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## **LAW AND LAUGHTER**

**BY GEORGE A. MORTON AND D. MACLEOD MALLOCH**

**ILLUSTRATED WITH PORTRAITS OF EMINENT MEMBERS OF BENCH & BAR**

T. N. FOULIS  
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TO  
THE MEMORY OF  
D. MACLEOD MALLOCH

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**EDWARD THURLOW, BARON  
THURLOW. LORD CHANCELLOR.**

---

"As crafty lawyers to acquire  
    applause  
Try various arts to get a double  
    cause,  
So does an author, rummaging his  
    brain,  
By various methods, try to  
    entertain."

PASQUIN.

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## **PREFACE**

The scope of this volume is indicated by its title—a presentation of the lighter side of law, as it is exhibited from time to time in the witty remarks, repartees, and *bon mots* of the Bench and Bar of Great Britain, Ireland, and America. The idea of presenting such a collection of legal *facetiae* originated with the late Mr. D. Macleod Malloch, and it is greatly to be regretted that by his untimely death, his share of the work had reached the stage of selecting only about one-half of the material included in the book. His knowledge of law, and his wide reading in legal biography, was such as would have increased considerably the value of this volume.

In addition to sources which are acknowledged in the text, I have to mention contributions drawn from the following works: W. D. Adams' *Modern Anecdotes*; W. Andrews' *The Lawyer in History, Literature and Humour*; Croake James's *Curiosities of Law*; F. R. O'Flanagan's *The Irish Bar*; and A. Engelbach's comprehensive and entertaining *Anecdotes of the Bench and Bar*. I am further indebted to Sir James Balfour Paul, Lyon King of Arms, for permission to include "The Circuiteer's Lament," from the privately printed volume *Ballads of the Bench and Bar*, and to the editor of the *Edinburgh Evening Dispatch* for a number of the more recent anecdotes in the Scottish chapters of the book.

GEO. A. MORTON.

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## CHAPTER ONE THE JUDGES OF ENGLAND

"The man resolv'd and steady to his  
trust,  
Inflexible to ill, and obstinately just,  
May the rude rabble's insolence despise,  
Their senseless clamours, and  
tumultuous cries;

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The tyrant's fierceness he beguiles,  
And the stern brow, and the harsh voice  
defies,  
And with superior greatness smiles."

HORACE: *Odes*.

"The charge is prepared, the lawyers are  
set;  
The judges are ranged, a terrible show."

*Beggar's Opera*.

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## LAW AND LAUGHTER BY GEORGE A. MORTON AND D. MACLEOD MALLOCH

### CHAPTER ONE THE JUDGES OF ENGLAND

Mr. Justice Darling, whose witty remarks from the Bench are so much appreciated by his audiences in Court, and, it is rumoured, are not always received with approval by his brother judges, says, in his amusing book *Scintillæ Juris*:

"It is a common error to suppose that our law has no sense of humour, because for the most part the judges who expound it have none."

But law is, after all, a serious business—at any rate for the litigants—and it would appear also for the attorneys, for while witticisms of the Bench and Bar abound, very few are recorded of the attorney and his client. "Law is law" wrote the satirist who decided not to adopt it as a profession. "Law is like a country dance; people are led up and down in it till they are tired. Law is like a book of surgery—there are a great many terrible cases in it. It is also like physic—they who take least of it are best off. Law is like a homely gentlewoman—very well to follow. Law is like a scolding wife—very bad when it follows us. Law is like a new fashion—people are bewitched to get into it. It is also like bad weather—most people are glad when they get out of it."

From very early times there have appeared on the Bench expounders of the law who by the phrase "for the most part" must be acquitted of Mr. Justice Darling's charge of having no sense of humour; judges who, like himself, have lightened the otherwise dreary routine of duty by pleasantries which in no way interfered with the course of justice. One of the earliest of our witty judges, whose brilliant sayings have come down to us, was Henry VIII's Lord Chancellor, Sir Thomas More, who lost his head because he would not acknowledge his king as head of the Church. To Sir Thomas Manners, Earl of Rutland, who had made a somewhat insolent remark, the Lord Chancellor quietly replied, 'Honores mutant mores'—Honours change manners. Sir Thomas's humour was what may be called *quiet*, because its effect did not immediately show itself in boisterous merriment, but would undoubtedly remain long in the remembrance of those to whom it was addressed. Made with as much courtesy as irony, is it likely his keeper in the Tower would ever forget his remark? "Assure yourself I do not dislike my cheer; but whenever I do, then spare not to thrust me out of your doors." Nor did his quaint humour desert him at the scaffold: "Master Lieutenant," said he, "I pray you see me safe up; for my coming down let me shift for myself." Even with his head on the block he could not resist a humorous remark, when putting aside his beard he said to the executioner, "Wait, my good friend, till I have removed my beard, for it has never offended his highness."

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Another judge of the sixteenth century, Sir Nicholas Bacon, who resembled Sir Thomas More in the gentleness of his happiest speeches, could also on occasion exhibit an unnecessary coarseness in his jocular retorts. A circuit story is told of him in which a convicted felon named Hog appealed for remission of his sentence on the ground that he was related to his lordship. "Nay, my friend," replied the judge, "you and I cannot be kindred except you be hanged, for hog is not bacon until it be well hung." This retort was not quite so coarse as that attributed to the Scottish judge, Lord Kames, two centuries later, who on sentencing to death a man with whom he had often played chess and very frequently been beaten, added after the solemn words of doom, "And noo, Matthew, ye'll admit that's checkmate for you."

To Lord Chancellor Hatton, also an Elizabethan judge who aimed at sprightliness on the Bench, a clever *mot* is attributed. The case before him was one concerning the limits of certain land. The counsel having remarked with emphasis, 'We lie on this side, my lord,' and the opposing counsel with equal vehemence having interposed, 'And we lie on this side, my lord'—the Lord Chancellor dryly observed, "If you lie on both sides, whom am I to believe?" It would seem that punning was as great a power in the Law Courts of that time as it is at the present day. When Egerton as

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Master of the Rolls was asked to commit a cause—refer it to a Master in Chancery—he would reply, "What has the cause done that it should be committed?"

Many witticisms of Westminster Hall, attributed to barristers of the Georgian and Victorian periods, are traceable to a much earlier date. There is the story of Serjeant Wilkins, whose excuse for drinking a pot of stout at mid-day was, that he wanted to fuddle his brain down to the intellectual standard of a British jury. Two hundred and fifty years earlier, Sir John Millicent, a Cambridgeshire judge, on being asked how he got on with his brother judges replied, "Why, i' faithe, I have no way but to drink myself down to the capacity of the Bench." And this merry thought has also been attributed to one eminent barrister who became Lord Chancellor, and to more than one Scottish advocate who ultimately attained to a seat on the Bench.

And to various celebrities of the later Georgian period has been attributed Lord Shaftesbury's reply to Charles II. When the king exclaimed, "Shaftesbury, you are the most profligate man in my dominions," the Chancellor answered somewhat recklessly, "Of a subject, sir, I believe I am."

Bullying witnesses is an old practice of the Bar, but for instances of it emanating from the Bench one has to go very far back. A witness with a long beard was giving evidence that was displeasing to Jeffreys, when judge, who said: "If your conscience is as large as your beard, you'll swear anything." The old man retorted: "My lord, if your lordship measures consciences by beards, your lordship has none at all."

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A somewhat similar story of Jeffreys' bullying manner, when at the Bar, is that of his cross-examining a witness in a leathern doublet, who had made out a complete case against his client. Jeffreys shouted: "You fellow in the leathern doublet, pray what have you for swearing?" The man looked steadily at him, and "Truly, sir," said he, "if you have no more for lying than I have for swearing, you might wear a leathern doublet as well as I."

Instances of disrespect to the Bench are rarely met with in early as happily in later days. There is, perhaps, the most flagrant example of young Wedderburn in the Scottish Court of Session, when with dramatic effect he threw off his gown and declared he would never enter the Court again; but he rose to be Lord Chancellor of England. Scarcely less disrespectful (but not said openly to the Bench) was young Edward Hyde when hinting that the death of judges was of small moment compared with his chances of preferment. "Our best news," he wrote to a friend, "is that we have good wine abundantly come over; our worst that the plague is in town, *and no judges die.*"

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**ALEXANDER WEDDERBURN,  
EARL OF ROSSLYN, LORD  
CHANCELLOR.**

In squabbles between the Bench and the Bar there are few stories that match for personality the retort of a counsel to Lord Fortescue. His lordship was disfigured by a purple nose of abnormal growth. Interrupting counsel one day with the observation: "Brother, brother, you are handling the case in a very lame manner," the angry counsel calmly retorted, "Pardon me, my lord; have patience with me and I will do my best to make the case as plain as—as—the nose on your lordship's face." Nor did the retort of an Attorney-General to a judge, after a warm discussion on a point which the latter claimed to decide, show much respect for the Bench. The judge closed the argument with "I ruled so and so."—"You ruled," muttered the Attorney-General. "You ruled! You were never fit to rule anything but a copy-book."

Verse has been used as a medium of much amusing legal wit and humour, although law and law cases do not offer very easy subjects for turning into rhyme. But a good illustration is afforded by Mr. Justice Powis, who had a habit of repeating the phrase, "Look, do you see," and "I humbly conceive." At York Assize Court on one occasion he said to Mr. Yorke, afterwards Lord Hardwicke, "Mr. Yorke, I understand you are going to publish a poetical version of 'Coke upon

"He that holdeth his lands in fee  
Need neither shake nor shiver,  
I humbly conceive, for, look, do you see,  
They are his and his heirs for ever."

In Sir James Burrows' reports is given a poetical version of Chief Justice Pratt's decision with regard to a woman of English birth who was the widow of a foreigner.

"A woman having a settlement,  
Married a man with none,  
The question was, he being dead,  
If what she had was gone.

Quoth Sir John Pratt, 'The settlement  
Suspended doth remain  
Living the husband; but him dead  
It doth revive again.'"

Chorus of Puisne Judges:

"Living the husband; but him dead  
It doth revive again."

The Chief Justice's decision having been reversed by his successor, Chief Justice Ryder's decision was reported:

"A woman having a settlement  
Married a man with none;  
He flies and leaves her destitute,  
What then is to be done?

Quoth Ryder the Chief Justice,  
'In spite of Sir John Pratt,  
You'll send her to the parish  
In which she was a brat.'

*Suspension of a settlement*  
Is not to be maintained.  
That which she had by birth subsists  
Until another's gained."

Chorus of Puisne Judges:

"That which she had by birth subsists  
Until another's gained."



**EDWARD THURLOW, BARON  
THURLOW. LORD CHANCELLOR.**

Many of the well-known witticisms attributed to great judges are so tinged with personality—even tending to malignity—that no one possessing respect for human nature can read them

without being tempted to regard them as mere biographical fabrications. But such a construction cannot be put upon the stories told of Lord Chancellor Thurlow, whose overbearing insolence to the Bar is well known. To a few friends like John Scott, Lord Eldon, and Lloyd Kenyon, Lord Kenyon, he could be consistently indulgent; but to those who provoked him by an independent and fearless manner he was little short of a persecutor. Once when Scott was about to follow his leader, who had made an unusually able speech, the Chancellor addressed him: "Mr. Scott, I am glad to find you are engaged in the cause, for I now stand some chance of knowing something about the matter." This same leader of the Bar on one occasion, in the excitement of professional altercation, made use of an undignified expression before Lord Thurlow; but before his lordship could take notice of it the counsel immediately apologised, saying, "My lord, I beg your lordship's pardon. I really forgot for the moment where I was." A silent recognition of the apology would have made the counsel feel his position more keenly, but the Chancellor could not let such an opportunity pass and immediately flashed out: "You thought you were in your own Court, I presume," alluding to a Welsh judgeship held by the offending counsel.

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As a contrast to Lord Thurlow's treatment of Scott's leader, the following story—given in Scott's own words—shows how the great Chancellor could unbend himself in the company of men who were in his favour. "After dinner, one day when nobody was present but Lord Kenyon and myself, Lord Thurlow said, 'Taffy, I decided a cause this morning, and I saw from Scott's face that he doubted whether I was right.' Thurlow then stated his view of the case, and Kenyon instantly said, 'Your decision was quite right.' 'What say you to that?' asked the Chancellor. I said, 'I did not presume to form a case on which they were both agreed. But I think a fact has not been mentioned, which may be material.' I was about to state the fact, and my reasons. Kenyon, however, broke in upon me, and with some warmth stated that I was always so obstinate there was no dealing with me. 'Nay,' interposed Thurlow, 'that's not fair. You, Taffy, are obstinate, and give no reasons. You, Jack, are obstinate too; but then you give your reasons, and d—d bad ones they are!'"

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Another anecdote again illustrates the Chancellor's treatment of even those who were on a friendly footing with him. Sir Thomas Davenport, a great Nisi Prius leader, had long flattered himself with the hope of succeeding to some valuable appointment in the law; but several good things passing by, he lost his patience and temper along with them. At last he addressed this laconic application to his patron: "The Chief Justiceship of Chester is vacant; am I to have it?" and received the following laconic answer: "No! by G—d! Kenyon shall have it."

Scarcely less courteous was this Lord Chancellor's treatment of a solicitor who endeavoured to prove to him a certain person's death. To all his statements the Chancellor replied, "Sir, that is no proof," till at last the solicitor losing patience exclaimed: "Really, my lord, it is very hard and it is not right that you should not believe me. I knew the man well: I saw the man dead in his coffin. My lord, the man was my client." "Good G—d, sir! why didn't you tell me that sooner? I should not have doubted the fact one moment; for I think nothing can be so likely to kill a man as to have you for his attorney."

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As Keeper of the Great Seal Thurlow had the alternate presentation to a living with the Bishop of ——. The Bishop's secretary called upon the Lord Chancellor and said, "My Lord Bishop of —— sends his compliments to your lordship, and believes that the next turn to present to —— belongs to his lordship."—"Give his lordship my compliments," replied the Chancellor, "and tell him that I will see him d—d first before he shall present."—"This, my lord," retorted the secretary, "is a very unpleasant message to deliver to a bishop." To which the Chancellor replied, "You are right, it is so; therefore tell the Bishop that *I will be* d—d first before he shall present."

Lord Campbell in his life of Thurlow says that in his youth the Chancellor was credited with wild excesses. There was a story, believed at the time, of some early amour with the daughter of a Dean of Canterbury, to which the Duchess of Kingston alluded when on her trial at the House of Lords. Looking Thurlow, then Attorney-General, full in the face she said, "That learned gentleman dwelt much on my faults, but I too, if I chose, could tell a Canterbury tale."

But with all his bitterness and sarcasm Lord Thurlow had a genuine sense of humour, as the following story of his Cambridge days illustrates—days when he was credited with more disorderly pranks and impudent escapades than attention to study. "Sir," observed a tutor, "I never come to the window but I see you idling in the Court."—"Sir," replied the future Lord Chancellor, "I never come into the Court but I see you idling at the window."

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**WILLIAM MURRAY, EARL OF  
MANSFIELD, LORD CHIEF  
JUSTICE.**

Mansfield was not credited with lively sensibility, but his humanity was shocked at the thought of killing a man for a trifling theft. Trying a prisoner at the Old Baily on the charge of stealing in a dwelling-house to the value of 40s.—when this was a capital offence—he advised the jury to find a gold trinket, the subject of the indictment, to be of less value. The prosecutor exclaimed with indignation, "Under 40s., my lord! Why, the *fashion* alone cost me more than double the sum."—"God forbid, gentlemen, we should hang a man for fashion's sake," observed Lord Mansfield to the jury.

An indictment was tried before him at the Assizes, preferred by parish officers for keeping an hospital for lying-in women, whereby the parish was burdened by illegitimate children. He expressed doubts whether this was an indictable offence, and after hearing arguments in support of it he thus gave his judgment. "We sit here under a Commission requiring us to *deliver* this gaol, and the statute has been cited to make it unlawful to *deliver* a woman who is with child. Let the indictment be quashed."

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Having met at supper the famous Dr. Brocklesby, he entered into familiar conversation with him, and there was an interchange of stories just a little trenching on the decorous. It so happened that the doctor had to appear next morning before Lord Mansfield in the witness-box; and on the strength of the previous evening's doings the witness, on taking up his position, nodded to the Chief Justice with offensive familiarity as to a boon companion. His lordship taking no notice of his salutation, but writing down his evidence, when he came to summing it up to the jury thus proceeded: "The next witness is one Rocklesby or Brocklesby, Brocklesby or Rocklesby—I am not sure which—and first he swears he is a physician."

Lord Chief Baron Parker, in his eighty-seventh year, having observed to Lord Mansfield who was seventy-eight: "Your lordship and myself are now at sevens and eights," the younger Chief Justice replied: "Would you have us to be all our lives at sixes and sevens? But let us talk of young ladies and not old age."

Trying an action which arose from the collision of two ships at sea, a sailor who gave an account of the accident said, "At the time I was standing abaft the binnacle."—"Where is abaft the binnacle?" asked Lord Mansfield; upon which the witness, who had taken a large share of grog before coming into Court, exclaimed loud enough to be heard by all present: "A pretty fellow to be a judge, who don't know where abaft the binnacle is!" Lord Mansfield, instead of threatening to commit him for contempt, said: "Well, my friend, fit me for my office by telling me where *abaft the binnacle is*; you have already shown me the meaning of *half-seas over*."

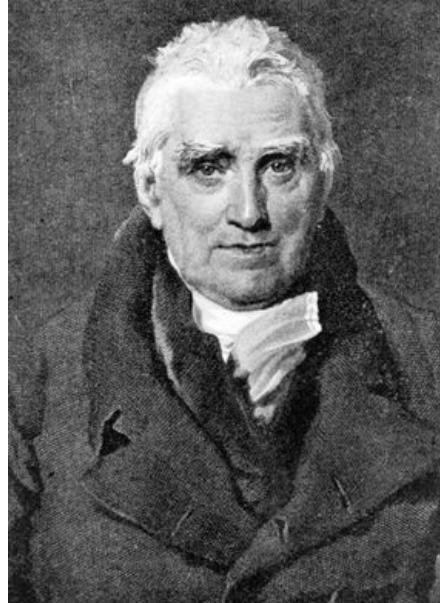
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On one occasion Lord Mansfield covered his retreat from an untenable position with a sparkling pleasantry. An old witness named ELM having given his evidence with remarkable clearness, although he was more than eighty years of age, Lord Mansfield examined him as to his habitual mode of living, and found he had been through life an early riser and a singularly temperate man. "Ay," remarked the Chief Justice, in a tone of approval, "I have always found that without temperance and early habits longevity is never attained." The next witness, the elder brother of this model of temperance, was then called, and he almost surpassed his brother as an intelligent and clear-headed utterer of evidence. "I suppose," observed Lord Mansfield, "that you are an early riser?"—"No, my lord," answered the veteran stoutly; "I like my bed at all hours, and special-*lie* I like it of a morning."—"Ah, but like your brother, you are a very temperate man?" quickly asked the judge, looking out anxiously for the safety of the more important part of his theory. "My lord," responded this ancient Elm, disdaining to plead guilty to a charge of habitual sobriety, "I am a very old man, and my memory is as clear as a bell, but I can't remember the night when I've gone to bed without being more or less drunk."—"Ah, my lord," Mr. Dunning exclaimed, "this old man's case supports a theory unheld by many persons—that habitual

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intemperance is favourable to longevity."—"No, no," replied the Chief Justice with a smile; "this old man and his brother merely teach us what every carpenter knows—that Elm, whether it be wet or dry, is a very tough wood."



**JOHN SCOTT, EARL OF  
ELDON, LORD CHANCELLOR.**

Lord Eldon's good humour gained him the affection of all counsel who practised before him, but there is one story—apocryphal it may be, coming from Lord Campbell—of a prejudice he had against Lord Brougham, who, in Scottish cases, frequently appeared before him in the House of Lords. Lord Eldon persisted in addressing the advocate as Mr. Bruffam. This was too much for Brougham, who was rather proud of the form and antiquity of his name, and who at last, in exasperation, sent a note to the Chancellor, intimating that his name was pronounced "Broom." At the conclusion of the argument the Chancellor stated, "Every authority upon the question has been brought before us: new Brooms sweep clean."

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As Lord Chancellor, Lord Eldon's great foible was an apparent inability to arrive at an early decision on any question: it was really a desire to weigh carefully all sides of a question before expressing his opinion. This hesitancy was expressed in the formula "I doubt," which became the subject of frequent jests among the members of the Bar.

Sir George Rose, in absence of the regular reporter of Lord Eldon's decisions, was requested to take a note of any decision which should be given. As a full record of all that was material, which had occurred during the day, Sir George made the following entry in the reporter's notebook:

"Mr. Leach made a speech,  
Angry, neat, but wrong;  
Mr. Hart, on the other part,  
Was heavy, dull, and long;  
Mr. Parker made the case darker,  
Which was dark enough without;  
Mr. Cooke cited his book;  
And the Chancellor said—I doubt."

This *jeu d'esprit*, flying about Westminster Hall, reached the Chancellor, who was very much amused with it, notwithstanding the allusion to his doubting propensity. Soon after, Sir George Rose having to argue before him a very untenable proposition, he gave his opinion very gravely, and with infinite grace and felicity thus concluded: "For these reasons the judgment must be against your clients; and here, Sir George, the Chancellor does not *doubt*."

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The following was Lord Eldon's answer to an application for a piece of preferment from his old friend Dr. Fisher, of the Charter House:

"DEAR FISHER,—I cannot, to-day, give you the preferment for which you ask.—I remain, your sincere friend, ELDON." Then, on the other side, "I gave it to you yesterday."

According to his biographer, Lord Eldon caused a loud laugh while the old Duke of Norfolk was fast asleep in the House of Lords, and amusing their lordships with "that tuneful nightingale, his nose," by announcing from the woolsack, with solemn emphasis, that the Commons had sent up a bill for "enclosing and dividing Great Snoring in the county of Norfolk!"

Like Lord Thurlow, Lord Eldon was in close intimacy with George III in the days when his Majesty's mind was supposed to be not very strong. "I took down to Kew," relates his lordship, "some Bills for his assent, and I placed on a paper the titles and the effect of them. The king,

being perhaps suspicious that my coming down might be to judge of his competence for public business, as I was reading over the titles of the different Acts of Parliament he interrupted me and said: 'You are not acting correctly, you should do one of two things; either bring me down the Acts for my perusal, or say, as Thurlow once said to me on a like occasion, having read several he stopped and said, "It is all d—d nonsense trying to make you understand them, and you had better consent to them at once.'"

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It is not often, but it sometimes happens that a judge finds himself in conflict with members of the public who are under no restraint of professional privilege or etiquette. Some maintain the dignity of the Court by fining and committing for contempt. Occasionally this may be necessary, but it has been found that delicate ridicule is often more effective. An attorney, pleading his cause before Lord Ellenborough, became exasperated because the untenable points he continually raised were invariably overruled, and exclaimed, "My lord, my lord, although your lordship is so great a man now, I remember the time when I could have got your opinion for five shillings." With an amused smile his lordship quietly observed, "Sir, I say it was not worth the money."

The same judge used to be greatly annoyed during the season of colds with the noise of coughing in Court. On one occasion, when disturbances of this kind recurred with more than usual frequency, he was seen fidgeting about in his seat, and availing himself of a slight cessation observed in his usual emphatic manner: "Some slight interruption one *might* tolerate, but there seems to be an *industry* of coughing."

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As an illustration of figurative oratory a good story is told of a barrister pleading before Lord Ellenborough: "My lord, I appear before you in the character of an advocate for the City of London; my lord, the City of London herself appears before you as a suppliant for justice. My lord, it is written in the book of nature."—"What book?" said Lord Ellenborough. "The book of nature."—"Name the page," said his lordship, holding his pen uplifted, as if to note the page down.

Moore relates the story of a noble lord in the course of one of his speeches saying, "I ask myself so and so," and repeating the words "I ask myself." "Yes," quietly remarked Lord Ellenborough, "and a d—d foolish answer you'll get."

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The comparison of a father and son who have both ascended the Bench has afforded a good story of a famous Scottish advocate which is told later, and the following is an equally cutting retort from the Bench to any assumed superiority through such a connection. A son of Lord Chief Justice Willes (who rose to the rank of a Puisne Judge) was checked one day for wandering from the subject. "I wish that you would remember," he exclaimed, "that I am the son of a Chief Justice." To which Justice Gould replied with great simplicity, "Oh, we remember your father, but he was a sensible man."

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When hanging was the sentence, on conviction, for crimes—in these days termed offences—which are now punished by imprisonment, some judges from meting out the sentence of death almost indiscriminately came to be known as "hanging judges." Justice Page was one of them. When he was decrepit he perpetrated a joke against himself. Coming out of the Court one day and shuffling along the street a friend stopped him to inquire after his health. "My dear sir," the judge replied, "you see I keep just hanging on—hanging on."

A Chief Justice of the "hanging" period, whose integrity was not above suspicion, was sitting in Court one day at his ease and lolling on his elbow, when a convict from the dock hurled a stone at him which fortunately passed over his head. "You see," said the learned man as he smilingly received the congratulations of those present—"you see now, if I had been an *upright judge* I had been slain."

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**LLOYD KENYON, BARON  
KENYON, LORD CHIEF  
JUSTICE.**

Some of the stories respecting Lord Kenyon's historical allusions and quotations are surely greatly exaggerated, or are pure inventions. In addressing a jury in a blasphemy case, he is reported to have said that the Emperor Julian "was so celebrated for the practice of every Christian virtue that he was called 'Julian the Apostle'"; and to have concluded an elaborate address in dismissing a grand jury with the following valediction: "Having thus discharged your consciences, gentlemen, you may return to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads on your pillows, saying to yourselves 'Aut Cæsar, aut nullus.'" And this was his remark on detecting the trick of an attorney to delay a trial: "This is the last hair in the tail of procrastination, and it must be plucked out."

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Among other failings attributed to this Lord Chief Justice was the extreme penuriousness he practised in his domestic arrangements and his dress. His shoes were patched to such an extent that little of their original material could be seen, and once when trying a case he was sitting on the bench in a way to expose them to all in Court. It was an action for breach of contract to deliver shoes soundly made, and to clinch a witness for the pursuer he suddenly asked, "Were the shoes anything like these?" pointing to his own. "No, my lord," replied the witness, "they were a good deal better and more genteeler."

As an example of his (Lord Kenyon's) style of addressing a condemned prisoner we have the following. A butler had been charged and convicted of stealing his master's wine.

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"Prisoner at the bar, you stand convicted on the most conclusive evidence of a crime of inexpressible atrocity—a crime that defiles the sacred springs of domestic confidence, and is calculated to strike alarm into the breast of every Englishman who invests largely in the choicer vintages of Southern Europe. Like the serpent of old, you have stung the hand of your protector. Fortunate in having a generous employer, you might without discovery have continued to supply your wretched wife and children with the comforts of sufficient prosperity, and even with some of the luxuries of affluence; but, dead to every claim of natural affection, and blind to your own real interest, you burst through all the restraints of religion and morality, and have for many years been *feathering* your nest with your master's *bottles*."

Lord Kenyon was warmly attached to George III, who had a high opinion of him; but like many of his lordship's contemporaries, his Majesty strongly deprecated the frequent outbursts of temper on the part of his Chief Justice. "At a levee, soon after an extraordinary explosion of ill-humour in the Court of King's Bench, his Majesty said to him: 'My Lord Chief Justice, I hear that you have lost your temper, and from my great regard for you, I am very glad to hear it, for I hope you will find a better one.'"

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Of Lord Chief Justice Tenterden, Lord Campbell asserts that he once, and only once, uttered a pun. A learned gentleman, who had lectured on the law and was too much addicted to oratory came to argue a special demurrer before him. "My client's opponent," said the figurative advocate, "worked like a mole under ground, *clam et secretè*." His figures only elicited a grunt from the Chief Justice. "It is asserted in Aristotle's *Rhetoric*—"—"I don't want to hear what is asserted in Aristotle's *Rhetoric*," interposed Lord Tenterden. The advocate shifted his ground and took up, as he thought, a safe position. "It is laid down in the *Pandects* of Justinian—" "Where are you got now?" "It is a principle of the civil law—" "Oh sir," exclaimed the judge, with a tone and voice which abundantly justified his assertion, "we have nothing to do with the *civil* law in this Court."

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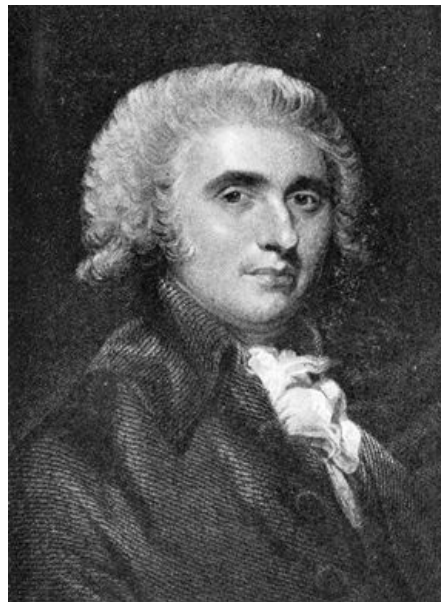
Judges sometimes stray into humour without intending it. At an election petition trial one allegation was, that a number of rosettes, or "marks of distinction," had been kept in a table drawer in the central committee-room. To meet this charge it was thought desirable to call witnesses to swear that the only table in the room consisted of planks laid on trestles. "So that the table had no proper legs," said counsel cheerfully. "Never mind whether it had proper legs," said one of the learned judges. "The more important question is: Had it drawers?"

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And in *The Story of Crime* the author recalls an instance of a judge unconsciously furnishing material for laughter in Court. "At the beginning of the session at the Old Baily a good deal of work is got through by the judge who takes the small cases, and it may be this fact that accounted for the confusion of thought which he describes. One of the prisoners was charged with stealing a camera, and after all the evidence had been taken his lordship proceeded to sum up to the jury. He began by correctly describing the stolen article as a camera, but had not gone very far before the camera had become a concertina, and by the time he had finished the concertina had become an accordion. And he never once saw his mistake. The usher noticed it at the first trip, and kept repeating in a kind of hoarse stage-whisper, 'Camera! Camera!' but his voice did not reach the Bench, and so the complicated article remained on record."

Mr. Andrews in his book, *The Lawyer in History, Literature, and Humour*, relates that a leader of the Bar on rising to address the drowsy jury after a ponderous oration by Sir Samuel Prime, said: "Gentlemen, after the long speech of the learned serjeant—" "Sir, I beg your pardon," interrupted Mr. Justice Nares, "you might say—you might say—after the long soliloquy, for my brother Prime has been talking an hour to himself."

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**THOMAS ERSKINE, BARON  
ERSKINE, LORD  
CHANCELLOR.**

Thomas, Lord Erskine was the youngest of three brothers, who were all distinguished men. The eldest was the well-known Earl of Buchan, one of the founders of the Society of Antiquaries of Scotland, whose eccentricities formed the subject of much gossip in the Scottish capital. To an English nobleman he declared: "My brothers Harry and Tom are certainly remarkable men, but they owe everything to me." Seeing a look of surprise upon his friend's face he added: "Yes, it is true; they owe everything to me. On my father's death they pressed me for an annual allowance. I knew this would have been their ruin, by relaxing their industry. So making a sacrifice of my inclinations to gratify them I refused to give them a farthing, and they have thriven ever since—*owing everything to me.*"

Henry, the second brother, was universally beloved and respected, and one of the most popular advocates at the Scottish Bar. He was twice Lord-Advocate for Scotland—on the second occasion under the Ministry of "All the Talents," when his younger brother was Lord Chancellor. He was famous in the Parliament House and outside of it for his witticisms, a selection of which will be given later.

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Thomas, who became Lord Chancellor, obtained an unique influence while practising at the Bar, and, like his older brother, he was a universal favourite. "Juries have declared," said Lord Brougham, "that they have felt it impossible to remove their looks from him when he had riveted, and as it were fascinated, them by his first glance. Then hear his voice, of surpassing sweetness, clear, flexible, strong, exquisitely fitted to strains of serious earnestness." Yet although he did not rely on wit, or humour, or sarcasm in addressing a jury, he could use them to effect in cross-examination. "You were born and bred in Manchester, I perceive," he said to a witness. "Yes."—"I

knew it," said Erskine carelessly, "from the absurd tie of your neckcloth." The witness' presence of mind was gone, and he was made to unsay the greatest part of his evidence in chief. Another witness confounding 'thick' whalebone with 'long' whalebone, and unable to distinguish the difference after counsel's explanation, Erskine exclaimed, "Why, man, you do not seem to know the difference between what is *thick* or what is *long*! Now I tell you the difference. You are *thick*-headed, and you are not *long*-headed."

Lord Erskine's addiction to punning is well known, and many examples might be cited. An action was brought against a stable-keeper for not taking proper care of a horse. "The horse," said counsel for the plaintiff, "was turned into the stable, with nothing to eat but musty hay. To such the horse 'demurred.'"—"He should have 'gone to the country,'" at once retorted Lord Erskine. For the general reader it should be explained that "demurring" and "going to the country" are technical terms for requiring a cause to be decided on a question of law by the judge, or on a question of fact by the jury. Here is another. A low-class attorney who was much employed in bail-business and moving attachments against the sheriff for not "bringing in the body"—that is, not arresting and imprisoning a debtor, when such was the law—sold his house in Lincoln's Inn Fields to the Corporation, of Surgeons to be used as their Hall. "I suppose it was recommended to them," said Erskine, "from the attorney being so well acquainted 'with the practice of bringing in the body!'"

