VARIOUS

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Содержание

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MODERN STATE TRIALS. [1]

PART I

The idea of this work is happily conceived, and carried into effect, in the two volumes before us, with no little judgment and ability. The subject is one interesting, useful, and important; and the author was in many respects well qualified to deal with it by his talents, his accomplishments, his professional acquirements, and his experienced observation. It will be seen that we speak of the author, and of his work, in different tenses; and there is a melancholy significance in the distinction. Within a very few days of his sending to us these two volumes, he died,

[1] *Modern State Trials*: Revised and Illustrated, with Essays and Notes. By William C. Townsend, Esq., M.A., Q.C., Recorder of Macclesfield. In 2 vols. 8vo. Longman & Co. 1850.

unexpectedly, in the flower of his age, and just as he had attained an honour which he had long coveted – that of being raised to the rank of Queen's Counsel. On the first day of last Easter term, he presented himself in each of the courts at Westminster, in his "silk" gown, exchanging the customary obeisances with the Judges, the Queen's Counsel, and the great body of his brethren behind the bar, on being formally called by the Lord Chief Justice "to take his seat within the bar, Her Majesty having been pleased to appoint him one of Her Majesty's Counsel." He looked pleasurably excited: alas, how little anticipating that the last day of that same term would see him stripped of his long-coveted insignia, and clothed in the dismal vesture of the grave! For on that day he died, after a brief but very severe illness, in his forty-sixth year. A serious attack of rheumatic fever, several years before, had permanently impaired his physical energies, though not to such an extent as to prevent the exercise of his profession. His practice, till latterly, had been chiefly at the Cheshire and Manchester sessions, from which he gradually rose into considerable business, both civil and criminal, on the North Wales circuit. On being raised to his briefly-held rank, the prospect of a successful career opened before him; for he knew his profession well, as those were aware who were able and disposed to push him forward. During Easter term he was engaged before a committee of the House of Commons, to conduct a case of some importance. This was a lucrative branch of practice, which he was naturally eager to cultivate. Fatigue,

anxiety, and excitement induced the return of an old complaint, accompanied by new and somewhat startling symptoms; but though utterly unfit for business, he could not be restrained from attending the committee room, though it was necessary to carry him in a chair up the long flight of steps leading to the corridor in the new House. He was soon, however, obliged to return as he had gone. The palsying hand of Death had touched the aspiring lawyer! After much suffering, he expired on the 8th of May, the last day of Easter term, and on the 13th was buried in the vaults of Lincoln's Inn, of which he had only a few days previously been elected a Bencher! He was a member of Queen's College, Oxford, where he graduated (we believe with honours) in 1824; was called to the bar in 1828; and elected Recorder of Macclesfield in 1833. – As a speaker he was correct and fluent, though not forcible; as an advocate, judicious and successful. He was a man of classical tastes, extensively read in literature, and exceedingly familiar with political history and constitutional law. What he knew he could use readily and effectively, both as a writer and a speaker. He was very industrious with his pen during every interval between his professional engagements; and has left behind him, independently of his contributions to periodical literature, three works – the *History of the House of Commons from 1688 to 1832*; the *Lives of Twelve Eminent Judges*, and the work now before us. The first of these was published in 1843-4, in two volumes octavo. The author's professed object was to present "a popular history of the House of Commons,

with biographical notices of those members who have been most distinguished in its annals; and describing the changes in its internal economy, powers, and privileges," during the space of a hundred and forty-four years elapsing between two memorable periods – the "noble introduction" to Parliamentary Records, "afforded by the Convention Parliament of 1688," and the "eventful close" witnessed in the second Parliament of William IV., which passed "the Reform Bill." This space he subdivided into three distinguishing eras: —

> "The *first* includes a space of thirty-nine years – from the abdication of James to the death of George I. in 1727 – characterised by master spirits, critical events, and stirring debate. The *second* era – sort of mezzo-termino – comprehends the reign of George II., when men in office were corrupt, and public morals low, and the general topics of discourse resembled parish vestry discussions, but still a prosperous reign – the sound common-sense of Walpole promoting, even by inglorious acts, the national welfare, and Chatham's genius rescuing the age from mediocrity.
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> "The regular publication of the debates, and troubles in America, usher in the *last* and most glorious epoch, – the days of North and Burke – of Pitt and Fox – of Windham and Canning – of Tierney, and Brougham, and Peel, – illustrated by oratory enduring as the language, and with memories of statesmen that can never die."

Mr Townsend's second work was published about four years afterwards – viz., in 1848 – also in two volumes, and entitled

Lives of Twelve Eminent Judges of the Last and Present Century. These were – Lord Alvanley, Mr Justice Buller, Lord Eldon, Lord Ellenborough, Lord Erskine, Sir Vicary Gibbs, Sir William Grant, Lord Kenyon, Lord Loughborough, Lord Redesdale, Lord Stowell, and Lord Tenterden. This work consisted of memoirs, which the author had previously published in the *Law Magazine*, where they had attracted considerable attention from the profession; as they contained many interesting and entertaining anecdotes, and information not easily attainable elsewhere.[2] Both of these works are of an entertaining character. They are written in an easy, flowing style – occasionally, however, somewhat loose and gossiping. It must be owned that the author's *forte* does not lie in the delineation of character, either moral or intellectual. If he really possessed a quick and searching insight into it, he would seem to have felt a greater pleasure in grouping about each individual who was the subject of his pencil the general incidents of his position, than in penetrating his idiosyncrasy, and detecting the operation of those incidents upon it. He does not conceive distinctly of *his man*, keeping his eye steadily upon him, with a view to the development and exhibition of character; but is apt, if we may be allowed so to speak, to lose him in his life. Still the work is

[2] Lord Campbell has made considerable use of Mr Townsend's collection, and publicly acknowledged his obligations, in his *Lives of the Lord Chancellors and Lord Chief-Justices*. It is not impossible that we may, before long, present our readers with an extended examination of these two important works of the new Lord Chief-Justice of the Queen's Bench.

decidedly an acquisition to popular and professional literature, and, equally with its predecessor, evidences the mild and candid temper and character of the author. Thus much we thought it only fair to premise, in justice to the memory of an amiable and accomplished member of the English bar, and a man of letters; one, too, who in his political opinions was a staunch and consistent upholder of those to which Maga has ever been devoted. In no instance, however – in neither of the two works at which we have been thus glancing in passing, nor in that now lying before us – did Mr Townsend suffer his political opinions to bias his judgment, or betray him into the faintest semblance of partiality or injustice.

It is time now to direct attention to the last work of Mr Townsend – which he barely lived to see published – his *Modern State Trials*, spread over two goodly octavo volumes, containing nearly eleven hundred pages, and these, too, pretty closely printed. Upon this work much thought and labour have evidently been bestowed in the collection of his materials, and dealing with them, as in the volumes before us, in such a manner as to render the product at once interesting and instructive to both general and professional readers.

It is no slight matter to make one's-self thoroughly master of a great case, in all its bearings; to seize its true governing characteristics; to select, condense, and arrange facts and incidents; to assign to every actor, whether judge, jury, witness, or counsel, his proper proportion and position; and all this with

a view to interesting and instructing widely different classes of readers – and those, again, general and professional. To do all this effectually, requires powerful talents, much knowledge of life and character, practical acquaintance with the law of the country, a sound judgment, and a vivid imagination. There is scarcely any point of view in which a great trial will not appear deeply interesting to a competent observer, watching how each individual plays his part in the agitating drama. Whether the judge holds the sacred scales even; whether he sees clearly and acts promptly, calmly, resolutely, in detecting fallacy, in order to shield an unsophisticated jury from its subtle and deleterious agency; whether, for this purpose, his intellect and his knowledge are superior, equal, or inferior to those of the advocates pleading before him. How those advocates conduct themselves, intellectually and morally; whether they be clear-headed, acute, ready, learned – or cloudy, obtuse, superficial, and ignorant; whether evenly or over matched; whether they play the gentleman or the scoundrel; whether they will, however difficult the task, nobly recognise the obligations of truth and honour, or villanously disregard them, to secure a paltry triumph in defeating justice! How the witnesses discharge their momentous duties; whether constantly mindful of their oath, or forgetful of it, or wilfully disregarding it, from hostility or partiality to the prisoner, or any other wicked motive. Whether the judge, or the advocates, are equal to the discomfiture of a wicked witness. How the jury are conducting themselves – whether with watchful

intelligence, or stolid listlessness. How the prisoner, standing in the midst of all these – with life, with honour, character, liberty, everything at stake – and depending on the word which one of that jury will utter – how *he* is demeaning himself, knowing, as he does, the truth or falsehood of the charge on which he is being tried; what he is thinking of the exertions of his counsel, of the temper and spirit of the witnesses, of the jury, of the judge; whether he adverts at all to the spectators around him, and the feelings by which they are animated towards him; whether he is aware of, or appreciates, the true strain and pressure of the case – the sudden chances and perils occurring in its progress.

How striking and instructive to observe the abstract rules of justice brought to bear, with equal readiness and precision, upon ordinary and extraordinary combinations of circumstances! – to witness the dead letter of the law become animated with potent vitality for the regulation of human affairs!

Again, it has often occurred to us that there is another point of view from which important trials – nay, almost any trial – may be contemplated with lively interest by a logical observer, with reference to *the use made of facts* by judicial and forensic intellect. How little even the acutest layman could have anticipated such dealing with facts as that which he here beholds; how he must appreciate the practised, watchful art with which the slightest circumstance is seized hold of, and in due time so combined with others with which it seemed to have no conceivable connexion, as to justify conclusions exactly the

reverse of those which had till then seemed inevitable! What totally different aspects the same facts may be made to wear by different dealers with them, having different objects in view! By their different arrangement and combination, what *unexpected* inferences may be drawn from the self-same facts, and even when similarly arranged and combined! How exciting to see a defence constructed by experienced astuteness and eloquence out of the slightest materials – out of a hopeless case – in the teeth of one overpowering for the prosecution! The desperate determination, the exquisite subtlety, the consummate judgment, often exhibited on such occasions by eminent advocates – struggling, too, at once with their own sense of right and wrong, and the desire to do their utmost for one who has intrusted his all to them – conscious, too, that though a jury of twelve plain common-sense people may be unable to see through the fallacies which are presented to them, it will doubtless be very far otherwise with one who has to follow, who has the last word! and with that last word may at once lay bare the sophistries of forensic effrontery, and perhaps rebuke him who attempted to trifle with and mislead the understandings of those so solemnly sworn to give a just and true verdict according to the evidence. "But what is one to do?" exclaims the anxious advocate. "How am I to defend yonder trembling being who has selected me to stand between him and – the scaffold, it may be – if I am to play the judge, and not the advocate; to yield pusillanimously to an array of fearfully plain facts, and make no attempt to

square them with the hypothesis of my client's innocence, or persuade a jury that they are – whatever my own secret opinion – pregnant with too much doubt to warrant a verdict of guilty?" Only one who has been placed in the situation can conceive the faintest idea of what is endured on such occasions by the sensitive and conscientious advocate, who is called upon in desperate emergencies – in moments of intense eagerness and anxiety – the spasms, as it were, of which are *publicly* exhibited, and before gifted and critical rivals and merciless public censors, to see and *observe* the delicate but decisive line of right – of duty; to maintain at once the character of the zealous, effective advocate, and the Christian gentleman. If sufficient allowances were made for persons placed in such circumstances of serious embarrassment and responsibility, less uncharitable judgments would be passed on the manner in which advocates exercise their functions than are sometimes seen; judgments formed and pronounced, too, in the closet – by those speaking after the event – calm and undisturbed by anxieties and agitation, which have probably *never been personally experienced*. This topic, however, we shall hereafter treat more at large, in giving to the volumes before us that extended examination which is at present contemplated. They contain a series of trials of undoubted public interest and importance. They have been selected upon the whole judiciously, with a view to the end which the author had proposed to himself; though the propriety of the title which he has chosen —*i. e.* "Modern *State* Trials" – is not at first sight apparent.

