thing distinguishing the present work of fiction from his previous attempts was the favour it won from the public; and he complains bitterly that this, his first successful literary venture, has been interrupted and indeed concluded by the

activities of the police. This ingenious but impudent defence I will now proceed to examine.

The Attorney-General was still examining this ingenious but impudent defence when the Court adjourned for luncheon.

(XIX) ENGHEIM, MUCKOVITCH, KETTELBURG, WEINBAUM, AND OSKI *v.* THE KING

Free Speech

THIS was a petition to the Crown by certain British subjects, made under the Bill of Rights, and referred by the Crown to the Privy Council.

The *Lord Chancellor* said: This is a petition to the Crown by certain members of a political party who were convicted of holding a public meeting in Trafalgar Square contrary to the orders of the Home Secretary and police. The petitioners are keenly interested in the 'Hands Off Russia' movement, and, although there is no evidence that any person in this country proposes to lay hands on Russia, they have been in the habit for some weeks past of gathering at Lord Nelson's monument on Sunday afternoons and imploring the few citizens present to keep their hands off that country. At these meetings banners are held aloft which invite compassion for persons in a state of bondage, and songs are sung expressive of a determination to improve the material condition of the human race. These at first sight unobjectionable aims have unfortunately inflamed the

passions of another body of citizens, who interpret them as an unwarrantable interference with the affairs of their own country, and have therefore banded themselves into a rival movement whose battle-cry is 'Hands off England'. This party, though their banners and their songs are different, express the same general ideals as the petitioners, namely, the maintenance of liberty and the material advancement of the poor and needy. Their principal song has a refrain to the effect that their countrymen will never consent to a condition of slavery; while the songs of the petitioners assert that many of their countrymen are in that condition already, and resent it. So that at first sight it might be thought that these two bodies, having so much in common, might appropriately and peacefully meet together under the effigy of that hero who did so much to ward off from these shores the hateful spectres of tyranny and oppression. When, however, it was announced that the two movements did in fact propose to hold meetings at the same time and place, the police were so apprehensive of a disturbance of the peace that both gatherings were by order prohibited. For it appears that the spectacle of the national flag of these islands is infuriating to the petitioners, while the simple scarlet banner of the petitioners is equally a cause of offence to the other movement, though that same colour is the distinctive ornament of many institutions which they revere, such as

His Majesty's Post Office and His Majesty's Army.

These, however, are political matters which fortunately it is not necessary for this Court to attempt to understand, though we may observe that an age in which it is possible to fly across the Atlantic in thirty hours might be expected to hit upon some more scientific method of deciding by what persons a given country shall be governed. The 'Hands Off England' movement obeyed the order of the Home Secretary, but the petitioners did not; their meeting was begun, and was dispersed by the police. They were prosecuted and fined, and they now ask for a gracious declaration from the Throne that these proceedings were in violation of the liberties of the subject as secured by the Bill of Rights, and in particular of the rights, or alleged rights, of Public Meeting and Free Speech.

Now, I have had occasion to refer before to the curious delusion that the British subject has a number of rights and liberties which entitle him to behave as he likes so long as he does no specific injury or harm. There are few, if any, such rights, and in a public street there are none; for there is no conduct in a public thoroughfare which cannot easily be brought into some unlawful category, however vague. If the subject remains motionless he is loitering or causing an obstruction; if he moves rapidly he is doing something which is likely to cause a crowd or a breach of the peace; if his

glance is affectionate he is annoying, and if it is hostile he is menacing, and in both cases he is insulting; if he keeps himself to himself he is a suspicious character, and if he goes about with two others or more he may be (*a*) a conspiracy or (*b*) an obstruction or (*c*) an unlawful assembly; if he begs without singing he is a vagrant, and if he sings without begging he is a nuisance. But nothing is more obnoxious to the law of the street than a crowd, for whatever purpose collected, which is shown by the fact that a crowd in law consists of three persons or more; and if those three persons or more have an unlawful purpose, such as the discussion of untrue and defamatory gossip, they are an unlawful assembly; while if their proceedings are calculated to arouse fears or jealousies among the subjects of the realm they are a riot. It will easily be seen, therefore, that a political meeting in a public place must almost always be illegal, and there is certainly no right of public meeting such as is postulated by the petitioners. It was held so long ago as 1887 by Mr. Justice Charles that the only right of the subject in a public street is to pass at an even pace from one end of it to another, breathing unobtrusively and attracting no attention.