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Perhaps one of his smartest puns he relates himself. "A case being laid before me by my veteran friend, the Duke of Queensberry—better known as 'old Q'—as to whether he could sue a tradesman for breach of contract about the painting of his house; and the evidence being totally insufficient to support the case, I wrote thus: 'I am of opinion that this action will not lie unless the witnesses do.'"

He was also fond of a practical joke. In answer to a circular letter from Sir John Sinclair, proposing that a testimonial should be presented to himself for his eminent public services, Lord Erskine replied:

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"MY DEAR SIR JOHN,—I am certain there are few in this kingdom who set a higher value on your public services than myself; and I have the honour to subscribe"—then, on turning over the leaf, was to be found—"myself, your most obedient faithful servant,

"ERSKINE."

"Gentlemen of the jury," were his closing words after an impassioned address, "the reputation of a cheesemonger in the City of London is like the bloom upon a peach. Breathe upon it, and it is gone for ever."

Among many apocryphal stories told of expedients by which smart counsel have gained verdicts, this one respecting a case in which Mr. Justice Gould was the judge and Erskine counsel for the defendant is least likely of credit. The judge entertained a most unfavourable opinion of the defendant's case, but being very old was scarcely audible, and certainly unintelligible, to the jury. While he was summing up the case, Erskine, sitting on the King's Counsel Bench, and full in the view of the jury, nodded assent to the various remarks which fell from the judge; and the jury, imagining that they had been directed to find for the defendant, immediately did so.

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When at the Bar, Erskine was always encouraged by the appreciation of his brother barristers. On one occasion, when making an unusual exertion on behalf of a client, he turned to Mr. Garrow, who was his colleague, and not perceiving any sign of approbation on his countenance, he whispered to him, "Who do you think can get on with that d—d wet blanket face of yours before him."

Nor did he always exhibit graciousness to older members. One nervous old barrister named Lamb, who usually prefaced his pleadings with an apology, said to Erskine one day that he felt more timid as he grew older. "No wonder," replied Erskine, "the older the lamb the more sheepish he grows."

When he was Lord Chancellor he was invited to attend the ministerial fish dinner at Greenwich—known in later years as the Whitebait Dinner—he replied: "To be sure I will attend. What would your fish dinner be without the Great Seal?"

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When a stupid jury returns an obviously wrong verdict the judge must feel himself in an awkward position; but in such cases—if they ever occur now—a good precedent has been set by Mr. Justice Maule who, when in that predicament, addressed the prisoner in these terms:

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"Prisoner, your counsel thinks you innocent, the prosecution thinks you innocent, and I think you innocent. But a jury of your own fellow-countrymen, in the exercise of such common sense as they possess, have found you guilty, and it remains that I should pass sentence upon you. You will be imprisoned for one day, and as that day was yesterday, you are free to go about your business."

"May God strike me dead! my lord, if I did it," excitedly exclaimed a prisoner who had been tried before the same justice for a serious offence, and a verdict of "guilty" returned by the jury. The judge looked grave, and paused an unusually long time before saying a word. At last, amid

breathless silence, he began: "As Providence has not seen fit to interpose in your case, it now becomes my duty to pronounce upon you the sentence of the law," &c. When somewhat excited over a very bad case tried before him he would delay sentence until he felt calmer, lest his impulse or his temper should lead him astray. On one such occasion he exclaimed, "I can't pass sentence now. I might be too severe. I feel as if I could give the man five-and-twenty years' penal servitude. Bring him up to-morrow when I feel calmer."—"Thank you, my lord," said the prisoner, "I know you will think better of it in the morning." Next day the man appeared in the dock for sentence. "Prisoner," said the judge, "I was angry yesterday, but I am calm to-day. I have spent a night thinking of your awful deeds, and I find on inquiry I can sentence you to penal servitude for life. I therefore pass upon you that sentence. I have thought better of what I was inclined to do yesterday."

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There are instances of brief summing up of a case by judges, but few in the terms expressed by this worthy judge. "If you believe the witnesses for the plaintiff, you will find for the defendant; if you believe the witnesses for the defendant, you will find for the plaintiff. If, like myself, you don't believe any of them, Heaven knows which way you will find. Consider your verdict."

To Mr. Justice Maule a witness said: "You may believe me or not, but I have stated not a word that is false, for I have been wedded to truth from my infancy."—"Yes, sir," said the judge dryly; "but the question is, *how long have you been a widower?*"

In the good old days a learned counsel of ferocious mien and loud voice, practising before him, received a fine rebuke from the justice. No reply could be got from an elderly lady in the box, and the counsel appealed to the judge. "I really cannot answer," said the trembling lady. "Why not, ma'am?" asked the judge. "Because, my lord, he frightens me so."—"So he does me, ma'am," replied the judge.

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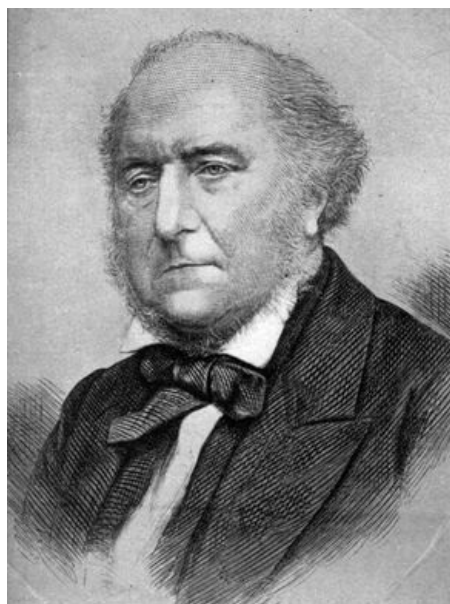
He was as a rule patient and forbearing, and seldom interfered with counsel in their mode of laying cases before a jury or the Bench, but once he was fairly provoked to do so, by the confused blundering way in which one of them was trying to instil a notion of what he meant into the minds of the jury. "I am sorry to interfere, Mr. —," said the judge, "but do you not think that, by introducing a little order into your narrative, you might possibly render yourself a trifle more intelligible? It may be my fault that I cannot follow you—I know that my brain is getting old and dilapidated; but I should like to stipulate for some sort of order. There are plenty of them. There is the chronological, the botanical, the metaphysical, the geographical—even the alphabetical order would be better than no order at all."

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Baron Thomson, of the Court of Exchequer, was asked how he got on in his Court with the business, when he sat between Chief Baron Macdonald and Baron Graham. He replied, "What between snuff-box on one side, and chatterbox on the other, we get on pretty well!"

Sir Richard Bethel, Lord Westbury, and Lord Campbell were on very friendly terms. An amusing story is told of a meeting of the two in Westminster Hall, when the first rumour of Lord Campbell's appointment as Lord Chancellor was current. The day being cold for the time of the year, Lord Campbell had gone down to the House of Lords in a fur coat, and Bethel, observing this, pretended not to recognise him. Thereupon Campbell came up to him and said: "Mr. Attorney, don't you know me?"—"I beg your pardon, my lord," was the reply. "I mistook you for the *Great Seal*."

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**RICHARD BETHEL, BARON  
WESTBURY, LORD  
CHANCELLOR.**

Lord Cranworth, Vice-Chancellor, after hearing Sir Richard Bethel's argument in an appeal, said

he "would turn the matter over in his mind." Sir Richard turning to his junior with his usual bland calm utterance said: "Take a note of that; his honour says he will turn it over in what he is pleased to call his mind."

Sir James Scarlett, Lord Abinger, had to examine a witness whose evidence would be somewhat dangerous unless he was thrown off his guard and "rattled." The witness in question—an influential man, whose vulnerable point was said to be his self-esteem—was ushered into the box, a portly overdressed person, beaming with self-assurance. Looking him over for a few minutes without saying a word Sir James opened fire: "Mr. Tompkins, I believe?"—"Yes."—"You are a stockbroker, I believe, are you not?"—"I ham." Pausing for a few seconds and making an attentive survey of him, Sir James remarked sententiously, "And a very fine and well-dressed ham you are, sir."

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In a breach of promise case Scarlett appeared for the defendant, who was supposed to have been cajoled into the engagement by the plaintiff's mother, a titled lady. The mother, as a witness, completely baffled the defendant's clever counsel when under his cross-examination; but by one of his happiest strokes of advocacy, Scarlett turned his failure into success. "You saw, gentlemen of the jury, that I was but a child in her hands. *What must my client have been?*"

Sir James was a noted cross-examiner and verdict-getter, but on one occasion he was beaten. Tom Cooke, a well-known actor and musician in his day, was a witness in a case in which Sir James had him under cross-examination.

Scarlett: "Sir, you say that the two melodies are the same, but different; now what do you mean by that, sir?"

Cooke: "I said that the notes in the two copies are alike, but with a different accent."

Scarlett: "What is a musical accent?"

Cooke: "My terms are nine guineas a quarter, sir."

Scarlett (ruffled): "Never mind your terms here. I ask you what is a musical accent? Can you see it?"

Cooke: "No."

Scarlett: "Can you feel it?"

Cooke: "A musician can."

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Scarlett (angrily): "Now, sir, don't beat about the bush, but explain to his lordship and the jury, who are expected to know nothing about music, the meaning of what you call accent."

Cooke: "Accent in music is a certain stress laid upon a particular note, in the same manner as you would lay stress upon a given word, for the purpose of being better understood. For instance, if I were to say, 'You are an *ass*,' it rests on *ass*, but if I were to say, '*You* are an *ass*,' it rests on *you*, Sir James." The judge, with as much gravity as he could assume, then asked the crestfallen counsel, "Are you satisfied, Sir James."—"The witness may go down," was the counsel's reply.

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Lord Justice Holt, when a young man, was very dissipated, and belonged to a club, most of whose members took an infamous course of life. When his lordship was engaged at the Old Baily a man was convicted of highway robbery, whom the judge remembered to have been one of his early companions. Moved by curiosity, Holt, thinking the man did not recognise him, asked what had become of his old associates. The culprit making a low bow, and giving a deep sigh, replied, "Oh, my lord, they are all hanged but your lordship and I."

We have already given examples of personalities in the retorts of counsel upon members of the Bench, and if the same derogatory reflection can be traced in the two following anecdotes of judges' retorts on counsel, it is at least veiled in finer sarcasm. A nervous young barrister was conducting a first case before Vice-Chancellor Bacon, and on rising to make his opening remarks began in a faint voice: "My lord, I must apologise—er—I must apologise, my lord"—"Go on, sir," said his lordship blandly; "so far the Court is with you." The other comes from an Australian Court. Counsel was addressing Chief Justice Holroyd when a portion of the plaster of the Court ceiling fell, and he stopping his speech for the moment, incautiously advanced the suggestion, "Dry rot has probably been the cause of that, my lord."—"I am quite of your opinion, Mr. —," observed his lordship.

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On the other hand, judges can be severely personal at times, and Lord Justice Chitty was almost brutal in a case where counsel had been arguing to distraction on a bill of sale. "I will now proceed to address myself to the furniture—an item covered by the bill," counsel continued. "You have been doing nothing else for the last hour," lamented the weary judge.

And Mr. Justice Wills once made a rather cutting remark to a barrister. The barrister was, in the judge's private opinion, simply wasting the time of the Court, and, in the course of a long-winded speech, he dwelt at quite unnecessary length on the appearance of certain bags connected with the case. "They might," he went on pompously, "they might have been full bags, or they might have been half-filled bags, or they might even have been empty bags, or—."—"Or perhaps," dryly

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interpolated the judge, "they might have been wind-bags!"



**HENRY BROUGHAM, BARON  
BROUGHAM AND VAUX, LORD  
CHANCELLOR.**

When Lord Brougham attained the position of Lord Chancellor he was greatly addicted to the habit of writing during the course of counsel's argument of the case being heard before him. On one occasion this practice so annoyed Sir Edward Sugden, whenever he noticed it, that he paused in the course of his argument, expecting his lordship to stop writing; but the Chancellor, without even looking up, remarked, "Go on, Sir Edward; I am listening to you."—"I observe that your lordship is engaged in writing, and not favouring me with your attention," replied Sir Edward. "I am signing papers of mere form," warmly retorted the Chancellor. "You may as well say that I am not to blow my nose or take snuff while you speak."

When counsel at the Bar, a witness named John Labron was thus cross-examined by Brougham at York Assizes:

"What are you?"

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"I am a farmer, and malt a little."

"Do you know Dick Strother?"

"No."

"Upon your oath, sir, are you not generally known by the name of Dick Strother?"

"That has nothing to do with this business."

"I insist upon hearing an answer. Have you not obtained that name?"

"I am sometimes called so."

"Now, Dick, as you admit you are so called, do you know the story of the hare and the ball of wax?"

"I have heard it."

"Then pray have the goodness to relate it to the judge and the jury."

"I do not exactly remember it."

"Then I will refresh your memory by relating it myself. Dick Strother was a cobbler, and being in want of a hare for a friend, he put in his pocket a ball of wax and took a walk into the fields, where he soon espied one. Dick then very dexterously threw the ball of wax at her head, where it stuck, which so alarmed poor puss that in the violence of her haste she ran in contact with the head of another; both stuck fast together, and Dick, lucky Dick! caught both. Dick obtained great celebrity by telling this wondrous feat, which he always affirmed as a truth, and from that every notorious liar in Thorner bears the title of Dick Strother. Now, Dick—I mean John—is not that the reason why you are called Dick Strother?"

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"It may be so."

"Then you may go."

The same turbulent spirit (Lord Brougham) fell foul of many other law lords. It is well known that in a speech made at the Temple he accused Lord Campbell, who had just published his *Lives of*



*the Chancellors*, of adding a new terror to death. Lord Campbell tells an amusing story which shows that he could retort with effect upon his noble and learned friend. He says that he called one morning upon Brougham at his house in Grafton Street, who "soon rushed in very eagerly, but suddenly stopped short, exclaiming, 'Lord bless me, is it you? They told me it was Stanley'; and notwithstanding his accustomed frank and courteous manner, I had some difficulty in fixing his attention. In the evening I stepped across the House to the Opposition Bench, where Brougham and Stanley were sitting next each other, and, addressing the latter in the hearing of the former, I said, 'Has our noble and learned friend told you the disappointment he suffered this morning? He thought he had a visit from the Leader of the Protectionists to offer him the Great Seal, and it turned out to be only Campbell come to bore him about a point of Scotch law.' Brougham: 'Don't mind what Jack Campbell says; he has a prescriptive privilege to tell lies of all Chancellors, dead and living.'"

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According to the same authority, Brougham was at one time very anxious to be made an earl, but his desire was entirely quenched when Lord John Russell gave an earldom to Lord Chancellor Cottenham. He is said to have been so indignant that he either wrote or dictated a pamphlet in which the new creation was ridiculed, and to which was appended the significant motto, "The offence is rank."

The common feeling with regard to Sir James Scarlett's (Lord Abinger) success in gaining verdicts led to the composition of the following pleasantry, attributed to Lord Campbell. "Whereas Scarlett had contrived a machine, by using which, while he argued, he could make the judges' heads nod with pleasure, Brougham in course of time got hold of it; but not knowing how to manage it when he argued, the judges, instead of nodding, shook their heads."

And it is Lord Campbell who has preserved the following specimen of a judge's concluding remarks to a prisoner convicted of uttering a forged one-pound note. After having pointed out to him the enormity of the offence, and exhorted him to prepare for another world, added: "And I trust that through the merits and the mediation of our Blessed Redeemer, you may there experience that mercy which a due regard to the *credit of the paper currency* of the country forbids you to hope for here."

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Campbell married Miss Scarlett, a daughter of Lord Abinger, and was absent from Court when a case in which he was to appear was called before Mr. Justice Abbot. "I thought, Mr. Brougham," said his lordship, "that Mr. Campbell was in this case?"—"Yes, my lord," replied Mr. Brougham, with that sarcastic look peculiarly his own. "He was, my lord, but I understand he is ill."—"I am sorry to hear that, Mr. Brougham," said the judge. "My lord," replied Mr. Brougham, "it is whispered here that the cause of my learned friend's absence is scarlet fever."



**JOHN CAMPBELL, BARON  
CAMPBELL, LORD  
CHANCELLOR.**

In his native town of Cupar, Fife, Lord Chancellor Campbell's abilities and position were not so much appreciated as they were elsewhere. This was a sore point with his father, who was parish minister, and when the son was not selected by the town authorities to conduct their legal business in London the future Lord Chancellor also felt affronted. On the publication of the *Lives of the Chancellors* some of his townsmen wrote asking him to present a copy to the local library of his native town, which gave Campbell an opportunity to square accounts with them for their past neglect of him, for he curtly replied to their request that "they could purchase the book from any bookseller." An old lady of the town relating some gossip about the Campbell family said, "They meant John for the Church, but he went to London *and got on very well*." Such was the good lady's idea of the relative positions of minister of a Scottish parish and Lord Chancellor of

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England.

The difference in the pronunciation of a word led to an amiable contest between Lord Campbell and a learned Q.C. In an action to recover damages to a carriage the counsel called the vehicle a "brougham," pronouncing both syllables of the word. Lord Campbell pompously observed, "Broom is the usual pronunciation—a carriage of the kind you mean is not incorrectly called a 'Broom'—that pronunciation is open to no grave objection, and it has the advantage of saving the time consumed by uttering an extra syllable." Later in the trial Lord Campbell alluding to a similar case referred to the carriage which had been injured as an "Omnibus."—"Pardon me, my lord," interposed the Q.C., "a carriage of the kind to which you draw attention is usually termed a 'bus'; that pronunciation is open to no grave objection, and it has the great advantage of saving the time consumed by uttering *two* extra syllables."



**SIR SAMUEL MARTIN, BARON  
OF EXCHEQUER.**

Mr. Martin (afterwards Baron Martin), when at the Bar, was addressing the Court in an insurance case, when he was interrupted by Baron Alderson, who said, "Mr. Martin, do you think any office would insure your life?"—"Certainly, my lord," replied Mr. Martin, "mine is a very good life."—"You should remember, Mr. Martin, that yours is brief existence." [Pg 45]

This judge's reason for releasing a juryman from duty was equally smart. The juryman in question confessed that he was deaf in one ear. "Then leave the box before the trial begins," observed his lordship; "it is necessary that the jurymen should hear *both* sides."

Baron Martin was one of the good-natured judges who from the following story seem to stretch that amiable quality to its fullest extent. In sentencing a man convicted of a petty theft he said: "Look, I hardly know what to do with you, but you can take six months."—"I can't take that, my lord," said the prisoner; "it's too much. I can't take it; your lordship sees I did not steal very much after all." The Baron indulged in one of his characteristic chuckling laughs, and said: "Well that's vera true; ye didn't steal *much*. Well then, ye can tak' *four*. Will that do—four months?"—"No, my lord, but I can't take that neither."—"Then take *three*."—"That's nearer the mark, my lord," replied the prisoner, "but I'd rather you'd make it *two*, if you'll be so kind."—"Very well then, tak' two," said the judge; "and don't come again. If you do, I'll give you—well, it'll all depend." [Pg 46]



**FREDERICK THESIGER,  
BARON CHELMSFORD, LORD  
CHANCELLOR.**

Lord Erskine's punning upon legal terms has already been noticed, but no better quip is recorded than that of Lord Chelmsford, when as Sir Frederick Thesiger, and a leader at the Bar, he took exception to the irregular examination of a witness by a learned serjeant. "I have a right," maintained the serjeant, "to deal with my witness as I please."—"To that I offer no objection," retorted Sir Frederick. "You may *deal* as you like, but you shan't *lead*."

On all occasions Samuel Warren, the author of *Ten Thousand a Year*, was given to boasting, at the Bar mess, of his intimacy with members of the peerage. One day he was saying that, while dining lately at the Duke of Leeds, he was surprised at finding no fish of any kind was served. "That is easily accounted for," said Thesiger; "they had probably eaten it all *upstairs*."

Walking down St. James's Street one day, Lord Chelmsford was accosted by a stranger, who exclaimed, "Mr. Birch, I believe."—"If you believe that, sir, you'll believe anything," replied his lordship as he passed on.



**SIR ALEXANDER COCKBURN,  
BART., LORD CHIEF JUSTICE.**

In the recently published *Cockburn Family Records* the following is told of the Chief Justice's ready wit:

"At a certain trial an extremely pretty girl was called as a witness. The Lord Chief Justice was very particular about her giving her full name and address. Of course he took note. So did the sheriff's officer! That evening they both arrived at the young lady's door simultaneously, whereupon Sir Alexander tapped the officer on the shoulder, remarking, 'No, no, no, Mr. Sheriff's Officer, judgment first, execution afterwards!'"

There never was a barrister whose rise at the Bar was more rapid or remarkable than that of Sir Alexander Cockburn, and along with him was his friend and close associate as a brother lawyer of

the Crown and Bench of the same Inn, Sir Richard Bethel, who became Lord Chancellor a few years after Sir Alexander was made Chief Justice. Sir Richard once said to his colleague, "My dear fellow, equity will swallow up your common law."—"I don't know about that," said Sir Alexander, "but you'll find it rather hard of digestion."

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Although the wit of Lord Justice Knight Bruce was somewhat sarcastic it was rarely so severe as that of Lord Westbury. There was always a tone of good humour about it. He had indeed a kind of grave judicial waggery, which is well exemplified in the following judgment in a separation suit between an attorney and his wife. "The Court has been now for several days occupied in the matrimonial quarrels of a solicitor and his wife. He was a man not unaccustomed to the ways of the softer sex, for he already had nine children by three successive wives. She, however—herself a widow—was well informed of these antecedents; and it appears did not consider them any objection to their union; and they were married. No sooner were they united, however, than they were unhappily disunited by unhappy disputes as to her property. These disputes disturbed even the period usually dedicated to the softer delights of matrimony, and the honeymoon was occupied by endeavours to induce her to exercise a testamentary power of appointment in his favour. She, however, refused, and so we find that in due course, at the end of the month, he brought home with some disgust his still intestate bride. The disputes continued, until at last they exchanged the irregular quarrels of domestic strife for the more disciplined warfare of Lincoln's Inn and Doctors Commons."

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Of this judge the story is told that a Chancery counsel in a long and dry argument quoted the legal maxim—*expressio unius est exclusio alterius*—pronouncing the "i" in *unius* as short as possible. This roused his lordship from the drowsiness into which he had been lulled. "Unyus! Mr. —? We always pronounced that *unius* at school."—"Oh yes, my lord," replied the counsel; "but some of the poets use it short for the sake of the metre."—"You forget, Mr. —," rejoined the judge, "that we are prosing here."

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Mr. Justice Willes was a judge of kindly disposition, and when he had to convey a rebuke he did so in some delicate and refined way like this. A young barrister feeling in a hobble, wished to get out of it by saying, "I throw myself on your lordship's hands."—"Mr. —, I decline the burden," replied the learned judge.

One day in judge's chambers, after being pressed by counsel very strongly against his own views, he said with quaint humour: "I'm one of the most obstinate men in the world."—"God forbid that I should be so rude as to contradict your lordship," replied the counsel.

Mr. Montague Williams in his *Leaves of a Life* relates the following story of Mr. Justice Byles. He was once hearing a case in which a woman was charged with causing the death of her child by not giving it proper food, or treating it with the necessary care. Mr. F—, of the Western Circuit, conducted the defence, and while addressing the jury said:

"Gentlemen, it appears to be impossible that the prisoner can have committed this crime. A mother guilty of such conduct to her own child? Why, it is repugnant to our better feelings"; and then being carried away by his own eloquence, he proceeded: "Gentlemen, the beasts of the field, the birds of the air, suckle their young, and—"

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But at this point the learned judge interrupted him, and said:

"Mr. F—, if you establish the latter part of your proposition, your client will be acquitted to a certainty."

And to the same authority we are indebted for a judge's gentle but sarcastic reproof of a prosing counsel. In an action for false imprisonment, heard before Mr. Justice Wightman, Ribton was addressing the jury at great length, repeating himself constantly, and never giving the slightest sign of winding up. When he had been pounding away for several hours, the good old judge interposed, and said: "Mr. Ribton, you've said that before."—"Have I, my lord?" said Ribton; "I'm very sorry. I quite forgot it."—"Don't apologise, Mr. Ribton," was the answer. "I forgive you; for it was a very long time ago."

A very old story is told of a highwayman who sent for a solicitor and inquired what steps were necessary to be taken to have his trial deferred. The solicitor answered that he would require to get a doctor's affidavit of his illness. This was accordingly done in the following manner: "The deponent verily believes that if the said — is obliged to take his trial at the ensuing sessions, he will be in imminent danger of his life."—"I verily believe so too," replied the judge, and the trial proceeded immediately.

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Some judges profess ignorance of slang terms used in evidence, and seek explanation from counsel. Lord Coleridge in the following story had his inquiry not only answered but illustrated. A witness was describing an animated conversation between the pursuer and defendant in a case

and said: "Then the defendant turned and said, 'If 'e didn't 'owld 'is noise 'ed knock 'im off 'is peark.'"—"Peark? Mr. Shee, what is meant by peark?" asked the Lord Chief Justice. "Oh, peark, my lord, is any position when a man elevates himself above his fellows—for instance, a bench, my lord."

Another story illustrating this alleged ignorance of every-day terms used by the masses comes from the Scottish Court of Session. In this instance the explanation was volunteered by the witness who used the term. One of the counsel in the case was Mr. (now Lord) Dewar, who was cross-examining the witness on a certain incident, and drew from him the statement that he (the witness) had just had a "nip." "A nip," said the judge; "what is a nip?"—"Only a small Dewar, my lord," explained the witness.

Lord Russell of Killowen, himself a Lord Chief Justice, tells some amusing stories of Lord Coleridge in his interesting reminiscences of that great judge in the *North American Review*. When at the Bar he was counsel in a remarkable case—Saurin against Starr. The pursuer, an Irish lady, sued the Superior of a religious order at Hull for expulsion without reasonable cause. Mr. Coleridge cross-examined a Mrs. Kennedy, one of the superintendents of the convent, who had mentioned in her evidence, among other peccadilloes of the pursuer, that she had been found in the pantry eating strawberries, when she should have been attending some class duties.

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Mr. Coleridge: "Eating strawberries, really!"

Mrs. Kennedy: "Yes, sir, she was eating strawberries."

Mr. Coleridge: "How shocking!"

Mrs. Kennedy: "It was forbidden, sir."

Mr. Coleridge: "And did you, Mrs. Kennedy, really consider there was any great harm in that?"

Mrs. Kennedy: "No, sir, not in itself, any more than there was harm in eating an apple; but you know, sir, the mischief that came from that."

When as Lord Chief Justice, Lord Coleridge visited the United States, he was continually pestered by interviewers, and one of them failing to draw him, began to disparage the old country in its physical features and its men. Lord Coleridge bore it all in good part; finally the interviewer said, "I am told, my lord, you think a great deal of your great fire of London. Well, I guess, that the conflagration we had in the little village of Chicago made your great fire look very small." To which his lordship blandly responded: "Sir, I have every reason to believe that the great fire of London was quite as great as the people of that time desired."

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There are few of Lord Bowen's witticisms from the Bench in circulation, but his after-dinner stories are worth recording, and perhaps one of the best is that given in *Anecdotes of the Bench and Bar*, as told by himself in the following words: "One of the ancient rabbinical writers was engaged in compiling a history of the minor prophets, and in due course it became his duty to record the history of the prophet Daniel. In speaking of the most striking incident in the great man's career—I refer to his critical position in the den of lions—he made a remark which has always seemed to me replete with judgment and observation. He said that the prophet, notwithstanding the trying circumstances in which he was placed, had one consolation which has sometimes been forgotten. He had the consolation of knowing that when the dreadful banquet was over, at any rate it was not he who would be called upon to return thanks."

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The following story cannot be classed a witticism from the Bench, but the judge clearly gave the opening for the lady's smart retort.

Mrs. Weldon, a well-known lady litigant in the Courts a generation ago, was on one occasion endeavouring in the Court of Appeal to upset a judgment of Vice-Chancellor Bacon, and one ground of complaint was that the judge was too old to understand her case. Thereupon Lord Esher said: "The last time you were here you complained that your case had been tried by my brother Bowen, and you said he was only a bit of a boy, and could not do you justice. Now you come here and say that my brother Bacon was too old. What age do you want the judge to be?"—"Your age," promptly replied Mrs. Weldon, fixing her bright eyes on the handsome countenance of the Master of the Rolls.

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On Charles Phillips, who became a judge of the Insolvent Court, noticing a witness kiss his thumb instead of the Testament, after rebuking him said, "You may think to *desave* God, sir, but you won't desave me."

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**SIR HENRY HAWKINS, LORD  
BRAMPTON.**

That racy and turf-attending judge, Lord Brampton, better known as Sir Henry Hawkins, tells many good stories of himself in his *Reminiscences*, but it is the unconscious humorist of Marylebone Police Court who records this *bon mot* of Sir Henry.

An old woman in the witness-box had been rattling on in the most voluble manner, until it was impossible to make head or tail of her evidence. Mr. Justice Hawkins, thinking he would try his hand, began with a soothing question, but the old woman would not have it at any price. She replied testily, "It's no use you bothering me. I have told you all I know."—"That may be," replied his lordship, "but the question rather is, do you know all you have told us?"

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When Sir Henry (then Mr.) Hawkins was prosecuting counsel in the Tichborne trial, over which Lord Chief Justice Cockburn presided, an amusing incident is recorded by Mr. Plowden. The antecedents of a man who had given sensational evidence for the claimant were being inquired into, and in answer to Sir Henry the witness under examination said he knew the man to be married, but his wife passed under another name. "What name?" asked Mr. Hawkins. "Mrs. Hawkins," replied the witness. "What was her maiden name?" added Mr. Hawkins. "Cockburn." Such a coincident of names naturally caused hearty and prolonged laughter.

In the course of this celebrated trial another amusing incident occurred which Sir Henry used to tell against himself. One morning as the claimant came into Court, a lady dressed in deep mourning presented Orton with a tract. After a few minutes he wrote something on it, and had it passed on to the prosecuting counsel. The tract was boldly headed in black type, "Sinner—Repent," and the claimant had written upon it, "Surely this must have been meant for Hawkins."

Not long after he had ascended the Bench Mr. Justice Hawkins was hearing a case in which a man was being tried for murder. The counsel for the prosecution observed the prisoner say something earnestly to the policeman seated by his side in the dock, and asked that the constable should be made to disclose what had passed. "Yes," said his lordship, "I think you may demand that. Constable, inform the Court what passed between you and the prisoner."—"I—I would rather not, your lordship. I was—."—"Never mind what you would rather not do. Inform the Court what the prisoner said."—"He asked me, your lordship, who that hoary heathen with the sheepskin was, as he had often seen him at the race-course."—"That will do," said his lordship. "Proceed with the case."

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An action for damages against a fire insurance company, brought by some Jews, was heard before Chief Justice Cockburn, which clearly was a fraudulent claim. The plaintiffs claimed for loss of ready-made clothes in the fire. Hawkins, who appeared for the defendant company, elicited the fact that ready-made clothes in this firm had all brass buttons as a rule; and, further, that after sifting the debris of the fire no buttons had been found. The trial was not concluded on that day, but on the following morning hundreds of buttons partially burnt were brought into Court by the Jew plaintiffs. Cockburn was not long in appreciating this mode of furnishing evidence after its necessity had been pointed out, and he asked: "How do you account for these buttons, Mr. Hawkins? You said none were found."—"Up to last night none had been found," replied Hawkins. "But," said the Chief Justice—"but these buttons have evidently been burnt in the fire. How do they come here?"—"On their own shanks," was Hawkins' smart and ready reply. Verdict for defendants.

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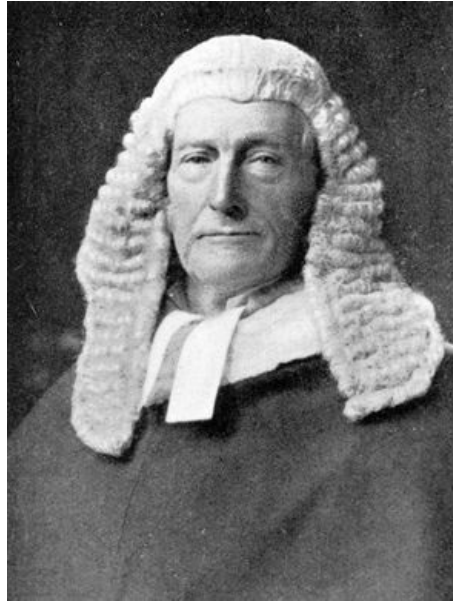
The alibi has come in for its fair share of jests. Sir Henry Hawkins relates in his *Reminiscences* how he once found the following in his brief: "If the case is called on before 3.15, the defence is left to the ingenuity of the counsel; if after that hour, the defence is an alibi, as by then the usual alibi witnesses will have returned from Norwich, where they are at present professionally engaged."

Sitting as a vacation judge, Sir Walter Phillimore, whose views on the law of divorce are well

known, protested against being called on to make absolute a number of decrees *nisi* granted in the Divorce Division. This fact is said to have called forth a witty pronouncement by a late president of that Division of the Courts. "Here is my brother Phillimore, who objects to making decrees *nisi* absolute because he believes in the sanctity of the marriage tie. By and by we may be having a Unitarian appointed to the Bench, and he will refuse to try Admiralty suits, as he would have to sit with Trinity Masters."