The idea conveyed by these words is, trials directly affecting *the state*, political prosecutions in respect of political offences. It is difficult to bring trials for murder, duelling, forgery, abduction, libel, blasphemy, and conspiracy, under this category; and this Mr Townsend felt. Such, nevertheless, constitute a large proportion of the trials contained in these volumes, and are, in our opinion, also those of most popular interest, and worthiest of being dealt with, as it was Mr Townsend's expressed intention to deal with them.

The "trials" contained in the volumes before us are fifteen in number, of which only four, or at most five, (Mr Townsend seems to have thought six,) have any pretensions to be designated "*State* trials." These five are – John Frost, Edward Oxford, and Smith O'Brien for high treason; Daniel O'Connell, and eight others, for a treasonable conspiracy; and Charles Pinney, for alleged neglect of his duty as mayor of Bristol, during the fiery and bloody "Reform Riots," as the were called, in that place, in October 1831. The remaining ten trials consist of two for duelling – the late James Stuart for killing Sir Alexander Boswell, and the Earl of Cardigan for shooting Captain Tucket; three for murder, (in addition to James Stuart, who was tried for the *murder* of Sir Alexander Boswell) – viz. Conrvoisier for the murder of Lord William Russell; M'Naughton for the murder of Mr Drummond; Hunter and others for conspiracy and the murder of John Smith, the Glasgow cotton-spinner, in 1837; Alexander (the titular Earl of Stirling) for forgery; Lord

Cochrane, and seven others, for a conspiracy to raise the funds; the Wakefields for conspiracy, and abduction of an heiress; John Ambrose Williams for a libel on the Durham clergy; and Mr John Moxon, for blasphemy, in publishing the poems of Percy Bysshe Shelley. It will be observed that all these are *criminal* trials, and occurred in England, Scotland, and Ireland; affording thus a favourable opportunity for comparing the different methods of proceeding in their respective courts, and the characteristics of their respective judges and advocates. The English trials are ten, the Scottish three, and the Irish two in number: and whether they are precisely those which could have been most advantageously selected, it were needless, for present purposes, to inquire. Mr Townsend made his choice, and thus generally states his objects and intentions: —

> "The present edition of *Modern State Trials* is meant to include those of the most general interest and importance which have occurred during the last thirty years. None are inserted in these volumes which have been previously comprised in any collection; but the editor regrets want of space, which compels him to omit several not uninstructive. In making a selection, he has endeavoured to present a faithful, but abridged, report of such legal proceedings as would be most likely to command the attention of all members of the community, and to be read by them with pleasure and profit. This appears to be the popular description of the term "State Trials," in which Mr Evelyn and Mr Hargreave acquiesced, or they would not have

included convictions for witchcraft, and the prosecution of Elizabeth Canning for perjury, in their collection. Were the definition restricted to political offences merely, the work, however logically correct, would be wanting in spirit and variety." – (Introd. vol. i. p. 5.)

After stating that no technical objection can be raised to those of the above trials which immediately affect the State, he observes, that, "for the propriety of inserting the rest under the same title, a just apology may be made." The trial of the Earl of Cardigan, before the House of Lords, is represented as interesting, from the rank of the accused and from the rarity of the trial, as being the first time that duelling was attempted to be brought within a recent statute, (1 Vict. c. 85) enacting that the shooting at a person, not with premeditated malice, but deliberately, and causing a bodily injury dangerous to life, should be a capital offence; and that whoever should shoot any person with intent to commit murder, or to do some grievous bodily harm, should, though no bodily harm were inflicted, be guilty of *felony*, and liable to transportation or imprisonment. The social position of the titular Earl of Stirling, and the extraordinary nature of the evidence, are said to justify the insertion of *his* trial; while, "in the records of criminal jurisprudence, there occur few proceedings of more deep and painful interest than the prosecution of Lord Cochrane, for Conspiracy to commit a fraud on the Stock Exchange." The two cases of Courvoisier and M'Naughton respectively "involve topics of absorbing interest at

the period of the occurrence, and of enduring interest to all time: in the one being involved the rights and duties, the privileges and immunities of counsel for prisoners; in the other, the fearful question of responsibility for crime – how far moral insanity alone may exonerate the alleged subject of it from the temporal consequences of his guilt." This latter topic is also involved in Oxford's case. The trials of Mr Stuart for killing Sir Alexander Boswell, and of Mr Moxon for blasphemy, are inserted for one and the same reason – namely, "a desire to embalm the very beautiful speeches of Lord Cockburn, Lord Jeffrey, and Mr Justice Talfourd." As to the trial of Ambrose Williams, it is inserted on account of the celebrated speech in defence by Lord Brougham – "one of the most vivid specimens extant, in either ancient or modern literature, of keen irony, bitter sarcasm, and vehement vituperation." The prosecution of the Wakefields for conspiracy, and the abduction of Miss Turner, "forms a singular chapter in legal history; interesting not less to the student of human nature, on account of its characters and incidents, than to the lawyer, for the elaborate discussions on the Scottish law of marriages, and the right of the wife, even should there have been a legal marriage, to appear as a witness against the offending husband – matters argued with profuse learning and ability."

> "In setting forth, under a condensed form," says Mr Townsend,[3] "this and the other most interesting trials of our time, it has been the object of the editor to free the

[3] Introduction, vol. i., p. 7, 8.

work from dry severity by introducing the '*loci lætiores*' of the advocates, the salient parts of cross-examination – those little passages of arms between the rival combatants which diversified the arena, the painting of the forensic scene, the poetry of action of these legal dramas. He has sought to give the expressed spirit of eloquence and law, upon occasions which peculiarly called them forth; pruning what was redundant, rejecting superfluities, weeding out irrelevant matter, but omitting no incident or episode that all intelligent witness would have been disappointed at not hearing."

We present the ensuing paragraph, which immediately follows the preceding, because it will afford us an opportunity of making a remark which is applicable to the entire structure of the work before us.

"In the extracts here given from some of the most celebrated speeches of modern days, the editor has also had the great advantage of the last corrections of the speakers themselves, and has thus been enabled to preserve the *ipsissima verba*, by which minds were captivated and verdicts won; those treasures of oratory which would have gladdened the old age of Erskine, could he have seen how his talisman had been passed from hand to hand, and the mantle of his inspiration caught. The vivid appeals of Whiteside, the magnificent defence of Cockburn, the persuasive imagery of Talfourd, will exist as κθηματα ἐις αεἰ – trophies of forensic eloquence, beacon lights it may be, in the midst of that prosaic mistiness which has begun

to creep around our courts."

The remark to which we have alluded is this: that the work before us is pervaded by a tone of uniform, excessive, and undistinguishing *eulogy*, which, however creditable to the amiable and generous dispenser of it, is calculated to lower our estimate of his critical judgment, and even – unless one should be on one's guard – to provoke a harsh and disparaging spirit towards the subjects of such undue eulogy, and a suspicion that here "praise undeserved," and the remark is applicable equally to praise "excessive, is censure in disguise!" No judge, no counsel, can say or do *anything*, in the course of any of the trials here brought under our notice, without speaking and acting in such a way as to merit applause for exhibiting the highest qualities of mind and character. Let it not be supposed, that, in making these observations, we wish to apply them to the particular instances cited by Mr Townsend of Messrs Whiteside, Cockburn, and Talfourd – all of whom are distinguished, accomplished, able, and eloquent advocates; but we believe that each would, in spite of the fondest self-love, in his own mind, somewhat mistrust his title to the *amount* of applause here bestowed upon him. What more than he has said of them, could he have said of the greatest orators and advocates whom the world has produced? In a corresponding strain, Mr Townsend speaks of every one – senior and junior counsel – and every writer, great and small, whom he has occasion to mention. Those who knew the late Mr Townsend, and appreciated his simple and manly character, will

refer the defect which we have felt compelled thus to point out to its true cause – the kindliness of his heart; and we believe that, had he lived to see these observations, his candour would have caused him promptly to recognise their justice.

Each of the trials is preceded and followed by "Introductory Essays" and "Notes."

"The Essays, chiefly historical, have been introduced in order to familiarise the reader with the subject, and prevent the monotony which, but for these occasional dissertations, might pervade so many recurring trials. The notes are added with a similar object."[4] We may say generally, that these "Essays" and "Notes" always display judgment, and the writer's complete knowledge of his subject. No reader should enter on the trial, without carefully perusing the "Essay" which ushers it in, shedding light upon all its details, and the circumstances attending the committing of these offences – and indicating with distinctness the leading features of interest and importance. In the report of the trial itself, great pains have evidently been taken, and successfully, to observe rigid impartiality, and secure accuracy of statement; and the conflicts of counsel with each other and with witnesses – the temperate, and timely interpositions of the judges, and their satisfactory summings-up to the jury – are presented to the reader with no little vividness. The fault of Mr Townsend's style is, diffuseness, a tendency to colloquiality, and a deficiency of vigour. With these little

[4] Introduction, p. ix.

exceptions, added to that above noticed, we have no hesitation in commending these volumes as an acquisition to popular and professional literature, reflecting credit on the author's memory, and the bar to which he belonged.

Having thus briefly indicated the general character of this work, and given the author's own account of it, we propose in the present, and one, or perhaps two, following articles, to take our own view of some of the leading "Trials" thus collected by Mr Townsend, incidentally observing on his treatment of the subject. With him, we regard several of these trials as exhibiting features of remarkable interest; and are much indebted to him for having so disposed his materials as to rouse and rivet the attention of all classes of intelligent readers, but in an especial degree that of the youthful student of jurisprudence. Without further preface, we shall commence with that which stands first in Mr Townsend's collection – the trial of Frost, for high treason.

This affords a very favourable specimen of Mr Townsend's capabilities. He appears to have worked it out perhaps more exactly to his own idea than any of the ensuing ones; and, by his able and judicious treatment of the subject, has given us an opportunity of exhibiting in glowing colours a forensic battle-field: the stake, life or death; the combatants, evenly matched, the very flower of the bar; their tactics clear and decisive, with the odds tremendously against one party – that is to say, facts too strong for almost any degree of daring or astuteness to contend against hopefully. Let us see, under such

circumstances, how the combatants acquitted themselves; or, if one may change the figure, let us see how was played a great game of chess on the board of life, by skilful and celebrated players. Who were they? Four in number – Sir John Campbell and Sir Thomas Wilde, then respectively Attorney and Solicitor-General, representing the Crown; Sir Frederick Pollock and Mr Fitzroy Kelly, Queen's Counsel for the prisoner. Ten years have since elapsed, and behold the changes in the relative positions of these gentlemen! Sir John Campbell is a peer of the realm, and Lord Chief-Justice of the Queen's Bench: having also, during the interval, become a laborious and successful biographer of the Lord Chancellors and Lord Chief-Justices of England. Sir Thomas Wilde is also a peer of the realm, and Lord High Chancellor, having been previously Attorney-General and Chief-Justice of the Common Pleas. Sir Frederick Pollock, having been subsequently appointed Attorney-General, is now Chief Baron of the Exchequer; while Mr Kelly, having since become Solicitor-General, lost office on the break-up of Sir Robert Peel's ministry, and remains – such are the chances and changes of political life – plain Sir Fitzroy Kelly, but occupying a splendid position at the bar. These four were the leading counsel; but besides the Attorney and Solicitor General, the Crown was represented by two gentlemen of great legal learning and eloquence, since raised to the bench – Mr Justice Wightman and Mr Justice Talfourd; and by Mr Serjeant Ludlow, since become a Commissioner of Bankruptcy; and the Hon. John C. Talbot, now so highly

distinguished in Parliamentary practice. The judges sent as the special commission consisted of the late Chief-Justice Tindal, the present Mr Baron Parke, and the late Mr Justice Williams, forming, it is superfluous to say, an admirably constituted court – the chief being most consummately qualified for his post by temper, sagacity, and learning.

