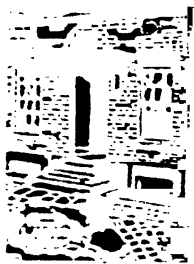


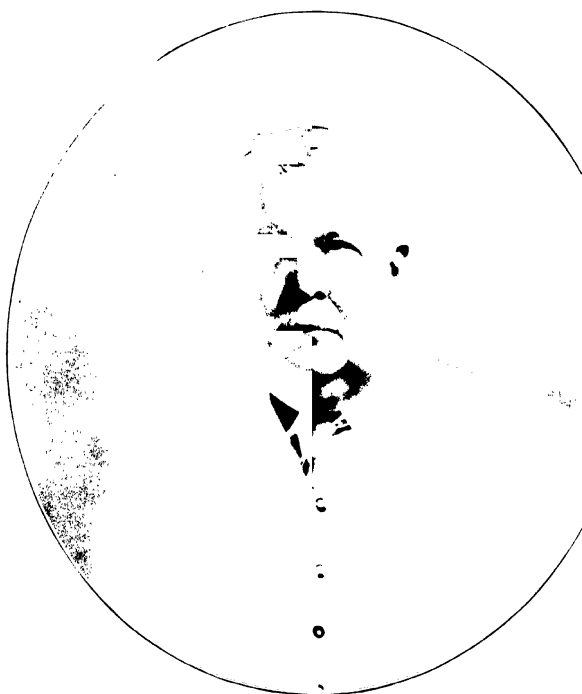


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THIRTY-FIVE YEARS  
IN THE  
DIVORCE COURT





Henry Edwin Fenn.

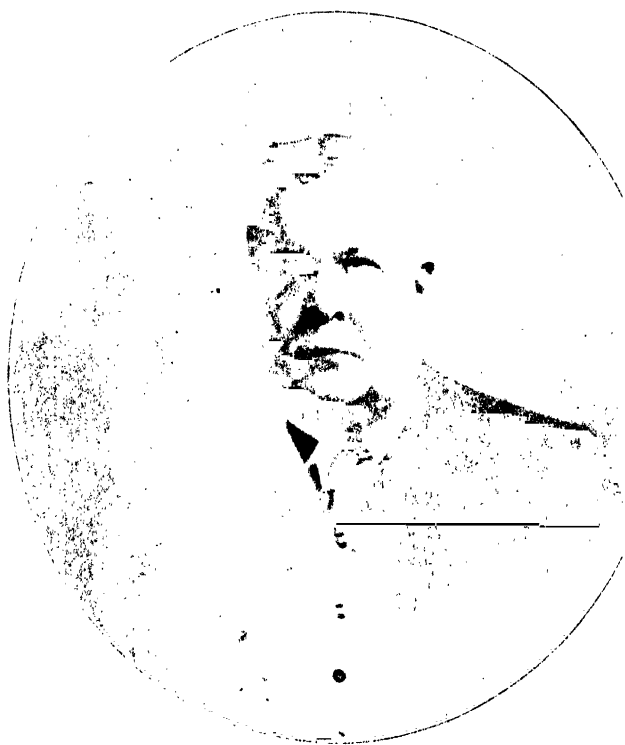
# THIRTY-FIVE YEARS IN THE DIVORCE COURT

BY

HENRY EDWIN FENN  
(THE SENIOR REPORTER)

*ILLUSTRATED*

LONDON  
WERNER LAURIE  
CLIFFORD'S INN



Henry Edwin Penn.

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**To**  
**MY DEAR WIFE**  
**THESE PAGES ARE INSCRIBED**

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# Thirty-five Years in the Divorce Court.

## CHAPTER I.

### IN THE BAD OLD DAYS.

#### THE TRIPLE DIVISION.

BEFORE the Act of 1857, divorce could only be obtained by costly proceedings before the Houses of Parliament, imposing great hardship on the mass of the people, and there can be little doubt that this hardship was deeply felt. Repeated proposals were made to Parliament with a view to reform of the law, and more than one Commission reported on the subject. It is said that the final impetus was given by an address to a prisoner by Mr Justice Maule. The prisoner's wife had deserted him with her paramour, and he married again during her lifetime. He was in-

dicted for bigamy and convicted, and Mr Justice Maule sentenced him in the following words:—

“ Prisoner at the bar: You have been convicted of the offence of bigamy, that is to say, of marrying a woman while you had a wife still living though it is true she has deserted you and is living in adultery with another man. You have therefore committed a crime against the laws of your country, and you have also acted under a very serious misapprehension of the course which you ought to have pursued.

“ You should have gone to the Ecclesiastical Court, and there obtained against your wife decree *a mensâ et thoro*. You should then have brought an action in the courts of common law and recovered, as no doubt you would have recovered, damages against your wife’s paramour.

“ Armed with these decrees, you should have approached the Legislature and obtained an Act of Parliament, which would have rendered you free and legally competent to marry the person whom you have taken upon yourself to marry with no such sanction. It is quite true that the proceedings would have cost you many hundreds of pounds, whereas you probably have not many pence. But the law knows no distinction between the rich and the poor. The sentence

the Court upon you, therefore, is that you be imprisoned for one day, which period has already been exceeded, as you have been in custody since the commencement of the Assizes."

The grave irony of the learned judge was felt to truly represent a state of things well nigh intolerable, and a reform in the law of divorce was inevitable. The hour and the man came in 1857, the man in the person of Sir Richard Bethell, then Attorney-General, who introduced a Bill which in that year became an Act of Parliament, reforming the Divorce Laws, the most bitter opponent being Mr Gladstone, who fought it through all its stages with uncompromising hostility.

In the prolonged debates on the Divorce Bill, Lord Chancellor Bethell defined the breaking of the Seventh Commandment as :—"In woman, an aberration of the heart ; in man, a surprise of the senses."

In one of his speeches, Mr Gladstone said:—"The solidarity and health of the social body depends on the soundness of the unit, the unit is the family, and the hinge of the family is to be found in the great and profound institution of marriage."

When the Bill was in Committee, he strongly

fought for an amendment giving the wife the same facilities for obtaining a divorce as the measure secured to the husband. His efforts were, however, unsuccessful, and whatever may be said of the propriety of establishing a Divorce Court, wives have a perfectly legitimate grievance, in so far as husbands are granted privileges to which, were the elementary principles of equity to obtain, wives are equally entitled.

The title of President of the Probate, Divorce and Admiralty Division is not even as old as the Divorce Court. By the Matrimonial Causes Act, 1857, which established the tribunal, the Judge of the Court was declared to be the Judge Ordinary, and this was the designation Sir Cresswell Cresswell, Sir James Wilde, and Sir James Hannen successively bore. It was the Judicature Act of 1873 which did away with the title of Judge Ordinary, and invented that of President.

The quaint assortment of the triple Division has always afforded a topic of speculation to the non-legal mind. Like most other things in the Constitution, this anomaly is the offspring of another. Till 1857 Probate was an ecclesiastical monopoly, like the granting of judicial separation, and it was found convenient, when the two

branches were secularised, to entrust them to the same Court, or rather to the same judge, for the two Courts were technically distinct.

When David Copperfield spoke of his future career to Steerforth, his companion described Doctor's Commons in a way that has never been equalled. "Doctor's Commons," he said, "is a little out-of-the-way place where they administer what is called 'ecclesiastical law,' and play all sorts of tricks with obsolete old monsters of Acts of Parliament. It is a place that has an ancient monopoly in all suits about people's wills and people's marriages, and disputes and boats!"

In answer to David Copperfield's expression of incredulity, Steerforth is at once more flippant and more precise: "You go down there one day and find them blundering through half the nautical terms in Young's Dictionary à-propos of the *Nancy* having run down the *Sarah Jane*, or Mr Peggotty and the Yarmouth boatmen having put off in a gale of wind with an anchor and a cable to the *Nelson Indiaman* in distress. You shall go there another day and find them deep in the evidence pro. and con. respecting a clergyman who has misbehaved himself; and you shall find the judge in the nautical case the advocate in the clergyman's case, or contrawise."

It was not till sixteen years later that the traditional jurisdiction of the Lord High Admiral was unequally yoked with the cares of wills and erring wives. Even here an ecclesiastical association was not wanting, since for a time before the transfer the judge of the Court of Admiralty was practically identical with the Dean of Arches.

As to the triple Division—Probate, Divorce and Admiralty—at first sight it might seem as if the combination had been arranged on the principle which used to prevail in the British Navy of embracing in one comprehensive item of a midshipman's mess-bill, "religious books, tobacco, and soap." What wills, marriages and ships have in common it were hard to say, but disputes concerning them are decided by the same two judges in the same two Courts. The Probate Court does not even possess a separate Bar, the principal counsel in divorce cases being also the leading advocates in probate actions.

The counsel who appear in Admiralty cases are specialists who confine themselves to this domain. Above the judges' seat in the second Court of the Division, in which the Admiralty cases are usually heard, is an anchor in brass. No emblem adorns the first Court!

After the creation of the Probate and Divorce Court in 1857, the position of Judge Ordinary was offered in the first instance to Mr Justice Erle, who subsequently said, "I thank a kind Providence which guided me to refuse the glittering bait." It was then accepted by Sir Cresswell Cresswell, who had for some years been an excellent judge. The position did not carry a higher salary, but the holder was supreme in his Court, an autocrat, and this his lordship liked. In addition, there is a very extensive patronage to the district registrarship and to the principal registry at Somerset House, a very large office.

Sir Cresswell's task was specially arduous, because he had, "without chart or compass," as he used to say, to embark on a new sea make a procedure, and mould a Bar. He was, of course, selected with a careful consideration for the difficult and delicate business he had to perform. A member of a wealthy Northumbrian family, he was a man of the world and of society, as well as a very able and acute lawyer.

His successor was Sir James Wilde, a nephew of a famous lawyer, Lord Truro. After him came Sir James Hannen, a very eminent Judge, who was appointed in 1872.

## CHAPTER II.

### THE FIRST PRESIDENT.

#### THE CHIEF BUILDER OF DIVORCE.

As the chief builder of our divorce laws, prominence must, of course, be given to Sir James Hannen (afterwards Lord Hannen), who for over twenty years was the presiding genius—a kindly, courteous judge, the very pink of propriety. For dignity, learning and common-sense—the latter quality being a very desirable acquisition in treating of the “seamy” side of life, the saddest of all, where married couples have made shipwrecks of their happiness—he had not his equal on the Bench. The most striking thing about him was his dignified manner. He ruled the Court with a rod of iron, in his grave, authoritative, intensely decorous manner.

His habitual frown, affected cough, and theatrical air, were studies in themselves. And

so he played his part, no counsel daring to take a liberty with him. His facility and power of expression seemed to grow with his position, and no judge delivered more finished judgments.

One of his sayings was: "Every good judge must be something of an actor." It was in no conventional sense that he used the phrase, "This Court is not a theatre," and would immediately suppress the slightest attempt at a demonstration in Court, or any indication of frivolity on the part of counsel only too eager to excite the risible faculties of those present, always an easy matter if not sternly checked by a strong judge. His reproachful glance at such persons was quite enough, and while he presided the Court was a model of propriety, far different to what has too often occurred at a later date.

There is a foolish story that a lady once wished that she might be Lady Hannen because Sir James must have, as she thought, so many scandals to relate.

Assuredly he might, had he been so minded; but such topics were profoundly distasteful to him. It is worthy of note that all the stories of feminine frailty which came before Lord Hannen, and they were naturally very many, utterly

failed to destroy his reverence for and faith in womanhood.

He was a most interesting personality. His courtesy and kindness to the junior branch of the Bar was well known. On an occasion of a "call night," referring to what he did with his first brief, he told the newly fledged barristers to act as he did when he first got briefed. "Read it carefully. Then forget all about it as quickly as you can, for it's sure to be all wrong. Tell the Court a plain, straightforward story, and when you've lost your case, go back to your client, and tell him it was all the fault of that old fool."

On one occasion, replying at a banquet at Trinity House, he, in his threefold capacity as President of the Probate, Divorce, and Admiralty Division, observed that it was a hard matter to do justice between man and man; harder still between ship and ship; and hardest of all between man and woman.

With regard to the contract of marriage, he held it is a consensual contract, an agreement between a man and a woman to live together and love one another as husband and wife to the exclusion of all others; but to make it binding the parties must understand what they are pledging themselves to, the nature of the duties

and the responsibilities which the contract creates, and whether they have done so—appreciated the contract—is in each case a question of fact.

In one of the most remarkable cases that ever came before the Court, Lord Hannen laid this down :—

“ It was a new version of an old story, a beautiful but shy and sensitive Irish girl, deeply attached to one man, forced by the importunity of worldly relations into a brilliant match with another ; marriage, then a few months after, melancholia and madness. Was she—that was the question for the Court—already mad at the date of the marriage, and incompetent, at least, to understand to what she was committing herself ?

His Lordship, on a minute review of the evidence, said “ No ! The madness had developed since marriage,” and he passed some scathing remarks on those “ whose devices to bring about a match they thought advantageous had assisted to wreck the happiness of two lives.”

He seldom went into what is called “ Society,” and City banquets and Belgravian drawing rooms had little charms for him. He usually wore a pained expression of countenance, “ more in sorrow than in anger,” when listening to the details of “ lovely women stooping to folly,” or of

"bold, bad men" breaking the sacred tie of marriage.

After being President for some time, Lord Hannen one day awoke to the fact that there was one particular branch over which he presided of which he knew little or nothing, viz., the Admiralty Division. With the assistance of the well known usher of the Admiralty Court, of the name of Smith, "Mr Justice Admiralty," as he used to be called by the reporters, Lord Hannen became a very diligent student at "evening classes" presided over by the Court usher, and with his fine intellect he soon grasped all the intricacies of nautical collisions, as a set-off to those of a matrimonial character in regard to which he became such a celebrated judge.

Only once was Lord Hannen known to be hoaxed. It was when a jurymen, dressed in deep mourning and downcast in expression, stood up and claimed exemption from service on that day as he was, as he told the official, deeply interested in the funeral of a gentleman at which it was his desire to be present.

"Oh! certainly," was the courteous reply of the judge, and the sad, melancholic-looking man left the Court. "My Lord," quietly interposed his faithful clerk, Mr G. J. Widdicombe, "Clerk of

the Rules and Orders," a kindly and courteous official, as soon as the ex-juryman had gone, "Do you know who that man is that you exempted?" "No!" "He is an undertaker."!!

## CHAPTER III.

### SIR CHARLES BUTT.

#### A JOVIAL JUDGE.

When on one occasion the late Lord Hannen used the phrase, "This Court is not a theatre," Mr Justice Butt, before he was made a judge, once whispered in a stage aside, "No, but neither is it a church." When he was elevated to the Bench, his rich, rollicking style compared most unfavourably with his predecessor, Lord Hannen, who was for all decorum in conducting divorce cases.

Sir Charles Butt seldom repressed the risible faculties of those present, and at times when he presided the Divorce Court was likened to a comedy theatre.

He had no respect for conventionalities, and "old crusted" traditions he scattered to the winds. Of him it may truly be said, to quote Hudibras :  
"His long chin proved his wit."

He was without doubt the "Joe Miller" of the Bench, and he never lost the opportunity to perpetrate jokes—good, bad, and indifferent. Essentially a man of the world, with far-reaching knowledge of human nature, he was well fitted to try divorce cases.

The character of his jokes was on a par with those used in the up-to-date musical comedies which Mr Henry Arthur Jones recently described as all "legs and tomfoolery." Emanating from a judge, the "jokes," mostly of an inferior class, must, according to some newspaper reports, be received with "roars of laughter."

There is always some "Boswell," usually representing the half-penny evening newspapers, to record these supposed mirth productions, and what is very remarkable is that they themselves obviously hugely enjoy the jokes which they so eagerly send to their respective newspapers, judging from the cheerful way they produce "copy."

One is always sorry to see a judge perform the judicial trick of what is known as "Playing to the gallery," treating the Court as a theatre, and constantly making observations to excite the risible faculties of an audience only too ready to titter at any supposed witticism from the Bench.

Sir Charles Butt presided over the Colin Campbell consolidated suits. Before summing up the case, his intimate friends knew that his spine was affected, and his clerk injected morphia. He bore pain with exemplary patience, and his chronic, pallid countenance markedly showed that he was seldom free from pain.

For three years he carried on his labours under unparalleled personal suffering, but nothing ever led him to indicate to those who practised before him that he was a great sufferer, and had passed sleepless nights, by any hasty or unfeeling word.

He was not an exceptionally great lawyer, but he was completely master and thoroughly versed in Admiralty cases. His decisions commanded every general respect and confidence. It fell to his lot to pronounce several decisions, both of legal and moral importance, and to preside over trials which excited great public interest.

In "Lister v. Lister," in which his decision was affirmed by the Court of Appeal, he held that the wife who had obtained a divorce from her husband might be allowed alimony—in this instance one-third of the husband's income—and that the allowance was to continue even in the event of the lady's marriage.

It was also his duty to give effect to the Greek

Marriage Act of 1884, by which doubts were removed as to the validity of certain marriages of members of the Greek Church in England, on the ground of their celebration in private houses, the law up to that time only recognising marriage in a church or duly recognised building.

There was a funny incident in December, 1891, attaching to the case of the salvage of a vessel which had gone ashore. The master and the crew temporarily left the ship, and went to an inn for refreshments and to dry their clothes. Meanwhile the vessel, with no one on board, had been taken possession of by the plaintiffs in the action, and they claimed salvage award.

One of the witnesses was a very big man, who was nicknamed "Jumbo," and who was a very assertive person. Questioned by Sir Charles Butt as to his rights as one of the salvors of the derelict vessel to take possession of the ship, he said to his Lordship, "If you found a ship on shore, with no one in charge, what would you do? Would you not stick to it like I did? Findings are keepings."

His Lordship had no reply to these queries, but he had his revenge by giving judgment against "Jumbo" and his co-plaintiffs, with costs, therefore they had no salvage award

of the vessel which they had temporarily "annexed."

He was appointed the second judge on the death of Sir Robert Phillimore, who with his High Church views cared very little in his time to try divorce cases. Sir Charles Butt was certainly pains-taking and mindful of the interests of suitors.



Photo by Russell & Co

Lord St. Helier.



## CHAPTER IV.

### LORD ST. HELIER.

#### AN INTERESTING PERSONALITY.

Sir Francis Jeune, who afterwards became Lord St Helier, during the thirteen years that he sat in the Divorce Court, fully justified his selection by Lord Halsbury as the successor of Sir Charles Butt in 1891. He performed his delicate and anxious duties with infinite tact and discretion. Courteous always, he could be strong when occasion arose.

Once he was chaffed at his own dinner table about some *cause célèbre* by a well-known Irish peer. Lord Randolph Churchill was present, and laughingly intervened by saying, "Come, come, So-and-so, you must not tease him; you must remember that he 'did for a Duchess.'" This had reference to one of the most sensational incidents in his Lordship's career, when, by a curious irony of fate, he was compelled to treat

sternly a lady with whom, when at the University, he used to play tennis and croquet.

The lady in question, the Dowager Duchess of Sutherland, was the daughter of Mr Mitchell, Principal of Hertford College, and Lord St. Helier ordered her to pay a fine of £250 and costs, and to be imprisoned for six weeks in Holloway Prison for contempt of the Probate Division in burning a letter brought to her for inspection on the 21st April, 1893.

Lord St Helier was a handsome man who did great play with his monocle, now plucking at his beard with his long, white fingers, now making brief notes with a scratchy quill, and anon sipping hot water from a steaming glass. Many a fair lady, blushing in the witness box, has fallen straightway in love with the kind eyes and the sympathetic voice of the man.

He was modesty itself, in spite of his being on intimate terms with the leaders of every phase of social life. One night, during the progress of a brilliant "At Home" in his house in Harley Street, a friend alluded to the presence of a Royal Duke and Duchess at the dinner which had preceded the less exclusive function, "Yes," said Lord St Helier, in his gentle, sensible way, "they are dear, good people; they

ill go anywhere." It was once said of him, "He wears a large eyeglass and an apologetic manner."

He tried the case of the Earl and Countess Russell, which found its way to the House of Lords in order to settle what is the meaning of legal cruelty, entitling a litigant husband or wife to judicial separation.

Although he saw so much of the seamy side of life, Lord St Helier always retained high spirits. He was something of a wit. He was once reproached by a legal friend for joining in prayers at the Archbishop's Court, when they had gone to impugn its competency in a certain case. "But I prayed without prejudice," was his retort.

In the same case, by the way, the reporters present, when prayers began, scribbled away zealously, taking down every word, until one of them said to another, "It strikes me I've heard this somewhere before?" It was some time before they discovered it was not part of the legal proceedings.

One of his dictums was: "From a very long experience in this Court, I have never yet known a case of a woman, who had once given way to drink, to be reclaimed." The late Lord Hannen

more than once said, "Drink and adultery run in double harness." There is no doubt, as the records of the Divorce Court show, this is a truism, and were it not for drink the business of the division would show a great decline.

When Lord St. Helier was raised to the Peerage, part of his farewell address was as follows :—

"I think I should be remiss in a duty which is justly laid upon me, if I did not express my acknowledgments to the gentlemen connected with the reporting of the cases in this division. Such reporting often is of a difficult and delicate character. I have done my best by laying down principles, which I hope are sound, to prevent cases being heard in public which should not be so heard ; but, after all, almost everything must rest upon the discretion of reporters in individual cases, guided by the discretion of the judge, and I say, with great pride and satisfaction, that the representatives of the Press throughout my judicial career have invariably lent me their fullest assistance by the cancelling of parts of cases, or by retiring from Court when things arose of which, in my judgment, it was desirable in the interests of decency and morality that the details should not be disclosed to the world. Of the efficiency

f the reporting as reporting, I need say nothing ;  
s record is before the world."

Lord St. Helier revived an old custom on the occasion of the ceremony of the re-opening of the Law Courts at the commencement of the Legal Year, viz., the bearing by an officer of the Court of the silver oar (which is the insignia of the Admiralty Court) before his lordship in the procession of judges. The silver oar is over three feet in length, and is always carried into Court at its opening, there being quite a "procession" at the time of officials, the silver oar being ultimately placed in front of the judge during the hearing of all Admiralty cases. This emblem of office is said to be of very ancient manufacture.

While he was President he took measures for the better security and preservation of some of the ancient records of the Admiralty Court. The original and illuminated Black Book containing the jurisdiction of the Court, which has been lost for many years, the old Oaths Books, on which the Lord High Admirals, the Judges of the Admiralty Court, and the other high officials were formerly sworn, and the manuscript Sea Laws of Oleron are all interesting, and are of great antiquity and value.

His Lordship once had occasion to take a course as bold as it is rare, that of annulling the finding of a jury whose verdict on a question of domicile he disagreed with. In doing so, he was backed up by a rule of the Supreme Court, which confers such power, but recourse to this discretion is so infrequent as to be novel.

Fiction has been repeatedly outweighed by fact in the division over which he for so long presided. In one curious nullity case a wife declared that, when thirteen years of age, she was compelled by her father to marry a boy of fourteen at a registry office. The ground of her application for a decree of nullity was that at the time of the marriage she did not know what the ceremony meant ; but the Court was unable to accept her testimony on this point, and accordingly could not relieve her of the legal bond she had contracted.

In another strange case a man who was divorced for nine years appeared, at the suit of his second wife, who successfully established misconduct against him with his first wife.



Photo by Russell & Co.]

**Lord Gorell.**



## CHAPTER V.

### LORD GORELL.

#### A SOUND, CONSCIENTIOUS JUDGE.

Sir John Gorell Barnes, who succeeded Lord St. Helier, was the son of a Liverpool ship owner. The early years of his judgeship unfortunately marked a time of much ill health, but after his recovery he became a highly worthy President, and added hugely to the building up of divorce law.

His characteristics have been his patience, imperturbability of temper, and impartiality. His idea of what a judge should be has been a high one, and he has striven hard to attain it, which he did, with remarkable success.

When President, he regarded the Divorce Court as the least congenial part of his work. He has more than once dropped the remark that he looked upon the Court as a "social hog-stye," his preference being for the Admiralty

Court actions, he regarding them as being as pleasant to him as "a trip to the seaside."

His professional path was singularly free from difficulties and obstacles. A prosperous junior for twelve years and a busy "silk" for four, he found himself on the Bench at the age of forty three. Throughout his career he has had nothing but merit to recommend him.

In private life he possesses a most fascinating manner, and his personal appearance must also charm, for he has been known to complain of the fact that, wherever he may be, whether at a public gathering, in a railway carriage, or in a drawing-room, his conversation is almost invariably sought by strangers.

His Lordship spends his spare time in farming at his beautiful place at East Bergholt, Suffolk, Constable's country. His famous breed of Berkshire pigs and his fine black-faced wethers are the envy of many. His shire horses have won a good many prizes. He delights in watching the progress of agricultural work and the growth of the crops.

It has been amusing to watch Mr Justice Barnes, as he then was, when counsel pleading before him had the misfortune to rouse the judge's indignation. For a little while the unfortunate

man of law is allowed to go on, while the judge's stern, stout face gets redder and redder.

From a shrimp-pink it deepens into scarlet, scarlet gives place to crimson, which in turn takes on a violet hue till, just as one is waiting the apparently inevitable stroke of apoplexy, the pent-up indignation of his lordship finds its natural outlet, and counsel's artful plea is shattered like a dream.

Once when dining out, he mentioned that he had a headache. When condoled with, he remarked, "It is the result of scent." Asked to explain what he meant, he replied: "The ladies of the Divorce Court love perfumes. It has been a hot and trying day for me, for each of the witnesses who are placed in a box quite close to me has come into Court and waved about a handkerchief saturated with scent. I have inhaled patchouli, white rose, heliotrope and half a dozen other perfumes since breakfast, and, unfortunately, the more emotional ladies become, the more they wave these pretty scraps of scented cambric, and apply them to their eyes."

There is a story of a sailor, travelling back to Portsmouth with a lawyer, to whom he said:

"I've been up to London on a big shipping case; came up before Judge Barnes; it weren't

no use tellin' 'im no lies, it weren't; 'e knows a thing or two about ships, 'e does!"

He is a wonderful man, with an unbroken record behind him. He is the only judge who ever lived who has existed for fourteen years as a judge without having one of his decisions upset.

The "Fourth Estate" does not want to be too critical, but he was always regarded as that bore to reporters, an almost inaudible voice. Oh! if only the judges would each and every of them take to heart and practise the elementary advice of the voice producer, and speak so that the person farthest off in the building could hear, what a blessing it would be!

They tell the witnesses to speak up. Why do some of the judges mumble? Often questions of the most vital character are in a mumbling way put to witnesses, and a smothered reply is given, and the courteous official shorthand writer has subsequently to be interviewed as to the exact question and answer, because they often turn out to be of the most vital character.

It is not a matter of wonderment that law reporters are such a solemn, unhappy-looking body of men, when they have to follow the gentle murmurings of a judge, and supply a

verbatim report of his judgment. In writing this, one knows fully well that Lord Gorell's decisions were always worthy of the fullest report, but, in extenuation of his low speaking, many of the judges suffer from the same complaint.

No one would suspect the hard, dry lawyer, Lord Justice Henn Collins, whose judgments were models of concise reasoning, of a gift of humorous verse, yet he was the poet of the Northern Circuit and the life of the Bar mess. Many of his rhymes are remembered, and one has been handed down to successive generations of rising barristers, in which he humorously chaffed Lord Gorell, then a leading counsel, with a big practice in Admiralty and insurance. It began :—

The anchor's weighed,  
Sails are set,  
Hurrah, the risk's attached.

The "risk" in question being of more pressing interest to the gentleman in wig and gown than to the shareholders.

The peerage conferred upon him secures his attendance in the two final Courts of Appeal. Strangely enough—for Divorce and Admiralty work would not seem to afford an ideal training—four of the six Divorce and Admiralty judges

have been ennobled. The quartette is made up of Lord Hannen, Lord St. Helier, Lord Gorell, and Lord Mersey. With regard to Lord Hannen, his was a life peerage. Lord Gorell has an heir to succeed him.

## CHAPTER VI.

### LORD MERSEY.

#### A BRIEF BUT BREEZY CAREER.

The successor to Lord Gorell came as a great surprise when it was announced that the Hon. Sir John Biggam was to occupy the Presidential chair. At the time the appointment was announced, he was the guest of the evening at the annual dinner of the Liverpool Philomathic Society, and, in reply to the toast of his health, delivered a speech in which he sketched his own most interesting career. He stated that he began his active life "on the flags of the Liverpool Exchange," in the old news-room where he worked for some years, and there he obtained knowledge which afterwards was of great value to him. At the age of twenty-six, encouraged by friends, he came to London to try his fortune at the Bar.

That was, he stated, in 1867, and he got a

letter of introduction to Mr Charles Russell, to whom he offered it. "He turned to me, looked at me, and said, 'What on earth induced you to think of going to the Bar?' That was rather a disheartening beginning, but he was good enough to say immediately afterwards, 'Come and dine with me to-night.'

"I went and dined with him; and I can say of him, that, although his manners were rough, and although at times perhaps one was not pleased with what he did, he was a good friend to me through my life as long as it lasted concurrently with his. That is not the end of the advantages which I obtained from my native city, for it was here that I selected the woman who has been my wife, and who has been the kindest and best of helpmates that a man could possibly have."

Continuing, Sir John Bigham said that he had rather a hard time of it. He worked as junior for many years; but he found in Liverpool invariable kindness, help, sympathy, and a willing hand and a kind heart whenever he was in need of them.

He then went on to state that the Lord Chancellor sent for him, and, to his surprise, announced to him that he desired him to take the place which another townsman of theirs, a

great man, and one of the finest lawyers who since the days of Blackburn had sat on the Bench, was to vacate ; he meant Sir John Gorell Barnes.

He added that in a few days he would shed the title of "Mr Justice Bigham," and become President of the Probate, Divorce and Admiralty Division. This title, he went on remark, he told the other day to a lady, who said, "Dear me ! Is he going to the Admiralty Division ? How very nice ! I do trust that he will see that we shall have a strong Navy !"

In his usual jocular way he, on this occasion, referred to changes in the law, and said that "Prisoners had become the pets of the public." He pointed out that he remembered the days when prisoners were not allowed to give evidence in the witness-box, but now some "cursed spite" had given them the privilege, and, he added, "God help them, for a more dreadful pitfall was never laid for a guilty wretch."

They had now, he further remarked, the right to be defended by counsel in certain circumstances. It was not every prisoner who desired to be defended, and his experience was that the best defended prisoner was the prisoner who was not defended at all. The moment a man was

undefended the judge on the bench became his counsel, and, if possible, got him off. Another supposed advantage was the right of appeal, and prisoners always did appeal. It did not cost them anything. It was a game of "Heads I win, tails you lose." It very often involved a pleasant journey up to London, and a stay there of a few days—whether they went to the pantomime or not he did not know.

Not the least of the changes (continued the speaker) were the changes affecting the ladies. Ladies had ceased to be what they were—shadows of their husbands—and had become personalities, people whom they could not ignore, people who could bring actions, defend actions, become bankrupts, and incur debts which unfortunately they could not always pay. They had become more and more separated from the poor men. What they were to become quite terrified him.

He dared say there were a great many Suffragettes among them that night. He was beginning to doubt whether he knew women at all; and if he did not, what on earth was he to do sitting in the Divorce Court? There was an idea in times gone by that a man was entitled to lock his wife up if she did not behave herself, and to administer, not cruel, but proper

and sufficient castigation, but that was now all exploded.

He remembered Lord Collins argued a case before Lord Halsbury, and got the law established that a man had no right to carry his wife away when coming out of church by putting her into a cab, so that nothing was seen of her but her legs hanging out of the window. Woman was now absolutely emancipated, and he would have to carry this chastening knowledge with him into his new Court.

When he acted as President of the Probate, Divorce and Admiralty Division for a period of twelve months only, Lord Mersey had a brief but glorious career. He certainly made things "hum," owing to his nimble intellect and masterful ways. On the question of cruelty alleged by wives against their husbands in divorce cases, some time ago he made an important announcement. He shewed in various ways that he was not prepared to accept the kind of evidence as to cruelty on the part of a husband which his predecessors generally considered satisfactory.