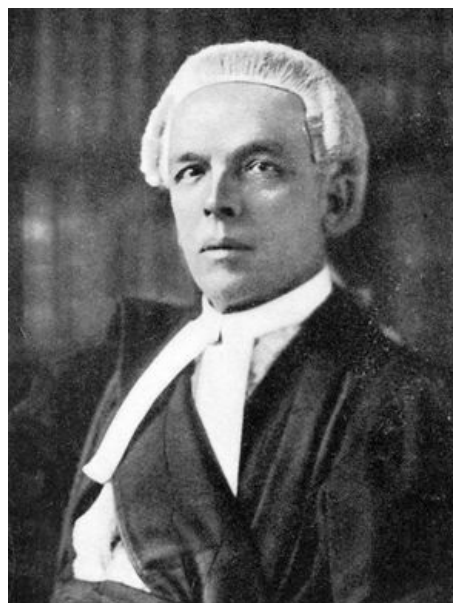
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In sentencing a burglar recently, the judge referred to him as a "professional," to which the prisoner strongly protested from the dock. "Here," he exclaimed, "I dunno wot you mean by callin' me a professional burglar. I've only done it once before, an' I've been nabbed both times." The judge, in the most suave manner, replied, "Oh, I did not mean to say that you had been very successful in your profession."



**THE HON. MR JUSTICE  
GRANTHAM, JUDGE OF THE  
KING'S BENCH DIVISION.**

Mr. Justice Grantham had a keen sense of humour. On one occasion, when he was judge at the Newcastle Assizes, he left the mansion-house where he was staying, at night, to post his letters. As he was wearing a cap he was not recognised by the police officer who was on duty outside, and the constable inquired of his lordship if "the old — had gone to bed yet." The judge replied that he thought not, and a short while after he had returned to the house he raised his bedroom window, and putting out his head called to the constable below: "Officer, the old — is just going to bed now."



**THE HON. MR JUSTICE  
DARLING, JUDGE OF THE  
KING'S BENCH DIVISION.**

Hardly a case of any importance comes into Mr. Justice Darling's Court without attracting a large attendance of the public, as much from expectation of being entertained by the repartees

between Bench and Bar as from interest in the proceedings before the Court. In a recent turf libel case his lordship gave a free rein to his proclivity to give an amusing turn to statements of both counsel and witnesses. At one point he intervened by remarking that other witnesses than the one under examination had said that a horse is made fit by running on the course before he is expected to win a position, and added, "That is so, not only on the race-course. You can never make a good lawyer by putting him to read in the library." To which the defendant, who conducted his own case, replied, "But I take it a barrister does try."—"You have no notion how he tries the judge," responded Mr. Justice Darling. In the same case a question arose as to whether the stewards of the Jockey Club had the power to check riding "short," as it is termed, and the Justice inquired if the stewards could say, "You must ride with a leather of a prescribed length," and got the answer, "Yes; they could say if you don't ride longer we won't give you a license."—"Which means," said the judge, "if you don't ride longer you won't ride long."

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"Who made the translation from the German?" asked the same judge, regarding a document to which counsel had referred. "God knows; I don't," was the reply of Mr. Danckwerts. "Are you sure," responded the Justice, "that what is not known to you is known at all?"

Perhaps Mr. Justice Darling never raised heartier laughter than in an action some years ago where the issue was whether the plaintiff, who had been engaged by the defendant to sing in "potted opera" at a music-hall, was competent to fulfil his contract.

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"Well, he could not sing like the archangel Gabriel," a witness had said, in reply to Mr. Duke, K. C.

"I have never heard the archangel Gabriel," commented the eminent counsel.

"That, Mr. Duke, is a pleasure to come," was his lordship's swift, if gently sarcastic, rejoinder.

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If witnesses occasionally undergo severe handling in cross-examination by counsel, there are also occasions when their ready reply has rather nonplussed the judge.

A case was being tried at York before Mr. Justice Gould. When it had proceeded for upwards of two hours the judge observed that there were only eleven jurymen in the box, and inquired where the twelfth man was. "Please you, my lord," said one of them, "he has gone away about some business, but he has left his verdict with me."

"How old are you?" asked the judge of a lady witness. "Thirty."—"Thirty!" said the judge; "I have heard you give the same age in this Court for the last three years."—"Yes," responded the lady; "I am not one of those persons who say one thing to-day and another to-morrow."

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Mr. Justice Keating one day had occasion to examine a witness who stuttered very much in giving his evidence. "I believe," said his lordship, "you are a very great rogue."—"Not so great a rogue as you, my lord—t—t—t—take me to be," was the reply.

Judge: "Is this your signature?"

Witness: "I don't know."

Judge: "Look at it carefully."

Witness: "I can't say for certain."

Judge: "Is it anything like your writing?"

Witness: "I don't think it is."

Judge: "Can't you identify it?"

Witness: "Not quite."

Judge: "Well, let me see, just write your name here and I will examine the two signatures."

Witness: "I can't write, sir."

Medical men are not as a rule the best witnesses, being too fond of using technical words peculiar to them in their own profession. In an action for assault tried by a Derbyshire common jury before Mr. Justice Patteson, a surgical witness was asked to describe the injuries the plaintiff had received; he stated he had "ecchymosis" of the left eye. Upon the judge inquiring whether that did not mean what was commonly understood by a black eye, the witness answered: "Yes."—"Then why did you not say so, sir? What do the jury know of 'ecchymosis'? They might think, as the farmer did of the word 'felicity,' used by a clergyman in his sermon, that it meant something in the inside of a pig."

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A notorious thief, being tried for his life, confessed the robbery he was charged with. The judge thereupon directed the jury to find him guilty upon his own confession. The jury having consulted together brought in "Not guilty." The judge bade them consider their verdict again, but still they brought in a verdict of "Not guilty." The judge asking the reason, the foreman replied: "There is reason enough, for we all know him to be one of the greatest liars in the country."

"Have you committed all these crimes?" asked the judge of a hoary old sinner. "Yes, my lord, and



worse." "Worse, I should have thought it impossible. What have you done then?"—"My lord, I allowed myself to be caught."

"I knows yer," said a prisoner to the present Lord Chief Justice, "and many's the time I've given yer a hand when ye've been stepping it round the track like a greyhound. So let's down lightly, like a good cove as yer are."

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The retort of a witness to Lord Avory was too good to be soon forgotten, and is still circulating among the juniors of the law-courts. "Let me see," said his lordship, "you have been convicted before, haven't you?"—"Yes, sir," answered the man; "but it was due to the incapacity of my counsel rather than to any fault on my part."—"It always is," said Lord Avory, with a grim smile, "and you have my sincere sympathy."—"And I deserve it," retorted the man, "seeing that you were my counsel on that occasion!"

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## CHAPTER TWO THE BARRISTERS OF ENGLAND

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"Hark the hour of ten is sounding!  
Hearts with anxious fears are bounding;  
Hall of Justice crowds surrounding,  
Breathing hope and fear.  
For to-day in this arena  
Summoned by a stern subpœna,  
Edwin sued by Angelina  
Shortly will appear."

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Sir W. S. GILBERT: *Trial by Jury*.

"As your Solicitor, I should have no  
hesitation in saying: Chance it  
——"

Sir W. S. GILBERT: *The Mikado*.

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## CHAPTER TWO THE BARRISTERS OF ENGLAND

From the middle of the thirteenth century the senior rank to which a barrister could attain at the Bar was that of serjeant-at-law, and from that body, which existed until 1875, the judges were selected. If a barrister below the rank of serjeant was invited to take a seat on the Bench he invariably conformed to the recognised custom and "took the coif"—became a serjeant-at-law—before he was sworn as one of his (or her) Majesty's judges. This explains the term "brother" applied by judges when addressing serjeants pleading before them in Court. "Taking the coif" had a curious origin. It was customary in very early times for the clergy to add to their clerical duties that of a legal practitioner, by which considerable fees were obtained, and when the Canon law forbade them engaging in all secular occupations the remuneration they had obtained from the law-courts proved too strong a temptation to evade the new law. They continued therefore to practise in the Courts, and to hide their clerical identity they concealed the tonsure by covering the upper part of their heads with a black cap or coif. When ultimately clerical barristers were driven from the law-courts, the "coif" or black patch on the crown of a barrister's wig became the symbol of the rank of serjeant-at-law. That this distinguishing mark has been, in later years, occasionally misunderstood is illustrated in the story of Serjeant Allen and Sir Henry Keating, Q.C., who were opposed to one another in a case before the Assize Court at Stafford. During the hearing of the case a violent altercation had taken place between them, but when the Court rose they left the building together, walking amicably to their lodgings. Two men who had been in Court and had heard their wrangle were following behind them, when one said to the other: "If you was in trouble, Bill, which o' them two tip-top 'uns would you have to defend you?"—"Well, Jim," was the reply, "I should pitch upon this 'un," pointing to the Q.C. "Then you'd be a fool," said his companion; "the fellow with the *sore head* is worth six of t'other 'un."

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There used to be a student joke against the serjeants. "Why is a serjeant's speech like a tailor's goose?"—"Because it is hot and heavy."

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"Taking silk," or becoming a K.C. and a senior at the Bar, originated at a much later date than that of serjeant-at-law. Lord Bacon was the first to be recognised as Queen's Counsel, but this distinction arose from his position as legal adviser to Queen Elizabeth, and did not indicate the existence of a senior body (as K.C. does now) among the barristers of that period. The institution of the rank dates from the days of Charles II, when Sir Francis North, Lord Guildford, was created King's Counsel by a writ issued under the Great Seal. As was customary in the case of a barrister proposing to "take the coif," so in that of one proposing to "take silk"; he intimates to the seniors already holding the rank that he intends to apply for admission to the body. A story is current in the Temple that when Mr. Justice Eve "took silk" the usual notification of his intention was sent to the seniors, and from one of them he received the following reply: "My dear Eve, whether you wear silk or a fig-leaf, I do not care.—A Dam."

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Our selection of facetiæ of the English Bar, therefore, naturally opens with stories of the serjeants-at-law, and one of the best-known members of that body in early days was Serjeant Hill, a celebrated lawyer, who was also somewhat remarkable for absence of mind, which was attributed to the earnestness with which he devoted himself to his professional duties.

On the very day when he was married, he had an intricate case on hand, and forgot his engagement, until reminded of his waiting bride, and that the legal time for performing the ceremony had nearly elapsed. He then quitted law for the church; after the ceremony, the serjeant returned to his books and his papers, having forgotten the *cause* he had been engaged in during the morning, until again reminded by his clerk that the assembled company impatiently awaited his presence at dinner.

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Being once on Circuit, and having occasion to refer to a law authority, he had recourse, as usual, to his bag; but, to the astonishment of the Court, instead of a volume of Viner's abridgment, he took out a specimen candlestick, the property of a Birmingham traveller, whose bag Serjeant Hill had brought into Court by mistake.

A learned serjeant kept the Court waiting one morning for a few minutes. The business of the Court commenced at nine. "Brother," said the judge, "you are behind your time this morning. The Court has been waiting for you."—"I beg your lordship's pardon," replied the serjeant; "I am afraid I was longer than usual in dressing."—"Oh," returned the judge, "I can dress in five minutes at any time."—"Indeed!" said the learned brother, a little surprised for the moment; "but in that my dog Shock beats your lordship hollow, for he has nothing to do but to shake his coat, and thinks himself fit for any company."

Serjeant Davy, when at the height of his professional career, once received a large brief on which a fee of two guineas only was marked on the back. His client asked him if he had read the brief. Pointing with his finger to the fee, Davy replied: "As far as that I have read, and for the life of me I can read no further." Of the same eminent serjeant in his earlier years an Old Baily story is told. Judge Gould, who presided, asked: "Who is concerned for the prisoner?"—"I am concerned for him, my lord," said Davy, "and very much concerned after what I have just heard."

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If Serjeant Davy was concerned about his client, Serjeant Miller had no such scruple about the man charged with horse stealing whom he successfully defended, although the evidence convinced the judge and everybody in the Court that there ought to have been a conviction. When the trial was over and the prisoner had been acquitted, the judge said to him: "Prisoner, luckily for you, you have been found Not Guilty by the jury, but you know perfectly well you stole that horse. You may as well tell the truth, as no harm can happen to you now by a confession, for you cannot be tried again. Now tell me, did you not steal that horse?" "Well, my lord," replied the man, "I always thought I did, until I heard my counsel's speech, but now I begin to think I didn't."

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In the days of "riding" and "driving circuit," and even later, the Circuit mess was a very popular institution with circuiteers, and was made the occasion of much merriment. After the table had been cleared a fictitious charge would be made against one of the barristers present, and a mock tribunal was immediately constituted before which he was arraigned and his case duly set forth with all solemnity. The victim was invariably fined—generally in wine, which had to be paid at once, and consumed before the company retired to bed. On one such occasion Serjeant Prime, who is represented as a good-natured but rather dull man, and as a barrister wearisome beyond comparison, was engaged in an important case in an over-crowded courtroom. He had been speaking for three hours, when a boy, seated on a beam above the heads of the audience, overcome by the heat and the serjeant's monotonous tones, fell asleep, and, losing his balance, tumbled down on the people below. The incident was made the subject of a charge against the serjeant at the mess, and he was duly sentenced to pay a fine of two dozen of wine, which he did with the greatest good humour.

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Serjeant Wilkins, on one occasion, on defending a prisoner, said: "Drink has upon some an elevating, upon others a depressing, effect; indeed, there is a report, as we all know, that an eminent judge, when at the Bar, was obliged to resort to heavy drinking in the morning, to

reduce himself to the level of the judges." Lord Denman, the judge, who had no love for Wilkins, bridled up instantly. His voice trembled with indignation as he uttered the words: "Where is the report, sir? Where is it?" There was a death-like silence. Wilkins calmly turned round to the judge and said: "It was burnt, my lord, in the Temple fire." The effect of this was considerable, and it was a long time before order could be restored, but Lord Denman was one of the first to acknowledge the wit of the answer.

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Difference of manner or temperament sometimes gives point to the collisions which occasionally occur in Court between rival counsel. Serjeant Wilkins, who had an inflated style of oratory, was once opposed in a case to Serjeant Thomas, whose manner of delivery was lighter and more lively. On the conclusion of a heavy bombardment of ponderous Johnsonian sentences from the former, Thomas rose, and, with his eyes fixed on his opponent, prefaced his address to the jury with the words, delivered with much solemnity of manner and intonation: "And now the hurly-burly's done."

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Dunning was defending a gentleman in an action brought from *crim. con.* with the plaintiff's wife. The chief witness for the plaintiff was the lady's maid, a clever, self-composed person, who spoke confidently as to seeing the defendant in bed with her mistress. Dunning, on rising to cross-examine her, first made her take off her bonnet, that they might have a good view of her face, but this did not discompose her, as she knew she was good-looking. He then arranged his brief, solemnly drew up his shirt sleeves, and then began: "Are you sure it was not your master you saw in bed with your mistress?"—"Perfectly sure."—"What, do you pretend to say you can be certain when the head only appeared from the bedclothes, and that enveloped in a nightcap?"—"Quite certain."—"You have often found occasion, then, to see your master in his nightcap?"—"Yes—very frequently."—"Now, young woman, I ask you, on your solemn oath, does not your master occasionally go to bed with you?"—"Oh, that trial does not come on to-day, Mr. Slabberchops!" replied the witness. A loud shout of laughter followed, and Lord Mansfield leaned back to enjoy it, and then gravely leaned forward and asked if Mr. Dunning had any more questions to put to the witness. No answer was given, and none were put. The same counsel, when at the height of his large practice at the Bar, was asked how he got through all his work. He replied: "I do one-third of it; another third does itself; and I don't do the remaining third."

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A witness under severe cross-examination by Serjeant Dunning was repeatedly asked if he did not live close to the Court. On admitting that he did, the further question was put, "And pray, sir, for what reason did you take up your residence in that place?"—"To avoid the rascally impertinence of dunning," came the ready answer.

A barrister's name once gave a witness the opportunity to score in the course of a severe cross-examination. Missing was the leader of his Circuit and was defending his client charged with stealing a donkey. The prosecutor had left the donkey tied up to a gate, and when he returned it was gone. "Do you mean to say," said counsel, "the donkey was stolen from the gate?"—"I mean to say, sir," said the witness, giving the judge and then the jury a sly look, at the same time pointing to the counsel, "the ass was missing."

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Mr. Clarke, a leader of the Midland Circuit, was a very worthy lawyer of the old school. A client long refusing to agree to refer to arbitration a cause which judge, jury, and counsel wished to get rid of, he at last said to him, "You d—d infernal fool, if you do not immediately follow his lordship's recommendation, I shall be obliged to use strong language to you." Once, in a council of the Benchers of Lincoln's Inn, the same gentleman very conscientiously opposed their calling a Jew to the Bar. Some tried to point out the hardship to be imposed upon the young gentleman, who had been allowed to keep his terms, and whose prospects in life would thus be suddenly blasted. "Hardship!" said the zealous churchman, "no hardship at all! Let him become a Christian, and be d—d to him!"

It is sometimes imagined by laymen that verdicts may be obtained by the trickery of counsel. Doubtless counsel may try to throw dust in the eyes of jurors, but they are not very successful. Lord Campbell tells a story of Clarke, who by such tactics brought a case to a satisfactory compromise. The attorney, coming to him privately, said, "Sir, don't you think we have got very good terms? But you rather went beyond my instructions."—"You fool!" retorted Clarke; "how do you suppose you could have got such terms if I had stuck to your instructions."

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**JOHN ADOLPHUS, BARRISTER.**

In the biography of John Adolphus, a famous criminal lawyer, we are told that the judges of his time were much impressed with the following table of degrees. "The three degrees of comparison in a lawyer's progress are: getting on; getting on-er (honour); getting on-est (honest)." He declared the judges acknowledged much truth in the degrees. The third degree in Mr. Adolphus' table reminds us of the story of the farmer who was met by the head of a firm of solicitors, who inquired the name of a plant the farmer was carrying. "It's a plant," replied the latter, "that will not grow in a lawyer's garden; it is called honesty."

One night, walking through St. Giles's by way of a short cut towards home, an Irish woman came up to Mr. Adolphus. "Why, Misther Adolphus! and who'd a' thought of seeing you in the Holy Ground?"—"And how came you to know who I am?" said Adolphus. "Lord bless and save ye, sir! not know ye? Why, I'd know ye if ye was boiled up in a soup!"

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Mr. Montagu Chambers was counsel for a widow who had been put in a lunatic asylum, and sued the two medical men who signed the certificate of her insanity. The plaintiff's case was to prove that she was not addicted to drinking, and that there was no pretence for treating hers as a case of *delirium tremens*. Dr. Tunstal, the last of plaintiff's witnesses, described one case in which he had cured a patient of *delirium tremens* in a *single night*, and he added, "It was a case of gradual drinking, *sipping all day* from morning till night." These words were scarcely uttered when Mr. Chambers rose in triumph, and said, "My lord, that is *my case*."

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On the Northern Circuit a century ago, there was a famous barrister who was familiarly known among his brother advocates as Jack Lee. He was engaged in examining one Mary Pritchard, of Barnsley, and began his examination with, "Well, Mary, if I may credit what I hear, I may venture to address you by the name of Black Moll."—"Faith you may, mister lawyer, for I am always called so by the blackguards." On another occasion he was retained for the plaintiff in an action for breach of promise of marriage. When the consultation took place, he inquired whether the lady for whose injury he was to seek redress was good-looking. "Very handsome indeed, sir," was the assurance of her attorney. "Then, sir," replied Lee, "I beg you will request her to be in Court, and in a place where she can be seen." The attorney promised compliance, and the lady, in accordance with Lee's wishes, took her seat in a conspicuous place, where the jury could see her. Lee, in addressing the jury, did not fail to insist with great warmth on the "abominable cruelty" which had been exercised towards "the highly attractive and modest girl who trusted her cause to their discernment"; and did not sit down until he had succeeded in working upon their feelings with great and, as he thought, successful effect. The counsel on the other side, however, speedily broke the spell with which Lee had enchanted the jury, by observing that "his learned friend, in describing the graces and beauty of the plaintiff, ought in common fairness not to have concealed from the jury the fact that the lady had a *wooden leg!*" The Court was convulsed with laughter at this discovery, while Lee, who was ignorant of this circumstance, looked aghast; and the jury, ashamed of the influence that mere eloquence had had upon them, returned a verdict for the defendant.

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Justice Willes, the son of Chief Justice Willes, had an offensive habit of interrupting counsel. On one occasion an old practitioner was so irritated by this practice that he retorted sharply by saying, "Your lordship doubtless shows greater acuteness even than your father, the Chief Justice, for he used to understand me *after I had done*, but your lordship understands me even *before I have begun*."

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Of Whigham, a later leader on the Northern Circuit, an amusing story used to be told. He was defending a prisoner, and opened an alibi in his address to the jury, undertaking to prove it by calling the person who had been in bed with his client at the time in question, and deprecating

their evil opinion of a woman whose moral character was clearly open to grave reproach, but who was still entitled to be believed upon her oath. Then he called "Jessie Crabtree." The name was, as usual, repeated by the crier, and there came pushing his way sturdily through the crowd a big Lancashire lad in his rough dress, who had been the prisoner's veritable bedfellow—Whigham's brief not having explained to him that the Christian name of his witness was, in this case, a male one.

Colman, in his *Random Records*, tells the following anecdote of the witty barrister, Mr. Jekyll. One day observing a squirrel in Colman's chambers, in the usual round cage, performing the same operation as a man in a tread-mill, and looking at it for a minute, exclaimed, "Oh! poor devil, he's going the Home Circuit."

Jekyll was asked why he no longer spoke to a lawyer named Peat; to which he replied, "I choose to give up his acquaintance—I have common of turbary, and have a right to cut *peat!*" An impromptu of his on a learned serjeant who was holding the Court of Common Pleas with his glittering eye, is well known:

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"Behold the serjeant full of fire,  
Long shall his hearers rue it,  
His purple garments *came* from Tyre,  
His arguments *go to it.*"

Mr. H. L. Adam, in his volume *The Story of Crime*, tells an amusing story of a prisoner whose counsel had successfully obtained his acquittal on a charge of brutal assault. A policeman came across a man one night lying unconscious on the pavement, and near by him was an ordinary "bowler" hat. That was the only clue to the perpetrator of the deed. The police had their suspicions of a certain individual, whom they proceeded to interrogate. In addition to being unable to give a satisfactory account of his movements on the night of the assault, it was found that the "bowler" hat in question fitted him like a glove. He was accordingly arrested and charged with the crime, the hat being the chief evidence against him. Counsel for the defence, however, dwelt so impressively on the risk of accepting such evidence that the jury brought in a verdict of "not proven," and the prisoner was discharged. Before leaving the dock he turned to the judge, and pointing to the hat in Court, said, "My lord, may I 'ave my 'at."

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Some amusing scenes have occurred in suits brought by tailors and dressmakers to recover the price of garments for which their customers have declined to pay on the ground of misfit. Serjeant Ballantine, in his *Experiences of a Barrister*, relates the case of a tailor in which the defendant was the famous Sir Edwin Landseer. It was tried in the Exchequer Court, before Baron Martin. "The coat was produced," says the serjeant, "and the judge suggested that Sir Edwin should try it on; he made a wry face, but consented, and took off his own upper garment. He then put an arm into one of the sleeves of that in dispute, and made an apparently ineffectual endeavour to reach the other, following it round amidst roars of laughter from all parts of the Court. It was a common jury, and I was told that there was a tailor upon it, upon which I suggested that there was a gentleman of the same profession as the plaintiff in Court who might assist Sir Edwin. This was acceded to, and out hopped a little Hebrew slop-seller from the Minories, to whom the defendant submitted his body. With difficulty he got into the coat, and then stood as if spitted, his back one mass of wrinkles. The tableau was truly amusing; the indignant plaintiff looking at the performance with mingled horror and disgust; Sir Edwin, as if he were choking; whilst the jurymen, with the air of a connoisseur, was examining him and the coat with profound gravity. At last the judge, when able to stifle his laughter, addressing the little Hebrew, said, 'Well, Mr. Moses, what do you say?'—'Oh,' cried he, holding up a pair of hands not over clean, and very different from those encased in lavender gloves which graced the plaintiff, 'it ish poshitively shocking, my lord; I should have been ashamed to turn out such a thing from my establishment.' The rest of the jury accepted his view, and Sir Edwin, apparently relieved from suffocation, entered his own coat with a look of relief, which again convulsed the Court, bowed, and departed."

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Financial prosecutions are as a rule very dreary, and any little joke perpetrated by counsel during the course of them is a relief. One was being heard, in which Mr. Muir was counsel, and to many of his statements the junior counsel for the prosecution shook his head vehemently, although he said nothing. This continual dumb contradiction at length got on the customary patience of Mr. Muir, who blurted out: "I do not know why my friend keeps shaking his head, whether it is that he has palsy, or that there's nothing in it!"

Mr. Baldwin was the counsel employed to oppose a person justifying bail in the Court of King's Bench. After some common questions, a waggish counsel sitting near suggested that the witness should be asked as to his having been a prisoner in Gloucester gaol. Mr. Baldwin thereon boldly asked: "When, sir, were you last in Gloucester gaol?" The witness, a respectable tradesman, with astonishment declared that he never was in a gaol in his life. Mr. Baldwin being foiled after putting the question in various ways, turned round to his friendly prompter, and asked for what the man had been imprisoned. He was told that it was for suicide. Thereupon Mr. Baldwin, with

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great gravity and solemnity addressed the witness: "Now, sir, I ask you upon your oath, and remember that I shall have your words taken down, were you not imprisoned in Gloucester gaol for suicide?"

A young lawyer who had just "taken the coif," once said to Samuel Warren, the author of *Ten Thousand a Year*: "Hah! Warren, I never could manage to get quite through that novel of yours. What did you do with Oily Gammon?"—"Oh," replied Warren, "I made a serjeant of him, and of course he never was heard of afterwards."



**SAMUEL WARREN, Q.C.,  
MASTER IN LUNACY.**

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Warner Sleight, a great thieves' counsel, was not debarred by etiquette from taking instructions direct from his clients. One day, following a rap on the door of his chambers in Middle Temple Lane, a thick-set man, with cropped poll of unmistakably Newgate cut, slunk into the room, when the following colloquy took place.

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"Mornin', sir," said the man, touching his forelock. "Morning," replied counsel. "What do you want?"—"Well, sir, I'm sorry to say, sir, our little Ben, sir, has 'ad a misfortin'; fust offence, sir, only a 'wipe'—"—"Well, well!" interrupted counsel. "Get on."—"So, sir, we thought as you've 'ad all the family business we'd like you to defend 'im, sir."—"All right," said counsel; "see my clerk —."—"Yessir," continued the thief; "but I thought I'd like to make sure you'd attend yourself, sir; we're anxious, 'cos it's little Ben, our youngest kid."—"Oh! that will be all right. Give Simmons the fee."—"Well, sir," continued the man, shifting about uneasily, "I was going to arst you, sir, to take a little less. You see, sir (wheedlingly), it's little Ben—his first misfortin'."—"No, no," said the counsel impatiently. "Clear out!"—"But, sir, you've 'ad all our business. Well, sir, if you won't, you won't, so I'll pay you now, sir." And as he doled out the guineas: "I may as well tell you, sir, you wouldn't 'a' got the 'couties' if I 'adn't 'ad a little bit o' luck on the way."

The gravity of the Court of Appeal was once seriously disturbed by Edward Bullen reading to them the following paragraph from a pleading in an action for seduction: "The defendant denies that he is the father of the said twins, *or of either of them*." This he apologetically explained was due to an accident in his pupil-room, but everyone recognised the style of the master-hand.

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Serjeant Adams, who acted as assistant judge at the sessions, had a very pleasant wit, and knew how to deal with any counsel who took to "high-falutin." On one occasion, after an altercation with the judge, the counsel for the prisoner in his address to the jury reminded them that "they were the great palladium of British Liberty—that it was *their* province to deal with the facts, the *judge* with the law—that they formed one of the great institutions of their country, and that they came in with William the Conqueror." Adams at the end of his summing up said: "Gentlemen, you will want to retire to consider your verdict, and as it seems you came in with the Conqueror you can now go out with the beadle."

There was always a mystery how Edwin James, who at the Bar was earning an income of at least £10,000 a year, was continually in monetary difficulties. Like Sir Thomas Lawrence, he must have had some private drain on his resources which was never disclosed. Among others who suffered was the landlord of his chambers, whose rent was very much in arrear. In the end the landlord hit upon a plan to discover which would be the best method of recovering his rent, and one day asked James to advise him on a legal matter in which he was interested, and thereupon drew up a statement of his grievance against his own tenant. The paper was duly returned to the landlord next day with the following sentence subjoined: "In my opinion this is a case which admits of only

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one remedy—patience. Edwin James."

In a case before Lord Campbell, James took a line with a witness which his lordship considered quite inadmissible, and stopped him. When summing up to the jury Lord Campbell thought to soften his interruption by saying: "You will have observed, gentlemen, that I felt it my duty to stop Mr. Edwin James in a certain line which he sought to adopt in the cross-examination of one of the witnesses; but at the same time I had no intention to cast any reflection on the learned counsel who I am sure is known to you all as a most able—" but before his lordship could proceed any further James interposed, and in a contemptuous voice exclaimed: "My lord, I have borne your lordship's censure, spare me your lordship's praise."

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Mr. W. G. Thorpe, F.S.A., in his entertaining volume of *Middle Temple Table Talk*, relates a curious story of a judge taking an extremely personal interest in a case which was brought before him. A milk company had sold off a lot of old stock to a cake-maker, and the cake-maker had declined to pay because the milk had turned out to be poisonous. As the case went on the judge became more and more exercised. "What do they do with this stuff?" he asked, pointing to a mass of horrible mixture. "Oh, my lord, they make cakes of it; it doesn't taste in the cakes."—"Where do they sell these cakes?" was the judge's next question, and the reply was, "They are used for certain railway stations, school-treats, and excursions." Then the defendant specified one of the places. "Bless me!" said the judge, turning an olive-green, "I had some there myself," and with a shudder he retired to his private room, returning in a few minutes wiping his mouth.

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There is another story of a counsel defending a woman on a charge of causing the death of her husband by administering a poisoned cake to him. "I'll eat some of the cake myself," he said in Court, and took a bite. Just at this moment a telegram was brought to him to say that his wife was seriously ill, and he obtained permission to leave in order to answer the message. He returned, finished his speech, and obtained the acquittal of his client. It transpired afterwards that the telegram business was arranged in order that counsel could obtain an emetic after swallowing the cake.

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Mr. Montagu Williams tells a story, in his interesting *Leaves of a Life*, of two members of the Bar, one of whom had made a large fortune by his practice, but worked too hard to enjoy his gains, while the other, who only made a decent living, liked to enjoy life. They met on one occasion at the end of a long vacation, and the rich man asked his less fortunate brother what he had been doing. "I have been on the Continent," the other replied, "and I enjoyed my holiday very much. What have you been doing?"—"I have been working," said the rich Q.C., "and have not been out of town; I had lots of work to do."—"What is the use of it?" queried the other; "you can't carry the money with you when you die; and if you could, *it would soon melt*."

From the same work we take the following story of Serjeant Ballantine. On one occasion he was acting in a case with a Jewish solicitor, and it happened that one of the hostile witnesses also belonged to the same race. Just as the serjeant was about to examine him, the solicitor whispered in Ballantine's ear: "Ask him as your first question, if he isn't a Jew."—"Why, but you're a Jew yourself," said the serjeant in some surprise. "Never mind, never mind," replied the little solicitor eagerly. "Please do—just to prejudice the jury."

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**JOHN ROMILLY, BARON**

## ROMILLY, MASTER OF THE ROLLS.

No collection of the wit and humour of the Bar would be complete without some specimens of Sir Frank Lockwood's racy sayings. From Mr. Augustine Birrell's *Life of Lockwood* we quote the following:

"A tale is attached to Lockwood's first brief. It was on a petition to the Master of the Rolls for payment out of Court of a sum of money; and Lockwood appeared for an official liquidator of a company whose consent had to be obtained before the Court would part with the fund. Lockwood was instructed to consent, and his reward was to be three guineas on the brief and one guinea for consultation. The petition came on in due course before Lord Romilly, and was made plain to him by counsel for the petitioner, and still a little plainer by counsel for the principal respondent.

"Then up rose Lockwood, an imposing figure, and indicated his appearance in the case.

"'What brings *you* here?' said Lord Romilly, meaning, I presume, 'Why need I listen to you?'

"Lockwood looking puzzled, Lord Romilly added a little testily, 'What do you come here for?'

"The answer was immediate, unexpected, and, accompanied as it was by a dramatic glance at the outside of his brief, as if to refresh his memory, triumphant, 'Three and one, my lord!'"

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"The following letter is to Mrs. Atkinson:

1 HARE COURT, TEMPLE, E.C., LONDON. *September 18, '72.*

MY DEAR LOO,—I trust it is well with yourself, John, and the childer.... It is an off-day. We are resting on our legal oars after a prolonged and determined struggle yesterday. Know! that near our native hamlet is the level of Hatfield Chase, whereon are numerous drains. Our drain (speaking from the Corporation of Hatfield Chase point of view) we have stopped, for our own purposes. Consequently, the adjacent lands have been flooded, are flooded, and will continue to be flooded. The landed gentry wish us to remove our dam, saying that if we don't they won't be worth a d—n. We answer that we don't care a d—n.