It was the business of the Attorney and Solicitor General to establish a case of high treason against the prisoner, and of Sir Frederick Pollock and Mr Kelly to defend him *à l'outrance*; but God forbid that we should say *per fas aut nefas*. It were idle to characterise the intellectual and professional qualifications of these four combatants; the eminence of all is undisputed, though their idiosyncrasies are widely different from each other. Suffice it to say, that everything which great experience, sagacity, learning, power, and eloquence could bring to bear on that contest might have been confidently looked for. One circumstance is proper to be borne in mind – that the prisoner's counsel (of course abhorring the acts imputed to their client) were stimulated to the very uttermost exertion by the fact that their own political opinions were notoriously adverse to those entertained by the prisoner, and those – viz., Chartists – who so confidently summoned two Tories to the rescue of their imperilled brother Chartists.

All the main facts of the case were universally known before the trial took place, together, of course, with the legal category to which they must be referred, to satisfy the conditions of

high treason. The nature of that offence was thus tersely and beautifully explained by the Chief Justice, —[5]

> "Gentlemen, the crime of high treason, in its own direct consequences, is calculated to produce the most malignant effects upon the community at large; its direct and immediate tendency is the putting down the authority of the law, the shaking and subverting the foundation of all government, the loosening and dissolving the bands and cement by which society is held together, the general confusion of property, the involving a whole people in bloodshed and mutual destruction; and, accordingly, the crime of high treason has always been regarded by the law of this country as the offence of all others of the deepest dye, and as calling for the severest measure of punishment. But in the very same proportion as it is dangerous to the community, and fearful to the offender from the weight of punishment which is attached to it, has it been thought necessary by the wisdom of our ancestors to define and limit this law within certain express boundaries, in order that, on the one hand, no guilty person might escape the punishment due to his transgression by an affected ignorance of the law; and, on the other, that no innocent man might be entangled or brought unawares within the reach of its severity by reason of the law's uncertainty."

The following were fearful words to be heard, or afterwards read, by those who were charged with the defence of Frost. They

[5] Townsend, vol. i. pp. 1, 2.

occur, like the preceding passage, in the luminous charge of the Chief Justice to the Grand Jury, on the 10th December 1839: —

> "An assembly of men, armed and arrayed in a warlike manner, with any treasonable purpose, is a levying of war, although no blow be struck; and the enlisting and drilling and marching bodies of men are sufficient overt acts of that treason, without coming to a battle or action. And, if this be the case, the actual conflict between such a body and the Queen's forces must, beyond all doubt, amount to a levying of war against the Queen, under the statute of Edward. It was quite unnecessary to constitute the guilt of treason that the tumultuous multitude should be accompanied with the pomp and pageantry of war, or with military array. Insurrection and rebellion are more humble in their first infancy; but all such external marks of pomp will not fail to be added with the first gleam of success. The treasonable design once established by the proper evidence, the man who instigated, incited, procured, or persuaded others to commit the act, though not present in person at the commission of it, is equally a traitor, to all intents and purposes, as the man by whose hand the act of treason is committed. He who leads the armed multitude towards the point of attack, and then retires before the blow is struck – he who remains at home, planning and directing the proceedings, but leaving the actual execution of such plans to more daring hands – he who, after treason has been committed, knowingly harbours or conceals the traitor from the punishment due to him, all these are equally guilty in

the eye of the law of the crime of high treason."

The head of treason applicable to the facts of the case under consideration is the third in statute 25 Edward III. c. 2, which concisely declares it to exist "*if a man do levy war against our lord the King in his realm*." This has been the law of the land for just five centuries, *i. e.* since the year 1351. But in the application of these words, of fearful significance, the object with which arms are taken up must be a GENERAL one – "the *universality of the design* making it a rebellion against the state, a usurpation of the power of Government, and an insolent invasion of the King's authority" – "under pretence to reform religion and the laws, or to remove evil counsellors, or other grievances, whether real or pretended."[6] Or, to adopt the definition of Mr Kelly, in addressing the jury in this very case, it is necessary to prove "that the prisoner levied war against her Majesty, with intent by force to alter the law, and subvert the constitution of the realm."[7] To appreciate the position of the prisoner, and the difficulties with which his counsel had to struggle, it may here be mentioned, that he admitted the prisoner to be a Chartist, as it was called – that is, a supporter of the following five points of sweeping change in the political institutions of the country, – "Universal suffrage, vote by ballot, annual parliaments, no property qualification, and payment of members of parliament." This was also, during the

[6] 4 Black. Com., pp. 81-2.

[7] Townsend, vol i., p. 54.

trial, avowed by the prisoner.[8]

Having thus got a clear view of the law, let us briefly indicate the *facts*– the palpable, notorious, leading facts, known to be such by the prisoner's counsel, as soon as they had perused their briefs.

A body of ten thousand men, principally miners from the surrounding country, headed, in three divisions, by Frost, and two other men, Jones and Williams, (Frost having five thousand under his command,) and armed indiscriminately with muskets, pikes, axes, staves, and other weapons, was to make a descent upon the peaceful town of Newport, during the night of Sunday, the 3d November 1839! Tempestuous weather prevented the preconcerted junction of these three bands; but, between eight and nine o'clock on the Monday morning, Frost's division, five thousand strong, marched into the town – and, headed after a fashion by him, commenced an attack upon a small inn, where they knew that a handful of troops was stationed, about thirty in number, under command of a lieutenant. As soon as the mob, who formed steadily, saw the soldiers drawn up in the room – the windows of which were thrown open – they cruelly fired into it, and also rushed through the doors into the passage. On this, the lieutenant gave the word of command to fire. He was obeyed – and with deadly effect, as far as regarded some thirty or forty, known to have received the fire, many of whom were shot dead on the spot. But this cool promptitude and determination of the troops put an end *instanter* to the insane insurrection. This

[8] Ibid. vol. i., p. 45.

vast body of supposed desperadoes fled panic-struck in every direction; and Frost himself, who was unquestionably on the very spot at the very time when and where the attack commenced, fled in ridiculous terror,[9] and was arrested that evening at a friend's house adjoining his own, armed with three loaded pistols, and having on him a powder-flask and a quantity of balls. His brother heroes, Williams and Jones, were also arrested, together with many others; and there ended the formidable outbreak, which had more astounded than alarmed the public; leaving, however, the instigators and conductors to a speedy and very dismal reckoning with that same public. The active management of matters by Frost was beyond all doubt, and it seemed never to have been wished to conceal it. He was the Jack Cade of the affair. He planned the order of march; the time, place, and mode of attack; and explained the immediate and ulterior objects of the movement. Shortly before the outbreak, he was asked by one of his adherents, "*what he intended to do*?" He answered, —

> "First, they should go to the new poor-house and take soldiers and arms; then, he said, there was a storehouse, where there was plenty of powder; then, they would blow up the bridge, that would stop the Welsh mail which did run to the north, and that would be tidings; and they would commence there in the north on Monday night, and he should be able to see two or three of his friends or enemies in Newport." – (vol. i., p. 36.)

[9] "I thought *he was crying*," said one of the witnesses! – p. 23.

Similar observations he made to another of his followers, who asked him, on hearing him give orders for the guns to take the front, the pikes next, the bludgeons next, – "in the name of God, what was he going to do? was he going to attack any place or people?" he said, —

> "He was going to attack Newport, and take it – and blow up the bridge, and prevent the Welsh mail from proceeding to Birmingham: that there would be three delegates there, to wait for the coach an hour and a half after the time; and if the mail did not arrive there, the attack was to commence at Birmingham, and be carried thence to the North of England, and Scotland, *and that was to be the signal for the whole nation*." – (vol. i., p. 33.)

The coal and iron trade in these parts, from which the population derived their subsistence, had seldom been more prosperous than at the time when this movement was concerted and made: employment was easily obtained; wages were high; and those concerned in the affair had no private grievances to redress. At the same time, it was notorious that political agitation, on the subject of the Charter aforesaid, had for some time prevailed there – that the population had been organised for combined and effective action by affiliated societies; and Frost, the prime mover – a pestilent agitator, who, occupying the position of a decent tradesman, a linendraper, in Newtown, had been rashly raised to the local magistracy, from which he was soon degraded for sedition – declared his object to be, to make

the Charter the law of the land. All these, and many other facts, which had been elicited during the preliminary examinations, were known to the prisoner's counsel, who had copies of all the depositions which had been made by the witnesses; and also knew the precise terms in which the indictment was framed, and the name, calling, and residence of every witness to be produced in proof of that indictment.

How was this towering array of facts to be encountered, with these enlightened judges to conduct the inquiry, and guide the jury, and very able and determined counsel to elicit and arrange the facts, and enforce them on the jury – and *have the last word* with the jury in so doing? We may well imagine how anxious and disheartening were the consultations of the prisoner's counsel before going into court. Neither they, nor their attorneys, could disguise from themselves the desperate nature of the case in which they were concerned. They would probably determine to cross-examine the witnesses very cautiously and rigorously, with a view to breaking down important links in the case; and it is likely that their paramount object in conducting the defence, would be to aim at supplying Frost with some other than *a general object*– something else than establishing the Charter as the law of the land. A hopeful prospect! But besides all this, it must have been determined, of course, to throw no single chance away, whereon – however, whenever it presented itself – to fight the fearful case for the Crown inch by inch, and foot by foot – contesting every technical point, with a view to

detecting any possible slip in either the preliminary or any other part of the proceedings of the experienced and watchful Crown officers. Here, again, was a hopeful prospect! Their proceedings had been doubtless advised beforehand by the Attorney and Solicitor General, and conducted by Mr Maule, the Solicitor of the Treasury, in person – himself a barrister, and consummately qualified for his post. He was also a humane man, always anxious to discharge his duties firmly, but at the same time to afford a prisoner every degree of consideration and indulgence consistent with the public interest. By this time the reader may be aware how very serious a thing is the conduct, on the part of the Crown, of a prosecution of high treason, in every one of its stages – in the slightest particulars – especially where the great *facts* of the case are so clear against the prisoner, as to compel his advocate to watch and test every link in the chain fixed around his client. Here, in fact, correlative duties are cast on the opposing parties – to *take* every possible objection; and to be beforehand *prepared for* every possible objection, by vigilant exactitude in complying with every legal requisite.

On the *eleventh* day of December 1839, the Grand Jury returned a true bill for high treason, against John Frost and thirteen of his followers; and on the very next day – viz., Thursday the *twelfth*, in order to oblige the prisoner, by giving him the longest possible time for availing himself of the important information contained in the *indictment*, and the *jury list*– copies of these instruments were delivered to him by the

Solicitor of the Treasury. On the ensuing Tuesday, the 17th, he delivered to the prisoner a *list of the witnesses*; and, the trial having been appointed to take place on the 31st December, five days previously to the latter day – viz., on the 26th December – Sir Frederick Pollock and Mr Kelly were assigned to John Frost, as his counsel, on his application pursuant to the statute to Mr Bellamy, the clerk of the Crown. It is here essential, in order to appreciate the immense importance of the earliest moves in this life-and-death game, to weigh every word in the following brief enactment, under which the above documents were delivered to the prisoner: the humane object of the legislature being to afford him ample time to prepare his defence. – "When any person is indicted for high treason, a list of the *witnesses*, and of the *jury*, mentioning the names, profession, and place of abode of the said witnesses and jurors, be also given at the same time that the copy of the indictment is delivered to the party indicted – which copy of the indictment shall be delivered ten days before the trial."[10] Thus it will be seen that as the trial was to take place on Tuesday the 31st December, Mr Maule might have delayed delivering these documents to the prisoner till the 20th, and perhaps till the 21st December; but, solely to favour the prisoner, he delivered two of them – viz., the indictment and jury list – so early as the 12th, and the list of witnesses so early as the 17th December. Let us see, by and by, whether anything comes of this, and of the lengthened study, by the prisoner's counsel, of these three

[10] Stat. 7 Anne, c. 21, § 11.

documents.

