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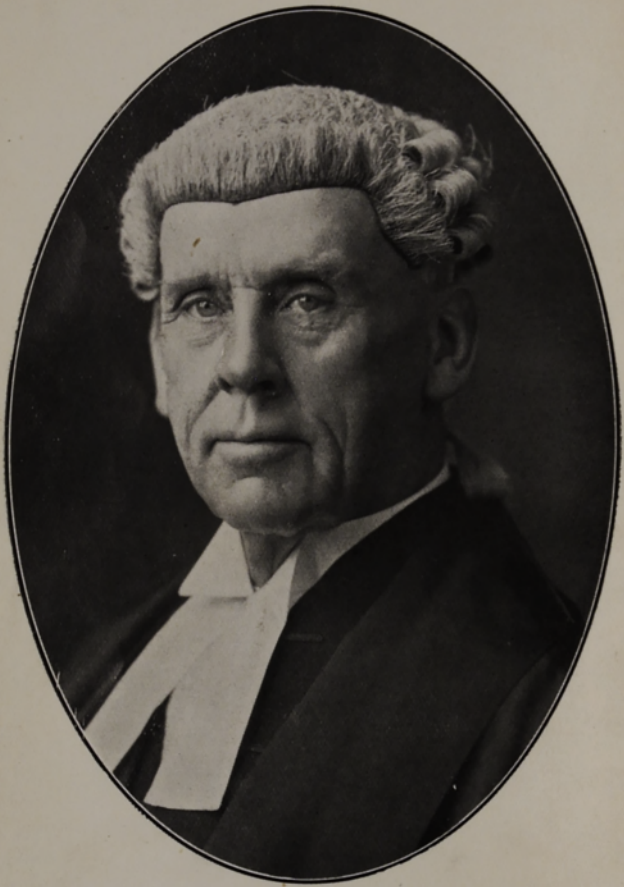

A. C. HANLON, K.C.

Random Recollections

Notes on a Lifetime at the Bar

BY

A. C. HANLON

(One of His Majesty's Counsel for the Dominion of New Zealand)

WITH A PREFACE

By

The Rt. Hon. SIR MICHAEL MYERS, G.C.M.G., P.C.

(Chief Justice of the Dominion of New Zealand)

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TO
MY WIFE

PREFACE

I welcome the opportunity of saying a few words by way of introduction to these "Random Recollections." The question is often asked why there have been so few autobiographies of New Zealand lawyers and advocates—at the moment I can think of only one. The reason is, I suppose, that the reading public are not greatly interested in the work or the experience of one who is in the main merely a Banco advocate or a commercial or Equity lawyer. It is the work of the Nisi Prius advocate that excites and holds their interest. Hence the popularity with the reading public, as indeed with professional men, of the biographies of such advocates as say Montagu Williams and Marshall Hall.

We have had very few advocates of that type in New Zealand, brilliant though some of them have been, who have had a sufficient number of what may be called sensational cases to justify the expectation that their Memoirs would compel the interest of the general reader. The writer of "Random Recollections"—known and spoken of everywhere throughout New Zealand as Alf Hanlon—is par excellence one of those few. No living advocate in New Zealand—and very few of those who have gone—has had anything like the experience and number that he has had of sensational cases: and none has had a greater quantum of success. Perhaps it has been unfortunate for him that his life should have been

lived in a small country where the scope for the activities of men in every profession is necessarily limited, for it is certain that his personality, his powers of elocution, his histrionic gifts, and withal his judgment—and brevity—in cross-examination would have won for him as great a reputation amongst the best of the advocates in any part of the Empire as, relatively, they have earned for him here. That Mr Hanlon's memoirs will give pleasure to a very large number of the general public as well as to his many personal friends and the members of the Profession of the law I have not the slightest doubt. And to young men on the threshold of life Mr Hanlon's career should be an inspiration, for it shows that no young man need despair in starting without money, friends, or influence, if he possesses character, ability, integrity, and determination.

I cannot conclude without an expression to Mr Hanlon on behalf of those who like myself—there are not so many left now—had the privilege of practising before the late Mr Justice Williams in either the Supreme Court or the Court of Appeal or both, of gratitude for the tribute that he pays in his book to that fine lawyer, great man, and eminent Judge, than whom no more highly respected and beloved Judge has ever adorned the New Zealand Bench.

Michael Myers

Chief Justice's Chambers,
Wellington,
October, 1939.

AUTHOR'S NOTE

If a defence is required for the publication of this casual and rambling chronicle of half a century at the Bar in New Zealand, I feel that I am entitled to turn for support to the many friends and colleagues who have urged me, times without number, to write a volume of reminiscences. Hitherto I have declined to inflict anything of the kind upon the public, but with the completion last year of fifty years in practice the pressure was increased by members of both Bench and Bar. Hence "Random Recollections." That the material gathered here will be of interest to a wide circle of readers I have no doubt, because experience has taught me how keenly the public will always savour the drama of the criminal courts. Nevertheless, my most fervent hope is that from the study of these notes some young barrister may derive help and encouragement in his pursuit of success in his profession.

It may occur to some of my readers that my memoirs cover less than the whole period of my career at the Bar, but the explanation is to be found in the fact that I have deliberately refrained from recalling some of the more sensational cases of recent years because it might cause unnecessary pain and embarrassment to innocent relatives or friends, or in some instances to the principals themselves, who, it may be suggested, are entitled to "let the dead past bury its dead," and to expect others to do the same.

CONTENTS

CHAPTER IX.

QUESTIONS AND ANSWERS.

CHAPTER X.

TRIAL BY JURY.

CHAPTER XI.

TWICE CHARGED AND DISCHARGED.

CHAPTER XII.

THE TWELVE MEN.

CHAPTER XIII.

VERDICTS AND CASES.

CHAPTER XIV.

PRESENT-DAY PROBLEMS.

CHAPTER XV.

THE STRANGE STORY OF A WRECK.

CHAPTER XVI.

BABY-FARMING AT WINTON.

CHAPTER XVII.

THE DEFENCE OF PRISONERS.

CHAPTER XVIII.

THE CASE OF CHARLES CLEMENTS.

CHAPTER XIX.

A POLITICAL INTERLUDE.

CHAPTER XX.

THE TAPANUI MURDER TRIAL.

CHAPTER XXI.

MEMORIES OF THE ROAD.

CHAPTER XXII.

A PECULIARLY UNPLEASANT CASE.

CHAPTER XXIII.

PERJURY AND MANSLAUGHTER.

CHAPTER XXIV.

WHO SHOT WILLIAM WOGAN?

CHAPTER XXV.

SOME THOUGHTS ON DIVORCE.

CHAPTER XXVI.

"THE DEAR OLD JUDGE."

RANDOM RECOLLECTIONS

CHAPTER I.

Years and Years Ago.

I.

I was born into a world that was very young—a citizen of a country which even now is commemorating only its first centennial. For me as a small child the universe was largely my own secret. To an extent, of course, that is true of everyone, and remains so until, with the years, we become part of the secret ourselves; but in the days when Dunedin was itself still a child, without history or tradition, and with only great expectations and a high hope that drew a lively, if meretricious, vigour from the glamour of gold-seeking, and the promise of riches torn from the bowels of the earth, it was doubly so.

The way things struck me—how that tiny world looked, and what experience felt like—all these are essentially incommunicable seventy years afterwards, even if they could be recalled. So few of us realise in the years of our childhood how much of what we see and think and feel we will want to redeem in the days that are to come, and, in consequence, when the time arrives for us to indulge our " anecdotage " the fragments we remember are too inadequately reflective of the significant years when the thread of life was just beginning to emerge. But of all the recollections of that far-off period that come back to me now the most remarkable was the baffling quality of surprise and

delight. The world was full of it to a degree that would be foreign to this highly sophisticated, steam-heated age of bitumen and speed and noise and excitement. Even in after years I was to find this enthusiasm for the small things around me not altogether controllable.

So many things were an adventure which to-day pass unnoticed. Our children live in an age of composed urbanity and immobile gentility and seem to wear a cloak under which the quick, pleasant stir of wonder is stifled and surprise is concealed. Whether it is the effect of modern education, the matter-of-fact town or times in which they live, or just a simple inability to experience astonishment, I can never decide, but it is true that they take too much for granted from the marvellous inventions and achievements of science down to the endless littlenesses of life all around them.

II.

I believe of many young people I know to-day that, if the ghost of their grandmother were to rise before them, they would quite dispassionately request the apparition to shut the door and be seated. As Murat said of Talleyrand, you might kick them in the back for hours without the slightest change of countenance passing over them. If the earth were to stand still or the sun turn green, they would accept such phenomena with no more than a casual reference to the calendar and a muttered "that's funny." To them the world is a ball on which they live, and what there may be inside it, beneath it, or above it is no concern of theirs.

As for me, I still cannot walk a hundred paces down the street without seeing something to be

wonder-stricken or amazed at. After seventy years I am still astonished at the ways of men—and women—at the constant straining moneywards and pleasurewards, the shimmering of silks and the shabbiness of old clothes; the gold and the dross; the rattle of wheels and the tramp of innumerable feet; the countless vehicles, fast and slow, so seldom running foul of one another; the crowds of pedestrians so infrequently run over. But our unfortunate children seem to be incapable of either perplexity or bewilderment.

Still such a generation is almost to be pitied. Browning's Pippa, the poor little worker in an Italian silk mill, woke on the morning of her one day's holiday in the year singing:

> Oh! Day, if I squander a wavelet of thee,
> Then shame fall on Asolo, mischief on me.

They do not sing thus to-day. When its enforced times of leisure come upon it, there is little of the old-fashioned pleasure for the present generation because its faster and more exciting forms of amusement demand as much mental and physical effort as that given to work, without, too often, yielding a correspondingly high reward.

Things were different seven decades ago in Dunedin. Neither work nor recreation was ready made, and the amenities of life were all of them luxuries. A bath meant hard labour and not the mere turning on of a steaming tap. Shopping was a day's toil, and bad weather brought acute discomfort and often hardship. With no asphalt paths, no overhanging verandahs nor electric lights, and stout footwear as the chief means of conveyance from place to place, urban life differed little from that of the country.

I was nearly a year old when Dunedin acquired its first trickling water supply, and my second birthday had passed before the flickering fishtail gas flame flared and spluttered to provide the most modern and up-to-date illumination. Of these events I recall nothing, but I was a mature brat of six and appropriately thrilled when the imported locomotive, Josephine, began puffing its laborious way from Dunedin to Port Chalmers. The port of Otago was then nothing more than a tidal bay offering a dubious haven to the tall ships that still held their place on the high seas, and I was a full eleven years when, amid scenes of great excitement, the horse trams began their lumbering perambulation of the town.