This interesting case has been simmering in the law-courts since 1820. The landed gentry got a verdict in their favour at the last Lincoln Assizes, but find themselves little the better, as we have appealed, and our dam still reigns triumphant. Yesterday an application was made to the judge to order our dam to be removed. In the absence of Mellor, I donned my forensic armour and did battle for the Corporation. After two hours' hard fighting, we adjourned for a week; in the meantime the floods may rise, and the winds blow. The farmers yelled with rage when they heard that the dam had got a week's respite. I rather fancy that they will yell louder on Tuesday, as I hope to win another bloodless victory. It is a pretty wanton sport, the cream of the joke being that the dam is no good to us or to anybody else, and we have no real objection to urge against its removal, excepting that such a measure would be informal, and contrary to the law as laid down some hundred years ago by an old gentleman who never heard of a steam-engine, and who would have fainted at the sight of a telegraph post. As we have the most money on our side, I trust we shall win in the end. None of this useful substance, however, comes my way, as it is Mellor's work. But I hope to reap some advantage from it, both as to experience and introduction. I make no apology for troubling you with this long narration. I wish it to sink into your mind, and into that of your good husband. Let it be a warning to you and yours. And never by any chance become involved in any difficulties which will bring you into a court of law of higher jurisdiction than a police court. An occasional 'drunk and disorderly' will do you no harm, and only cost you 5s. Beyond a little indulgence of this kind—beware! In all probability I shall be in the North in a few weeks. Sessions commence next month. I will write to the Mum this week.—With best love to all, I am, Your affectionate brother,

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FRANK LOCKWOOD."

"Mr. Mellor vouches for the following story, which, as it illustrates Lockwood's humour and had gone the round of the newspapers, I will tell. It is the ancient custom of the new Lord Mayor of London, attended by the Recorder and Sheriffs, to come into the law-courts and be introduced to the Lord Chief Justice or, if he is not there, to the senior judge to be found on the premises, and, after a little lecture from the Bench, to return good for evil by inviting the judges to dinner, only to receive the somewhat chilling answer, 'Some of their lordships will attend.' On this occasion the ceremony was over, and the Lord Mayor and his retinue was retiring from the Court, when his lordship's eye rested on Lockwood, who in a new wig was one of the throng by the door. 'Ah, my young friend!' said the Lord Mayor in a pompous way (for in those days there was no London County Council to teach Lord Mayors humility); 'picking up a little law, I suppose?' Lockwood had his answer ready. With a profound bow, he replied: 'I shall be delighted to accept your lordship's hospitality. I think I heard your lordship name seven as the hour.' The Lord Mayor hurried out of Court, and even the policeman (and to the police Lord Mayors are almost divine) shook with laughter."

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Counsel sometimes find their position so weak that their only hope of damaging the other side lies in ridiculing their witnesses. Serjeant Parry on one occasion was defending a client against a claim for breach of promise of marriage made a few hours after a chance meeting in Regent Street. According to the lady's story the introduction had been effected through the gentleman offering to protect her from a dog. In course of cross-examination Parry said: "You say you were alarmed at two dogs fighting, madam?"—"No, no, it was a single dog," was the reply. "What you mean, madam," retorted Parry, "is that there was only one dog; but whether it was a single dog or a married dog you are not in a position to say." With this correction it need not be wondered that the lady had little more to say.

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A learned counsellor in the midst of an affecting appeal in Court on a slander case delivered himself of the following flight of genius. "Slander, gentlemen, like a boa constrictor of gigantic size and immeasurable proportions, wraps the coil of its unwieldy body about its unfortunate victim, and, heedless of the shrieks of agony that come from the utmost depths of its victim's soul, loud and reverberating as the night thunder that rolls in the heavens, it finally breaks its unlucky neck upon the iron wheel of public opinion; forcing him first to desperation, then to madness, and finally crushing him in the hideous jaws of mortal death."

Talking of his early days at the Bar, Mr. Thomas Edward Crispe, in *Reminiscences of a K.C.*, relates how on one occasion he was opposed by a somewhat eccentric counsel named Wharton, known in his day as the "Poet of Pump Court." The case was really a simple one, but Wharton made so much of it that when the luncheon half-hour came the judge, Mr. Justice Archibald, with some emphasis, addressing Mr. Wharton, said: "We will now adjourn, and, Mr. Wharton, I hope you will take the opportunity of conferring with your friend Mr. Crispe and settling the matter out of Court."

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But Wharton would not agree to this, and when at last he had to address the jury, he, in the course of his speech, made the following remarks, for every word of which Mr. Crispe vouches:

"Gentlemen, I think it only courteous to the learned judge to refer to the advice his lordship gave me to settle the matter out of Court. That reminds me of a case, tried in a country court, in an action for detention of a donkey. The plaintiff was a costermonger and the defendant a costermonger; they conducted the case in person. At one o'clock the judge said: 'Now, my men, I'm going to have my lunch, and before I come back I hope you'll settle your dispute out of Court.' When he returned the plaintiff came in with a black eye and the defendant with a bleeding nose, and the defendant said: 'Well, your honour, we've taken your honour's advice; Jim's given me a good hiding, and I've given him back his donkey.'"

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Mr. F. E. Smith, M.P., tells a story of a County Court case he was once engaged in, in which the plaintiff's son, a lad of eight years, was to appear as a witness.

When the youngster entered the box he wore boots several sizes too large, a hat that almost hid his face, long trousers rolled up so that the baggy knees were at his ankles, and, to complete the picture, a swallow-tail coat that had to be held to keep it from sweeping the floor. This ludicrous picture was too much for the Court; but the judge, between his spasms of laughter, managed to ask the boy his reason for appearing in such garb.

With wondering look the lad fished in an inner pocket and hauled the summons from it, pointing out a sentence with solemn mien as he did so: "To appear in his father's suit" it read.

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There have been few readier men in retort than the late Mr. Francis Oswald, the author of *Oswald on Contempt of Court*. After a stiff breeze in a Chancery Court, the judge snapped out, "Well, I can't teach you manners, Mr. Oswald."—"That is so, m'lud, that is so," replied the imperturbable one. On another occasion, an irascible judge observed, "If you say another word, Mr. Oswald, I'll commit you."—"That raises another point—as to your lordship's power to commit counsel engaged in arguing before you," was the cool answer.

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The author of *Pie Powder* in his entertaining volume, tells us that he was once dining with a barrister who had just taken silk. In the course of after-dinner talk, the new K.C. invited his friend to tell him what he considered was his (the K.C.'s) chief fault in style. After some considerable hesitation his friend admitted that he thought the K.C. erred occasionally in being too long. This apparently somewhat annoyed the K.C., and his friend feeling he had perhaps spoken too freely, thought he would smooth matters by inviting similar criticism of himself from the K.C., who at once replied, "My dear boy, I don't think really you have any fault. *Except, you know, you are so d—d offensive.*"

A judge and a facetious lawyer conversing on the subject of the transmigration of souls, the judge said, "If you and I were turned into a horse and an ass, which of them would you prefer to be?"—"The ass, to be sure," replied the lawyer.—"Why?"—"Because," replied the lawyer, "I have heard of an ass being a judge, but of a horse, never."

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**SERJEANT TALFOURD.**

In some cases counsel receive answers to questions which they had no business to put, and these, if not quite to their liking, are what they justly deserve. The following story of George Clarke, a celebrated negro minstrel, is a case in point. On one occasion, when being examined as a witness, he was severely interrogated by a lawyer. "You are in the minstrel business, I believe?" inquired the lawyer. "Yes, sir," was the reply. "Is not that rather a low calling?"—"I don't know but what it is, sir," replied the minstrel; "but it is so much better than my father's that I am rather proud of it." The lawyer fell into the trap. "What was your father's calling?" he inquired. "He was a lawyer," replied Clarke, in a tone that sent the whole Court into a roar of laughter as the discomfited lawyer sat down.

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At the Durham Assizes an action was tried which turned out to have been brought by one neighbour against another for a trifling matter. The plaintiff was a deaf old lady, and after a pause the judge suggested that the counsel should get his client to compromise it, and to ask her what she would take to settle it. Very loudly counsel shouted out to his client: "His lordship wants to know what you will take?" She at once replied: "I thank his lordship kindly, and if it's no ill convenience to him, I'll take a little *warm ale*."

A tailor sent his bill to a lawyer, and a message to ask for payment. The lawyer bid the messenger tell his master that he was not running away, and was very busy at the time. The messenger returned and said he must have the money. The lawyer testily answered, "Did you tell your master that I was not running away?"—"Yes, I did, sir; but he bade me tell you that *he was*."

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A well-known barrister at the criminal Bar, who prided himself upon his skill in cross-examining a witness, had an odd-looking witness upon whom to operate. "You say, sir, that the prisoner is a thief?"—"Yes, sir—'cause why, she confessed it."—"And you also swear she did some repairs for you subsequent to the confession?"—"I do, sir."—"Then," giving a knowing look at the Court, "we are to understand that you employ dishonest people to work for you, even after their rascalities are known?"—"Of course! How else could I get assistance from a lawyer?"—"Stand down!" shouted the man of law.

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At Worcester Assizes, a cause was tried as to the soundness of a horse, and a clergyman had been a witness, who gave a very confused account of the transaction, and the matters he spoke to. A blustering counsel on the other side, after many attempts to get at the facts, said: "Pray, sir, do you know the difference between a horse and a cow?"—"I acknowledge my ignorance," replied the clergyman. "I hardly know the difference between a horse and a cow, or between a bully and a bull. Only a bull, I am told, has horns, and a bully," bowing respectfully to the counsel, "*luckily for me, has none*."

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"In Court one day," says Mr. W. Andrews in *The Lawyer*, "I heard the following sharp encounter between a witness and an exceedingly irascible old-fashioned solicitor who, among other things, hated the modern custom of growing a beard or moustache. He himself grew side-whiskers in the most approved style of half a century ago. "Speak up, witness," he shouted, "and don't stand mumbling there. If you would shave off that unsightly moustache we might be better able to hear what was coming out of your lips." "And if you, sir," said the witness quietly, "would shave off those side-whiskers you would enable my words to reach your ears.""

"My friend," said an irritable lawyer, "you are an ass."—"Do you mean, sir," asked the witness, "that I am your friend because I am an ass, or an ass because I am your friend?"

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Counsel sometimes comes to grief in dealing with experts. "Do you," asked one of a scientist, "know of a substance called Sulphonylic Diazotised Sesqui Oxide of Aldehyde?" and he looked round triumphantly. "Certainly," came the reply. "It is analogous in diatomic composition of Para Sulpho Benzine Azode Methyl Aniline in conjunction with Phehekatoline." Counsel said he would pursue the matter no further.

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An action was brought by the owner of a donkey which was forced against a wall by a waggon and killed. The driver of the donkey was the chief witness, and was much bullied by Mr. Raine, the defendant's counsel, so that he lost his head and was reprimanded by the judge for not giving direct answers, and looking the jury in the face. Mr. Raine had a powerful cast in his eye, which probably heightened the poor fellow's confusion; and he continued to deal very severely with the witness, reminding him again and again of the judge's caution, saying: "Hold up your head, man: look up, I say. Can't you hold up your head, fellow? Can't you look as I do?" The witness, with much simplicity, at once answered, "I can't, you squint." On re-examination, Serjeant Cockle for the plaintiff, seeing gleams of the witness's recovery from his confusion, asked him to describe the position of the waggon and the donkey. After much pressing, at last he said, "Well, my lord judge, I'll tell you as how it happened." Turning to Cockle, he said, "You'll suppose ye are the wall."—"Aye, aye, just so, go on. I am the wall, very good."—"Yes, sir, you are the wall." Then changing his position a little, he said, "I am the waggon."—"Yes, very good; now proceed, you are the waggon," said the judge. The witness then looked to the judge, and hesitating at first, but with a low bow and a look of sudden despair, said, "And your lordship's the ass!"

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Serjeant Cockle, who had a rough, blustering manner, once got from a witness more than he gave. In a trial of a right of fishery, he asked the witness: "Dost thou love fish?"—"Aye," replied the witness, with a grin, "but I donna like cockle sauce with it." The learned serjeant was not pleased with the roar of laughter which followed the remark.

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Mr. H. L. Adam in *The Story of Crime* says he remembers a very amusing incident in one of our police courts. A prisoner had engaged a solicitor to defend him, and while the latter was speaking on his behalf he suddenly broke in with, "Why, he dunno wot the devil he's talking abaht!" Thereupon the magistrate informed him that if he was dissatisfied with his advocate's capabilities, he could, if he chose, defend himself. This he elected to do, and in the end was acquitted, the magistrate remarking that had the case been left to counsel he would unquestionably have been convicted.

In cross-examining a witness, says Judge Parry in *What the Judge Saw*, who had described the effects of an accident, was confronted by counsel with his statement, and asked, "But hadn't you told the doctor that your thigh was numb and had no feeling?"—"What's the good o' telling him anything," replied the witness. "That's where doctor made a mistake. I told 'im I was numb i' front, and what does he do but go and stick a pin into my back-side. 'E's no doctor."

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From the same source is the following story. Another man was testifying to an accident that had occurred to him at the works where he was employed. It was sought to prove that his testimony was false because he had a holiday that day, and this poser was put to him: "Do you mean to tell the Court that you came to work when you might have been enjoying a holiday?"—"Certainly."—"Why did you do that?" The reply was too obviously truthful. "What should I do? I have nowhere to go. I'm teetotal now."

A Jew had been condemned to be hanged, and was brought to the gallows along with a fellow prisoner; but on the road, before reaching the place of execution, a reprieve arrived for the Jew. When informed of this, it was expected that he would instantly leave the cart in which he was conveyed, but he remained and saw his fellow prisoner hanged. Being asked why he did not at once go about his business, he said, "He was waiting to see if he could bargain with Mr. Ketch for the *other gentleman's clothes!*"

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A sign-painter presented his bill to a lawyer for payment. After examining it the lawyer said, "Do you expect any painter will go to heaven if they make such charges as these?"—"I never heard of but one that went," said the painter, "and he behaved so badly that they determined to turn him out, but there being no lawyer present to draw up the Writ of Ejectment, he remained."

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This must be the lawyer who, being refused entrance to heaven by St. Peter, contrived to throw his hat inside the door; and then, being permitted to go and fetch it, took advantage of the Saint being fixed to his post as doorkeeper and refused to come back again.

A solicitor who was known to occasionally exceed the limit at lunch betrayed so much unsteadiness that the magistrate quickly observed, "I think, Mr. —, you are not quite well, perhaps you had a little too much wine at lunch."—"Quite a mistake, your worship," hiccupped Mr. —. "It was brandy and water."

The son-in-law of a Chancery barrister having succeeded to the lucrative practice of the latter, came one morning in breathless haste to inform him that he had succeeded in bringing nearly to its termination a cause which had been pending in the Court for several years. Instead of obtaining the expected congratulations of the retired veteran of the law, his intelligence was

received with indignation. "It was by this suit," exclaimed he, "that my father was enabled to provide for me, and to portion your wife, and with the exercise of common prudence it would have furnished you with the means of providing handsomely for your children and grandchildren."

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## CHAPTER THREE THE JUDGES OF IRELAND

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"So slow is justice in its ways  
Beset by more than customary clogs,  
Going to law in these expensive days  
Is much the same as going to the  
dogs."

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WILLOCK: *Legal Facetiæ*.

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## CHAPTER THREE THE JUDGES OF IRELAND

In the days of Queen Anne corruption was rife among Irish judges, as it was also among members of the Scottish Bench at an earlier period, and it was not uncommon to find the former concurring in Privy Council reports issued contrary to evidence. Within the area of the Munster Circuit in the early years of the eighteenth century a petition was signed and presented to Parliament by clergy, resident gentry, and others in the district, because Lord Chancellor Phipps refused to be influenced in his decision of cases coming before him, and had thereby incurred the displeasure of a certain section of the Irish Parliament. Even a Lord Chief Justice was not above taking a gift; and in this connection O'Flanagan in *The Munster Circuit* tells a story of Chief Justice Pyne, who was a great cattle-breeder and owner of valuable stock. One day before starting for Cork Assizes to try a case in which a Mr. Weller and a Mr. Nangle were concerned, he received a visit from the former's steward, who had been sent with a herd of twenty-five splendid heifers for his lordship. The judge was highly pleased, and returned by the steward a gracious message of thanks to his master. On the way to Cork the Chief Justice's coach was stopped by a drove of valuable shorthorns on the road. Looking out, his lordship demanded of the drover, "Whose beasts are these, my man?"—"They belong, please your honour, to a great gentleman of these parts, Judge Pyne, your honour," replied the man. "Indeed," cried the Chief Justice in much surprise, "and where are you taking them now?"—"They are grazing in my master Mr. Nangle's farm, your honour; and as the Assizes are coming on at Cork my master thought the judge might like to see that he took good care of them, so I'm taking them to Waterpark (his lordship's estate) to show to the judge." The judge felt the delicacy of Mr. Nangle's mode of giving his present, and putting a guinea in the drover's hand said, "As your master has taken such good care of my cattle, I will take care of him." When the case came on it appeared at first that the judge favoured the plaintiff, Mr. Weller, but as it proceeded he changed his views and finally decided for the defendant, Mr. Nangle. On arriving home the judge's first question was, "Are the cattle all safe?"—"Perfectly, my lord."—"Where are the beasts I received on leaving for the Cork Assizes?"—"They are where you left them, my lord."—"Where I left them—that is impossible," exclaimed the judge. "I left them on the road." The steward looked puzzled. "I'll have a look at them myself," said Chief Justice Pyne. The steward led the way, and pointed out the twenty-five fine heifers presented by Mr. Weller, the plaintiff. "But where are the shorthorns that came after I left home?"—"Bedad, the long and the short of it is, them's all the cattle on the land, except what we have bred ourselves, my lord." And so it was. Mr. Nangle, the defendant, had so arranged his gift to meet the judge on the road, but as soon as his lordship's coach was out of sight the cattle were driven back to their familiar fields. The Chief Justice had been outwitted and had no power of showing resentment.

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In the manners and customs of the legal profession of Ireland in the latter part of the eighteenth century, there is also a strong similarity between the members of the Scottish Bench and their Irish brethren, in that they were heavy port drinkers; and did not hesitate to indulge in it while sitting on the Bench. It is reported of one Irish judge that he had a specially constructed metal tube like a penholder, through which he sucked his favourite liquor, from what appeared to the audience to be a metal inkstand. Another judge on being asked if, at a social gathering, he had seen a learned brother dance, "Yes," he replied, "I saw him in a *ree!*"; while Curran referring to a third judge, who had condemned a prisoner to death, said, "He did not weep, but he had a drop in his eye."

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Unblushing effrontery and a bronzed visage gained for John Scott (Lord Clonmel) while at the

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Bar the sobriquet of "Copper-faced Jack." He took the popular side in politics, which ordinarily would not have led to promotion in his profession; but his outstanding ability attracted the attention of Lord Chancellor Lifford, and through his influence Scott was offered a place under the Government. On accepting it at the hands of Lord Townshend, he said, "My lord, you have spoiled a good patriot." Some time after he met Flood, a co-patriot, and addressed him: "Well, I suppose you will be abusing me as usual." To which Flood replied: "When I began to abuse you, you were a briefless barrister; by abuse I made you counsel to the revenue, by abuse I got you a silk gown, by abuse I made you Solicitor-General, by abuse I may make you Chief Justice. No, Scott, I'll praise you."

When Lord Clonmel was Lord Chief Justice he upheld the undignified practice of demanding a shilling for administering an oath, and used to be well satisfied, provided the coin was a *good one*. In his time the Birmingham shilling was current, and he used the following extraordinary precautions to avoid being imposed upon by taking a bad one. "You shall true answer make to such questions as shall be demanded of you touching this affidavit, so help you God! *Is this a good shilling?* Are the contents of this affidavit true? Is this your name and handwriting?"

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The family of Henn belonging to Clare have been, generation after generation, since the first of the name became Chief Baron in 1679, connected with the Irish Bench and Bar. William Henn, a descendant of the Chief Baron, was made a Judge of the King's Bench in 1767, and when on Circuit at Wexford in 1789 two young barristers contended before him with great zeal and pertinacity, each flatly contradicting the other as to the law of the case; and both at each turn of the argument again and again referred with exemplary confidence to the learned judge, as so well knowing that what was said by him (the speaker) was right. The judge said, "Well, gentlemen, can I settle this matter between you? You, sir, say positively the law is one way; and you, sir (turning to the opponent), as unequivocally say it is the other way. I wish to God, Billy Harris (leaning over and addressing the registrar who sat beneath him), I knew what the law really was!"—"My lord," replied Billy Harris, rising, and turning round with great gravity and respect, "if I possessed that knowledge, I assure your lordship that I would tell your lordship with great pleasure!"—"Then," exclaimed the judge, "we'll save the point, Billy Harris!" [Pg 111]

Although more appropriate in the following chapter, we may here introduce a story of the younger son of the Judge Henn of the previous story. Jonathan, who was more distinguished than his elder brother—another Judge Henn—did not attain to the Bench. In early years he was indifferent whether briefs were given him or not, and indeed on one occasion he is said to have sent a message to the Attorney-General, who had called to engage him in a case, to keep "his d—d brief and to take himself to the d—l." But later he became very industrious, and his natural ability soon brought him into a large and lucrative practice. He was counsel for the Government at the trial of John Mitchell, and at its close the wags of the Court declared that "Judge Moore *spoke* to the evidence, but Jonathan Henn *charged the jury*." [Pg 112]



**HUGH CARLETON, VISCOUNT  
CARLETON, LORD CHIEF  
JUSTICE OF IRELAND.**

Chief Justice Carleton was a most lugubrious judge, and was always complaining of something or other, but chiefly about the state of his health, so that Curran remarked that it was strange the old judge was *plaintive* in every case tried before him.

One day his lordship came into Court very late, looking very woeful. He apologised to the Bar for

being obliged to adjourn the Court at once and dismiss the jury for that day. "Though," his lordship added, "I am aware that an important issue stands for trial. But, the fact is, gentlemen (addressing the Bar in a low tone of voice and somewhat confidentially), I have met with a domestic misfortune, which has altogether deranged my nerves. Poor Lady Carleton has, most unfortunately, miscarried, and—" "Oh, then, my lord," exclaimed Curran, "I am sure we are all quite satisfied your lordship has done right in deciding there is no *issue* to try to-day." His lordship smiled a ghastly smile, and, retiring, thanked the Bar for their sympathy.

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Judge Foster was trying five prisoners for murder, and misunderstood the drift of the evidence. Four of the prisoners seem to have assisted, but a witness said as to the fifth, Denis Halligan, that it was he who gave the fatal blow: "My lord, I saw Denis Halligan (that's in the dock there) take a vacancy (Irish word for 'aim' at an unguarded part) at the poor soul that's kilt, and give him a wipe with a *clehalpin* (Irish word for 'bludgeon'), and lay him down as quiet as a child." They were found guilty. The judge, sentencing the first four, gave them seven years' imprisonment. But when he came to Halligan, who really killed the deceased, the judge said, "Denis Halligan, I have purposely reserved the consideration of your case to the last. Your crime is doubtless of a grievous nature, yet I cannot avoid taking into consideration the mitigating circumstances that attend it. By the evidence of the witness it clearly appears that *you* were the only one of the party who showed any mercy to the unfortunate deceased. You took him to a vacant seat, and wiped him with a clean napkin, and you laid him down with the gentleness one shows to a little child. In consideration of these extenuating circumstances, which reflect some credit upon you, I shall inflict upon you three weeks' imprisonment." So Denis Halligan got off by the judge mistaking a vacancy for a vacant seat, and a *clehalpin* for a clean napkin.

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John Toler (Lord Norbury) was Chief Justice of the Common Pleas in Ireland. His humour was broad, and his absolute indifference to propriety often saved the situation by converting a serious matter into a wholly ludicrous one. His Court was in constant uproar, owing to his noisy jesting, and like a noted old Scottish judge he would have his joke when the life of a human being was hanging in the balance. Even on his own deathbed he could not resist the impulse. On hearing that his friend Lord Erne was also nearing his end at the same time, he called for his valet: "James," said Lord Norbury, "run round to Lord Erne and tell him with my compliments that it will be a *dead-heat* between us."

The best illustration of the almost daily condition of things when Lord Norbury presided at Nisi Prius is given by himself in his reply to the answer of a witness. "What is your business?" asked the judge. "I keep a *racquet-court*, my lord."—"So do I, so do I," immediately exclaimed the judge. Nor did he reserve his *bon mots* for Court merriment. Passing the Quay on his way to the Four Courts one morning, he noticed a crowd and inquired of a bystander the cause of it. On being told that a tailor had just been rescued from attempted suicide by drowning, his lordship exclaimed, "What a fool to leave his *hot goose* for a *cold duck*." The boastful statement of a gentleman in his company that he had shot seventy hares before breakfast drew from the Chief Justice the sarcastic remark, "I suppose, sir, you fired at a wig."

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A son of a peer having been accused of arson, of which offence he was generally believed guilty, but acquitted on a point of insufficiency of evidence to sustain the indictment, was tried before Lord Norbury. The young gentleman met the judge next at the Lord-Lieutenant's levee in the Castle. Instead of avoiding the Chief Justice, the scion of nobility boldly said, "I have recently married, and have come here to enable me to present my bride at the Drawing-Room."—"Quite right to mind the Scripture. Better marry than burn," retorted Lord Norbury.

A barrister once pressed him to non-suit the plaintiff in a case; but his lordship decided to let it go to a jury trial. "I do believe," said the disappointed advocate, "your lordship has not the *courage to non-suit*."—"You say, sir," replied the irate judge, "you don't believe I'd have the courage to non-suit. I tell you I have courage to *shoot* and to *non-shoot*, but I'll not non-suit for you." This same counsel was once horsewhipped by an army officer at Nelson's Pillar in Sackville Street, and applied for a Criminal Information against his assailant. "Certainly he shall have it," said the witty judge. "The Court is bound to give protection to any one who has *bled under the gallant Nelson*."

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On a motion before this judge, a sheriff's officer, who had the hardihood to serve a process in Connemara, where the king's writ *did not run*, swore that the natives made him eat and swallow both copy and original. Norbury, affecting great disgust, exclaimed: "Jackson, Jackson, I hope it's not made returnable into this Court."

While giving a judgment on a writ of right, Lord Norbury observed that it was not sufficient for a demandant to say he "claimed by descent." "Such an answer," he continued, "would be a shrewd one for a sweep, who got into your house by coming down the chimney; and it would be an easy, as well as a sweeping, way of getting in."

His lordship was attacked by a fit of gout when on Circuit, and sent to the Solicitor-General requesting the loan of a pair of large slippers. "Take them," said the Solicitor to the servant, "with my respects, and I hope soon to be in his lordship's shoes."

At the instigation of O'Connell, Lord Norbury was finally removed from the Bench. A flagrant case of partiality was brought to Lord Brougham's notice which exasperated Lord Norbury, and

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he is reported to have said, "I'll resign to demand satisfaction. That Scottish Broom wants to be made acquainted with an Irish stick."

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Two notorious highwaymen were charged before Chief Baron O'Grady with robbery, and to the surprise of all the jury returned a verdict of not guilty. "Mr. Murphy," said the judge to the gaoler, "you will greatly ease my mind by keeping these two respectable gentlemen in custody until seven o'clock. I leave for Dublin at five, and I should like to have at least two hours' start of them." There is also the story of a barrister who made an eloquent speech and got his client off, but he was very anxious to know whether the prisoner was guilty or not. "Well, sir," said the man when applied to, "to tell the truth I thought I was guilty until I heard you speak, and then I didn't see how I could be." This at once recalls an old story. "Prisoner, I understand you confess your guilt," said the judge. "No, I don't," said the prisoner. "My counsel has convinced me of my innocence."

On hearing that some spendthrift barristers, friends of his, were appointed to be Commissioners of Insolvent Debtors the Chief Baron remarked, "At all events, the insolvents can't complain of not being tried by their peers." It was the same judge who caustically observed, after a long and dull legal argument: "I agree with my brother J—, for the reasons given by my brother M—." A prisoner once was given a practical specimen of his lordship's wit, and must have been rather distressed by it. He was passing sentence upon a pickpocket, and ordering a punishment common at that time. "You will be whipped from North Gate to South Gate," said the judge. "Bad luck to you, you old blackguard," said the prisoner. "—And back again," said the Chief Baron, as if he had been interrupted in the delivery of the sentence.

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A cause of much celebrity was tried at a county Assize, at which Chief Baron O'Grady presided. Bushe, then a K.C., who held a brief for the defence, was pleading the cause of his client with much eloquence, when a donkey in the courtyard outside set up a loud bray. "One at a time, brother Bushe!" called out his lordship. Peals of laughter filled the Court. The counsel bore the interruption as best he could. The judge was proceeding to sum up with his usual ability: the donkey again began to bray. "I beg your lordship's pardon," said Bushe, putting his hand to his ear; "but there is such an echo in the Court that I can't hear a word you say."

In his charges to juries, O'Grady frequently made some quaint remarks. There was a Kerry case in which a number of men were indicted for riot and assault. Several of them bore the familiar names of O'Donoghue, Moriarty, Duggan, &c., while among the jurymen these names were also found. Well knowing that consanguinity was prevalent in the district, the judge began his address to the jury with the significant remark: "Of course, gentlemen, you will acquit your own relatives." In another case of larceny of pantaloons which was clearly proved, but in which the thief got a good character for honesty, he began: "Gentlemen, the prisoner was an honest boy, but he stole the pantaloons."

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"I merely wish to address your lordship on the form of the indictment, if your lordship pleases," said a young barrister to the Chief Baron. "Oh, certainly, I will hear you with mighty great pleasure, sir; but I'll be after taking the verdict of the jury first," was the sarcastic reply.

The brother of Chief Baron O'Grady once caught a boy stealing turnips from one of his fields and asked his lordship if the culprit could be prosecuted under the Timber Acts. "No," said the Chief Baron, "unless you can prove that your turnips are sticky."

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Yelverton, first Baron Avonmore, possessed remarkable rhetorical ability and a highly cultivated mind. He rose rapidly at the Bar, until he became Chief Baron of Exchequer. He was the founder of the convivial order of St. Patrick, called "The Monks of the Screw," of which Curran, who wrote its charter song, was Prior. Avonmore was a man of warm and benevolent feelings, which he gave vent to in an equal degree in private life, in the senate, and on the Bench.

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Before giving an anecdote of Lord Avonmore it may interest readers, especially English and Scottish, to quote here the charter song of this famous Irish convivial club of the eighteenth century.

#### THE CHARTER SONG OF THE MONKS OF THE SCREW

When St. Patrick this order establish'd,  
He called us the "Monks of the Screw"!  
Good rules he reveal'd to our Abbot,  
To guide us in what we should do.  
But first he replenish'd our fountain,  
With liquor the best in the sky;  
And he swore on the word of a saint  
That the fountain should never run dry.

Each year when your octaves approach,

In full chapter convened let me find you,  
And when to the convent you come  
Leave your favourite temptation behind  
you;  
And be not a glass in your convent,  
Unless on a festival found;  
And this rule to enforce I ordain it,  
Our festival all the year round.

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My brethren, be chaste till you're  
tempted;  
While sober be grave and discreet;  
And humble your bodies with fasting,  
As oft as you've nothing to eat.  
Yet, in honour of fasting, one lean face  
Among you I'll always require,  
If the Abbot should please he may wear  
it—  
If not, let it come to the Prior.

The last two lines hit off the appearance of the Abbot, a Mr. Doyle, and of the Prior, J. P. Curran. The former was a big burly man with a fat, jovial face, while Curran was a short and particularly spare man whose "lean face" always attracted attention.

On a Lent Circuit, one of the Assize towns happened to be a place, of which one of Lord Avonmore's college contemporaries held a living: at his own request, the Chief Baron's reverend friend preached the Assize sermon. The time being the month of March the weather was cold, the judge was chilled, and unhappily the sermon was long, and the preacher tedious. After the discourse was over, the preacher descended from the pulpit and approached the judge, smirking and smiling, looking fully satisfied with his own exertions, and expecting to receive the compliments and congratulations of his quondam chum. "Well, my lord," he asked, "and how did you like the sermon?"—"Oh! most wonderfully," replied Avonmore. "It was like the peace of God—it passed all understanding; and—like his mercy—I thought it would have endured for ever."

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When Plunket was at the Bar his great friend and rival was C. K. Bushe. The former was Attorney-General at the same time as the latter was Solicitor-General, and it caused him much dissatisfaction when Plunket learned that on a change of Government Solicitor-General Bushe had not followed his example and resigned office. At the time this occurred both barristers happened to be engaged in a case at which, when it was called, Bushe only appeared. On the judge inquiring of Mr. Bushe if he knew the reason of Mr. Plunket's absence his friend jocosely remarked, "I suppose, my lord, he is Cabinet-making." This pleasantry, at his expense, was told to Plunket by a friend, when he arrived in Court, on which, turning to the judge, the ex-Attorney-General proudly said, "I assure your lordship I am not so well qualified for Cabinet-making as my learned friend. I never was either a *turner* or a *joiner*."