There are, in fact, few things, and those rapidly diminishing, which it is lawful to do in a public place, or anywhere else. But if he is not allowed to do what he likes, how much less likely is it that

the subject will be permitted to say what he likes! For it is generally agreed that speech is by many degrees inferior to action, and therefore we should suppose must be more rigidly discouraged. Our language is full of sayings to that effect. 'Speech is silver', we say, and 'silence is golden'; 'Deeds —not words'; 'Least said—soonest mended'; 'Keep well thy tongue and keep thy friend' (Chaucer); 'For words divide and rend,' said Swinburne; 'But silence is most noble till the end'; '"Say well" is good, but "Do well" is better'; and so on. The strong, silent man is the admiration of us all, and not because of his strength but because of his silence. The talker is universally despised, and even in Parliament, which was designed for talking, those men are commonly the most respected who talk the least. There never can have been a nation which had so wholesome a contempt for the arts of speech; and it is curious to find so deeply rooted in the same nation this theoretical ideal of free and unfettered utterance, coupled with a vague belief that this ideal is somewhere embodied in the laws of our country.

No charge was made in this case of seditious, blasphemous, or defamatory language, and in the absence of those the petitioners claim some divine inherent right to pour forth unchecked in speech the swollen contents of their minds. 'A Briton, they would say, is entitled to speak as freely as he breathes. I can find no authority or precedent

for this opinion. There is no reference to Free Speech in Magna Carta or in the Bill of Rights. Our ancestors knew better. As a juridical notion it has no more existence than Free Love, and, in my opinion, it is as undesirable. The less the subject loves the better; and the less everybody says the better. Nothing is more difficult to do than to make a verbal observation which will give no offence and bring about more good than harm; and many great men die in old age without ever having done it. And the strange thing is that those who demand the freest exercise of this difficult art are those who have the smallest experience and qualifications for it. It may well be argued that if all public men could be persuaded to remain silent for six months the nation would enter upon an era of prosperity such as it would be difficult even for their subsequent utterances to damage. Every public speaker is a public peril, no matter what his opinions. And so far from believing in an indiscriminate liberty of expression, I think myself that public speech should be classed among those dangerous instruments, such as motor-cars and fire-arms, which no man may employ without a special licence from the State. These licences would be renewable at six-monthly periods, and would be endorsed with the particulars of indiscretions or excesses; while 'speaking to the public danger' would in time be regarded with as much disgust as inconsiderate or reckless driving.

What is in my mind is well illustrated by this case; for the evidence is that the one manifest result of the 'Hands Off Russia' movement has been to implant in many minds a new and unreasoning antipathy to Russia; while the cry of 'Hands Off England' has aroused in others a strong desire to do some injury to their native land. We find therefore that there is no right of Free Speech recognized by the Constitution; and a good thing too.

(XX) MARROWFAT *v.* MARROWFAT

Is Marriage Lawful?

THE President of the Probate, Divorce, and Admiralty Division gave judgment in this action to-day. He said:

In this case issues of such importance have been raised that I hope the Press, ignoring a recent Act of Parliament, will report the proceedings, and particularly my remarks, in full.

The petitioner, Mr. Andrew Marrowfat, is asking for a restitution of conjugal rights, his wife Gladys having deserted, or rather left, him (for it is a subtle distinction of English law that, while a husband who departs abruptly 'deserts' his wife, a wife in similar circumstances 'leaves' him). The facts are clear, but Sir Humphrey Codd, for the respondent, has advanced and indefatigably argued a novel point of law. A cynical writer has somewhere remarked that human marriage is in the nature of a lottery, and Sir Humphrey now suggests that this observation has some significance in law. The transactions governed by the Gaming and Lotteries Acts are of various kinds. They may be wholly unlawful, such as lotteries, dicing, or snakes-and-ladders (played for money); or

they may be not illegal (such as wagers on horse-races arranged with credit bookmakers over His Majesty's telephones), but so little loved by the law that the law will not assist the parties to adjust any difficulty or disagreement which may arise.

This department of the law is a labyrinth of which Parliament and the Courts may well be proud; and in the days when it was still my duty to know and study the law it gave me as much trouble as the law of libel and slander. It is now, however, the duty of counsel to look up and inform me of the condition of the law. And Sir Humphrey tells me that the common characteristic of every class of gaming transaction is this—that a person makes a sacrifice in the hope of receiving a benefit, but the reception of this benefit depends upon the operation of chance and not upon the exercise of his own skill and judgment. Sir Humphrey says that this was exactly the character of the contract of marriage entered into by the petitioner, and that the Court should no more assist him to enforce that contract than it will assist a person who bets on horseraces to recover his losses, or even his winnings.