On Tuesday the 31st December 1839, all the fourteen prisoners were arraigned on an indictment consisting of four counts: two for levying war against her Majesty in her realm; a third for compassing to depose the Queen from her royal throne; and the last, for compassing to levy war against the Queen, with intent to compel her to change her measures. To this indictment each of the fourteen prisoners pleaded not guilty; and it is to be particularly observed that they all did so without making any objection on any score. Thus was taken the first move by the Crown counsel, who may possibly, for aught we can at present see, have thereby gained some very great advantage. Let us now conceive the solemnly-exciting scene of the court house at Monmonth, on this memorable trial. Three judges sitting, in their imposing scarlet and ermine vestments, calm and grave; a phalanx of counsel sitting beneath them; the prisoners standing at the bar, on their deliverance, silent as the grave, while the fate-fraught procedure of the court was methodically going on; the spectators crowding every part of the court that they could occupy, and all silent, nothing heard but official voices; while without that court all was excitement – repressed, however, by the stern presence of the civil and military power; detachments of troops at that moment scouring the adjacent hills in quest of malcontents, and preventing any fresh rising of the population.

The first step taken by the prisoner's counsel was to state that they appeared for John Frost alone, and should challenge the

jury separately: on which all the other prisoners were removed from the bar, John Frost remaining to take his trial alone. Then came the swearing of the jury – the name of every one, with his calling in life, and place of abiding, being known to the prisoner and his counsel, who objected to the very first step taken by the clerk of the Crown. He had begun to call over the names in their alphabetical order on the panel – the usual course for a great series of years; but Sir Frederick Pollock objected to his doing so, insisting on each juror's name being taken from the ballot-box. The Lord Chief-Justice was about to have overruled the objection; but the Attorney-General intimated that he consented to the course proposed by the prisoner's counsel. Each witness was sworn first on the *voir dire*, (*i. e. dicere verum*) as to his qualification, before he was sworn to try. First came a juryman who was challenged peremptorily on the part of the Crown; but the prisoner's counsel, doubtless for very good reasons, wishing him to remain on the jury, insisted, first, that the Crown had no such right – an objection at once overruled; secondly, that the crown was too late, as the juror had actually got the New Testament into his hand to be sworn to try before the Crown challenged. But, on the court's inquiry, it turned out that the witness had himself taken the book, without having been directed to do so by the clerk of the Crown. Under these circumstances, the court decided that the Crown were in time with their challenge – and the juryman was excluded. In this kind of out-skirmishing the whole of the first day was consumed! – a

full jury not having been sworn till the evening, when they were "charged" with the prisoner and then dismissed for the night – but with the unpleasant information from the court, that they themselves were thenceforth prisoners (though with every kind of proper indulgence) till the trial was over.

On the next morning, just as the Attorney-General was rising to state the case of the Crown, he was interrupted by Sir Frederick Pollock, and doubtless sufficiently astonished by what fell from him: "I feel myself bound, at the earliest moment – and this is the first opportunity that I have had, – to take an objection which must occur the moment that the first witness is put into the box, – namely, that the prisoner has never had a list of the witnesses, *pursuant to the statute*, and that therefore *no witness can be called*!" What could be the meaning of this? inquired the Attorney-General's companions among themselves, with no little anxiety; but he himself somewhat sternly censured the interruption, as premature, (as it certainly was,) and proceeded with his address to the jury. He made a lucid and very temperate statement of the case – drawing attention prominently to the necessity imposed on him of proving that what had been done by Frost and his companions was with a *general*, and not a particular object, – a *public*, and not a private purpose. His proposed proof was crushing: but immediately on the Solicitor-General's calling the name of the first witness, Sir Frederick Pollock rose, and required him to prove the delivery of a list of the witnesses, containing the particular one in question, pursuant to the statute.

The Attorney-General then called Mr Maule, who proved having done what has already been explained: whereupon Sir Frederick Pollock disclosed the exact objection, which he himself had been the first to detect – that whereas the statute required all these documents, —*i. e.*, the indictment, the jury list, and witness list – to be delivered "*at the same time*," in the present instance that had not been done, the first two having been delivered on the 12th, and the list of witnesses on the 17th December! This was a very formidable move on the part of the prisoner: who stood at the bar on his deliverance – the jury being bound to convict or acquit according to evidence, and none could be offered them! If that *were* so, he must of necessity be pronounced not guilty, and be for ever safe. The objection was urged with extreme tenacity and ingenuity by both the prisoner's counsel, who insisted on the statute of Anne receiving a strict literal construction of the words "at the same time," – admitting the benevolent intentions by which Mr Maule had been actuated. The Attorney-General argued very earnestly against this startling objection, denying that it had any validity – asserting that the statute had been substantially complied with; and that the objection, if valid, had been waived; and that it was made too late – viz., not till after the prisoner had pleaded to the indictment, and the jury been charged with the prisoner. The Attorney-General's astute argument, however, was interrupted by the Lord Chief-Justice, stating that the court had a sufficient degree of doubt on the point to reserve it for further consideration by the judges at

Westminster, should it become necessary: for, if their objection were valid, it affected every one of the fourteen prisoners awaiting their trial! Then came another desperate attempt of Sir Frederick Pollock, to secure his client the benefit of *an acquittal*, in the event of the judges ultimately deciding that the objection ought to have been decided in the prisoner's favour at the trial. This, however, the Attorney-General again strongly opposed; and the court cautiously ruled, that, in the event contemplated, the prisoner would be entitled then to the same benefit to which he would have been entitled at the trial – without saying what that would have been. The witness thus provisionally objected to was then admitted; but only to be, at first, sworn on the *voir dire*, on which a lengthened examination and some argument ensued – each of the judges delivering judgment on the excessively refined and astute objection to the manner in which the witness's place of abode had been described in the list – which was such as that it was just imaginable, and nothing more, that an inquirer might have been misled! The objection was overruled in the case of the first witness; but on the ensuing two witnesses – and most important witnesses – being called, a similar objection was taken, but too successfully, and their evidence, consequently, altogether excluded! – excluded solely on account of the anxious "*over*-particularity" of the Crown! Nor were these the only witnesses whose testimony was, on such grounds, rendered unavailable to the Crown.

Then came the usual contests, from time to time, as to acts

and declarations of third parties, which were offered as evidence against the prisoner, though done and said in his absence, and before and after the actual outbreak – viz., to what extent he had rendered himself liable for the consequences of such acts and declarations, by embarking in a common enterprise, having a common intent with these third parties. The result of such contests was practically this, – The court acted on the rule of law, as rule established, that, in treason and conspiracy, the Crown may prove either the conspiracy, which renders admissible as evidence the acts and declarations of the co-conspirators; or the acts and declarations of the different persons, and so prove the conspiracy. A witness, for instance, said that he was at a party at a Chartists' lodge on the 2d November, when a man named *Reed* gave them directions to go to Newport on the following night, and explained for what purpose they were to go: but the witness did not see Frost till two days *afterwards*, when on his march to Newport. The Lord Chief-Justice overruled the objections of Sir F. Pollock and Mr Kelly, and received the evidence which they had attempted to exclude.

A great mass of proof was given during the trial, establishing most satisfactorily the acts and doings of Frost, throughout the progress of the conspiracy, and down to the very moment of the actual attack on the inn, and the Queen's troops stationed in it – a mass of proof on which the attempt to make an impression seemed absurd. There was only one faint ray of hope for the prisoner's counsel, throughout the palpable obscure – that they

might be able to escape from the generality and publicity of object attributed to the prisoner, by persuading the jury that the object was a private, temporary, and specific one – viz., to effect the release of one Vincent, a Chartist, then in confinement at Monmouth! To pave the way for this hopeful line of defence, first, an artful turn was sought, in cross-examination, to be given to one of the early witnesses. He swore that he had heard one of those who attacked the inn, exclaim at the time, presenting his gun at one of the special constables at the door, "Surrender *yourselves* our prisoners;" to which the gallant answer was, "No, never!" On this Mr Kelly very warily cross-examined the witness, with a view of showing that, in the confusion, he could not hear very distinctly, so as to report distinctly, as to precise expressions; that the mob intended merely to rescue Vincent; and that the expressions used must have been, not "Surrender *yourselves* our prisoners," but "Surrender up our prisoners!" or simply, "Surrender our prisoners," – thus rejecting, from the witness's answer, the single significant word "yourselves." The attempt, however, was wholly ineffectual; but out of two other witnesses were extorted on cross-examination, the following (so to speak) crumbs of comfort: from one – "I have heard Vincent's name mentioned many times; I have heard Williams (one of the leaders of the three bands forming the ten thousand) say that Vincent was a prisoner at Monmouth: the people there liked him very much; the people knew he was in jail. I have heard them speak about him." Another witness said, – "I knew of Vincent's being sent to

prison: I believe the Chartists took a great interest in his fate: I do recollect something of dissatisfaction about Vincent's treatment, and about a petition to be drawn up: I recollect people's minds being dissatisfied about it." Another witness, however, said "that at midnight on the Sunday, (the 3d November,) Williams came to his house with a number of armed men: " the witness inquired, "Where are you going?" – "Why do you ask?" said Williams. "Because," answered the witness, "some of the men who were with me have told me, this morning, that they were going to Monmouth, to draw Vincent out of prison." – "*No*," replied Williams, "*we do not attempt it*: we are going to give a turn as far as Newport."

The Attorney-General closed his case with the arrest of Frost, heavily armed, and in concealment, on the evening of the day on which he had attacked the inn with his five thousand men; and thus stood the matter, when, after a considerable interval for repose and reflection, courteously conceded by the Lord Chief-Justice, at the implied request of Sir Frederick Pollock, that most able and upright advocate rose to address the jury for the defence. Judging from the specimens afforded us by Mr Townsend, Sir Frederick Pollock's address appears to have been pervaded by a strain of dignified and earnest eloquence, and also characterised by a candour in dealing with facts which was in the highest degree honourable to him, and also equally advantageous to the prisoner, on whose behalf such conduct was calculated to conciliate both the judges and the jury. His line of defence was, that, admitting

enormous indiscretion on the part of Frost in assembling so vast a body of men, and marching and appearing with them as he did at Newport, there was no satisfactory evidence of his having done so with a *treasonable* purpose. He had been guilty of a heinous misdemeanour; but the treasonable declarations and exclamations put into his and their mouths, in order to give the affair a treasonable complexion, had been either misunderstood or perverted by the witnesses. The sole object of Frost and his friends was the release of Vincent; that they had never dreamed of *taking*, or *attacking* the town of Newport – least of all, as an act of general rebellion; that all they had meant was to take a "turn" as far as Newport, to get Vincent out of prison; and that "that was the true character of the whole proceedings;" that Frost did not know that the military were in the inn; and that, the instant they had become visible, and had fired, the crowd succumbed, threw down their arms, and ran away —*i. e.* they did this "the very moment there was any prospect of what they were doing being construed into treason." That Frost could not have contemplated treason, and throwing the whole country into confusion, would be evidenced by proof, and his having made provision for the payment of a bill of exchange, and actually paying it on the very Monday on which the outbreak occurred. Sir Frederick Pollock properly insisted on the burthen of proving treason lying on the Crown, and not of disproof on the prisoner. Then were called one or two witnesses, with a view to showing expressions of the crowd that they had come to Newport in quest of their prisoners

who were there; but the evidence proved ridiculously insufficient and contradictory. Then was read, with the Attorney-General's consent, a letter of Frost's in the previous September, to one of the visiting magistrates of the gaol of Monmouth, requesting some relaxation of the prison discipline to which Vincent and other prisoners were subject; and it appeared, also, that a similar application had been made to the Lord-Lieutenant of the county. Then was proved Frost's having taken up his acceptance on the 4th November; and his character for humanity as specially instanced in his having protected Lord Granville Somerset from personal violence, during the Reform riots of 1832. Finally was called a witness, with the view of negativing the design imputed to Frost of preventing the Welsh mail from going to Birmingham, by showing the absurdity of that course, since a new and different mail started from Bristol to Birmingham, and not the same coach which had come from Newport. But to this witness were put the following significant, and probably unsuspected, questions: —