Two eminent Irish astronomers differed in an argument on the parallax of a *lyræ*—the one maintaining that it was three seconds, and the other that it was only two seconds. On being told of this discussion, and that the astronomers parted without arriving at an agreement, Plunket quietly remarked: "It must be a very serious quarrel indeed, when even the seconds cannot agree."

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Once applying the common expression to accommodation bills of exchange, that they were *mere kites*, the judge, an English Chancellor, said "he never heard that expression applied before to any but the kites of boys."—"Oh," replied Plunket, "that's the difference between kites in England and in Ireland. In England the wind raises the kite, but in Ireland the kite raises the wind."

Everybody (says Phillips) knew how acutely Plunket felt his forced resignation of the chancellorship, and his being superseded by Lord Campbell. A violent storm arose on the day of Campbell's expected arrival, and a friend remarking to Plunket how sick of his promotion the passage must have made the new Chancellor: "Yes," said the former, ruefully, "but it won't make him throw up the seals."

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Mr. Frankfort Moore, in his *Journalist's Notebook*, relates how Justice Lawson summed up in the case of a man who was charged with stealing a pig. The evidence of the theft was quite conclusive, and, in fact, was not combated; but the prisoner called the priests and neighbours to attest to his good character. "Gentlemen of the jury," said the judge, "I think that the only conclusion you can arrive at is, that the pig was stolen by the prisoner, and that he is the most amiable man in the country."

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## CHAPTER FOUR THE BARRISTERS OF IRELAND

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"Men that hire out their words and anger"; that are more or less passionate according as they are paid for it, and allow their client a quantity of wrath proportionable to the fee which they receive from him."

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ADDISON: *The Spectator*.

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## CHAPTER FOUR THE BARRISTERS OF IRELAND

The Irish counsel like the occupants of the Bench were, in early times, eminent for their jolly carousing. Once, about 1687, a heavy argument coming on before Lord Chancellor Fitton, Mr. Nagle, the solicitor, retained Sir Toby Butler as counsel, who entered into a bargain that he would not drink a drop of wine while the case was at hearing. This bargain reached the ears of the Chancellor, who asked Sir Toby if it was true that such a compact had been made. The counsel said it was true, and the bargain had been rigidly kept; but on further inquiry he admitted that as he had only promised not to *drink* a *drop* of wine, he felt he must have some stimulant. So he got a basin, into which he poured two bottles of claret, and then got two hot rolls of bread, sopped them in the claret and ate them. "I see," replied the Chancellor; "in truth, Sir Toby, you deserve to be master of the rolls!"



JOHN P. CURRAN, MASTER OF  
ROLLS.

One naturally turns to Curran for a selection of the witty sayings of the Irish Bar, and abundantly he supplies them, although in these days many of his jests may be considered as in somewhat doubtful taste. Phillips tells us he remembered Curran once—in an action for breach of promise of marriage, in which he was counsel for the defendant, a young clergyman—thus appealing to the jury: "Gentlemen, I entreat you not to ruin this young man by a vindictive verdict; for *though* he has talents, and is in the Church, *he may rise!*"

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After his college career Curran went to London to study for the Bar. His circumstances were often straitened, and at times so much so that he had to pass the day without dinner. But under such depressing circumstances his high spirits never forsook him. One day he was sitting in St. James's Park merrily whistling a tune when a gentleman passed, who, struck by the youth's melancholy appearance while, at the same time, he whistled a lively air, asked how he "came to be sitting there whistling while other people were at dinner." Curran replied, "I would have been at dinner too, but a trifling circumstance—delay in remittances—obliges me to dine on an Irish tune." The result was that Curran was invited to dine with the stranger, and years afterwards, when he had become famous, he recalled the incident to his entertainer—Macklin, the celebrated actor—with the assurance, "You never acted better in your life."

From Phillips again we have Curran's retort upon an Irish judge, who was quite as remarkable for his good humour and raillery as for his legal researches. Curran was addressing a jury on one of the State trials in 1803 with his usual animation. The judge, whose political bias, if any judge can have one, was certainly supposed not to be favourable to the prisoner, shook his head in doubt or

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denial of one of the advocate's arguments. "I see, gentlemen," said Curran, "I see the motion of his lordship's head; common observers might imagine that implied a difference of opinion, but they would be mistaken; it is merely accidental. Believe me, gentlemen, if you remain here many days, you will yourselves perceive that when his lordship shakes his head, there's *nothing in it!*"

Curran was one day engaged in a case in which he had for a junior a remarkably tall and slender gentleman, who had been originally intended to take orders. The judge observing that the case under discussion involved a question of ecclesiastical law, Curran interposed with: "I refer your lordship to a high authority behind me, who was once intended for the Church, though in my opinion he was fitter for the steeple."

He was one day walking with a friend, who, hearing a person say "curoosity" for "curiosity," exclaimed: "How that man murders the English language!"—"Not so bad as that," replied Curran. "He has only knocked an 'i' out."

Curran never joined the hunt, except once, not far from Dublin. His horse joined very keenly in the sport, but the horseman was inwardly hoping all the while that the dogs would not find. In the midst of his career, the hounds broke into a potato field of a wealthy land-agent, who happened to have been severely cross-examined by Curran some days before. The fellow came up patronisingly and said, "Oh sure, you are Counsellor Curran, the great lawyer. Now then, Mr. Lawyer, can you tell me by what law you are trespassing on my ground?"—"By what law, did you ask, Mr. Maloney?" replied Curran. "It must be the *Lex Tally-ho-nis*, to be sure."

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During one of the Circuits, Curran was dining with a brother advocate at a small inn kept by a worthy woman known by the Christian name of Honoria, or, as it is generally called, Honor. The gentlemen were so pleased with their entertainment that they summoned Honor to receive their compliments and drink a glass of wine with them. She attended at once, and Curran after a brief eulogium on the dinner filled a glass, and handing it to the landlady proposed as a toast "Honor and Honesty," to which the lady with an arch smile added, "Our absent friends," drank off her amended toast and withdrew.

He happened one day to have for his companion in a stage-coach a very vulgar and revolting old woman, who seemed to have been encrusted with a prejudice against Ireland and all its inhabitants. Curran sat chafing in silence in his corner. At last, suddenly, a number of cows, with their tails and heads in the air, kept rushing up and down the road in alarming proximity to the coach windows. The old woman manifestly was but ill at ease. At last, unable to restrain her terror, she faltered out, "Oh dear; oh dear, sir! what can the cows mean?"—"Faith, my good woman," replied Curran, "as there's an Irishman in the coach, I shouldn't wonder if they were on the outlook for *a bull!*"

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Curran was once asked what an Irish gentleman, just arrived in England, could mean by perpetually putting out his tongue. "I suppose," replied the wit, "he's trying *to catch the English accent.*"

During the temporary separation of Lord Avonmore and Curran, Egan espoused the judge's imaginary quarrel so bitterly that a duel was the consequence. The parties met, and on the ground Egan complained that the disparity in their sizes gave his antagonist a manifest advantage. "I might as well fire at a razor's edge as at him," said Egan, "and he may hit me as easily as a turf-stack."—"I'll tell you what, Mr. Egan," replied Curran; "I wish to take no advantage of you—let my *size* be *chalked* out upon your side, and I am quite content that every shot which hits outside that mark should *go for nothing.*" And in another duel, in which his opponent was a major who had taken offence at some remark the eminent counsel had made about him in Court, the major asked Curran to fire first. "No," replied Curran, "I am here on your invitation, so you must *open the ball.*"

Sir Thomas Furton, who was a respectable speaker, but certainly nothing more, affected once to discuss the subject of eloquence with Curran, assuming an equality by no means palatable to the latter. Curran happening to mention, as a peculiarity of his, that he could not speak above a quarter of an hour without requiring something to moisten his lips, Sir Thomas, pursuing his comparisons, declared *he* had the advantage in that respect. "I spoke," said he, "the other night in the Commons for five hours on the Nabob of Oude, and never felt in the least thirsty."—"It is very remarkable, indeed," replied Curran, "for everyone agrees that was the *driest* speech of the session."

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Lord Clare (says Mr. Hayward) had a favourite dog which was permitted to follow him to the Bench. One day, during an argument of Curran's, the Chancellor turned aside and began to fondle the dog, with the obvious view of intimating inattention or disregard. The counsel stopped; the judge looked up: "I beg your pardon," continued Curran, "I thought your lordship had been in consultation."

Curran often raised a laugh at Lord Norbury's expense. The laws, at that period, made capital punishment so general that nearly all crimes were punishable with death by the rope. It was remarked Lord Norbury never hesitated to condemn the convicted prisoner to the gallows. Dining in company with Curran, who was carving some corned beef, Lord Norbury inquired, "Is that hung beef, Mr. Curran?"—"Not yet, my lord," was the reply; "you have not *tried* it."

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"A doldrum, Mr. Curran! What does the witness mean by saying you put him in a doldrum?" asked Lord Avonmore. "Oh, my lord, it is a very common complaint with persons of this description; it's merely a confusion of the head arising from a corruption of the heart."

Angered one day in debate, he put his hand on his heart, saying, "I am the trusty guardian of my own honour."—"Then," replied Sir Boyle Roche, "I congratulate my honourable friend in the snug little sinecure to which he has appointed himself."

But on one occasion he met his match in a pert, jolly, keen-eyed son of Erin, who was up as a witness in a case of dispute in the matter of a horse deal. Curran was anxious to break down the credibility of this witness, and thought to do it by making the man contradict himself—by tangling him up in a network of adroitly framed questions—but to no avail. The ostler's good common sense, and his equanimity and good nature, were not to be upset. Presently, Curran, in a towering rage, thundered forth, as no other counsel would have dared to do in the presence of the Court: "Sir, you are incorrigible! The truth is not to be got from you, for it is not in you. I see the villain in your face!"—"Faith, yer honour," replied the witness, with the utmost simplicity of truth and honesty, "my face must be moighty clane and shinin' indade, if it can reflect like that." For once in his life the great barrister was floored by a simple witness. He could not recover from that repartee, and the case went against him.

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When Curran heard that there was a likelihood of trouble for the part he took in 1798, and that in all probability he would be deprived of the rank of Q.C., he remarked: "They may take away the *silk*, but they leave the *stuff* behind."

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"Bully" Egan had a great muscular figure, as may be guessed from the story of the duel with Curran. To his bulk he added a stentorian voice, which he freely used in Nisi Prius practice to browbeat opposing counsel and witnesses, and through which he acquired his *sobriquet*. On one occasion his opponent was a dark-visaged barrister who had made out a good case for his client. Egan, in the course of an eloquent address, begged the jury not to be carried away by the "dark oblivion of a brow."—"What do you mean by using such balderdash?" said a friend. "It may be balderdash," replied Egan, "but depend upon it, it will do very well for that jury." On another occasion he concluded a vituperative address by describing the defendant as "a most naufrageous ruffian."—"What sort of a ruffian is that?" whispered his junior. "I have no idea," responded Egan, "but I think *it sounds well*."

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H. D. Grady was a strong supporter, in the Irish Parliament, of the Union of Great Britain and Ireland, although he represented a constituency strongly opposed to it; and he did not conceal the fact that the Government had made it worth his while to support them. "What!" exclaimed one of his constituents who remonstrated with him; "do you mean to sell your country?"—"Thank God," cried this patriot, "I have a country to sell."

For his Court work this anti-Nationalist barrister had what he called his "jury-eye." When he wanted a jury to note a particular point he kept winking his right eye at them. Entering the Court one day looking very depressed, a sympathetic friend asked if he was quite well, adding, "You are not so lively as usual."—"How can I be," replied Grady, "my jury-eye is out of order."

He was examining a foreign sailor at Cork Assizes. "You are a Swede, I believe?"—"No, I am not."—"What are you then?"—"I am a Dane." Grady turned to the jury, "Gentlemen, you hear the equivocating scoundrel. *Go down, sir!*"

Judge Boyd who, according to O'Connell, was guilty of sipping his wine through a peculiarly made tube from a metal inkstand, to which we have already referred, one day presided at a trial where a witness was charged with being intoxicated at the time he was speaking about. Mr. Harry Grady laboured hard to show that the man had been sober. Judge Boyd at once interposed and said: "Come now, my good man, it is a very important consideration; tell the Court truly, were you drunk or were you sober upon that occasion?"—"Oh, quite sober, my Lord." Grady added, with a significant look at the *inkstand*, "As sober as a judge!"

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Mr. Bethell, a barrister at the time of the Union of Ireland and Great Britain, like many of his brethren, published a pamphlet on that much-vexed subject. Mr. Lysaght, meeting him, said: "Bethell, you never told me you had published a pamphlet on the Union. The one I saw contained some of the best things I have ever seen in any of these publications."—"I am proud you think so," rejoined the other eagerly. "Pray what was the thing that pleased you so much?"—"Well," replied Lysaght, "as I passed a pastry-cook's shop this morning, I saw a girl come out with three hot mince-pies wrapped up in one of your productions!"

"Pleasant Ned Lysaght," as his familiar friends called him, meeting a Dublin banker one day offered himself as an assistant if there was a vacancy in the bank's staff. "You, my dear Lysaght," said the banker; "what position could you fill?"—"Two," was the reply. "If you made me *cashier* for one day, I'll become *runner* the next."

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And it was Lysaght who made a neat pun on his host's name at a dinner party during the Munster Circuit. The gentleman, named Flatly, was in the habit of inviting members of the Bar to his house when the Court was held in Limerick. One evening the conversation turned upon

matrimony, and surprise was expressed that their host still remained a bachelor. He confessed that he never had had the courage to propose to a young lady. "Depend upon it," said Lysaght, "if you ask any girl *boldly* she will not refuse you, *Flatly*."

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O'Flanagan, author of *The Lord Chancellors of Ireland*, writes of Holmes, an Irish barrister: "He made us laugh very much one day in the Queen's Bench. I was waiting for some case in which I was counsel, when the crier called, 'Pluck and Diggers,' and in came James Scott, Q.C., very red and heated, and, throwing his bag on the table within the bar, he said, 'My lords, I beg to assure your lordships I feel so exhausted I am quite unable to argue this case. I have been speaking for three hours in the Court of Exchequer, and I am quite tired; and pray excuse me, my lords, I must get some refreshment.' The Chief Justice bowed, and said, 'Certainly, Mr. Scott.' So that gentleman left the Court. 'Mr. Holmes, you are in this case,' said the Chief Justice; 'we'll be happy to hear you.'—'Really, my lord, I am very tired too,' said Mr. Holmes. 'Surely,' said the Chief Justice, 'you have not been speaking for three hours in the Court of Exchequer? What has tired you?'—'Listening to Mr. Scott,' was Holmes' sarcastic reply."

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Although rivals in their profession, C. K. Bushe had a great admiration for Plunket's abilities, and would not listen to any disparagement of them. One day while Plunket was speaking at the Bar a friend said to Bushe, "Well, if it was not for the eloquence, I'd as soon listen to —," who was a very prosy speaker. "No doubt," replied Bushe, "just as the Connaught man said, "Pon my conscience if it was not for the malt and the hops, I'd as soon drink ditch water as porter."

There is an impromptu of Bushe's upon two political agitators of the day who had declined an appeal to arms, one on account of his wife, the other from the affection in which he held his daughter:

"Two heroes of Erin, abhorrent of  
slaughter,  
Improved on the Hebrew command—  
One honoured his wife, and the other his  
daughter,  
That 'their' days might be long in 'the  
land.'"

A young barrister once tried to raise a laugh at the Mess dinner at the expense of "Jerry Keller," a barrister who was prominent in social circles of Dublin, and whose cousin, a wine merchant, held the contract for supplying wine to the Mess cellar. "I have noticed," said the junior, "that the claret bottles are growing smaller and smaller at each Assizes since your cousin became our wine merchant."—"Whist!" replied Jerry; "don't you be talking of what you know nothing about. It's quite natural the bottles should be growing smaller, because we all know *they shrink in the washing*."

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An ingenious expedient was devised to save a prisoner charged with robbery in the Criminal Court at Dublin. The principal thing that appeared in evidence against him was a confession, alleged to have been made by him at the police office. The document, purporting to contain this self-criminating acknowledgment, was produced by the officer, and the following passage was read from it:

"Mangan said he never robbed but twice  
Said it was Crawford."

This, it will be observed, has no mark of the writer having any notion of punctuation, but the meaning attached to it was, that

"Mangan said he never robbed but  
twice.  
*Said it was Crawford.*"

Mr. O'Gorman, the counsel for the prisoner, begged to look at the paper. He perused it, and rather astonished the peace officer by asserting, that so far from its proving the man's guilt, it clearly established his innocence. "This," said the learned gentleman, "is the fair and obvious reading of the sentence:

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"Mangan said he never robbed;  
*But twice said it was Crawford.*"

This interpretation had its effect on the jury, and the man was acquitted.

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There were two barristers at the Irish Bar who formed a singular contrast in their stature—

Ninian Mahaffy was as much above the middle size as Mr. Collis was below it. When Lord Redsdale was Lord Chancellor of Ireland these two gentlemen chanced to be retained in the same cause a short time after his lordship's elevation, and before he was personally acquainted with the Irish Bar. Mr. Collis was opening the motion, when the Lord Chancellor observed, "Mr. Collis, when a barrister addresses the Court, he must stand."—"I am standing on the bench, my lord," said Collis. "I beg a thousand pardons," said his lordship, somewhat confused. "Sit down, Mr. Mahaffy."—"I am sitting, my lord," was the reply to the confounded Chancellor.

A barrister who was present on this occasion made it the subject of the following epigram:

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"Mahaffy and Collis, ill-paired in a case,  
Representatives true of the rattling size  
    ace;  
To the heights of the law, though I hope  
    you will rise,  
You will never be judges I'm sure of  
    a(s)size."

A very able barrister, named Collins, had the reputation of occasionally involving his adversary in a legal net, and, by his superior subtlety, gaining his cause. On appearing in Court in a case with the eminent barrister, Mr. Pigot, Q.C., there arose a question as to who should be leader, Mr. Collins being the senior in standing at the Bar, Mr. Pigot being one of the Queen's Counsel. "I yield," said Mr. Collins; "my friend holds the honours."—"Faith, if he does, Stephen," observed Mr. Herrick, "'tis you have all the tricks."



**DANIEL O'CONNELL, "THE  
LIBERATOR."**

It is told by one of O'Connell's biographers that he never prepared his addresses to judges or juries—he trusted to the inspiration of the moment. He had at command humour and pathos, invective and argument; he was quick-witted and astonishingly ready in repartee, and he brought all these into play, as he found them serviceable in influencing the bench or the jury-box.

Lord Manners, Lord Chancellor of Ireland, stopped several of the many counsels in a Chancery suit by saying he had made up his mind. He, in fact, lost his temper as each in succession rose, and he declined them in turn. At last O'Connell, one of the unheard counsel, began in his deepest and most emphatic tone: "Well then, my lord, since your lordship refuses to hear my learned friend, you will be pleased to hear ME"; and then he plunged into the case, without waiting for any expression, assent or dissent, or allowing any interruption. On he went, discussing and distinguishing, and commenting and quoting, till he secured the attention of, and evidently was making an impression on, the unwilling judge. Every few minutes O'Connell would say: "Now, my lord, my learned young friend beside me, had your lordship heard him, would have informed your lordship in a more impressive and lucid manner than I can hope to do," etcetera, until he finished a masterly address. The Lord Chancellor next morning gave judgment in favour of O'Connell's client.

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He was engaged in a will case, the allegation being that the will was a forgery. The subscribing witness swore that the will had been signed by the deceased "while life was in him"—that being an expression derived from the Irish language, which peasants who have long ceased to speak Irish still retain. The evidence was strong in favour of the will, when O'Connell was struck by the persistency of the man, who always repeated the same words, "The life was in him." O'Connell asked: "On the virtue of your oath, was he alive?"—"By the virtue of my oath, the life was in him."—"Now I call upon you in the presence of your Maker, who will one day pass sentence on

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you for this evidence, I solemnly ask—and answer me at your peril—was there not a live fly in the dead man's mouth when his hand was placed on the will?" The witness was taken aback at this question; he trembled, turned pale, and faltered out an abject confession that the counsellor was right; a fly had been introduced into the mouth of the dead man, to allow the witness to swear that "life was in him."

O'Connell was defending John Connor on a charge of murder. The most incriminating evidence was the finding of the murderer's hat, left behind on the road. The all-important question was as to the identity of the hat as that of the accused man. A constable was prepared to swear to it. "You found this hat?" said O'Connell. "Yes."—"You examined it?"—"Yes."—"You know it to be the prisoner's property?"—"Yes."—"When you picked it up you saw it was damaged?"—"Yes."—"And looking inside you saw the prisoner's name, J-O-H-N C-O-N-N-O-R?" (here he spelt out the name slowly). "Yes," was the answer. "There is no name inside at all, my lord," said O'Connell, and the prisoner was saved.

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Explaining to a judge his absence from the Civil Court at the time a case was heard, in which he should have appeared as counsel, O'Connell said he could not leave a client in the Criminal Court until the verdict was given. "What was it?" inquired the judge. "Acquitted," responded O'Connell. "Then you have got off a wretch who is not fit to live," said the judge. O'Connell, knowing his lordship to be a very religious man, at once replied: "I am sure you will agree with me that a man whom you regard as not fit to *live* would be still more *unfit* to die."

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There was a young barrister—a contemporary of O'Connell—named Parsons, who had a good deal of humour, and who hated the whole tribe of attorneys. Perhaps they had not treated him very well, but his prejudice against them was very constant and conspicuous. One day, in the Hall of the Four Courts, an attorney came up to him to beg a subscription towards burying a brother attorney who had died in distressed circumstances. Parsons took out a one-pound note and tendered it. "Oh, Mr. Parsons," said the applicant, "I do not want so much—I only ask a shilling from each contributor. I have limited myself to that, and I cannot really take more."—"Oh, take it, take it," said Parsons; "for God's sake, my good sir, take the pound, and while you are at it bury twenty of them."

There is a terseness in the following which seems to be inimitable. Lord Norbury was travelling with Parsons; they passed a gibbet. "Parsons," said Norbury, with a chuckle, "where would *you* be now if every one had his due?"—"Alone in my carriage," replied Parsons.

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Here is a young Irishman's first Bar-speech. "Your lordships perceive that we stand here as our grandmothers' administrators *de bonis non*; and really, my lords, it does strike me that it would be a monstrous thing to say that a party can now come in, in the very teeth of an Act of Parliament, and actually turn us round, under colour of hanging us up, on the foot of a contract made behind our backs."

A learned Serjeant MacMahon was noted for his confusion of language in his efforts to be sublime. He cared less for the sense than the sound. As, for example: "Gentlemen of the jury, I smell a rat—but I'll nip it in the bud." And, "My client acted boldly. He saw the storm brewing in the distance, but he was not dismayed! He took the bull by the horns and he *indicted him for perjury*."

Peter Burrowes, a well-known member of the Irish Bar, was on one occasion counsel for the prosecution at an important trial for murder. Burrowes had a severe cold, and opened his speech with a box of lozenges in one hand and in the other the small pistol bullet by which the man had met his death. Between the pauses of his address he kept supplying himself with a lozenge. But at last, in the very middle of a 'high-falutin' period, he stopped. His legal chest heaved, his eyes seemed starting from his head, and in a voice tremulous with fright he exclaimed: "Oh! h-h!!! Gentlemen, gentlemen; I've swallowed the bul-let!"

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An Irish counsel who was once asked by the judge for whom he was "concerned," replied: "My lord, I am retained by the defendant, and therefore I am concerned for the plaintiff."

A junior at the Bar in course of his speech began to use a simile of "the eagle soaring high above the mists of the earth, winning its daring flight against a midday sun till the contemplation becomes too dazzling for humanity, and mortal eyes gaze after it in vain." Here the orator was noticed to falter and lose the thread of his speech, and sat down after some vain attempts to regain it; the judge remarking: "The next time, sir, you bring an eagle into Court, I should recommend you to clip its wings."

Mr. Tim Healy's power of effective and stinging repartee is probably unexcelled. He is seldom at a loss for a retort, and there are not a few politicians and others who regret having been foolish enough to rouse his resentment. There is on record, however, an amusing interlude in the passing of which Tim was discomfited—crushed, and found himself unable to "rise to the

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occasion."

During the hearing of a case at the Recorder's Court in Dublin the Testament on which the witnesses were being sworn disappeared. After a lengthy hunt for it, counsel for the defendant noticed that Mr. Healy had taken possession of the book, and was deeply absorbed in its contents, and quite unconscious of the dismay its disappearance was causing.

"I think, sir," said the counsel, addressing the Recorder, "that Mr. Healy has the Testament." Hearing his name mentioned, Mr. Healy looked up, realised what had occurred, and, with apologies, handed it over.

"You see, sir," added the counsel, "Mr. Healy was so interested that he did not know of our loss. He took it for a new publication." For once Mr. Healy's nimble wit failed him, and forced him to submit to the humiliation of being scored off.

In the North of Ireland the peasantry pronounce the word witness "wetness." At Derry Assizes a man said he had brought his "wetness" with him to corroborate his evidence. "Bless me," said the judge, "about what age are you?"—"Forty-two my last birthday, my lord," replied the witness. "Do you mean to tell the jury," said the judge, "that at your age you still have a wet nurse?"—"Of course I have, my lord." Counsel hereupon interposed and explained.

The witness who gave the following valuable testimony, however, was probably keeping strictly to fact. "I sees Phelim on the top of the wall. 'Paddy,' he says. 'What,' says I. 'Here,' says he. 'Where?' says I. 'Hush,' says he. 'Whist,' says I. And that's all." [Pg 148]

The wit of the Irish Bar seems to infect even the officers of the Courts and the people who enter the witness-box. It is impossible, for example, not to admire the fine irony of the usher who, when he was told to clear the Court, called out: "All ye blaggards that are not lawyers lave the building."

Irish judges have much greater difficulties to contend against, because the people with whom they have to deal have a fund of ready retort. "Sir," said an exasperated Irish judge to a witness who refused to answer the questions put to him—"sir, this is a contempt of Court."—"I know it, my lord, but I was endeavouring to concale it," was the irresistible reply.

A certain Irish attorney threatening to prosecute a printer for inserting in his paper the death of a person still living, informed him that "No person should publish a death unless informed of the fact by the party deceased."

A rather amusing story is told of a trial where one of the Irish jurymen had been "got at" and bribed to secure the jury agreeing to a verdict of "Manslaughter," however much they might want to return one upon the capital charge of "Murder." The jury were out for several hours, and it was believed that eventually the result would be that they would not agree upon a verdict at all. However, close upon midnight, they were starved into one, and it was that of "Manslaughter." Next day the particular jurymen concerned received his promised reward, and in paying it, the man who had arranged it for him remarked: "I suppose you had a great deal of difficulty in getting the other jurymen to agree to a verdict of 'Manslaughter'?"—"I should just think I did," replied the man. "I had to knock it into them, for all the others—the whole eleven of them—wanted to acquit him." [Pg 149]

An Irish lawyer addressed the Court as *Gentlemen* instead of *Your Honours*. When he had concluded, a brother lawyer pointed out his error. He immediately rose and apologised thus: "In the heat of the debate I called your honours gentlemen,—I made a mistake, your honours."

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## CHAPTER FIVE

### THE JUDGES OF SCOTLAND

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"Ye Barristers of England  
Your triumphs idle are,  
Till ye can match the names that ring  
Round Caledonia's Bar.  
Your *John Doe* and your Richard Roe  
Are but a paltry pair:  
Look at those who compose  
The flocks round Brodie's Stair,  
Who ruminat on Shaw and Tait  
And flock round Brodie's Stair.

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\* \* \* \* \*

"But, Barristers of England,  
Come to us lovingly,  
And any Scot who greets you not  
We'll send to Coventry.  
Put past your brief, embark for Leith,

And when you've landed there,  
Any wight with delight  
Will point out Brodie's Stair  
Or lead you all through Fountainhall  
Till you enter Brodie's Stair."

OUTRAM: *Legal and other Lyrics*.

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## CHAPTER FIVE THE JUDGES OF SCOTLAND

From the Institution of the Court of Session by James V of Scotland till well into the nineteenth century, it was the custom of Scottish judges when taking their seat on the Bench to assume a title from an estate—it might even be from a farm—already in their own or their family's possession. So we find that nearly every parish in Scotland has given birth to a judge who by this practice has made that parish or an estate in it more or less familiar to Scottish ears. Monboddo, near Fordoun, in Kincardineshire, at once recalls the judge who gave "attic suppers" in his house in St. John Street, Edinburgh, and held a theory that all infants were born with tails like monkeys; but under the modern practice of simply adding "Lord" to his surname of Burnet, we doubt if his eccentric personality would be so readily remembered. Lord Dirleton's *Doubts*, Lord Fountainhall's *Historical Observes*, carry a more imposing sound in their titles than if those one-time indispensable works of reference had been simply named Nisbet on Legal Doubts, and Lauder on Historical Observations of Memorable Events.

The selection of a title was an important matter with these old judges. When Lauder was raised to the Bench, his estate to the south-east of Edinburgh was called Woodhead; but it would never have done for a Senator of the College of Justice to be known as "Lord Woodhead," so the name of the estate was changed to Fountainhall, and as Lord Fountainhall he took his seat among "the Fifteen" as the full Bench of judges was then termed.

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These old-time judges with their rugged ferocity, corruption, and occasionally brave words and deeds, in a great measure present to us now a miniature history of Scotland in the seventeenth and eighteenth centuries. "Show me the man, and I will show you the law," one is reported to have said, meaning that the litigant with the longest purse was pretty certain to win his case in the long run. They delighted in long arguments, and highly appreciated bewilderment in pleadings; "Dinna be brief," cried one judge when an advocate modestly asked to be briefly heard in a case in which he appeared as junior counsel. But the tendency to delay cases in the old Courts stretched beyond all reasonable lengths and became a scandal to the country. It was not a question of a month or even a year. Years passed and still cases remained undecided, some even were passed on from one generation to another—a litigant by his will handing on his plea in the Court to his successor along with his estate. This protracted delay in deciding causes formed the subject of that highly amusing and characteristic skit on the Scottish judges for which Boswell was largely responsible:

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### THE COURT OF SESSION GARLAND

#### PART FIRST

The Bill charged on was payable at sight  
And decree was craved by Alexander  
Wight,<sup>[1]</sup>  
But, because it bore a penalty in case of  
failzie  
It therefore was null contended Willie  
Baillie.<sup>[2]</sup>

The Ordinary not chusing to judge it at  
random  
Did with the minutes make avizandum.  
And as the pleadings were vague and  
windy  
His Lordship ordered memorials *hinc  
inde*.

We setting a stout heart to a stey brae  
Took into the cause Mr. David Rae:<sup>[3]</sup>  
Lord Auchinleck,<sup>[4]</sup> however, repelled  
our defence,  
And over and above decerned for  
expençe.



However of our cause not being  
asham'd,  
Unto the whole Lords we straightway  
reclaim'd;  
And our petition was appointed to be  
seen,  
Because it was drawn by Robbie  
Macqueen.<sup>[5]</sup>

The answer of Lockhart<sup>[6]</sup> himself it was  
wrote,  
And in it no argument or fact was  
forgot;  
He is the lawyer that from no cause will  
flinch,  
And on this occasion divided the Bench.

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Alemoor,<sup>[7]</sup> the judgment as illegal  
blames,  
'Tis equity, you bitch, replies my Lord  
Kames;<sup>[8]</sup>  
This cause, cries Hailes,<sup>[9]</sup> to judge I  
can't pretend,  
For Justice, I see, wants an *e* at the end.

Lord Coalston<sup>[10]</sup> expressed his doubts  
and his fears,  
And Strichen<sup>[11]</sup> then in his weel weels  
and O dears;  
This cause much resembles that of  
M'Harg,  
And should go the same way, says Lordy  
Barjarg.<sup>[12]</sup>

Let me tell you, my Lords, this cause is  
no joke;  
Says with a horse laugh my Lord  
Ellick<sup>[13]</sup>  
To have read all the papers I pretend  
not to brag,  
Says my Lord Gardenstone<sup>[14]</sup> with a  
snuff and a wag.

Up rose the President,<sup>[15]</sup> and an angry  
man was he,  
To alter this judgment I never can  
agree;  
The east wing said yes, and the west  
wing cried not,  
And it carried ahere by my Lord's  
casting vote.

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This cause being somewhat knotty and  
perplext,  
Their Lordships not knowing what  
they'd determine next;  
And as the session was to rise so soon,  
They superseded extract till the 12th of  
June.

#### PART SECOND

Having lost it, so now we prepare for  
the summer,  
And on the 12th of June presented a  
reclaimer;  
But dreading a refuse, we gave  
Dundas<sup>[16]</sup> a fee,  
And though it run nigh it was carried to  
see.

In order to bring aid from usage beyond,  
The answers were drawn by quondam

Mess John;<sup>[17]</sup>  
He united with such art our law the  
civil,  
That the counsel, on both sides, would  
have seen him to the devil.

The cause being called, my Lord Justice-  
Clerk,<sup>[18]</sup>  
With all due respect, began a loud bark;  
He appeal'd to his conscience, his heart,  
and from thence,  
Concluded to alter, but give no expence.

Lord Stonefield,<sup>[19]</sup> unwilling his  
judgment to podder,  
Or to be precipitate agreed with his  
brother;  
But Monboddoo<sup>[20]</sup> was clear the bill to  
enforce,  
Because, he observed, 'twas the price of  
a horse.