In those days everything was an occasion and most things a surprise. Leisure was the privilege of the few, mainly the very old and the very young. Ideas, and even initiative, may have been stifled in the perpetual atmosphere of the daily routine, and the patient labourer in another man's vineyard frequently became a worn-out machine before he needed to; but they were spacious days, eventful and memorable, with little boredom as it is known to-day and no wasted time in work or play. Difficult and arduous they may have been, but both my parents lived through them with zest to an age more than a decade in excess of the prophet's three score years and ten.

CHAPTER II.

A Vision and the Reality.

I.

As the third son of my father I put in a first appearance in a modest cottage in Castle Street on August 1, 1866. My parents were both Irish, and like so many before them had been lured away from the obscurity and security of life in the Old World by rumours, which in the 'fifties and 'sixties hummed themselves into a long crescendo, of the wealth and freedom and opportunity to be had for the asking in the Colonies. My father came out of County Donegal, where at first he followed the not unexciting calling of a boatman on the Innisfree coast. But as he was a strapping six-footer, and Irish to boot, it was not surprising that he should eventually gravitate to that essentially Celtic vocation—the police force. He was for some years in the Royal Irish Constabulary, and it was while doing duty in the High Court of Dublin, listening spellbound to Daniel O'Connell and others of the great advocates of the Irish Bar at that time, that he conceived the idea—Heaven send him a son—that a Hanlon should one day be called to the Bar. And it was characteristic of his tenacity of purpose that the ambition thus born remained with him until, more than twenty years later, he signed the articles of apprenticeship for his third son in a little office in a colonial town on the other side of the world.

My mother was a daughter of the Irish countryside, born and raised on the estate of Lord Lorton in County Roscommon, where her father was employed as a gamekeeper. I well remember the stories she used to tell of the English milords and

gentry who came to shoot on the Lorton Estate, and can still recall her own prowess with fowling piece or rifle. One with her were mirth and duty, but she was never meant for slabbed pavements, and I believe that if she had not considered it her duty to accompany her husband on his adventurings, she would never have left her beloved Ireland. Like W. B. Yeats's wandering Aengus, she was born to

> . . . walk among long dappled grass,
> And pluck till time and times are done
> The silver apples of the moon,
> The golden apples of the sun.

My first memories of her were of someone who knew and understood the gay irresponsibility of youth, and did her best to lighten the consequences of many a boyish prank; and my last are of a gracious silver-haired lady, "old and grey and full of sleep," but still a mother to her children and keenly, anxiously interested in them. As I look back on the Otago of her day, I do not need to remind myself, here in a Dunedin bewilderingly coloured and crowded with living people, of the hardship and sacrifice of her life. We are all very clever people nowadays, and we have learned the knack of comfort and possession, but I doubt if the little plot that is home to us to-day is the live, lovable thing that was so very dear to the heart of my mother, and to a thousand women like her, who had to slave and toil for the greater part of their lives to build up the community and provide the opportunities which their children now enjoy. The home that she fashioned with love and devotion all the years of her womanhood may have been rude by modern standards, but it was a refuge to her children against a host of things that she would rather face and bear herself than leave them to struggle with.

II.

The middle of the nineteenth century brought difficult times for the common people in Ireland, so that it was not surprising that the stories of a bright new world thousands of miles away should fire the imagination of the young policeman. Distant fields were ever green, and the lure of the Colonies, where all men were equal and there was plenty for all, finally became too strong for my father, who set sail for Australia with his young wife in 1859. I often reflect that it must have been a good deal less exciting for my mother than for her husband. They went first to Melbourne, and there my father found employment as a lightkeeper on the Queenscliff lightship near Port Philip Heads. At the end of two years, however, they were again on the move, this time drawn by the irresistible stories of the Otago gold rushes, and in 1862 they arrived at Port Chalmers with their two sons, my elder brothers.

My father, however, was not destined to join the feverish rush to the goldfields in the interior. Fate had other plans for the ex-member of the Irish Constabulary. A year previously Gabriel Read, with nothing but a spade, a tin dish, and a butcher's knife, had laid bare one of Nature's countless rich secrets in the Lawrence district, less than 100 miles away. In an obscure gully in the Tuapeka County, he had found gold in almost incredible quantities, and announcement had barely been made before the stampede was on from nearly every corner of the colonies that lay on either side of the Tasman Sea.

In an area of country thirty-one miles by five the prospector had sunk his shafts, and in every hole he had found gold. The effect of the

discovery, which is undoubtedly one of the romances of Otago history, was electrical on even the canniest of the Scottish settlers, and life in the struggling little centre was revolutionised almost overnight. Local administration had to be subjected to a complete overhaul for "the preservation of law and order and the safe conveyance to Dunedin of the gold accumulated and accumulating." The modest little police force, under Mr St. John Branigan, that had sufficed for the maintenance of order among the law-abiding pioneers was hopelessly unequal to the task of controlling the rapidly growing population both in Dunedin and at the diggings.

An entirely new force came into being, with many of its personnel imported from Melbourne, and Mr Branigan was still engaged recruiting additional strength when my father arrived. His task was not an easy one with so many able-bodied men thinking only in terms of gold and swiftly amassed wealth. His most fruitful recruiting ground was the harbour jetty on the arrival of overseas vessels, and the wily commissioner used a beguiling Irish tongue and a crude unanswerable logic in weaning many a likely-looking young man away from the trail. He chose his men carefully and talked hard. All was not gold that glittered, and he knew only too well how to cover every bright speck of potential gold with an overburden of privation and uncertainty. His tactics were not ineffective, and many a hope died in a breast that found itself suddenly adorned with the uniform of the Otago Constabulary. My father was among those who were pursuaded that an official bird in the hand was worth two in the gold diggings, and before he had been a week in the Colony he had returned to the service of Her Majesty. Before he had time to

change his mind he was sworn in, and began the long period ot service which ended with his retirement with the rank of first class sergeant 30 years later.

III.

With Otago completely in the grip of a gold fever which attracted all manner of undesirables to the settlement, it looked as if the destiny of the province would be torn from the careful and God-fearing hands of the Free Kirkers who had founded it, but what touched my family much more nearly was the strain that was put on the still not overflowing ranks of the police force. When the first shipment of Gabriel's Gully gold reached Melbourne, 3000 miners flocked to Otago almost in a body, and when the second consignment was of even greater dimensions, the influx from Victoria and New South Wales grew greater still. They all came, the good and the bad, the just and the unjust, and with the mushroom growth of the town with its hastily run up hotels and saloons and worse, the daily round of even the humble constable on what passed for a beat in those days became a Herculean task.

It was not a congenial occupation patrolling the streets in those hectic times, but I never heard my father express any real regrets at the decision which led to his emigration. He had to be abroad all night in all sorts of weather and with no fixed hours. The amenities of the service to-day were out of the question then, and the making of an arrest was as often as not as hazardous as it was difficult. It was not a case of clapping the handcuffs on a violent drunk and hailing a cab to take him to the lock-up. The journey to the gaol was often a continuous fight, with every chance of the man's friends

attempting a rescue. But the comparatively harmless drunkard was the least of the policemen's problems. The calibre and temperament of many of the desperate characters that are concomitants of every gold rush would put the feckless larcenies and misdemeanours of the modern criminal to shame, and the proper execution of duty with respect to such was attended by real personal risk and danger. The constable to-day, who maintains the steady rhythm of his tread along a well-lighted beat with its shelter from the worst of the weather, may be doing as useful a public service, but he does it with infinitely less trouble and for infinitely more pay.

The family's first home was a small hut with the rudest facilities and a minimum of space and comfort—a habitation common to a community that was still at a loss to keep pace with the lightning development that had already laid the foundations of the municipal debt which the City of Dunedin still wrestles with. After a short time my father acquired a cottage in Castle Street, and it was here that the rest of the family, myself included, were born. This sufficed for a year or two, and when it became too small it was shifted back from the street frontage and replaced by a more commodious dwelling, in which my mother and father lived almost continuously until they died, each at the age of nearly 85 years. Although possessions in those days counted for little enough, my father and mother entertained a lively pride in the home they had built for themselves. It was like the life they lived, the hard life of a wilderness by modern standards, filled with constant work and attainment, but with none of the joys of the mind underrated or forgotten.

CHAPTER III.

Changing Scenes.

I.

About 1870 my father was transferred to Bluff for a period of two years. My recollection of this interlude is hazy, but I seem to recall that the port of Southland at that time was not without its attractions. What it was chiefly remarkable for was the beginning of the tempestuous and exhilarating years of schooling under a curious succession of masters among whom were some of the most irascible, exasperating mortals ever saddled with a teacher's yoke. Seven years had still to pass before the Education Act was to introduce the free, secular, and compulsory principle into education in New Zealand. Up to this time well-to-do people, of course, employed governesses and tutors, but most others did what conscience, time or opportunity dictated, which might be nothing at all. My first experience was at Bluff. Presumably there was at that school the usual mixed bag of lusty young Colonials, and the teacher probably had a hard enough time of it. What or how he taught has long since lapsed in my memory into an impression of not unpleasing commotion, for, after all, I was not long there.

One vague recollection I have of Bluff School is due to quite accidental circumstances—accidental and embarrassing. It happened, I think, on my first day at school. My hand had been held aloft for so long that I was already beginning to despair of ever catching the teacher's eye in time to avert a childish calamity. At last I received

permission to leave the room. I ran out of the door and across the yard, but there disaster befell me. Whether it was the excitement of going to school or the confusing sameness about the front and the back of small boys' pants at that age, I do not know, but I found to my alarm that I had my trousers on back to front. There was nothing I could do—in time.

A single other incident alone comes back to remind me of school days at Bluff, and the memory of that clings mainly because it so nearly resulted in my demise at a very tender age. Some other young hopefuls, older than I, had harnessed a billy-goat to a gin case on wheels, and taken the equipage out on to Bluff Hill. I, as the smallest, had been placed in the gin box to be taken for a ride. Unfortunately the goat took charge, and, careering madly down the hillside, outstripped the would-be charioteers. It headed straight for a deep and broad water-filled ditch which it essayed to jump.