> "*Attorney-General.*– You took an interest, I suppose, in Vincent? —*A.* I did so.
>
> "*Attorney-General.*– You had not been told that there was to be any meeting for Vincent on the 4th of November, had you? —*A.* No.
>
> "*Attorney-General.*– You, living at Newport, can tell us that there was no notice by placard, or in any other way, of a meeting to be held on the 4th November? —*A. I never saw any.*

"*Attorney-General.—Nor heard of any?—A. No.*"

Such was the meagre case in behalf of the prisoner in point of evidence. And at its close, his second counsel, Mr Kelly, rose to address the jury on his behalf – a privilege accorded to no prisoner, except one tried on a charge of high treason. We shall present the reader with an extract from the opening passage in Mr Kelly's address, inasmuch as it is highly characteristic of that eminent counsellor's style of advocacy – of his imposing display of fervent confidence in his case – his terse and nervous expression, and the clearness and precision of his reasoning. We have some ground for believing that the following is exactly what fell from his lips: —

> "The Attorney-General, in his opening, seemed to anticipate that we might deviate from the straight and honourable course before us, in defending the prisoner, into something like an attempt to induce you to depart from the strict letter of the law. So far from this, it is in the law, in the strict undeviating performance of the law, that I place my hope, my only trust. It is my prayer, therefore, that you should follow it; that you should be guided and governed by it; that you should attend and adhere to the law, and to the law alone; because I feel that, by that law, I shall prove to you, clearly and satisfactorily, that the prisoner, whatever may have been his misconduct in other respects, however high the crimes and misdemeanours for which in another form he might have been indicted or punished – I feel that, by the law of high treason, he is as guiltless as any one of

you, whose duty, I hope, it will soon be so to pronounce him. Gentlemen, if the prisoner at the bar be at this moment in any jeopardy or danger, it is from the law not prevailing, or not being clearly and perfectly understood. It is because the facts, which are in evidence before you, undoubtedly disclose a case of guilt against him; because they do prove that he has committed a great and serious violation of the law; because he has subjected himself to indictment and to punishment, that the danger exists – a danger from which it is for me, by all the humble efforts I can command, to protect him – that you, finding that he has offended against the justice of the country, should condemn him, not for the misdemeanour which he has really committed, but for the great and deadly crime with which he is charged by this indictment. I therefore, Gentlemen, beseech your calm and patient attention, while I endeavour as shortly, as concisely, and, I will venture to add, as fairly and candidly as I can, to lay before you, subject to the correction of their Lordships, the law, as it affects this high and serious charge. And if I should be fortunate enough to do so, I undertake then to satisfy you – to convince the most doubting among you, if there be any more doubting than the rest, when I shall refer you to the testimony of the witnesses, – that this charge is not only not proved, but that it is absolutely and totally disproved, even by the evidence for the prosecution. The question here is, – not whether a great and alarming riot has been committed; the question is, not whether blood has been shed, whether crimes, which are, as they ought to be, punishable by law, have been perpetrated by many

who may be the subjects of this indictment; but the question is, whether the prisoner at the bar has, by competent legal proof, been proved, beyond all reasonable doubt in the mind of any one of you, to have levied war against Her Majesty, with the treasonable intent which is stated in this indictment? The Crown must satisfy you that the prisoner at the bar has levied war; that he has levied war against Her Majesty – that is, that he has conducted these armed multitudes, and committed, if he has committed, outrages with them, and concerted with them, or engaged them, to commit them; and not merely that he has done all these acts, but that he has done them against the Queen, that he has levied war against the Queen and her Government. And then, further, it must be proved to you that that was done with the intent, with the design, which is stated in this indictment." – (I. p. 52, 53.)

Mr Kelly's speech was long, elaborate, eloquent, and most ingenious – adhering closely to the line of defence taken by Sir Frederick Pollock – pressing on the jury in every possible way, with many varied illustrations, the improbability of Frost having contemplated the rebellious objects imputed to him, and the alleged certainty that his only view had been – the rescue of Vincent. He vehemently assailed the credibility of those witnesses who had given the strongest evidence against Frost; and concluded with a most impassioned appeal to the feelings of the jury. When he had concluded, the Lord Chief-Justice accorded still another privilege to Frost – viz., that of himself

then addressing the jury, after both his counsel had done so; to which Frost prudently replied – "My Lord, I am so well satisfied with what my counsel have said, that I decline saying anything upon this occasion."[11]

The Solicitor-General then rose to reply on the part of the Crown; and if any one inexperienced in forensic contests were incredulous as to the potency of *the last word* (from competent lips) in any case, civil or criminal, let him read the outline of this reply, with the copious specimens of it, given with much judgment by Mr Townsend. It is true that Sir Thomas Wilde's case was in itself crushing, but his dealing with it made that crushing character fearfully clear to the plainest capacity. Its opening passages seem tinctured by some sternness of allusion to the concluding topics of Mr Kelly's address; but the remainder of the reply is characterised by mingled moderation and power; by irresistible closeness and cogency of argument, and by extraordinary skill in dealing with facts, in combining and contrasting them, and pointing out a significancy lurking in them, which the prisoner's counsel had possibly not chosen to see, or skilfully striven to conceal. Our limits restrict us to one or two samples of the present Lord Chancellor's mode of advocacy when at the bar. After explaining that it was the real object contemplated by the prisoner – viz., to raise, rebellion – with which the jury had to deal, the Solicitor-General thus pithily disposed of all arguments which had been drawn from the

[11] Townsend, vol. i. p. 71.

prisoner's want of power to do all that he intended: —

> "It is also immaterial to this Case whether or not he had the power to do all he intended. We need not talk of punishing successful rebellion – it is unsuccessful rebellion that comes under the cognisance of the law. I cannot restrain the expression of some surprise at the course of argument that was taken by the learned counsel who last addressed you. His course of argument was this: when the prisoner was interrupted in what he was doing, 'Look and see what he has done;' where he has accomplished his purpose, 'Do not believe the witnesses.' The party having been dispersed by the soldiers, the learned gentleman says, 'see if they went to the post-office; see if they went to the bridge; see if they went to other places' – he knowing that they were stopped before they reached those places; 'but as to marching there with arms to take the town, that I dispose of by asking you not to believe the witnesses; so that, as regards what was prevented, I ask you to see what was done; and as regards what was done, I ask you to disbelieve the witnesses, and there is an end of the charge.'" – (I. p. 75.)

This single paragraph annihilated a third of the case set up on behalf of Frost; as did the following a second third: —

> "They could not have raised these men with a view to relieve the prisoners at the Westgate, because at the time they collected on the mountain they had not been taken. But had it any relation to Vincent? What is their intention? We have been told again and again that Mr Frost must not be supposed likely to do absurd things; that he is a man of

the world and a man of intelligence. What then, gentlemen, do you think of an attempt to induce the Monmouthshire magistrates to relax the prison discipline in favour of a person who has been convicted of sedition, or seditious libel, or something of that sort, by marching into Newport with ten thousand men armed? What do you think of a man of the world resorting to that mode of inducing the magistrates to relax in favour of a prisoner? Is Mr Frost a man of intelligence? Is he a man of the world? Suppose he had been the worst foe that Vincent ever had, suppose that he had desired to procure additional restrictions to be put upon him, and had wished that he should sustain the last hour of the sentence which had been pronounced upon him, could he have resorted to a more maliciously effective mode than by showing that those who were connected with Vincent were persons so little acquainted with their duty, so little obedient to the law, so little to be depended upon for their peaceable conduct, as that they would march at that hour of the night into a town, alarming and frightening every body?" – (I. p. 79.)

Again: —

"Gentlemen, will you judge of the criminal intentions of persons engaged in an insurrection by the probability of their success? If you do, you will judge of a mob by a rule that never was found correct yet. They always imagine – and they would not begin if they did not imagine, though they always imagine wrong, but they never will learn wisdom – they always imagine that they can accomplish more than

they can; of course they begin, not with the idea of fastening a halter round their necks, but with the idea that they shall succeed, and by their success escape. With those thousands of men (you will see as I pass on what the number of the soldiers were,) was it an unnatural thing that, coming at between one and two o'clock in the morning, they should surprise the poor-house; that the soldiers, not being aware that they were coming, might not be prepared – might be taken by surprise – might be either overcome or murdered before they could put themselves in a condition to defend themselves?

"Are their sayings inconsistent? What conspiracy ever was consistent? You would indeed give the most perfect freedom to conspiracy, rebellion, and treason, if you disbelieved witnesses coming to prove declarations inconsistent if made at the same time, though not inconsistent when made at different times. They may at first think the soldiers to be Chartists and their friends, and, in the next moment, talk of attacking them in their barracks. But will you give a *carte blanche* to conspirators and traitors by saying, that if witnesses prove inconsistent declarations, they are not to be believed? It is not, gentlemen, the inconsistency of the witnesses, but of those engaged in transactions, the conduct and management of which must vary from hour to hour according as circumstances arise; and that which a man may contemplate one minute, may the following minute or the next hour be inconsistent with the views that had prevailed arising out of the then existing circumstances." – (I. p. 89.)

The circumstance of Frost's having been found with the loaded pistols, and not having attempted to use them, is thus significantly disposed of: —

> "Give him the benefit of the circumstance that *he did not use* the three loaded pistols which he had about him. But I think, unfortunately, that they speak much more strongly as indicating violent intentions *when those pistols were provided*, than they speak peaceable intentions when he was apprehended." – (I. p. 24.)

There has been no counsel at the English bar, in modern times, whose reply was more dreaded by an opponent than Sir Thomas Wilde; and that reply, in Frost's case, abundantly shows how well founded was that apprehension.

Thus, then, the counsel on both sides having played out their parts in the case, it stood awaiting the intervention of the Lord Chief-Justice – the very model of judicial excellence. Tranquil, grave, patient; exact, ready, profound in legal knowledge, and of perfect impartiality – all these high qualities and qualifications were exhibited by him in his luminous and masterly summing-up on this occasion. In order to give all due weight to the sole substantial suggestion offered on behalf of the prisoner —*i. e.*, that his object had been the liberation of Vincent – the Lord Chief-Justice read to the jury the following important passage from that great authority, Sir Matthew Hale – "If men levy war to break prisons, to deliver *one or more particular persons* out of prison, this was ruled, on advice of the judges, to be not

high treason, but only a great riot; but if it was to break prisons, or deliver *persons generally* out of prison, this is treason."[12] Having taken at once a minute and comprehensive view of the evidence, he left the following as the exact question for their determination, – "Whether it was Frost's object, by the terror which bodies of armed men would inspire, to seize and keep possession of the town of Newport, making this a beginning of an extensive rebellion, *which would be high treason*; or whether he had no more in view than to effect, by the display of physical force, the amelioration of the condition of Vincent and his companions in Monmouth jail, if not their liberation, *which would be a dangerous misdemeanour only*; and the jury were to look at the evidence with all possible candour and fairness, and see if the Crown had conclusively disproved this limited object and design."[13] We conceive that neither Frost nor any one of his ten thousand dupes, on that "day of dupes" which led to this inquiry, could have taken objection to this mode of submitting the all-critical question to his jury – a jury of his peers, with the selection of whom he himself had had as much concern as the Crown.

That jury retired from court for half-an-hour, and then returned, amidst the solemn excited silence of the court – crowded to suffocation – with the fatal verdict, "Guilty;" adding, "My lords, we wish to recommend the prisoner to the merciful

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[12] Hall's Pleas of the Crown, part I., c. 14.