As the law at present stands, a wife, to get a divorce, has to prove cruelty or desertion as well as misconduct. Frequently Lord Mersey has remarked, when the wife has been giving

evidence of what she considered cruelty on the part of her husband, "I don't think much of that; that is not cruelty." He apparently was rather in favour of the strict old-fashioned cruelty, tending to the really physical character. He once or twice stated that there is "too great a tendency to magnify incidents."

He certainly was a most expeditious judge, and the way he got through his work was marvellous. He some short time ago tackled a very formidable list, which showed a lot of arrears, which he disposed of in a surprisingly short time.

He was no stickler to old, crusted traditions of the way in which divorce suits should be conducted, and he brushed aside in the most ruthless manner anything appertaining to the slow, methodical style of past years, making old practitioners rub their eyes with amazement. Talk about "hustling" the hearing of divorce cases, that was really the best word to use in regard to his expeditious manner. He would have no opening statement to a case, and would immediately say, when a suit was called on, "Call your witnesses."

One instance will illustrate this remarkably expeditious manner as to his trial of divorce cases. Some time back it was proposed to cal

five or six private detectives. Taking the first of them, Lord Mersey got possession of the notes of the witness, which he hurriedly read, and then asked, "Did you see anything wrong?" "No, my lord," was the answer. The ex-President, "Then you may stand down."

The same method was gone through with the other private detectives, with the result that while, in the ordinary course of events, some hours might have been occupied with the examination and the cross-examination of these "necessary evils," the ex-President disposed of this part of the evidence in about ten minutes!

Though he was in the fullest sense a dignified judge, if he thought the glory of his Court was in the smallest danger, he was in a moment up in arms to defend it with all the haughty speech and manner which he could call at his disposal, and those who practised in his Court have said that "the reserve supplies are not by any means very small."

His pet aversion, and the one which most quickly put him upon his dignity, was a counsel or witness who persisted in taking a very contradictory view to that which he had expressed. When this kind of thing had at last got to its limit, he settled himself into his most dignified

attitude, and invariably remarked, "Well, we shall see!" That meant the war of dignity had begun, and it also meant that the counsel or witness, as the case might be, had a very bad time in front of him, for as the judge he always got his way.

From a reporter's point of view, he always made excellent "copy." He liked to get at the bottom of everything. His questions were of the most probing character, especially when he thought a witness was not detailing all he knew, a not uncommon occurrence, and when he formed an opinion with regard to a case, counsel's counter arguments were of no avail.

When at the Bar, Lord Mersey was the leader for many years of the Northern Circuit. He was known by the nick-name of the "Little Terrier," owing, no doubt, to his tenacity and fighting powers, and also, perhaps, on account of his size. When a junior he had a large practice at Judges' Chambers, and there often met and had long fights with Mr Justice Field, a most able judge, but who late in life became deaf, which made him very bad-tempered at times.

One morning when not in a good humour, he said angrily to Mr Bigham, who, he thought,

was sticking to him too tightly, "Mr Bigham, Mr Bigham, you are not at all yourself this morning." Mr Bigham replied, "Unfortunately, my lord, you are yourself this morning."

Once, cross-examining as counsel a hard-headed but not too scrupulous Lancashire man whom he had got in a tangle, Mr Justice A. L. Smith suggested a settlement of the case.

The litigant, however, would not come to terms, so the judge, leaning back, and, in his blunt way, said, "Go on, Bigham, get at him again."

Lord Mersey only presided for twelve months when the surprise to the public came that he had received a barony of the United Kingdom. For twelve years before that he was a judge of the King's Bench Division. He was recognised as one of the ablest judges on the Bench.

As to the resignation, it was stated that he was about to occupy a position of "greater freedom and less responsibility," and this may explain the outspokenness and unconventionality of some of his evidence on the working of the divorce law before the Royal Commission. The manly evidence, whatever divided counsels exists, will certainly form a "human" document of surpassing sociological interest. It shows two

main schools of thought, each represented by eminent divorce judges.

On the occasion of his recent farewell, he paid the following tribute to the Press :—

“I must bear testimony to the uniform courtesy of the reporters. The Press is a great power, and I am glad to say its power has never been misused in reference to myself. Of course, my judicial acts have been criticised, and often adversely, and perhaps rightly ; but no judge should complain of criticism, for a judge who is never worth criticism is probably never worth anything at all.

“I am reminded of a conversation I once had with Lord Watson. I told him that I thought he interrupted counsel's arguments too often with his criticisms. ‘Eh, mon,’ he answered, ‘you should never complain of that, for I never interrupt a fool.’ And so it is with a judge and the Press.”

Lord Mersey, as President of the Probate, Divorce, and Admiralty Division, had a breezy twelve months' career. His appointment came as a “surprise packet,” as also did the announcement of his retirement.

There is an epitaph on the death of a newly born child :

Since I was so early done for,  
I wonder why I was begun for.

So the wonderment must apply to the judicial meteorite in the person of Lord Mersey, who for twelve months fluttered the legal doves of the Divorce Court, made things generally "hum" all round, battered against old crusted traditions of the Court, woke up staid officials and got on their nerves, made managing solicitors' clerks regard the changes in practice with amazement, and the divorce "ring" was wondering what was to happen next. Then came the unexpected announcement of his retirement! "Like shadows we come—like shadows we depart."

In sporting parlance, he showed brilliant "form," but turned out to be a "non-stayer." He was a disappointment.

A good lawyer, a man of the world, and in the best sense a strong judge, the ex-President was eminently fitted to occupy the position from which he has retired, and it is a matter of congratulation that his services will be available for litigants in the House of Lords. But why should he have proved such a disappointment?

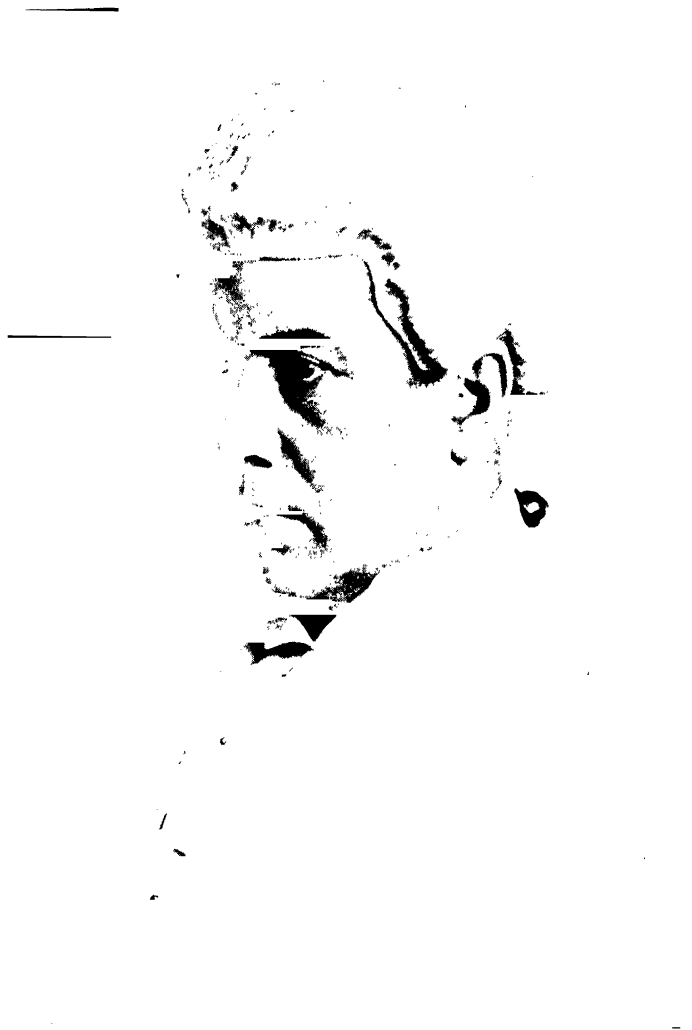
## CHAPTER VII.

### MR JUSTICE BARGRAVE DEANE.

#### A FOLLOWER OF OLD TRADITIONS.

Mr Justice Bargrave Deane is the son of the late Sir James Parker Deane, Q.C., D.C.L., a distinguished lawyer, who at one time successfully practised in the Court of which his son was made one of the judges. The father for a long time was Vicar-General to the Archbishop of Canterbury. Mr Justice Bargrave Deane's selection for a judgeship in the Court of which he was at the time the acknowledged leader was a departure from precedent. For some not very apparent reason, it has never been the practice to promote to the Bench any member of the Bar whose work lay exclusively in the Divorce Court. The claim, for example, of Mr Inderwick for a judgeship was always passed over.

His Lordship was not always so closely connected with the Divorce Court. As a junior he



Mr. Justice Bargrave Deane.



had a considerable practice of a general kind, and as a defender of prisoners in the Home Counties he won the warm regard of the criminal classes. His highly-respected father strongly approved of young barristers attending Quarter Sessions, that being in his view the best possible school in which to learn the technique of their profession. He went circuit and attended sessions regularly. For many years, indeed, he enjoyed a large common law practice.

In 1885 Mr Bayford, the leading junior at the Probate and Divorce Bar, took "silk" and several of his clients came to Sir Bargrave's chambers, and promised to send him all their junior work if he would specialise in that Division. He was then leader of the Kent Sessions, and was doing a good deal of High Court work ; he had also been recently appointed Recorder of Margate. At that time he consulted me as to his chance of success in the Divorce Court. Telling him that the name was one to conjure with, as his father had practised with so much success in that particular sphere of labour, and that there was a very good opening for a junior counsel, he took my advice and gave up the Home Circuit.

The late Mr Clement Middleton and the late

Mr Richard Searle then shared the bulk of the junior work between them; but Sir Bargrave Deane soon began to cut into their business. Although a stuff-gownsmen, from time to time he was pitted against the late Mr Inderwick, then leader of the Court, and other senior counsel of first rank at the Common Law Bar. He very soon got overwhelmed with briefs, and attained the success which he so richly deserves.

On the occasion of his being made a judge, I was the first outside person to whom he confided the information which, after congratulating him, I made public, and he heartily thanked me for the advice I had given him, which, he said, "was the best advice I ever had," adding, "I wish my father had been alive to know of my having been made a judge."

The latter remarks were no doubt the outcome of the curiously unfavourable idea Mr Justice Bargrave Deane's father had when his son decided to practise exclusively in probate and divorce, and who urged that, although such a course meant competence, and even opulence, the Court was a veritable *cul de sac*, and would never lead to the Bench.

At the time of his being made a judge there was much criticism, but he had his revenge on his critics

in his first judgment, which was held to be as correct in language and insight as any that had been delivered in the Court for years. In his younger days he did a good deal of shipping work under his father, and his critics seemed to have forgotten that he had written a treatise on "The Law of Blockade."

When he had before him this first case, a salvage action, he handled the chart produced in it, and sailed over treacherous soundings like a good seaman and a good Admiralty judge. He soon mastered the rights and wrongs of shipowners, sailors, and merchants; cases of collisions at sea; salvage awards; charter party disputes; and other maritime matters. His critics were silenced.

They apparently forgot that the Admiralty Court claimed him as a junior, and he has a curious story to tell of his experience in that sphere of labour. In order to make himself better acquainted with navigation, he purchased a yacht, which he let to a gentleman during one Long Vacation when he was too busy to make use of it himself. That gentleman sailed away taking somebody else's wife with him, and the owner never again saw the vessel, the rent for which the hirer had even omitted to pay.

He was always at the Bar a deadly cross-examiner, one who gave the impression that he is sorry to upset your feelings as he is so courteous a gentleman, whose great characteristics are firmness and outspokenness. Like his father, before putting a question in cross-examination, there was great deliberation, and an upward glance at the roof of the Court ; but the question was always of a searching character, and one entirely removed from "a roving commission" as to cross-examination artifices, he being the incarnation of discretion.

As a dogged, persistent advocate, few could equal him. He has a singular power of mind. He never bullied a witness. He is the personification of geniality. In a pre-eminent degree, he has the judicial visage, even to the gold spectacles, over the top of which he so often looks. Rarely allowing himself to smile, his expression is by no means gloomy. He has shapely features, a firm, horizontal brow, a balanced mouth, and a chin of mastery.

Even at his gravest and most strenuous moments, a jolly humour lurks behind his gravity. He never made any pretence of being an orator. His patient and clear statement of the most complicated details of a case was beyond all

praise. He never alleged more than he was prepared to prove, or put an unfair gloss on evidence. One of the most strenuous of opponents, he never was consciously unfair.

As an all round sportsman he is hard to beat. Volunteering and yachting used to be his favourite hobbies, especially the former. When he was called to the Bar he joined the "Devils' Own," and rose to the rank of captain. For many years he was Colonel of the 21st Middlesex Rifles, and his interest in the volunteer movement is evidenced by the "Bargrave Deane" prize annually competed for at Bisley.

His interest in military affairs has not always been confined to the practical side; he has studied them scientifically, and his attainments as a military strategist and tactician are of no mean order. As chairman of the Kriegspiel section of the Home District Military Society, he has won many bloodless victories on paper at the United Service Institution.

Considering that Sir Bargrave Deane is a keen sportsman, having gone in for every form of sport except shooting big game, it is small wonder that he recently proclaimed himself to be a fisherman, and this was proved because he is one of those who can tell a good fisherman's story.

The occasion was the recent annual dinner of the British Sea Anglers' Society, at which Mr Justice Bucknill presided, Mr Justice Bargrave Deane being the honoured guest.

The angling story told by Mr Justice Bargrave Deane was one of the Spey, and came from his keeper, a very keen fisherman but an equally keen Sabbatarian, whose previous master let his fishing to a gentleman of the Jewish persuasion. One day, after a succession of bad days, this gentleman said to the keeper : " Munro, I don't see why we should not fish to-morrow." The morrow was Sunday, and Munro told him it was very unfortunate to fish on the Sabbath, and that something always happened.

The ardent angler, however, said he was not afraid, and so they went out fishing. Presently they came to a deep pool, and the angler, fishing from the side of a steep bank, suddenly lost his balance and fell in. " I don't know what it was," he said, after Munro had pulled him out, " but I was feeling quite all right when something seemed to impel me forward into the water."

" He was quite right," Munro told the judge on the quiet, " something did impel him forward ; he was impelled by me." Moral : Do not try fishing in Scotland on a Sunday.

No one, as Mr Justice Bargrave Deane remarked, would dream of attending the British Sea Anglers' dinner who was not himself a fisherman. "I," he said, "have been a fisherman all my life. My first real acquaintance with your chairman (Mr Justice Bucknill) was as a fisherman. We happened to meet unintentionally at Plymouth. We awoke one morning to find our yachts side by side, and we agreed to go out and have a day's fishing off the Eddystone. We had a roughish time of it, but it was one of those happy days that serve to cement a friendship once it has begun."

At the anniversary dinner in 1906 of the United Law Clerks' Society, at which Mr Justice Bargrave Deane presided, he related a good story. He said he remembered when he was Recorder of Margate being told by a gentleman there an amusing story about judges' clerks. There were two of these gentlemen who went down to Margate for a holiday. He would not mention the real names of their masters, but would take two names at hazard, let them say Mr Justice Willes and Lord Chief Justice Cockburn.

These two clerks went down to Margate, and they thought the best thing they could do was to

drop their own names and adopt the names of their masters. So one called the other Willes, and the other called him Cockburn ; and they were overheard one day, at a certain hotel at Margate, discussing how they could spend the evening. Willes said to Cockburn, " What shall we do, old chap, to-night ? " and Cockburn answered, " Let's go to the Hall by the Sea ! "

Mr Justice Bargrave Deane on one occasion said it down that " A husband has no right to strike his wife. "

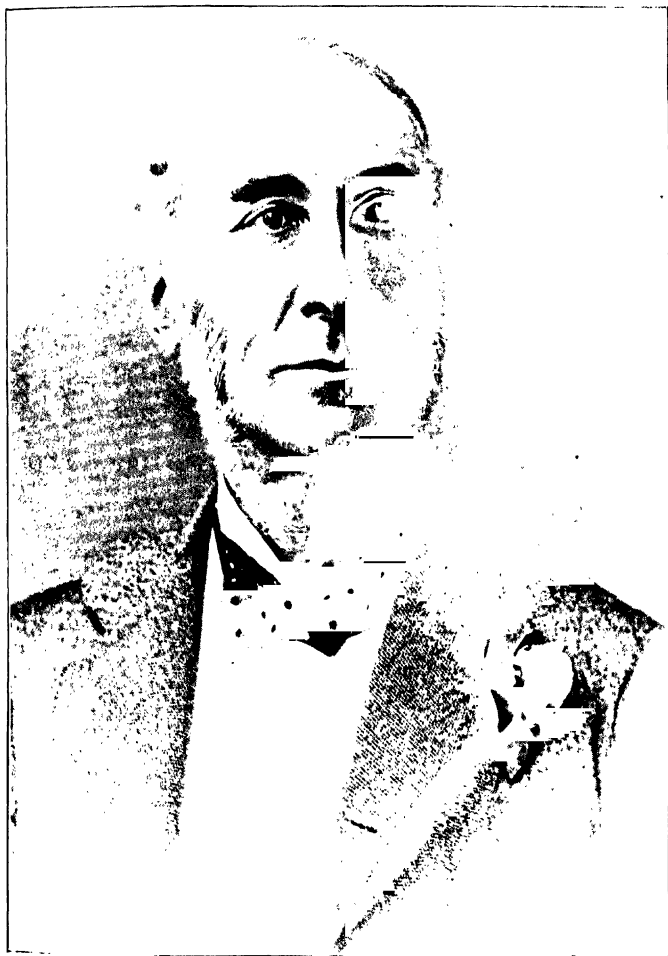
*Punch* said of this (November 3, 1909) : " These indeed be revolutionary days. One by one our cherished ideas are being taken from us. A husband, declared Mr Justice Bargrave Deane in the Divorce Court, last week, ' has no right to strike his wife. ' "

Suggested motto for his lordship :

" I forbid the bangs. "

" Post-nuptial flirtation is not legal cruelty, " according to Mr Justice Bargrave Deane ; and further,

" Two corroborated acts of cruelty at least are required to establish a charge of cruelty. "



Mr. F. A. Inderwick, K.C.



## CHAPTER VIII.

### MR INDERWICK, K.C.

#### SOME OF THE PRACTITIONERS.

For fourteen years Mr F. A. Inderwick, K.C., was the leader of the Divorce Bar, and he certainly was a most polished and urbane advocate.

Erudite, persuasive, bland in the face of most unexpected surprises, he won many cases where a more boisterous advocate would have failed. He was all courtesy, gentleness, and sympathy.

Scholar and historian, he wrote several books, the most interesting of which is devoted to the Stuart period.

It may well be said of him that he was a walking digest of divorce laws, the chief builder of which was, of course, Lord Hannen, the kindly, courteous judge.

To have heard Mr Inderwick open a case, in regard to which he had full confidence, was a study, especially in watching the dexterity with which

he cut the most telling figures on the thinnest of ice. As a cross-examiner, he wanted a great deal of beating in these days of mincing, silly questions, which are far too often put to witnesses.

At one time he was chairman of the Reform Club, and for many years he represented Rye in the House of Commons. Three times he was Mayor of Winchelsea, where he then had a residence, and as baron of that Cinque Port, he was present at the Coronation.

Although at the time the acknowledged leader of the Divorce Court, his claims to a seat on the Bench were for some reason ignored. Over his head were put Sir Charles Butt, Sir Francis Jeune (Lord St. Helier), and Mr Justice Barnes (Lord Gorell). It must have required a great deal of philosophy to keep up the old efficiency and his hold upon auditors, as Mr Inderwick did, under the steady discouragement which he met from the authorities in whose hands promotion lies, promotion which at times is open to criticism.

It was in 1874 that he took "silk," and from that time he was in nearly every important case which engaged the attention of the Court till his retirement. To enumerate them all would be rather tedious, but to mention some haphazard is

to recall many interesting *causes célèbres* of the past.

To begin with, there was the long Mordaunt Case, the Sebright Nullity of Marriage, the Dilke Suit, the Colin Campbell consolidated actions, and a long string of others of a more recent date.

The year after he took "silk" he was engaged in a most remarkable will case. "*Sugden v. Lord St. Leonards*." It involved the question whether legal proof had been given of the will of Lord Chancellor Lord St. Leonards, which was lost.

That will was in all probability one of the finest pieces of legal draughtsmanship ever put on paper. It was well known that Lord St. Leonards had made a will doing even justice among his numerous children and grand-children. On his death the will could not be found, and his unmarried daughter, Miss Charlotte Sugden, who for years had been her father's companion, and knew more of law than many a learned counsel, and had assisted her father in the later edition of his works, declared that she could remember the provisions of the very complicated document which was missing. He had frequently read his will over to her.

She drew up a statement of the substance of

her father's intentions, which was propounded for probate. It was opposed by the second Lord St. Leonards, the testator's grandson. She was able to repeat the substance of a complicated will, and her testimony could not be shaken in any way. Her evidence so impressed Lord Hannen, that he thereupon decided that the contents of the will were, without a single exception, what Miss Sugden had represented them to be.

That decision was upheld by the Court of Appeal, and Mr Inderwick was throughout on the winning side.

The will in question was generally supposed to have been buried with Lord St. Leonards in a pocket of a dressing-gown which he habitually wore.

That same year Mr Inderwick was in a case in which the Divorce Court held that it could not make a decree absolute for divorce upon the application of the guilty persons. All Courts insist upon having before them suitors "with clean hands," and where it found a wife guilty, she was not allowed to ask for the final step which dissolved the marriage.

He was also engaged in the celebrated case which decided that the English Court of Divorce could not dissolve the marriage of a foreigner.

It was once said by a wit of Mr Inderwick that a woman never knew how badly she had been treated till she had heard him address a jury on her behalf. There is no doubt he was a "master of forensic fence," an insinuating, smiling personage, who was so skilful in his surgery that it was almost a pleasure to the victim to have his motives and his mind laid bare under the operation.

Practising in the Court in the early days of Mr Inderwick's career were such intellectual giants as Serjeant Ballantine, Serjeant Parry, Mr Hawkins (afterwards Lord Brampton), Mr Henry James (Lord James of Hereford), Mr R. A. Bayford, and Dr. Tristram.

At a later stage Mr Inderwick had for his opponent the genial Sir Frank Lockwood, whose rough sketches in Court, drawn with a quill, were much sought after, and were so numerous that there was a successful "Loan Collection" of them, of which I contributed some, which were presented to me by Sir Frank Lockwood, a characteristic one being that of Lord Loreburn, the present Lord Chancellor, when he was known as "Bob Reid" amongst his very intimate friends.

Sir Frank's cartoons are still treasured by their

fortunate possessors, but he never made the mistake of sending a judge a cartoon of himself. He supplied him with a learned brother instead, whereat his lordship would laugh heartily.

In one of the stories which Sir Frank Lockwood liked to tell against himself, he was on circuit with Mr Waddy, Q.C., and the latter, being a staunch Nonconformist, was announced to preach at a local chapel. Sir Frank and a friend decided to attend the service, but Mr Waddy was equal to the occasion, and announced from the pulpit that "Brother" Lockwood would lead in prayer, a statement which secured the hurried withdrawal of "Brother" Lockwood.

Of the many stories that are told at the Bar illustrative of Sir Frank Lockwood's cheery audacity and breezy wit, few perhaps are so characteristic of the man as that connected with the first brief ever entrusted to him.

The case was one of some importance in which several companies were concerned, and Mr Lockwood entered the Court determined to make his mark, but, if possible, to call attention to the meanness of the solicitor who, as he thought, had marked his "brief" in a very illiberal manner.

The opportunity to do both these things pre-



LORD LOREBURN.

SKETCHED BY SIR FRANK LOCKWOOD.

sented itself sooner than he expected, for, immediately after his tall, stately, and imposing, but then unknown, figure had risen, he was checked by a distressed voice from the Bench, saying, "And, pray, what do you appear for?"

"One, three, six, my lord," instantly answered Mr Lockwood, naming the smallest sum for which a barrister may come into Court, and feeling that he had secured his point.

The Bar Point-to-Point Races is an institution in legal circles. At a dinner on one occasion when the Lord Chief Justice was present, Sir Frank made one of his amusing speeches. It appeared that he had been "welshed" in the course of the meeting of a sovereign. Lord Alverstone had, in the first instance, been approached by a bookmaker to back a horse, and he pointed out Sir Frank as a person more likely to be engaged in a betting transaction. In the course of his speech Sir Frank insinuated that the "bookie," who wore a Tyrolese hat, and who was the "welsher," had plotted with the Lord Chief Justice to obtain the sovereign. In his humorous way, he added that he was not sure, but he was almost certain that he had seen them divide the money behind the grand-stand after the races.

## THE SOLICITOR GENERAL.

Sir Rufus Isaacs, K.C., who succeeds Sir Samuel Evans (the new Divorce Court President), as Solicitor General, is a highly popular barrister, and the most successful of the present period. He has had a most interesting career. In his early days he went to sea, serving before the mast. On one occasion he was taken prisoner by Chinese pirates, and was forced to work for several days in the hold of a vessel in the tropics. Few men could have stood this ordeal, but he possesses great physical as well as mental power.

At the age of twenty he gave up the sea and became a member of the Stock Exchange, and the knowledge he thus gained was very useful to him in after life in the many commercial cases in which he was engaged. Subsequently he studied for the Bar. He "read" in Sir Lawson Walton's chambers, and soon took "silk."

His face is keen cut, pleasant to see, and as pallid as the usual curate, while he has a golden voice and a silver laugh. He carefully bears in mind the old adage, "Never to cross-examine crossly." Throwing back his head, and gripping

his gown at the shoulders, he asks subtle questions in such a charming way that the witnesses as a rule pleasantly answer them.

His method in Court is delightful. He makes everybody feel at ease, except his learned opponent, who sees his case vanishing in wreathed smiles and urbane compliment. It is only when the witness leaves the box that he sees how he has been caught in the folds of the learned counsel's insinuating way. A duel between the new Solicitor General and a typical English K.C., has been likened to a bout between a rapier and a quarter staff.

Not long ago a surgeon, whom he was cross-examining, said : " I dreamed about you last night, Mr Isaacs ; you have been a nightmare to me. I have hardly slept since you let me out of the box on Friday. I dreamed you had examined me, and I seemed to have nothing on except bones."

A man obviously intended by nature to become a successful barrister, he has risen with amazing rapidity, by sheer hard work, to the head of his profession. He does not try to be brilliant ; he has a quiet and very convincing way with him, and he may now properly be regarded as the leader of the Common Law Bar. A man of

high social standing, he is absolutely devoid of conceit. It is said that he knows the Cluny Museum in Paris better than any living Englishman, and he is a great collector of art treasures.

He had not been long practising before men of experience predicted for him a brilliant career. "Keep your eye on that young man," said one old judge. Lord Esher plainly told Mr Isaacs one day in 1894, before he had been seven years at the Bar, that he expected to see him on the Bench, a prediction which, no doubt, will be fulfilled. He is certainly one of the most striking personalities of the time.

For several years past he has sacrificed all pleasures to his profession and political duties. It has been his practice to go to bed every night at nine o'clock, and to rise at four for the purpose of reading his briefs and preparing for the day's work in the Law Courts. With characteristic generosity, he always speaks in the highest terms of his devoted man-servant, who year in and year out has faithfully aroused him and prepared his breakfast at the abnormally early hour at which it has been his practice to rise.

His appointment will give special pleasure to the Jewish community, of which he is an honoured and a distinguished member, for he

has closely identified himself with the most important of its public and philanthropic institutions.

With regard to his schoolboy days, it is stated that he left lessons unlearned, classwork he shirked, and mischief was his only devotion, he being full of "wicked ways." He has been described in those youthful days as "a demoniacal young mischievous imp, with sparkling eyes, who was always in disgrace, or being caned, and yet withal was ever merry and deliciously humorous." The theory of "Sandford and Merton" he has exploded. "Isaacs Secundus, you will go to the devil," was the prognostication oft repeated by his schoolmasters.

### SIR EDWARD CLARKE.

The Right Hon. Sir Edward Clarke, K. C., who has just entered his seventieth year, a Londoner born, has had a very remarkable career as regards politics, but more especially at the Bar. In 1864 he was "called" at Lincoln's Inn, and he has been one of the most successful practitioners in both the Civil and Criminal Courts. In company, libel, and divorce cases, where was his equal when he

was in full practice? As a cross-examiner, who could excel him? He is another interesting personality at the Bar. Frank, alert, he has what people call "a winning manner," and the term applies to his work as well as to his bearing.

He is an old boy of the City of London School, and has always manifested the greatest interest in that foundation. In the course of an interview, he said, "I was not attracted to the profession of advocacy merely by its being the pleasantest and most highly paid of all intellectual occupations. The attraction to me was that the Bar offered the only path by which a lad who had neither money nor influence to back him, could hope to attain any position of influence in political affairs."

Sir Edward made up his mind to achieve political distinction, and at a very early period he threw himself into party warfare.

As to his political career, he was Solicitor General in the late Lord Salisbury's administration from 1886 to 1892. For twenty years he was one of the representatives of Plymouth in the House of Commons.

At the Central Criminal Court his reputation first began to grow, and as a defender of prisoners few could equal him. With regard

to forensic utterances, no advocate has been more successful with juries in divorce cases. Tiny in physique, he is intellectually enormous, and he has made his way by sterling merit. He has a kindly nature, one of the cheeriest of companions, a clever raconteur, and a true friend.

He is an accomplished musician and sculler. In his young days he was always very enthusiastic about the hobby which happened to be the immediate favourite. It is recorded that he once broke a friend's pianoforte. Once he was asked to take part in a river picnic, the invitation setting out that it was "musical." After the acceptance, he was told "to be less athletic on the piano, and more harmonious on the water!"

His costume when rowing was remarkable for brilliancy, in contrast to his present day appearance. Has any one ever seen him in the summer when "on business bent" without a grey frock coat, tightly buttoned? Then there are the hat and the gloves to match.

It is stated that, in regard to his smart appearance one day, after having unrobed in the Law Courts, he left by the Strand entrance, when the following conversation was overheard between an American and a friend, who was evidently showing him round:—

“Waal ; see that, say, who might he be ?”

“ Lord Chesterfield, at least I think it must be,” the Englishman answered, “ but I’ll ask,” and he questioned a cabman, who replied, “ Luv’ yer for an innercent—why that’s Teddy Clawk, that is ; ain’t he a fighter, eh ? ” Mistaking the meaning of the latter phrase, the American said, “ Waal, I dunno, but I lay he ain’t altogether raal professional.”

He is a regular “ first-night ” theatre goer, and rarely missed a Lyceum production during the Irving management. A love of the stage is characteristic of many eminent men, which has included Mr Gladstone, Mr Chamberlain and Lord Rosebery. He was a personal friend of Sir Henry Irving, and although they went to the same school they were not fellow students, but the boy friendship continued throughout their lives. The love between them was like that of David and Jonathan.

A very recent instance of his sturdy independence was shown when he appeared for the claimant in the “ Sackville Peerage Case.” His client had sent him a letter dictating to him as to the course he should adopt if he did not apply for an adjournment of the case, and, not acquiescing with the insistance, he dramatically withdrew from the case.

## THE LORD CHANCELLOR.

Lord Loreburn was appointed Attorney-General by Lord Rosebery, and he has stuck to his political party through thick and thin, storm and calm. He is a robust, uncompromising Liberal. He never fought a shady case or did a mean thing. He was a Cheltenham college boy, and went up thence to Balliol; he comes from Dundee. He was always known as a "right good fellow."

His unaffected manner and quiet humour soon made him a *persona grata* with the House of Lords, who have a healthy contempt for ostentation. As a cricketer he is well-known, in fact he is a good-all round athlete, and loves golf. As Sir Robert Reid, he had few rivals in popularity at the Bar. At Oxford, where he batted for his 'Varsity year after year, and carried off the coveted Ireland scholarship, he was always modest as he was clever. The best of company, and the warmest-hearted of men, he is, as Mr Pope, K.C., once said, "The reverse of a triangle, because he has neither angle nor side."

An amusing tale was told of him by his intimate

friend, the late Sir Frank Lockwood, who was speaking to the Eighty Club at Cambridge.

"I met a man in the Temple the other day," he said—"and it shows how little straws in the minds of some indicate the way the wind is blowing—and he said to me, 'I am afraid we are not going to last long; I am afraid there is going to be a dissolution.'"