The goat made it, but the cart landed squarely in the middle of the drain. The makeshift chariot stopped with such suddenness that the goat was pulled over backwards into the drain, landing on top of the cart which in turn was on top of me. I must certainly have been drowned had the bigger boys not been near enough at hand to release the struggling animal, and remove me in time from where the gin case was keeping me pinned in the dirty water of the drain.

From Bluff I stepped back into the larger world of Dunedin, and the next picture is of a small boy dragging unwilling steps up Tennyson Street to Halliwell's School. I had a deep-rooted objection to that school from the first time I saw

it, and I set out on my first morning with obvious diffidence which was not entirely dispelled by the firmness of the paternal suasion. One hour was more than enough. At the morning recess I locked myself in the lavatory and hid there until the school went in again. As soon as the coast was clear I fled home. No one realised how much I shrank from going back to that school, but I could not tell them that at home. This telling business was often a complication, except perhaps with my mother, but in this case, as in so many more important matters in later life, it was no use trying to explain. There was nothing for it but to go away back again with only a dim understanding of the probably very sound parental advice I had been given, but a very full appreciation of the meaning of the threats that accompanied it.

II.

My first conceptions of Halliwell's might almost be said to have been confirmed by the fact that the school left no very vivid impression on my young mind. The curriculum centred round the statutory requirements of the three "R's," with a few additional subjects thrown in. The instruction was given, I should say, by teachers of good average competence, and their methods, though disciplinary, were effective. Little attempt was made to coax us to learn—conditions did not permit it—and the emphasis in any case was all the other way, but for boys who had an aptitude the system was useful enough.

Almost as important as any instruction we may have received was the unholy feud that existed between Halliwell's and the Christian Brothers School, which was most inconveniently situated on

the other side of the dividing fence. Out of purely nominal religious differences there arose a state of war that was productive of many thrilling encounters. There was many a sanguinary pitched battle in an adjacent vacant section in Rattray Street with a variety of weapons and missiles at the very thought of which the blood now runs cold. Broken heads and torn clothing were common, and not infrequently there were serious results, but no amount of cajoling, threatening or appealing to juvenile better nature by either the Brothers or the staff at Halliwell's could put a stop to the senseless and unreasonable vendetta. My personal acquaintance with the more bloody conflicts, since I was still very young, was generally that of a spectator perched in safety on a nearby fence.

It was about this time that I made my own first contact with religion. So impersonal an experience, however, could hardly be attended by any very real results. I do not remember exactly when matters religious were really brought under my notice. Somehow, going to church was as much a part of respectable living as washing behind one's ears and cleaning one's boots, and I took it for granted just as I did God and the Bible. Neither the sermons nor the music made any profound impression upon me, but the spectacle of the family in full parade every Sunday had its effect for many years afterwards. My interest did develop, however, with my entry at the age of ten into the ranks of the choir boys at All Saints' Church, and my perfunctory participation in organised religion was undoubtedly given a fillip by my appointment to the proud position—a joint affair—of organ blower. Indeed, I might have filled the post with

distinction to myself and pride to my parents had it not been for an errant draught from the back of the building which caused a sudden fall from grace.

Between music the young organ-blowers were left to their own devices, and as usual Satan found some mischief for their idle hands to do. We had purchased some cigarettes from a Chinaman the day before, and thought to improve the shining hour with a surreptitious puff or two in the shelter of the organ. We had reckoned, however, without that draught, for as soon as our cigarettes were fairly glowing the fragrant clouds of fine cut Virginia were whisked out through the gaps in the organ and left to hang like incense above the front pews, finally curling and eddying round the pulpit itself. Blissfully unconscious of the tell-tale smoke we puffed away to our heart's content. But Nemesis was on his way in the person of Mr Statham—now Canon Statham. My companion, better situated strategically than I, was able to beat a timely retreat. I was caught red-handed, and was entirely oblivious of any danger until I reeled under the shock of a forceful and well-placed cuff over the side of the head. So ended my career as an organ-blower. Next Sunday I took my place once more in the family pew.

III.

In the same year came a change of environment that might well have altered the whole course of my future. My father was transferred to Port Chalmers as a sergeant in charge of four constables, and the family left Dunedin again for a time. The crowded little haven with its abrupt hills, bush-covered in those days, caught my youthful imagination as in a snare. There was an intimacy about

these new surroundings, a playfulness about the advancing and receding tide which one had never experienced before. Somehow the waterfront seemed more friendly at Port Chalmers, and at high tide at the end of the piers there was always that hint of depth and danger so familiar to the very young in harbour waters that swirl round wharf piles.

The town itself was small enough to be always full of salt air and of the sound of the waves on a rough night. Such things through several summers and winters wove around me a spell under the influence of which adventures on the jetties, escapades on ships, explorations in the bush, childish friendships, and boyish aspirations acquired a magic quality that resulted in the development of a compelling impulse towards the sea and sailing ships. Nature, as represented by the hill-girt port, became my master, and for the first time that I can recall my devotion to something became tireless and humble. To this day I can see the waves as they rolled in to the shore, piled themselves up, curled forward, and broke back into the brief receding surf. Trees, too, acquired a new value for me, and my time seemed to be divided always between the waterfront and the bush. But most of all the tall ships fascinated me. The glamour of sails full set, the attractively ugly tang of rope and tar, the dizzy height of masts and sky-sail yards—all these held me in thrall and enveloped me in the "magic and the mystery of the sea."

Is it surprising that here was born a consuming passion for the sea which threatened to brook no interference from parents who had other plans for me? Up to this time my life had been a more or less leisurely succession of mildly pleasurable and

novel experiences with little real excitement. Here was something different, and my future seemed to stretch out before me as clearly as the road that I followed every day to the wharves. The sea was in my mind and heart. At home at night, seated in front of the fire, I would find myself listening to the swirling rush of a wave running froth-covered upon a beach. Or else I walked on a slanted deck, and the smell of the wood in the grate was the hot tar melting in a ship's seams under a fierce tropic sun. The smell of the air on salt water and the life that sailors knew held me captive.

I do not think the rest of the family shared my enthusiasm for the change of scene brought about by my father's transfer. The routine of the beat in Dunedin was replaced for him by considerable responsibility and not a little anxiety. Police duty in Port Chalmers in 1876 was a vastly different thing from what it is to-day. Life for my father suddenly became hectic, and the humours and excesses of sailors ashore caused him many an anxious moment. Frequently it required the combined energies and tact of the entire force of five to separate the crews of departing vessels from the fleshpots of the hostelries that offered them such warm welcome. They were strenuous and full days for the custodians of the peace.

Our new home, too, left much to be desired. Living conditions were crudely primitive compared with the snug little cottage we had left behind in Castle Street. Our quarters consisted of six rooms above the courthouse and police station—a tiny sitting room, four bedrooms, and a kitchen with a camp oven for all cooking and heating. Innocent alike of sink or water, the kitchen was a model of domestic inconvenience. There was no bathroom,

and all our water had to be carried upstairs in buckets. What served as a bath had to be filled and emptied by hand, and I can remember how my mother's back ached and the perspiration stood out on her face by the time she had finished the Saturday night ritual of providing the family with baths. Only winter bathing was indulged in by the masculine members of the family. In summer my father and the boys bathed in the harbour.

IV.

But youth has small patience with such trivialities and cares little for the discomforts and inconveniences which it does not itself experience. I revelled in life at Port Chalmers, and preferred it infinitely to the aimless mischief one encountered playing about the streets of Dunedin, skylarking on Tanna Hill, or bathing in the trickling Leith. There was so much more to do and to see in the little harbourside town for a boy, and to this day I retain a deep affection for Port Chalmers. Tall masts and billowing canvas have disappeared from the scene, but there are few brighter recollections of my youth than the freedom of pier and ship that was ours. We had little difficulty in boarding any ship in the harbour and disporting monkey-like in the rigging, where we learnt the name and function of every spar, and sail and rope. A loaf of common bread, "soft tack," was our footing to the apprentices, who for so munificent a bribe were more than willing to act as guides and mentors to the little land-lubbers.

Mention of these apprentices brings back to mind my first adventure in the realms of inebriety—an experience which more than anything else engendered in me an indifference to alcohol in almost

any form that has frequently been remarked by my friends. A sickly viscous concoction of whisky, black sugar, and hot water can be thanked, or blamed, for the very moderate consumption of liquor that has been mine through the years that have elapsed.

One evening, through lack of something better to do, I strolled down to the export pier with a companion. As usual, we soon found ourselves with the apprentices in the half-deck of a sailing ship at berth. Someone suggested a drink. A tarpaulin muster of our resources produced the sum of one shilling, with which it was proposed we should procure some whisky. It was only 5s a bottle in those days, and a shilling went a long way. After mixing the whisky in a dixie with a breakfast cup of black sugar, we added hot water smuggled from the galley. We took turns at drinking the stuff, and in a very short time the two visitors from the shore began to feel that the cabin was getting very hot and stuffy. It was not long before we resolved to go home. As we emerged from the half-deck, sick and giddy, and already very sorry for ourselves, we saw the nightwatchman standing at the gangway. Half stupid, we bolted the other way and finally jumped ashore at the fore rigging.

They say Providence has a special care of drunken men and fools. Whatever category we belonged to, Heaven smiled on our extremity, for on visiting the spot again next day we stood aghast at the thought of the desperate leap we had made to the wharf. But the violent effort merely completed our ruin. Nausea descended upon us like a black cloud, and, leaning over the buffers of a rake of trucks, we were both heartily and unpleasantly

sick. How I got from the pier home I never knew, but as I neared the gate I saw my father pacing up and down in the roadway. Weakly I leaned against a fence and waited until he set off in the direction of the railway station, and then with what speed I could muster I scuttled into the house to confront my mother. With characteristic tact and forbearance she administered a Sedlitz powder and hurried me into bed before my father should return. I was cured of excessive drinking before I had fairly started.

CHAPTER IV.

Youth Faces the Future.

I.

They were carefree happy days, rowing and sailing boats on the harbour, travelling to and fro in the tug when she went to tow vessels in or out, and, it must be admitted, learning much more about life afloat than the less interesting subjects which might be expected to assist me to fulfil the ambitions that my father still entertained for me. My desire to go away to sea must about this time have communicated itself to my father, more especially as several of my companions had already taken the plunge and signed on as apprentices, for he suddenly decided that it was time I went to the Otago Boys' High School to continue my education. I was not very happy about it, and many an afternoon I sat in a classroom in town and was haunted by visions of tranquil harbour waters in the sunshine and tall masts and white sails reflected in the depths. But my dream was ended. Almost before I knew it I was out of school again and earning five shillings a week in a legal office.