[13] Townsend, p. 95.

consideration of the court." Sentence was not immediately passed upon him. He was removed from court; and on its re-assembling on the ensuing morning, Zephaniah Williams was placed at the bar, tried, and in due course found guilty; on which William Jones was in like manner arraigned, tried, and found guilty; each being recommended by the jury to mercy. Scared by this result, five of the ringleaders resolved to throw themselves on the mercy of the Crown, withdrawing their pleas of not guilty, and pleading guilty – it having been intimated that the sentence of death should be commuted into transportation for life. The Attorney-General thought it expedient, in the case of the remaining four prisoners, who were less deeply implicated, to allow a verdict of not guilty to be recorded.

On the 16th January, Frost, Williams, and Jones were brought up to the bar to receive sentence of death, which the Lord Chief-Justice prefaced by a very solemn address, listened to in breathless silence. An imposing scene of judicial solemnity and terror, indeed, the court at that agitating moment exhibited. Without were strong detachments of soldiery, foot and horse, guarding the public peace: within were an anxious auditory, commanded to keep silence under pain of fine and imprisonment, while sentence of death was being passed upon the prisoners. There were, in the midst of the throng, two groups awfully contrasted in character and position – the three prisoners, standing pale and subdued; and, sitting opposite, the three judges, each wearing his black cap; while the following

heart-sickening words fell from the lips of the Lord Chief-Justice: —

> "And now nothing more remains than the duty imposed upon the court – to all of us a most painful duty – to declare the last SENTENCE OF THE LAW; which is that you, John Frost, and you, Zephaniah Williams, and you, William Jones, be taken hence to the place whence you came, and be thence drawn on a hurdle to the place of execution, and that each of you be there hanged by the neck until you be dead; *and that afterwards the head of each of you shall be severed from his body, and the body of each, divided into four quarters, shall be disposed of, as her majesty shall think fit. And may Almighty God have mercy on your souls!*"

Whether the words placed in italics should ever again be pronounced on such an occasion, barbarously prescribing a revolting outrage on the dead, which it is known, at the time, cannot be perpetrated in these days of enlightened humanity, is a point which cannot admit of debate. The practice ought forthwith to be abolished, and by statute, if such be necessary.

Under the mortal pressure of this capital sentence remained these three unhappy and misguided men, from the 16th till the 28th of January. On the 25th, an elaborate argument was had at Westminster before the fifteen judges, which lasted till the 28th, on a case framed by Lord Chief-Justice Tindal for their opinion, on the point which had been raised at the trial by Sir Frederick Pollock. The Chief-Justice submitted these two questions for consideration, – "*First*, whether the service of the

list of witnesses was a good service, under the statute 7 Anne, c. 21, § 11; *secondly*, whether, at all events, the objection was taken in due time." There was a great array of counsel on both sides; but the argument was conducted by the Attorney-General alone, on behalf of the Crown; and by Sir Frederick Pollock, Sir William Follett, and Mr Kelly on behalf of the prisoners. The utmost possible ingenuity was displayed on both sides; and with such effect, that at the close of the argument the Lord Chief-Justice of the Common Pleas wrote a letter to the Secretary of State for the Home Department, (the Marquis of Normanby,) announcing the following somewhat perplexing result, – that, "first, a majority of the Judges, in the proportion Of NINE to SIX, were of opinion that the delivery of the list of witnesses was NOT a good delivery in point of law:

"But, secondly, a majority of the Judges, in the proportion of nine to six, are of opinion that the OBJECTION to the delivery of the list of witnesses was *not taken in due time*.

"All the Judges agreed, that if the objection had been made in time, the effect of it would have been a postponement of the trial, in order to give time for a proper delivery of the list."

The Ayes on this occasion were —

Justices Littledale, Patteson, Williams, Coleridge, Colins, Erskine; Barons Parke, Alderson, Rolfe.

The Noes —

Lord Chief-Justice Denman, Lord Chief-Justice Tindal, Lord Chief-Baron Abinger; *Justices* Bosanquet and Maule,

and Baron Gurney.

Those last (the Noes) decided also that the objection had not been taken in time; and three of the former class, (the Ayes,) viz. Baron Alderson, Baron Rolfe, and Justice Coleridge, concurred in that decision.[14]

Here was a question for the Executive to decide! A capital conviction for high treason, with a decision of the majority of the Judges of the land, that a statutory requisition as to the period for delivery of a list of the witnesses had not been exactly complied with, but that the prisoner did not make the objection till the time had gone by for making it; and that, had he made it in time, the utmost effect would have been to cause a postponement of the trial for a few days. The prisoner's objection was avowedly *strictissimi juris*; and he did not affect to show that he had suffered the slightest detriment from the over-anxious kindness of the Crown solicitor. That, under these circumstances, the lives of the three traitors were absolutely at the mercy of the Ministry, is indisputable; and no one, we conceive, could have censured them, if they had allowed the capital sentence to be carried into effect. They inclined, however, to the merciful exercise of their anxious discretion; and the capital sentence was remitted, on

[14] 1 Townsend, pp. 99-100; and see the argument reported at length in Regina *v.* Frost, 9 Carr and Payne, 165-187. Of these fifteen Judges, only six are still on the Bench – Barons Parke, Alderson, Rolfe; and Justices Patteson, Coleridge, and Maule – nine having disappeared during the last ten years. It will be observed that the three chiefs of the Courts were of one way of thinking, viz. that there *had* been a good delivery of the list of witnesses, in point of law.

the condition of the three prisoners being transported for the term of their natural lives. They have now been ten years at the Antipodes; and how many times, during that lengthened period of bitter, dishonoured existence, they have cursed their own folly and crime, who can tell?

Have they ever appreciated the skill and vigilance with which they were defended? It is true that this one chance objection – which it is wonderful should have occurred to any one at all – was ultimately pronounced, but only by a majority of the Judges after lengthened debate, to have been taken too late; but if it had not occurred to the vigilant advocate when it did – if no one had taken it at any time – would not the three traitors have been executed? Unquestionably: public justice, the public safety required it. Whether Sir Frederick Pollock purposely delayed making the objection till the moment when he did, (and the Attorney-General insinuated, before the fifteen Judges, that such was the case,[15]) thinking that course more advantageous to the prisoners, or whether the objection had not, in fact, occurred to him till it was too late, we cannot at present say. This much, however, we can say in conclusion, that we are very much indebted to the late Mr Townsend for having enabled us to present this entertainment – for such we hope it has proved – to our readers; who may hereafter look with great interest on a great trial, especially if they have the opportunity of witnessing it. They may then appreciate the exquisite anxieties and responsibilities

[15] 9 Carr and Payne, pp. 175-176.

imposed on those concerned in conducting it – the difficulties with which they have to contend on the spot, without time for consideration, though life itself be the stake played for. They will also, probably, be of the opinion, that in the great game at Monmouth all the players played their parts well – may we not say admirably? – that the uttermost justice was done on both sides. Two practical deductions from the whole may yet be made: first, have a look-out, gentlemen prosecutors, in taking every single step of your course, however apparently unimportant at the time it may seem to you; bearing in mind that, in proportion to the desperate exigencies of the defence, will be the piercing scrutiny to which every formality will be subjected; so that a blot may be hit which might easily have been avoided, but, when hit, is fatal. Secondly, in your turn, gentlemen counsel, be encouraged by the result of this interesting and instructive trial, to watch every single step of your opponents – even those in which error, omission, or miscarriage is least likely – with sleepless vigilance, and be prompt in action. Thus much for the trial of John Frost.

MY NOVEL; OR, VARIETIES IN ENGLISH LIFE

BY PISISTRATUS CAXTON

CHAPTER X

In my next chapter I shall present Squire Hazeldean in patriarchal state – not exactly under the fig-tree he has planted, but before the stocks he has reconstructed. – Squire Hazeldean and his family on the village green! The canvass is all ready for the colours.

But in this chapter I must so far afford a glimpse into antecedents as to let the reader know that there is one member of the family whom he is not likely to meet at present, if ever, on the village green at Hazeldean.

Our squire lost his father two years after his birth; his mother was very handsome – and so was her jointure; she married again at the expiration of her year of mourning – the object of her second choice was Colonel Egerton.

In every generation of Englishmen (at least since the lively reign of Charles II.) there are a few whom some elegant Genius skims off from the milk of human nature, and reserves for the cream of society. Colonel Egerton was one of these *terque, quaterque beati*, and dwelt apart on a top shelf in that delicate porcelain dish – not bestowed upon vulgar buttermilk – which persons of fashion call The Great World. Mighty was the marvel of Pall Mall, and profound was the pity of Park Lane, when this supereminent personage condescended to lower himself into a husband. But Colonel Egerton was not a mere gaudy butterfly;

he had the provident instincts ascribed to the bee. Youth had passed from him – and carried off much solid property in its flight; he saw that a time was fast coming when a home, with a partner who could help to maintain it, would be conducive to his comforts, and an occasional humdrum evening by the fireside beneficial to his health. In the midst of one season at Brighton, to which gay place he had accompanied the Prince of Wales, he saw a widow who, though in the weeds of mourning, did not appear inconsolable. Her person pleased his taste – the accounts of her jointure satisfied his understanding; he contrived an introduction, and brought a brief wooing to a happy close. The late Mr Hazeldean had so far anticipated the chance of the young widow's second espousals, that, in case of that event, he transferred, by his testamentary dispositions, the guardianship of his infant heir from the mother to two squires whom he had named his executors. This circumstance combined with her new ties somewhat to alienate Mrs Hazeldean from the pledge of her former loves; and when she had born a son to Colonel Egerton, it was upon that child that her maternal affections gradually concentrated.

William Hazeldean was sent by his guardians to a large provincial academy, at which his forefathers had received their education time out of mind. At first he spent his holidays with Mrs Egerton; but as she now resided either in London, or followed her lord to Brighton to partake of the gaieties at the Pavilion – so, as he grew older, William, who had a hearty

affection for country life, and of whose bluff manners and rural breeding Mrs Egerton (having grown exceedingly refined) was openly ashamed, asked and obtained permission to spend his vacations either with his guardians or at the old hall. He went late to a small college at Cambridge, endowed in the fifteenth century by some ancestral Hazeldean; and left it, on coming of age, without taking a degree. A few years afterwards he married a young lady, country born and bred like himself.

Meanwhile his half-brother, Audley Egerton, may be said to have begun his initiation into the *beau monde* before he had well cast aside his coral and bells; he had been fondled in the lap of duchesses, and galloped across the room astride on the canes of ambassadors and princes. For Colonel Egerton was not only very highly connected – not only one of the *Dii majoris* of fashion – but he had the still rarer good fortune to be an exceedingly popular man with all who knew him; – so popular, that even the fine ladies whom he had adored and abandoned forgave him for marrying out of "the set," and continued to be as friendly as if he had not married at all. People who were commonly called heartless, were never weary of doing kind things to the Egertons. – When the time came for Audley to leave the preparatory school, at which his infancy budded forth amongst the stateliest of the little lilies of the field, and go to Eton, half the fifth and sixth forms had been canvassed to be exceedingly civil to young Egerton. The boy soon showed that he inherited his father's talent for acquiring popularity, and that to

this talent he added those which put popularity to use. Without achieving any scholastic distinction, he yet contrived to establish at Eton the most desirable reputation which a boy can obtain – namely, that among his own contemporaries – the reputation of a boy who was sure to do something when he grew to be a man. As a gentleman commoner at Christ Church, Oxford, he continued to sustain this high expectation, though he won no prizes and took but an ordinary degree; and at Oxford the future "something" became more defined – it was "something in public life" that this young man was to do.

While he was yet at the university, both his parents died – within a few months of each other. And when Audley Egerton came of age, he succeeded to a paternal property which was supposed to be large, and indeed had once been so, but Colonel Egerton had been too lavish a man to enrich his heir, and about £1500 a-year was all that sales and mortgages left of an estate that had formerly approached a rental of ten thousand pounds.