Now, in what circumstances was the contract made? The evidence is that in 1925 the petitioner was travelling as passenger in an ocean-going steamship between Australia and Colombo; that he met the respondent (then Gladys Willows) for

the first time on the evening of the First-class Fancy Dress Ball, when he drew her (by lot, it appears) as his partner for dinner. The respondent was dressed as a Columbine and the petitioner as an Oriental prince. After dinner they danced, and after dancing they proceeded on to the upper or boat deck to seek some relief from the tropical heat of the evening. On the boat deck the unexpected spectacle of the Southern Cross and other constellations excited in the petitioner a warm affection for the respondent, and he was moved to such protestations and, it appears, caresses as are commonly the preliminaries of a matrimonial entanglement. And in fact an offer of marriage was made and accepted, a few days later, in a four-wheeled cab at Colombo.

Now Sir Humphrey says that the petitioner throughout was governed by chance and not by judgment or selective skill. Chance embarked the two parties in the same steamship, chance threw them together at the fancy dress dinner, and chance directed that at that meeting the respondent should be dressed in the fascinating costume of a Columbine, which she never wore before or after. It is common ground that she is not a good wife; but never, says Sir Humphrey, between that first meeting and the making of the contract did the petitioner have an opportunity to estimate by reason and discretion whether she was likely to be a good wife or not, for those attributes which

are most in evidence and most agreeable on ocean-going steamships are not the same as the attributes of a good wife in the home. The petitioner therefore sacrificed or staked his liberty and his fortune without knowing and without the means of knowing what return, if any, he would receive. He selected his wife as many citizens select a racehorse, with no stronger reason for believing it to be the fastest runner than that it has an attractive name or elegant tail. Such is Sir Humphrey's argument, and in my judgment it is well-founded. I am satisfied that this contract was in the nature of a gaming or gambling transaction, and therefore the petitioner is not entitled to the assistance of this Court, and his suit is dismissed.

So much for this case. But in the public interest I am bound to ask myself whether this decision has not a wider ambit than the particular affairs of Mr. and Mrs. Marrowfat. Can it be said that any matrimonial arrangement is different, in essence, from theirs? I spoke just now of racehorses, which are a common subject of wagers. But if one may accept the evidence of numerous newspaper placards and headlines, there are men who are able with almost infallible accuracy to predict the future behaviour of racehorses in given circumstances. Indeed, so confident and successful are many of these prophets that the element of chance seems to be wholly removed and it becomes matter for argument whether the

transactions of those who act upon their information ought properly to be classed as wagers or as lawful investments depending upon skill; and I hope that at some future date I may be called upon to determine some delicate dispute of that character.

But can the same be said of him who selects from the very numerous women in these islands some particular female to be the partner of his life? The prophet of the race-course has in nearly every case definite material on which to found his predictions: such-and-such a foal has run faster than such-and-such a filly over such-and-such a distance, in wet weather or in dry weather, with a cough, with glanders, with enthusiasm, and so forth; and therefore it may be expected to do this, that, or the other thing in the same or in some other circumstances. But the case of the prospective husband is *ex hypothesi* completely opposite. He is backing a horse which has never run before, or, if his fancy be a widow, has never run over the same course in the same company. The form of a racehorse is public property, but the form of a bride is of necessity concealed. (*Laughter.*) Have I been indelicate?

Sir Humphrey: No, my lord.

The President: Lord Mildew said in *Simpson* v. *Archdeacon Dunn* (1873), 2 Q.B., at p. 514: 'The critical period in matrimony is breakfast-time.' But for too many couples the first breakfast which

they take together is the wedding-breakfast. And how many husbands ascertain before marriage the opinions of the beloved on reading in bed, on early rising or late retiring? It was argued in the case just decided that a man of average judgment should be able to make satisfactory deductions from general conduct, but how is a man to deduce from the conduct of an unmarried woman at lunch-time the behaviour of the same woman, married, at the morning meal? It is a commonplace of literature that no one can predict the conduct of a woman. Women complain, in moments of dissatisfaction, that all men are alike, but men complain with equal indignation that no two women are the same, and that no woman is the same for many days or even minutes together. It follows that no experience, however extensive, is a certain guide, and no man's judgment, however profound, is in this department valuable. In all matrimonial transactions, therefore, the element of skill is negligible and the element of chance predominates. This brings all marriages into the category of gaming (see *Wagg* v. *The Chief Constable of Ely*), and therefore I hold that the Court cannot according to law assist or relieve the victims of these arrangements, whether by way of restitution, separation, or divorce. Therefore it will be idle for married parties to bring their grievances before us, and, in short, this Court will never sit again.