Every school should essentially be the image of a personality, but my school days at Port Chalmers were not illumined by any very striking genius in the dominie line. The simple studies which comprised the primary education of the time put no great strain on the abilities of teachers, and it is probably that fact which deprives my recollections of the memory of any outstanding figure. To one of my masters, an artist in caligraphy himself, I owe the presentable hand I possess still. He taught me to write with distinction, and lawyers

will realise the importance of such an accomplishment to one who was soon to be apprenticed to a legal firm. Almost as soon as I began work I was given engrossing to do, and I was able to make such a commendable fist of it that, as the veriest junior in the office, I was entrusted with most of that work. I found the experience invaluable when I was afterwards called upon to draft documents myself and give them to somebody else to engross.

Not entirely pleasant were my dealings with this expert of the pen, one of my most painful experiences with him being in the matter of a certain mathematical deceit, which I was keenly interested to learn from the late Mr. Justice Alpers's "Cheerful Yesterdays" was practised by the judge also. The consequences of my folly, I fear, were much more painful than his. Successive teachers had laboured in vain to acquaint me with the rudiments of Euclid, and my caligraphist master, who also taught mathematics, was one of them. But it was quite beyond my poor wits, and I could make neither head nor tail of the simplest problem. Like Mr. Justice Alpers, and a majority of schoolboys also if the truth were known, I relied upon a very retentive memory. My method was to learn whole propositions off by heart until I could recite them parrot-fashion without reference to figures or theorems. The fifth proposition was my downfall. The figure had been drawn on the board, and the reward for a correct solution of it was an early release from afternoon school. Another boy and myself had memorised the whole thing, and in a few minutes we were on our way out of school. The other "blockheads," as an irate teacher described them, were held back and required to

prepare the theorem for the following Euclid day. When that day came few, if any of them, were any more enlightened than they had been before, and in desperation the master called:

"Hanlon, you come out and show these dunderheads how it is done."

With all the confidence of one perfectly sure of himself I strode out in front of the class, and with hardly a glance at the blackboard I began to parrot the thing as usual.

"What are you talking about?" was the angry query. "Start again and look at the figure this time."

Fearfully I turned my eyes to the board and was about to begin all over again when I sensed something unusual about the hieroglyphics inscribed there. The familiar A, B, C, and D of the text I knew so well had been replaced by a mixture of letters and numerals. I was undone. I shot an agonised appealing glance first at the class and then at the teacher.

"Go on!" he roared, but "as a sheep before her shearers is dumb," so I opened not my mouth.

He made a wild lunge at me and caught me on the side of the head. Over I went with the easel and blackboard on top of me. As I slunk back to my desk in disgrace, the master turned with a suspicious gleam in his eye to summon the other reciter of geometrical problems. But he was too late; the other boy realising what was coming had wisely made a hurried exit through the open window. That night I complained about my treatment to my father, and was tersely told that it was all for my own good.

II.

Shortly after this a new master came to the school. He was a kindly soul and a born teacher. He had the artist's gift for believing in possibilities, which probably explains his success as an educator. On his first Euclid day I was the only boy kept in, and when the others had all gone he asked me why I was so backward in that subject. I tried to explain that it was all a riddle to me and that I would never be able to master its intricacies, but he told me that was the wrong way to look at it. Then he came round from behind his desk and sat in the seat beside me. Carefully and patiently he explained the figures, the lettering, and the meaning of a problem, and went through several theorems with me step by step. Slowly I began to see daylight, and from that time I got on well. It was without doubt due to him that when I sat my general knowledge examination for the Bar I got full marks for geometry.

One of the experiences I had while living at Port Chalmers is worth retailing here. It left an indelible impression on my mind and introduced me for the first time in my life to stark, staring fear. I was twelve or thirteen years of age at the time, and was being taken to Waitati by Constable Livingstone to spend the week-end with his family. For some reason he decided to walk part of the way along the main railway line. Before we left he told my parents that there was no chance of meeting a train at that hour. On the way we had to go through the Purakanui railway tunnel, which is over a mile long. The idea was not very pleasing to me, but I fell into step beside the tall policeman and breasted the chilly darkness. We were halfway through when, with a whistle and a roar, an

express train, running late, entered the tunnel at the other end. Naked, unashamed terror took hold of me. Paralysed with fear, I stood there in the middle of the line until I was roughly grasped by the constable and flung against the wall of the tunnel. There was no time to find a man-hole, and all my companion could do was to dig his feet hard into the metalled track and brace himself, with his arms outflung across my chest, against the draught of the rushing train. The almost irresistible pull of the draught, the roaring darkness, the fumes of smoke, and the wet kiss of steam and flying embers from the engine stack combined to comprise an experience I have never forgotten.

That great day in the life of every boy when he dons his first suit of long trousers occurred about this time, and was for me a combination of triumph and disaster. It had taken weeks of cajoling and coaxing to persuade my mother that it was time I discarded my knickerbockers for long trousers, but she finally agreed, and my new Sunday suit was bought. The usual Sunday morning hurry and bustle which began the religious institution of getting on parade, a few days later, was for me a great occasion. Long before anyone else had fairly started to get ready I was fully dressed in a navy blue long-trousered suit. While waiting for the rest of the family I strolled down to the water's edge, and was asked by the local tailor's son to go for a row in the meantime. Nothing loth I stepped gingerly aboard, but while endeavouring to fend the craft off from the pier steps I fell overboard, new suit and all. Church was now out of the question, and I waited until I saw the family procession move off down the road. Then the tailor's son and myself hurried round to his father's shop and went into the

tailoring room to see what could be done about my suit. The pressing iron was lit up, and while it was heating we wrung what water we could out of the sopping suit. Then followed some strenuous pressing with the idea of drying my clothes as quickly as possible. We pressed everything but my boots, and finally I donned the suit and set off home.

Nothing could have been more comical than my appearance when I crept into the house. My father and the younger members of the family were all away at church still, but my mother was in the kitchen cooking the dinner, which on Sundays was like the parade to church—something of an event as regards both food and accoutrements. Despite a natural annoyance at the ruin of a new suit of clothes, she laughed immoderately as soon as she caught sight of me. My paper collar had lost all its stiffening; my light blue tie had shed its colour into my shirt front; and my trousers had shrunk so much that I was almost back into knickerbockers again. My coat barely reached my waist, and there were inches of wrist and shirt sleeve showing below my cuffs. I looked a real scarecrow. But, as had happened so often in the past, my mother stood between me and the paternal ire, although I had to do without a Sunday suit for some time.

Another sartorial catastrophe occurred when several of us were surprised by a workman on the George Street pier, which was then under construction, using a powder magazine for target practice with mutton shank and lead pipe cannons in which we used pellets and blasting powder purloined from a nearby quarry. In making our escape we had to scramble between two stacks of timber. I was the last to get through the barrier, and was caught by the coat tails by a pursuer who hung on for dear

life. I managed to get away, but I left half my coat behind me. Here was trouble again, but, as usual, my mother was my salvation just as she was when I arrived home after all my scrapes. Always it seemed my mother was in the background ready to "temper the wind to the shorn lamb."

Whenever there was a crisis, and it generally occurred round about the breathless and uncomfortable hour on Sunday mornings when the family was expected to tighten up its morale and take the road for church, it was my mother who saved the day for me. She had the rare gift of understanding and sympathising with youthful misdemeanour, and without openly condoning it she contrived in a hundred ways to reduce or eliminate altogether the penalties which my father invariably regarded as necessary. I think it was this attitude of hers as much as anything that impelled me throughout the years that followed to spend at least an hour with her every day that I was in town, until the time of her death.

III.

Youth to-day would count my sojourn at the Otago Boys' High School a very brief one. It lasted for one short year. My father had intended that I should stay longer, but when he found an opportunity of placing me in an office where I could be trained for the vocation he had always had in mind for me, he did not hesitate. I was at home at Port Chalmers when he told me my school days were over. Helping my mother with the Christmas cleaning, I was actually on my knees blackleading the parlour grate when he came in and told me excitedly that he had secured a position for me in the employ of Mr J. A. D. Adams, and that I could start when the

office reopened after Christmas. I at once demurred on the ground that the holidays to which I had looked forward for a year would be spoilt, but my father was singularly unimpressed. I think he was even a little shocked. Here was a job with a chance to begin my training! Opportunity was sitting on the doorstep and I talked of holidays! The idea was unthinkable.

It was an abrupt and disconcerting turn of events to one who was anticipating halcyon days on the waterfront, on the harbour, and in the bush, but I appreciated the strength of the parental decision, and, concealing what chagrin I felt, faced the prospect in tolerably good spirits. I was facing a world of which my ignorance was total, and I started work on January 4, 1882, with few serious misgivings, but no very great enthusiasm either. It was rather a case of "So be it; so I can but come to hard blows with the devil and have at him with a right good thrust or two." But in the months that followed I had many regrets for the bright heap of days in the open that had been my boyhood at Port Chalmers.

The articles of apprenticeship were duly signed by Mr Adams, my father, and myself on January 10 with, it may be conjectured, a sigh of relief on the part of my father. If anything could "settle" me and get the tang of the sea out of my brain that should. For myself, I realised for the first time that I had said farewell to a childhood that had been full and pleasant. The challenge to life had been taken up, and come what may there could be no going back now.

Memories of that boyhood lay heavily over the present then, and at sixteen I was tempted to believe that pleasure and laughter were over. How

the glamour of things flies as one gets older! How the colour goes out of the day and the music out of the night as time passes! Dear days of youth, when life was not a dreary round of unfinished tasks, but a pleasant sojourn in a fair and unknown land. I was to learn soon enough that such languishing was mere rhetoric, and stale at that—the sort of thing with which youth so often deceives itself when it is suddenly asked to fling away the visions and enchantments of childhood and wrestle with a future someone else has planned for it.

So began a course of study and instruction which continued at varying speeds through six years of hard work. The legal student to-day takes life easily by comparison, and, I believe, learns less of the practical issues which are so essential to his profession. Everything was more strenuous then, despite a slower tempo and fewer distractions. We worked and played with gusto. People went to bed earlier, got up earlier, and worked harder than they do to-day; played harder, too, and accomplished more in both directions. Social life was freer and less formal, and offered a more abundant experience of people. There was a lot of rough humour at the other fellow's expense, but a great warmth and kindliness for the man who could "take it."

IV.