Still, Audley was considered to be opulent, and he did not dispel that favourable notion by any imprudent exhibition of parsimony. On entering the world of London, the Clubs flew open to receive him: and he woke one morning to find himself, not indeed famous – but the fashion. To this fashion he at once gave a certain gravity and value – he associated as much as possible with public men and political ladies – he succeeded in confirming the notion that he was 'born to ruin or to rule the State.'

Now, his dearest and most intimate friend was Lord L'Estrange, from whom he had been inseparable at Eton; and who now, if Audley Egerton was the fashion, was absolutely the rage in London.

Harley Lord L'Estrange was the only son of the Earl of Lansmere, a nobleman of considerable wealth, and allied by intermarriages to the loftiest and most powerful families in England. Lord Lansmere, nevertheless, was but little known in the circles of London. He lived chiefly on his estates, occupying himself with the various duties of a great proprietor, and rarely came to the metropolis; so that he could afford to give his son a very ample allowance, when Harley, at the age of sixteen, (having already attained to the sixth form at Eton,) left school for one of the regiments of the Guards.

Few knew what to make of Harley L'Estrange – and that was, perhaps, the reason why he was so much thought of. He had been by far the most brilliant boy of his time at Eton – not only the boast of the cricket-ground, but the marvel of the school-room – yet so full of whims and oddities, and seeming to achieve his triumphs with so little aid from steadfast application, that he had not left behind him the same expectations of solid eminence which his friend and senior, Audley Egerton, had excited. His eccentricities – his quaint sayings and out-of-the-way actions, became as notable in the great world as they had been in the small one of a public school. That he was very clever there was no doubt, and that the cleverness was of a high order might be

surmised not only from the originality but the independence of his character. He dazzled the world, without seeming to care for its praise or its censure – dazzled it, as it were, because he could not help shining. He had some strange notions, whether political or social, which rather frightened his father. According to Southey, "A man should be no more ashamed of having been a republican than of having been young." Youth and extravagant opinions naturally go together. I don't know whether Harley L'Estrange was a republican at the age of eighteen; but there was no young man in London who seemed to care less for being heir to an illustrious name and some forty or fifty thousand pounds a-year. It was a vulgar fashion in that day to play the exclusive, and cut persons who wore bad neckcloths and called themselves Smith or Johnson. Lord L'Estrange never cut any one, and it was quite enough to slight some worthy man because of his neckcloth or his birth, to ensure to the offender the pointed civilities of this eccentric successor to the Dorimonts and the Wildairs.

It was the wish of his father that Harley, as soon as he came of age, should represent the borough of Lansmere, (which said borough was the single plague of the Earl's life.) But this wish was never realised. Suddenly, when the young idol of London still wanted some two or three years of his majority, a new whim appeared to seize him. He withdrew entirely from society – he left unanswered the most pressing three-cornered notes of inquiry and invitation that ever strewed the table of a young Guardsman; he was rarely seen anywhere in his former haunts –

when seen, was either alone or with Egerton; and his gay spirits seemed wholly to have left him. A profound melancholy was written in his countenance, and breathed in the listless tones of his voice. At this time the Guards were achieving in the Peninsula their imperishable renown; but the battalion to which Harley belonged was detained at home; and whether chafed by inaction or emulous of glory, the young Lord suddenly exchanged into a cavalry regiment, from which a recent memorable conflict had swept one half the officers. Just before he joined, a vacancy happening to occur for the representation of Lansmere, he made it his special request to his father that the family interest might be given to his friend Egerton – went down to the Park, which adjoined the borough, to take leave of his parents – and Egerton followed, to be introduced to the electors. This visit made a notable epoch in the history of many personages who figure in my narrative; but at present I content myself with saying, that circumstances arose which, just as the canvass for the new election commenced, caused both L'Estrange and Audley to absent themselves from the scene of action, and that the last even wrote to Lord Lansmere expressing his intention of declining to contest the borough.

Fortunately for the parliamentary career of Audley Egerton, the election had become to Lord Lansmere not only a matter of public importance, but of personal feeling. He resolved that the battle should be fought out, even in the absence of the candidate, and at his own expense. Hitherto the contest for this

distinguished borough had been, to use the language of Lord Lansmere, "conducted in the spirit of gentlemen," – that is to say, the only opponents to the Lansmere interest had been found in one or the other of two rival families in the same county; and as the Earl was a hospitable courteous man, much respected and liked by the neighbouring gentry, so the hostile candidate had always interlarded his speeches with profuse compliments to his Lordship's high character, and civil expressions as to his Lordship's candidate. But, thanks to successive elections, one of these two families had come to an end, and its actual representative was now residing within the Rules of the Bench; the head of the other family was the sitting member, and, by an amicable agreement with the Lansmere interest, he remained as neutral as it is in the power of any sitting member to be amidst the passions of an intractable committee. Accordingly, it had been hoped that Egerton would come in without opposition, when, the very day on which he had abruptly left the place, a handbill, signed "Haverill Dashmore, Captain R.N., Baker Street, Portman Square," announced, in very spirited language, the intention of that gentleman to emancipate the borough from the unconstitutional domination of an oligarchical faction, not with a view to his own political aggrandisement – indeed, at great personal inconvenience – but actuated solely by abhorrence to tyranny, and patriotic passion for the purity of election.

This announcement was followed, within two hours, by the arrival of Captain Dashmore himself, in a carriage-and-four

covered with yellow favours, and filled, inside and out, with harum-scarum looking friends who had come down with him to aid the canvass and share the fun.

Captain Dashmore was a thorough sailor, who had, however, taken a disgust to the profession from the date in which a Minister's nephew had been appointed to the command of a ship to which the Captain considered himself unquestionably entitled. It is just to the Minister to add, that Captain Dashmore had shown as little regard for orders from a distance, as had immortalized Nelson himself; but then the disobedience had not achieved the same redeeming success as that of Nelson, and Captain Dashmore ought to have thought himself fortunate in escaping a severer treatment than the loss of promotion. But no man knows when he is well off; and retiring on half-pay, just as he came into unexpected possession of some forty or fifty thousand pounds, bequeathed by a distant relation, Captain Dashmore was seized with a vindictive desire to enter parliament, and inflict oratorical chastisement on the Administration.

A very few hours sufficed to show the sea-captain to be a most capital electioneerer for a small and not very enlightened borough. It is true that he talked the saddest nonsense ever heard from an open window; but then his jokes were so broad, his manner so hearty, his voice so big, that in those dark days, before the schoolmaster was abroad, he would have beaten your philosophical Radical and moralising Democrat hollow. Moreover he kissed all the women, old and young, with all the

zest of a sailor who has known what it is to be three years at sea without sight of a beardless lip; he threw open all the public-houses, asked a numerous committee every day to dinner, and, chucking his purse up in the air, declared "he would stick to his guns while there was a shot in the locker." Till then, there had been but little political difference between the candidate supported by Lord Lansmere's interest and the opposing parties – for country gentlemen, in those days, were pretty much of the same way of thinking, and the question had been really local – viz., whether the Lansmere interest should or should not prevail over that of the two squirearchical families who had alone, hitherto, ventured to oppose it. But though Captain Dashmore was really a very loyal man, and much too old a sailor to think that the State (which, according to established metaphor, is a vessel, *par excellence*,) should admit Jack upon quarterdeck, yet, what with talking against lords and aristocracy, jobs and abuses, and searching through no very refined vocabulary for the strongest epithets to apply to those irritating nouns-substantive, his bile had got the better of his understanding, and he became fuddled, as it were, by his own eloquence. Thus, though as innocent of Jacobinical designs as he was incapable of setting the Thames on fire, you would have guessed him, by his speeches, to be one of the most determined incendiaries that ever applied a match to the combustible materials of a contested election; while, being by no means accustomed to respect his adversaries, he could not have treated the Earl of Lansmere with less ceremony if his Lordship

had been a Frenchman. He usually designated that respectable nobleman by the title of "Old Pompous;" and the Mayor, who was never seen abroad but in top-boots, and the Solicitor, who was of a large build, received from his irreverent wit the joint soubriquet of "Tops and Bottoms!" Hence the election had now become, as I said before, a personal matter with my Lord, and, indeed, with the great heads of the Lansmere interest. The Earl seemed to consider his very coronet at stake in the question. "The man from Baker Street," with his preternatural audacity, appeared to him a being ominous and awful – not so much to be regarded with resentment, as with superstitious terror: he felt as felt the dignified Montezuma, when that ruffianly Cortez, with his handful of Spanish rapscallions, bearded him in his own capital, and in the midst of his Mexican splendour. – "The gods were menaced if man could be so insolent!" wherefore said my Lord, tremulously, – "The Constitution is gone if the Man from Baker Street comes in for Lansmere!"

But, in the absence of Audley Egerton, the election looked extremely ugly, and Captain Dashmore gained ground hourly, when the Lansmere Solicitor happily bethought him of a notable proxy for the missing candidate. The Squire of Hazeldean, with his young wife, had been invited by the Earl in honour of Audley; and in the Squire the Solicitor beheld the only mortal who could cope with the sea-captain, – a man with a voice as burly, and a face as bold – a man who, if permitted for the nonce by Mrs Hazeldean, would kiss all the women

no less heartily than the Captain kissed them; and who was, moreover, a taller, and a handsomer, and a younger man – all three, great recommendations in the kissing department of a contested election. Yes, to canvass the borough, and to speak from the window, Squire Hazeldean would be even more popularly presentable than the London-bred and accomplished Audley Egerton himself.

The Squire, applied to and urged on all sides, at first said bluntly, "that he would do anything in reason to serve his brother, but that he did not like, for his own part, appearing, even in proxy, as a Lord's nominee; and moreover, if he was to be sponsor for his brother, why, he must promise and vow, in his name, to be staunch and true to the land they lived by; and how could he tell that Audley, when once he got into the House, would not forget the land, and then he, William Hazeldean, would be made a liar, and look like a turncoat!"

But these scruples being overruled by the arguments of the gentlemen and the entreaties of the ladies, who took in the election that intense interest which those gentle creatures usually do take in all matters of strife and contest, the Squire at length consented to confront the Man from Baker Street, and went accordingly into the thing with that good heart and old English spirit with which he went into everything whereon he had once made up his mind.

The expectations formed of the Squire's capacities for popular electioneering were fully realised. He talked quite as much

nonsense as Captain Dashmore on every subject except the landed interest; – there he was great, for he knew the subject well – knew it by the instinct that comes with practice, and compared to which all your showy theories are mere cobwebs and moonshine.

The agricultural outvoters – many of whom, not living under Lord Lansmere, but being small yeomen, had hitherto prided themselves on their independence, and gone against my Lord – could not in their hearts go against one who was every inch the farmer's friend. They began to share in the Earl's personal interest against the Man from Baker Street; and big fellows, with legs bigger round than Captain Dashmore's tight little body, and huge whips in their hands, were soon seen entering the shops, "intimidating the electors," as Captain Dashmore indignantly declared.

These new recruits made a great difference in the muster-roll of the Lansmere books; and when the day for polling arrived, the result was a fair question for even betting. At the last hour, after a neck-and-neck contest, Mr Audley Egerton beat the Captain by two votes. And the names of these voters were John Avenel, resident freeman, and his son-in-law, Mark Fairfield, an outvoter, who, though a Lansmere freeman, had settled in Hazeldean, where he had obtained the situation of head carpenter on the Squire's estate.

These votes were unexpected; for, though Mark Fairfield had come to Lansmere on purpose to support the Squire's brother,

and though the Avenels had been always staunch supporters of the Lansmere Blue interest, yet a severe affliction (as to the nature of which, not desiring to sadden the opening of my story, I am considerately silent) had befallen both these persons, and they had left the town on the very day after Lord L'Estrange and Mr Egerton had quitted Lansmere Park.