It is not without a pang that I thus pronounce the death-sentence of Divorce, which has meant so much to so many in this Court. To those learned counsel who have made a good thing out of it I offer my sincere condolences, and particularly to Sir Humphrey Codd, who by his own argument has destroyed his own livelihood. We shall all have to do the best we can with the limited and tedious litigation which arises from Probate and Admiralty; but any persons who want a divorce will be compelled in future to divorce themselves.

The Court adjourned, for good.

(XXI) CARROT & CO. *v.* THE GUANO ASSOCIATION

Bedlam: or The Expert Witness

(Before Mr. Justice Wool)

THERE was a dramatic climax to-day to Sir Ethelred Rutt's cross-examination of Mr. Stanley in the Canary Guano Case. Sir Ethelred, in his opening speech, described Mr. Stanley as 'the vilest thug in Christendom'. Troops lined the approaches to the Court, and there were some sharp exchanges between Sir Ethelred Rutt and Sir Humphrey Codd, in which both the famous advocates constantly thumped on the desk, raised their eyebrows and blew their noses. Sir Ethelred's brief is marked four thousand pounds, with 'refreshers' of two hundred pounds a day, and it is the general opinion in legal circles that the case will never finish. Had the defendant company been unable to secure his services, it is calculated that the case would have been clearly intelligible from the beginning, and in all probability would have been concluded in a day. It is freely stated that there has been no counsel so able to protract a simple dispute since Serjeant Buzfuz.

Sir Humphrey Codd, concluding his examination-in-chief, said: And, in fact, Mr. Stanley, the gist of your evidence is that there are, in fact, ***no*** vitamins in canary guano?

Mr. Stanley: That is so.

(Sir Ethelred Rutt then rose to cross-examine. Three well-dressed women fainted and were thrown out.)

Sir Ethelred: You are Mr. Stanley?

Witness: That is my name.

Sir Ethelred: But of course, Mr. Stanley, your name is *not* Stanley at all—but Moss?

Witness: Yes.

Sir Ethelred: And before the Great War your name was Moses?

Witness: Yes.

Sir Ethelred: And before the South African war your name was Finkelstein?

Witness: Yes.

Sir Ethelred: What was your name before the Crimean War?

Witness: I forget.

Sir Ethelred: You forget? *Very* well. And you appear as an expert witness for the plaintiff?

Witness: Yes.

Sir Ethelred: Exactly. Now, Mr. Finkelstein, in your opinion, suppose a ton of canary guano is shipped at Hamburg f.o.b. Cardiff, adding two pounds of the best beef suet, and making the necessary adjustments for the Swiss Exchange,

what would be the effect on a young girl? Just tell the jury that, will you?

Witness: That would depend on the voltage.

The Judge (who took copious notes throughout the proceedings): That—would—depend—on—the—voltage. Go on.

Sir Ethelred: And that was on the 22nd, I think?

The Judge: My *note* says 'Bees-wax'.

Sir Ethelred: Melud, with great submission—that was the *last* case, I think.

The Judge: Oh! But what about the charter-party?

Sir Ethelred: I beg your pardon, melud. I am very much obliged to you, melud—— So that, *in fact*, Mr. Stanley, in the case of a widow, and counting thirteen to the dozen, the price of canary guano would vary with the weather in the ratio of 2 to 1, or 1 to 2 in the Northern hemisphere?

Witness: That is so. Except, of course, at high water.

Sir Ethelred: Except at high water. Quite, quite. I understand that. Melud, I don't know whether the jury follow that.

The Judge (to the jury): You hear what the witness says? There are thirteen to a dozen in the case of a widow, except at high water in the Northern hemisphere.

Sir Ethelred: Melud, with great respect, that is not *quite*——

The Judge (*sternly*) : Sir Ethelred, you go too far!

Sir Ethelred : I beg your pardon, melud. I am very much obliged to you, melud. (*To the witness.*) Have you got varicose veins, Mr. Stanley?

The Witness (*warmly*) : No!

Sir Ethelred : I put it to you, Mr. Stanley, that you *have* got varicose veins?