In spite of a quickly kindled interest in the work I was given to do I did not take altogether kindly to the routine of "swotting" for my general knowledge examination. It seemed too much like going back to school again. Then, too, a nostalgic feeling seemed to haunt me, losing none of its potency from my continual though less regular ramblings round the wharves at Port Chalmers.

Ships and cricket used up a lot of time that might have been more profitably devoted to study, and I was beginning to take an interest in elocution as an art. Musical evenings were the staple form of entertainment at this time, and everybody was expected to contribute to the general entertainment. I could neither sing nor play, and for a long time felt very much out of it, until I discovered that I had a good voice and could recite creditably. After a few attempts I became genuinely interested in elocution and character studies, and finally became madly enthusiastic. It was a good thing, and has stood me in excellent stead since.

Here we have one of the prime differences between life to-day and fifty years ago. There was a piano in nearly every home. Entertainment was not delivered packed in a gramophone or a radio set, there were no films, and not too many theatres. The generation was thrown back on itself. In my own case it was not merely reciting that I was learning. I was laying the foundation for a future talent that was to be more than useful, and I am convinced that the present generation could be improved by the encouragement of similar interests. Whoever has the wit or the grit to study any of the arts, though he may fall short of distinction, will never be able to say that the time was wasted. Elocution and dramatic recital literally seduced me, and to a large extent took the place of my craving to go to sea.

In fact, at one time I seriously considered the idea of a career on the stage, and in later life was not infrequently encouraged to go on thinking along those lines. I do not doubt that my enthusiasm for elocution had a good deal of vanity in it, especially after I began public appearances on the concert

stage. Applause is heady wine for any young man, but a great deal of my success goes back to the determination to recite which had its birth in the front parlours of Port Chalmers homes. In later years I performed for all sorts of charities on every concert platform and in every hall in Dunedin, and it was as a result of my own dabbling in elocution that I became one of the founders of the Dunedin Competitions Society, at which I often acted as a judge, and of the Dunedin Shakespeare Club, whose periodical readings were among my principal delights.

In the little office in Dunedin my nose was kept fairly steadily to the grindstone, and I was learning a lot about the practical side of the profession, particularly conveyancing. It has been my view for a long time that most young lawyers to-day would be the better for some of the gruelling practical instruction which was the rule fifty years ago. It was an odd chance that had landed me in this office at an age when most boys of any ability would be scaling the educational ladder and forming all kinds of personal affiliations. I had no real feeling of loss, apart, of course, from my regrets at a suddenly terminated holiday, and this I attribute to a very considerable extent to the kindly helpfulness and guidance of Mr. A. S. Adams, later Mr. Justice Adams, who for a time was a fellow clerk with me, and afterwards one of my masters. My association with him proved rich beyond expectation, and more than anything else enabled me to extract everything of value from my period of training. From the first he took a keen interest in me, and helped me in every way possible, not only in the office, but also with my examinations. I owe a

great deal to his generous assistance at that time and to the infinite patience he always exhibited towards me.

V.

He himself had a deep sense of vocation, a liking for quality in people and things, a hatred of vulgarity, and a feeling for tradition. If in after years I achieved any of these admirable traits, it was undoubtedly due to the impact on an impressionable youth of so attractive a personality. In these days it is a common fallacy to regard such characteristics as constituting conservatism. Such nonsense masquerades as democracy. Fortunately for the development of this young country a different condition prevailed in the difficult days when the work of nation-building was at its height, although even before the close of the nineteenth century the forces of disintegration were at work. Bench and Bar and, one might add, the Legislature and the Church were largely in the hands of a class of cultured, almost hereditary leaders, a legacy from the Old World. It was no mere intellectual dominance, but a conscious class solidarity which on the whole did extraordinarily well for the country. Its failures were so disposed as to inflict small real harm on the people, and its successes resulted in the attainment of a standard of nationhood which New Zealand is celebrating to-day.

But these things are no more. A totally different civilisation has arisen and, for better or worse, has taken control. There is still a class solidarity, but it moves in an entirely different direction. Brains rather than breed is the ideal. Owing little to birth, nothing to tradition, and generally speaking execrable English, a new generation has been evolved with no more than a single thought

—equality and opportunity. The old order is being assailed on every side. Benevolent compulsory State education, the multiplication of books, and the spread of learning, through a variety of channels, have produced an insatiable demand for the consideration of the individual, who to-day grows steadily more clamorous for his rights.

Looking back over the years, I cannot avoid the thought that the new idealism has overlooked one essential and paramount fact—that all the learning, training, and culture in the world, all the artificial opportunity that the new system may afford, are of no use to them who have not the wit to assimilate them. It is not culture or opportunity that counts, but the use that is made of it. Society to-day has not a great deal in common with the order of things that produced the great personalities of the Bench and Bar of the past, and I doubt whether any of them could ever have been convinced that an enduring edifice can be erected upon such lines. Could they return and see it at the present time they would recognise the system for the ad hoc experimental thing that it is, and sadly deplore the submerging of the personal element beneath an order that is almost entirely mechanical.

But these are vain regrets, and I have digressed too long on thoughts given shape by my memories of one who was an invaluable factor in my career. To get back to the struggling law clerk. With my general knowledge examination behind me, I was progressing steadily if not spectacularly with my professional studies. The combination of a hard school and competent mentors was achieving results. It was about this time that I made my debut in the Supreme Court, albeit, like Uriah Heep, in a

" very 'umble way." It was an event, and I realised that the Law with all its erudite complications and inviolable traditions is not always austere and unsmiling, which alone can be the justification for the inclusion of this anecdote.

Mr. J. A. D. Adams had been retained for the respondent, the husband, in a divorce case in which the ground of the petition was misconduct. I had been taken to the court to attend him, and with considerable pride I took a seat at the Bar table. During the hearing a housemaid was called as a witness for the petitioner, and was asked to produce a letter written by a woman to the respondent. In appearance the document was dilapidated and discoloured, but by the use of transparent adhesive paper the torn parts had been pieced together again to resume the vividly incriminating form the epistle once took. Before the witness left the box the trial judge, Mr Justice Williams, requested that the exhibit be handed up to him for inspection.

The deciphering of the text was no easy matter, particularly as the ink had run badly, and it was necessary for His Honor to hold the letter for ocular inspection at very much less than an ordinary distance from his face.

" Was this letter torn when you found it? " he asked the witness.

" Yes, sir," the girl replied.

"And was it discoloured as it is now? "

" Yes, sir; and it was all damp."

" Where exactly did you find it? "

" In the chamber, sir," the witness replied shyly.

With obvious haste His Honor handed the unhygienic exhibit to the Registrar with a request that he should take charge of it.

CHAPTER V.

Professional Beginnings and Encouragements.

I.

Time passed quickly enough in Mr Adams's office, and I wrestled valiantly with examinations for six years, finally completing them in September, 1888. About three months later I was admitted as a barrister and solicitor of the Supreme Court of New Zealand by Mr Justice Williams. I was now "passing rich" on £130 a year, but another clerk was working up to my position in the office, and my services were no longer required. I left the firm, and with disturbing suddenness my income dropped from £2 10s a week to nothing.

The outlook was hardly inviting. I had no money to buy myself into a partnership, and so had no alternative but to commence practising on my own account. After a lot of searching I found a small vacant room in Eldon Chambers in Princes Street, and I immediately arranged a tenancy. With capital almost nil, the furnishing of the room had for a long time to remain an unsolved problem. From an auction room I bought a plain deal kitchen table, three cane chairs, and a letterpress. I covered the table with oilcloth and purchased an inkstand, pens, pencils, and paper, and laid in a stock of forms of complaint, summonses, and other official documents. These, with my students' law books, comprised my stock in trade and practically the whole of my assets. It remained only to put up a plate bearing my name and profession at the door and then sit down and wait for clients. This I did with more assurance than I can credit at this stage.

The first week went by and then the second without a solitary caller. I was not greatly perturbed then, but when the fifth and the sixth and tenth week passed without a single visitor except the debt collectors who wanted payment for the professional cards I had had published in the Otago Daily Times, the Evening Star, and the Taieri Advocate I began to be worried. My position seemed hopeless, and things went from bad to worse. Three months went by and then four, and still no business and no income. I was now thoroughly daunted, and I think that at times I almost hated the office and all its associations.

Little wonder then that I could not dissemble my eagerness whenever I heard a footstep outside the door. The months dragged hopelessly by, and still boy enough to be moved at their passing, I bade each a melancholy farewell. It came to this, that every time I heard a step I trembled. Would it reach my door? With feverish haste I would fling my largest law book—"Benjamin on Sales"—on to the table, and when the knock came my too studiedly casual "Come in" arose from a head buried in the large tome. But it was all to no purpose. My carefully staged scene made no impression, because the caller was always another debt collector. Those confounded cards in the newspapers were still unpaid for, and who knew when the rent of my small room would not be made the subject of similar visits?

The problem of my livelihood stared me in the face for five months. Welcome as I was at all times, it was no easy situation, either for my parents or myself, to live at home, trying to busy myself with non-existent personal affairs, and at the same time keep up courage and morale without the prospect

of a penny of actual earnings. Incentive at times ran dangerously low. There is nothing like the simple misery of having nothing to do. It is a peculiarly powerful species of torture which cannot be appreciated until it has been experienced. Idleness can be a delightful luxury, but let it be enforced too long and it is unendurable. Held in its grip, one finds it easy to sympathise with persons convicted of drunkenness in France who are said to be fed entirely on bread and wine. The worst aspect of it is that one feels so useless and unnecessary, and one's very energies begin to prey on the mind until even what one could once do well becomes almost impossible.

II.

I had reached the stage of asking nothing more of the callous earth or the empty heavens than the most sterile and abject of definite employment when someone did call at my office. He brought a message from the Central Police Station. Would I go down and see a man in the cells? It appeared that a police constable whom, as I afterwards found out, I knew slightly, had told a prisoner in the cells who was asking for a lawyer that "that chap Hanlon is only a young fellow, but he is a very fine pleader." The reference to my age was accurate enough, but the latter part of his recommendation had still to be demonstrated.

I lost no time in getting to the police station, and saw my first client in his cell. He was facing a charge of false pretences, but I considered that he had a good case. I inquired how much money he had, and he said half a sovereign was all he had in the world. Remembering the months of idleness behind me, I grasped the opportunity and took his

case, after first persuading him to sign an order requiring the police to pay his modest 10s over to me. The man was a pedlar, dealing in corn cure which he made himself by diluting highly coloured hair restorer with water. This he canvassed from house to house on the Otago Peninsula from Taiaroa Heads to Dunedin. He had been arrested at Anderson's Bay on a charge of having obtained a bottle of hair restorer from a city chemist by a false pretence.