Whatever might have been the gratification of the Squire, as a canvasser and a brother, at Mr Egerton's triumph, it was much damped when, on leaving the dinner given in honour of the victory at the Lansmere Arms, and about, with no steady step, to enter the carriage which was to convey him to his Lordship's house, a letter was put into his hands by one of the gentlemen who had accompanied the Captain to the scene of action; and the perusal of that letter, and a few whispered words from the bearer thereof, sent the Squire back to Mrs Hazeldean a much soberer man than she had ventured to hope for. The fact was, that on the day of nomination, the Captain having honoured Mr Hazeldean with many poetical and figurative appellations – such as "Prize Ox," "Tony Lumpkin," "Blood-sucking Vampire," and "Brotherly Warming-Pan," the Squire had retorted by a joke about "Salt Water Jack;" and the Captain, who, like all satirists, was extremely susceptible and thin-skinned, could not consent to be called "Salt Water Jack" by a "Prize Ox" and a "Blood-sucking Vampire." The letter, therefore, now conveyed to Mr Hazeldean by a gentleman, who, being from the Sister Country, was deemed the most fitting accomplice in the honourable

destruction of a brother mortal, contained nothing more nor less than an invitation to single combat; and the bearer thereof, with the suave politeness enjoined by etiquette on such well-bred homicidal occasions, suggested the expediency of appointing the place of meeting in the neighbourhood of London, in order to prevent interference from the suspicious authorities of Lansmere.

The natives of some countries – the French in particular – think little of that formal operation which goes by the name of Duelling. Indeed, they seem rather to like it than otherwise. But there is nothing your thorough-paced Englishman – a Hazeldean of Hazeldean – considers with more repugnance and aversion, than that same cold-blooded ceremonial. It is not within the range of an Englishman's ordinary habits of thinking. He prefers going to law – a much more destructive proceeding of the two. Nevertheless, if an Englishman must fight, why, he will fight. He says "it is very foolish;" he is sure "it is most unchristianlike;" he agrees with all that Philosopher, Preacher, and Press have laid down on the subject; but he makes his will, says his prayers, and goes out, like a heathen!

It never, therefore, occurred to the Squire to show the white feather upon this unpleasant occasion. The next day, feigning excuse to attend the sale of a hunting stud at Tattersall's, he ruefully went up to London, after taking a peculiarly affectionate leave of his wife. Indeed, the Squire felt convinced that he should never return home except in a coffin. "It stands to reason," said he to himself, "that a man who has been actually paid

by the King's Government for shooting people ever since he was a little boy in a midshipman's jacket, must be a dead hand at the job. I should not mind if it was with double-barrelled Mantons and small shot; but, ball and pistol! they arn't human nor sportsmanlike!" However, the Squire, after settling his worldly affairs, and hunting up an old College friend who undertook to be his second, proceeded to a sequestered corner of Wimbledon Common, and planted himself, not sideways, as one ought to do in such encounters, (the which posture the Squire swore was an unmanly way of shirking,) but full front to the mouth of his adversary's pistol, with such sturdy composure, that Captain Dashmore, who, though an excellent shot, was at bottom as good-natured a fellow as ever lived, testified his admiration by letting off his gallant opponent with ball in the fleshy part of the shoulder; after which he declared himself perfectly satisfied. The parties then shook hands, mutual apologies were exchanged, and the Squire, much to his astonishment to find himself still alive, was conveyed to Limmer's Hotel, where, after a considerable amount of anguish, the ball was extracted, and the wound healed. Now it was all over, the Squire felt very much raised in his own conceit; and, when he was in a humour more than ordinarily fierce, that perilous event became a favourite allusion with him.

He considered, moreover, that his brother had incurred at his hand the most lasting obligations; and that, having procured Audley's return to Parliament, and defended his interests at the risk of his own life, he had an absolute right to dictate to that

gentleman how to vote – upon all matters at least connected with the landed interest. And when, not very long after Audley took his seat in Parliament, (which he did not do for some months,) he thought proper both to vote and to speak in a manner wholly belying the promises the Squire had made on his behalf, Mr Hazeldean wrote him such a trimmer, that it could not but produce an unconciliatory reply. Shortly afterwards, the Squire's exasperation reached the culminating point; for, having to pass through Lansmere on a market day, he was hooted by the very farmers whom he had induced to vote for his brother; and, justly imputing the disgrace to Audley, he never heard the name of that traitor to the land mentioned without a heightened colour and an indignant expletive. Monsieur de Roqueville – who was the greatest wit of his day – had, like the Squire, a half-brother, with whom he was not on the best of terms, and of whom he always spoke as his "*frère de loin*." Audley Egerton was thus Squire Hazeldean's "*distant-brother*!" – Enough of these explanatory antecedents, – let us return to the Stocks.

CHAPTER XI

The Squire's carpenters were taken from the park pales, and set to work at the parish stocks. Then came the painter and coloured them a beautiful dark blue, with a white border – and a white rim round the holes – with an ornamental flourish in the middle. It was the gayest public edifice in the whole village – though the village possessed no less than three other monuments of the Vitruvian genius of the Hazeldeans: – to wit, the alms-house, the school, and the parish pump.

A more elegant, enticing, coquettish pair of stocks never gladdened the eye of a justice of the peace.

And Squire Hazeldean's eye was gladdened. In the pride of his heart he brought all the family down to look at the stocks. The Squire's family (omitting the *frère de loin*) consisted of Mrs Hazeldean, his wife; next, of Miss Jemima Hazeldean, his first cousin; thirdly, of Master Francis Hazeldean, his only son; and fourthly, of Captain Barnabas Higginbotham, a distant relation – who, indeed, strictly speaking, was not of the family, but only a visitor ten months in the year. Mrs Hazeldean was every inch the lady, – the lady of the parish. In her comely, florid, and somewhat sunburnt countenance, there was an equal expression of majesty and benevolence; she had a blue eye that invited liking, and an aquiline nose that commanded respect. Mrs Hazeldean had no affectation of fine airs – no wish to be greater

and handsomer and cleverer than she was. She knew herself, and her station, and thanked heaven for it. There was about her speech and manner something of that shortness and bluntness which often characterises royalty; and if the lady of a parish is not a queen in her own circle, it is never the fault of the parish. Mrs Hazeldean dressed her part to perfection. She wore silks that seemed heirlooms – so thick were they, so substantial and imposing. And over these, when she was in her own domain, the whitest of aprons; while at her waist was seen no fiddle-faddle *chatelaine*, with *breloques* and trumpery, but a good honest gold watch to mark the time, and a long pair of scissors to cut off the dead leaves from her flowers, for she was a great horticulturist. When occasion needed, Mrs Hazeldean could, however, lay by her more sumptuous and imperial raiment for a stout riding-habit of blue Saxony, and canter by her husband's side to see the hounds throw off. Nay, on the days on which Mr Hazeldean drove his famous fast-trotting cob to the market town, it was rarely that you did not see his wife on the left side of the gig. She cared as little as her lord did for wind and weather, and, in the midst of some pelting shower, her pleasant face peeped over the collar and capes of a stout dreadnought, expanding into smiles and bloom as some frank rose, that opens from its petals, and rejoices in the dews. It was easy to see that the worthy couple had married for love; they were as little apart as they could help it. And still, on the First of September, if the house was not full of company which demanded her cares, Mrs Hazeldean "stepped out" over

the stubbles by her husband's side, with as light a tread and as blithe an eye as when in the first bridal year she had enchanted the Squire by her genial sympathy with his sports.

So there now stands Harriet Hazeldean, one hand leaning on the Squire's broad shoulder, the other thrust into her apron, and trying her best to share her husband's enthusiasm for his own public-spirited patriotism, in the renovation of the parish stocks. A little behind, with two fingers leaning on the thin arm of Captain Barnabas, stood Miss Jemima, the orphan daughter of the Squire's uncle, by a runaway imprudent marriage with a young lady who belonged to a family which had been at war with the Hazeldeans since the reign of Charles I., respecting a right of way to a small wood (or rather spring) of about an acre, through a piece of furze land, which was let to a brickmaker at twelve shillings a-year. The wood belonged to the Hazeldeans, the furze land to the Sticktorights, (an old Saxon family if ever there was one.) Every twelfth year, when the faggots and timber were felled, this feud broke out afresh; for the Sticktorights refused to the Hazeldeans the right to cart off the said faggots and timber, through the only way by which a cart could possibly pass. It is just to the Hazeldeans to say that they had offered to buy the land at ten times its value. But the Sticktorights, with equal magnanimity, had declared that they would not "alienate the family property for the convenience of the best squire that ever stood upon shoe leather." Therefore, every twelfth year, there was always a great breach of the peace on the part of both

Hazeldeans and Sticktorights, magistrates and deputy-lieutenants though they were. The question was fairly fought out by their respective dependants, and followed by various actions for assault and trespass. As the legal question of right was extremely obscure, it never had been properly decided; and, indeed, neither party wished it to be decided, each at heart having some doubt of the propriety of its own claim. A marriage between a younger son of the Hazeldeans, and a younger daughter of the Sticktorights, was viewed with equal indignation by both families; and the consequence had been that the runaway couple, unblessed and unforgiven, had scrambled through life as they could, upon the scanty pay of the husband, who was in a marching regiment, and the interest of £1000, which was the wife's fortune independent of her parents. They died and left an only daughter, upon whom the maternal £1000 had been settled, about the time that the Squire came of age and into possession of his estates. And though he inherited all the ancestral hostility towards the Sticktorights, it was not in his nature to be unkind to a poor orphan, who was, after all, the child of a Hazeldean. Therefore, he had educated and fostered Jemima with as much tenderness as if she had been his sister; put out her £1000 at nurse, and devoted, from the ready money which had accrued from the rents during his minority, as much as made her fortune (with her own accumulated at compound interest) no less than £4000, the ordinary marriage portion of the daughters of Hazeldean. On her coming of age, he transferred this sum to her absolute disposal, in order that she

might feel herself independent, see a little more of the world than she could at Hazeldean, have candidates to choose from if she deigned to marry; or enough to live upon if she chose to remain single. Miss Jemima had somewhat availed herself of this liberty, by occasional visits to Cheltenham and other watering places. But her grateful affection to the Squire was such, that she could never bear to be long away from the Hall. And this was the more praise to her heart, inasmuch as she was far from taking kindly to the prospect of being an old maid. And there were so few bachelors in the neighbourhood of Hazeldean, that she could not but have that prospect before her eyes whenever she looked out of the Hall windows. Miss Jemima was indeed one of the most kindly and affectionate of beings feminine – and if she disliked the thought of single blessedness, it really was from those innocent and womanly instincts towards the tender charities of hearth and home, without which a lady, however otherwise estimable, is little better than a Minerva in bronze. But whether or not, despite her fortune and her face, which last, though not strictly handsome, was pleasing – and would have been positively pretty if she had laughed more often, (for when she laughed, there appeared three charming dimples, invisible when she was grave) – whether or not, I say, it was the fault of our insensibility or her own fastidiousness, Miss Jemima approached her thirtieth year, and was still Miss Jemima. Now, therefore, that beautifying laugh of hers was very rarely heard, and she had of late become confirmed in two opinions, not at all conducive to laughter. One

was a conviction of the general and progressive wickedness of the male sex, and the other was a decided and lugubrious belief that the world was coming to an end. Miss Jemima was now accompanied by a small canine favourite, true Blenheim, with a snub nose. It was advanced in life and somewhat obese. It sate on its haunches, with its tongue out of its month, except when it snapped at the flies. There was a strong Platonic friendship between Miss Jemima and Captain Barnabas Higginbotham; for he too was unmarried, and he had the same ill opinion of your sex, my dear madam, that Miss Jemima had of ours. The Captain was a man of a slim and elegant figure; – the less said about the face the better, a truth of which the Captain himself was sensible, for it was a favourite maxim of his – "that in a man, everything is a slight, gentlemanlike figure." Captain Barnabas did not absolutely deny that the world was coming to an end, only he thought it would last his time.

Конец ознакомительного фрагмента.