"I asked him why he thought so, and he said, 'I was walking down Middle Temple-lane, and passing the door of the Solicitor-General, I noticed that his name, which had been painted fresh, has only been done in one coat of paint.'"

### SIR ROBERT FINLAY.

Sir Robert Finlay, K.C., has worthily fought the battle of life, and is a shrewd, hard-headed Scotchman, who can address a jury, and argue clearly a knotty point of law. His recent appearance for Lord Sackville in that remarkable "Peerage Case," tried before Lord Mersey, was a master-piece of legal acumen. Replete with the most intricate details, Sir Robert got the "grip" of it in a very remarkable manner. The ex-President, for the purposes of judgment, and the fact that the claimant had retired from

the case under protest, requested Sir Robert to deal genealogically with the whole of the case affecting his client, and for five hours he was on his legs, setting out with the minutest detail all the facts, principally taken from evidence on commission, of the most intricate case that has ever been before the Court.

Sir Robert Finlay has been known to hold his own in a sensational divorce case, but he is not in love with that class of work, being more at home in commercial actions than "matrimonial collisions." A capital lawyer he undoubtedly is, and looks stolid and one not likely to appreciate a joke.

On one occasion he had to cross-examine a highly disreputable lady, who steadfastly refused to disclose her address. After some pressure, she stated where she lived, and ultimately invited the cross-examining counsel to "drop in and have a cup of tea sometimes." This ray of humour did not affect him, for he is a Scotchman! He looked askance at the witness, and sat down.

Some years ago he used to be seen at his best on horseback, riding to his chambers of a morning on an animal the breed of which could not, to satisfy any expert, be said to be of a "pedigree"

character. It was stated at the time Sir Robert rode out that the Inns of Court Mounted Infantry had cast their longing eyes upon it, to add materially to the attractiveness of their own corps, known as "The Devil's Own."

### SIR EDWARD CARSON, K.C.

Sir Edward Carson, K.C., before he joined the English Bar, was known in Ireland as "Coercion Carson." He was then Mr Arthur Balfour's right-hand man in the struggle between Coercion and the National League. For some reason he resolved to leave his native country. He was admitted, after some little delay, and even some little difficulty, as a junior to the English Bar. The next year he was created a Queen's Counsel.

He rapidly became famous. His cross-examination—dexterous, relentless, searching—was a new thing in English Courts, and he very soon got to the head of the profession. One of his great successes was the masterly manner in which, as counsel for the King's Proctor in the Pollard Divorce Case intervention, he unmasked the methods of the private detectives in that remarkable suit, and broke up a scandalous business.

His long, narrow head, his thin, hatchet face, his dark and sallow complexion, his deep-set,

cold, strong eyes, all mark him as a man of tremendously strong will and determination. "Carson is cross-examining" in a society case in the Divorce Court runs like wild-fire through the corridors, and then "the great unbriefed" flock there in great numbers. His keen repartee, his sallies, his abundance of wit, pouring forth on every possible occasion, always make the Court ring with laughter.

He always wears a pained expression, due, it is said, to dyspepsia. As an advocate he is always cool and self-possessed; nothing disconcerts him. He has a great charm of manner, and is greatly admired for his personal qualities.

### MR WILLIS, K.C.

Mr Willis, K.C., the well-known County Court judge, was another well-known frequenter of the Divorce Court, and was at the time, doubtless, one of the most interesting figures at the Bar, and was always welcomed by the public for making matters "hum." In his hands, whichever side he was on, dulness flew away, and he made things brighter by his cheery presence and his invariable good humour.

In addressing a jury, and in examining a witness, he was in the habit of using his right

hand in a manner best described as a trowel-like action. It is related of him that while he was a member of the House of Commons he effected the destruction of Mr Campbell-Bannerman's hat.

The latter gentleman was sitting below him, and down came the smiting hand on the devoted head. Mr Bannerman shifted his seat. Mr Willis shifted his stand, and the destructive, lever-like action was continued till the hat was knocked over its owner's eyes. And its ruin was complete.

In addressing juries he used to grow quite pathetic, and those who heard his capital address to the jury in the Newman Hall divorce case very many years ago, will readily remember his shedding copious tears as counsel for Mrs Newman Hall.

Originally he did not propose to practise at the Bar, but was engaged in business, when one night an influential gentleman heard him speak at a political meeting, and persuaded him to throw up the business and take to the profession.

He had an antipathy to cross-examine a hostile witness through an interpreter. On one occasion, during the hearing of a will suit, it was a sight to see a shepherd in his plaid, garrulous in Welsh,

but knowing no English, the interpreter flurried but anxious to please, Mr Willis enraged, and the court demurely amused.

He is a most generous and kind-hearted man, a most able and conscientious advocate, who never went into Court without thoroughly knowing his case. Given in the long remembered past, a common jury and a case in which there was scope for legitimate indignation, and Mr Willis was hard to beat. His methods were of that persuasive order that jurymen like, in regard to which many verdicts were recorded in his favour.

He is a great authority on the Seventeenth Century and a sturdy defender of the Roundheads, and has collected so many books and pamphlets that much of this literature used to be housed in his chambers in King's Bench Walk, Temple.

In one of the election petitions there was some discussion on a meeting at which "Cavaliers and Roundheads" had been the subject of a lecture.

"I wish I had been there," said Mr Willis.

"If you had been there," was the retort, "I fear there would have been a disturbance." And there would.

One of the few cases on record of a coincidence as to names, leading to a very witty retort, is the

celebrated encounter that took place, some years ago, between Mr Willis, K.C., and Mr Dickens, K.C. "Little" Mr Willis, as he used to be called in the Courts, had been conducting his case in his usual strenuous manner, and had in the course of an impassioned speech referred personally to the opposing counsel, remarking that rarely, if ever, were the sons of great men blessed with the same superabundance of intellect that distinguished their fathers.

When Mr Dickens rose to reply, he was exceedingly modest in referring to "his distinguished father, whom, but for the remarks of his learned friend, he should never have thought of introducing into the case. He felt bound to admit, however, that his friend, even before he had made that reference, had strangely reminded him of a well-known character in one of his father's novels, who signified his desire to enter the matrimonial state by repeating the words "Barkis is willin'."

He (the learned counsel), as he listened to parts of his learned friend's speech, could not help inverting the phrase, and saying to himself, "Willis is Barking."

## MR MARSHALL HALL, K.C.

With regard to another Divorce Court practitioner, Mr Marshall Hall, K.C., he is the most fluent and rapid speaker at the English Bar. In fact, it is doubtful whether any man in England has a more facile and rapid flow of words, or is more a thorn in the side of reporters, who are ordered to do a verbatim note of a particular case in which he is opening. He is gifted with a dash of eloquence, which puts him in great favour with litigants of all classes.

Some regard him as aggressive, but he is naturally kind-hearted. He is a capital host, who can tell a good story well. He has many friends and quite a distinguished appearance.

## MR C. F. GILL, K.C.

As regards Mr Charles F. Gill, K.C., who is very often engaged in divorce cases, he is an Irishman, who figures more prominently at the Old Bailey. "Who is the dreary old buffer?" a burglar is said to have whispered over the dock rails to a bystander, referring to Mr Gill, whom the judge had asked to defend the prisoner. The

words used by the burglar were not exactly those as printed ; they were more of a pronounced character. The burglar was acquitted, thanks to the able advocacy of Mr Gill, who did not question his client's personal reference.

Mr Gill is slow of speech and of almost painful deliberateness. He scorns oratorical tricks and gestures, and rarely brightens into humour. His strength lies in his clear grasp and enunciation of his case, the strong common-sense with which he infuses it.

Judging from his appearance, Mr Gill is not a man to be trifled with, as Lord Chief Justice Russell knew when he and that eminent counsel crossed swords.

When a domineering judge once threatened to commit Mr Gill for contempt of court, he placidly remarked, " That raises an interesting question, m' Lud, as to your Lordship's power to commit a counsel when engaged in a case before your Lordship," and went on as before. The large featured, strongly moulded, clean-shaven face is eloquent in every line of strength ; he is a very sound advocate, and as a cross-examiner he is most skilful.

There is no more ruthless cross-examiner at the Bar, and his method is as sure as it is slow.

As he twirls a piece of string diffidently in his fingers, and propounds his deliberate questions, he is twisting a coil round the witness from which no struggles shall free him.

He still possesses the same buoyancy of spirits, the same vivacity and endurance. There is no more useful fighter in the world of advocates. He is not a bully, nor floridly eloquent, yet he is very quietly aggressive when occasion seems to demand it, and in the making of points he can hold his own.

#### MR H. F. DICKENS, K.C.

Mr Henry Fielding Dickens, K.C., another practitioner in the Divorce Court, has a high-pitched voice, with a mournful cadence. He is a sound lawyer, and has inherited a good deal of his father's gifted mind. A good story is told of him on one occasion when he was having a holiday in Switzerland.

Over the dinner table one evening the conversation turned upon glacier chasms, and one of Mr Dickens' companions, dipping his finger in his champagne, drew a rough plan of the particular chasm he was talking about.

"That's a pretty fair description of the place," said the friend, wiping his finger on his serviette.



Mr. W. T. Barnard, K.C.



"Yes," assented Mr Dickens, "it is quite an illustration by *Phiz*," the nickname of the artist, Hablot Browne, who illustrated Dickens' works.

### MR W. T. BARNARD, K.C.

There are few big cases which Mr Barnard, K.C., is not in. He is painstaking, highly reliable, and can fight a losing case better than any barrister I have ever come across. His tenacity of purpose is marvellous. By sheer industry he has made his way, and it would be difficult to find a more reliable advocate.

He sticks to the Court, and the Court sticks to him. Briefed in a case, one may always rely upon his being in attendance, and, unlike some of the busy "bees" who extract substantial "honey" from the other Courts, leaving clients often in the lurch after substantial "briefs" have been delivered, his professional attendance may always be guaranteed, and a suitor is perfectly safe in his hands.

He never gives up hope in any case, whatever weakness a defence might disclose, and this is the key-note of his success at the Bar. He is a born legal fighter and a counsel to be safely trusted in either will suits or divorce cases.

Giving evidence at the Royal Commission on Divorce Reform, Mr Barnard said that there was a certain amount of collusion at present ; but if suits were started in the County Courts it would be tremendously increased. As to the value of the jury system, one reason why he desired the retention of juries in divorce suits was that when, as happened in many cases, there was a great conflict of evidence, it was better to have the verdict of twelve men than one.

I have repeatedly heard Lord Hannen say that, in regard to conflicting evidence which has been placed before him alone, he deeply regretted that he had not the assistance of a jury, but that, in its absence, he must proceed to weigh the evidence for and against, and Mr Barnard properly took this view, being of opinion that the greatest protection litigants can have is a jury.

Questioned as to his view as to the publication of divorce cases, he, who is such a great authority, spoke as follows :—

“ My own view is that it is in the interest of the public that divorce cases should be published. I think that it often leads to evidence being obtained by which in the end justice is brought about. I am afraid if reports are confined simply to putting in the names of the parties and the

result, the newspapers will not publish those cases at all, and I think it is in the interest of the public that these cases should be known. I think myself that it does exercise a wholesome check upon people.

“We hear of cases where people are living unhappily together, and there is misconduct on the part of either of them, often with the object of obtaining relief by divorce afterwards. I think cases of that kind would be increased if there was no publication. I think publication is a very great check upon people who know that if they are guilty of misconduct or cruelty they run the risk of having it published to the world.”

## CHAPTER IX.

### THE DIVORCE COURT.

On any day almost, especially if a cause célèbre stands in the list as "part heard," ranged up in queue outside the public entrance to the Courts in the Strand are generally some fifty or sixty people, two deep, the majority of whom are "loafers," but the crowd always contains women. A stranger would probably want to know what theatre it was, and, if he had the temerity to ask, he would be told it was a free but morbid form of entertainment provided by the law for the amusement and diversion of gossips.

These patient waiters are for the public gallery of the Divorce Court, the entrance to which is on the west side of the main entrance of the "Gothic Stone Village," otherwise known as the Royal Courts of Justice. The accommodation

provided is very limited, but that does not deter those seeking admission by a long waiting crowd eager for seats.

At the two regular entrances to the Court proper janitors have a very unenviable time owing to persons; on all sorts of pretences, endeavouring to seek admission, most of them being the scandal-loving public who are always ready to eagerly watch the unfolding of a highly spiced marital drama. Of course, in addition to the well-dressed women, "the very junior bar" are always largely represented where there are no intricate points of law under consideration, and the unseemly way and undignified manner in which the "great unbriefed" struggle for places is a grave scandal, and cannot be too strongly reproofed.

They are the most troublesome people to deal with in sensational divorce cases. Some of them appear to imagine that because they wear a wig and gown, oftentimes borrowed, that they can at once obtain admission to the Court, and they block up the passages, much to the discomfort of those who have to attend "on business."

Then, again, there are the so-called "law students," always to the front in clamouring

for admission, harassing the keepers of the doors in their anxiety to obtain seats. When Lord Keynon was Chief Justice of England there used to be a box for the Bar students close to the Bench. It often happens that when an important case is being tried the demands upon the space of the Court are so heavy that a student is prevented from enjoying the wished-for opportunity of observing how the masters of the forensic art do their work.

The provision of special accommodation for students in the Courts, if they are really *bonâ fide*, would not only enable them to learn the lessons which are to be derived from the combats of the foremost men at the Bar in *causes célèbres*, but would also encourage them to make a sympathetic use of the opportunities of studying the art of accuracy in less sensational cases.

Some years ago, during the hearing of a sensational divorce case, counsel complained to Lord St. Helier that there was no sitting accommodation for the witnesses, and pointed out that the body of the Court was only intended for the use of those strictly concerned with the trial under investigation, while persons occupied seats who had no business there whatever. After that an order was made that only those

persons strictly engaged in the suit should be admitted into the Court, which has since been enforced, but certainly not strictly, much to the relief of those whose duty is to be present. Certainly the order could be more rigidly enforced.

The time to see the Divorce Court in all its glory is when an aristocratic case is being tried. As usual the Court is crowded with well-dressed women, and should the case last some days the same faces are to be seen but with changes of dresses and hats worn by the same people. Gold-mounted scent bottles odourise the atmosphere, delicate fans are eternally on the move, gasps of astonishment, interspersed with gentle titters of laughter, whispered conversations lit up by stereotyped society smiles, are the order of the day.

The scenes enacted at this important arena of public life are naturally always sure to attract "crowded houses," while too often there is not even "standing room " for the scandal-loving public.

In the Divorce Court, like most of the others in the Royal Courts of Justice, the days of forensic eloquence of the Serjeant Buzfuz type are practically over. Plain, matter of fact speeches are encouraged by the judges, and

really have a more telling effect on the jury than florid addresses.

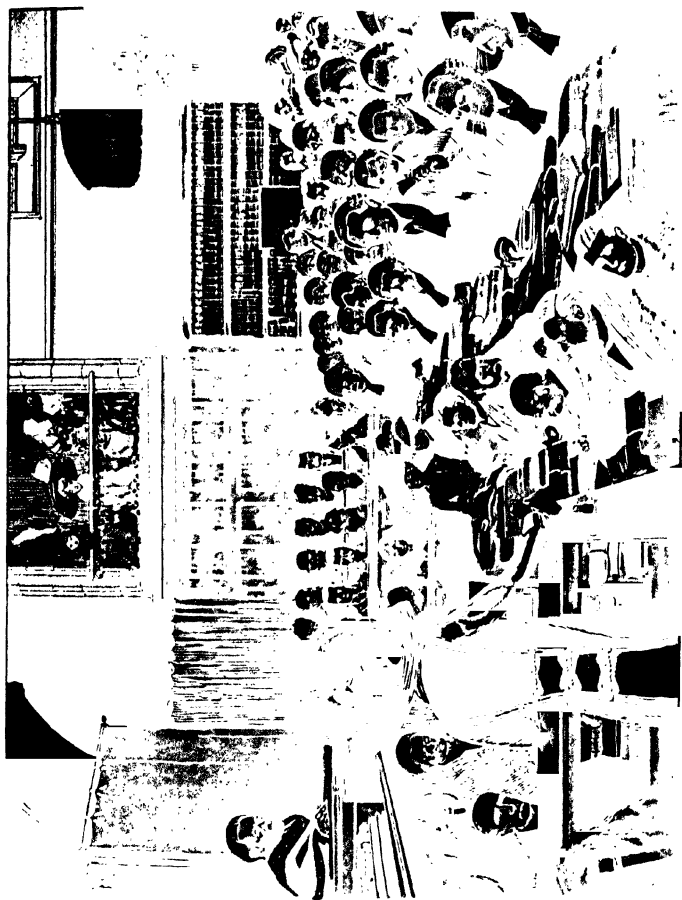
“What strikes the ear and not the heart.”

It is now difficult indeed to “snatch a verdict” from the Old Bailey advocate point of view, and it is generally a source of considerable amusement, when a newly fledged barrister, fresh from a Fleet Street Discussion Forum, awakens the echoes of the Court with an impassioned address.

The Divorce Court is a wonderful mixture of the real and the unreal, the melodrama and the comedy. It is, indeed, a human comedy in the largest of senses, and nearly every imaginable marital and legal entanglement have been thrashed out in its precincts.

Sordid stories? Yes! But sordid stories which are entwined in flashes of comedy; skilful, parrying counsel and witnesses, an education in itself to watch.

The judge sits as the arbiter of men and women’s destinies. He must be able to judge them, to be himself a man of the world, and to mete out justice with due regard to human nature. It is human nature that makes the Divorce Court interesting—the fact that it is human in its follies, its weaknesses, and its passions.





The chief charm of the Probate, Divorce, and Admiralty Division is its chameleon-like mutability. No one seems absolutely certain what is going to happen. Its business is transacted in two Courts, in regard to which there is no particular sign of their functions, except in the second Court an anchor is displayed. One may look in early in the morning and find the Court wholly given to divorce.

There is a Bond Street air about it; the co-respondent generally wears the smartest of neckties; and the long line of domestic witnesses only serves as a foil to the charms and brightness of attire of the fair respondent. As a rule, she is always well-dressed. Everything seems serene, fixed; it is calm and peaceful.

To quote the poet, "The scene is changed." You look in half-an-hour later, and see placed on the table the silver oar, which means that from divorce the Court is hearing "nautical collisions" as opposed to "matrimonial collisions." The operation of placing the silver oar on the table means the employment of "officials" with substantial salaries, and the work cannot be called laborious, but is departmental.

Hardly has the scent of highly-perfumed letters, which had been disclosed on a previous divorce

case, been wafted away, breathing lawless affection, than the attention of the Court is called to a chart board, with the points of the compass pricked out in red and green, and there are questions raised about longitudes and latitudes. All this while the silver oar is carefully guarded by an official called the "Admiralty Marshal," who keeps his eagle eye upon it because once it went astray.

In the corridor may sometimes be seen on one day a remarkable trio, emblematic of the triple Division—Probate, Divorce, and Admiralty—first, a daintily-dressed lady who is interested in a matrimonial case; secondly, an old salt mixed up in a collision action; and thirdly, a widow disputing her husband's will.

## CHAPTER X.

### THE COURT'S ACOUSTIC PROPERTIES.

The late Lord Field, when necessity required, could be very severe. The old Courts at Westminster were his first and only love. Like a great many more people, he never took kindly to the Royal Courts of Justice.

One day, owing to his deafness, he failed now and then to grasp the evidence of a witness, and ever and anon he would exclaim patiently, "Speak up, please! Do speak up. You forget that these Courts were never built for hearing. They are very ornamental, but not very . . ." finishing the sentence with a good humoured laugh.

Lord Justice Lopes, many years ago, was called upon to sit in the Divorce Court to dispose of some arrears, and he then said that he had tried cases in a number of places, but, without doubt,

the Court for hearing purposes was the worst he had ever been in, its acoustic properties were abominable. The last thing the much abused architect of the "Gothic Stone Village" seems to have considered is that the people in the Divorce Court could get a hearing. Whether the witness could be heard by a jury, or whether either could be heard by the judge, apparently did not seem a matter of much moment to him.

The public are admitted to a high gallery, the entrance to which is in the Strand, but the accommodation is very limited. They, however, have one important advantage over those seated in the body of the chamber. The acoustic properties of the Court seem to have been so arranged that those seated in the gallery very often hear better than counsel themselves, or the representatives of the "Fourth Estate." Answers to questions evoking laughter are heard by them, while the unfortunate reporters are straining their ears to catch the replies.

Various experiments have been tried to remedy acoustic defects. Reporters' seats have been raised, and all kinds of technical methods adopted so that witnesses can be heard; but counsel still repeatedly call out, "Do keep up your voice."

"I cannot hear you." "Speak out," and over and over again the official shorthand writer has to read over the replies of witnesses.

All the Courts appear to be constructed on a wrong principle with regard to acoustic properties. I have long advocated a sounding-board to be placed over the witness-box, like that in use at St. Paul's Cathedral ; but the authorities will not try the experiment, and tinker with technicalities with regard to the production of "sound waves " and other wondrous modern fads. A witness, if he really tries, can make himself heard, but the enunciation is to blame. Clear speaking ought to form part of the education of the young as to opening their mouths.

Oh, those trying mumblings of witnesses, and oh, that irritating cough, generally adjacent to the reporters' box, and most trying in endeavouring to catch an irritating, soft reply by a nervous witness.

The Law Courts, it appears, is not the only building with regard to which the acoustic properties are open to objection. At the Central Criminal Court, where the judges sit, it is stated that not only is it difficult to hear remarks from the Bench and evidence from the witness box, but that in one of the seats allotted to the

members of the Bar there is an "echo," which is most embarrassing to counsel.

Rarely does, it is affirmed, a session pass without some allusion to the irritating "voice," which seems to come from the glass roof in the Court. In the course of the hearing of a recent case, Mr Marshall Hall, K.C., counsel engaged in the suit, explained to the presiding judge the difficulties experienced in conducting a case owing to the "echo." He caused some laughter by stating, with regard to the "echo," "It comes back and knocks you on the head. It mocks you like a laughing jackass on the top of a tree in Australia." At the hearing of the particular case, this very well-known counsel changed his seat, but the "echo" of his "voice" was not silenced !

## CHAPTER XI.

### WOMEN IN COURT.

#### A PROTEST.

I remember some years ago Mr Justice Bucknill, who has frequently been called upon to assist in the Divorce Court, had to try a very disagreeable case, about half the time of the trial being engaged in hearing medical evidence. At the outset it was pointed out that the nature of the suit was such that all women who were not directly interested in it would do well to leave the Court. As usual, the public gallery was thronged with well-dressed women, not one of whom budged an inch, but stuck more firmly to their seats.

The unanimity with which every woman present at once assumed a thoughtful, abstracted air, that might mean deafness or mental pre-occupation, was striking, even to an ordinary observer.

There was a rustle of dresses, and it was thought that there would be a general exodus of the "fair sex," but the "rustling" only meant that they had more firmly settled themselves in their seats, to which they appeared glued. They had the right to stay as they could not be expelled, and they fully exercised it, as women of this calibre will ; but what can one think of such people ?

At the close of the case, Mr Justice Bucknill said :—

"I have observed with the greatest pain that the public gallery has never been empty of two or three women—I shall not call them ladies—listening to the filthy details day after day which have been laid before the Court. I think it is a great pity such things are allowed."

If these prurient-minded women come to the Divorce Court they must know what to expect. The judge, in the old story, who, when some racy evidence was expected, requested all *ladies* to leave the Court, and when all but a few brazen females had cleared out, turned to the usher, and said, "Now the *ladies* have all gone, turn these other women out," had a nice appreciation of what constitutes a lady, who, in the proper sense of the term, has more regard for her character

than be seen in such a place purely out of curiosity.

When there has been uncontrollable and unseemly laughter, judges have frequently threatened to clear the Court ; but the judicial warning is not often put into practice, the public being mildly reminded that the Court is "not a theatre." There is something about this withering satire that seems to dry up the fountain of humour, generally having the desirable effect of curbing the risible faculties of the public. But a conspicuous instance of such an extreme step as the clearance of the Court where occasion required would have undoubtedly a salutary effect ; at present it is generally believed that at least one fit of indulgence is safe.

The purient-minded frequenters of the Court are not entirely members of the "weaker sex," for men are almost as great offenders, and the number of habitual "loafers" who want to "kill time," seems increasing. On one occasion a policeman was asked why it was so hard (for the innocent) to get into the Central Criminal Court, and his reply was, "So many would come in wot's got no other home."

In the Divorce Court the "loafers" have, in fact, warmth, light, shelter, and the martial

drama of life displayed before them, all "free, gratis, and for nothing," hence the questionable eagerness for admission, and the scrimmage for seats, a spectacle much to be deplored. One of the habitual "loafers" is reported to have said of the Court that "it is always warm and comfortable, plenty to amuse you, and nothing to pay."

Why do well-dressed women throng to the public gallery? One thinks of the terrible truth of the proverb, "The corruption of the best is worst." A most deplorable feature in a fashionable case is the presence day after day of numbers of these women. To them it is the same as going to the theatre, only more exciting, for, instead of seeing actors pretend to suffer, they see men and women undergoing a terrible ordeal.

They listen to the unsavoury evidence that is given, and by prurient curiosity, they carry their curse about with them—a diseased and blackened mind.

The zeal in discovering the nasty needs no praise. "A nose for carrion," as Thackeray said, "is no credit to its possessor." One would like to know Mrs Grundy's opinion of these well-dressed women who so frequently come to what has been termed "the saddest of all the King's

Courts," which invariably has a great fascination for them, they being the most devoted attendants, gloating over the admissions made by their unfortunate sisters, a pitiable spectacle, and one much to be deplored.

The gloating crowd that quickly horror spies,  
 Stands there salacious at some soul's demise,  
 Lewd eyes pry out the wounds that bleed,  
 Lewd ears drink in each baser deed,  
 Full many a sorry tale is told  
 Of shrinking honour bright and sold.  
 Slain ghosts of better selves are there  
 Mad mem'ry's sprites to darken care.  
 But there are few, God wot, to say,  
 Alas ! the twain should see this day.  
 O, gentle stranger, turn and flee  
 From this sad Morgue of chastity.  
 Love's suicides are laid out here,  
 Grieve for and leave them with a tear !

R. H. M.

### MR JUSTICE BUCKNILL.

Mr Justice Bucknill, who made the protest about women being in Court, is an unconventional judge (using the term in no disrespectful sense). "Why don't you call me 'Tommy'?" he once said to a too respectful junior who would persist in addressing him as "Mr Bucknill." "I'd have you to know that my name is 'Tommy,' and I must ask you to stick to it." No one calls him "Tommy" now, but there is more than a suspicion that the learned judge would not resent the

familiarity if it came from those who knew him in the olden time.

Sir Thomas Bucknill is still at heart the "Tommy" who was, in the days of briefs, the idol of his friends and the soul of the mess table. He is ideally at home at Epsom, for he loves horses and horse-racing, far better than "briefs and bamboozling," as he once summed up his profession.

If he has any regrets (although one cannot associate such an idea with a personality so incorrigibly happy), one may be that he was not born a steeple-chasing country squire, for when once "Tommy" gets astride of a horse a seven-foot wall would not stop him. He has had many narrow escapes, but, as he humorously says, he is reserved for a "higher" fate, with a playful emphasis on the "higher."

He looks surprisingly young, and no doubt this is due to his love of sea air and sport. His cheery optimism was shown at the last annual meeting of the British Sea Anglers' Society, when, referring to his years, he said that sixty-five is the age of optimism. He looks out upon the world and sees that all is fair.

"I for one still believe," he said, "that our old country is going on pretty well, as we have been

for hundreds of years. I don't know what country is going to beat ours for sport, for manly spirit, or for real patriotism, when you rub off the fringes of politics and disagreement. And politics, after all, is very much like a game of cricket. Which-ever side is in wants to get the other out."

Firmly he believes that the British Empire is as great a force as ever, "and because we love outdoor exercise, fresh air, and outdoor competition, which brings men together and rubs off the rough corners, making them, however much they disagree, understand that there is a moment given to them for entertainment and enjoyment, and only those who abuse it are fools, and those who take advantage of it are wise men."

#### SKETCHING IN COURT.

Sketching in the Divorce Court having been forbidden by Lord Gorell, the late President, few will object as it will have a most salutary effect. But it is to be hoped that the prohibition will not be extended to other Courts, or there will be wailing among the artists. Least of all, it is to be desired that the knights of the pencil should be banished from the High Court of Parliament. Most M.P.'s rather like being caricatured, provided they be not guyed too cruelly.

The prohibition of sketching in the Divorce Court was put a stop to because of its abuse by the artists themselves. Eight or ten openly sketching at the same time when a petitioner or a witness enters the witness box would quite unnerve one, especially when he or she could not help being conscious of the efforts made to obtain a likeness, which may thus interfere with the administration of justice.

But surely sketching would not be prohibited at a criminal trial, where it is really desirable in the public interest that portraits of prisoners should be published, as also in the case of a murderer or delinquent, whose capture may be hastened by the pictorial art, as has often been proved in the course of former trials.

#### THE COST OF A DIVORCE.

As a rule, an undefended suit costs about £30, and many a hard-working man with a small salary has for years saved up the sum rather than support a faithless wife.

But it is interesting to know that people with no money can get a divorce. They can go to the Divorce Registry, Somerset House, and take out proceedings *in formâ pauperis*, swearing that their income is something less than £50 a year, the

Court fees being dispensed with. If they like, they can conduct their suits in person, and the judge is always of great assistance to them in such cases. But it must be borne in mind that these proceedings are only for petitioners in needy circumstances.

Some time ago a convict, with seven years of his sentence still to undergo, came to the Court in charge of two warders to divorce his wife. In another it was the case of a working man, In both suits the motive was the same. The working man was not very particular whether he was free to marry again or not, and it clearly did not matter to the convict, with seven years to serve. But both of them wanted to be free from the obligation to support their wives through life, and they thought an expenditure of about £30 cheap at the price.

Money is, it seems, the motive which keeps litigation moving in the Divorce Court, and sentiment, or a desire to vindicate reputation, has little or nothing to do with it, and the husband, as a rule, is better supplied than his spouse, so that here her disadvantages at once commence.

When a wife divorces her husband, the Court allows her a proportion of her husband's income as perpetual alimony ; generally the proportion is

a third, although sometimes it is only a fourth. These arrangements are made in Chambers, and the public hear nothing about them ; but, all the same, they account for most of the hard swearing and extravagant briefing which characterise the more famous cases in the Divorce Court.

The consideration may not apply in a few of the most celebrated Society cases, where both parties are rich in their own right, but in the bulk of instances it is the only incentive to litigation. Cases of the kind are constantly recurring.

## CHAPTER XII.

### FAITHLESS SPOUSES.

Marriage has been described as "A blessing to a few, a curse to many, and a great uncertainty to all." To quote Emerson, "Is not marriage an open question when it is alleged, from the beginning of the world, that such as are in the institution wish to get out, and such as are out wish to get in?"

We are told that "Many a man might be entrusted with a woman's future, few with her past." Readers of Swinburne will remember that one of his ladies exchanged

" The lilies and languours of virtue  
For the roses and raptures of vice."

A man who is not virtuous is considered by the world not half so bad as a woman in the same category ; hence it follows that a woman has a much greater inducement to be true and faithful

than a man has, because society is so much more severe on her failings than those of her partner. When she falls, it is from a far higher eminence than a man.

"I don't want to see the morality of women sink to the morality of men," is a saying quite in keeping with Voltaire's assertion that the pleasures and grace of society are generally the gift of women, who "appear as though they were made on purpose to soften the manners of men."

Sir Arthur Pinero's "Mrs Tanqueray" seemed to say that when a woman has fallen there is no salvation for her in this life, and that she might as well take herself out of it and leave the reckoning between the world and her faults.

Woman is by nature and organisation, if the poets speak the truth, "a magazine of enticement and influence and power" over the imagination and conduct of the opposite sex. There is no doubt that a majority of women exert an undue influence over men. Men have formed two codes of morality, one for themselves, in which greater laxity is permitted, the other for women, in which no deviation is allowed except under pain of utter degradation.

Bulwer Lytton's axiom is that "No man ever did anything worth mentioning until he cared no

more for women than an old hat." Luther has it that "No good ever came of female domination." Novelists invariably describe the meeting of two persons, their trials before they can be wed, and sometimes, but rarely, their difficulties after marriage.

There is, however, the other side of the shield.