Says Pitfour<sup>[21]</sup> with a wink and his hat  
all agee,  
I remember a case in the year twenty-  
three,  
The magistrates of Banff contra Robert  
Carr,  
I remember well, I was then at the Bar.

Likewise, my Lords, in the case of Peter  
Caw,  
*Superflua non nocent* was found to be  
law:  
Lord Kennet<sup>[22]</sup> also quoted the case of  
one Lithgow  
Where a penalty in a bill was held *pro  
non scripto*.

Lord President brought his chair to the  
plum,  
Laid hold of the bench and brought  
forward his bum;  
In these answers, my Lords, some  
freedoms have been used,  
Which I could point out, provided I  
chus'd.

I was for this interlocutor, my Lords, I  
admit,  
But am open to conviction as long's I  
here do sit;  
To oppose your precedents I quote you  
some clauses,  
But Tait<sup>[23]</sup> *a priori* hurried up the  
causes.

He prov'd it as clear as the sun in the  
sky  
That the maxims of law could not here  
apply,  
That the writing in question was neither  
bill nor band  
But something unknown in the law of  
the land.

The question adhere or alter being put,  
It carried to alter by a casting vote:  
Baillie then mov'd.—In the bill there's a  
raze,  
But by that time their Lordships had  
called a new case.

## FOOTNOTES:

- [1] Wight: a well-known advocate of the period.
- [2] Baillie: Lord Palkemmet.
- [3] Afterwards Lord Eskgrove.
- [4] The father of James Boswell.
- [5] Afterwards Lord Braxfield.
- [6] Lord Covington.
- [7] Andrew Pringle.
- [8] Henry Home, who was notorious for the use of the epithet in the text.
- [9] Sir David Dalrymple, author of the *Annals of Scotland*.
- [10] George Brown of Coalston.
- [11] Alexander Fraser of Strichen.
- [12] James Erskine, who changed his title to Lord Alva.
- [13] James Veitch.
- [14] Francis Garden, who founded the town of Laurencekirk in Kincardineshire.
- [15] Robert Dundas, first Lord President of that name.
- [16] Henry, first Viscount Melville, the friend of Pitt.
- [17] A nickname for John Erskine of Carnoch.
- [18] Sir Thomas Miller of Glenlee.
- [19] John Campbell, raised to the Bench in 1796.
- [20] Jas. Burnet of Monboddo, who had a theory that human beings were born with tails.
- [21] James Ferguson of Pitfour. Owing to weak eyesight he wore his hat on the Bench.
- [22] Robert Bruce of Kennet.
- [23] Clerk of Session.

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It was the first Lord Meadowbank, who wearying of the dry statement of a case made by Mr. Thomas W. Blair, broke in with the remark: "Declaim, sir! why don't you declaim? Speak to me as if I were a popular assembly."

In the reign of Queen Anne there was an old Scottish judge—Lord Dun—who was particularly distinguished for his piety. Thomas Coutts, the founder of the bank now so well known, used to relate of him that when a difficult case came before him, as Lord Ordinary, he used to say, "Eh, Lord, what am I to do? Eh, sirs, I wish you would make it up!" Of another judge of much the same period, also noted for his strict observance of religious ordinances; but who, at the same time, did not allow these to interfere with his social habits, it is related that every Saturday evening he had with him his niece, who afterwards married a more famous Scottish judge, Andrew Fletcher, Lord Milton, Charles Ross who made himself prominent in the "45" Rebellion, and David Reid, his clerk. The judge had what was, and in some parts of Scotland still is, known as "the exercise," which consisted of the reading of a chapter from the Bible, and his form of announcing the evening devotions was: "Betsy (his niece), ye hae a sweet voice, lift ye up a psalm; Charles, ye hae a gey strong voice, read the chapter; and David, fire ye the plate." Firing the plate consisted of a dish of brandy prepared for the company, of which David took charge, and while the first part of the proceedings were in progress David lighted the brandy, which when he thought it burnt to his master's taste he blew out, and this was the signal for the others to stop, while the whole company partook of the burnt brandy. This same judge—Lord Forglen—was walking one day with Lord Newhall, in the latter's grounds. Lord Newhall was a grave and austere man, while, as may be gathered, Lord Forglen was a medley of curious elements. As they passed a picturesque bend of a river Lord Forglen exclaimed: "Now, my lord, this is a fine walk. If ye want to pray to God, can there be a better place? If ye want to kiss a bonny lass, can there be a better place?"

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**SIR DAVID RAE, LORD  
ESKGROVE.**

Sir David Rae (Lord Eskgrove), Lord Justice-Clerk of Scotland, has been described as a ludicrous person about whom people seemed to have nothing else to do but tell stories. Sir Walter Scott imitated perfectly his slow manner of speech and peculiar pronunciation, which always put an accent on the last syllable of a word, and the letter "g" when at the end of a word got its full value. When a knot of young advocates was seen standing round the fireplace of the Parliament Hall listening to a low muttering voice, and the party suddenly broke up in roars of laughter, it was pretty certain to be a select company to whom Sir Walter had been retailing one of the latest stories of Lord Eskgrove.

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He was a man of much self-importance, which comes out in his remarks to a young lady of great beauty who was called as a witness in the trial of Glengarry for murder. "Young woman, you will now consider yourself as in the presence of Almighty God, and of this Court; lift up your veil, throw off all modesty, and look *me* in the face."

Sir John Henderson of Fordell, a zealous Whig, had long nauseated the Scottish Civil Courts by his burgh politics. Their lordships of the Bench had once to fix the amount of some discretionary penalty that he had incurred. Lord Eskgrove began to give his opinion in a very low voice, but loud enough to be heard by those next him, to the effect that the fine ought to be £50, when Sir John, with his usual imprudence, interrupted him and begged him to raise his voice, adding that if judges did not speak so as to be heard they might as well not speak at all. Lord Eskgrove, who could never endure any imputation of bodily infirmity, asked his neighbour, "What does the fellow say?"—"He says, that if you don't speak out, you may as well hold your tongue."—"Oh, is that what he says? My lords, what I was saying was very simpell; I was only sayingg, that in my humbell opinyon this fine could not be less than £250 sterlingg"—this sum being roared out as loudly as his old angry voice could launch it.

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A common saying of his to juries was: "And now, gentle-men, having shown you that the panell's argument is impossibill, I shall now proceed to show you that it is extremely improbabill."

In condemning some persons to death for breaking into Sir John Colquhoun's house and assaulting him and others, as well as robbing them, Eskgrove, after enumerating minutely the details of their crime, closed his address to the prisoners with this climax: "All this you did; and God preserve us! juist when they were sitten doon tae their denner."

When condemning a tailor convicted of stabbing a soldier, the offence was aggravated in Lord Eskgrove's eyes by the fact that "not only did you murder him, whereby he was berea-ved of his life, but you did thrust, or push, or pierce, or project, or propell, the le-thall weapon through the belly-band of his regimental breeches, which were his Majesty's."

One of the most biting of caustic jests made by a judge of the old Court of Session of Scotland, before its reconstruction at the beginning of the nineteenth century, was uttered during the hearing of a claim to a peerage. The claimant was obviously resting his case upon forged documents, and the judge suddenly remarked in the broad dialect of the time, "If ye persevere ye'll nae doot be a peer, but it will be a peer o' anither tree!" The claimant did not appreciate this idea of being grafted, and abandoned the case.

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To return to the stories of the earlier period of the eighteenth century, there is one told of Lord Halkerston. He was waited on by a tenant, who with a woeful countenance informed his lordship that one of his cows had gored a cow belonging to the judge, and he feared the injured animal could not live. "Well, then, of course you must pay for it," said his lordship. "Indeed, my lord, it was not my fault, and you know I am but a very poor man."—"I can't help that. The law says you

must pay for it. I am not to lose my cow, am I?"—"Well, my lord, if it must be so, I cannot say more. But I forgot what I was saying. It was my mistake entirely. I should have said that it was your lordship's cow that gored mine."—"Oh, is that it? That's quite a different affair. Go along, and don't trouble me just now. I am very busy. Be off, I say!"

And there is one of the testy old Lord Polkemmet when he interrupted Mr. James Ferguson, afterwards Lord Kilkerran, whose energy in enforcing a point in his address to the Bench took the form of beating violently on the table: "Maister Jemmy, dinna dunt; ye may think ye're dunting it *intill me*, but ye're juist *dunting it oot o' me*, man."

He was reputed to be dull, and rarely decided a case upon the first hearing. On one occasion, after having heard counsel, among whom was the Hon. Henry Erskine, John Clerk, and others, in a cause of no great difficulty, he addressed the Bar: "Well, Maister Erskine, I heard you, and I thocht ye were richt; syne I heard you, Dauvid, and I thocht ye were richt; and noo I hae heard Maister Clerk, and I think he's richtest amang ye a'. That bauthers me, ye see! Sae I man een tak' hame the process an' wimble-wamble it i' ma wame a wee ower ma toddy, and syne ye'se hae ma interlocutor." [Pg 164]

"The Fifteen," as the full Bench of the old Court of Session of Scotland was popularly called, were deliberating on a bill of suspension and interdict relative to certain caravans with wild beasts on the then vacant ground which formed the beginning of the new communication with the new Town of Edinburgh spreading westwards and the Lawnmarket—now known as the Mound. In the course of the proceedings Lord Bannatyne fell fast asleep. The case was disposed of and the next called, which related to a right of lien over certain goods. The learned lord who continued dozing having heard the word "lien" pronounced with an emphatic accent by Lord Meadowbank, raised the following discussion:

Meadowbank: "I am very clear that there was a lien on this property."

Bannatyne: "Certain; but it ought to be chained, because——" [Pg 165]

Balmuto: "My lord, it's no a livin' lion, it's the Latin word for lien" (leen).

Hermand: "No, sir; the word is French."

Balmuto: "I thought it was Latin, for it's in italics."



**HENRY HOME, LORD KAMES.**

Henry Home (Lord Kames) was at once one of the most enlightened and learned of Scottish judges of the latter half of the eighteenth century, and one of the most eccentric. His *History of Mankind* brought him into correspondence with most of the famous men and women of his day, and yet it was his delight to walk up the Canongate and High Street with a half-witted creature who made it his business to collect all the gossip of the town and retail it to his lordship as he made his way to Court in the morning. His humour was very sarcastic, and nothing delighted him more than to observe that it cut home. Leaving the Court one day shortly before his death he met James Boswell, and accosted him with, "Well, Boswell, I shall be meeting your old father one of these days, what shall I say to him how you are getting on now?" Boswell disdained to reply. After a witness in a capital trial at Perth Circuit concluded his evidence, Lord Kames said to him, "Sir, I have one question more to ask you, and remember you are on your oath. You say you are from Brechin?"—"Yes, my lord."—"When do you return thither?"—"To-morrow, my lord."—"Do you know Colin Gillies?"—"Yes, my lord; I know him very well."—"Then tell him that I shall breakfast with him on Tuesday morning." [Pg 166]

Lord Kames used to relate a story of a man who claimed the honour of his acquaintance on rather

singular grounds. His lordship, when one of the justiciary judges, returning from the North Circuit to Perth, happened one night to sleep at Dunkeld. The next morning, walking towards the ferry, but apprehending he had missed his way, he asked a man whom he met to conduct him. The other answered, with much cordiality, "That I will do with all my heart, my lord. Does not your lordship remember me? My name's John ——. I have had the *honour* to be before your lordship for stealing sheep!"—"Oh, John, I remember you well; and how is your wife? She had the honour to be before me too, for receiving them, knowing them to be stolen."—"At your lordship's service. We were very lucky; we got off for want of evidence; and I am still going on in the butcher trade."—"Then," replied his lordship, "we may have the honour of meeting again."

Once when on Circuit his lordship had been dozing on the bench, a noise created by the entrance of a new panel woke him, and he inquired what the matter was. "Oh, it's a woman, my lord, accused of child murder."—"And a weel farred b—h too," muttered his lordship, loud enough to be heard by those present.

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**JOHN CLERK, LORD ELDIN.**

John Clerk (Lord Eldin) was one of the best-known advocates at the Scottish Bar in the first quarter of the nineteenth century, and probably the last of them to retain the old Scots style of pronunciation. His voice was loud and his manner brow-beating, from which the Bench suffered equally with his brother members of the Bar. He suffered from a lameness in one leg, which was made the subject of a passing remark by two young women in the High Street of Edinburgh one day as Clerk was making his way to Court. "There goes John Clerk the lame lawyer," said one to the other. Clerk overheard the remark, and turning back addressed the speaker: "The lame man, my good woman, not the lame lawyer."

The stories of his advocate days are numerous, and many of them probably well known. In his retention of old Scots pronunciation he got the better of Lord Eldon when pleading before the House of Lords one day. "That's the whole thing in plain English, ma lords," he said. "In plain Scotch, you mean, Mr. Clerk."—"Nae maitter, in plain common sense, ma lords, and that's the same in a' languages." On another occasion before the same tribunal he had frequently referred to water, pronouncing it "watter," when he was interrupted by the inquiry, "Do you spell water with two t's in the north, Mr. Clerk?"—"No, my lord, but we spell mainners wi' twa n's." And there is the well-known one of his use of the word "enough," which in old Scots was pronounced "enow." His repetition of the word in the latter form drew from the Lord Chancellor the remark that at the English Courts the word was pronounced "enough." "Very well, my lord," replied Clerk, and he proceeded with his address till coming to describe his client, who was a ploughman, and his client's claim, he went on: "My lords, my client is a pluffman, who pluffs a pluff gang o' land in the parish of," &c. "Oh! just go on with your own pronunciation, Mr. Clerk," remarked the Lord Chancellor.

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His encounters with members of the Scottish Bench were of a more personal character. Indeed, for years he appears to have held most of them in unfeigned contempt. A junior counsel on hearing their lordships give judgment against his client exclaimed that he was surprised at such a decision. This was construed into contempt of Court, and he was ordered to attend at the Bar next morning. Fearing the consequences of his rash remark, he consulted John Clerk, who offered to apologise for him in a way that would avert any unpleasant result. Accordingly, when the name of the delinquent was called, John Clerk rose and addressed the Bench: "I am sorry, my lords, that my young friend so far forgot himself as to treat your lordships with disrespect. He is extremely penitent, and you will kindly ascribe his unintentional insult to his ignorance. You will see at once that it did not originate in that: he said he was surprised at the decision of your lordships. Now, if he had not been very ignorant of what takes place in this Court every day; had he known your lordships but half so long as I have done, he would not be surprised at anything

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you did."

Two judges, father and son, sat on the Scottish Bench, in succession, under the title of Lord Meadowbank. The second Lord Meadowbank was by no means such a powerful judge as his father. In his Court, Clerk was pressing his construction of some words in a conveyance, and contrasting the use of the word "also" with the use of the word "likewise."

"Surely, Mr. Clerk," said his lordship, "you cannot seriously argue that 'also' means anything different from 'likewise'! They mean precisely the same thing; and it matters not which of them is preferred."—"Not at all, my lord; there is all the difference in the world between these two words. Let us take an instance: your worthy father was a judge on that Bench; your lordship is 'also' a judge on the same Bench; but it does not follow that you are a judge 'like wise.'"

When Meadowbank was about to be raised to the Bench he consulted John Clerk about the title he should adopt. Clerk's suggestion was "Lord Preserve Us." The legal acquirements of James Wolfe Murray were not held in high esteem by his brethren of the Bar, and when he became a judge with the title of Lord Cringletie, Clerk wrote the following clever epigram:

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"Necessity and Cringletie  
Are fitted to a tittle;  
Necessity has nae law,  
And Cringletie as little."

The only man on the Bench for whom John Clerk retained a respectfulness not generally exhibited to others in that position was Lord President Blair. After hearing the President overturn without any effort an argument he had laboriously built up, and which appeared to be regarded as unsurmountable by the audience who heard it, Clerk sat still for a few moments, then as he rose to leave the Court he was heard to say: "My man, God Almighty spared nae pains when He made your brains."

When he ascended the Bench in his sixty-fifth year, and when his physical powers were declining, he received the congratulations of his brother judges, one of whom expressed surprise that he had waited so long for the distinction. "Well, you see, I did not get 'doited' just as soon as the rest of you," replied the new-made judge.

Like the generation preceding his, Clerk was of a very convivial disposition. Of him the story is told that one Sunday morning, while people were making their way to church, he appeared at his door in York Place in his dressing-gown and cowl, with a lighted candle in his hand, showing out two friends who had been carousing with him, and in the firm belief that it was about midnight instead of next mid-day. At the termination of a Bannatyne Club dinner, where wit and wine had contended for the mastery, the excited judge on the way to his carriage tumbled downstairs and, *miserabile dictu*, broke his nose, an accident which compelled him to confine himself to the house for some time. He reappeared, however, with a large patch on his olfactory member, which gave a most ludicrous expression to his face. On someone inquiring how this happened, he said it was the effect of his studies. "Studies!" ejaculated the inquirer. "Yes," growled the judge; "ye've heard, nae doot, about *Coke upon Littleton*, but I suppose you never before heard of *Clerk upon Stair!*"

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When asked by a friend what was the difference between him and Lord Eldon, the Lord Chancellor of England, Eldin replied; "Oh, there's only an 'i' of a difference."



**CHARLES HAY, LORD  
NEWTON.**

Charles Hay (Lord Newton), known in private life as "The Mighty," has been described by Lord Cockburn as "famous for law, paunch, whist, claret, and worth." His indulgence in wine and his great bulk made him slumbrous, and when sitting in Court after getting the gist of a case he almost invariably fell fast asleep. Yet it is strange to find it recorded that whenever anything pertinent to the matter under discussion was said he was immediately wide awake and in full possession of his reasoning faculties. While a very zealous but inexperienced counsel was pleading before him, his lordship had been dozing, as usual, for some time, till at last the young man, supposing him asleep, and confident of a favourable judgment in his case, stopped short in his pleading and, addressing the other judges on the Bench, said: "My lords, it is unnecessary that I should go on, as Lord Newton is fast asleep."—"Ay, ay," cried Lord Newton, "you will have proof of that by and by"—when, to the astonishment of the young advocate, after a most luminous view of the case, he gave a very decided and elaborate judgment against him.

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Lord Jeffrey himself declared that he only went to Oxford to improve his accent, and according to some of the older members of the Bar of his days, he only lost his Scots accent and did not learn the English. A story of his early days at the Bar is related to the effect that when pleading before Lord Newton the judge stopped him and asked in broad Scots, "Whaur were ye educat', Maister Jawfrey."—"Oxford, my lord."—"Then I doot ye maun gang back there again, for we can mak' nocht o' ye here." But Mr. Jeffrey got back his own. For, before the same judge, happening to speak of an "itinerant violinist," Lord Newton inquired: "D'ye mean a blin' fiddler?"—"Vulgarly so called, my lord," was the reply.

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**HENRY COCKBURN, LORD  
COCKBURN.**

Circuit Courts were in Scotland, in the eighteenth and early years of the nineteenth century (as in England and Ireland), occasions for a great display in the county towns in which they were held. Whether the judges had arrived on horseback or as later in their private carriages, there was always the procession to the court-house, in which the notabilities of the district took part. Lord Cockburn, who had no sympathy with this part of a judge's duties, thus describes one of his experiences in the early days of his Circuit journeys: "Yet there are some of us who like the procession, though it can never be anything but mean and ludicrous, and who fancy that a line of soldiers, or the more civic array of paltry policemen, or of doited special constables, protecting a couple of judges who flounder in awkward gowns and wigs through ill-paved streets, followed by a few sneering advocates and preceded by two or three sheriffs or their substitutes, with their swords, which trip them, and a provost and some bailie-bodies trying to look grand, the whole defended by a poor iron mace, and advancing each with a different step, to the sound of two cracked trumpets, ill-blown by a couple of drunken royal trumpeters, the spectators all laughing, who fancy that all this pretence of greatness and reality of littleness contributes to the dignity of judges." Things are changed now. Even Lord Cockburn saw the change that the introduction of railways made in the progress of Circuit work, and with them a lesser display and more dignified opening of the courts of justice in local towns. But the older Circuits were times of much feasting and merriment, in which the judges of that period took their full share as well as the members of the Bar accompanying them. In the eyes of some of these old worthies it was part of the dignity of their position to sit down after Court work at two o'clock in the morning to a collation of salmon and roast beef, and drink bumpers of claret and mulled port with the provosts and other local worthies, although they were due in Court that same morning at nine to try some miserable creature for a serious crime. Lord Pitmilly had no stomach for such proceedings, his inclination was stronger for decorum and law than for revelling. Once at a Circuit town he ordered his servant to bring to his room a kettle of hot water. Lord Hermand on his way to dinner at midnight, meeting the servant, said, "God bless me, is he going to make a whole kettle of punch—and before supper too?"—"No, my lord, he's going to bed, but he wants to bathe his feet."—"Feet,

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sir! what ails his feet? Tell him to put some rum among it, and to give it all to his stomach."

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The Circuit sermon was an important part of the duties to which the judges had to attend in the course of their visits in the country. One of these that Lord Cockburn had to listen to was delivered from the text, "What are these that are arrayed in white robes, and whence came they?" There was nothing personal intended, but the ermine on the judges gowns naturally attracted significant glances from the other members of the congregation. A Glasgow clergyman and friend of the judge, not knowing that his lordship was present in his church, preached from the text, "There was in a city a judge which feared not God, neither regarded man." The announcement of the text directed all eyes towards the learned judge, which attracting the preacher's attention nearly prevented him from proceeding further with the service. The judge was the pious Lord Moncreiff, the son of the Rev. Sir Henry Wellwood Moncreiff, and the text stuck to him ever afterwards. But there seemed to have been deliberation in selection of the text made by a south-country minister who, before Lord Justice Boyle and Samuel M'Cormick, Advocate-Depute, preached from I Samuel vii. 16, "And Samuel went from year to year in circuit to Bethel, and Gilgal, and Mizpeh." The two legal gentlemen took offence at this audacious attempt to ridicule the Court, they identifying the places mentioned in the text as representing their circuit towns of Jedburgh, Dumfries, and Ayr. In this connection maybe told the story of Lord Hermand, beside whom stood the clergyman whose duty it was to offer up the opening prayer before the work of the Court began. He seemed to think the company had assembled for no other purpose than to hear him perform, and after praying loud and long his lordship's patience gave way, and with a decided jog of his elbow he exclaimed in a stage whisper, "We've a lot of business to do, sir."

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From a somewhat rare volume printed for private circulation we are permitted to quote the following ballad, the authorship of which may be easily guessed, as the circuiter who mourns the loss of his Circuit days may be as easily identified.

#### THE EX-CIRCUITEER'S LAMENT

Ae morning at the dawning  
I saw a Counsel yawning,  
And heard him say, in accents that were  
anything but gay,  
As sadly he was grinding  
At a meikle multiplepounding,—  
The days o' my Circuits are a' fled away.

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Nae banter frae Lord Deas,  
Nae promises o' fees  
That never will be paid afore the  
judgment-day,  
Nae lies dubbed "information,"  
From the worst rogues in the nation,  
—  
The days o' my Circuits are a' fled away.

Nae havelal wutty witness,  
Displaying his unfitness,  
Tae see some sma' distinction 'tween a  
trial and a play,  
Nae witness primed at lunch  
Wi' perjuries and punch,—  
The days o' my Circuits are a' fled away.

Nae laughing-gas orations,  
Nae treading on the patience  
Of Judges and of Juries, who will let you  
say your say,  
Yet pay but sma' attention  
To the gems of your invention,—  
The days o' my Circuits are a' fled away.

Nae mair delightful wondering  
At a new man blandly blundering,  
Nae kind hints from the Court that he's  
gagin far astray,  
Nae flowery depictions  
In the teeth of ten convictions,—  
The days o' my Circuits are a' fled away.

Nae whacking ten years' sentence,  
Wi' advices o' repentance,  
And learn in years of leisure to admire  
the "law's delay."  
Nae fell female fury,  
Blackguarding Judge and Jury,—  
The days o' my Circuits are a' fled away.

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Nay grey auld woman sobbing,  
Nae mair you'll catch her robbing,  
And a' the Christian virtues henceforth  
she will display,  
If the Judge will but have mercy  
(For the sixteenth time I daresay),—  
The days o' my Circuits are a' fled away.

Nae processions, nae pageants,  
Nae pawky country agents,  
Nae macers, nae trumpeters, wi' tipsy  
blare and bray,  
Nae Councillors or Bailie,  
Or Provost smiling gaily,—  
The days o' my Circuits are a' fled away.

Nae funny cross-examining,  
Nae jurymen begammoning,  
Nae laughter from the audience, nae  
gallery's hurrah,  
Nae fleeching for acquittal,  
Though you don't care a spittle,—  
The days o' my Circuits are a' fled away.

Nae playing *hocus-pocus*  
With the *tempus* and the *locus*,  
Nae pleas in mitigation (a kittle job are  
they),  
Nae bonny rapes and reivings,  
Nae forgeries and thievings,—  
The days o' my Circuits are a' fled away.

Nae dinners wi' the Judges,  
Nae drooning a' your grudges  
In deep, deep draughts o' claret, and a'  
your senses tae,  
Nae chatter wise or witty  
On ticklish points o' dittay,—  
The days o' my Circuits are a' fled away.

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Nae high-jinks after dinner  
Wi' ony madcap sinner,  
Nae drinking whisky-toddy until the  
break o' day,  
Nae speeches till a hiccup  
Compels a sudden stick-up,—  
The nights o' my Circuits are a' fled  
away.

Lord Hermand's manner on the Bench conveyed the impression that he was of an impatient, almost savage temper, but in his domestic circle he was one of the warmest-hearted of men, and one with the simplest of tastes. His outbursts on the Bench, too, were emphasised by what, in Scotland, was called "Birr"—the emphatic energy of his pronunciation—which may be imagined but cannot be transcribed in the following dialogue between him and Lord Meadowbank.

Meadowbank: "We are bound to give judgment in terms of the statute, my lords."

Hermand: "A statute! What's a statute? Words—mere words. And am *I* to be tied down by words? No, my laards; I go by the law of right reason."

He was a great friend of John Scott (Lord Eldon). In a case appealed to the House of Lords, Scott had taken the trouble to write out his speech, and read it over to Hermand, inviting his opinion of it. "It is delightful—absolutely delightful. I could listen to it for ever," said Hermand. "It is so beautifully written, and so beautifully read. But, sir, it's the greatest nonsense! It may do very well for an English Chancellor, but it would disgrace a clerk with us." The blunder that drew forth this criticism was a gross one for a Scottish lawyer, but one an English barrister might readily fall into.

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It was put forward in mitigation of the crime that the prisoner was in liquor when, either rashly

or accidentally, he stabbed his friend. While the other judges were in favour of a short sentence, Lord Hermand—who had no sympathy with a man who could not carry his liquor—was vehement for transportation: "We are told that there was no malice, and that the prisoner must have been in liquor. In liquor! Why, he was drunk!... And yet he murdered the very man who had been drinking with him! Good God, my laards, if he will do this when he is drunk, what will he not do when he is sober?"

On one of Lord Hermand's circuits a wag put a musical-box, which played "Jack Alive," on one of the seats of the Court. The music struck the audience with consternation, and the judge stared in the air, looking unutterable things, and frantically called out, "Macer, what in the name of God is that?" The macer looked round in vain, when the wag called out, "It's 'Jack Alive,' my lord."—"Dead or alive, put him out this moment," called out the judge. "We can't grip him, my lord."—"If he has the art of hell, let every man assist to arraign him before me, that I may commit him for this outrage and contempt." Everybody tried to discover the offender, and fortunately the music ceased. But it began again half an hour afterwards, and the judge exclaimed, "Is he there again? By all that's sacred, he shall not escape me this time—fence, bolt, bar the doors of the Court, and at your peril let not a man, living or dead, escape." All was bustle and confusion, the officers looked east and west, and up in the air and down on the floor; but the search was in vain. The judge at last began to suspect witchcraft, and exclaimed, "This is a *deceptio auris*—it is absolute delusion, necromancy, phantasmagoria." And to the day of his death the judge never understood the precise origin of this unwonted visitation.

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On another occasion, in his own Court in the Parliament House, he was annoyed by a noise near the door, and called to the macer, "What is that noise?"—"It's a man, my lord."—"What does he want?"—"He *wants in*, my lord."—"Keep him out!" The man, it seems, did get in, and soon afterwards a like noise was renewed, and his lordship again demanded, "What's the noise there?"—"It's the same man, my lord."—"What does he want now?"—"He *wants out*, my lord."—"Then *keep him in*—I say, *keep him in!*"

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Lord President Campbell, after the fashion of those times, was somewhat addicted to browbeating young counsel; and as bearding a judge on the Bench is not a likely way to rise in favour, his lordship generally got it all his own way. Upon one occasion, however, he caught a tartar. His lordship had what are termed pig's eyes, and his voice was thin and weak. Corbet, a bold and sarcastic counsel in his younger days, had been pleading before the Inner House, and as usual the President commenced his attack, when his intended victim thus addressed him: "My lord, it is not for me to enter into any altercation with your lordship, for no one knows better than I do the great difference between us; you occupy the highest place on the Bench, and I the lowest at the Bar; and then, my lord, I have not your lordship's voice of thunder—I have not your lordship's rolling eye of command."

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**ROBERT MACQUEEN, LORD  
BRAXFIELD.**

Robert Macqueen (Lord Braxfield), the prototype of Stevenson's "Weir of Hermiston," was known as the "hanging judge"—the Judge Jeffreys of Scotland; but he was a sound judge. He argued a point in a colloquial style, asking a question, and himself supplying the answer in his clear, abrupt manner. But he was illiterate, and without the least desire for refined enjoyment, holding in disdain natures less coarse than his own; he shocked the feelings of those even of an age which had less decorum than prevailed in that which succeeded, and would not be tolerated by the working classes of to-day. Playing whist with a lady, he exclaimed, "What are ye doin', ye

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damned auld ...," and then recollecting himself, "Your pardon's begged, madam; I took ye for my wife." When his butler gave up his place because his lordship's wife was always scolding him: "Lord," he exclaimed, "ye've little to complain o'; ye may be thankfu' ye're no mairred to her."

His most notorious sayings from the Bench were uttered during the trials for sedition towards the end of the eighteenth century, and even some of these are too coarse for repetition. "Ye're a very clever chiel," he said to one of the prisoners; "but ye wad be nane the waur o' a hangin'." And to a juror arriving late in Court he said, "Come awa, Maister Horner, come awa and help us to hang ane o' they damned scoondrels." Hanging was his term for all kinds of punishment.

To Margarot, a Baptist minister of Dundee—another of the political prisoners of that time—he said, "Hae ye ony counsel, man?"—"No," replied Margarot. "Dae ye want tae hae ony appointed?" continued the Justice-Clerk. "No," replied the prisoner, "I only want an interpreter to make me understand what your lordship says."

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We have already referred to Lord Moncreiff's piety, and to it must be added his great simplicity of nature. Like many of his predecessors, he had a habit of making long speeches to prisoners on their conviction; but his intention was to help them to a better mode of life, not to aggravate their feelings by silly or coarse remarks. This habit, however, led him occasionally into enunciating principles which rather astonished his friends. In a murder case he found that the woman killed was not the wife of the prisoner but his mistress, which led his lordship to explain to the prisoner that it might have been some apology for his crime had the woman been his wife, because there was difficulty in getting rid of her any other way. But the victim being only his associate he could have left her at any time, and consequently there were absolutely no ameliorating circumstances in the case. From this point of view it would seem to have been (in Lord Moncreiff's eyes) less criminal to murder a wife than a mistress. In another, a bigamy case, after referring to the perfidy and cruelty to the women and their relations, Lord Cockburn reports him to have said: "All this is bad; but your true iniquity consists in this, that you degraded that holy ceremony which our blessed Saviour *condescended* to select as the type of the connection between him and His redeemed Church."

In the Court of Session, the judges who do not attend or give a proper excuse for their absence are (or were) liable to a fine. This, however, is never enforced: but it is customary on the first day of the session for the absentee to send an excuse to the Lord President. Lord Stonefield having sent an excuse, and the Lord President mentioning that he had done so, the Lord Justice-Clerk said: "What excuse can a stout fellow like him hae?"—"My lord," said the President, "he has lost his wife." To which the Justice-Clerk replied: "Has he? That is a gude excuse indeed, I wish we had a' the same."

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Lord Cockburn's looks, tones, language, and manner were always such as to make one think that he believed every word he said. On one occasion, before he was raised to the Bench, when defending a murderer, although he failed to convince the judge and jurymen of the innocence of his client, yet he convinced the murderer himself that he was innocent. Sentence of death was pronounced, and the day of execution fixed for the 3rd of March. As Lord Cockburn was passing the condemned man, the latter seized him by the gown, saying: "I have not got justice!" To this the advocate coolly replied: "Perhaps not; but you'll get it on the 3rd of March."

Cockburn's racy humour displayed itself in another serious case; one in which a farm-servant was charged with maiming his master's cattle by cutting off their tails. A consultation was held on the question of the man's mental condition at which the farmer was present, and at the close of it some conversation took place about the disposal of the cattle. Turning to the farmer Cockburn said that they might be sold, but that he would have to dispose of them wholesale for he could not now *retail* them.

He was walking on the hillside on his estate of Bonaly, near Edinburgh, talking to his shepherd, and speculating about the reasons why his sheep lay on what seemed to be the least sheltered and coldest situation on the hill. Said his lordship: "John, if I were a sheep I would lie on the other side of the hill." The shepherd answered: "Ay, my lord; but if ye had been a sheep ye would have had mair sense."