When the case was called two Justices of the Peace were on the Bench, one of them himself a chemist. The defence was a denial of any false pretence. All the accused had done was to walk into a chemist's shop, ask the boy behind the counter for a bottle of hair restorer, and tell him to put it down to "Dr Shannon." The boy charged the purchase up without any hesitation, and the "doctor" left the shop. The case was dismissed, the chemist J.P. remarking, rather gratuitously, I thought, "No chemist has any right to go away to his lunch and leave a boy in charge of a dispensary where poisonous drugs are kept for sale."

Shortly after this a young man who said he had been in court when what he was pleased to call "the doctor's" case was heard, came to me and asked if I would go down to the police station and see a friend of his who had been arrested for vagrancy. It was a hopeless case, but the man had eighteen shillings, and after securing the necessary order on the police, I appeared for him in the police court, again before justices. There was little I could do, but I suggested to the Bench that it was absurd for the State to be put to the expense of maintaining an able-bodied man like my client in prison. The proper course, I submitted, was to order him to

leave town and find work in the country. The court agreed, and the defendant was admonished and told to leave town. He went away to the country, but it was not long before he was back again.

Almost I imagine I can hear someone say "Small beginnings." Minute beginnings they were, but they brought to these sombre months greatly-needed encouragement, although not much cash. Moreover, they had their repercussions and led to something much greater and infinitely more remunerative. About three weeks after my eighteen-shilling vagrant disappeared into the country, the young fellow who had approached me in his behalf was himself in trouble. It was another case of vagrancy, but unlike his friend he was utterly penniless. Still, on the principle that one good turn deserved another, I took his case. His plight was the same in every respect as that of his predecessor, and I made the same appeal to the Bench, with similar results. He, too, was sent into rural exile, and I never expected to see him again.

III.

Actually it was less than four years when he turned up again in 1893 with far from empty hands. He was accompanied by his brother, and the pair of them wished to consult me about their father's estate, over which there was a family dispute. The two brothers were on the same side of the argument, and they asked me to investigate the position in their interests. I went into the case thoroughly, and after giving them my opinion I was retained to appear for them in the proceedings which were taken for the interpretation of the will.

The case was argued before Mr Justice Williams, who, in a reserved decision, delivered a

lengthy and learned judgment, the effect of which was to give my clients a sort of Pyrrhic victory. The details are irrelevant, but in certain respects their claim succeeded, and in others it failed. They were still not satisfied, and were determined to appeal against the decision. I advised strongly against such a course, but their minds were made up, and they asked me if I would submit a case for opinion to a prominent barrister then practising in Dunedin, who was afterwards elevated to the Supreme Court Bench. I did so, and the opinion I got was that an appeal should succeed. The case, therefore, went to the Court of Appeal, and I had difficulty in concealing my gratification when the brothers insisted that I should appear also for them in the Appeal Court, as I had been in close touch with the matter from the beginning and was completely familiar with it. Satisfactory terms were arranged, and I composed myself with what patience I could command to await the date of the hearing. My anticipations were heightened by the fact that I had not yet approached anywhere near the Court of Appeal, and up to this time had not even visited Wellington.

I was neither surprised nor discouraged when the appeal was dismissed. I had felt all along that it was a forlorn hope. A solatium in the decision, however, was an order that the costs of the action should be paid out of the estate. This was perhaps as well, because the disbursements were considerable. My share, which covered appearances in both the Supreme Court and the Court of Appeal was sufficient to enable me to furnish a home and put into effect a plan to marry which I had been cherishing for some time.

IV.

Naturally at this stage I was thirsting for experience. Every contact I regarded as a potential asset. Also, and not less eagerly, I was on the look-out for instruction in the arts of advocacy and pleading. In this latter quest the best experience I had was my actual appearance in court. Realising this, I was prepared to accept almost any case that came my way, and I found myself less daunted by hopeless difficulties than I had been by my early period of enforced inactivity. My failures, no less than my brief successes, taught me much, and my search for experience gave me not only a wider outlook, but a more intimate connection with the material of which lawsuits and prosecutions are made. Were all my excursions into the lower stratum of Dunedin to be detailed and minuted here, I might invite a charge of having been injudicious. I moved about among all sorts and conditions of people, making it my business to know their ways and temperaments, and wherever possible to discover their motives. I have seen Chinese men and European women at their ease in opium dens, witnessed the drawing of pakapoo banks, stood interestedly by, and not infrequently taken a hand, at the time-honoured pastimes of fan-tan and sing-tai-loo. By these means I learnt for myself about people and things that were to have a significant bearing on my future.

It is an absorbingly interesting study, the submerged tenth—those ordinary mortals who are so generally recognised as the common "enemies of society." There is nothing very unusual about them—they have no fine passionate, rebellious blood—and among them can be found many good souls,

too, the types that would steal with one hand and give away their last sixpence with the other. The customary conventional virtues mean little to them, but there is frequently sterling yeoman worth to back up even their sins and shortcomings. To the moralist they are poor stuff, but they comprise the raison d'etre of the criminal law, and as such have an incalculable value to the ambitious young lawyer. My explorations in this sphere, though wide and varied, would certainly have been less fruitful had it not been for a practice, early acquired, of never missing an opportunity of allowing the police to assist me. Sparing no energy in this highly essential aspect of practical education at an early stage in my career, I found the habit persisting long after it was entirely necessary. The strange distortion of ideas, the curious promptings of Nature, the mental excitement and the innumerable inhibitions that lie behind the criminal's law-breaking furnish an endless subject for study.

To-day more than ever I believe that this is an aspect of advocacy with which the young barrister must come to grips. A difficulty certainly consists in the reluctance one may feel about probing too deeply into the lives and concerns of people who are, after all, perfectly normal beings until they are found out. On the other hand, it is obviously fatal for the criminal lawyer to make his first acquaintance with malpractice from the explanations made by clients who retain him. The problems of humanity at this stage are almost as important as the more abstract problems of law. The exploratory impulse that took me into unfamiliar spheres certainly had a lot to do with the small successes that made up my early encouragements.

V.

With recognition on the way, it is all too easy to take undue pleasure in whatever success one achieves, even though such satisfaction may frequently be tempered by a sobering reservation of doubt as to the financial aspect of such employment. For me, at this period, the chill ghost of waiting had departed, and to-day I recall the hard work and concentration of that time with pardonable pride. The first few years must always be difficult for young men. So much is beyond one's control, and so infrequently can one set the pace of recognition; unbidden it comes and unbidden it goes, and in the final influence on one's career good fortune counts for more than any subjective action for which one can actually claim responsibility.

Indeed, it resolves itself largely into the purest luck, but in case that may be regarded as a less than worthy estimate of the considerations that determine success in the legal profession, I will modify it by saying that the best practical counsel that emerges from my own early years is, "Go ahead according to your lights, accept all the assistance that is offered, and let the other fellow do his 'damnedest.'" Some planes require a little more reach and a little more courage, that's all. The one faith the young lawyer, or for that matter any young man, must never lose is belief in himself. My generation was more fortunate than some of its successors in that it learnt that faith in a very hard school. In retrospect to-day I can glimpse, through the haze into which the past is merging, faces and personalities which reflect with striking vigour the rigors of a youth that could not fail to inculcate a genuine belief in self.

There is no intention here of suggesting that the 1930's have not young people with an unbounded faith in themselves. It is impossible not to admire the will to win that exists to-day, and I would emphasise here my lively admiration for modern youth, because it matters so supremely. For many years now I have derived a keen satisfaction from the opportunities of assisting and encouraging young people in both work and sport that have come my way. Still, it is one of the mistakes of youth to confuse self-confidence with self-esteem, and in the legal profession such an error is fatal.

That truth was brought home to me forcibly when I was still in my professional swaddling clothes, but I have never forgotten the effect of it. When I was a law clerk we had a dancing club at Port Chalmers under the style of the Quadrille Assembly. As a member of the controlling committee I was asked to sponsor a resolution for the rescission of a motion which did not meet with the approval of members. At the next meeting I "orated" at the committee on the subject, and concluded by solemnly moving that the previous motion be "abrogated."

"Crikey! Abrogated! What's abrogated?" exclaimed the chairman, who was a few years my senior.

Feeling and probably looking very sheepish, I replied, "Oh, it's practically the same as rescinded."

"Then why couldn't you say 'rescinded'? We would have known what you were talking about," was the somewhat disgusted retort.

It was a trifling incident, but it taught me one lesson: "Don't show off!" Since then it has been almost a fetish with me never to try and talk over

the heads of my hearers, especially if they happen to be twelve members of a jury. The plainest, simplest language has always been my aim, and I have been content to rely for my effects on warmth of expression or dramatic endeavour.

VI.

Blows to my vigorous and growing pride were not infrequent in those early days. On one occasion I was defending two men in the Supreme Court at Dunedin on charges of theft from the person. The defence was an alibi, and before the hearing I was fairly confident that I could make it "stick." When I faced the Bench, however, my self-assurance deserted me, and I became very nervous. I called witnesses to prove that neither of the accused could possibly have been at the scene of the crime when the theft took place, because very shortly before they were seen in another part of the town. Due, no doubt, to my fatal nervousness, I failed to get the time fixed definitely, and the judge, in his summing up, put his finger on the weakness of my case. He pointed out that if the jury accepted the testimony of my witnesses, the prisoners had had ample time to walk down and be at the spot where the offence took place at the time alleged. The verdict went against my clients, who were convicted and sentenced.

After the judge had retired, and as the prisoners were being conducted from the dock, one of them turned to me and almost shouted:

"A fine bloody lawyer you are. I could have done a damned sight better myself!"

In the Police Court, too, at this time I was made to realise that the way of the beginner is hard. I had been instructed to defend two men

charged with assaulting a publican. When the case was called, the complainant stepped into the witness box and said he wished to withdraw the complaint, and the two accused were thereupon discharged. I had taken the precaution, however, of issuing a summons for assault against the hotelkeeper, and his case was then called. I undertook to withdraw the case on condition that the defendant paid the costs of the proceedings.

"I won't pay a penny of costs! Not a penny!" he roared amid laughter. Then he seemed to see me for the first time.

"You're a new chum," he said to the accompaniment of more laughter. "I don't know you, but you don't look like a lawyer to me. Have you ever read any of Grattan's works?"