Bacon says, "Certainly wife and children are a kind of discipline of humanity." Jeremy Taylor has the following:—"A good wife is Heaven's best gift to man, his angel and minister of graces innumerable, his gem of many virtues, his casket of jewels; her voice is sweet music, her smiles his brightest day, her kiss the guardian of his innocence, her arms the pale of his safety, the balm of his health, the balsam of his life; her industry his surest wealth, her economy his safest steward, her lips his faithful counsellors, her bosom the softest pillow of his cares, and her prayers the ablest advocates of Heaven's blessings on his head."

Mr Hardy, in "Tess of the D'Urbervilles," has heretofore been inclined to champion man the faithful against woman the coquette; but in this very interesting book he very definitely espouses the cause of woman, and devotes himself to show how often in this world—all alas! because

the best of us is so conventionalised—when men and women break a law, the woman pays.

The Earl of Crewe is the true son of his father, Lord Houghton, and in nothing more than the pretty wit he shows as a writer of rhyme. The following is smart as well as a bold “question” appearing in the volume of “Stray Verses.”

“Ought the man to be cut  
Just as much as the lady—  
When they’ve met Justice Butt,  
Ought the man to be cut?  
When they’ve stuck in a rut  
Down a lane that is shady—  
Ought the man to be cut  
Just as much as the lady?”

It has not been necessary for women to be voters for men to create the Divorce Court. “The Married Woman Maintenance in Case of Desertion Act,” a severe punishment for aggravated assaults on women; the Married Woman’s Property Act, enabling her to apply her earnings to her own use; the practical power of a magistrate to give a woman a separation order from her husband who ill-treats her; the order enabling her to make a home or a business of her own, without his molestation in any way, his unwelcome visits or claims upon her property. These are only a few of the Acts that have been passed to release women from the complete subjection of men.

Divorce, and protection too, must surely be conceded to some husbands one hears of. When the suffragettes come into power, it is hoped they will have regard to the relief of husbands who cannot get on with their wives—husbands who have neither the pluck nor the depravity to give legal cause for divorce, and who are married to immaculate wives who give them no acknowledged right to appeal to the Court. There are many cases where the two long for the freedom they have sacrificed for each other.

## CHAPTER XIII.

### FAMOUS TRIALS:

#### THE MORDAUNT CASE.

In 1870 Sir Charles Mordaunt, of Walton Hall, Warwickshire, petitioned the Divorce Court to dissolve his marriage with his wife, Harriet Sarah (née Moncrieffe), whom he had married in 1886 at Perth, there being two-named co-respondents. The question at first tried was, whether Lady Mordaunt was (as was alleged on her behalf) of unsound mind, and consequently unable to plead and to give instructions for her defence.

It was on the fifth day of the trial the Prince of Wales (as he was then) had volunteered to go into the witness-box on account of something Lady Mordaunt had said. Dr. Deane, father of the present judge, asked the Prince this plain question: "Has there ever been any improper familiarity or criminal act between yourself and

Lady Mordaunt?" His Royal Highness replied in a very firm tone, "There has not!" Serjeant Ballantine, who represented Sir Charles Mordaunt, did not put any questions to the Prince, who left the Court immediately after he had given his evidence. The impression created by His Royal Highness was unquestionably satisfactory. There was an obvious feeling of relief when it was found that he was able not only to deny the chief accusation made, but to give a more innocent colour to circumstances, which, if left unexplained, were likely to be misconstrued.

A notable incident in the case was the publication of several letters (not read in Court), written by the Prince of Wales to Lady Mordaunt, which mysteriously found their way into some of the provincial newspapers. They were of the most ordinary character, and had reference only to commonplace matters, save when the Prince entered upon more or less facetious descriptions of the gentlemen with whom he was shooting.

The jury found that Lady Mordaunt was "totally unfit" to answer the petition, and to duly instruct her attorney for her defence. It was subsequently held by the Court of Appeal

that insanity is no bar to a suit for divorce, and ultimately the marriage was dissolved.

As to the later proceedings, it was the first case of importance that I reported. It was then a formal matter, the case being undefended, and took but a comparatively short time to try.

Other notable cases I reported were the suit instituted by the late Lord Aylesford against his wife and the then Marquis of Blandford, the decree of divorce subsequently obtained by the Marchioness of Blandford; and the suit of the Rev. Newman Hall *v.* Mrs. Hall, the co-respondent of the name of Richardson being his coachman (1879).

The Earl of Euston *v.* The Countess of Euston was for a divorce sought on the ground that she had a husband living when she married; as it was proved, this man had a wife living when he married her, and that thus she was free. The divorce was refused.

On the 10th March, 1885, the Earl of Durham's petition for annulling his marriage on account of his wife's alleged insanity at the time of their union, was dismissed with costs by Lord Hannen after eight days trial.

In the Crawford case a divorce against Mrs. Crawford decreed on the 12th February 1886;

confirmed; serious charges against Sir Charles Dilke denied by him but accepted by the jury.

A REMARKABLE SUIT.

Scott, otherwise Sebright *v.* Sebright, heard in 1886, was a very remarkable case, and is worth recording in some detail because of its interesting character. The petitioner was a young woman of twenty-two years of age, and was entitled to the sum of £26,000 in actual possession, and a considerable sum in reversion. She became engaged to respondent, and, shortly after coming of age, was induced by him to accept bills to the amount of £3,325.

The persons who had discounted these bills subsequently issued writs against her, and threatened to make her bankrupt. The distress caused by these threats severely affected her health, and she alleged that in January, 1886, the month in which she went through the ceremony of marriage, the respondent would be made bankrupt and ruined, and that it was the only way of saving herself from financial ruin.

She further alleged that the respondent was a strong man, and of masterful disposition, whereby he acquired complete dominion over her; and that he frequently threatened that

unless she married him he would accuse her to her mother and in every drawing-room in London that she had been seduced by him ; and that by reason of such threats she was induced to be a party to the ceremony of marriage, not of her own free will, but through fear and terror. She alleged that there had been no cohabitation and that there had been no marital intercourse. She sought a declaration of nullity on the ground of fraud and duress.

The Court observed that the Courts of law always refused to recognise as binding contracts to which the consent of either party has been obtained by fraud or duress, and the validity of a contract of marriage must be tested in precisely the same manner as that of any other contract. True it is that in contracts of marriage there is an interest involved above and beyond that of the immediate parties.

Public policy requires that marriages should not be lightly set aside, and there is in some cases the strongest temptation to the parties more immediately interested to act in collusion in obtaining a dissolution of the marriage tie. These reasons necessitate great care and circumspection on the part of the tribunal, but they in no wise alter the principle or the grounds



Herr von Bismarck

Helmich

Free translation  
"Empty pockets"

SKETCHED BY SIR FRANK LOCKWOOD.

on which this, like any other contract, may be avoided. It has sometimes been said that in order to avoid a contract entered into through fear, the fear must be such as would impel a person of ordinary courage and resolution to yield to it, but that is not an accurate statement of the law.

Whenever from natural weakness of intellect or from fear, whether reasonably entertained or not, either party is actually in a state of mental incompetence to resist pressure improperly brought to bear, there is no more consent than in the case of a person of stronger intellect and more robust courage yielding to a more serious danger. The difficulty consists, not in any uncertainty of the law on the subject, but in its application to the facts of each individual case.

The Colin Campbell Case, tried before Mr Justice Butt and a special jury in 1886, occupied eighteen days, eight "silks" and six juniors being engaged. The K. C.'s included Sir Charles Russell (afterwards Lord Chief Justice of England), Sir R. Finlay, Sir R. Webster (present Lord Chief Justice), and Sir Edward Clarke, K. C. (then Attorney General). Charges and counter charges were made, and the jury occupied over three hours in arriving at a verdict which dismissed

the allegations of each party. At the trial so great was the interest excited that barriers had to be placed in the corridor leading to the Court to stay the pressure of the crowd.

Lord Dunlo, (who afterwards became Lord Clancarty) *v.* Lady Dunlo, the co-respondent being Mr T. E. Wertheimer, after a six days' trial the divorce was refused on the 30th July, 1890.

Captain O'Shea *v.* Mrs O'Shea, the co-respondent being Mr. C. S. Parnell, M. P., divorce granted on the 17th November, 1890. The following year commenced the prolonged litigation between the Earl and Countess Russell, the lady finally obtaining a divorce in 1901. In 1903 she obtained a divorce from her second husband.

### THE HARTOPP-COWLEY CASE.

The Hartopp-Cowley case took thirteen days to try, and it was remarkable from the fact that the days of the petitioner and the respondent, according to the evidence, appeared to have been passed in an unceasing round of amusement and gaiety; their atmosphere was charged with frivolity, childish and fantastic; nick-names were borne by nearly everybody concerned. As Mr Justice Barnes (now Lord Gorell), who tried the

case, put it, the nick-names "seemed to be flying about like brickbats."

The most noticeable feature of the case, after its length, was its tone. It was distinctly "class." Six peers went into the witness box, including the late Duke of Devonshire, the Earl of Essex, and the Marquis of Cholmondeley, whilst baronets and knights, guardsmen and hunting men made up the "chorus."

In addition to the principals themselves, fifty-five witnesses gave evidence. It fell to the lot of Lady Hartopp to undergo the severest ordeal in the witness-box, her examination and cross-examination occupying about eight hours. The cost in the long litigation amounted to about £15,000 by reason of the fact that there were no less than seven K.C.'s engaged in it. In addition, there were seven juniors, five different firms of solicitors, and at least three firms of enquiry agents.

### A COSTLY AND PROLONGED TRIAL.

For costliness and prolonged hearing the suit of "Bryce v. Bryce and Pape," heard before Mr Justice Bargrave Deane, will long be remembered. From beginning to end the case occupied sixteen days. The petitioner was a stockbroker and the

respondent was a well-known actress. There were engaged in it four King's Counsel and three juniors, and as the briefs of the three leading "silks" were marked 150 guineas, and there was added a 100-guinea "refresher" each day on such brief, the earnings of this trio of eminent lawyers alone amounted to £5,250.

To that has to be added the smaller fees of the juniors, the cost of consultations, and of the preparation of the case by expensive solicitors exercising a free hand, and court fees. Roughly, it may be computed that such a case absorbed very little short of £1,000 a day.

The case involved some very long speech-making, and put the respondent, in particular, through a most severe ordeal, for she was in the witness-box for three days, and answered 2,300 questions. Mr Duke, K.C., the petitioner's counsel, took six hours to open his case and four hours for his closing speech. Sir Rufus Isaacs, K.C., for the respondent spoke for five hours in addressing the jury at the close of his case; Sir Edward Carson's final speech occupied two hours; and the same time was absorbed by the judge in his summing up.

## EFFIGY BURNING.

## A MOCK FUNERAL.

A very singular divorce case was heard before Mr Justice Bargrave Deane some years ago, and on that occasion he expressed great surprise at what in Cornwall is known as "Riding" or effigy parade, brought about by the indignation on the part of the villagers at the scandal caused by the respondent and co-respondent in a divorce case openly living together.

The petitioner was a miner living at Bugle, near St. Austell, Cornwall, and the co-respondent a local jeweller. It appeared that the scandal had caused great local interest in the village of Bugle, and the effigies of respondent and co-respondent were buried in an extraordinary manner.

There was a solemn funeral service, and the burial of these effigies took place in the back garden of the house where the accused parties were living. An extraordinary part of the proceedings was that co-respondent, who was present at the burial of his own effigy, supplied the beer that was "consumed at this solemnisation."

At the trial counsel read a newspaper report of the proceedings appearing in "Bugle Notes," which ran :—

"In order to give expression to the local indignation, what is locally called a 'Riding' or effigy parade, was carried out with due ceremony on Friday fortnight, and on Friday week there was a repetition of the business, two effigies instead of one being carried throughout the district, after which they were burned with all the marks of shame and ignominy.

"But this was not the end of it. There was a still more emphatic condemnation to be pronounced. This took place on Friday last, when some 2,000 people flocked into Bugle to witness one of the most extraordinary scenes ever enacted in the neighbourhood.

"This was the formal interment, with all due solemnity, of the ashes of the effigies that were burned on the preceding Friday.

"The funeral took place at a quarter to nine o'clock in the evening, and the funeral procession included a 'clergyman,' duly robed in surplice, a 'choir' of twelve voices, four 'bearers' wearing white gloves and box-hats, a party of 'mourners,' six male and six female 'relatives' all wearing black gloves, and the men wearing box-hats and

dress coats, and the women black sailor hats and black veils.

"The 'undertaker' was of course present, in black gloves and box-hat, carrying the orthodox black bag, with the insignia of his office.

"The 'sextons' also performed their duties in a proper manner.

"About twenty lamps were supplied by the villagers, as well as a cross and a wreath.

"The whole proceedings were carried out with the greatest decorum, and, although there was an enormous attendance, there was no sign of rowdiness, but solemn silence was maintained, the only voices heard besides the lamentations of the 'mourners' being those of the 'clergyman' and the 'choir,' and those who chose to join in the 'service.'

"The police were present, but their services were not required. Among the accessories of the function were black flags at half mast on scaffold poles."

#### PUNISHMENT BY EFFIGY.

In another divorce case, as a survival from Shakespeare's country, reference was made to "Lewbelling," which seems to be derived from

“lewd” and “belling,” roaring or bellowing. It occurred when the morals of a married man or a married woman have left something to be desired, and neighbours wish to show their disapproval.

The effigy of a man was made first and was exposed for three days; the effigy of a woman was exposed for two days. The figures were placed side by side, the woman's arm upon her lover's shoulder.

A band of thirty or more youths and boys, bearing all kinds of tin utensils, paraded the village for three nights. On the third night, after dark, the effigies were taken down and burnt. The dummies were set opposite the woman's house. The fear of this form of public exposure is said to act as a great deterrent.

These cases take one back to the primal passions and to some of the primitive manners and customs of Thomas Hardy's Wessex rustics. The kettle and pan serenade in Dorset is called “The Skimmington Ride,” and it may be remembered that the “rough music” caused the wife of the Mayor of Casterbridge to give up the ghost.

#### BOTH TURNED SEVENTY.

Of the many remarkable trials there was a recent one of a very unusual character, in which

husband and wife, both turned seventy, who were on the eve of celebrating their golden wedding, came to the Court to settle their matrimonial differences. The wife, a grey-haired lady, wearing spectacles, alleged cruelty on the part of her husband, a retired sea captain, which charge he indignantly denied.

The husband was one of those characters so beloved by Mr W. W. Jacobs, bluff, hale and hearty, and in the witness-box some of his expressions were of a very nautical character.

The ex-President (Lord Mersey), who tried the case, after hearing their respective ages, sadly asked, "How many years do they expect to live together in any event?"

It transpired in the course of the hearing that there were several children of the marriage, and "the baby of the family" was stated to be thirty-six years of age. The ex-President described the case as a "shocking" one, and dismissed the wife's petition. He dwelt sorrowfully on the fact that the old couple had got to such a pass so late in life. They had, he said, better get a mutual friend to arrange a separation. The Court could not interfere in the matter.

## CHAPTER XIV.

### PERPLEXITIES OF A SCOTCH MARRIAGE.

A "MATRIMONIAL GUIDE."

What infinite possibilities of romance underlie the Scotch "irregular" marriage, as it is called? No wonder the subject appeals to the imaginations, both of the public and of writers of romance, for the best living authority on the law, Mr Robert Campbell, the well-known barrister, who is so frequently called as a witness in regard to Scotch marriages, has repeatedly declared that if in Scotland two persons gave each other a consent in writing, the marriage was valid, provided the conditions as to residence were fulfilled.

Yet it is difficult enough to prove a marriage in Scotland, especially as the fact depends not on any one specific form or act of the parties, but a long course of conduct, which admits of endless variations, and the more variety the more is the difficulty and expense of proof.

Hence it has often been said by strangers that some persons in Scotland cannot tell whether they are married or not, and it requires a ruinous litigation to clear up the point, as has often been shown in cases which come before the English Divorce Court. To try and annul a Scotch marriage, "irregular," as it is called, always proves very interesting reading.

That eminent Scotch judge, Lord Neave, composed a poetical *vade mecum* to Scotch law, which contains seven verses on this testy point, entitled "The Tourist's Matrimonial Guide Through Scotland." It was referred to by Mr Graham Campbell, who appeared for the Attorney-General in the course of the Whitehead Legitimacy Case which came before the Court some years ago.

The following are the remarkable verses, which are worthy to be put on record :—

THE TOURIST'S MATRIMONIAL GUIDE THROUGH SCOTLAND.

"Ye tourists who Scotland would enter,  
The summer or autumn to pass,  
I'll tell you how far you may venture  
To flirt with your lad or your lass.  
How close you may come upon marriage,  
Still keeping the wind of the law,  
And not by some foolish miscarriage  
Get woo'd and married an' a'.  
Woo'd and married an' a', &c.

This maxim itself might content ye—

That marriage is made by consent,  
Provided its done *de præsenti*

And marriage is really what's meant.  
Suppose that young Jocky and Jenny

Say "We two are husband and wife,"  
The witnesses needn't be many,

They're instantly buckled for life.

Suppose the man only has spoken,

The woman just given a nod,

They're spliced by that very same token

Till one of them's under the sod.

Though words would be bolder and blunter,

The want of them isn't a flaw,

For *mutu signisque loquuntur*

Is good consistorial law.

If people are drunk or delirious,

The marriage, of course, would be bad

Or if they're not sober and serious,

But acting a play or charade.

It's bad if its only a cover

For cloaking a scandal or sin,

And talking a landlady over

To let the folks lodge in her inn'

You'd better keep clear of love-letters,

Or write them with caution and care,

For, faith, they may fasten your fetters

If wearing a conjugal air.

Unless you're a knowing old stager

'Tis here you'll most likely be lost,

As a certain much-talked-about Major

Had very near found to his cost.

I ought now to tell the unwary

That into the noose they'll be led

By giving a promise to marry,

And acting as if they were wed.

But if when the promise you're plighting,

To keep it you think you'll be loathe,

Just see that it isn't in writing,

And then it must come to your oath.

A third way of tying the tether,  
Which sometimes may happen to suit,  
Is living a good while together  
And getting a married repute.  
But you who are here as a stranger,  
And don't mean to stay with us long,  
Are little exposed to that danger,  
So here I may finish my song.  
Woo'd and married an' a', &c."

The last lines in the fifth verse :—

"As a certain much-talked-about Major  
Had very near found to his cost,

had reference to the Yelverton Case.

The Major met Miss Longworth on board a steamer, and she talked magnetism and affinities, and sat up all night under his plaidie.

They did not meet again for long, but the lady kept writing affectionate letters. Nothing is weaker than to let a woman begin writing letters.

He wrote to her that he was betrothed to a club arm-chair. He really took every means to convince her that he would not marry her, that "le bon motif" was out of the question, and that no other motive should be contemplated.

He said that the paternal or "Platonic" theory of flirting was impossible. He deliberately avoided her at Constantinople, when she had chased him to the Crimea, and then she followed him to Scotland, that fatally propitious soil.

Could a man and a Major do more? But the

lady, who was technically the "pursuer" in the Scotch Courts, was actually the pursuer as a matter of fact. The Major fell.

Afterwards he married another lady, and then Mrs Yelverton tried to prove that he was married to her. She was married four deep.

1. By declaration of consent in Scotland. 2. By promise and the rest of it. 3. By a Catholic ceremony in Ireland. 4. By habit and repute in Scotland.

Now, whether Miss Longworth was really married or not nobody can say. Lord Ardmillan thought she was not; Lord Deas thought she was; there was a minute majority of judges against Lord Deas.

But it is certain that Miss Longworth was "the pursuer," that she was a woman of the world, not a village maiden, but that it was a contest of wits between the pair.

"The Major was not the seeker, or the seducer, or the betrayer of the pursuer," said Lord Ardmillan. "The lady rushed headlong to her own ruin; she sinned against light," says the "Advocate."

Nobody proposes to represent the Major as a frank and sympathetic character. But he did "go through a moral struggle." He tried to

escape and to behave well ; he ended by behaving very ill and heartlessly.

But there was far too much heart on the other side, and it is certain that the heroine could not be made a sympathetic character in a novel. She was warned from the first with a frankness almost brutal.

In the Crimea the Major asked her to let their position cease at a time when her character was apparently flawless. Yet, after all the meanderings of the adventurer, probably no one can say *à priori* whether there was or was not a marriage.

A majority, with natural partiality for the Major, decided that there was not, but that is a mere balance of opinion ; the arguments were of nearly equal weight either way.

## CHAPTER XV.

### WOMEN AS WITNESSES.

#### THE WILES OF THE SEX.

On the recent authority of Judge Willis, women are more intelligent, more truthful, and cleverer witnesses than men. To the constant observer in the Divorce Court, where the majority of witnesses are women, the demeanour of this class of the community while under examination is a very interesting, fascinating study in regard to the manner in which they give their evidence.

It must be a trying position, in a crowded Court, with all eyes on one, for a woman to go into the witness-box and give evidence of an incriminating character ; but as a general rule she comes out of the ordeal successfully, and cuts a much better figure than a man in the trying circumstances.

When a woman becomes lying and vindictive—as is often observed in sordid divorce cases—

she turns out a dangerous witness. She will stick at nothing to thwart any attempt to put the actions of one of her own sex in a favourable light, and she has a wilful disregard of committing perjury.

Sometimes, while affected by hysterics, she will give utterly false evidence, although at the time she may become unconscious of lying. A malicious mind and a hysterical temperament combined may be the means of doing an immense amount of harm in her propensity to say too much.

A woman of birth, education, and culture is usually a self-possessed witness, and, to hide her divers intrigues, she has developed a naturally powerful instinct of caution. With a consummate knowledge of the world, she can usually hold her own under the most searching cross-examination. As a rule, women are more indifferent than men as to the injury they may do by a reckless disregard of truth. Women are naturally imaginative, and their imagination is often greater than their observation.

As witnesses, servant girls figure the best. They are usually smart in their answers to questions, and when they tell the truth there is not a better class of witness when once they

have recovered from the first attack of nervousness begotten of finding themselves in the witness-box. Clear-headed, cool, and explicit they are in their statements, and they have a memory of apparently unimportant details. Even in cross-examination they stick to one clear narrative. Besides, be the woman artful or ingenious, she has a whole battery of women's tricks and mannerisms which serve in good stead.

When she wishes to reply cautiously, she makes a display with her smelling-salts, her handkerchief or her gloves, and you cannot hurry her. Her coolness and nerve after a time are wonderful. The operation of taking the oath is more ceremonious in a woman's case, and therefore more awe-inspiring.

A woman invariably goes into the witness-box wearing her right hand glove, and if there is one sound principle more firmly imprinted in the mind of the official who administers the oath than another it is that the right hand glove must be removed. Solemn silence prevails while the fair witness tugs at this particular glove, and then she is told to lift her veil and "keep it up," sometimes a troublesome matter. Altogether the taking of the oath in her case is a prolonged and an impressive function, notwith-

standing in the majority of cases her coolness and clear-headedness are remarkable.

Before now a woman who has been lying at her best, or rather worst, when thoroughly caught by the cross-examining counsel, has absolutely from sheer chagrin fallen down in a fit. A bad type of the lying woman witness is what must be styled the flippantly spiteful. They will not draw the line at the most startling accusations, such is the "love" of a woman for a fallen sister! Alas! How spiteful a woman can be to her own sex in trouble!

It is just the propensity of a woman to say too much, which makes a counsel who is conducting a "shaky" case feel very uneasy until all his female witnesses are out of the box. She is pretty safe in answering plainly "Yes" or "No" to the questions asked; and she should learn that as much silence as possible is peculiarly "golden" while undergoing the not altogether pleasant ordeal in the witness-box.

## CHAPTER XVI.

### PERJURY IN DIVORCE CASES.

“A QUESTION OF WOMAN’S HONOUR.”

There is probably no tribunal in the country in which perjury is more rife than in the Divorce Court, which has been known in some quarters as the “playground of perjurers”; but nobody is bold enough to contend that parties should be excluded from the witness-box merely because every co-respondent in a defended case states on oath that he is innocent of the charge made against him.

Dr Stephen Lushington, who was afterwards an Admiralty Court judge, used, it is said, to advise his clients, when it was a question of woman’s honour, that it was their duty to lie. What are they to do but “to honour and obey” when beauty is in distress?

As Shakespeare says :—“At lovers’ perjuries, they say, Jove laughs.”

Some short time ago a problem, arising out of an American divorce suit involving a lady, deeply occupied the jurists of Chicago. One judge held that a lie under oath is permissible, even justifiable, when spoken in defence of a woman's honour, this being euphemistically called at the time "gentlemanly perjury." Divorce cases place a man in such a position, both in England and America, that he often prefers to commit perjury than play a dastard's part. The lie itself admits palliation in the circumstances. The world's code of honour is that a man must do all in his power to defend the reputation of a woman from scandal, to protect the "weaker vessel," even to the point of aggravating the injury to the husband.

Perjury has been defined by Sir James Stephen as "An assertion upon an oath, duly administered in a judicial proceeding before a competent court, of the truth of some matter of fact material to the question depending in that proceeding, which the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant. A man cannot be convicted of perjury unless the falsity of his statement is proved by two witnesses, or by one witness whose evidence is corroborated by independent and material circumstances."

It would obviously be unjust to require a jury to convict when there was merely one oath against another.

The existence of this rule does much to explain why prosecutions for perjury are so rare, but there have been occasions on which the authorities have appeared to be necessarily afraid of its operation. Dealing with the complaints that prosecutions for perjury are not more often instituted against persons connected with divorce, a high public official gave it as his opinion some time ago that in most instances prosecutions would fail, and, he added, he was afraid perjury "will increase in the future."

One might imagine from the manner in which prevalence of perjury is complained of that judges have no power to deal with it. As a matter of fact, they are fully armed to punish the offence. The witness who upon oath makes a statement he knows to be false may be sent to penal servitude for seven years. The law, of course, cannot admit in theory that perjury is ever permissible, but in practice it extends to an exceedingly broad toleration.

The Courts are full of perjury ; indeed, many observers say that false swearing is markedly on the increase, largely because the ordinary man or

woman is less afraid of the possible consequences of violating an oath than formerly, of diminishing the latitude which witnesses frequently allow themselves in handling the truth.

An ordinary witness does not designedly intend to deceive the Court. After all, a good witness must be an accurate observer, and he is a being not easily to be discovered. He must have a very good memory, as very often in a divorce case he is called upon to speak of incidents which he has to depose to sometimes twelve or twenty months after they have occurred. In addition, he must have the power of stating, in a manner intelligible to the Court, what he remembers he did actually see, and stick to his narrative.

Many witnesses are apt to mix up in the recollection of what they saw the things which they imagine must have happened. They honestly think they saw things which, in reality, they never observed at all. There must always be a certain amount of unconscious lying in the witness-box. Many a witness, who has a clear recollection of what happened, fails to convey to others anything but a confused and misleading account of it, purely unintentionally, of course. They get flurried. Not so with theatrical people, who are nearly always cool and collected when

giving evidence. They are used to facing the public, and a crowded Court has no terrors for them.

The story of Sir Walter Raleigh and his three fellow prisoners in the Tower, each of whom gave a different account of an incident in the court-yard which they had all witnessed, applies to this question. An accurate observer is a very rare person indeed, and one thing that very few descriptive writers can do is to estimate, even approximately, the size of a crowd.

The value of abstract truth is rapidly declining ; it has given way to the society lie, the "all is fair in love and war" lie, the diplomatic lie, the pious lie, and a host of lies that must be told to meet the demands of our complex civilisation. "When in doubt, tell the truth," was the remark of the easy-going American.

A hard-headed and truth-loving Scotsman once observed, "The man who asserts that it is always easy to tell the truth, probably never tried much." "Truth is stranger than fiction," and it takes some people a long time to feel at home in it. Truth has never been defined, since Pilate, when he put the question, "would not stay for an answer."

According to one of John Oliver Hobbes's epigrams, "The truth is only convincing when

told by an experienced liar." There is, unfortunately, a class of persons who cannot speak the truth. The habit is acquired in childhood, and it is rarely lost, and even the solemnity of an oath administered in any form does not seem to affect them, and is of little consequence. The late Lord Young's wit was proverbial. One of the best things attributed to him was the famous saying that there were three degrees of those who bear testimony in Courts—"The liar, the d——liar, and the expert witness."

## CHAPTER XVII.

### ABUSE OF CROSS-EXAMINATION.

#### SOME SUGGESTIONS.

It is certainly time that the license which some advocates allow themselves in the holy cause of brow-beating unfortunate witnesses should be severely discouraged. By keeping timid people out of Court, it acts as a premium on injustice. It is all very well to say that the insinuation of a counsel produces no effect if it is unsupported by evidence. Such is not the case. The seed once dropped cannot be so easily plucked up. The vile hint has gone forth, and may result in suspicions, head shakings, and several boycottings, which will render a man's life a burden to him henceforth.

Judges fear, they say, that the interests of justice would suffer if they exercised too rigid a censorship of the cross-examination in regard to which it is invariably urged that it is a test

of credibility. With the best will to protect witnesses, they do not see their way to check a course of interrogation of which all they know, and can know, is that it seems to be tending to the discredit or discomfort of the gentleman or lady in the witness-box, raking, in fact, in the dust heap of a totally irrelevant past, and inflicting a cruel and cowardly injury.

"Scenes" between counsel in "Big cases" are for the delectation of others outside the Court, and they are "Playing to the gallery," with the desire to impress the general public with an awed sense of the zeal and acumen with which the forensic disputants protect the interests of their clients. The ostentatious parade of courage and independence, by provoking continual conflicts with the Bench, is a much less excusable form of regular advertisement; but it is one which, it is to be regretted, is increasing in popularity with certain junior members of the Bar.

Many judges and jurymen are apt to gauge a witness's credibility by his demeanour when giving evidence. If he hesitates before replying to questions, or displays nervousness under cross-examination, he is regarded as resorting to his imagination for his facts. Nothing could be more unfair than this judgment of the unfor-

tunate. It is the glib witness who never hesitates for a second that most usually strains the truth.

Having got by heart the testimony he intends to give, out it comes in a continuous stream, while there is a quick and ready answer to every question. Smart barristers greatly relish getting hold of such witnesses for cross-examination. They are certain to contradict themselves flagrantly, and to deprive their evidence-in-chief of any value.

The relations between counsel and witnesses formed a subject very much to the front a few years ago. The wigged and gowned gentlemen were then severely called to account in the Press for the brutality with which, it was alleged, they too often treated poor and unfortunate witnesses. But it had no justification. The Bar generally then, as now, did not deserve the censure passed upon it. The condemnation was deserved and provoked by a comparatively small number of men, mostly to be found in the lower walks of the profession, who committed the old error of supposing that "To cross-examine is to examine crossly." A maxim of Lord Abinger's was that "You should never, in order to drive in one nail, knock out two tacks."

Of course, if one looks back over a longer period, there was doubtless a time when bullying and brow-beating were much more prevalent; but the improvement in the tone of the Bar is much the same as has taken place in society generally. This, doubtless, is brought about by a great change in the intelligence and demeanour of witnesses. There is not so much clumsy lying, while education has had a very good effect upon the witness-box.

As to cross-examination, witnesses often suffer more from the Bench than the Bar. That is not to say that judges of the High Court inflict unnecessary torture on witnesses; but occasionally a judge forgets he is merely an instrument selected by the public for the redress of their grievances and the settlement of their disputes, and is apt to play the autocrat decidedly in the French fashion.

In cross-examination many a one's case has been lost by counsel too strongly denouncing a witness although one on all hands admitted to be discreditable, but who was still entitled to fair play. Lord Justice Cockburn on one occasion said a barrister was bound to exercise all his talent and all his energy on behalf of his client, but there were boundaries that he ought

not permit himself to transgress. He was bound to act like a man of honour. He ought not unfairly to traduce the character of others in order to benefit his cause. "He is," he continued, "entitled to use the weapons of a warrior, not those of an assassin."

What has been called the terror in the witness-box recalls the observations of the elder Mill on the cross-examination of witnesses for Warren Hastings. He refers to it as torture unnecessarily and wantonly inflicted upon the feelings of an individual to show off a hireling lawyer, and prove to the attorneys his power of doing mischief. Attorneys would seem to bid against one another to secure the services of the most ruthless forensic bravo.