Sitting long after the usual hour listening to a prosy counsel, Lord Cockburn was commiserated by a friend as they left the Court together with the remark: "Counsel has encroached very much on your time, my lord."—"Time, time," exclaimed his lordship; "he has exhausted time and encroached on eternity."

When a young advocate, Cockburn was a frequent visitor at Niddrie Marischal, near Edinburgh, the residence of Mr. Wauchope. This gentleman was very particular about church-going, but one Sunday he stayed at home and his young guest started for the parish church accompanied by one of his host's handsomest daughters. On their way they passed through the garden, and were so beguiled by the gooseberry bushes that the time slipped away and they found themselves too late for the service. At dinner the laird inquired of his daughter what the text was, and when she failed to tell him he put the question to Cockburn, who at once replied: "The woman whom thou

gavest to be with me she gave me of the fruit and I did eat."

Jeffrey and Cockburn were counsel together in a case in which it was sought to prove that the heir of an estate was of low capacity, and therefore incapable of administrating his affairs. Jeffrey had vainly attempted to make a country witness understand his meaning as he spoke of the mental imbecility and impaired intellect of the party. Cockburn rose to his relief, and was successful at once. "D'ye ken young Sandy —?"—"Brawly," said the witness; "I've kent him sin' he was a laddie."—"An' is there onything in the cratur, d'ye think?"—"Deed," responded the witness, "there's naething in him ava; he wadna ken a coo frae a cauf!"

When addressing the jury in a case in which an officer of the army was a witness, Jeffrey frequently referred to him as "this soldier." The witness, who was in Court, bore this for a time, but at last, exasperated, exclaimed, "I am not a soldier, I'm an officer!"—"Well, gentlemen of the jury," proceeded Jeffrey, "this officer, who on his own statement is no soldier," &c.

Patrick, Lord Robertson, one of the senators of the College of Justice, was a great humorist. He was on terms of intimacy with the late Mr. Alexander Douglas, W.S., who, on account of the untidiness of his person, was known by the sobriquet of "Dirty Douglas." Lord Robertson invited his friend to accompany him to a ball. "I would go," said Mr. Douglas, "but I don't care about my friends knowing that I attend balls."—"Why, Douglas," replied the senator, "put on a well-brushed coat and a clean shirt, and nobody will know you." When at the Bar, Robertson was frequently entrusted with cases by Mr. Douglas. Handing his learned friend a fee in Scottish notes, Mr. Douglas remarked: "These notes, Robertson, are, like myself, getting old."—"Yes, they're both old and dirty, Douglas," rejoined Robertson.

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When Robertson was attending an appeal case in the House of Lords he received great attention from Lord Brougham. This gave rise to a report in the Parliament House of Edinburgh that the popular Tory advocate had "ratted" to the Liberal side in politics, which found expression in the following *jeu d'esprit*:

"When Brougham by Robertson was told  
He'd condescend a place to hold,  
The Chancellor said, with wondering  
    eyes,  
Viewing the *Rat's* tremendous size,  
'That you a place would hold is true,  
But where's the place that would hold  
    you?'"

Lord Rutherford when at the Bar put an illustration to the Bench in connection with a church case. "Suppose the Justiciary Court condemned a man to be hanged, however unjustly, could that man come into this Court of Session and ask your lordships to interfere?" and he turned round very majestically to Robertson opposing him. "Oh, my lords," said Robertson, "a case of suspension, clearly."

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When a sheriff, Rutherford, dining with a number of members of the legal profession, had to reply to the toast, "The Bench of Scotland." In illustration of a trite remark that all litigants could not be expected to have the highest regard for the judges who have tried their cases, he told the following story: A worthy but unfortunate south-country farmer had fought his case in the teeth of adverse decisions in the Lower Courts to the bitter end in one of the divisions of the Court of Session. After the decision of this tribunal affirming the judgment he had appealed against, and thus finally blasting his fondest hopes, he was heard to mutter as he left the Court: "They ca' themselves senators o' the College o' Justice, but it's ma opeenion they're a' the waur o' drink!"

It was only a small point of law, but the two counsel were hammering at each other tooth and nail. They had been submitting this and that to his lordship for twenty minutes, and growing more and more heated as they argued. At last: "You're an ass, sir!" shrieked one. "And you're a liar, sir!" roared the other. Then the judge woke up. "Now that counsel have identified each other," said he, "let us proceed to the disputed points."

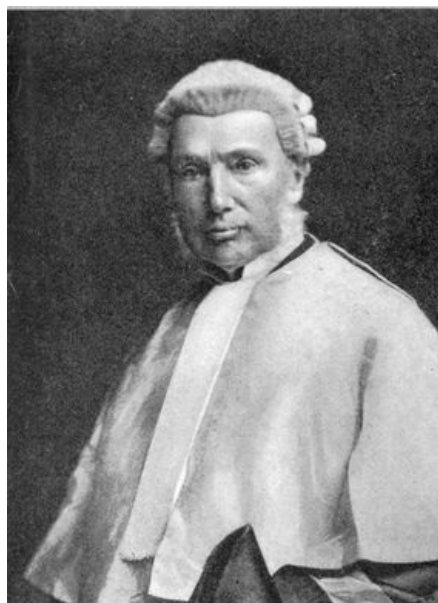
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A recent eminent judge of the Scottish Bench when sitting to an artist for his portrait was asked what he thought of the likeness. His lordship's reply was that he thought it good enough, but he would have liked "to see a little more dislike to Gladstone's Irish Bills in the expression."

Lord Shand's shortness of stature has been a theme of several stories. When he left Edinburgh after sitting as a judge of the Court of Session for eighteen years, one of his colleagues suggested that a statue ought to be erected to him. "Or shall we say a statuette?" was the remark of another friend. His lordship lived at Newhailes—the property of one of the Dalrymple family, several members of which were eminent judges in the late seventeenth and the early eighteenth centuries—and travelled to town by rail. The guard was a pawky Aberdonian, and had evidently been greatly struck by Lord Shand's appearance, for his customary salutation to him, delivered no doubt in a parental and patronising fashion, was: "And fu (how) are ye the day, ma lordie?" His lordship's manner of receiving this greeting is not recorded. Still another anecdote on the same subject is that when still an advocate, it was proposed to make Mr. Shand a Judge of Assize. On the proposal being mentioned to a colleague famous for his caustic wit, the latter with a good-

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humoured sneer which raised a hearty laugh at the expense of his genial friend, remarked: "Ah, a judge of a size, indeed."



**GEORGE YOUNG, LORD  
YOUNG.**

Lord Young's wit was of this caustic turn and not infrequently was intended to sting the person to whom it was addressed. An advocate was wending his weary way through a case one day, and in the course of making a point he referred to a witness who had deponed that he had seen two different things at one time and consequently contradicted himself. Lord Young gave vent to the feelings of his colleagues in the Second Division of the Court, when he interrupted thus:

"Oh, Mr. B—, I can see more than two things at one time. I can see your paper, and beyond your paper I can see you, and beyond you I can see the clock, and I can see that you have been labouring for an hour over a point that is capable of being expressed in a sentence."

In the course of an argument in the same division, counsel had occasion to refer to "Fraser" (a brother judge) "on Husband and Wife." Lord Young, interrupting, asked: 'Hasn't Fraser another book?'—'Yes, my lord, 'Master and Servant!'—'Well,' said Lord Young, 'isn't that the same thing?'

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Owing to a vacancy on the Bench having been kept open for a long period, Lord Young's roll had become very heavy. Hearing that a new colleague had been appointed, and like the late judge had adopted a title ending in "hill," he gratefully quoted the lines of the one hundred and twenty-first psalm:

"I to the hills will lift mine eyes,  
From whence doth come mine aid."

Before the same judge, two prominent advocates in their day were debating a case. One of them was a particularly well-known figure, the feature of whose pinafore, if he wore one, would be its extensive girth. The other advocate, who happened to be rather slim, was addressing his lordship: "My learned friend and I are particularly at one upon this point. I may say, my lord, that we are virtually in the same boat." Here his opponent broke in: "No, no, my lord, we are nothing of the kind. I do not agree with that." Lord Young, leaning across the bench, remarked: "No, I suppose you would need a whole boat to yourself."

It is also attributed to Lord Young that, when Mr. Baird of Cambusdoon bequeathed a large sum of money to the Church of Scotland to found the lectureship delivered under the auspices of the Baird Trust, he remarked that it was the highest fire insurance premium he had ever heard of. "Possibly, my lord," observed a fire insurance manager who heard the remark; "but you will admit that cases occur where the premium scarcely covers the risk."

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Lord Guthrie tells that when, as an advocate, he was engaged in a case before Lord Young, he mentioned that his client was a Free Church minister. "Well," said Lord Young, "that may be, but for all that he may perhaps be quite a respectable man."

And there is the story that when Mr. Young was Lord Advocate for Scotland a vacancy occurred on the Bench and two names were mentioned in connection with it. One was that of Mr. Horne, Dean of Faculty, a very tall man, and the other Lord Shand. "So, Mr. Young," said a friend, "you'll be going to appoint Horne?"—"I doubt if I will get his length," was the reply. "Oh, then," queried the friend, "you'll be going to appoint Shand?"—"It's the least I could do," answered the witty Lord Advocate.

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"What is your occupation?" asked Lord Ardwall of a witness in a case. "A miner, sir."—"Good; and how old are you?"—"Twenty, sir."—"Ah, then you are a minor in more senses than one." Whereat, no doubt, the Court laughed. "Now, my lord, we come to the question of commission received by the witness, which I was forgetting," said a counsel before the same judge one day. "Ah, don't commit the omission of omitting the commission," replied his lordship.

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An unfortunate miner had been hit on the head by a lump of coal, and the judges of the First Division of the Court of Session were considering whether his case raised a question of law or of fact. "The only law I can see in the matter," said Lord Maclaren, "is the law of gravitation."

In a fishing case heard in the Court of Session some years ago, a good deal of evidence was led on the subject of taking immature salmon from a river in the north. The case was an important one, and the evidence was taken down in shorthand notes and printed for the use of the judge and counsel next day. The evidence of one of the witnesses with respect to certain of the salmon taken was that "some of them were kelts." When his lordship turned over the pages of the printed evidence next morning to refresh his memory, he was astonished to find it stated by one of the witnesses in regard to the salmon that "some of them wore kilts."

Many other stories, particularly of the older judges, might be given, were they not too well known. We may therefore close this chapter with the following epigram by a Scottish writer, which is decidedly pointed and clever, and has the additional merit of being self-explanatory:

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"He was a burglar stout and strong,  
Who held, 'It surely can't be wrong,  
To open trunks and rifle shelves,  
For God helps those who help  
          themselves.'  
But when before the Court he came,  
And boldly rose to plead the same,  
The judge replied—"That's very true;  
You've helped yourself—*now God help  
          you!*"

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## CHAPTER SIX THE ADVOCATES OF SCOTLAND

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"Ye lawyers who live upon litigants' fees,  
And who need a good many to live at  
          your ease,  
Grave or gay, wise or witty, whate'er  
          your degree,  
Plain stuff, or Queen's Counsel, take  
          counsel from me,  
When a festive occasion your spirit  
          unbends,  
You should never forget the profession's  
          best friends;  
So we'll send round the wine and a  
          bright bumper fill  
To the jolly Testator who makes his own  
          will."

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NEAVES: *Songs and Verses.*

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## CHAPTER SIX THE ADVOCATES OF SCOTLAND

Since days when Sir Walter Scott gathered round him at the fireplace in the Parliament Hall of Edinburgh a company of young brother advocates to hear the latest of Lord Eskgrove's eccentric sayings from the Bench, that rendezvous has been the favourite resort for story-telling among succeeding generations of counsel. While the Court is in session, they vary their daily walk up and down the hall by lounging round the spot where the future Wizard of the North proved a strong counter-attraction to many an interesting case being argued before a Lord Ordinary in the alcoves on the opposite side of the hall, which was then the "Outer House." It is even asserted that this same fireplace is the hatchery of many of the amusing paragraphs daily appearing in a column of a certain Edinburgh newspaper. But of all the witticisms that have enlivened the dull hours of the briefless barrister in that historic hall during the past century, none will stand the test of time or be read with so much pleasure as those of that prince of wits, the Hon. Henry Erskine.



**THE HON. HENRY ERSKINE,  
LORD ADVOCATE AND DEAN  
OF FACULTY OF ADVOCATES.**

Hairry, as he was familiarly called both by judge and counsel, was in an eminent degree the "advocate of the people." It is said that a poor man in a remote district of Scotland thus answered an acquaintance who wished to dissuade him from "going to law" with a wealthy neighbour, by representing the hopelessness of being able to meet the expenses of litigation. "Ye dinna ken what ye're saying, maister," replied the litigious northerner; "there's no' a puir man in a' Scotland need want a freen' or fear a foe, sae lang as Hairry Erskine lives."

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When the autocratic reign of Henry Dundas as Lord Advocate was for a time eclipsed, Henry Erskine was his successor in the Whig interest. In his good-humoured way Dundas proposed to lend Erskine his embroidered gown, suggesting that it would not be long before he (Dundas) would again be in office. "Thank you," said Hairry, "I am well aware it is made to suit any party, but it will never be said of me that I assumed the abandoned habits of my predecessor."

Having been speaking in the Outer House at the Bar of Lord Swinton, a very good, but a very slow and deaf judge, Erskine was called away to Lord Braxfield's Court. On appearing his lordship said: "Well, Dean" (he was then Dean of the Faculty of Advocates), "what is this you've been talking so loudly about to my Lord Swinton?"—"About a cask of whisky, my lord, but I found it no easy matter to make it run in his lordship's head."

He was once defending a client, a lady of the name of Tickell, before one of the judges who was an intimate friend, and he opened his address to his lordship in these terms: "Tickell, my client, my lord." But the judge was equal to the occasion and interrupted him by saying: "Tickle her yourself, Harry, you're as able to do it as I am."

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Lord Balmuto was a ponderous judge and not very "gleg in the uptak" (did not readily see a point), and retained the utmost gravity while the whole Court was convulsed with laughter at some joke of the witty Dean. Hours later, when another case was being heard, the judge would suddenly exclaim: "Eh, Maister Hairry, a' hae ye noo, a' hae ye noo, vera guid, vera guid."

Hugo Arnot, a brother advocate, a tall, cadaverous-looking man, who suffered from asthma, was one day munching a speldin (a sun-dried whiting or small haddock, a favourite article supplied at that time, and till a generation ago, by certain Edinburgh shops). Erskine coming up to Arnot, the latter explained that he was having his lunch. "So I see," said Harry, "and you're very like your meat." On another occasion these two worthies were discussing future punishment for errors of the flesh, Arnot taking a liberal, and Erskine a strongly Calvinist view. As they were parting Erskine said to Arnot, referring to his spare figure:

"For — and blasphemy by the mercy of  
heaven  
To flesh and to blood much may be  
forgiven,  
But I've searched all the Scriptures and  
text I find none  
That the same is extended to skin and to  
bone."

Erskine's brother, the extremely eccentric Lord Buchan, who thought himself as great a jester as his two younger brothers, the Lord Chancellor of England and the Dean of Faculty of Advocates, one day putting his head below the lock of a door, exclaimed: "See, Harry, here's Locke on the Human Understanding."—"Rather a poor edition, my lord," replied the younger brother.

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Sir James Colquhoun, Baronet of Luss, Principal Clerk of Session, towards the close of the eighteenth century was one of the odd characters of his time, and was made the butt of all the wags of the Parliament House. On one occasion, whilst Henry Erskine was in the Court in which Sir James was on duty, he amused himself by making faces at the Principal Clerk, who was greatly annoyed at the strange conduct of the tormenting lawyer. Unable to bear it longer, he disturbed the gravity of the Court by rising from the table at which he sat and exclaiming, "My lord, my lord, I wish you would speak to Harry, he's aye making faces at me." Harry, however, looked as grave as a judge and the work of the Court proceeded, until Sir James, looking again towards the bar, witnessed a new grimace from his tormentor, and convulsed Bench, Bar, and audience by roaring out: "There, there, my lord, see he's at it again."

Hugo Arnot's eccentricity took various forms. In his house in South St. Andrew Street, in the new town of Edinburgh, he greatly annoyed a lady who lived in the same tenement by the violence with which he kept ringing his bell for his servant. The lady complained; but what was her horror next day to hear several pistol-shots fired in the house, which was Arnot's new method of demanding his valet's immediate attendance.

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In his professional capacity, however, he was guided by a high sense of honour and of moral obligation. In a case submitted for his consideration, which seemed to him to possess neither of these qualifications, he with a very grave face said to his client: "Pray what do you suppose me to be?"—"Why, sir," answered the client, "I understood you to be a lawyer."—"I thought, sir," replied Arnot, "you took me for a scoundrel." On another occasion he was consulted by a lady, not remarkable either for youth or beauty or for good temper, as to the best method of getting rid of the importunities of a rejected admirer. After having told her story and claiming a relationship with him because her own name was Arnot, she wound up with: "Ye maun advise me what I ought to do with this impertinent fellow."—"Oh, marry him by all means, it's the only way to get quit of his importunities," was Arnot's advice. "I would see him hanged first," retorted the lady. "Nay, madam," rejoined Arnot, "marry him directly as I said before, and by the Lord Harry he'll soon hang himself."

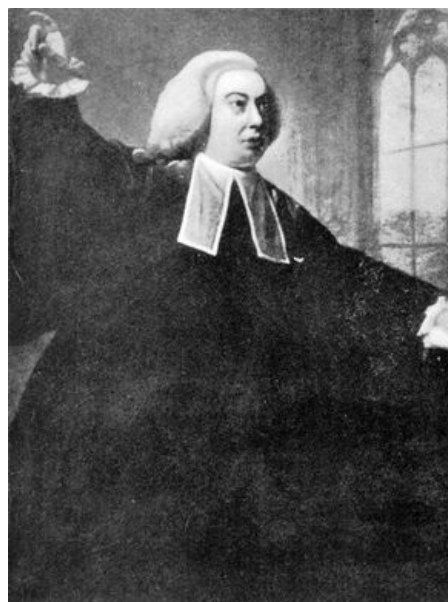
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Of the convivial habits of the Bar as well as the Bench in Scotland at this period many stories are told. The Second Lord President Dundas once refused to listen to counsel who obviously showed signs of having come into Court fresh from a tavern debauch. The check given by the President appeared to effect some sobering of the counsel's faculties and he immediately addressed his lordship upon the dignity of the Faculty of Advocates, winding up a long harangue with: "It is our duty and our privilege to speak, my lord, and it is your duty and your privilege to hear."

Another counsel in a similar condition of haziness hurriedly entered the Court and took up the case in which he was engaged; but forgetting for which side he had been fee'd, to the unutterable amazement of the agent, delivered a long and fervent speech in the teeth of the interests he had been expected to support. When at last the agent made him understand the mistake he had made, he with infinite composure resumed his oration by saying: "Such, my lord, is the statement you will probably hear from my brother on the opposite side of the case. I shall now show your lordship how utterly untenable are the principles and how distorted are the facts upon which this very specious statement has proceeded." And so he went over the same ground and most angelically refuted himself from the beginning of his former pleading to the end.

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**ANDREW CROSBIE,  
ADVOCATE, "Pleydell."**

When a barrister, pleading before Lord Mansfield, pronounced a Latin word with a false quantity his lordship rarely let the opportunity pass without exhibiting his own precise knowledge of that language. "My lords," said the Scottish advocate, Crosbie, at the bar of the House of Lords, "I have the honour to appear before your lordships as counsel for the Curators."—"Ugh," groaned the Westminster-Oxford law lord, softening his reproof by an allusion to his Scottish nationality, "Curators, Mr. Crosbie, Curators: I wish *our* countrymen would pay a little more attention to prosody."—"My lord," replied Mr. Crosbie, with delightful readiness and composure, "I can assure you that *our* countrymen are very proud of your lordship as the greatest senator and orator of the present age."

A very young Scottish advocate, afterwards an eminent judge on the Scottish Bench, pleading before the House of Lords, ventured to challenge some early judgments of that House, on which he was abruptly asked by Lord Brougham: "Do you mean, sir, to call in question the solemn decisions of this venerable tribunal?"—"Yes, my lord," coolly replied the young counsel, "there are some people in Scotland who are bold enough to dispute the soundness of some of your lordship's *own* decisions."

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Sheriff Logan, when pleading before Lord Cunningham in a case which involved numerous points of form, on some of which he ventured to express an opinion, was repeatedly interrupted by old Beveridge, the judge's clerk—a great authority on matters of form—who unfortunately possessed a very large nasal organ, which literally overhung his mouth. "No, no," said the clerk, as the sheriff was quietly explaining the practice in certain cases. On which Logan, somewhat nettled at the blunt interruption, coolly replied: "But, my lord, I say: 'Yes, yes, yes,' in spite of Mr. Beveridge's *noes*."

In the days of Sheriff Harper, Mr. Richard Lees, solicitor, Galashiels, was engaged in a case for a client who was not overburdened with the necessary funds for legal proceedings. However, he was thought good enough for the expenses in the case. The action went against Mr. Lees' client, and then Mr. Lees rose to plead for modified expenses. But the client leant across to speak to the lawyer and said in a hoarse whisper audible over the Court: "Dinna stent (limit) yoursels for the expenses for a haena a fardin'." This was too much even for the gravity of the Bench.

Not many years ago, in the High Court at Glasgow, a case was heard before an eminent judge still on the Scottish Bench, in which the accused had committed a very serious assault and robbery. He was unable to engage counsel for his defence, and the usual course was adopted of putting his case in the hands of "counsel for the poor." There was really no defence; but the young advocate who undertook the task had to make the best of it, and the plea he put forward was that the accused was so drunk at the time he did not know what he was doing. It was the best thing he could do in the circumstances, as all the success he could expect to make with a well-known felon was a mitigation of the sentence. When it came to his time to address the Court, he set out in the following fashion: "My lord and gentlemen of the jury, you all know what it is to be drunk."

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It is most important to be exact in stating the times of the movements of a person accused of murder. In a recent case this point was very minutely examined by an advocate in the Scottish Court. One witness deposed that she saw the accused in a certain place at 5.40 P.M. "Are you sure," asked the learned counsel in a tone calculated to make a witness not quite sure after all, "are you sure it was not twenty minutes to six?" And then he seemed surprised at the laughter his question had raised.

When Mr. Ludovick Mair, who was a very short man, was Sheriff-Substitute of Lanarkshire, he was called upon, at an Ayrshire Burns Club dinner, to propose the toast of the "Ayrshire Lasses." After alluding to the honour that had been conferred upon him, happily said that "Provided his fair clients were prepared to be 'contented wi' little and canty wi' mair,' he had no compunction in performing the agreeable duty."

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In the Glasgow Small Debt Court where the sheriff frequently presided, a young lawyer's exhaustive eloquence in striving to prove that his client was not due the sum sued for, drew from his lordship the following interruption: "Excuse me, sir, but throughout the conflict and turmoil engendered by this desperate dispute with the pursuer I presume the British Empire is not in any danger?"—"No, my lord," came the reply, "but I fear after that interrogation from your lordship my client's case is?"

On one occasion the sheriff, becoming impatient with an agent's protracted speech, rebuked him thus: "Be brief, be brief, my dear sir; time is short and eternity is long!" And again on being asked by an agent not to allow a witty old Irishman to act as the spokesman of "the defendant" on the ground that the Irishman was not now in the defendant's employment, the sheriff sternly said to the would-be witness: "Now, answer me truthfully, mirthful Michael, are you or are you not in the defendant's employment?"—"Well, my lord of lords," was the reply, "that is to say, in the learned phraseology of the law, *pro tem* I am and *ultimo* and *proximo* I amn't."

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Two stories are told of the late Sheriff Balfour. His lordship was addressing a prisoner at unusual

length, when he was interrupted more than once by a *sotto voce* observation from his then clerk, who was very impatient when the luncheon hour drew near. Accustomed to this interruption, the sheriff, as a rule, took no notice of them. On this occasion, however, he threw down his quill with a show of annoyance, leaned back in his chair, and addressed the interrupter thus: "I say, Mr. —, are you, or am I, sheriff here?" Promptly came the unabashed reply: "You, of course; but your lordship knows that this woman has been frequently here," meaning that it was idle to address words of counsel to the prisoner. On another occasion, the sheriff was pulled up by a male prisoner, who took exception to his version of the story of the crime, and concluded: "So you see I've got your lordship there."—"Have you?" was the sheriff's rejoinder. "No, but I've got you—three months hard."

A law agent was talking at length against an opinion which Sheriff Balfour had already indicated. Twice the sheriff essayed in vain to stay the torrent that was flowing uselessly past the mill. At last, in a more decided tone, he asked the agent to allow him just one word, after which he would engage not to interrupt him again. "Certainly, milord," said the agent. "Decree," said the sheriff.

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Counsel who are briefless and who spend much time in perambulating the floor of Parliament Hall should be as careful in their dress as their more fortunate neighbours who jostle each other in the lobbies as they rush from one Court to another. A company of Americans visiting the Courts one day made a casual inquiry of one of the advocates "in waiting," who politely offered to show them all that is to be seen. As they were leaving, one of the party caught hold of a passing solicitor and after apologising for stopping him inquired: "This—this—this gentleman has been very good in showing us over your beautiful place. Would it be correct to give him something?"—"Yes, certainly," said the busy practitioner, "and it will be the first fee he has earned, to my knowledge, for the last ten years."

An advocate of the present day, in trying to induce the Second Division of the Court of Session to reverse a decision pronounced in Glasgow Sheriff Court somewhat startled the Bench by reminding them that their lordships were only mortal after all. "Are you quite sure of that?" asked the presiding judge. Counsel judiciously refrained from replying to this poser. The incident recalls an occasion in the Second Division when it was presided over by Lord Justice-Clerk Moncreiff. A junior counsel was debating a case in the division, and, apparently finding he was not making much headway, invited their lordships to imagine for the moment that they were navvies, and to look at the question from the point of view of the worker. In stately tones the Lord Justice-Clerk informed the audacious junior that his invitation was unsuited to the dignity of the Court.

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A learned counsel at the Bar prided himself on the juvenility of his appearance, and boasted that he looked twenty years younger than he was. He was cross-examining a very prepossessing and uncommonly self-possessed young woman as to the age of a person whom she knew quite well, but could get no satisfactory answer. "Well," he persisted, "but surely you must have been able to make a good guess at his age, having seen him often."—"People don't always look their age."—"No, but you can surely form a good idea from their looks. Now, how old should you say I am?" "You might be sixty by your looks, but judging by the questions you ask I should say about sixteen!"

Much amusement is afforded by the answers given by witnesses to judges and counsel. They form the theme of legions of stories, and we append a selection to this chapter of legal wit of the Bar.

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An Irishman before Lord Ardwall was giving evidence on the question whether having lived eleven years in Glasgow he was a domiciled Scotsman. He swore that he was, and as a question of succession depended upon the domicile the point was of importance. The opposing counsel thought he had him cornered when on the list of voters for an Irish constituency he found the witness's name. But Pat was equal to the occasion. "It's a safe sate," he said; "they never revise the lists," and by way of clinching the argument, he added: "Shure there's men in Oireland who have been in their graves for twenty years who voted at the last election."

Legal gentlemen sometimes resort to methods not quite in accordance with usual practice to elicit information from stubborn witnesses. In Glasgow Sheriff Court one day a somewhat long and involved question was addressed by the cross-examining agent to a witness who, from his stout build and imperturbable manner, looked the embodiment of Scottish caution. The witness, who was not to be so easily "had," having regarded his questioner with a steady gaze for the space of almost a minute, at last broke silence: "Would you mind, sir," said he, "just repeating that question, and splitting it into bits?" And after the Court had regained its composure the discomfited agent humbly proceeded to subdivide the question.

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In the old days when Highlanders "kist oot" (quarrelled) they resorted to the claymore, but the hereditary fighting spirit appears nowadays in an appeal to the law. Perth Sheriff Courts witness many a "bout" between the stalwarts, who are not amiss to clash all round if need be. "You must

have been in very questionable company at the show?" inquired a sheriff of a farmer. "Weel, ma lord—you wis the last gentleman I spoke to that day as I was coming out!" was his reply.

The pointed insinuation to another witness in a claim case at the same Court. "I think I have seen you here rather often of late," drew the reply, "Nae doot, if a'm no takin' onybody here—then it's them that's takin' me!"

Quite recently an old farmer in Perthshire, who had been rather severely cross-examined by the opposing counsel, had his sweet revenge when the sheriff, commenting on the case, inquired: "There seems to be a great deal of dram-dramming at C— on Tuesdays, I imagine?"—"Aye, whiles," was the canny reply—and immediately following it up, as he pointed across at the rival lawyer, he continued—"an' that nicker ower there can tak' a bit dram wi' the best o' them!"

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A young advocate, as junior in a licensing club case, had to cross-examine the certifying Justice of the Peace who was very diffuse and rather evasive in his answers. "Speak a little more simply and to the point, please," said counsel mildly. "You are a little ambiguous, you know."—"I am not, sir," replied the witness indignantly; "I have been teetotal for a year."

It is a fact well known to lawyers that it is a risky thing to call witnesses to character unless you know exactly beforehand what they are going to say. Here is an instance in point. "You say you have known the prisoner all your life?" said the counsel. "Yes, sir," was the reply. "Now," was the next question, "in your opinion is he a man who is likely to have been guilty of stealing this money?"—"Well," said the witness thoughtfully, "how much was it?"

In a County Sheriff Court his lordship addressed a witness: "You said you drove a milk-cart, didn't you?" "No, sir, I didn't."—"Don't you drive a milk-cart?" "No, sir."—"Ah! then what do you do, sir?"—"I drive a horse."

A well-known lawyer not now in practice, who had risen from humble parentage to be Procurator Fiscal of his county, once got a sharp retort from a witness in Court. It was a case of law-burrows—well known in Scotland—which requires a person to give security against doing violence to another. A lady had assaulted a priest who in the discharge of his duty had been visiting her husband—a member of his flock. The lady was herself a Protestant, and suspected the reverend gentleman of designs on her husband's property for behoof of his Church. The witness in the box was prepared on every point, and the following dialogue ensued—P.F.: "Who was your father?" Lady: "My father was a gentleman." P.F.: "Yes, but who was he?" Lady: "He was a good man and much respected, although he didn't make such a noise in the world as yours." The P.F.'s father had been the town crier.

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Perhaps it was to the same lawyer who asked the question of a labouring man: "Are you the husband of the previous witness?" and got the answer: "I dinna ken onything about the previous witness, but if it was Mrs. —, a'm her man."

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The macer who calls the cases coming before the judges in Court was in older days an interesting personality. Lord Cockburn recalls the time when this duty was performed by the "crier" putting his head out of a small window high up in the wall of the Parliament House and shouting down to the counsel and agents assembled below him. Now it is performed from a raised dais on the floor of the hall, and it is no joke when the macer has to call in stentorian tones such a case as "Dampskibsselskabet Danmary v. John Smith." Learned members of the Faculty approach such a difficulty otherwise. During "motions" one day an astute counsel said, "In number 11 of your lordship's roll." "What did you call it?" inquired the judge. "I called it number 11," naïvely replied counsel. The case was "Fiskiveidschlutafjelagid Island v. Standard Fishing Company."

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The administration of the oath in Courts of Justice is apt to become perfunctory, and some sheriffs shorten the formula, so that it is administered somewhat after this fashion: "I swearbalmitygod, that I will tell the truth, the wholetruth, anothingbuthetruth." There is one sheriff more punctilious, and recently he administered the oath to a female witness, making her recite it in sections after him. "I swear by Almighty God" (pause). Witness: "I swear by Almighty God."—"As I shall answer to God." Witness: "As I shall answer to God."—"At the Great Day of Judgment." The witness stumbled over this clause, and the sheriff had to repeat it twice. As she ran more glibly over the concluding words, the sheriff remarked: "It's extraordinary how many people come to this Court who seem never to have heard of that great occasion."

This is what took place in a Glasgow Court. Sheriff: "Repeat this after me, 'I swear by Almighty God.'" Witness: "I swear by Almighty God." Sheriff: "I will tell the truth." Witness: "I will tell the truth." Sheriff: "The whole truth." Witness: "I HOPE so!"

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In Edinburgh Sheriff Small Debt Court the oath was administered to a witness who was dull of hearing. "I swear by Almighty God," said the sheriff. The witness put his hollowed hand to his ear and asked: "Wha dae ye sweer by?" Many Court reporters have heard a witness swear to tell "the truth, the whole truth, and anything but the truth"; and one old lady (mistaking certain words recited by the judge) affirmed her determination to tell the truth "with a great deal of judgment."

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As we indicated at the beginning of this volume, stories of wit and humour from the ranks of agents in the legal profession are much rarer than in those of the Bench and the Bar. From the *Court of Session Garland* we quote the following relating to a worthy practitioner in the days when Councillor Pleydell played "high jinks" in his favourite tavern.