Witness : Must I answer that, your honour?

Sir Humphrey : Melud, I object. Me learned friend——

Sir Ethelred : Melud, I do submit—I have a reason for asking, melud.

Sir Humphrey
Sir Ethelred } Melud!

(The two famous advocates here engaged in a violent altercation in undertones.)

The Judge : Without anticipating anything I may have to say at a later stage, and subject to anything which may be disclosed in evidence next year, and bearing in mind the relations of the parties, and without prejudice to the issue of forgery, and *prima facie* and *statu quo*, and not forgetting the Boat Race, I think it right to say that so far as I understand the law (and, of course, I am a mere child in Sir Ethelred's hands) I shall at a suitable moment be prepared to say that the question is relevant and should be answered, subject to the consideration that this sentence has now continued so long that it may be arguable that the law has altered in the meantime.

Sir Ethelred: I am very much obliged, melud.

The Judge: But I don't see where it is leading us. (*To the witness.*) *Have* you got varicose veins?

Witness: Well, milord, it's like this——

The Judge (*impatiently*): Come, come, my man, don't beat about the bush! Either you have varicose veins or you have not.

Witness: Yes, milord, I have.

The Judge: Very well, then. (*Writing.*) *Question:* 'Do—you—suffer—from—varicose—veins?' *Answer*: 'I—do.' Now then, Sir Ethelred, do let us get *on*!

Sir Ethelred (*to the witness*): Now take your mind back to the 22nd of May 1884. On the 22nd of May 1884, Mr. Stanley—melud, I have rather a delicate question to put to the witness. Perhaps your lordship would prefer me to commit it to writing?

The Judge: By 'delicate', Sir Ethelred, I take it that you mean '*in*delicate'? (*Laughter.*)

Sir Ethelred: Yes, melud.

The Judge: Then I am afraid we must have the question.

Sir Ethelred: Melud, there is a woman on the jury, and in view of the delicate character of the question, I propose, with your permission, to write it down in invisible ink and hand it to the witness in a sealed box.

The Judge: Very well, Sir Ethelred. This is great fun.

(Sir Ethelred then wrote rapidly on a piece of paper and handed it to the witness, who was unable to conceal his emotion. The question and the answer were then examined by counsel, tied up with string, and carefully disinfected, after which his lordship carried them to the jury-box, where the foreman unpacked them and fainted. Meanwhile, to Sir Ethelred's obvious annoyance, public interest in the case was steadily mounting; there was a baton charge in the corridor outside the court, and in the streets the troops were compelled to fire a volley over the heads of the crowd.)

Sir Ethelred: So on the 22nd May, 1884, Mr. Stanley, your wife bore you a male child?

Witness: She did.

Sir Ethelred: Was that your *fourth* wife?

Witness: No.

Sir Ethelred: Ah! Would it be fair to say that you have committed alimony?

Witness: Never!

Sir Ethelred: I put it to you that the suggestion I have put to you is consistent with the hypothesis that the answers you have given are easily distinguishable from the true facts?

Witness: It is a lie.

Sir Ethelred: Do you smoke in the bath?

Sir Humphrey: I object.

Sir Ethelred: I put it to you that you do smoke in the bath.

Witness: No.

Sir Ethelred: I suggest that you are a bully and a blackguard.

Witness: Nothing of the sort. Don't browbeat me, sir!

The Judge: Now then, Mr. Stanley, you mustn't get into an altercation. Answer the question.

Witness: He didn't ask me a question. He made a statement.

The Judge (sternly): Mr. Stanley, this is not far removed from contempt of court. It is my duty to protect learned counsel. Now answer the learned counsel's question.

Witness: I am sorry, milord.

Sir Ethelred: I put it to you that you are a bully and a blackguard.

Witness: No.

Sir Ethelred: Very well. Did you stay at the Grand Hotel, Palermo, in September 1911 with a woman purporting to be your wife?

Witness: Yes.

Sir Ethelred: Was she your wife?

Witness: Yes.

Sir Ethelred: On the evening of the 11th September were you in your private room with a woman?

Witness: Very likely.

Sir Ethelred: Be careful, Mr. Stanley—the house was being watched, you know. At nine p.m. did you draw the blinds in your private room?

Witness: Very likely.

Sir Ethelred: Ah! So you drew the blinds? Will you tell the jury why you drew the blinds?

Witness: To annoy the watchers.

The Judge: If you are not careful, Mr. Stanley, you will be placed in the Tower.