## CHAPTER XVIII.

### CONFESSIONS OF WIVES.

The proverb has it that "He who tells his wife all is but newly married." The wise husband never tells his wife about preliminary affairs of his heart. The Emperor Peter used to bore Catherine with tales of his intrigues, and came to a bad end. Most mortals at times feel a dismal contempt for themselves because of things they have said. They never meant to say them; they put violence on themselves to keep them back. Yet out they popped, in a wicked day of destiny.

One should never make such confidences. The only policy is to bottle them judiciously. Catholics, of course, can unbosom themselves in the confessional, where the worthy priest "has seen plenty of others," and does not care. But a Protestant's motto should be, "Keep it dark."

Next day you will be sorry you spoke, and perhaps detest the sharer of your secret.

As to women, if they have a taste for making confidences, they are sure to make them so often that one does not matter. A man says, "I will tell nobody, not even my wife," and straightway goes and tells her. More men can keep a piece of irritating news from their wives than wives from their husbands.

As to a wife's confession in divorce cases, the Court always looks upon it with very grave suspicion, and does not, in any case, act upon it without full corroboration, and quite right too, otherwise who would be safe from the utterings of a hysterical woman? It is always a difficult problem to deal with.

There is no doubt that some women do "romance," especially if they are of a high-strung, nervous disposition, imagining things which they would not really object to happen; consequently, when the Court has to deal with cases of this kind, it never acts judicially without there is strong, independent, corroborative evidence.

## CHAPTER XIX.

### PLATONIC LOVE.

#### A QUESTIONABLE DEFENCE.

Plato has much to answer for, but he did not invent the modern notion of "Platonic" love, as put forward sometimes in defended divorce cases.

If the phrase means anything at all (a moot point), it implies a certain kind of innocent love between persons of opposite sexes. One often hears of this rubbish as a defence in divorce cases, but it never succeeds.

On one occasion counsel for a co-respondent pointed out to the jury that some people did not believe in "Platonic affection," others did. At any rate, "a great philosopher did." Lord St Helier, who tried the case, immediately asked the name of the "great philosopher," and counsel seemed nonplussed. Some would have answered Plato, but that great philosopher never advocated

such stuff and nonsense in the sense generally understood.

Counsel said he had heard there was a school which believed it, and he was not going to discuss a question of the sort with the jury, a very ingenious way of getting out of the difficulty, and quite lawyer like. It reminds one of the Scotch minister who, on one occasion, was expounding a difficult text with very small success, and, having tried for some time, paused and said, "My brethren, this is a very knotty point. Let us look it straight in the face, and pass on."

According to Mr Oscar Browning, "Platonic love," as currently understood, means "love without passion of the senses, or without self-interest—love for its own sake, chivalrous, perhaps quixotic, a force of worship without a backbone and without a creed."

The definition reminds one of the American description of a mule as an animal without either pride of ancestry or hope of posterity. An anonymous writer is responsible for the following :—"Platonic friendship is like balancing oneself morally on a tight-rope over the Niagara rapids, very wonderful, eminently perilous, and supremely unprofitable. A woman it is, however, who runs

the greatest risk, and when an accident occurs both necks are generally broken."

There are many who hold that the relations between Mrs Rawdon Crawley (Becky Sharp) and Lord Steyne were purely "Platonic," but this view did not recommend itself to the lady's husband, a rough and an imperfectly educated man. "Platonic" friendships are at all times risky things to undertake. They add to the pleasures, the excitement, the interests, of life truly; but they multiply its dangers. It is a relationship fraught with danger to the peace of mind of the man and woman who essay it.

Many years ago Mr Willis, Q.C., in the course of a divorce case, in defence of an accused lady respondent, boldly said, "A Platonic kiss is a kiss in which there is no warmth." The description was received with unthinking, and indeed unintelligible, laughter by the audience in Court; but could there be a better definition?

It cannot be said that every kiss in which there is no warmth is a Platonic kiss. If so, every lady who salutes her dearest friend with that appearance of effusion which she reserves especially for those whom her relations are most strained, is an unconscious Platonist.

For no male observer who has ever watched

with awe the embraces exchanged under the circumstances between woman and her "sweet enemy" can for a moment suppose them to be either physically or spiritually warm, yet no one could intelligibly describe them as Platonic.

Respecting Mr Willis' definition that a Platonic kiss is one in which "there is no warmth," what sort of a kiss is that with which paterfamilias dismisses his daughter for the night, or Tommy carries back to school with him from the lips of his affectionate mamma?

Once or twice Mr Justice Bargrave Deane has permitted himself to express views that have startled certain sections of the community, and brought upon him much adverse criticism.

In a famous divorce case, when evidence was given of an alleged flirtation between the husband and a young lady, he thus delivered himself: "I do not know that it can be said that a man who is married is not to have an affection for another woman. We all know of cases where a man has a strong affection for another woman than his wife, and perhaps more than one.

"A man should never allow a woman to come between him and his wife in his affections. Directly he finds that the case, he should not meet her at all. It is a proper affection, however,

so long as it does not diminish his love for his wife.

“For a married man to flirt with another woman is not legal cruelty, although it may be wrong. If no married man is allowed to go for a walk with a girl, we should all be in a very uncomfortable position.”

These were strange words, indeed, from a judge of cases which largely arise out of indiscreet flirtation, but that his Lordship has not gone back on his opinions was demonstrated in the divorce suit of *Bryce v Bryce*, when he spoke to similar effect in reference to river picnics.

“Should Women Flirt?” was a discussion recently started in one of the magazines, and interesting was the topic. One of the lady writers defined “flirting” as “to trifle with love; to play at courtship.” Of course, a very young woman, emancipated from school-room or home thrall, and thrown for the first time into the company of men, is suddenly conscious of a power hitherto unknown and undreamed of.

She is an object of interest, of absorbing interest, to the creatures of the male sex, and, without feeling her own heart in the least touched, she is moved to see how far she may wander into that debatable land, and with what results.

That there is any deliberate intention to be cruel or to wound men's hearts is entirely out of the question. The girl is really unconscious of her own power.

There is, in contrast to this excusable and lovable flirt, the flinty-hearted huntress, whose business it is to bring men to her feet, and who boasts of her conquests as an Indian does of his scalps.

There is the woman who flirts purely for her own amusement—to make the time pass pleasantly—and as a rule she is pretty harmless, because she never goes too far.

Of the married flirt one has neither inclination nor patience to write about ; she is insufferable, unattractive, obnoxious always. What may be excusable and amusing in a young girl becomes highly objectionable in the matron. At the best it is a risky game, and does not add dignity to married life.

The dictionary defines flirting as “ To act with giddiness, or so as to attract attention ; to play at courtship,” and so unmarried women will try their “ ’prentice hands.”

It will be a dull day for the world when they give up this art of “ frivolling,” which is the outcome of that natural craving and seeking for the

admiration and attention of the opposite sex that is inborn in all women.

To flutter round an attractive girl is a privilege that men would be denied were it possible to have flirting tabooed. The girl who has never flirted has missed her girlhood; she has not "played at courtship."

Some people flirt for one motive, and some for another. There are some persons who are constitutionally fickle in love, and are apt to be given to flirtation.

They are like the young lady who, accused of being a flirt, said that the report was untrue, that her love was eternal, though the object changed.

It is evident that the underlying reason why people flirt is to obtain a real or fancied enjoyment. Women should flirt a little, but not too much. The girl or woman who has not a spice of coquetry in her is really imperfect.

## CHAPTER XX.

### LOVE-LETTERS.

#### NOT ON THE DECREASE.

“Human” documents is the French definition of love-letters, which are a very important factor in divorce cases.

Writers of them apparently forgot the view of Thackeray that all love-letters should be written in an ink warranted utterly to fade away within a given time.

“Write nothing and burn nothing,” is said to have been the advice given by a great statesman to his friends. “Burn anything,” would be better advice for the friends of respondents in prospective divorce cases. Further, in view of a recent case, do not make entries in diaries and carelessly lay them about.

Every year witnesses some new “indiscretion” (as it is leniently called), some publication of

letters that were purely private, and ought never to have seen the light.

Rousseau said that to write a good love-letter you ought to begin without knowing what you mean to say, and finish without knowing what you have said. But Rousseau was a Frenchman, and love in France is a very different thing from love in this country.

In committing to paper the words dictated by a hot and passionate love, a woman never pauses to give thought to the future of that slip of perfumed note-paper, so indelibly inscribed with the intense emotion of the moment.

If a man holds in his possession the private letter of one person addressed to another, the contents of which were intended only for their several eyes, that man should either return the letter to its writer or recipient, or should destroy it once and for all.

Why will men keep love-letters? Generally speaking they contain a lot of rubbish. A master stroke of determination not to become ridiculous in love-letter writing was made by a Scotch Writer to the Signet, who always concluded his communications, with "Yours, dearest madam, without prejudice."

But we cannot all of us be Scotch lawyers,

and the bulk of poor humanity, not having received a legal education, whenever it gets a pen in its hand for the purpose of writing a letter to a lady, is apt to indite the absurdest balderdash that can well be conceived.

The Genius of the Ridiculous is paramount in the composition of love-letters, and for that reason some enterprising fancy stationer might devise an ink or inks of the vanishing capacity advocated by the author of "Vanity Fair."

A unique demonstration, in which love-letters written in invisible ink formed the chief feature, took place some time ago in the New York Supreme Court, before Justice Clark and a jury. The case was a divorce suit brought by a husband against his wife.

A former servant of the husband's stated that she had seen envelopes containing blank paper received by her mistress, who informed her that they were from the co-respondent in the trial.

"What did Mrs R— do with them?" inquired counsel.

"She used to iron the blank sheets with a hot iron."

Then an envelope was produced by counsel for the petitioner, and identified by Mrs K— as having been given to her by Mrs R— for

delivery to Mr D—. The envelope contained a sheet of blank paper, which was likewise identified by Mrs K—.

“Get me a glass of water,” said counsel for the petitioner to the Court officer. The water was brought, and the lawyer, from beneath a heap of papers, took out a thin pan, in which he placed the blank sheet of paper.

He then poured the water over it, when there came slowly to light a letter, which began as follows: “Dear Heart—I received your letter this morning, and you can imagine how happy you made me with it.”

The epistle concluded: “I love you, I adore you; receive my love, my kisses; my heart is yours, and only yours.”

The pan containing the letter was handed to Mrs K—, who identified it as being in Mrs R—’s handwriting, and read it through the water.

The lawyer then read it aloud to the jury, and after a few moments handed it round to the jurors, who examined it carefully, and with much interest.

Mrs K— said that this letter was never delivered to Mr D—, as her husband took it from her when she showed it to him, and refused to give it to the co-respondent.

The love-letters of even the most eminent men will not often bear the cold light of publicity. Even Keats' now and then seem to verge on the ridiculous. But what can we do but smile at one of Victor Hugo's published some time ago, which begins: "My own Adèle! How I love you! I have a thousand things to see to. I must pack. Farewell."

It was long ago established that the Bottoms of the world can always find Titanias somewhere, and, as Macready said when he received an anonymous love-letter, the ugly need never despair.

Lord Mersey had a rough-and-ready way of treating these "human" documents. When counsel has begun to read them in a divorce case, he has shifted uneasily in his seat, and seemed as if he wanted to spare the feelings of the unfortunate writers. On one occasion I heard him say, "I don't want all this stuff read aloud; the beginning and the end is quite enough for me." Collapse of counsel!

The age of letter writing is not yet gone, as is proved in divorce cases. In one epistle handed up to Lord Mersey on one occasion, he expressed his surprise that in "these days" a man could write such a long letter. English

people, however, are becoming less romantic and more matter-of-fact in their love epistles. The phraseology of the modern love-letter is cheapening ; it is losing its simplicity and charm. There is an absence of sincerity and romantic love which characterised such epistles in the past.

The question is often asked as to what is an ideal love-letter. Sam Weller, Pickwick's immortal servant, used to write to Mary, "the pretty housemaid from Mr Nupkins's," those of a short and sweet character, and he would never be ashamed of them if they were read in after years of his married life.

Modern love-letters are said to be briefer, but the chronicles of the Divorce Court do not show that. On the whole, however, the old-fashioned epistle, apart always from divorce cases, has gone the way of all lengthy correspondence, of the three-volume novel, the tedious sermon, and the four-wheel cab.

A recent case proved that, instead of love-letters, telephone love messages were resorted to, rather a questionable method. Love-letters typewritten are not unknown. Everything is changing but love letters disclosed in divorce cases.

The writers always request that they should be at once burned, a request never complied with, and they are found ultimately by the husband hidden in all kinds of places. One receptacle was a lady's stocking! It is singular that the most popular feature of modern literature is the publication of love-letters.

## CHAPTER XXI.

### PRIVATE DETECTIVES AND THEIR METHODS.

#### A SOCIAL PEST AND THE REMEDY.

The Pollard Divorce Case, which brought into prominence a well-known detective agency, ending in its downfall, tried many years ago, directed public attention at the time with regard to the operations of an unscrupulous and a dangerous class of men.

There is no question that there is a number of most deserving and respectable people who conduct private inquiries, they being retired inspectors and superintendents from the Metropolitan and City police force, men who, after years of good work in the force, have retired on their pensions, and, being middle-aged, do not desire to live an idle life, and therefore conduct private inquiries.

As a rule the reports they furnish to their clients are perfectly reliable and their charges

fair. They do not advertise, but rely on the character they possess as a sufficient introduction to business. There is, however, a class of men who do advertise, and, inasmuch as there are more fools than sensible men, they reap a rich harvest by the promises they hold out and the reputation they give themselves, which in most cases is simply delusive.

Those who advertise are generally people with no police experience. They are self-constituted "detectives" (as they call themselves), and, but for the publicity which they obtain through the medium of advertisements in certain papers, they would be absolutely unknown. As to earnings, they seem to charge what they choose, and in some instances their actions are not altogether "straight."

The way to deal with this social pest is for the Press to decline their advertisements. In the present age, as regards commercial principles which now appear to be paramount, and the dominating power in newspaper enterprise, this is a bold suggestion. If such a course were taken, those who require the assistance of private detectives would gradually find their way into the offices of the retired inspectors of police, men who are to be thor-

oughly relied on, and who have a staff of their own to carry out the duties they undertake.

Unfortunately, private detectives in matrimonial cases are "necessary evils." Again and again husbands, in attempting to obtain evidence against their wives—and wives against their husbands—without the assistance of the private inquiry agent, make a deplorable hash of the whole business. They may succeed partially, but when the matter comes to the question of corroborative evidence they are beaten. Then of necessity, they try the detectives. They, too, often go to the wrong man, the man who advertises.

I remember Sir Frank Lockwood once cross-examined a private detective in a divorce case. The witness was dressed in well-cut broadcloth. He was portly; a massive gold chain and seals hung from his fob; he might have passed for a country banker, or a solicitor of the old style, one of those you see on the stage.

Sir Frank (very politely): "I believe you are a member of the eminent firm of detectives, Messrs Blater & Co.?"

Witness: "Yes, sir; I represent the firm."

Sir Frank: "And, I presume, in the course

of your professional duties, you have to assume many disguises?"

Witness: "Yes, sir."

Sir Frank: "Pray, may I ask you what you are disguised as now?"

## CHAPTER XXII.

### CHILDREN AND DIVORCE.

#### A HARDSHIP ON MOTHERS.

One of the saddest aspects in man-made divorce laws and which most deeply affects women, is the custody of the children. The cruellest punishment of wrong-doing on the part a woman is the deprivation of her children. According to the law, a guilty mother is entirely deprived of their custody, and even access, which, however, is allowed to a faithless father. In no circumstances, if she is found guilty, can she have the custody of the children, however young one of them may be. It is opposed to every legal principle. She loses everything, income, custody and access to children, reputation, and even in some cases her husband's name.

The numerous reconciliations and strange re-marriages that often succeed a divorce may be traced to this cause; while the wonderful

forbearance of some wives is due to love of their children and dislike to the breaking up of the home, rather than to any lingering tenderness and leniency for the wrong-doer.

Give a woman the right to at least co-equal control with her husband of the lawful issue of her own body. At present this is denied her, although nobody disputes the right of an unmarried mother to rule the fortunes of her own children. There is a well-known dramatic play in which the mother vehemently said to her husband, who had divorced her, "You can never divorce me from my children!"

A woman will fight fiercely to the death to keep her offspring with her; she will even, as cases have been known, commit herself to permanent exile from England, and to all the penalties of contempt of Court, in order to retain their society and guardianship.

The fine trait in her character is the foundation of a mother's love, a quality which remains to the end in even the most depraved woman. Many wives will endure tortures sooner than be parted from their children, and bear opprobrium and ill-usage for their sakes.

When an unfortunate mother has "stooped to folly," she will not hesitate to commit wilful

perjury rather than be deprived of her offspring, so powerful is the maternal instinct. It may be confidently asserted that, in the majority of defended divorce cases, this consideration is at the bottom of the unfortunate litigation between the parents. Girls most invariably take the part of the mother, and the boys of the father, in these contested suits.

It is often a very painful scene when it becomes absolutely necessary to call a witness of tender years ; but justice must be done, in spite of the harrowing testimony deposed to in a crowded Court. It is only fair to state that in such cases the evidence is of the briefest possible character, both as regards examination and cross-examination, and counsel, fully recognising the obviously painful position of matters, do not prolong any examination.

In France children of divorced parents lose none of their rights through the dissolution of marriage of their parents, who are at liberty to watch over the bringing up and the education of their offspring.

The Rev. Archibald G. Brown, of the East London Tabernacle, some time ago spoke as follows :—"A husband or wife may seek a divorce, but you have never heard of a mother

ever wishing that a divorce could be obtained for her most fallen and depraved child.

“And when the whole world may turn against the boy, you will find that it is the mother who will become all the world to that boy.

“As it has been beautifully put, a mother’s love is like the vine that will cling to the tree after it has been blasted by the lightning; and the blasted tree that has no leaf of its own shall yet be wreathed and festooned by the vine that puts her own beauteous fruit upon its bare boughs.”

Statistics prove that divorce proceedings are generally brought about by the childless. Matrimonial disputes of the gravest kind seldom occur where there are two or three children, and not often where there is one. Children undoubtedly keep the home together; no home is complete without them.

“I have always received happiness from my children,” Lord Rosebery recently said in a public speech. There is no doubt that children are often a great “thorn in the flesh” of parents, but what is home without them? More than once a childless marriage has been described as a domestic tragedy. In our children our hopes live and become anew, and we discover a

happiness which can be likened to nothing else in this world.

If the effect of divorce is in most cases to give the custody of the children to the unoffending parent, that surely must be a gain. For the children one can hardly imagine a worse state of things than one in which, say, the mother was tied for life to a cruel and depraved father, who retained the whole of his parental control over his offspring. "Living poems," as Longfellow calls children, deserve a better fate.

Marriage and family are intimately connected with each other. It is for the benefit of the young that husband and wife continue to live together. Marriage is, therefore, rooted in family rather than family in marriage.

There are many people among whom true conjugal life does not begin before a child is born. Among the Eastern Greenlanders marriage is not regarded as complete till the woman has become a mother. In Siam a wife does not receive her marriage portion before having given birth to a child.

Desire for offspring is universal in mankind. "Be numerous in offspring and descendants," is a frequent marriage benediction or salutation in Madagascar; for to die without posterity is

looked upon as a great calamity, and is termed "dead as regards the eye."

A negro considers childlessness the greatest disaster which can happen to him. "Honest people have many children," a Japanese proverb says. The Chinese regard a large family of sons as a mark of the Divine favour; and to become the father of a son is described in Indian poems as the greatest happiness which may fall to the share of a mortal.

In Persia childlessness is considered the most horrible calamity. One of the chief blessings that Moses, in the name of God, promised the Israelites was a numerous progeny; and the ancient Romans regarded the procreation of legitimate children as the real end of marriage.

"He who has 'no children has no happiness either," the South Slavonians say; while German folk-lore compares a marriage without offspring with a world without sun.

"Children," says Hobbes, "are a man's power and his honour." But no doubt children are most eagerly longed for by savage man because they are of use to him in his lifetime.

In Switzerland, although barrenness is no sufficient reason for a man to repudiate his wife, two-fifths of the total number of divorces take

place between married people who have no children, whilst the sterile marriages amount only to one-fifth of the number of marriages.

Mr Herbert Spencer rightly points out that we have interfered already in many directions with the freedom of fathers and mothers, and thereby diminished their responsibility.

We will not allow a father to send his child too soon to a factory, or to keep him there too long ; he must not bring him up to several avocations considered quite lawful for children half a century ago ; he must get him vaccinated, and at a suitable age send him to school. The child also has a common law right to be properly fed, but this last is a duty very imperfectly enforced.

## CHAPTER XXIII.

### ON CRUELTY.

#### WIFE-BEATERS ON THE DECREASE.

In the course of the hearing of a divorce case, a curious Nottingham custom was disclosed with regard to straw being tied on a door-handle, which signified that the husband had been thrashing his wife. As to what constitutes cruelty, Mr Justice Bargarve Deane some time ago gave a pronouncement which was criticised at the time. A husband had slapped his wife's face, and pleaded that to that extent he was entitled to administer corrections to the lady.

A slap in the face might be given, not by any husband to any wife, certainly, but by many husbands to many wives. It would be absurd to arraign a man for systematic cruelty on such grounds. On the other hand, there would be worse folly in accepting the slap in the face as a regulation for matrimony generally.

Proof of actual physical violence, which was recognised in the old Ecclesiastical Courts, is not now necessary in a divorce case, showing a great evolution with regard to what used to constitute legal cruelty of the costermonger kind, nor is the habitual use of bad language classed under the head of cruelty.

The ground of the Court's interference is the wife's safety, and what merely wounds the mental feelings is in but few cases allowed to be admitted as cruelty unless accompanied with bodily injury, either actual or menaced. Threats of violence, if it appear that they are not mere empty threats, are a ground on which the Court acts; for be it not forgotten that the Court has not to wait until an injury is inflicted, for, if there be a reasonable apprehension of danger, it is sufficient.

Although a blow is always a blow, the surrounding circumstances may be taken into consideration, for the actual injury is more severe when it comes from those of gentle birth than when the blow is struck between parties in a lower condition of life. Indignities, therefore, which a wife is subjected to, if they be of such an intolerable character that they affect the health of the wife, may be properly set up as a charge of cruelty.

If a husband strike his wife in the course of a scuffle, the Court does not allow the wife to complain of such accidental injuries thus inflicted on her in the course of a quarrel if the same was provoked by herself, for the wife's conduct may give her some title to complain. The law presumes her not to have been the authoress of her own sufferings ; for, if it were otherwise, she would have nothing to do but to provoke ill-treatment, and then to complain. It is her duty to conduct herself with reasonable prudence and submission ; and if she can ensure her own safety by lawful obedience and proper self-command, she has no right to come to the Court and complain.

Although provocation is sometimes pleaded in answer to acts of cruelty alleged by a wife against her husband, it was formerly much more frequently alleged than it is now, the prevailing notions of the age with regard to the treatment of a wife by her husband, even under the greatest provocation of circumstances, having necessarily influenced and mollified the Court's view of the propriety of the exercise of physical force towards a woman.

In educated society a husband rarely lifts his hand against his wife, though the "moral" cruelty may be of a far more subtle and soul-shattering

nature. There are men who know how to work on a woman's nerves, to trample on her fine feelings, to humiliate and render her miserable, and yet always keep within the exact limit of the law.

If a husband subject his wife to a course of harsh and unreasonable treatment, it matters not that the force is merely "moral" and not physical that is exercised ; for if it is exercised to such a degree and during such a length of time as to break down her health, he is guilty of cruelty. If brutality to a child is committed in the presence of the mother with the express purpose of wounding her feelings, that is an act of cruelty.

As to "moral" cruelty, the leading case is "Kelly v. Kelly," which has always influenced the Court in its decisions.

The learned judge who presided at the trial thus describes in outline the course of the husband's treatment :—

"She was entirely deposed from her natural position as mistress of her husband's house ; she was debarred the use of money entirely ; not only were the household expenses withdrawn from her control, but she was not permitted to disburse anything for her own necessary expenses ; every article of dress, every trifle that

she required, had to be put down on paper, and her husband provided it if he thought proper.

“Having refused on one occasion of going into the town to tell her husband everywhere that she had been, an interdict was placed on her going out at will.

“At one time the doors were locked to keep her in ; at another a man-servant was deputed to follow her ; at another the respondent insisted on accompanying her himself whenever she wished to go abroad.

“Those whom she desired to see were forbidden the house. She was absolutely prohibited from writing any letters unless her husband saw them before they were posted.

“She was thus, as far as the respondent could achieve it, practically isolated from her friends. Meanwhile the care of the household was confided to a woman hired for the purpose, who was directed not to obey Mrs Kelly’s orders without the respondent’s directions.”

A husband may no longer put duress on his wife to remain in his house longer than she wishes. If she chooses she may leave him at the church door, and the marriage which has been effected in the church may be broken at that moment by the wife walking away, and there is no power

which can bring them back to a state of marriage.

What is known as "The Clitheroe Abduction Case" was determined in 1891. The fortunes of the heroine in that case read very much like a romance of at least a hundred years ago. Emily Hall married E. Haughton Jackson at Blackburn in 1877. They never lived together, and she returned to her friends. Soon after he went to New Zealand, and returned to England in July, 1880. After some correspondence and one interview, she steadily refused to live with him. Some litigation ensued, and a decree against her was obtained on the 30th July, 1889, for restitution of conjugal rights.

On Sunday, March 8, 1891, the husband, assisted by two young men, one of whom was a solicitor's articled clerk, seized her just as she was leaving a church in Clitheroe in company with her sister, and forced her into a carriage which was in readiness.

Her sister said she was seized in full view of the congregation coming out of church, that she resisted seizure, and was dragged backwards into the carriage, her feet remaining outside until they were lifted into the carriage by the solicitor's clerk.

Her arm was bruised in the struggle. The carriage was then driven off; the solicitor's clerk, with whom the wife was stated to have been previously acquainted, accompanying the husband and wife in it.

The carriage proceeded to the husband's house in Blackburn, in which the wife was detained until she was brought to Court under the Queen's writ of *habeas corpus*.

The matter came before a full Court of Appeal, specially constituted, and Mr Collins, Q.C. (who was afterwards Mr Justice Henn Collins, and is now Lord Collins) appeared to argue before their Lordships whether a man had a right to beat and imprison his wife. All sorts of delicate positions and doubtful cases had to be discussed, and the case was one of the last which Mr Collins argued before being made a judge. The case was conducted by him in a very able manner, the wives of the Lord Chancellor and the Lords Justices being also present to hear the views of their husbands with regard to the very delicate question.

In the course of the arguments an old authority was cited which decided that a man must not beat his wife with a stick thicker round than his own thumb; ergo, he may beat her with

one which does not exceed the limit. The case has never been overruled, and, when cited before Lord Esher, he did not dispute it was good law. He only laughed. Everybody was convinced that a husband cannot compel his wife to live with him by force, although he has obtained from the Court an order for restitution of conjugal rights.

Mr Henn Collins, Q.C., then contended for the husband that, if a wife refuses to live with her husband, he has a right by law to take possession of her person by force, and keep her, not imprisoned, but confined, till she consents to live with him, in order to prevent her from prematurely withdrawing her society from him. Quoting an old authority, counsel said, "The husband hath by law power and dominion over his wife, and may keep her by force within the bounds of duty, and may beat her, but not in a cruel or insolent manner."

Mr Finlay, Q.C., for the wife, urged that a husband had no power by the law of England to imprison his wife if she refused to live with him.

Lord Halsbury, in giving judgment, said that more than a century ago it was boldly contended that slavery existed in England; but if any one were to set up such a contention now, it would be regarded as ridiculous. In the same way, such

quaint and absurd dicta as were to be found in the books as to the right of a husband over his wife in respect of personal chastisement were not, he thought, now capable of being cited as authorities in a court of justice in this or any civilised country.

The authorities cited for the husband were all tainted with the sort of notion of the absolute dominion of the husband over the wife. He was not prepared to assent to the proposition that it was the right of the husband, where his wife had wilfully absented herself from him, to "seize the person of his wife" by force and detain her in his house until she should be willing to restore to him his conjugal rights. No such rights existed or ever did exist.

The husband had no authority such as he claimed. It seemed to have been thought that the question how far a lady must be dealt with in the manner suggested depended on the exact amount of violence used or pain inflicted. But was it nothing that a lady coming out of church on a Sunday afternoon was to be seized by a mob of men and forcibly put into a carriage and carried off? Must not the element of insult involved in such a transaction be considered? He confessed to regarding with something like indignation the

statement of the facts of this case, and the absence of a due sense of the delicacy and respect due to a wife whom the husband had sworn to cherish and protect. The lady must be restored to her liberty.

Lord Esher, then Master of the Rolls, said in this case it was really admitted that this lady was confined by the husband physically so as to take away her liberty. The husband had declared his intention to continue it. He justified such detention. "A series of propositions have been quoted, which, if true, make an English wife the slave, the abject slave, of her husband. One proposition that has been referred to is that a husband has a right to beat his wife. I do not believe this ever was the law."

Lord Esher further stated that by the law of England the husband had the custody of the wife. He protested that there was no such law in England. He did not believe that an English husband had by law any such rights over his wife's person as had been suggested. In regard to the case in question, the seizure was made on a Sunday afternoon when the lady was coming out of church, in the face of the whole congregation. "The husband takes with him to assist him in making the seizure a young lawyer's clerk and another man: The wife is taken by

the shoulders and dragged into a carriage, and falls on the floor of the carriage with her legs hanging out of the door. These had to be lifted in by the clerk. Her arms was bruised in the struggle. She was then driven off to the husband's house, the lawyer's clerk riding in the carriage with them. Could anything be more insulting?" The circumstances of this seizure and detention were those of "extreme insult."

Lord Justice Fry concurred, and the wife was allowed to go free, and she returned to her friends. So here was a good, solid advance in the emancipation of that much-favoured person—a married woman.

On decided cases, a man may beat his spouse in "a reasonable manner," and that enactment is still law in the same way as the Lord's Day Observance Act has been allowed to remain on the Statute Book.

A Chinaman has a right to whip his wife with a bamboo, but the thickness of the sticks as well as the number of strokes is adjusted by the law.

A high authority has it: "Neither soft words nor the lavish giving of raiment, but the jasmine rod, brings peace to a house." It has been stated that a man who lays the foundation of his married life on kindness raises a structure of sand. Many

wives convince themselves that the anger of their husbands is an irrefutable proof of their love for them, and, so far from being ashamed of being beaten, they are proud of it. In a police court case, the magistrate asked, "Did he strike you?" the reply being, "Oh, no, sir, I am not his wife."

A singular case of cruelty was before the Court some years ago, when a West of England Town Councillor would take to his bedroom a bottle of whisky, and, stimulated by its contents, he prevented his wife from sleeping. In the first place, he would wander about the room and deliberately make noises by shaking the brass handles of the furniture, declaring that he would not let her slumber.

He would take up a newspaper ; for an hour or two he would deliberately crumple it up and shake it, avowedly for the purpose of preventing his wife from sleeping, stating that he could not sleep and he would not let her.

Nowadays, however, it is pretty generally admitted that the sexes should be considered as being on an equality, and that to assume superiority on the ground of being physically stronger is mean and cowardly ; so we find that a complete change has taken place in the public mind in that respect.

Some husbands, as the Divorce Court records prove, seem to forget the old lines :—

“ Use the woman tenderly, tenderly ;  
From a crooked rib God made her slenderly.  
Straight and strong he did not make her,  
So if you try to bend you'll break her.”

But there is another side to the shield. Some women are cruel to their husbands.

Cruelty, when alleged by a husband against his wife, though not of frequent occurrence, is nevertheless a very real matrimonial offence, and one which the Court recognises ; nor has it ever disdained to protect either party from the violence of the other. Violence by the husband and violence by the wife are not to be considered in the same identical light, for, though the physical effects of violence by the wife are comparatively puny, the moral results are profoundly great.

Considered in its lowest form, violence by the wife excites the instinct of retaliation in the husband in self-defence, and in the humbler grades of life the habit of self-restraint often proves insufficient to avert the sad results of the weaker attacking the stronger ; but, notwithstanding all, the Court will not allow sentiment to usurp the seat of justice, and therefore it will not withhold its hand to relieve a husband from

the perils of continuous provocation ; for it asks itself, what security is there in such circumstances for the wife ? Although the husband's safety is in no jeopardy because he can defend himself, yet this is the great grievance. It is because he may be tempted to retaliate on his wife that the Court will interfere.