In old times some stray agents in Scotland might be found who were not particularly distinguished for professional attainments, and who sometimes could not "draw" a paper as it is termed. One of these worthies was impressed with the idea that his powers were equal to the preparation of a petition for the appointment of a factor. His clerk was summoned, pens, ink, and paper placed before him, and the process of dictation commenced: "Unto the Right Honourable." "Right Honourable," echoed the clerk. "The Lords of Council and Session."—"Session," continued the scribe—"the Petition of Alexander Macdonald, tenant in Skye—Skye—humbly sheweth—sheweth." "Stop, John, read what I've said."—"Yes, sir. 'Unto the Right Honourable the Lords of Council and Session the Petition of Alexander Macdonald, tenant in Skye, humbly sheweth.'"—"Very well, John, very well. Where did you stop?"—"Humbly sheweth—that the petitioner—petitioner"—here a pause for a minute—"that the petitioner. It's down, sir." Here the master got up, walked about the room, scratched his head, took snuff, but in vain; the inspiration had fled with the mysterious word "petitioner." The clerk looked up somewhat amazed that his master had got that length, and at last ventured to suggest that the difficulty might be got over. "How, John?" exclaimed his master. "As you have done the most important part, what would you say, sir, to send the paper to be finished by Mr. M— with a guinea?"—"The very thing, John, tak' the paper to Mr. M—, and as we've done the maist fickle pairt of the work he's deevilish weel aff wi' a guinea."

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We are indebted to the author of that capital collection of Scottish anecdote, *Thistledown*, for the following story, as illustrating one of the many humorous attempts to get the better of the law, and one in which the lawyer was "hoist with his own petard." A dealer having hired a horse to a lawyer, the latter, either through bad usage or by accident, killed the beast, upon which the hirer insisted upon payment of its value; and if it was not convenient to pay costs, he expressed his willingness to accept a bill. The lawyer offered no objection, but said he must have a long date. The hirer desired him to fix his own time, whereupon the writer drew a promissory note, making it payable at the day of judgment. An action ensued, when in defence, the lawyer asked the judge to look at the bill. Having done so, the judge replied: "The bill is perfectly good, sir; and as this is the day of judgment, I decree that you pay to-morrow."

Joseph Gillon was a well-known Writer to the Signet early in the nineteenth century. Calling on him at his office one day, Sir Walter Scott said, "Why, Joseph, this place is as hot as an oven."—"Well," quoth Gillon, "and isn't it here that I make my bread?"

A celebrated Scottish preacher and pastor was visiting the house of a solicitor who was one of his flock, but had a reputation of indulging in sharp practice. The minister was surprised to meet there two other members of his flock whose relations with the solicitor were not at the time known to be friendly or otherwise. In course of conversation the solicitor, alluding to some disputed point, appealed to the minister: "Doctor, these are members of your flock; may I ask whether you look on them as black or as white sheep?"—"I don't know," answered the minister, "whether they are black or white sheep; but this I know, that if they are long here they are pretty sure to be *fleeced*."

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*Apropos* of this story is the one of a Scottish countrywoman who applied to a respectable solicitor for advice. After detailing all the circumstances of the case, she was asked if she had stated the facts exactly as they had occurred. "Ou ay, sir," rejoined the applicant; "I thought it best to tell you the plain truth; you can put the lees till't yoursel'."

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#### THE LAWYER'S TOAST

At a dinner of a Scots Law Society, the president called upon an old solicitor present to give as a toast the person whom he considered the best friend of the profession. "Then," said the gentleman very slyly, "I'll give you 'The Man who makes his own will.'"

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## CHAPTER SEVEN THE AMERICAN BENCH & BAR

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"Going tew law is like skinning a new milch cow for the hide and giving the meat tew the lawyers."

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JOSH BILLINGS.

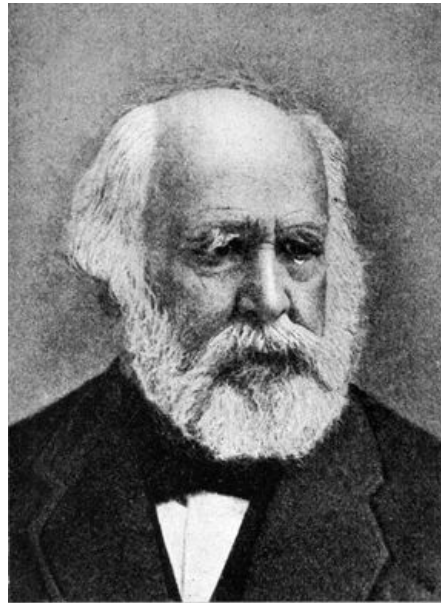
"Oh, sir, you understand a conscience, but not law."

MASSINGER: *The Old Law*.

## CHAPTER SEVEN

### THE AMERICAN BENCH & BAR

The Rev. H. R. Haweis has defined "humour as the electric atmosphere, wit as the flash. A situation provides atmospheric humour, and with the culminating point of it comes the flash." This definition is peculiarly applicable to the humour of the Bench and Bar when the situation invariably provides the atmosphere for the wit. Not less so is this the case in American Courts than in British. Before Chief Justice Parsons was raised to the Bench, and when he was the leading lawyer of America, a client wrote, stating a case, requesting his opinion upon it, and enclosing twenty dollars. After the lapse of some time, receiving no answer, he wrote a second letter, informing him of his first communication. Parsons replied that he had received both letters, had examined the case and formed his opinion, but somehow or other "it stuck in his throat." The client understood this hint, sent him one hundred dollars, and received the opinion.



**THEOPHILUS PARSONS,  
CHIEF JUSTICE OF THE  
SUPREME COURT OF  
MASSACHUSETTS.**

He was engaged in a heavy case which gave rise to many encounters between himself and the opposing counsel, Mr. Sullivan. During Parson's speech Sullivan picked up Parson's large black hat and wrote with a piece of chalk upon it: "This is the hat of a d—d rascal." The lawyers sitting round began to titter, which called attention to the hat, and the inscription soon caught the eye of Parsons, who at once said: "May it please your honour, I crave the protection of the Court, Brother Sullivan has been stealing my hat and writing his own name upon it."

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Parsons was considered a strong judge, and somewhat overbearing in his attitude towards counsel. One day he stopped Dexter, an eminent advocate, in the middle of his address to the jury, on the ground that he was urging a point unsupported by any evidence. Dexter hastily observed, "Your honour, did you argue your own cases in the way you require us to do?"—"Certainly not," retorted the judge; "but that was the judge's fault, not mine."

Patrick Henry, "the forest-born Demosthenes," as Lord Byron called him, was defending an army commissary, who, during the distress of the American army in 1781, had seized some bullocks belonging to John Hook, a wealthy Scottish settler. The seizure was not quite legal, but Henry, defending, painted the hardships the patriotic army had to endure. "Where was the man," he said, "who had an American heart in his bosom who would not have thrown open his fields, his barbs, his cellars, the doors of his house, the portals of his breast, to have received with open arms the meanest soldier in that little band of famished patriots? Where is the man? *There* he stands; and whether the heart of an American beats in his bosom, you gentlemen are to judge." He then painted the surrender of the British troops, their humiliation and dejection, the triumph of the patriot band, the shouts of victory, the cry of "Washington and liberty," as it rang and echoed through the American ranks, and was reverberated from vale to hill, and then to heaven. "But hark! What notes of discord are these which disturb the general joy and silence, the acclamations of victory; they are the notes of *John Hook*, hoarsely bawling through the American camp—'Beef! beef! beef!'"

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It is sometimes imagined that eloquent oratory is everything required of a good advocate, and certainly this idea must have been uppermost in the minds of the young American counsel who

figure in the following stories. A Connecticut lawyer had addressed a long and impressive speech to a jury, of which this was his peroration: "And now the shades of night had wrapped the earth in darkness. All nature lay clothed in solemn thought, when the defendant ruffians came rushing like a mighty torrent from the mountains down upon the abodes of peace, broke open the plaintiff's house, separated the weeping mother from the screeching infant, and carried off—my client's rifle, gentlemen of the jury, for which we claim fifteen dollars."

There was good excuse for adopting the "high-falutin" tone in the second instance, that it was the lawyer's first appearance. He was panting for distinction, and determined to convince the Court and jury that he was "born to shine." So he opened: "May it please the Court and gentlemen of the jury—while Europe is bathed in blood, while classic Greece is struggling for her rights and liberties, and trampling the unhallowed altars of the bearded infidels to dust, while the chosen few of degenerate Italy are waving their burnished swords in the sunlight of liberty, while America shines forth the brightest orb in the political sky—I, I, with due diffidence, rise to defend the cause of this humble hog thief."

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And this extract from a barrister's address "out West," some fifty years ago, surely could not fail to influence the jury in his client's behalf. "The law expressly declares, gentlemen, in the beautiful language of Shakespeare, that where a doubt of the prisoner exists, it is your duty to fetch him in innocent. If you keep this fact in view, in the case of my client, gentlemen, you will have the honour of making a friend of him and all his relations, and you can allus look upon this occasion and reflect with pleasure that you have done as you would be done by. But if, on the other hand, you disregard the principles of law and bring him in guilty, the silent twitches of conscience will follow you all over every fair cornfield, I reckon, and my injured and down-trodden client will be apt to light on you one of these dark nights as my cat lights on a saucerful of new milk."

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In a rural Justice Court in one of the Southern States the defendant in a case was sentenced to serve thirty days in jail. He had known the judge from boyhood, and addressed him as follows: "Bill, old boy, you're gwine to send me ter jail, air you?"—"That's so," replied the judge; "have you got anything to say agin it?"—"Only this, Bill: God help you when I git out."

Daniel Webster was a clever and successful lawyer, who was engaged in many important causes in his day. In a case in one of the Virginian Courts he had for his opponent William Wirt, the biographer of Patrick Henry, a work which was criticised as a brilliant romance. In the progress of the case Webster brought forward a highly respectable witness, whose testimony (unless disproved or impeached) settled the case, and annihilated Wirt's client. After getting through his testimony, Webster informed his opponent, with a significant expression, that he had now closed his evidence, and his witness was at Wirt's service. The counsel for defence rose to cross-examine, but seemed for a moment quite perplexed how to proceed, but quickly assuming a manner expressive of his incredulity as to the facts elicited, and coolly eyeing the witness, said: "Mr. —, allow me to ask you whether you have ever read a work called *Baron Munchausen*?" Before the witness had time to answer, Webster rose and said, "I beg your pardon, Mr. Wirt, for the interruption, but there was one question I forgot to ask my witness, and if you will allow me that favour I promise not to interrupt you again." Mr. Wirt in the blandest manner replied, "Yes, most certainly"; when Webster in the most deliberate and solemn manner, said, "Sir, have you ever read Wirt's *Life of Patrick Henry*?" The effect was so irresistible that even the judge could not control his rigid features. Wirt himself joined in the momentary laugh, and turning to Webster said: "Suppose we submit this case to jury without summing up"; which was assented to, and Mr. Webster's client won the case.

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In the year 1785 an Indian murdered a Mr. Evans at Pittsburg. When, after a confinement of several months, his trial was to be brought on, the chiefs of his nation were invited to be present at the proceedings and see how the trial would be conducted, as well as to speak in behalf of the accused, if they chose. These chiefs, however, instead of going as wished for, sent to the civil officers of that place the following laconic answer: "Brethren! you inform us that —, who murdered one of your men at Pittsburg, is shortly to be tried by the laws of your country, at which trial you request that some of us may be present. Brethren! knowing — to have been always a very bad man, we do not wish to see him. We therefore advise you to try him by your laws, and to hang him, so that he may never return to us again."

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There are many stories of the smart repartee of white and coloured witnesses and prisoners appearing before American judges, but the most of them bear such strong evidence of newspaper staff manufacture as to be unworthy of more permanent record than the weekly "fill up" they were designed for. Of the more reputable we select a few.

Judge Emory Speer, of the southern district of Georgia, had before his Court a typical charge of illicit distilling. "What's your name?" demanded the eminent judge. "Joshua, jedge," drawled the prisoner. "Joshua who made the sun stand still?" smiled the judge, in amusement at the laconic

answer. "No, sir. Joshua who made the moon shine," answered the quick-witted mountaineer. And it is needless to say that Judge Speer made the sentence as light as he possibly could, saying to his friends in telling the story that wit like that deserved some recompense.

A newly qualified judge in Tennessee was trying his first criminal case. The accused was an old negro charged with robbing a hen-coop. He had been in Court before on a similar charge, and was then acquitted. "Well, Tom," began the judge, "I see you're in trouble again."—"Yes, sah," replied the negro. "The last time, jedge, you was ma lawyer."—"Where is your lawyer this time?" asked the judge. "I ain't got no lawyer this time," answered Tom. "I'm going to tell the truth." [Pg 230]

Judge M. W. Pinckney tells the story of a coloured man, Sam Jones by name, who was on trial at Dawson City, for felony. The judge asked Sam if he desired the appointment of a lawyer to defend him. "No, sah," Sam replied, "I'se gwine to throw myself on the ignorance of the cote."

A Southern lawyer tells of a case that came to him at the outset of his career, wherein his principal witness was a negro named Jackson, supposed to have knowledge of certain transactions not at all to the credit of his employer, the defendant. "Now, Jackson," said the lawyer, "I want you to understand the importance of telling the truth when you are put on the stand. You know what will happen, don't you, if you don't tell the truth?"—"Yessir," was Jackson's reply; "in dat case I expects our side will win de case."

When Senator Taylor was Governor of Tennessee, he issued a great many pardons to men and women confined in penitentiaries or jails in that State. His reputation as a "pardoning Governor" resulted in his being besieged by everybody who had a relative incarcerated. One morning an old negro woman made her way into the executive offices and asked Taylor to pardon her husband, who was in jail. "What's he in for?" asked the Governor. "Fo' nothin' but stealin' a ham," explained the wife. "You don't want me to pardon him," argued the Governor. "If he got out he would only make trouble for you again."—"Deed I does want him out ob dat place!" she objected. "I needs dat man."—"Why do you need him?" inquired Taylor, patiently. "Me an' de chillun," she said, seriously, "needs another ham." [Pg 231]

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Etiquette in the matter of dress was, in early days, of little or no consequence with American lawyers, especially in the Southern States. In South Carolina this neglect of the rigid observance of English rules on the part of Mr. Petigru, a well-known barrister, gave rise to the following passage between the Bench and the Bar.

"Mr. Petigru," said the judge, "you have on a light coat. You can't speak."

"May it please the Bench," said the barrister, "I conform strictly to the law. Let me illustrate. The law says the barrister shall wear a black gown and coat, and your honour thinks that means a black coat?" [Pg 232]

"Yes," said the judge.

"Well, the law also says the sheriff shall wear a cocked hat and sword. Does your honour hold that the sword must be cocked as well as the hat?"

He was permitted to go on.

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In the United States, as elsewhere, the average juryman is not very well versed in the fine distinctions of the law. On these it is the judge's duty to instruct him. What guidance the jury got from the explanation of what constitutes murder is not quite clear to the lay mind, however satisfactory it may have appeared to the judge.

"Gentlemen," he stated, with admirable lucidity, "murder is where a man is murderously killed. The killer in such a case is a murderer. Now, murder by poison is just as much murder as murder with a gun, pistol, or knife. It is the simple act of murdering that constitutes murder in the eye of the law. Don't let the idea of murder and manslaughter confound you. Murder is one thing; manslaughter is quite another. Consequently, if there has been a murder, and it is not manslaughter, then it must be murder. Don't let this point escape you."

"Self-murder has nothing to do with this case. According to Blackstone and other legal writers, one man cannot commit *felo-de-se* upon another; and this is my opinion. Gentlemen, murder is murder. The murder of a brother is called fratricide; the murder of a father is called parricide, but that don't enter into this case. As I have said before, murder is emphatically murder." [Pg 233]

"You will consider your verdict, gentlemen, and make up your minds according to the law and the evidence, not forgetting the explanation I have given you."

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There is a delightful frankness about the address submitted to the electors by a candidate who solicited their support for the position of sheriff in one of the provinces of the United States, but its honesty cannot be questioned:



"Gentlemen, I offer myself a candidate for sheriff; I have been a revolutionary officer; fought many bloody battles, suffered hunger, toil, heat; got honourable scars, but little pay. I will tell you plainly how I shall discharge my duty should I be so happy as to obtain a majority of your suffrages. If writs are put into my hands against any of you, I will take you if I can, and, unless you can get bail, I will deliver you over to the keeper of the gaol. Secondly, if judgments are found against you, and executions directed to me, I will sell your property as the law directs, without favour or affection; if there be any surplus money, I will punctually remit it. Thirdly, if any of you should commit a crime (which God forbid!) that requires capital punishment, according to law, I will hang you up by the neck till you are dead."

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**RUFUS CHOATE, LEADER OF  
THE MASSACHUSETTS BAR.**

Rufus Choate was designated *the* leader of the Massachusetts Bar—a distinctive title which long outlived him and marked the sense of esteem in which he was held by his brother lawyers, as well as indicating his outstanding ability and success.

In 1841 a divorce case was tried in America, and a young woman named Abigail Bell was the chief witness of the adultery of the wife. Sumner, for the defence, cross-examined Abigail. "Are you married?"—"No."—"Any children?"—"No."—"Have you a child?" Here there was a long pause, and then at last the witness feebly replied, "Yes." Sumner sat down with an air of triumph. Rufus Choate was advocate for the husband, who claimed the divorce, and after enlarging on other things, said, "Gentlemen, Abigail Bell's evidence is before you." Raising himself proudly, he continued, "I solemnly assert there is not the shadow of a shade of doubt or suspicion on that evidence or on her character." Everybody looked surprised, and he went on: "What though in an unguarded moment she may have trusted too much to the young man to whom she had pledged her untried affections; to whom she was to be wedded on the next Lord's Day; and who was suddenly struck dead at her feet by a stroke of lightning out of the heavens!" This was delivered with such tragic effect that Choate, majestically pausing, saw the jury had taken the cue, and he went on triumphantly to the end. He afterwards told his friends that he had a right to make any supposition consistent with the witness's innocence.

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A client went to consult him as to the proper redress for an intolerable insult and wrong he had just suffered. He had been in a dispute with a waiter at the hotel, who in a paroxysm of rage and contempt told the client "to go to ——" "Now," said the client, "I ask you, Mr. Choate, as one learned in the law, and as my legal adviser, what course under these circumstances I ought to take to punish this outrageous insult." Choate looked grave, and told the client to repeat slowly all the incidents preceding this outburst, telling him to be careful not to omit anything, and when this was done Choate stood for a while as if in deep thought and revolving an abstruse subject; he then gravely said: "I have been running over in my head all the statutes of the United States, and all the statutes of the commonwealth of Massachusetts, and all the decisions of all the judges in our Courts therein, and I may say that I am thoroughly satisfied that there is nothing in any of them that will require you to go to the place you have mentioned. And if you will take my advice then I say decidedly—*don't go.*"

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Choate defended a blacksmith whose creditor had seized some iron that a friend had lent him to assist in the business after a bankruptcy. The seizure of the iron was said to have been made harshly. Choate thus described it: "He arrested the arm of industry as it fell towards the anvil; he put out the breath of his bellows; he extinguished the fire upon his hearthstone. Like pirates in a gale at sea, his enemies swept everything by the board, leaving, gentlemen of the jury, not so much—not so much as a horseshoe to nail upon the doorpost to keep the witches off." The blacksmith, sitting behind, was seen to have tears in his eyes at this description, and a friend noticing it, said, "Why, Tom, what's the matter with you? What are you blubbering about?"—"I

had no idea," said Tom in a whisper, "that I had been so abominably ab-ab-bused."

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A veteran member of the Baltimore Bar tells of an amusing cross-examination in a Court of that city. The witness seemed disposed to dodge the questions of counsel for the defence. "Sir," admonished the counsel sternly, "you need not tell us your impressions. We want facts. We are quite competent to form our own impressions. Now, sir, answer me categorically." From that time on he got little more than "yes" and "no" from the witness. Presently counsel asked: "You say that you live next door to the defendant."—"Yes."—"To the south of him?"—"No."—"To the north?"—"No."—"Well, to the east then?"—"No."—"Ah," exclaimed the counsel sarcastically, "we are likely now to get down to the one real fact. You live to the west of him, do you not?"—"No."—"How is that, sir?" the astounded counsel asked. "You say you live next door to the defendant, yet he lives neither north, south, east, or west of you. What do you mean by that, sir?" Whereupon the witness "came back." "I thought perhaps you were competent to form the impression that we lived in a flat," said the witness calmly; "but I see I must inform you that he lives next door above me."

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In the Supreme Court of the United States the President interrupted counsel in the course of a long speech by saying: "Mr. Jones, you must give this Court credit for knowing *something*."—"That's all very well," replied the advocate (who came from a Western State), "but that's exactly the mistake I made in the Court below."

In a suit for damages against a grasping railway corporation for killing a cow, the attorney for the plaintiff, addressing the twelve Arkansas good men and true who were sitting in judgment, and on their respective shoulder-blades, said: "Gentlemen of the jury, if the train had been running as slow as it should have been ran, if the bell had been rung as it 'ort to have been rang, or the whistle had been blown as it 'ort to have been blew, none of which was did, the cow would not have been injured when she was killed."

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Although not strictly a story of either the Bench or the Bar of America, it is so pertinent to the latter that we cannot omit the following told by the Scottish clergyman, the late Dr. Gillespie of Mouswold, in his amusing collection of anecdotes.

A young American lady was his guest at the manse while a young Scottish advocate was spending a holiday in the neighbourhood. He was invited to dine at the manse, and took the young lady in to dinner, and kept teasing her in a lively, good-natured manner about American people and institutions, while it may be guessed his neighbour held her own, as most American girls are well able to do. At length the advocate asked, "Miss —, have you any lawyers in America?" She knowing what profession he belonged to replied quick as thought, "Oh yes, Mr. —, lots of lawyers. I've a brother a lawyer. Whenever we've a member of a family a bigger liar than another, we make him a lawyer."

A quaint decision was given by Judge Kimmel, of the Supreme Court at St. Louis, in an application for divorce by Mrs. Quan. The judge directed Patrick J. Egan, a policeman, to supervise the domestic affairs of the couple, and to visit their home daily for thirty days. After questioning the wife closely on her attitude towards her husband and his treatment of her, Egan wrote down for the wife's guidance a long array of precepts. Among these were the following:

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"Don't remonstrate with your husband when he has been drinking. Wait until next morning. Then give him a cup of coffee for his headache. Afterwards lead him into the parlour, put your arms about him, and give him a lecture. It will have more weight with him than any number of quarrels.

"If he has to drink, let him have it at home.

"Avoid mothers-in-law. Don't let them live with you or interfere in your affairs.

"If you must have your own way, do not let your husband know you are trying to boss him. Have your own way by letting him think he is having his.

"Dress to suit your husband's taste and income. Husbands usually don't like their wives to wear tight dresses. Consult him on these matters.

"Don't be jealous or give your husband cause for jealousy.

"When your husband is in a bad humour, be in a good humour. It may be difficult, but it will pay."

The policeman-philosopher's precepts were duly printed, framed, and placed against the wall of the family sitting-room. After paying only fifteen of the thirty visits to the house directed by the judge, the results could not have been more gratifying. Mr. and Mrs. Quan were delighted, and presented the guide to martial bliss with a handsome token of their gratitude in the form of a gold watch.

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Many of the droll sayings of the American Bench of past years are attributable to the fact that the judges were appointed by popular vote, and the successful candidate was not always a man of

high attainments in the practice of his profession at the Bar, or of profound learning in the laws of his country. Too often he was a man of no better education than the mass of litigants upon whose causes he was called to adjudicate. For instance, a Kentuckian judge cut short a tedious and long-winded counsel by suddenly breaking into his speech with: "If the Court is right, and she thinks she air, why, then, you are wrong, and you knows you is. Shut up!"

"What are you reading from?" demanded Judge Dowling, who had in his earlier life been a fireman and later a police officer. "From the statutes of 1876, your honour," was the reply. "Well, you needn't read any more," retorted the judge; "I'm judge in this Court, and my statutes are good enough law for anybody." A codified law and precedent cases were of no account to this "equity" judge.

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But these are mild instances of the methods of early American judges compared with the summing up of Judge Rodgers—Old Kye, as he was called—in an action for wrongful dismissal brought before him by an overseer. "The jury," said his honour, "will take notice that this Court is well acquainted with the nature of the case. When this Court first started in the world it followed the business of overseeing, and if there is a business which this Court understands, it's hosses, mules, and niggers; though this Court never overseed in its life for less than eight hundred dollars. And this Court in hoss-racing was always naterally gifted; and this Court in running a quarter race whar the hosses was turned could allers turn a hoss so as to gain fifteen feet in a race; and on a certain occasion it was one of the conditions of the race that Kye Rodgers shouldn't turn narry of the hosses." Surely it must have been Old Kye who, upon taking his official seat for the first time, said: "If this Court know her duty, and she thinks she do, justice will walk over this track with her head and tail up."

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On a divorce case coming before a Western administrator of the law, Judge A. Smith, he thus addressed the plaintiff's counsel, who was awaiting the arrival of his opponent to open proceedings. "I don't think people ought to be compelled to live together when they don't want to do so. I will decree a divorce in this case." Thereupon they were declared to be no longer man and wife. At this juncture the defendant's counsel entered the Court and expressed surprise that the judge had not at least heard one side of the case, much less both sides, and protested against such over-hasty proceedings. But to all his protestations the judge turned a deaf ear; only informing him that no objections could now be raised after decree had been pronounced. "But," he added, "if you want to argue the case 'right bad,' the Court will marry the couple again, and you can then have your say out."

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Breach of promise cases generally afford plenty of amusement to the public, both in the United States and Great Britain, but it is only in early American Courts that we hear of a judge adding to the hilarity by congratulating the successful party to the suit. A young American belle sued her faithless sweetheart, and claimed damages laid at one hundred dollars. The defendant pleaded that after an intimate acquaintance with the family, he found it was impossible to live comfortably with his intended mother-in-law, who was to take up residence with her daughter after the marriage, and he refused to fulfil his promise. "Would you rather live with your mother-in-law, or pay *two hundred* dollars?" inquired the judge. "Pay two hundred dollars," was the prompt reply. Said the judge: "Young man, let me shake hands with you. There was a time in my life when I was in the same situation as you are in now. Had I possessed your firmness, I should have been spared twenty-five years of trouble. I had the alternative of marrying or paying a hundred and twenty-five dollars. Being poor, I married; and for twenty-five years have I regretted it. I am happy to meet with a man of your stamp. The plaintiff must pay ten dollars and costs for having thought of putting a gentleman under the dominion of a mother-in-law."

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The charms of the female sex were more susceptible to the Iowa judge than to his brother of the former story. This worthy refused to fine a man for kissing a young lady against her will, because the complainant was so pretty that "nothing but the Court's overwhelming sense of dignity prevented the Court from kissing her itself."

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"A fellow-feeling makes one wondrous kind," wrote Garrick, and something of this nature must have actuated Judge Bela Brown in a case in a Circuit Court of Georgia. The judge was an able lawyer, and right good boon companion among his legal friends. The night before the Court opened he joined the Circuit barristers at a tavern kept by one Sterrit, where the company enjoyed themselves "not wisely, but too well." Next morning the judge was greatly perturbed to find a quantity of silver spoons in his pocket, which had been placed there by a wag of the company as the judge left the tavern the night before. "Was I tipsy when I came home last night?" timidly asked the judge of his wife. "Yes," said she; "you know your habits when you get among your lawyer friends."—"Well," responded the judge, "that fellow keeps the meanest liquor in the States; but I never thought it was so bad as to induce a man to steal."

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Before the close of the Court a man was arraigned for larceny, who pleaded guilty, but put forward the extenuating circumstance that he was drunk and didn't know what he was doing. "What is the nature of the charge," asked Judge Brown. "Stealing money from Sterrit's till," replied the clerk. "Are you sure you were tipsy when you took this money?"—"Yes, your honour;

when I went out of doors the ground kept coming up and hitting me on the head."—"That will do. Did you get all your liquor at Sterrit's?"—"Every drop, sir." Turning to the prosecuting attorney the judge said, "You will do me the favour of entering a *nolle prosequi*; that liquor of Sterrit's I have reason to know is enough to make a man do anything dirty. I got tipsy on it myself the other night and stole all his spoons. If Sterrit will sell such abominable stuff he ought not to have the protection of this Court—Mr. Sheriff, you may release the prisoner."

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The judge of a Court in Nevada dealt differently with a man who, charged with intoxication, thought to gain acquittal by a whimsical treatment of his offence. On being asked whether he was rightly or wrongly charged he pleaded, "Not guilty, your honour. Sunstroke!"—"Sunstroke?" queried Judge Cox. "Yes, sir; the regular New York variety."—"You've had sunstroke a good deal in your time, I believe?"—"Yes, your honour; but this last attack was most severe."—"Does sunstroke make you rush through the streets offering to fight the town?"—"That's the effect precisely."—"And makes you throw brickbats at people?"—"That's it, judge. I see you understand the symptoms, and agree with the best recognised authorities, who hold it inflames the organs of combativeness and destructiveness. When a man of my temperament gets a good square sunstroke he's liable to do almost anything."—"Yes; you are quite right—liable to go to jail for fifteen days. You'll go down with the policeman at once." With that observation the conversation naturally closed, and the victim of so-called sunstroke "went down."

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"Sheriff, remove the prisoner's hat," said a judge in the Court of Keatingville, Montana, when he noticed that the culprit before him had neglected to do so. The sheriff obeyed instructions by knocking off the hat with his rifle. The prisoner picked it up, and clapping it on his head again, shouted, "I am bald, judge." Once more it was "removed" by the sheriff, while the indignant judge rose and said, "I fine you five dollars for contempt of Court—to be committed until the fine is paid." The offender approached the judge, and laying down half a dollar remarked, "Your sentence, judge, is most ungentlemanly; but the law is imperative and I will have to stand it; so here is half a dollar, and the four dollars and a half you owed me when we stopped playing poker this morning makes us square."

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The card-playing administrator of law must have felt as small as his brother-judge who priced a cow at an Arkansas cattle-market. Seeing one that took his fancy he asked the farmer what he wanted for her. "Thirty dollars, and she'll give you five quarts of milk if you feed her well," said the farmer. "Why," quoth the judge, "I have cows not much more than half her size which give twenty quarts of milk a day." The farmer eyed the would-be purchaser of the cow very hard, as if trying to remember if he had met him before, and then inquired where he lived. "My home is in Iowa," replied the judge. "Yes, stranger, I don't dispute it. There were heaps of soldiers from Iowa down here during the war, and they were the worst liars in the whole Yankee army. Maybe you were an officer in one of them regiments." Then the judge returned to his Court duties.

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Judge Kiah Rodgers already figures in a story, and here we give his address to a delinquent when he presided at a Court in Louisiana. "Prisoner, stand up! Mr. Kettles, this Court is under the painful necessity of passing sentence of the law upon you. This Court has no doubt, Mr. Kettles, but what you were brought into this scrape by the use of intoxicating liquors. The friends of this Court all know that if there is any vice this Court abhors it is intoxication. When this Court was a young man, Mr. Kettles, it was considerably inclined to drink, and the friends of this Court know that this Court has naterally a very high temper; and if this Court had not stopped short off, I have no doubt, sir, but what this Court, sir, would have been in the penitentiary or in its grave."

There was a strong sense of duty to humanity, as well as seeing justice carried out, in the Californian sheriff after an interview with a self-confessed murderer, who desired to be sent to New York to be tried, when he addressed the prisoner: "So your conscience ain't easy, and you want to be hanged?" said the sheriff. "Well, my friend, the county treasury ain't well fixed at present, and I don't want to take any risks, in case you're not the man, and are just fishing for a free ride. Besides, those New York Courts can't be trusted to hang a man. As you say, you deserve to be killed, and your conscience won't be easy till you are killed, and as it can't make any difference to you or to society how you are killed, I guess I'll do the job myself!" and his hand moved to his pocket; but before he could pull out the revolver and level it at the murderer, that conscience-stricken individual was down the road and out of killing distance.

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Like the sailor who objected to his captain undertaking the double duty of flogging and preaching, prisoners do not appreciate the judge who delivers sentence upon them and at the same time admonishes them in a long speech. After being sentenced a Californian prisoner was thus reproached by a judge for his lack of ambition:

"Where is it, sir? Where is it? Did you ever hear of Cicero taking free lunches? Did you ever hear that Plato gamboled through the alleys of Athens? Did you ever hear Demosthenes accused of sleeping under a coal-shed? If you would be a Plato, there would be a fire in your eye; your hair would have an intellectual cut; you'd step into a clean shirt; and you'd hire a mowing-machine to pare those finger-nails. You have got to go up for four months!"

In conclusion we return to the jury-box of a New York Court for the story of a well-known

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character who frequently was called to act along with other good men and true. As soon as they had retired to deliberate on the evidence they had heard, he would button up his coat and "turn in" on a bench, exclaiming, "Gentlemen, I'm for bringing in a verdict for the plaintiff (or the defendant, as he had settled in his mind), and all Creation can't move me. Therefore as soon as you have all agreed with me, wake me up and we'll go in."

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## L'ENVOI

"THE TASK IS ENDED, AND ASIDE WE FLING  
THE MUSTY BOOKS TIED UP WITH LEGAL STRING;  
AND SO GOOD NIGHT, SINCE WE OUR SAY HAVE  
SAID,  
SHUT UP THE VOLUME AND PROCEED TO BED;  
AND DREAM, DEAR READER, OF A FUTURE, WHEN  
A LAWYER MAY SHAKE HANDS WITH YOU AGAIN."

WILLOCK: *Legal Facetiæ.*

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