"Very well," I said, "if you won't pay the costs, we'll go on with the case."

"I think I could manage you if we went outside," he retorted, and to my chagrin the courtroom rang with laughter again.

Finally the case was adjourned until the following day, and as he left the court the defendant said, turning to me,

"If you come along to my place any time there'll always be a spot of whisky for you."

Next morning he paid the costs in full and the case was withdrawn.

CHAPTER VI.

Experience and Recognition.

I.

About this time I was retained to defend my first murder case, which was one in which two men were charged with killing a man at South Dunedin by stabbing him. Never before had I been called upon to defend a prisoner on trial for his life, and the experience was a memorable one. The trial occupied three days, and I felt the responsibility keenly. The Crown case was concluded before the luncheon adjournment, and it was my task to open my address to the jury when the Court resumed. I had very little lunch, and when I returned to the court I was far from comfortable. On my way to the robing room I began to whistle, for no other reason than that my spirits needed buoying up. As I entered the courtroom I was met by the late Mr B. C. Haggitt, Crown Prosecutor in the case.

"Was that you I heard whistling just now?" he asked.

"Yes," I replied with more cheerfulness than I felt.

"I can't understand you whistling on such an occasion. You must have wonderful nerve."

The truth was that I was as nervous as I could possibly be, and my whistling was merely a form of Dutch courage. I tried to tell Mr Haggitt as much, but he did not seem to believe me. When I concluded my address to the jury Mr Haggitt was gracious enough to congratulate me on a very

fine effort, and gave me the consolation of predicting that I would secure a manslaughter verdict. When the jury came back it turned out that he was right.

II.

Following on this trial I was engaged in a much less important, but very amusing case in which two men were indicted for conspiracy to defraud. It was simply a variation of the old-fashioned "confidence trick," but it had its unusual twists. One of the accused was a youth of nineteen years, and it was he who produced the victim to be plucked, a farmer's boy from the Tokomairiro district, who had just arrived in town with about £10 in his pocket. They met on the railway station just after the train from the south had arrived, and it was not long before the accused had ascertained that the boy was temporarily out of work. With the customary magnanimity of the confidence trickster, he undertook to find employment for the boy on a sheep station. In fact, he had come up to Dunedin, he said, to get two men, and as long as his "uncle" had not already engaged anyone a job would be available. Together they went to the Old Brigade Hotel in George Street, which the accused said was run by his "uncle." It was some time before "uncle" could be found, and there was a lot of going in and out of the place by the accused before the landlord relative arrived. The boy proffered two shillings for drinks all round, but at this stage one of "uncle's" little idiosyncrasies came to light. He had been "so long in the public house line that he never took a drink unless it was a case of a bob in and the winner shouts."

And so the stage was set for the plucking. "Uncle" left the room and returned with a box of dice. Throwing half a sovereign on the table with a remark that he had no smaller coin, he rattled the dice significantly, and in a twinkling of an eye two more half-sovereigns lay with it. "Uncle" threw the dice and got a high number, then the two youths followed, each getting about the same, but very much below "uncle's" figure. But "uncle" did not want the young fellows' money, so he left the spoils on the table. The accused suggested a sovereign in and throw for the lot, and "uncle" won again. Three times "uncle" gave the boys a chance to recoup themselves, but every time luck favoured him and he won. By this time each had contributed £4 10s to a pool that had assumed sizeable proportions, and it was proposed that they should all put another £2 in and throw for the lot again. The boy from the country was beginning to become suspicious by this time, and refused to contribute further, although he was prepared to throw for the pool as it stood. And, for the sixth time in succession, "uncle" won again. The complainant was now sure that he was being "fleeced," and put out his hand to take up his money, but he was told he could not do that, as "uncle" had won it all. So "uncle" picked up the money, bought the youths a drink, and after unsuccessfully attempting to sell the complainant some tweed for a suit, he advised him to go to the rabbit factory at Dunback and see if he could get a job. There was no talk about work on a sheep station, and very soon "uncle" departed to be seen no more.

Complaints were made to the police, and "uncle" and his youthful accomplice were arrested. In their possession was found a false die which had two sixes, two fives, and two fours on it, a cigar case capable of being converted into a dice box, an ordinary set of dice, a pack of cards specially prepared for the three card trick, and in the cigar case were found, not cigars, but several cards adapted to cheating purposes. It was a hopeless case from the outset, and the attempt to produce an alibi by one of the prisoners served merely to make matters worse. There was nothing I could say in their defence or, in the face of their records, in extenuation, and the jury seemed to have no doubt whatever about the facts. After a retirement of barely half an hour they returned with a verdict of "guilty" against both the accused, and each was sentenced to two years' imprisonment with hard labour.

III.

From now on common law business began flowing regularly in my direction, and I was acquiring a substantial practice in country courts and also in other centres. In 1895 I conducted the defence in the Winton baby farming case, and in the same year I appeared as junior counsel with the late Sir Robert Stout in the Balfour murder case. In this instance the defence's insanity plea failed, but the prisoner was later reprieved. Shortly afterwards came the Tapanui murder case, in which two men were tried for the killing of a Chinaman, both being acquitted in the end, because I was able to show that the circumstantial evidence, which the Crown adduced as proof of their guilt, applied with equal

force to one of the principal witnesses for the prosecution. The Allanton murder trial followed, and I secured an acquittal in this case against apparently hopeless odds.

Before long I found my services in demand from Auckland to the Bluff to such an extent that it was impossible to cope with the briefs offering. I defended a Chinaman for the murder of a man at Three Kings in the far north of New Zealand, and appeared in a nautical inquiry at the Bluff in the far south. In 1900 I was retained to represent the Government in the famous marine scandal of that year. I was briefed by the Seddon Government to appear in its interests before the Royal Commission that had been set up, and I had the satisfaction at the end of this protracted litigation of knowing that I had saved the Premier and his Cabinet colleagues a lot of embarrassment at the hands of the Opposition. In fact, after the case had been washed up Mr Seddon almost begged me to enter Parliament and join his party. I have defended men on capital charges in nearly every metropolitan centre of the Dominion, and of all the cases of the kind in which I appeared I only once had the disappointment of having one of my clients pay the supreme penalty.

Throughout my long career I have stood alone without any affiliations or partnerships, and in these latter years I have derived a keen satisfaction from the fact that my allegiance to my home town was strong enough to withstand many alluringly lucrative offers from northern centres. I was frequently advised to go to Wellington to practise, and was continually tempted by recitals of the wider sphere and more generous opportunities offering there.

Among those who urged me to go north were the late Sir Charles Skerrett, K.C., and Sir John Findlay, K.C. Mr Skerrett, as he then was, used to tell me that in Wellington the profession had a groper to divide up between its members, whereas in Dunedin there was only a sardine. Neither municipal nor national politics ever appealed to me, despite the urgent representations of the late Mr Seddon with respect to the latter. It was while I was still religiously affirming my loyalty to Dunedin that The Triad, a periodical which has since ceased publication, referred in very complimentary terms to myself, and said that it was a tragedy that I should remain in Dunedin, where I seemed to be in a backwash.

One of the principal factors in my aversion from such a change was the conviction that a removal from Dunedin would just about break my mother's heart, but I had long ago decided that, notwithstanding the possibility of a wider practice and a larger income in the north, I would stay with my parents in Dunedin as long as they lived. I had, and still have, a genuine affection for the city of my birth, which I had seen grow steadily and sturdily from a crude outpost of the colony into a flourishing centre, and, in addition, I found it far from easy to sever all connection with dear old Port Chalmers, where my boyhood days had been so full of pleasurable incident and exciting adventure.

Many times in the past twenty years I have been chided for my decision to remain in Dunedin, but I have never seriously regretted having declined the numerous attractive offers of partnerships in northern centres which I received from time to time. The habit, which seems to be so common among northerners of decrying Dunedin, has never had any

great effect on me. I remember many years ago a paragraph appearing in the Evening Star, stating that a wild rabbit had been seen scuttling across Albert Street, hardly a stone's throw from the business centre of the city. By some means the item found its way into northern newspapers, and a brother of mine, resident in the Capital City at the time, wrote to me and said he understood from the papers that wild rabbits were now cavorting about the streets of Dunedin, and that excellent rabbit-shooting could be had from the windows of the Grand Hotel. Poor old Dunedin! She has been sorely maligned by her neighbours for many years, but for all their disparagement of the southern city, there is hardly a northern municipality that has not at some time or another been more than glad to borrow both money and example from the capital of the provincial district of Otago.

In 1930, 44 years after I had been admitted as a barrister and solicitor by Mr Justice Williams, I was appointed a King's Counsel. Of the many congratulatory letters and telegrams I received at that time from all over the Dominion, I recall one in particular. It was a telegram from an eminent barrister in the north, who had the reputation of being something of a wag. He wrote:

> "Congratulations on your appointment as a King's Counsel. I have already congratulated the King."

IV.

With the growth of my practice in the criminal courts, I realised how difficult the calling of a barrister can become. Those of the profession who have had much criminal practice will appreciate the disturbing and upsetting character of many of the encounters a lawyer may have in his pursuit

of the daily round and the common task. It is impossible, outside actual experience, to appreciate to the full the poignancy of many interviews a criminal lawyer has. Imagine a widowed mother whose son is charged with murder haunting your chambers to hear what you have to say about the chances of her son being saved from the gallows! It is pathetic the way such distressed souls hang on your every word. You wish with all your heart that you could offer them some grain of comfort, but too often you know only too well that the position is desperate, and that despite the best efforts of which you are capable, the most you can reasonably hope for is a reduction of the capital charge to one of manslaughter, which may mean a lifetime of imprisonment.

No expression on any face that I have ever looked on can compare with the silent look of misery that accompanies a mother's tears. No artfulness can depict it, nor can any acting ever hope to capture the tones, actions, looks, and, above all, the silences of maternal grief. I have seen, and been quite unmoved by, the icy glory that surrounds the hardened sinner as he fights, like the gods, against foreordained disaster, and there are no qualms about telling such a man that he has no hope. But in the case of an anxious mother it is different. To tell it all—the apparent hopelessness of a plight—and to hate the self that has to tell it; to watch the suffering and the anguish that every word causes; and worst of all, to endure the light of hope that shines in eyes that have too much faith in one's powers—these are aspects of advocacy with which the barrister would prefer to dispense.