A dictum of Mr Justice Bargrave Deane was :—"I have always said, except in self-defence, that no man has a right to strike his wife. If it was done in self-defence, he might be excused, but in a case of mere irritation the man should run away from it."

In a well-known divorce case one of the witnesses said that petitioner was the best superintendent of police a certain town ever had. He was once a powerful man, but was now, in consequence of the ill-treatment of his wife, greatly reduced in strength, and his health was bad.

"George Eliot," in one of her novels, has the following :—"It's a strange thing to think of a man as can lift a chair with his teeth, and will walk fifty miles on end, trembling and turning hot and cold at only a look from one woman out of all the rest of the world. It's a mystery we can give no account of ; but no more we can the

sprouting of the seed, for that matter." This woman, no doubt, was one we are told about, "Whose look was a sermon, and her brow a homily."

It seems to be that women are rapidly becoming the stronger sex. At one time it was an unheard thing for men to complain of the violence of women. Now it appears to be quite common. As regards the "weaker sex," naturalists tell us that the female bird of prey is larger, fiercer, and stronger than the male.

With regard to a recent police court case the magistrate asked the following question :—"You say that because of injuries inflicted by your wife you have been unable to pursue your vocation! What is your business, sir?" The answer was :—"Your honour, I'm a lion-tamer."

Recently Mr Plowden, the well-known police magistrate, had occasion to remark, "The whole type of women seems to be changed. Nowadays, it is left for women to excel in violence anything that a man could do." No doubt this is due to the suffragette movement, which tends to the development of a masculine mind.

Men appear to be growing smaller and women bigger, their figures running to flatness and angularity, while they are losing the truly

feminine desire to look pretty and behave charmingly. The Englishwoman is in danger of being criticised by the women of other nations for the size of her feet. On an average she is taking a much larger size in boots and shoes than formerly. Substantial fives and sixes are required in place of the little twos and threes which were not uncommon in the past, and in regard to which there is now no popular demand, and they are not what is called "stocked." Eight is no uncommon size for a lady to wear.

In Congreve's *Way of the World* there is the character of a most brilliant girl, who says she "loves to give pain, because cruelty is a proof of power, and to part with one's cruelty one parts with one's power." There is no doubt that fear is the worst form of cruelty.

## CHAPTER XXIV.

### LADY LITIGANTS.

#### INTERESTING STUDIES.

Most frequenters of the Divorce Court are more or less familiar with the numerous lady litigants who have a mania for appearing in person. They are of a peculiar type, and are by no means of a tender age. The majority of them have a "bee in their bonnet." If you happen to be in their confidence, they will call you on one side and loudly assert that such and such a judge has been "nobbled," certain counsel "got at," their principal witnesses "squared," and that bribery and corruption are as freely indulged in as at an old-fashioned election.

They are very suspicious and mistrustful of anybody who puts himself out of the way to try and do them a kindness. In most cases, vanity and the love of notoriety are at the bottom of the "scenes" they dearly love to create, and for the

most part they are a shrewd, cunning race. Lady litigants may come and go, but there are three or four "old stagers," who, like the brook, "go on for ever." Their assiduity and unswerving patience are well-known.

The most original of lady claimants has long since passed away. An old lady named Ryves used periodically to importune the justice of her country for an examination of her claim to the throne of England. But this did not prevent her from being extremely well disposed to the then occupant. She used to make demonstrations of good will towards the Royal carriage, and to wave her umbrella in a stately grace.

Like the majority of lady litigants, they cannot or will not understand the law of evidence. What the soldier "said," as laid down in the immortal trial of "Bardell v Pickwick" as not being admissible in evidence, they never appear to comprehend, and it seems a hopeless task to try and convince them to adopt first legal principles. Their litigation is in every sense "personally conducted," and it is full of mines and pitfalls, as there is no legal help for litigants in person; but they get all the assistance possible from the judges, taking up much valuable time, there being no help for it.

Their bundles of legal papers have a greasy, dirty appearance and have become yellow and faded with age ; but the dry as dust technicalities of the law are, after all, really "watered" by such tenacious and obstinate persons.

These curious personalities haunt the judges in Chambers a great deal, and worry them out of their lives with respect to mythical claims. Curiously enough, the lady litigant has a peculiar tendency to become confirmed in her attendances, haunting the Courts year after year. An atmosphere of pathos envelops many of these cases, due not only to the painful stories of distress and the hopeless strivings they disclose, but to the want of harmony between the female presence and the severe professional aim of a court of civil law.

Yet of the unfortunate "scenes" that frequently arise in personally fought cases, the most violent have been due to woman's excitable temperament. More than once blows have fallen, and Courts have been turned into places of wild disorder by female litigants in person. One of these, who had before the Divorce Court a suit of "jactitation" of marriage, a term in the canon law for a false pretension to marriage, was in the habit of using her umbrella pretty freely in the corridor of the Court when she had been unsuccessful in her

numerous applications to the presiding judges. This I know from personal experience.

One of the old time persistent litigants in person was an Irish lady, who had some imaginary grievance against one of the Registrars of the Probate Division in relation to her mother's will, and there was some allegation she made with regard to a spoiled stamp. On one particular motion day she, with great dramatic power, alluded to what she alleged to be the "mutilation" of her dead mother's will, and invoked God Almighty to see that full justice was done in the matter.

Her powerful speech made excellent "copy," and in one particular newspaper on the staff of which I was then engaged half a column was duly published. The lady was so pleased with this report that she called on the manager and told him he was represented by "a very able reporter" (myself) whose salary she recommended should be immediately increased, but no heed was taken of this by the astute manager as to what I thought to be a modest request.

The next motion day this lady litigant went through the same performance, and, evidently with the hope of seeing her remarks in print, she was more dramatic than ever with regard to the

alleged "mutilation" of her mother's will. This time it seemed clear to me that she was seeking "bold advertisement." The note-book was shut up, and her second application to the Court was not reported. She called upon the manager the next day, told him that his representative at the Court was utterly incompetent, and suggested my immediate dismissal!

A very well known lady litigant, Mrs Georgina Weldon, was the means of bringing about a very remarkable change in divorce law. In 1883 the Court held that if a decree for restitution of conjugal rights has been pronounced against the husband, he is required not merely to provide a house, servants, and allowance, but he is bound to live under the same roof with the petitioner, and the decree can be enforced against him by attachment for contempt.

The difficulty was foreseen by Lord Hannen, who said that if an unwilling husband was compelled to live under the same roof with his wife great difficulties would arise, "even murder," slily added his lordship. This brought about the amendment of the law in 1884 by which non-compliance with an order for restitution of conjugal rights constitutes almost immediate

desertion, and it has been taken advantage of to such a large extent it is difficult to estimate. Indeed, its benefits cannot be too strongly dwelt upon in connection with such an important change in divorce law. This very important amendment of the law is known among practitioners as "The Weldon Relief Act," and numberless ladies owe this redoubtable champion of women's rights a deep debt of gratitude for her action in the matter.

Lord Esher, during his term of office as Master of the Rolls, was much troubled by lady litigants, and it was usually his fault, whether it was because he was good looking, or because he was polite to them is uncertain. Of his politeness when they were before him there can be no question, but sometimes they were not polite to him in return. On one occasion, when he had really taken a great deal of trouble in explaining her position to a lady, the fair one most ungratefully replied :—

"But do try to take a reasonable view of it, my lord. If I could only induce you to use just a little common sense, you have no idea how different it would appear." There was laughter at this, but nobody laughed more heartily than Lord Esher.

In another case, in which a lady litigant was

concerned, there was some reference to a mine which was styled "Moaning Flat," or some name like that. "It sounds more like the name of some place below," said Lord Esher.

"It ill becomes an old man like you, my lord, with white hairs and one foot in the grave, to be profane," replied the lady. Lord Esher only smiled, one of his great characteristics.

One well known lady litigant once described him as "A perfect darling." She delighted to argue with one of the handsomest men on the bench, and laugh and chaff with a man of his kind heart.

He had a very strong sense of humour. One naturally distrusted the voice of rumour in connection with the retirement of a judge. This was the case of the late Master of the Rolls, Lord Esher. When rumour had been especially persistent that his resignation had been placed in the hands of the Lord Chancellor, Lord Esher, who dearly loved a joke, would appear in a brand-new wig. There would be a great array of the Bar on the closing day of the sitting, and the reporters' box would be crowded with pressmen ready to chronicle the farewell utterances which sometimes accompany the leave-taking of a judge. Then Lord Esher would

bid everyone "Good day," adding, with a merry twinkle in his eye, "Until after the Long Vacation."

The most noticeable feature of his lordship's methods was the very successful mode in which he refuted counsel's propositions by the simplest analogies. In one case counsel was endeavouring to make out a person who had been convicted as bad as possible, and to strengthen his argument quoted the old adage, "A man is known by the company he keeps," and this man was admittedly the associate of bad company.

"I thought," said his lordship, "that you were addressing the Court on a point of law, and now you quote something which isn't law to mislead the Court."

"Maxims are frequently quoted at the Bar," submitted counsel.

"Yes," retorted his lordship. "Counsel often do what they ought not, but you have quoted a maxim which is wrong. If, for instance, a clergyman visits a murderer before he is hanged, would you say that clergyman was known by the company he keeps?"

To return to the lady litigants, one of the most persistent was Mrs Davis, who has suffered imprisonment in the "cause" in prosecuting

her claim. Over thirty years ago she was the defendant in a will case which concerned some house property in the north of London, which her "husband" had left her. The relatives of the "husband" disputed the claim, alleging that there was no legal marriage, the certificate of which could not be produced. She stated that she and her "husband" were married "In the sight of God" at Canterbury Cathedral, they taking each other "for better or for worse."

She lost the case, and from that day she was a thorn in the flesh of the judges, both in the Probate, the King's Bench Divisions and the Appeal Courts. She insisted on putting men into the possession of the property she claimed, and was again and again warned of the consequences if she persisted in disobeying the order of the Court. But she was very obstinate and self-willed, and the applications she made to the judges were numerous.

She reminds one of the description given in "Bleak House," in the well-known Jarndyce v. Jarndyce Chancery suit :—"Standing on a seat at the side of the hall, the better to peer into the curtained sanctuary, is a little, mad, old woman; in a squeezed bonnet, who is always in Court, from its sitting to its rising, and always expecting

Mrs. Davis.



"My Lord, My claim  
is against the Treasury  
for - £3,000,000."

some incomprehensible judgment to be given in her favour. Some say she is, or was, a party to a suit ; but no one knows for certain, because no one cares. She carries some small litter in a reticule which she calls her documents, principally consisting of paper matches and dry lavender."

Like that character described by Dickens, when the little old lady, Mrs Davis, made her appearance, generally at the rising of the Court, there was a hurried exit from the Court on the part of the "reporters of the newspapers," unwilling to hear any further application in her well-known, weak, piping voice ; for, to again quote Dickens, there was "no crumb of amusement in her application, which was squeezed dry years upon years ago."

As she continued to disobey the order of the Court, she was sent to Holloway Prison for contempt, and then she brought an action against the Treasury in consequence. As naturally they did not pay, she added to her claim daily compound interest, making the sum amount to £3,000,000; which was her modest claim !

After all the Law Courts would be a very dull place if it were not made interesting by lady litigants. They relieve the dull monotony, and stir up the elderly judges.

## CHAPTER XXV.

### JURYMEN AND THEIR WAYS.

#### TRIAL BY JURY THE BEST.

Juries play a very important part in divorce cases. Service on a jury is one of the least agreeable and convenient of the duties of a citizen. Often enough the discharge of it entails a not inconsiderable loss of money. The least that the faithful subject might reasonably expect in return is that he should discharge his obligations to the State in circumstances of elementary decency, not to say comfort. Most of the adult males of this country have at one time or another in their lives to go through this experience, and a very unpleasant one it is.

Ordered about by the officials as if his proper destination were the dock, and not the jury-box ; “cabined, cribbed, confined” in an inadequate compartment, which would be scorned in a waiting-room on a branch railway line in Ireland ;

compelled to breathe a hopelessly polluted atmosphere, and often ordained to kick his heels about in idleness when he knows his business is probably going to the dogs ; it is not wonderful that jurymen should be sometimes contumacious, obstinate, and unreasonable.

With regard to the unfortunate juror in waiting, there is no real sanctuary he may repair to and call his own. He must either sit in Court listening to cases, loiter in the draughty corridors, or linger at the refreshment bars ; but he must not go beyond the range of an immediate summons to be called into the box to "well and truly try the issues between the parties."

No one has yet conceived the idea of a billiard or card room for the jury in waiting. Lord Gorell, at one time, ordered a special room to be set aside for juries in waiting in divorce cases, among dark, creepy vaults, "In caverns deep," in "The Gothic Stone Village." The room was fairly furnished ; there was a carpeted floor, easy-chairs and writing-tables ; but the room was cold, dark, cheerless and ill-ventilated. The experiment was not a success !

As to jurors generally, the usual qualification of the special jurymen is the payment of a substantial rent. The highest rents are paid by

restaurant keepers, publicans, and proprietors of boarding houses. It is no uncommon thing to find a goodly proportion of a special jury comprised of licensed victuallers empanelled at one time ; and, at another, summoned from the St. John's Wood district, there have been three or four well-known artists sitting in the same box, quite an artistic gathering to represent the "glorious Palladium of British Justice" as jurymen have been styled.

Legally, a special jurymen is only allowed for his services "such sum of money as the judge shall think just and reasonable, which sum is not to exceed one guinea." Practically, jurymen serving as special jurymen are allowed by the party applying for that form of trial one guinea a-piece for each case, but if the case is likely to last, generally on the second day the foreman sends a note to the judge asking that they should receive remuneration at the rate of one guinea per day. His lordship tells the jury he has no power in the matter, and hands the note to counsel engaged in the case ; and they, after consultation with their clients, generally accede to the request.

With regard to the remuneration of common jurymen, one shilling a case, Lord St Helier

on one occasion characterised it, I remember, as a "miserable remuneration," and Mr Deane (as he then was), who was the leading counsel, said the remuneration was "perfectly ridiculous, perfectly monstrous," and ought not to exist in a civilised country.

In the particular case which called forth these remarks, seven of the jurymen formed a deputation and attended at the office of a daily newspaper with the object making of their grievance public.

"We wish," said one of them at the time, "to protest against what we regard as the wicked waste of time which is entailed on Divorce Court jurors. We are all business men, and such a system entails great hardships upon those who are dragged away for days together to attend to what are the purely private affairs of other people."

This "protest" was of no avail. The remuneration of common jurymen remains the same, viz., the handsome sum of one shilling a case! It is not proposed to abolish Magna Charta whereby citizens' claims are entitled to be heard by a jury, but certainly the juror should receive a moderate recompense for the time and attention he is compelled to devote to the private quarrels

of unimportant strangers. The juryman, who is always accommodated with the most uncomfortable seat in Court, should not be expected to perform an irksome public service without adequate payment.

A panel usually consists of seventy-five jury-men, and for each court where juries are required a panel is summoned. The whole of the seventy-five unfortunates are at the call of duty for generally a week. It has happened that out of this number twelve sit for five or six days, and the remaining sixty-three are idle ; but the authorities are bound to exercise great caution so that they can always have at their command twelve "good men and true" to try a case, therefore it is sometimes unavoidable the waiting to be called, and is a great trial on the part of business men.

Juries are generally right, often more so, indeed, than judges and counsel, because they judge from a common-sense point of view. In any case involving the liberty of the subject the jury is the safest tribunal.

As a rule, the verdicts of juries are worth treating with the greatest respect, and are to be preferred to those of a judge. Twelve men are sworn to try an issue of a momentous character, and when they unanimously agree on

a verdict, this should be regarded as always sacred.

They have had the opportunity of seeing the various witnesses in the box, of observing their demeanour under cross-examination; and they are far more competent to judge the value of evidence than that highly important personage, "The man in the street," who generally objects to their verdicts. Upon being questioned he generally has to admit that he has not carefully read the daily records of a long trial; and the common inference is that he has jumped to a conclusion, probably after an opening statement of counsel at the first day's hearing.

As to persons not wishing to serve on juries, perhaps the most common type is the well-to-do commercial man. This somewhat over well dressed personage generally acts as if he had been served with a writ in the bosom of his family for a debt that he has never contracted. Next, he volubly pours out every excuse that happens to come to mind, with a poor regard for the truth.

If excused—well, if the cases going on are of an interesting character, he will sit at the back of the Court, listening and wasting hour after hour. Yet, according to his own account, his

business is of such a vast and complicated character that an hour's absence from it would mean ruin to hundreds.

Another well-known type of the selfish order—for selfishness it is in the inconvenience it may cause to another who is bound to take the place that could easily have been filled—is the gentleman who is suffering from acute sensibility, a shallow-faced man, with thin features.

Painfully nervous and genteel, he wears a superfine black coat, white waistcoat, some quaint but not showy jewellery, and (why has never yet been known) silk gloves. Very often he carries a small parcel, which it does not take an over-acute amateur detective to claim as evident proof that he is bent on going somewhere else.

“If anything happened in Court, I am sure I should faint, my organisation is so delicate!” This type of gentleman we have all met in the course of our lives or in the pages of a novel, the man, the utterly selfish man, who, on the plea of ill-health and bad nerves, always insists upon shirking every obligation. You know him well—Mr Fairlie in “The Woman in White.”

However, he is not excused. He takes his seat, and he is not in the least lacking in

intelligence, and, when once aroused, perchance proves himself to be one of the smartest of the mighty twelve.

As to excuses put forward from persons summoned on juries, one was:—"I certify that Mr——, of ——, is suffering from acute alcoholism and an injured face, and is quite unable to attend as a jurymen. (Signed) ——."

On the great excuse day of the year—Derby Day—there once came by post:—"Mr—— is a patient of mine, and he suffers at times from irregularity of the heart's action. Being confined in a close atmosphere is injurious."

On one occasion a juror asked Baron Alderson to excuse him from service. "On what grounds?" asked the Baron. "Well, my lord," replied the juror, "I can hear pretty well on this side when people speak with great distinctness, but on the other side I can't hear at all." "Well," Baron Alderson said, "in courts of law it is necessary to hear both sides. You are excused."

Another jurymen did not fare so well. He once asked Mr Justice Hawkins to excuse him on the ground that he was too deaf to hear the witnesses. The jurymen was unable to make out anything said to him, until the judge observed in a low, soft voice that he might go

A smile irradiated his face, and he exclaimed, "Thank you, my lord." He was retained on active service!

With regard to the summoning of jurymen, why no qualification of natural or acquired intelligence should be required of a jurymen it is difficult to see. The points he has to decide are often of extreme complexity, and in theory he is supposed to supply a quality of wisdom not possessed even by the judge who tries the case.

Yet the law of the land declares that his capacity for the due discharge of his duties shall be gathered mainly from the fact of his possessing a certain quantity of a certain sort of property, or—more amazing still—of his enjoyment of the right to the style and title of "esquire."

An "esquire" is supposed to be "a gentleman." Some have suggested that he is anyone who makes a thousand a year regularly; while others assume that it is a man who wears a tall hat, and is a member of a club. Caryle defined "a gentleman" as one "who keeps a gig."

I remember some time ago, in the course of a trial in the Probate Division, a witness being asked to define "a gentleman," emphatically excluded "tradesmen and keepers of public houses," from the category of "Nature's noble-

men." He was questioned as to "a gentleman" keeping a public house, whereupon, in contemptuous tones, he said that "No gentleman keeps a public house."

Among the definitions of "a gentleman" there was a famous one by an American actress, "a man who can wear a clean collar without looking conspicuous;" another, less famous, by a lowlier sister, "A man who wears spats"; but the best was given in a county court case by a plaintiff, who, referring to the defendant, said: "He is more like a gentleman than anything else. He walks about all day doing nothing, going from public house to public house."

One definition of a "gentleman" was a man who used a tooth-brush; but the general notion of "Nature's nobleman" is a man who does not work.

"As a rule," said Sir Edward Carson, K.C., when interviewed on the subject, "juries return good verdicts. I should prefer a jury's verdict to that of a judge, and I think it a great pity that judges should interfere so much with the free exercise of their opinions by juries; in many instances, indeed, usurping their functions, for juries naturally don't like to set up views against the experience of a trained judge."

The late Lord Bramwell once said that "If juries had to give the reasons for their verdicts, trials by jury would not last five years."

"A jury assisted by a judge is a far better tribunal for the elucidation of the truth than a judge unassisted by a jury," observed Sir Alexander Cockburn.

"A jury is, in general, far more likely to come to a right decision than a judge," remarked Chief-Justice Erle. "As a rule juries are, in my opinion, more right than judges."

The late Sir Archibald Smith once said that his own opinion of juries grew higher. "Sometimes," he said, "I think the verdict is wrong and I feel disappointed in it, but I think the case over, and I find on reflection that the jury were quite right."

Some years ago Lord Halsbury, addressing the United Law Society, said: "For myself, I will avow that trial by jury is too often lightly regarded, and that it is one of the surest foundations on which civil rights repose. As a rule, juries are, in my opinion, more generally right than judges."

The late Lord Russell of Killowen held a very strong opinion on the value of a jury as judges of matters of fact. He always thought that the average opinion of twelve men of common sense

was at least equal to the judgment of twelve judges on matters of fact.

Conflicts between judges and juries are not edifying, least of all when the judge is in the wrong. Mr Justice Ridley, who recently fell out with "twelve good men and true," probably had not present to his mind while he was delivering his rebuke the majestic words of Lord John Russell on the subject of trial by jury. "It is to trial by jury," wrote the statesman, "more than even by representation (as it at present exists) that the people owe the share they have in the government of the country; it is to trial by jury also that the Government mainly owes the attachment of the people to the laws."

He regarded the jury also as an efficient agent for the remodelling the law, inasmuch as it has "been the cause of amending many bad laws which the judges would have administered with professional bigotry; and, above all, it has this important and useful consequence, that laws totally repugnant to the feelings of the community for which they are made cannot long prevail in England." Had juries not refused to convict persons who had forged documents or stolen linen from bleach yards, those offences might still be punishable by death.

Lord St Helier, having before him a case which had already been tried twice, expressed the opinion that it is a serious blot on our administration of the law that there are no means of settling a case when the jury disagree. The remedy is far less obvious than the evil. It has been suggested that whenever the jury confess their inability to agree, the judge should have the power of deciding the case.

This proposal, though much may be said in its favour on the score of simplicity, has one defect. What would happen if it became known that the view adopted by the judge was that for which one "obstinate" juror had stood out against his fellows?

No doubt a single man may sometimes be right against even a greater majority; but the Irish juryman noted for standing out did not quite clear his character when he explained that it was only his luck, he did not know how it was, but he was always locked in with eleven obstinate men.

The jury system is so deeply rooted in English life and history that no one really wants to advocate a change, even in regard to coroners' inquests, which has been suggested.

According to Dickens, in the immortal "Pickwick," it is a serious question what the foreman

of a jury has for breakfast, this being very important, because "a good, contented, well breakfasted jurymen, is a capital thing to get hold of. Discontented or hungry jurymen always find for the plaintiff."

They do things better in America so far as jury-serving is concerned. Here is an official list of those who are privileged to be exempt in that country, and it may well be commended to our law-givers for imitation here :—

Those entitled to exemption are :—Clergymen, lawyers, physicians, surgeons, surgeon-dentists ; professors or teachers in a college, academy or public school ; editors, editorial writers, or reporters of daily newspapers ; licensed pharmacutists or pharmacists, actually engaged in their respective professions, and not following any other calling ; militiamen, policemen, and firemen, election officers, non-residents, city employés, and United States employés ; officers of vessels making regular trips, licensed pilots, actually following their calling ; superintendents, conductors, and engineers of a railroad company, other than a street railroad company ; telegraphists actually doing duty as such, and persons, physically incapable of performing jury duty by reason of sickness, deafness, or other physical disorder.

## CHAPTER XXVI.

### DAMAGES IN DIVORCE.

FROM ONE FARTHING TO £25,000.

The theory is that the British wife is no longer a chattel of a husband, but a free citizen, independent of all conjugal control. Special Acts of Parliament have been passed to establish the security of her separate estate ; yet we retain a law and a custom which conflict directly with the theory of the wife's independence, the law providing that a husband may demand compensation for the loss of a faithless wife, and the custom-keeping British juries still in the mind to grant damages.

We are inexpressibly shocked when we hear that some drunkard of uneducated classes has sold his wife to a comrade for sundry measures of beer, but the practice of the Divorce Court recognises this very right of property and barter. As regards damages, the Act of Parliament has

specially kept alive the principles and practice applicable to the action of *crim. con.* The allowance of damages, however—itsself a survival of an unsatisfactory state of things—is only incidental to the petition.

Actions have been brought in which the husband has not sought a divorce, but has obtained damages against the co-respondent for breaking up his home. The old action of *crim. con.* was for damages pure and simple. It was brought against the adulterer, and the guilty wife was no party to it. As a consequence, it could be brought even though she had been forgiven. Forgiveness of the wife did not involve forgiveness of the adulterer.

In the old *crim. con.* days it was by no means an uncommon thing to punish the destroyer of domestic happiness and salve the feelings of the injured husbands by verdicts carrying £10,000 and even £20,000. Our grandfathers, according to all accounts, were a hard-drinking, hard-living, and hard-swearing generation; but they had a due appreciation of the sanctity of home life, as some of their verdicts clearly show.

Irish juries have always been foremost in marking their sense of the infamy of wife seduction, and this, too, at a period when English statesmen

were wringing their hands over the "crimes" of the sister island, and sending Hessians and other mercenary troops to dragoon Irishmen into a proper sense of the fitness of things in general, and the supremacy of England in particular.

In 1797 a jury of merchants, in the Dublin Court of Exchequer, gave Lord Westmeath a verdict of £10,000 against Mr Bradshaw, a baronet's son. In the following year Sir Godfrey Webster obtained a separation order against his wife, and was awarded £6,000 damages.

In the same year the case of "Boddington v. Boddington" came before the Sheriff of Middlesex, the defendant (a relation of the lady) allowing the case to go by default. The special jury returned a verdict of £10,000 damages.

Another Irish Divorce case was tried in 1800, when Mr R. Tighe, of co. Westmeath, obtained a verdict and £10,000 damages in the Court of King's Bench, Dublin, against a Mr Jones. Four years later there was a trial in the same country affecting the Marquis of Headfort versus Massey.

Mr Massey was a clergyman, and the offence was committed while the reverend husband was performing Divine service on the Sabbath day.

The ground of defence set out was the general carelessness of the husband, and the lady's open

declaration of her attachment to the defendant. In this case £10,000 damages were awarded.

Another verdict of an Irish jury was that of £20,000. Lord Cloncurry was the plaintiff, and the defendant was Sir J. B. Piers, Bart.

In the same year a Middlesex jury gave Lord Elgin £10,000 damages against a Mr Fergusson. In 1809 there was the famous Wellesley elopement case, complicated by a duel, and terminating in a verdict of £20,000, the defendant, Lord Paget, having allowed judgment to go by default.

In regard to exceptionally heavy divorce damages in the English Courts, the £10,000 awarded (a sum agreed upon) in the Beauchamp Divorce Suit was a "record," until it was eclipsed by the £25,000 verdict in the Constantinidi Case. Demetrius S. Constantinidi, the petitioner, having sought a divorce from his wife, Julia (née Ralli) daughter of a wealthy Greek merchant, (from whom in 1889 he was judicially separated) on the ground of her desertion, was assessed this sum by a jury, the co-respondent being Dr W. H. Lance, who had been her medical attendant. In 1902, Mrs Constantinidi obtained a divorce in South Dakota, U.S.A., and married Dr Lance. It is doubtful whether the petitioner ever recovered the damages by reason of the fact that, in all the

circumstances of the case, the decision of Lord St. Helier was open to question, and his successors always objected to this case being quoted as a precedent.

Many years ago a verdict carrying £7,000 was given, but on appeal it was reduced to £5,000. In the case of *Izzard v. Izzard and Leslie* (the respondent being a well-known actress,) £5,000 was awarded. A similar sum (agreed upon) was given some time ago, the co-respondent being described as "A racing gentleman."

The amount of damages claimed in a divorce action is never stated in open Court, but it is set out in the pleadings, and it has frequently happened that juries have awarded injured husbands more than the sum claimed. In such instances an application is made to amend the petition. Experience has shown that it is always best for a jury to under-estimate than over-value a wife, if the petitioner wishes to get any damages out of a wife seducer, because where heavy damages are assessed the co-respondent in many cases becomes bankrupt.

The damages assessed have to be paid into Court within a fortnight, except a co-respondent at the time is resident abroad, and then, on application, an extension of time is granted. The

Registrar deals with the share to be received by the children of the marriage ; but where there are no children, the money is paid to the petitioner direct, and sometimes he sets aside a sum for his faithless wife.

The Court and not the petitioner has the disposal of the damages, and is not bound by any agreement entered into by the petitioner in respect of them without its sanction. With its sanction, however, agreements with respect to the amount claimed and paid are constantly being entered into ; and there is nothing otherwise to prevent the petitioner from compromising the matter with the co-respondent, but this compromise must not savour of connivance.

The principle upon which damages are assessed is that of compensating the husband for the loss he has sustained. All wives are not of the same value. If, therefore, the husband has a virtuous wife stolen from him by the contrivance of another man, he sustains a greater loss than he would if his wife had led a loose life before marriage ; a faithful wife's value to her husband is much enhanced if she has made his home happy, attended to his children, and assisted him in life.

Juries almost invariably ask, at the close of

the judge's summing-up, to be informed as to the means of the co-respondent, only to be met by the stereotyped answer, "It is not, gentlemen, a question what the co-respondent *can* pay, but what he *ought* to pay" for breaking up a happy home. Such damages, Lord Hannen once said, bearing in mind the state of the law, is the same, whether the co-respondent "is a chimney sweep or an Earl." No small wonder, then, that juries sometimes get fogged and at times assess incomprehensible amounts, for what is to guide them?

It was for some time held that if a man did not know that a woman with whom he had committed adultery was a married woman, then he was not liable to damages. Although knowledge is an important element in assessing the amount which ought to be paid, the Court now holds that, as a matter of law, damages are recoverable though the adulterer be ignorant, because he takes the risk whether a woman is married or not.

In a recent case one farthing damages was the award of a jury, this amount truly being a "record." The case was singular in regard to the fact that after the marriage, which was a secret one, husband and wife never lived together.

## CHAPTER XXVII.

### THE KING'S PROCTOR.

#### HIS OFFICIAL DUTIES.

The title of King's Proctor, which figures so frequently and prominently in the Divorce Court, is one used to designate no other personage than the Solicitor to His Majesty's Treasury. Though proctors, as a class of legal practitioners, no longer exist, the name still survives in this connection. Originally they were licensed to practise by the Archbishop of Canterbury in Ecclesiastical and Admiralty Courts ; but their work is now done by other members of the legal profession.

Section 7 of the Matrimonial Causes Act, 1860, clothed " Her Majesty's Proctor " with the duty of exposing collusion and bringing forward other material facts in divorce suits. It is true that when conducting cases involving other branches of the law, the more prosaic title of Treasury

Solicitor is the one by which the King's Proctor is generally known; but when he puts in an appearance in connection with divorce cases, the more sonorous title is still retained.

This official has his duties to fulfil, however unpleasant they may appear on the surface to the lay mind, and future petitioners ought to be fully aware of the fact that they must come into Court with what is known as "clean hands;" that is to say, their past moral conduct must bear the strictest investigation, and be fully able to bear the "fierce light" which beats on suitors in the Divorce Court. Woe betide those who have not "clean hands" and who want relief from the marriage tie!

The public has a very vague idea of the duties of the King's Proctor. His office costs the community some £30,000 a year, and his chief activities aim at preventing collusion or arrangement between married persons to obtain a divorce.

This really means that he has to put every obstacle in the way of unhappy couples obtaining dissolution of their marriages.

His duties have considerably engaged the attention of the Royal Commission on Divorce in reference to suggested collusion should County

Courts try divorce cases, a very arguable point. It would certainly be a very wide, open door to collusive suits, which now are not at all uncommon, and cannot be stopped by the contracting parties, should there be any change in the direction indicated.