Sir Ethelred: Would it surprise you to learn that this letter which you wrote on the 30th May is in your own handwriting?

Witness: No.

Sir Ethelred: Did you know a Mr. Trout who died of indigestion?

Witness: Yes.

Sir Ethelred: Then do you still say that you do not smoke in the bath?

Witness: Yes.

Sir Ethelred: I suggest that you do smoke in the bath.

Witness: No.

Sir Ethelred: I put it to you that you smoked in the bath last April.

Witness: Very well. Have it your own way, Sir Ethelred.

Sir Ethelred: And you have committed alimony?

Witness: No.

Sir Ethelred: Why not?

Witness: I resent the innuendo.

Sir Ethelred: Is that your mentality, Mr. Moss?

Witness: Leave my mentality alone.

Sir Ethelred (*sternly*): Answer the question!

Sir Humphrey: Really, melud, I must object.

The Judge: I don't think the mentality of the witness is admissible, Sir Ethelred.

Sir Ethelred: Very well, melud. At Palermo, in September, there would be good sea-bathing?

Witness: Yes.

Sir Ethelred: Would it be fair to say that you bathed at Palermo?

Witness: Yes.

Sir Ethelred: In company with this woman who accompanied you?

Witness: Yes.

Sir Ethelred: *Mixed* bathing?

Witness: Certainly. My wife is a woman.

Sir Ethelred: Of course, Mr. Moss, I don't suggest that there is anything wrong in mixed bathing.

Witness: Then why did you refer to it?

Sir Ethelred: Melud, I claim the protection of the Court.

The Judge: Mr. Moss, I am here to protect learned counsel, and I will not have them insulted. It is little I am allowed to do in these proceedings, but at least I can do that. Sir Ethelred is paid a great deal of money for cross-examining you, and the longer he cross-examines you the longer will the case continue and the more will Sir Ethelred be paid. It is therefore very selfish of you to take the bread out of his mouth by objecting to his little excursions into fancy. Moreover, he has the mind

of a child, and has not the least idea how people really behave. He gets his ideas from French plays and detective stories, and you must admit that he is most entertaining. Moreover, he is very sensitive, so please answer his questions kindly, and don't upset him.

Sir Ethelred: I am very much obliged to your lordship. Is three litres of acilysalic acid, Mr. Stanley, a greater or a less proportion than the same quantity of gin?

Witness: It is not.

Sir Ethelred: I put it to you that it is.

Witness: It is a lie.

Sir Ethelred: What was your name before it was Finkelstein?

Witness: Rutt.

The Judge: Did you say 'Pratt'?

Witness: 'Rutt', milord—RUTT.

The Judge: Oh—Wright.

(Sir Ethelred at this point seemed overcome and for a moment he was unable to proceed. The Judge ordered the windows to be opened.)

Sir Ethelred: Now tell the jury this. What were you doing on the night of the 30th June 1891?

Witness: I was in bed.

Sir Ethelred: Did you, on the 30th June 1891, deposit your infant child on the doorstep of the Foundling Hospital?

Sir Humphrey: Really, melud, I must object. Me learned friend is not entitled——

Sir Ethelred: Melud, my instructions are, melud——

Sir Humphrey: Melud, me learned friend——

Sir Ethelred: Me learned friend, melud——

(Counsel here talked both at the same time, exchanging angry glances, thumping on the desk, and scratching each other.)

The Judge: I think I must allow the question. (*To the witness.*) Did you, in fact, dispose of your child in the manner suggested?

Witness: I did, milord.

Sir Ethelred: I see. Would it be true to say, Mr. Moss, that at that date your son had a piece of red flannel tied round his middle?

Witness: It would.

Sir Ethelred: Exactly. Now take your time, Mr. Stanley, and be very careful how you answer. Had the child, or had he not, *in fact*, a little mole on the left elbow?

Sir Humphrey: Really, melud, with great respect, melud, me learned friend has no right, melud——

The Judge: That seems to me a perfectly proper question, Sir Humphrey.

Sir Ethelred: Well, Mr. Stanley?

Witness (*with emotion*): God forgive me, he had. My little boy!

Sir Ethelred: Then you, Mr. Stanley, are my father.

Witness: My son! My son!

(Sir Ethelred here vaulted over the bar and embraced the witness, who seemed much affected by this dramatic reunion.)

The Judge: Is there any precedent for this proceeding, Sir Ethelred?

Sir Ethelred: No, melud.

The Judge: Then do not do it again.

The case was adjourned.

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