It has often been asked who sets the King's Proctor into action. After the publicity of a divorce case, principally owing to newspaper reports, information comes to that official from a variety of sources should the petitioner not have "clean hands," hence an intervention which ensues if there has been in the history of a petitioner any unpleasant peccadilloes in the past, and he has obtained a decree nisi "contrary to the justice of the case," as the legal phraseology sets out.

However thankless the task and unpopular the intervention, the public cannot be too much impressed with the fact that the Act of Parliament provides against collusion between husband and wife to obtain a divorce, and also of improper conduct. The King's Proctor intervenes "in the interest of the public;" but collusion will take place in spite of the Act of Parliament by those who are anxious to get free from the matrimonial tie, from the "knot" which husband and wives

have "fastened with their tongue and cannot undo with their teeth."

It is one of the grotesquest of anomalies that in a case where a man and woman absolutely ought not to be husband and wife—that is to say, where both have committed adultery—the English law resolutely condemns them to be tied together for life. It leaves the couple, as it was once wittily put in one of Mr Carton's plays, "bound indissolubly together in the bonds of mutual infidelity."

The law, in fact, persists in regarding the Divorce Court, despite its civil forms, as a quasi-criminal Court. The theory of the anomaly is, you have done wrong and you must be punished; you want to be divorced, so your punishment is that you shall remain married. It is the cruellest punishment, certainly.

Many years ago the King's Proctor always had his costs granted him whenever he intervened to prevent a decree nisi being made absolute, and consequently in a large number of cases he was to the fore. So enormous was the bill of costs which he ran up, and so lavish was the expenditure of the ratepayers' money, that a return was moved for in Parliament by a member as to the amount three or four notable inter-

ventions at that time cost the country. In the result a Bill was passed into law.

By the Matrimonial Causes Act, 1878, it is provided that, when the Queen's Proctor or any other person intervenes, the Court may make such order as to costs as may seem just, and further that the Treasury may, if it shall think fit, order any costs which the Queen's Proctor may, by any order of the Court made under the section of the Act, pay to the parties. From that time interventions were not so frequent, and this was a great saving to the always oppressed taxpaying community.

As to the costs of the King's Proctor, there appears to be a practice of the Court to the effect that, even though unsuccessful, the King's Proctor should not be condemned in the petitioner's costs, and that has invariably been acted upon; but in a recent case Lord Mersey thought that the intervention was not justified, and for the first time the King's Proctor, in an unsuccessful intervention, was directed to pay the petitioner's costs, the ex-President ruling that under the Matrimonial Causes Act, 1878, he had a discretionary power.

This decision, and another bearing on the same matter, recently came before the Court of

Appeal, each raising a question whether the costs of an unsuccessful intervention by the King's Proctor in a matrimonial suit should be borne by the party opposing the intervention or by the Department of the King's Proctor.

In the first case the husband, as petitioner, had obtained a decree nisi. The King's Proctor intervened, alleging that material facts had been kept back from the knowledge of the Court, and that the petitioner had himself been guilty of misconduct. The intervention failed, but the ex-President of the Divorce Division ordered the petitioner to pay the costs of the King's Proctor. The petitioner appealed from that order.

In the second case, the wife had obtained a decree nisi on the plea of the misconduct and desertion of her husband ; but, on the intervention of the King's Proctor, on the ground that there was no desertion, the decree was rescinded. The petitioner was allowed to amend her petition, but before the case was tried a second time the King's Proctor again intervened, alleging collusion and other matters.

Again the intervention failed, but Mr Justice Bargrave Deane, differing from the ex-President on the question of procedure, ordered the King's

Proctor to pay the petitioner's costs. The King's Proctor appealed from that decision.

The Master of the Rolls, giving judgment, said that by Section 7 of the Matrimonial Causes Act, 1860, six months had to elapse before a decree nisi could be made absolute, and in the interval any person might show cause why the decree should not be made absolute by reason of its having been obtained by collusion, or of material facts having been withheld from the knowledge of the Court.

Any person might give information to the King's Proctor on any matter material to the case, and the King's Proctor might take such steps as the Attorney-General might think expedient. By Section 2 of the Matrimonial Causes Act, 1878, when the King's Proctor or any other person intervened to show cause, the Court might make such order as to costs as might seem just.

It was plain that by that section there was jurisdiction to order the King's Proctor to pay the costs of an unsuccessful intervention by him, and it was difficult to understand that he was placed in any different position from any other person, except that he had the public purse to fall back upon. It had been urged that he ought

not to be ordered to pay costs if his intervention failed.

His lordship was unable to assent to that contention. It seemed to him that by the Act of 1878 the costs of every intervention, whether supported by the King's Proctor or by any other person, were in the discretion of the Court, and that this Court ought not to assent to the suggestion that the King's Proctor was in a position of special advantage.

Common fairness required that, in the absence of some qualifying circumstance, the petitioner should recover his costs from the intervener. If the costs fell upon the King's Proctor, the burden would not fall upon him personally, but upon the public.

He was satisfied that there was no such settled practice as ordering the petitioner to pay the costs in any event, as had been suggested. Therefore, in his opinion, the appeal in the one case must be allowed, with costs, and the appeal in the other case must be dismissed, with costs.

Lords Justices Moulton and Buckley concurred, so that it is now settled practice that it is in the discretion of a judge of the Divorce Division to order the King's Proctor to pay the

costs of his unsuccessful intervention in matrimonial cases, a great public gain.

It is not generally known that where the King's Proctor does not see fit to intervene to ask that a decree nisi should be rescinded, a member of the public may exercise his or her right to act in the same capacity. I remember one case in which a lady as "a private person" successfully intervened as a friend of the wife's family, on the ground that the husband had misconducted himself.

In France, where there is no publicity and no King's Proctor, the tribunals pronounced in five years three times more decrees of divorce than have been granted in the English Courts in thirty.

## CHAPTER XXVIII.

### “KISSING THE BOOK.”

#### THE “OATHS ACT.”

The “Oaths Act” of 1909, the object of which is to provide a substitute for the practice of “Kissing the book,” has come into force, and it cannot at present be said to work satisfactorily. Its promoter, Sir T. A. Bramsdon, the rejected member for Portsmouth at the recent general election of members of Parliament, in the course of a published letter, pointed out that when the Bill left the House of Commons for the Lords, it provided that the oath was to be administered by the Officer of the Court, and orally assented to by the deponent. If the person taking the oath preferred it, he could object to this form, and be sworn on the Testament as before.

He complained that in the House of Lords his Bill was altered, requiring the person taking the oath to hold the New Testament in the uplifted

hand, and to say or repeat after the officer administering the oath the words in the schedule.

The mode of administering the new oath, as sanctioned by the Lord Chief Justice for use in the King's Bench Division, is as follows :—

A witness, after giving his name, will be told :  
“Take the book in your right hand and raise your hand.” He will then repeat :

“I swear by Almighty God that the evidence I shall give to the Court (and jury) touching the matters in question shall be the truth, the whole truth, and nothing but the truth.”

Each jurymen in the same way will swear  
“That I will well and truly try the issues joined between the parties, and a true verdict give according to the evidence.”

“Kissing the Book” has not been formally abolished, because the new Act provides that “any oath may be administered,” etc. Anyone who prefers the old method may still go through the process of “smacking calf skin,” which was the picturesque designation process employed by vulgar persons who had not succeeded in keeping on the windy side of the law.

On one occasion a witness, at his express desire, was permitted to kiss the Old Testament

alone, "because it countenanced swearing, and the New prohibited it."

As an instance of the perfunctoriness in the administration of the oath, at a certain police court it was discovered, quite by accident, that all the witnesses had been sworn on a "Guide to the Law of Landlord and Tenant," a well-known legal text-book. It may sincerely be hoped that this is one of the cases covered by the old ecclesiastical canon, "The unworthiness of the vessel hindereth not the efficacy of the observance."

By the Act of 1888 it is provided that "if any person to whom an oath is administered desires to swear with uplifted hand in the form and manner in which an oath is administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question."

This method will never become popular in this country for the reason that it is too demonstrative for the modesty of the English character. It is not much in favour with judges and magistrates.

This clause in the oath was not inserted to meet a religious difficulty, but on medical grounds. This method is believed to be a relic of the days when the Cross was uplifted before

the witness, and his hand was held up towards it as a sign of belief in its saving power.

Many people have properly an objection to touching a volume which has been thumbed by scores of unknown persons, and which may, and often does, contain the germs of disease.

The custom of "Kissing the Book" has existed amongst us for centuries, but of late a number of persons properly have objected to be sworn in this fashion for sanitary reasons.

"Kissing the Book" is really no essential part of an oath, and the Scottish fashion, if universally adopted—an improbable contingency—would defeat the cunning scheme of those who think their conscience is quit of perjury when they contrive to kiss their thumbs instead of the cover of the book, which is generally a soiled and an evil-smelling thing.

A good story is told of a Glasgow Bailie on the occasion of a witness being sworn in Scotch fashion, the Magistrate finding a difficulty:—

"Hold up your right arm," he commanded. "I canna dae't," said the witness. "Why not?" "Got shot in the airm." "Then hold up your left?" "Canna dae that ayther, got shot in the ither ane tae." "Then hold up your leg," responded the irate Magistrate. "No man in

this Court can be sworn without holding up something."

There are thousands of worthy people who would regard it as an innovation if they were called upon to give testimony in a Court of law without being sworn.

Persons professing the Roman Catholic faith are known to be exceedingly particular on the question of being sworn. It is not uncommon for such witnesses to absolutely refuse to kiss the Testament because the cover has not the Cross upon it.

To carry one's own Testament to a court of law is becoming quite a common practice. The plan is to be recommended because it does away with the necessity of having to handle and kiss a book that has been used by several thousand persons.

In deference, then, to their conservative susceptibilities, the oath had perhaps be better retained ; but neither they nor anyone else would take umbrage were it administered in a more solemn manner. Probably perjury might be less common if witnesses were made to understand and feel when taking an oath its awful nature.

When the late Lord Iddesleigh, as Mr Stafford Northcote, left Oxford many years ago, he was

appointed Magistrate for Devon. He attended at the Castle of Exeter to be sworn in, and was handed a book which had been of what Dickens called the "under-done pie-crust" colour. It was tied round with red tape. Mr Northcote did not quite like the look of it, so he took out his knife and cut the tape, and on opening the book discovered that for about thirty years the Magistrates had been sworn on a ready reckoner!

As Cowper puts it:—

"Men swear so oft on very slight pretence,  
That perjuries are common as bad pence;  
While thousands, careless of the damning sin,  
Kiss the book's outside who ne'er look within."

From the time of Bentham there have been audacious reformers who contend that the whole system of legal swearing should be swept away as a useless anachronism. It is certainly singular that perjury should be exceptionally rampant in the East in spite of many intricate forms of oaths; while in the case of the British Army it is considered quite unnecessary for officers to enter into any religious undertaking when joining; but there is a highly respectable sentiment involved in this matter.

It is viewed with suspicion because of its non-sacred character, and the opportunities it

affords to persons who are not over scrupulous about telling the truth to commit perjury, encouraging a certain class of witnesses to lie with greater frequency than they do at present. Surely it is quite sufficient to place a hand on the book, as is done in Spain or Germany. When the Sovereign takes the Coronation Oath, he first lays his hand upon the Gospels, and then kisses the book. The form of words used by him is:—"The things which I have here before promised I will perform and keep, so help me God."

With regard to the "Oaths Act," Mr Justice Darling, recently addressing a jury with reference to the new Act, said:—"It was supposed, I believe, that the Book was covered with microbes, and that people got ill through kissing it. I don't know whether it is a great change or not. My experience is that a great many people who committed perjury were punished in no other way."

At the Whitechapel County Court the suitors some time back almost invariably in taking the oath kissed the Book in addition to holding it above their head.

Judge Bacon remarked that some people have an aversion to that form of oath either through a

fad or a supposed fear of microbes. "I wish," he emphatically said, "I could implant in that Book the bacillus of truth."

The new method of administering the oath does not apparently meet with the approval of the ex-President (Lord Mersey) of the Probate, Divorce, and Admiralty Division. Recently, for the first time, he carefully watched the process as each individual member of the jury repeated in turn the printed words on the card placed before them. After a very careful scrutiny of the process, the ex-President, in his blindest tones, said:—"This is the first time I have seen this performance. I want to know if anyone can tell me whether it is the common practice to swear the jury in this inconvenient way."

It was pointed out to the ex-President that on circuit and in the common law courts the administration of the oath was performed in this way.

The ex-President then asked whether it was not possible to swear the jury together, as he saw no reason to the contrary, silyly adding that "It would necessitate having further copies of the New Testament. Anything more inconvenient than swearing the jury in this way I cannot conceive. We were well satisfied with the old procedure."

On one occasion a Chinaman had to be sworn in the Admiralty Court, and it was quite an event. As he was put into the witness-box a saucer was given to him, and the following oath administered: "You swear to speak the truth the whole truth, and nothing but the truth; and if you do not speak the truth your soul will be cracked like that saucer."

The witness was then required to kneel on the floor and smash the saucer. Twice did he fling it to the ground, but the saucer refused to break. The judge told the astonished Chinaman to expend a little more force, and at the third attempt the saucer flew in little pieces about the Court.

Then there is the method of blowing out a lighted candle. The procedure followed in either of these picturesque methods is first of all to swear the interpreter in the usual way.

When the candle is to be used it is lighted by the usher, and the witness kneels while the candle is blown out. The interpreter thereupon swears the witness as follows: "You shall tell the truth, the whole truth. The light is extinguished, and if you do not tell the truth your soul will be extinguished like the candle."

These methods, however, have been called

into question, and have been stated not to be in vogue in Chinese police courts, and that the most binding form of oath on a Chinaman was the cutting off of a cock's head. The oath is to the effect that if the man does not speak the truth he hopes that his own throat will be cut, as in the case of the fowl, and his blood scattered over the four oceans. Will any oath, however, bind "John Chinaman" if he does not want to speak the truth?

Jews are sworn on the Pentateuch, keeping on their hats, and the oath ends with the words, "So help you, Jehovah."

A Mohammedan is sworn on the Koran, and, according to "Roscoe," the ceremonial was for the witness to place his right hand flat upon the book, placing the other upon his forehead, in which attitude, by bending his body, he brought his forehead down upon the book, after which, gazing at the book, he declares that form of oath binding on his conscience.

Another form frequently adopted was to have recited to him in the usual way, "You do swear in the presence of God that the evidence you shall give the Court touching the matters in question shall be," etc. The witness then raising his hand and saying "By Allah."

Recently a blush of pride must have overspread the features of Mohammed had he seen the commotion his literary remains caused in the Royal Courts of Justice. A witness wished to give evidence and insisted on being sworn on the Koran. Nothing else would please him.

The ushers tried him with a Pentateuch in Hebrew, some old law books in black letter, and a stray volume of manuscript notes left by a late judge. The witness appeared to have some doubt whether the handwriting in the latter did not bear some resemblance to the Koran, but the cover was suspiciously English, so he rejected all the volumes offered to him.

Mr Pitt-Taylor, a high authority on the subject of oaths, writes :—" The wisdom of requiring witnesses to be sworn, excepting under very special circumstances, cannot well be disputed. The ordinary definition of an oath—viz., 'a religious asseveration by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth'—may, indeed, be open to comment, since the design of the oath is, not to call the attention of God to man, but the attention of man to God ; not to call upon

Him to punish the wrong-doer, but on the witness to remember that he will assuredly do so. Still, by laying hold of the conscience of a witness, the law best insures the utterance of truth."

## CHAPTER XXIX.

### “NAGGING” WIVES.

#### “USUAL RESULT OF EARLY MARRIAGES.”

In numerous divorce cases husbands complain of “nagging” on the part of their wives, the “nagging” stated to be in more than one suit tried in the Divorce Court as “the usual result of early marriages.” A counsel, in answer to a judge as to what was understood to be “nagging,” said, “My lord, it means a reiteration of unpleasant observations.” It is supposed to be a form of disease arising from mental excitement, and believed to be incurable, one of its symptoms being that of labouring under imaginary grievances.

Mrs Carlyle, who knew a good deal about the minor griefs of matrimony, once made a deeply-felt remark to the effect that little incessant irritations are harder to put up with in life, married or otherwise, than big calamities. A



### PALACE COURT.

One of the oldest courts of justice. (From an old print).



nagging, untidy woman could send a saint to the devil ; the perpetual dropping of water will wear away a stone, and a "nagging" wife leaves a man neither peace nor comfort.

Charles Reade makes one of his characters plaintively say, "Forgive me for nagging ; I am but a woman." It is stated that women owe their longevity to their love of gossip, "perpetual prattle" being highly conducive to the active circulation of the blood while the body remains unfatigued and undamaged.

On one occasion a married couple were telling a Scotch minister that their matrimonial life had been perfect halcyon days, lives without quarrelling, whereupon he philosophically replied that this connubial conduct was "very praiseworthy," but it must have been "very dull." There is an American small boy's definition of a Quaker, which is worth reviving. "I know all about Quakers," he said. "A Quaker's a man who doesn't jaw back. Father is a Quaker ; mother isn't."

In some countries there is granted an annulment of marriage where the wife has proved herself to be a "nagger." In America, Canada, Australia, and other Anglo-Saxon countries, the relief is given on the ground of "incompatibility

of temper," which is a polite way of putting it. It makes little difference what it is called so long as the relief is obtainable. It is a mystery to some people that so many of these "nagging" women end their days in a natural way. One can only suppose that nature, by one of her mysterious processes, contrives to marry them to easy-going, gentle, submissive, forgiving male creatures.

A good story is told of a termagant wife curing a consumptive husband. Owing to lung disease, he had perforce to spend a lot of time in the company of "his better half," whose perpetual "nagging" becoming unbearable drove him out of doors. In consequence of the open-air remedy, he recovered from consumption.

There is another story of a husband afflicted with a violent temper, who, when his wife—who also had a temper—exasperated him to the verge of madness, which she generally did about three times a week, was wont to threaten her that he would run away. "The running away is easy enough," quoth the provoking lady one day to her irate spouse; "it's the coming back that will bring your pride down."

The late Lord St. Helier in many cases acted as mediator between husbands and wives who

had come to the Court to be judicially separated, and, owing mainly to his foresight, he was instrumental in seeing the respective parties in his private room, and before details had been gone into. He was enabled to bring together those with whom, as the legal phraseology has it, "whereas unhappy differences have arisen." The late President's view was that very often a temporary separation is the best solution between husband and wife, shewing that the difference between them was not very great, and that in too many instances it was purely a matter of temper.

He has stated that many examples have come under his notice in which married people have lived together agreeably after a temporary separation. "It is much better to separate for a time," he once told an interviewer, "than to live a cat and dog life together. The husband and wife are better out of each other's way for a period."

Asked if it was a case of absence making the heart grow fonder, Lord St. Helier gave to the world, with some emphasis, a new proverb: "It is, perhaps, that absence makes the mind grow wiser."

He added that "The pair get time to reflect upon their position and arrive at a sane estimate of each other's qualities. Their friends have also

an opportunity of gathering around them, with the possible result of bringing them together in a mutually forgiving frame of mind.

It is quite a mistake to suppose that these domestic quarrels denoted an incurable incompatibility of temper. Many couples are living together happily now after a brief separation which enabled them properly to appreciate and understand each other."

This would temporarily put a stop to what Tobin, in "The Honeymoon," calls "sharp upbraidings and perpetual jars."

Often a little friendly advice would heal up a quarrel, which, without any such plaster, would lead to a life-long split. A wise magistrate could help many a couple to make up their minds to "bear and forbear," so essential to married life.

Browning, in one of his poems, introduces an old monk who lives in one of the most beautiful spots on earth, and who is full of spleen and disgust with it. The mountains, the flowers, and the sea are objects that he has grown to detest, he has looked at them so long. The eye wants a change.

A great physician, who had a big reputation not only as a clever doctor, but also as a healer

of matrimonial disagreements, once told Bulwer Lytton, the novelist, the secret of his success. He used to order the husband away to one place, under the pretence of it being necessary for him to drink the waters, and send the wife somewhere else. He declared that in ninety-nine cases out of a hundred, if the husband and wife could be prevented from seeing one another for six weeks, when they met once more there was a remarkable increase of affection. "The only thing has been that they could not stand seeing one another so much," he explained.

Almost all people who live together get tired of one another occasionally. There is something trying to human patience in constant contact at breakfast and at dinner, in always seeing much the same faces in front of you. In few families are there no quarrels; there are moods to be dealt with.

Separation brings a sense of affection hitherto unappreciated, and marriage being a "big business" is not to be broken for a mood, as is often done in certain States of North America, but then such parties generally re-marry.

In the olden days a short shrift awaited the woman whose nagging tongue disturbed the peace of a well-ordered community. The duck-

ing-stool was her fate, and the severity of the cold-water cure generally had its effect.

The following epitaph appears on a tombstone :—

“ In Memory of Margaret,  
“ Erected by her Grieving Children,  
“ What is Home Without a Mother?  
Peace, Perfect Peace.”

According to the official reports put in at the opening of the Royal Commission on Divorce Law, most foreign countries require the tribunals which deal with matrimonial causes to use their utmost efforts to produce reconciliation between the parties, and it was pointed out by the chairman (Lord Gorell) that it “ seems to be a remarkable feature of that legislation.”

Sir John Macdonnell, one of the Masters of the Supreme Court, and Professor of Comparative Law in the University of London, questioned on this point by the chairman, said :—

“ It seems to me that that might be a most important addition to the machinery of our Courts. In some countries the results of the attempts at reconciliation are unimportant ; but in certain others—in Germany, for example—I understand that something like from one-fifth to one-third of the cases terminate in the initial stage. In my opinion, success even in a small

minority of cases would justify the introduction of the system as a feature of the machinery of our Courts dealing with divorce."

"In our country people are at arm's length from the beginning. You think that immediately proceedings begin the judge should have power to summon the parties before him?"—"I think the introduction of some entirely disinterested person, free to speak to the parties more or less as a friend rather than as a judge, would in a considerable number of cases be likely to lead to a settlement. Of course, the system would hardly be possible of application in all cases."

In one important respect the Swiss surpass the English in the "management" of their divorce cases. In every town there is a kind of official paper, known as the "*Feuille d'Avis*," in which one may read daily the following announcement:—

"Monsieur and Madame X, who are in instance of divorce, are requested to appear privately before the judge, alone or with their lawyers, in order to come to a reconciliation, if possible."

Before the beginning of every divorce case in Switzerland, this notice is published and sent out to the interested parties, leaving the couple, of

course, free to attend before the judge or not, as they wish. Often the couple meet !

Although there are no statistics published on the subject, at least 30 per cent. of divorce cases are settled by the paternal advice of the judge at these meetings out of Court.

In fact, Swiss lawyers will not definitely take up a divorce case until it has passed through the reconciliation process. If one of the couple does not attend the rendezvous, this means that the affair is to be fought out, but in any case Swiss divorces are not expensive.

The average cost in a contested case is £40, often £20, and the lowest, when both parties are agreed, £2 or £3.

In France, divorce is by mutual consent, while agreement to dissolve the marriage tie is sufficient to secure the intervention of the Courts, and remarriage of the parties is allowed three months after the absolute decree. A question of great importance in the interests of the couple is the preliminary action of the judge, who calls the parties before him and counsels reconciliation.

“ Every husband and wife would be better if they had a fortnight’s holiday away from each other every year.” This was the recent dictum of the Bishop of London, who, by-the-bye, is a

bachelor, and who is bold enough to suggest that this temporary separation would be a "holiday." He uses the words "Every husband and wife," and the suggestion, which is not new, must not be taken too lightly, for it would not suit all cases.

The old explanation used to be that they would never know how much they loved each other if they were always together. For the wife to have a fortnight's holiday by herself, she would be free from household cares, while her husband would get away from business worries.

Will Carleton's "Betsy and I are Out," may serve as an instance of quarrelling :—

Draw up the papers, lawyer, and make 'em good and stout ;  
For things at home are crossways, and Betsy and I are out.  
We, who have worked together so long as man and wife,  
Must pull in single harness for the rest of our nat'ral life.

There was a stock of temper we both had for a start,  
Although we never suspected 'twould take us two apart ;  
I had my various failings, bred in the flesh and bone ;  
And Betsy, like all good women, had a temper of her own.

The first thing I remember whereon we disagreed  
Was something concerning Heaven—a difference in our creed ;  
We arg'ed the thing at breakfast, we arg'ed the thing at tea,  
And the more we arg'ed the question, the more we didn't agree.

And so I have talked with Betsy, and Betsy has talked with me  
And we have agreed together that we can't never agree.

And when she dies I wish that she would be laid by me,  
And, lyin' together in silence, perhaps we will agree ;  
And, if ever we meet in Heaven, I wouldn't think it queer  
If we loved each other the better because we quarrelled here

## CHAPTER XXX.

### MOTHER-IN-LAW.

#### A MUCH ABUSED LADY.

An important part is played in matrimonial cases with regard to that much-abused lady, the mother-in-law. In cases counsel have pointed out that perhaps with more temerity than discretion the petitioner has had living with them the mother-in-law, and that "naturally" quarrels afterwards arose.

What would playwriters and novelists do without their jokes about mother-in-law? Is there another subject which provokes so much mirth? It is always the mother of the wife who is represented as the wrecker of homes and destroyer of happiness. As to the stories of the railway station bun, the "Mugby" junction sandwich and the big-footed policeman, no self-respecting person laughs at them now-a-days, and so it is with regard

to mother-in-law. On the whole, she is a maligned person.

Holding a medium position, however, she is as a rule neither warmly loved nor greatly hated; but is generally regarded, if living in the same house as her daughter and son-in-law, as antagonistic to matrimonial happiness. She is represented as the "fly in the ointment," "the rift in the lute," and writers caution the reckless bridegroom who harbours one.

"A house with a wife is often warm," says Thackeray; "a house with a wife and her mother is rather warmer than any spot on the known globe."

An actuary once gave a student the following advice:—"How to become practically acquainted with the 'Rule of Three': live with your wife, mother, and mother-in-law."

Perhaps the best story of an instance of a little matter regarding a man's enjoyment being spoilt by a mother-in-law is as follows:—

A man buried his wife, and when the return from the cemetery was about to commence, a friend said, "Now you must go back in the carriage with your mother-in-law." He replied, "Well, I would rather not."

But his friend said, "There are certain

matters which must be observed." So the widower, with a sigh, articulated, "Well, I suppose I must; but you have spoilt my day."

"Don't let me make a toil of a pleasure," observed the widower when the bearers of his wife's coffin stepped out too fast for him.

A good story is told of a Frenchman who attended the funeral of his mother-in-law in the deepest mourning, but expressed his emotions in one word, "Enfin!"

There are very few jokes about mother-in-law in Japanese papers. The Japanese mother-in-law is taken seriously. The Japanese wife must obey, not only her husband, but her husband's father and mother. Not infrequently the Japanese wife gives up the task, obeys nobody, and gets a divorce.

On the whole, both mother-in-law and the old maid are worthy persons, many of them kindly, considerate, and loveable. Of course there are exceptions, as, for example, the mother-in-law of the man who refused to obey the humane order of the captain of the good ship *Skylark*, as is historically recorded in the chronicles of maritime disasters. The vessel was rapidly sinking.

Only one man remained on board. "Hurry,

or you will be lost. Give me your hand," said the captain. "Is my wife in the boat?" asked the one solitary man who still remained on deck. "Yes, and she is crying for you." "Say good-bye to her for me. I shall go down with the ship."

"What is the reason of this madness?" the captain asked impatiently. "If I'm saved," the man replied, "I shall have to explain to my wife's mother why I hadn't sense enough to take her daughter on board a ship that wouldn't sink, and I prefer to go down ; so farewell."

The Chinaman is the only man who knows exactly how to make the best use of a mother-in-law. Not only does he seek a wife whose mother is living, but he insists on having the mother in his house. There she becomes the mainspring of the establishment, superintending the domestic affairs in virtue of her greater experience, and thus effecting economies which her less experienced daughter would fail to accomplish. The mother's years have given her wisdom and experience.

It is interesting that, in Abyssinia, custom, which is always stronger than law, has long since dealt satisfactorily with a question which to this day occasions grave difficulty in various

countries of Europe. On no account is an Ethiopian mother permitted to see her daughter until a whole year has elapsed since the marriage of the latter. Even then it is considered bad taste to make frequent or prolonged visits for fear of appearing to meddle unduly in the affairs of the new household.

There was the case of a man who married his wife's sister, and the inference was that he did not want to be bothered by a new mother-in-law. It has been left to America to provide the case of a mother-in-law eloping with her own daughter's husband. The deserted wife was twenty-four, the husband twenty-eight, and the mother-in-law forty-two!

## CHAPTER XXXI.

### SOME STORIES.

#### A SNORING JURYMAN.

The late Mr Cock, Q.C., while in the middle of an impassioned address to the jury, who were trying a divorce case some years ago, suddenly paused, when there was heard a sonorous snore proceeding from a juryman. It was one of those snores for which old Joe Willett, proprietor of the Maypole Inn at Chigwell, was so deservedly famous. It sounded as if the juryman was sawing wood and had come to a very tough knot. Counsel started as if he were shot, because his voice was of a Boanerges character, specially designed to keep people awake. He hurriedly pleaded for an adjournment, it then being nearly four o'clock, a request which Lord St Helier, in a smiling manner, acceded to.

After all, the snore was not necessarily a

comment upon counsel's eloquence in defence of his client. The case had been a very long one, and there is no more somnolent atmosphere than the Divorce Court on an afternoon in its ill-ventilated Court. The jurymen may have been trying to steady his mind by getting rid of some part of the excessive burden of testimony.

The juror of legal anecdote, who objected to the speech for the defence in a divorce case, on the ground that it disturbed the conclusions he had formed after hearing the case for the petitioner, must have longed for the same chance of relief. To sleep with every outward appearance of being on the alert, to successfully avoid nodding and snoring, and to wake up the instant when appealed to, have been accomplishments among some judges; but it is no easy matter for ordinary individuals to acquire the art of sleeping unobtrusively and waking unperceived. The juror is sometimes a quaint creature, whether sleeping or waking, and he does not often give himself away.

“COPY” FOR THE STAGE DOOR KEEPER.

Many years ago there was no communication between the “Gothic Stone Village” in the

Strand, otherwise the Law Courts, to newspapers and a messenger used to collect my "copy" and take it round to the various evening newspapers.

Three days the *Globe* was without any "flimsy," and, when a managerial complaint was made, it was found on inquiry that the messenger had left the "copy" at the stage door of the old Globe Theatre which then was very near the Law Courts. What the recipient of the "flimsies" considered such an act of thoughtfulness on the part of the reporter must be left to the imagination!

#### GEORGE IV.'S STATUTE.

When the Courts were sitting at Westminster, the scene of so many historic trials, divorce cases were heard in what was known as the Lord Chancellor's Court, where the celebrated Mordaunt trial took place, and where Lord Hannen spent most of his laborious years of office in building up divorce law.

One of the ushers, not very remarkable for his intelligence, was told to furnish for the use of the Court a particular *Statute* of George IV., which had an important bearing on the case then being argued. Westminster Hall is known

to be adorned with statues of monarchs, including that of George IV. The usher left the Court, had a look at this particular statue, and, on returning, told the Court that the statue required "was very dirty, very heavy, and that he would want some assistance to bring it into Court. The same "intelligent" usher on one occasion was asked to fetch a certain volume of "Swabey & Tristram," two well-known living authorities on divorce. After some time, he returned to the Court stating he could not find "either of the gents."

#### A FLURRIED WITNESS.

An amusing instance of a witness losing all self-possession in the witness-box, and getting very "flurried" in cross-examination, occurred in the Admiralty division. The case had reference to a Thames collision, and a question arose as to how far the colliding ship was seen before one came in contact with the other. The witness in the box was a bluff, hearty seaman; but he seemed to have had an attack of nerves, and got very confused in cross-examination as to distances between the ships before the collision occurred.

Counsel, in a stern tone, then put the following  
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poser to the witness :—" Now, sir, attend to my question, and be very careful how you answer it. How many *yards* are there in a mile?" The witness scratched his head, seemed non-plussed, and became very red in the face. At last he said, " Look here, governor, let me get out of this Court, walk quietly up and down in the corridor with you arm-in-arm, and I'll tell yer. But upon my soul, I can't tell yer here."

#### HIS " MUSICAL INSTRUMENT."

In the Divorce Court at Westminster Mr Hawkins, Q.C. (Lord Brampton) was on one occasion rather rough on a colleague of mine. When non-jury actions were being tried, reporters were allowed to sit in the jury box. This eminent counsel was at the time cross-examining a witness, and my colleague was rather noisily " punching flimsy;" that is to say, writing copy on the ledge of the desk on his " shield," and the occupation was rather of a disturbing character, as it was after luncheon time. After some time putting up with the noise, Mr Hawkins paused, and, addressing the reporter, said, " When this gentleman has quite finished with his musical instrument I will proceed with my cross-examination."

The witness examined was one of those who make a long pause before answering a question, and almost invariably displayed a large coloured handkerchief (so beloved by the late Lord Killowen) and blew his nose. At last Mr Hawkins could stand this delay in answering his questions no longer, and, before putting a poser to him in cross-examination, said, "Now, before I put this question, have a good blow at your nose."

#### A CO-RESPONDENT'S "DOUBLE."

Many years ago a very well-known public man was cited as co-respondent in a divorce suit, and the case was fought to the bitter end and caused at the time a great sensation. The main point turned on the question of identification, which was vigorously contested. An important witness was called, and deposed to the co-respondent coming to his house to see the lady in question, and that the visitor did everything possible to conceal his identity.

During the examination of this witness a man occupied a prominent position as he stood under the clock in the Court, which is at the further end of the witness-box. Apparently he was labouring under a bad "cold," and did all that

was possible to attract the attention of the witness to his distressing "cough."

The crucial question was asked of the witness by the petitioner's counsel: "Just look carefully round the Court, and point out the man who you say came to your house to visit Mrs ——?" At this point the "cough" of the man under the clock seemed to have alarmingly developed. It got worse than ever, and he vigorously tapped his chest. "Is that the man?" said counsel, pointing to the "merchant" with the "cold." "Oh, no," bluntly and emphatically replied the witness, "There he is," pointing to the co-respondent, who was at the time occupying a seat at the solicitor's table, and who turned "the colours of the rainbow" with regard to his unmistakable identification.

Some time after the case was over, I happened to meet the private inquiry agent who had been engaged by the solicitors for the co-respondent. I said, "That was a poor imitation you had of ——," referring to the man who had posed under the clock with a bad "cold," and who wanted to deceive the Court on the important question of identification. His reply was, "I had carte blanche as to money matters. I searched London for forty-eight hours, and he was the best 'double' I could get."

## “LOSS OF MEMORY.”

A medical expert in lunacy cases was one day in the Probate Court giving his reasons for concluding that a testator was insane. One of the signs of failing mental capacity, he said, was “loss of memory.” A well-known K.C., who was cross-examining him, asked, “Were you in Court yesterday?”

“Yes,” was the reply.

“Did you hear Mr — give evidence?”

“I don’t remember.”

“What!” exclaimed counsel (assuming an anxious look). “Loss of memory on your part, doctor?” Laughter in which judge, jury and expert himself joined.

A learned counsel in another case showed a similar want of knowledge. He questioned a witness as to whether a certain testator, who had been employed at the Royal Courts of Justice, ever drank to excess. “Well, he never took anything but ‘shandy gaff,’” said the witness. “What is ‘shandy gaff?’” asked the learned one. “Beer and gingerbeer mixed,”

was the reply, and then with a chuckle the witness added that the testator said, "We go in for it strong at the Law Courts."

"SHARING" THE PROPERTY.

In a will suit a witness remarked that the testator whose property was in dispute had told him he would only leave his six children a penny.

The Judge : What were they to do with it ?

The witness : Share it among them.

The Judge : What ! the penny ?

The witness : Yes.

The Judge : As far as it would go ?

The witness : Yes. (Laughter).

OTHER EMPLOYMENT.

The following dialogue occurred between Counsel and a witness one day :—

Was Mr — a solicitor ?

Yes.

And was he struck off the Roll ?

He was.

And after that he committed suicide ?

He did.

And you did not employ him afterwards ?

Well—

And a wag added: "Presumably he got employment in a warmer climate."

### JUDGES' "INNOCENCE."

The innocence of judges when discharging their judicial functions has often moved the wonder of ordinary mortals. It is not so long ago since the Bench was fain to declare its ignorance of the meaning of the word "oof," and there is the monumental instance of the eminent judge who asked, "Who is Miss Connie Gilchrist?" She was at the time a well-known actress, and her name was very generally known.

Judges appear to do these things better in Scotland. While summing up in a case tried some years ago before the Court of Session, the judge undertook to make clear the significance of the term "Johnny" to the intelligence of the jury, defining it as "a young man who owes more to his tailor than to himself for his advancement."

A captious critic suggested as an amendment that the "Johnny" generally owes more to his tailor than he is ever likely to be able to pay, showing that the mysteries of slang are no longer veiled from the occupants of the Bench

notwithstanding that an English judge, evidently not a card-player, on one occasion said he supposed "Solo whist," which had been referred to in the case before him, was "played by one person!"

Judicial ignorance of common matters has often been remarked upon. Even Lord St. Helier, with his wide knowledge of things in general, once revealed his want of information on the question of the national beverage. A witness, being questioned as to how much he had to drink on a specified occasion, replied that he had "Only had a glass of 'Fours'."

"What is that?" enquired his Lordship.

"Don't you know what 'fours' is, my lord?" said the witness.

"No," said his Lordship.

"It's ale at fourpence a quart—penny a glass."

"Oh," remarked the judge, "I always thought ale was 2d a glass."

#### TWO STORIES OF THE LATE LORD COLERIDGE.

There is a good story which the late Lord Coleridge used to tell of the London cabby. He had hailed a cab in a great hurry, and told the man to drive to the Courts of Justice.

"Courts of Justice?" said the cabby. "Where be they?"

“What!” said Lord Coleridge. “You a London cabman, and don’t know where the Law Courts are?”

“Oh, the Law Courts, is it? I knows them ; ~~but~~ you said the Courts of *Justice*.”

The late Lord Coleridge, in his address as President of the Salt Schools, Shipley, told a characteristic anecdote of Browning. The poet was so kind as to give him many of his volumes, knowing that the recipient honestly read them. Soon after one of the later works had been thus forwarded, Browning asked him how he liked it.

He replied, “What I can understand I heartily admire, and I think that parts of it ought to be immortal ; but as to much of it I really can’t tell whether I admire it or not, because for the life of me I can’t understand it.”

“Ah, well,” replied Browning, “if a reader of your calibre understands 10 per cent. of what I write, I think he ought to be satisfied.”

#### TWO IRISH STORIES.

The late Judge Keogh was “a fellow of infinite jest, of most excellent fancy.” When he first went circuit as Judge of Assize he was entertained in state by his Bar, and the evening was passed in dignified decorum, as

grave compliments were exchanged on both sides.

The "counsellors" present were made to feel that their old comrade had become a judge. At ten o'clock, to their amazement, he rose, thanked them for their hospitality, made a solemn bow, and retired, leaving them in blank consternation at the complete change.

In five minutes a face beaming with fun appeared at the door. "Boys, the Judge has retired for the night, but Bill Keogh won't go home until morning." A roar of laughter and applause saluted the return, and the mirth was fast and furious.

A similar story is told of an Irish Dean of old, who placed his broad-brimmed hat on his stick at the door of the dining-room, with the injunction, "Be you the Dean till I come out."

#### "THE DEVIL'S OWN."

When years ago General Sir Edward Hamley astonished the House of Commons by assuring it that the army which King Harold marched to Hastings was better qualified to keep the field than any proportionate force we could now bring against an invader, that gallant officer

must surely have been forgetting the 14th Middlesex Volunteer Rifle Corps.

That particular body of our unpaid defenders has been labelled with a nickname which is attributed to no less an authority than the late King George III.

Hearing that the regiment, though composed of lawyers, had no special designation, His Majesty is said to have exclaimed,

“All lawyers! All lawyers! What! What! Call them the Devil’s Own.”

Another and more decorous description has since been suggested for them—“Retained for the Defence.”

In the “Life of the Law” the late Mr J. G. Witt, K. C., has the following:—“I remember marching out of the Temple in the ranks of the Inns of Ct. Rifle Volunteers in all the pride and panoply of war, and hearing in Fleet Street this conversation: ‘Fine fellows, ain’t they, George?’ ‘Yes, Bill, they are. Why, there are bigger and better than the Grenadiers. What a pity they are such a set of rogues.’”

#### THE JANITOR AND THE DUKE.

The keepers of the doors have anything but a pleasant time during the hearing of a sensational

divorce case. Every door is besieged from early morning to late afternoon by crowds of persons trying to obtain admittance under all sorts of pretexts, not a tithe of whom succeed in passing the portals.

The accommodation of the Court is extremely limited, and the public gallery only provides sitting accommodation for thirty-three. Owing to the unseemly struggles to obtain admission, principally on the part of "the great unbriefed" and "the very junior bar," some very diverting scenes have been the result.

On one occasion a well-known Duke (now deceased), who could not be said to have had a very smart appearance at any time, had been subpœnaed to give evidence in a very aristocratic case. Upon seeking to obtain admission, he gave the janitor his name. The witnesses had included a duke, an earl, a marquis, a baronet, and several titled ladies.

The janitor would not believe he was confronting a real Duke, and told him that "other people had tried on the same game," and carefully directed him to the public entrance in the Strand, where he said he might be able to obtain admittance if there were not too many persons waiting. Fortunately for the ducal witness, a solicitor's

clerk came out of Court, recognised him, and shortly afterwards the astonished janitor saw the rejected Duke go into the witness-box.

Explanations afterwards followed, and the janitor, a very well-known old soldier, a man with a keen eye for faces, and who generally determines who shall be admitted to the Court and who shall be excluded, judging them from well-known characteristics, was not reprimanded. Dukes should study sartorial effect if they wish to gain admittance to the Divorce Court !

## CHAPTER XXXII.

### IN CAMERA.

#### A JUDGE'S POWER.

On the point of procedure, Lord St. Helier on one occasion decided that a judge has power to try a case *in camera*<sup>1</sup> when he thinks the circumstances justify such a course, thereby settling a question on which much doubt existed. Conceivably danger must arise from the exercise of this ruling, but his Majesty's Judges are so alive to the public interest that any abuse of the practice is unlikely to occur.

Before the opening of the pleadings in this particular case Lord St. Helier said :

"I have had an opportunity of looking at the record and the particulars in this case, and it is quite clear, I think, that if it is gone into, as I presume it may be, it is a case in which the details are not such as any self-respecting people ought to care to hear.

"Therefore, although I have no power to compel any person to leave this Court, still, I think it is a case that every right-minded person would desire to be absent from.

"I would ask, therefore, in their own interests, and the interests of decency, that every person not immediately connected with the case and not properly engaged in it, should not stay to hear details which will only give pain and disgust to hear."

Several people in the body of the Court and the representatives of the Press then left.

Lord St. Helier: "My observations apply to the gallery, as well as the body of the Court. I am sorry to see, however, that a number of persons, who cannot in any way be connected with the case, still remain.

"I hope they will leave the Court, I really hope that every decent-minded person will leave the Court. I have never yet made such an appeal in vain, and I can only regret that so many persons remain in Court."

Taking the unmistakable hint, the occupants of the public gallery filed out and thronged the corridors during the petitioner's recital of details which, Sir Edward Clarke, K. C., appearing for the husband, remarked were of a character such

as he never expected to live long enough to hear discussed in the Divorce or any other Courts.

At a later stage of the proceedings, the public were re-admitted with regard to another part of the case, but the two matters being so involved, Sir Edward Clarke applied that the whole of the case should be heard *in camera*. If, he said, this had only been the wife's suit for judicial separation, there would have been no difficulty about it whatever ; for there could be no question of his lordship's power to order that to be heard *in camera*.

He cited a case in which a learned judge had decided that he could only hear nullity suits *in camera*, and in that the Court followed the practice of the old Ecclesiastical Courts. He remembered, however, that the learned judge more than once expressed the opinion that such questions as had been raised in this action ought to be heard in private.

Lord St. Helier: Lord Hannen afterwards heard a case privately, which was a case of dissolution. He thought, however, he was doing what he ought not to do.

Sir E. Clarke said Lord Hannen observed that he would not, in any circumstances, allow matters like those in this suit to be discussed in

open Court. He submitted that the then President had an inherent right to hear a case *in camera* if he thought it necessary for the full administration of justice. These were examples of the inherent right to hear cases *in camera* if the Court considered that the administration of justice would be rendered more accurate, useful, and forcible by that course ; or if a public hearing would defeat the ends of justice.

Lord St. Helier, in giving his decision, said he was very glad the application had been made, because it was a matter which had pressed itself upon him again and again in similar cases.

He had experienced great difficulty in trying petitions involving questions of this sort in public, not because the publication of things might be detrimental to public morals (although he was bound to say they would have that effect), for he felt that he could rely upon the discretion of the Press not to publish matters which would be detrimental to the public interest ; but the reason was that a case like this could not be conducted in the way that it should be in the presence of a mixed public.

He never felt that difficulty so much as in the present suit. They had been obliged to go through the form of handing to the witnesses

pieces of marked paper, and ask questions upon them without knowing exactly what was in the witnesses' minds, because details were involved which no right-minded person could wish to hear, and which could not properly be investigated before a mixed public.

He was, however, confronted with the legal difficulty as to whether such matters could be taken *in camera*. He had come to the conclusion that the Court had the power to act in the way it was desired should be done.

The special power of the Court was limited to cases of judicial separation. In cases of dissolution of marriage the power of the Court was derived from the Act of 1857, and in that Act no power was given to hear cases *in camera*. In nullity suits the old Ecclesiastical Courts habitually exercised the power of hearing them *in camera*.

He had looked into the matter, and found no distinct authority; but he believed the reason why the Ecclesiastical Courts heard nullity suits in private was not because they were nullity suits, but because, in the exercise of their powers, they thought that such cases ought to be heard in private for reasons connected with decency.

If the Court had inherent power to act thus in regard to nullity suits, he thought the principle also applied to cases of judicial separation, and that the Court had power to hear such cases *in camera* when it was desirable to do so.

He was prepared to go further and say that wherever the Court was satisfied justice could not be done if the case was heard in public, it was justified in hearing the case in private. The following day he sent to the representatives of the Press a note thanking them for leaving the Court.



## CHAPTER XXXIII.

### PUBLICITY IN DIVORCE CASES.

#### OPINIONS OF JUDGES.

With regard to the work of the Royal Commission on law and divorce, evidence has been taken on the question of the publication of reports on matrimonial causes, and naturally opinions are very much divided as to this vexed question. On this subject the Committee set out :—

“ We submit for consideration that it would be very undesirable to permit the publication of proceedings of matrimonial cases heard under the suggested jurisdiction of the County Courts. If our proposals be adopted, these cases will be heard at a considerable number of places throughout the country, and unless prohibited, a flood of reports of these unfortunate, and often very disagreeable, cases will be spread everywhere.

“ In our opinion, it is not in the best interests

of the country that 'this should take place, even though in some few cases such publication might be desired. We think that the right of publication should be confined, as, for instance, in France, to that of the decrees made.

"We further submit for consideration whether similar action might not be taken with advantage with regard to the High Court. A step in this direction was taken some time ago, with most beneficial results, by prohibiting any sketching in the Divorce Court; and the illustrated Press has very appreciatively and courteously responded to suggestions made as to the undesirability of drawing special attention to this class of case by ceasing from publishing illustrations connected with matrimonial cases."

After the passing of the Matrimonial Causes Act, 1857, which directed that petitions for divorce should be heard in open Court, it was doubted whether the old power to hold trials in private was not rescinded. But, after some hesitation, it was held that section 22 of the Act, which preserved the principles and rules on which the Ecclesiastical Courts had acted and given relief, justified hearings *in camera* in the Divorce Court, but only with regard to two certain specified matters.

Lord St. Helier, in the course of a published interview, said that, so far as the reporting of the proceedings in the Divorce Division was concerned, instead of incurring his censure, the British Press deserved his praise for its presentation of the often sensational and unsavoury stories which are unfolded before him. "I am perfectly satisfied with the Press," he said. "Their discretion is admirable, and I have never felt disposed to disapprove of a newspaper for over-reporting." He went further and gave reasons for his statement: "The Press is the voice of the country. Justice is a public thing, and the administration of justice should be given all publicity. If this were not done, how would the public ever know that litigants were getting their rights?"

There was the expressed opinion of Lord Gorell many years ago that divorce cases "should be heard in open Court and reported." It is now said he has changed his mind with regard to that expression of opinion. On his retirement, after seventeen years' experience as a judge of the Divorce Division, he paid the following tribute to the Press :—

"Lastly, I should like to say that there is another body of men who attend this Court

regularly and keep an observant eye upon its proceedings. I mean the representatives of the Press, and I desire to express my acknowledgments to them.

“Throughout the whole time of my judicial career they appear to me to have discharged their difficult, and often delicate, duties with judgment and soundness and discretion. The opportunity is given me of referring to one matter which may not be generally known, but with regard to which I wish to express my very grateful acknowledgments to the Press.

“Some two or three years ago I came to the conclusion, after much reflection, that it was undesirable, in the interests of the decorum of the Court and of the due administration of justice therein, to permit the continuance of the practice which had grown up of taking sketches in Court of witnesses and others, more especially in divorce cases, and I made an order prohibiting that practice.

“But it was open to the Press to produce drawings not actually taken in Court, and I ventured to suggest to the principal representatives of the illustrated Press that it was not desirable in the public interests to draw specia

attention by these means to divorce cases, and desired their consideration of the matter.

"The response to my suggestion was of the most courteous and considerate character, and I think I am correct when I say that from that day to this illustrations relating to these unfortunate and unpleasant cases, heard in this Court, have, so far as I am aware, ceased."

One cannot help dwelling on the compliment the retiring President paid to the reporters, that they "had discharged their difficult and often delicate duties with judgment and soundness and discretion." This was a carefully weighed compliment to the representatives of the Press. No valedictory testimonial is so significant as the confidence which judges, who have no option in the matter, have come to place in practised decisions of the reporters.

There was only very recently another important judicial pronouncement made by the ex-President (Lord Mersey), who was asked to take a case *in camera* of an ordinary kind, which he refused to do, emphatically remarking: "I don't like taking these cases secretly. The case will come on in the ordinary way."

Subsequently, giving evidence at the Royal Commission on the Law of Divorce, he said, "I

have a very strong feeling that it would be undesirable to suppress reports altogether. I know from the anxiety of the parties that cases should be kept out of the papers that publicity helps to keep people straight, and I would not take any steps that would prevent that publicity."

Some years ago Mr Justice Bucknill had to try a Nottingham divorce case which was of a very unsavoury character. Mr Marshall Hall, K.C., in the course of its hearing said that the local papers were full of "filthy details," which erroneous statement was immediately called into question by his lordship, who said that he had seen the papers out of curiosity, and found that two hours' medical evidence was reported in two lines.

Mr Marshall Hall withdrew his wrong statement, after which Mr Justice Bucknill spoke as follows : — " Personally, I have never once, as far as I can remember, had reason to complain of the performance of their duties by the gentlemen who sit here day after day, and have very difficult duties to perform, and have to decide how far to go and where to stop in reporting these cases."

Judges know how much the reporters give to the public, and also how much they let drop into discreet oblivion, without suppressing anything

That can be reasonably held to be essential or desirable that the public should know. Now, this discretion is especially important, and requires to be exercised under a strong sense of responsibility, as well as self-respect, and with a large consideration.

The public should know that what is published in the leading newspapers regarding unsavoury matter is the merest bagatelle compared with the details which are eliminated. When they are printed it is, as a rule, because they are essential, because their omission, or even their material alteration, would entail, or imply, misrepresentation of facts. Every case is and has to be sub-edited at the fountain source before leaving the hands of skilled reporters.

No doubt, publicity is the great Court of Appeal. If it were unduly restricted, many a sinner would go unpunished. The policy of suppression gives rise to all sorts of conjectures, and it is not a policy to be commended in the interest of morality alone. Publicity is the great deterrent influence in regard to wrongdoing, and the "fierce light" of the newspaper report is dreaded by those whose deeds are evil.

At present the English Courts possess the

confidence of every class of Englishmen, this to a great extent being due to the fact that justice is administered in the full glare of publicity. This is an inestimable advantage, and should not be lightly tampered with for the sake of a problematic good.

The mere publication of decrees, as has been proposed in some quarters with regard to divorce cases, would mean no publicity at all, and the same arguments that are put forward with regard to the non-publication of matrimonial suits might equally be urged in criminal and police court cases. Where is the line to be drawn?

Apropos of divorce reports, *The Times* recently, in a leading article, put it: "People who can be led into misconduct by reading our reports of the Divorce Court must be persons of virtue so frail that it cannot be shielded by any legislation."

There have been very many cases where, owing to the reading of the reports, witnesses have come forward to explain or disprove facts which they could not possibly have heard of but from the newspapers, and such statements have, in some instances, altered the entire complexion of the case.

Without proper publicity, collusion actions

Between husbands and wives will materially increase ; non-publication of divorce proceedings must essentially open a very wide door to collusive suits, and thereby defy the law. How can, in these circumstances, the King's Proctor get his information in regard to his intervention to prevent collusive suits ?

The power of excluding in unsavoury matters the general public, who only desire to be present from a morbid desire to hear unpublishable details, should be given to a judge, provided these precautions are safeguarded by the presence of the Press, in the public interest, to see that there is no shielding of an evil-doer.

That the public are entitled to be present at all criminal trials is clear, and the conventional direction that women and children should leave the Court has, as regards the former, no legal sanction. So sound a lawyer as the late Mr Justice Wright was always at pains to explain this when opportunity offered, and observation proves that the women concerned not infrequently avail themselves of their rights, and get "glued" to their seats, not budging an inch, if any unpleasant details are expected.

To clear the Court of women and loafers is one thing, but to include indirectly in that order

experienced reporters, is not a compliment to pay as affecting their "admirable discretion," to quote Lord St. Helier. They, and they alone, represent the public. No good purpose would be served by practically trying all divorce cases *in camera*. The public will not endure secrecy in certain exceptional cases, for there is a well-grounded jealousy against any appearance of favouritism towards persons in high position.

Lord Justice Farwell, at the banquet on the last Lord Mayor's Day, said that the laws of England stood for freedom to the person and not for security of property. Those on the Bench appealed "to the public, because we do our work in public, in the fierce light that beats upon the Bench . . . in the presence of reporters that sit to record all that we say . . . To my mind, the great secret is that we stand for freedom and security, and that we act in public.

"It will be an ill day for England if any of that freedom, or any of those rights of property, are handed over to any individual, or body of men, to be dealt with in secret, without appeal to any law, or any responsibility to any court of law. Star chambers are detestable and odious to the English race. It matters not who are the members of a Star Chamber. I would not trust

the whole bench of bishops or judges with the powers of the Star Chamber, to act in secret and do as they thought fit."

Lord Campbell's Act surely gives the public all the protection that is needed against indecent publications; and in the interest of newspaper proprietors, who know that in England no newspaper will pay if it gets the reputation of being unfit for family reading, it is a fairly good check on their reporting enterprise. The Press always exercises a wise discretion in the suppression of unnecessary detail. If it is desired to encourage divorce and condone the courses which lead to it, let us have no publicity. But if infidelity is an evil, and divorce a shame, let us have them out in the light of day.

On the occasion of the opening of the new Central Criminal Court, Lord Halsbury said he thought that the evil that was done by publication of anything was far less than the evil that would be done if anything was supposed to have been done in a corner. It was a protection to them all, that what was done was done in the sight and hearing of all. It was a protection to the judge that all men knew what he had done, because rash and foolish people sometimes, without knowing what had been proved by a judge, thought

proper to have a judgment of their own, which they were very ill-fitted to give.

Some years ago a measure, called "The Publication of Indecent Evidence Bill," was read a second time in the House of Lords. This ill-considered legislation provided that :—

Where a judge of the High Court is of opinion that any evidence given at any trial before that judge is of such an indecent character that the publication thereof is likely to be prejudicial to public morality, the judge may order that such of the evidence as is specified in the order shall not be published, and any person who publishes or is a party to the publishing of such evidence in any newspaper, periodical, book, or any other public manner, in contravention of such order, shall be guilty of contempt of Court and punishable accordingly.

The Bill was introduced by the Lord Chancellor of the day (Lord Halsbury). One of its fatal defects was its impracticable character. By the measure judges, as was shown, would have had to become, in a sense, sub-editors, and those who had to do with the production of the frequent editions of evening papers would have had a censorship of the Press over the Press. It might possibly have gratified a time-serving judge who

thought that by shielding some high-placed offender he was promoting his own interests ; but it could have done no possible good to suitors, neither would it have improved the moral standard of the community.

In moving the second reading of the Bill, Lord Halsbury said he could not help feeling that the Bill proposed to give the judges a novel power. He did not conceal from himself that it was an additional burden which it was proposed to put on the judges, and as to that all he could say was that a judge had to try and do his duty. He did not think it an unreasonable thing that the judge should make an order and exercise his power in the name of morality and decency.

A most important speech was delivered during the debate by the then Lord Chief Justice :—

Lord Russell of Killowen, in rising to oppose the Bill, said he should have hesitated to undertake this duty, as he conceived it to be, were it not that he knew he was speaking the views of a large body of the judges with whom he had an opportunity of conversing.

There was only one opinion entertained by them, that this Bill was not called for, that it proceeded on an erroneous principle, and that, if passed, it would be ineffective and unworkable.

The judge who presided over the Probate and Divorce Court was most emphatic in his opinion that the Bill was not called for, and that the existing law was sufficient to meet existing difficulties ; although he ought to add that, in that judge's opinion, the Bill might be workable if passed.

He was charged by the Master of the Rolls, who was not well enough to be there, to express his strong objection to the Bill, and to say that he concurred in the view now submitted to their lordships. He (Lord Russell) objected to the Bill because it introduced a new and dangerous principle, for which, if defensible at all, a strong case was required. That strong case, however, was not forthcoming. He objected to it, moreover, because it was the substitution for trial by the ordinary constituted tribunals of the country of trial by the opinion of a judge ; and because it created a new and hitherto unknown crime—namely, disobedience to the order of a judge. The power of punishing for contempt, which was a highly objectionable power if it could be dispensed with, should not be lightly extended. To make the person offending subject to be tried by the judge by whose opinion his crime was created, would be to introduce an anomaly in the law.

If the Bill was passed it would be ineffective, because its provisions were confined to the judges of the Superior Court, whereas criminal trials of an indecent character in the first instance came before the magistrates, and in some cases before the magistrates at Quarter Sessions. He ventured to say, without fear of contradiction, that any paper which published matter which, in the opinion of the jury, was indecent matter, was at this moment subject to the criminal law. But, apart from any statutory provisions of the law, it was a misdemeanour at common law to publish indecent matter, just as it was to publish blasphemous matter. It was now proposed to establish for the first time in our law a principle of censorship unknown to our law. A measure like the one now proposed required a strong case to justify it, and he submitted respectfully that such a case had not been made out.

Lord Rosebery said :—

“As a matter of fact, is it not within the knowledge of your lordships that the amount of indecent evidence that is published in newspapers of large circulation is extremely small and a diminishing quantity? No conceivable Ministry, no Lord Chancellor, would dream of giving powers to a bench of Magistrates to order

what evidence should or should not be published.

Then, what is it you are going to legislate for? You are going to legislate with respect to a corner, a fragment of an evil which is not itself great, and which has a tendency to become less and less every day. There is one more point for us to consider. Is not the proposed remedy in some degree worse than the evil itself? At present the state of things is this.

There is in the papers on very rare occasions a certain amount of evidence which is not altogether agreeable reading for ourselves and our families, and what is proposed to be done is to scotch the evil to some extent by allowing a part of this evidence to be suppressed on the order of a judge. It has been pointed out by my noble and learned friend that the judge must be able to overtake the reporter as he flies to the newspaper office with his quota of copy, because he must be held to have allowed all that to be decent and proper to be published which he has not expressly forbidden to be published.

This would be to place the judge in a position of extreme difficulty. Now, if you have to face

these difficulties, would it not be better to leave the matter alone? Have we not a greater guarantee for the suppression of obnoxious evidence than this Bill would supply in the good sense, good judgment, and wise precautions of the Press itself, and in that by which the Press must be guided, namely, the wisdom and common sense of the public at large?

It would be useless for us to vote against this Bill, because it is quite obvious that we should have no power to carry our views into effect. I am sure we shall readily concur in the proposal to refer it to a Select Committee, but we do think that it is worth more than the somewhat jejune and parsimonious consideration which apparently is all that has been given to a principle of such wide and far-reaching importance."

The *Times* then properly pointed out that the Bill sought to take away from journalists the responsibility they now had, and to lay on the judge the duty of determining what they might publish and what they might exclude as unfit for publication, and that until the evidence had been given it would not be possible for him to decide whether it was fit or unfit for publication.

The objectionable Bill was obviously intended

to establish a Censorship of the Press in regard to a supposed evil which does not exist. The remedy proposed would have been far worse than the disease. It was a meddling Bill, and was wisely dropped.

## CHAPTER XXXIV.

### SUPPRESSION OF NAMES.

With regard to the suppression of names in divorce cases, Mr Justice Bucknill, who has frequently been called in to assist in the work of the Division, will not permit any discrimination between the rich and the poor, and he insists that the names of persons assisting justice shall not be concealed. It may be very distressing to witness in certain circumstances, to attain an undesired publicity; but that is one of the penalties of legal proceedings. It is intolerable in this country and age, that any discrimination should be shown as to what names should be published, and what names should be suppressed.

On one occasion he referred to it as "This sort of fancifulness," adding:—"If you will come to a public court of justice, where you have reason to know something very disagreeable may come

out, you must put up with it. I don't like this hole-and-corner way of communicating matters to a jury."

Unless it is vigorously suppressed, it will ultimately sap the very foundation of justice. Publicity is part and parcel of the system of English law. It is one of the chief deterrents to evil-doing; and one of the severest punishments that evil-doers have to face. The "Star Chamber" of Tudor days was an admirable institution from the point of view of suppression of names. You were "starred," and that was the beginning and end of it, save in so far as your sorrowing friends managed to cry loud enough to attract the sympathy of the neighbours. But England notwithstanding this picturesque atmosphere of mystery, never took kindly to the "Star Chamber," and it had to go in favour of publicity.

Nowadays we seem to be getting away rapidly from the principle, or, worse still, modifying the principle in the most invidious way by using alphabetical letters to conceal the identity of witnesses. The motives which govern the Courts in allowing names to be suppressed are always sympathetic. But sympathy requires to be exercised with great circum-

inspection when the interests of justice are at stake.

The custom is a direct incentive to the evil-doer to embrace temptation and let severity take the consequences.

There are instances in which the Court grants an indulgence in regard to suppression of names, but there is no reason why it should degenerate into a common practice, especially in the Divorce Court where one might not like it to take root. The practice, if extended, tends to deprive testimony of the great incentive to truth—publicity, and if one shamefaced witness may remain anonymous to the world, why not all?

The Common Sergeant is to be congratulated upon the attitude he took in the recent *Manners-Sutton v. Crossland* libel case in refusing to allow names of persons referred to in the evidence to be handed to the jury in writing. "I do not like, in public proceedings," he said, "keeping anybody's name private. Unless it is put before the jury in the proper way they had better not see it."

Some magistrates have tolerated this very objectionable practice of allowing influential individuals to screen themselves by anonymity in legal proceedings, but of late there has been

a reaction against it. Publicity may have its drawbacks, but it is a most valuable protection against abuse of the Law Courts.

Times have greatly altered as to counsel boldly asking to have names suppressed. Judges of the stamp of Sir Henry Hawkins (Lord Brampton) would never have allowed such indulgence.

In fact, the boldest counsel at the Bar, would not have dared to suggest the suppression of the identity of a witness of any importance.

Publicity was properly regarded as essential in the administration of justice, at all stages and under all circumstances ; and, during the progress of a prolonged divorce or criminal trial, some member of the public reading a report has been able to supply important information to one side or the other, thus putting an entirely different complexion on disputed evidence, and thereby preventing a miscarriage of justice.

There should be some check to the tendency which has grown up of late to obscure the "fierce light" which ought to beat upon all Courts and all witnesses, a comparatively recent innovation, which, if encouraged, will have most harmful effects, and ought, in the interests of justice, to be strongly resisted.

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