But it is not only with respect to capital charges that such scenes occur. Whenever crime, like an unwelcome intruder, rears its ugly head in the home, it brings in its train inconsolable grief for someone. The help of a lawyer is immediately sought, but no matter what assistance or encouragement he can afford, and too often it is little enough, there is nothing that he can do adequately to cope with the sorrow and disillusionment of proud parents who find themselves with no choice but to face the inevitable. To the temperamental, and an advocate to be successful must have temperament, such experiences are unsettling in the extreme, and if by virtue of skill or good fortune the lawyer can achieve any success in such cases, his reward is not entirely financial.

One of the many cases in which I have been fortunate enough to obtain such a reward should suffice to illustrate my point. An old widowed lady came to me one day with her only daughter, with a request that I should defend her only son, who was charged with assault and robbery. The woman was very distressed, and I agreed to do what I could. From the depositions I found that the crime was alleged to have been committed in the backyard of an hotel when the witnesses and the accused were all more or less drunk. In the Supreme Court I had little difficulty in breaking down the evidence, which was given very badly, no doubt as a result of the dubious condition of all concerned at the time of the alleged robbery. In the end the accused was found "not guilty" and was discharged. A day or two later the mother came to my chambers to express her gratitude for what I had done for her son. She told me that he had always been a

good son until a little while before, when he got into bad company and began drinking, but that he had now learned his lesson. He had promised to turn over a new leaf, and she was convinced that he would do it. That was as far as she got. Overcome by her feelings, she dropped on her knees beside me, and taking my hand between hers, she pressed it to her lips, while she sobbed silently. Deeply affected myself, there was nothing I could do or say for some time. Finally, I comforted her and sent her home.

I did not see her again until 10 or 12 years afterwards, when my wife and I met her and her daughter. I did not recognise them again, but they stopped us, and the daughter said that, seeing us approaching, her mother wanted to tell me about her son. It appeared that since his trouble he had never looked back. He was in constant work, and brought his money home regularly. With his wages and a little earned by the daughter, they all lived together perfectly happily. The son had promised that he would never leave her as long as she lived and she knew he would keep his word. If instead of an acquittal there had been a conviction in his case, what a different thing life would have been for three people!

V.

When I had earned some little reputation as a jury advocate, I found that the leaders of the Bar in Dunedin frequently briefed me as their junior in civil cases, and in practically every instance they did me the honour of asking me to deliver the final address to the jury, in addition to examining some of the witnesses. It was a courtesy for which I had reason to be profoundly grateful, as it afforded me

valuable opportunities of studying and developing the art of advocacy. Nor was it only the openings made for me in Court for which I was thankful. There was much to be learnt also in the numerous conferences which I had with my learned and experienced leaders, whose example and advice were an education that, as a junior, I appreciated greatly.

Mr W. A. Sim, afterwards Sir William Sim, and an ornament of the Supreme Court Bench, was especially kind to me, and gave me many briefs which necessitated frequent conferences with him from which I learned a great deal. He was astonishingly quick in discerning a point, and could measure its value in the twinkling of an eye with the greatest precision. He was always at special pains to explain the cases to me in every detail, so that whatever he asked me to undertake during the hearing I could gauge his mind with accuracy. I take pleasure in paying this tribute to him for the invaluable assistance he so generously extended to me at a time when it could be put to the best use.

There was another barrister, who was also elevated to the Supreme Court Bench, who gave me briefs in some of his cases, one of which I will mention because of an amusing incident in connection with it. A woman was suing a company for damages under the Fatal Accidents Act in respect of the death of her husband, who had been killed in an accident as the result of the negligence of the company. The action was brought on behalf not only of the widow, but also of a young child of the deceased.

My learned leader left the final address to the jury in my hands, and suggested that I should make the best possible use of the mother and child angle

when I came to the "sob stuff." The evidence had been very lengthy, and after traversing it fully with a view to securing a verdict, I turned to the question of damages. I referred to some of the arguments of our opponents, and then drew a picture of the wealthy company trying to save every possible shilling by using faulty gear, regardless of the lives of its workmen, with the result that this unfortunate man had been killed, leaving the widowed mother and the orphaned child to face the world alone.

I invited the jury to visualise for themselves the broken little home rendered cheerless and lonely by the great company's negligence; I asked them to picture the broken-hearted mother's grief as she sat by the fire in the evenings with the child at her breast, looking through a mist of tears into the little face as the mite fell asleep; starting in hope at every passing footstep—but, alas, remembering. . . . What damages could compensate?

When the jury retired, my leader and I went into the robing room, where he said:

"Well, old man, that was a great speech you made, and I think we'll get a good verdict. I liked that part where you rung in the broken-hearted mother with her babe at her breast. It's a good thing you didn't know that the kid isn't hers."

CHAPTER VII.

A Warning to Justices.

I.

Life was energetic and often exhausting in these days after recognition came, and although it was frequently disconcerting to find oneself unable to cope with all the briefs offered, it was an exhilarating experience to find my services so eagerly sought. I continued researching wherever possible, trying to find out more and more things about the highly intricate and interesting branch of the law that I had embraced. And the more I sought, the keener became my realisation that the advocate can never afford the "I don't want to know any more, I know enough already" attitude. That and the importance of never antagonising the Bench, directly or by inference, whether it be Judge or Magistrate, are lessons which cannot be learned too early. I have always considered that one of the weaknesses of that great and eminent advocate, the late Marshall Hall, was his unfortunate flair for falling foul of Judges. Throughout my career it has always been my endeavour to preserve the happiest possible relationships between Bench and Bar.

On one occasion when I was appearing for the defendant in a claim for damages in the Magistrate's Court the Magistrate was very rude to me. It was an unusual happening, and I mention it because, throughout my experience, I have always found Magistrates very considerate and frequently infinitely forbearing. In the present instance the discourtesy was most marked. From the beginning of

the case I had had the idea that he was unfavourably disposed towards me, and when it came to my turn to address him he turned round in his chair, took a penknife from his pocket, and commenced to trim his fingernails.

I continued for some time, but when I realised that I was being completely ignored I sat down. Immediately he turned to my opponent, who rose, and was about to proceed with his address when I stood up again and continued from where I had left off.

But it was no good. I was greeted with a remark from the Magistrate to the effect that he thought that I had finished.

"Oh, no!" I replied. "I was only waiting for your Worship to complete your toilet."

I was then told to go on, which I did, but, needless to say, I lost the case.

It must be admitted, however, that the display of a spirit of sweet reasonableness is not always easy. In my early days when so much of the work of the Magistrate's Court was entrusted to Justices of the Peace the maintenance of harmony was frequently wellnigh impossible. I can recall few serious disagreements with Judges or Magistrates in my life which have resulted in open bad feeling, but I still have vivid recollections of a time when my fervent prayer was, "From Justices of the Peace, Good Lord deliver me." Not that I have not known many estimable gentlemen who have acted in such a capacity, but I am inclined to think that thirty or forty years ago the faults of the worst of them just about cancelled out the virtues of the best of them. One man in particular did more, I think, than any other to encourage such

a view. He never missed an opportunity of presiding over the City Police Court, and once ensconced in a magisterial chair he contrived to make his presence felt in a host of disagreeable ways, even on one occasion to the point of, with brother Justices, over-ruling a Stipendiary Magistrate on a point of law, an incident which evoked a firm protest from the Crown Prosecutor, who complained:

"I have stood here to-day and heard the Magistrate over-ruled on a point of law by his brother Justices. It is unprecedented in my experience."

II.

So amazing were some of the happenings in this gentleman's courts that on one occasion the Press was moved to comment in the most outspoken terms.

"Owing to the very singular behaviour of one of the presiding Justices," the Otago Daily Times said, referring to the previous day's Police Court, "the whole of the proceedings were little better than a farce for the benefit of that unsavoury portion of the community whose morbid tastes lead them day after day to frequent that court. The great disgust of the members of the legal fraternity, who regarded the whole affair as inimical to the course of justice, was painfully apparent."

On the day in question two other justices had been requested to preside over the Police Court, but Mr M—— arrived with the announcement that he was determined to sit. Immediately the other two flatly declined to sit with him and left the courthouse. An anxious Clerk of the Court then had to despatch an orderly in search of another justice, but it was not until he had gone out into the highways and byways for the third time that anyone

could be found to officiate with the gentleman who had in the meantime been improving the shining hour by dealing with cases of drunkenness, which were permitted to be disposed of by a single justice. At length a companion was found for Mr M——, and, in the words of the newspaper, "what can only be described as a burlesque of justice began." Throughout the day the sitting was punctuated by audible chuckles, rising frequently to roars of laughter.

Perhaps the most humiliating stage was reached when three diminutive boys were charged with stealing some rabbit skins. When the young delinquents appeared Mr M—— rose from his seat and, peering at them, said:

"Dear, dear. This is a most extraordinary thing."

After much cogitation and scratching of his head, he elected to fine them the value of the skins, the amount to be equally divided between them. But the figure was 14s 10d, and to divide that into three equal parts was too much even for this redoubtable justice. Fortunately, a solicitor present suggested that a way out of the dilemma would be to make the aggregate fine 15s, in which case each would pay 5s. The gentleman on the Bench jumped at the idea like a drowning man clutching at a straw. But with that point settled, he was still not satisfied, and said he thought the boys should be punished. He read the fathers of the lads a lecture on parental control, even going so far as to ask one of them if he had ever been thrashed when he was a boy. He then hinted at birchings, but finally declared that he did not know what to do about it, and implored the Crown Prosecutor, Mr J. F. M. Fraser, to

suggest a penalty, as an "amicus curiae." Mr Fraser very sensibly advised that the boys should be convicted and ordered to come up for sentence when called upon.

As the day wore on Mr M——'s difficulties increased. At one stage he vigorously upheld a contention that certain evidence was inadmissible, but shortly afterwards he delivered himself of the dictum that justices had great discretionary powers, and he would therefore allow the evidence. This effort he followed up with a warning to a sub-inspector of police that it was the duty of the Court to keep him in his place, and with the repetition of the remark a minute or so later in relation to counsel for the defence. I myself appeared in his Court that day, and, speaking of one of the witnesses, who had said that the victim of an assault was "lying senseless, dead, and kicking," Mr M—— stated pontifically:

"This witness is so unreliable I would not hang a dead cat on his evidence."

When at another stage of the sitting I complained about the action of the police in refusing me a private interview with my client, and said something about "eavesdropping constables," Sub-inspector Kelly jumped into the breach with a stout denial. Even when the wordy battle was at its height, the worthy justice was quite unperturbed, merely adjourning the Court for five minutes "in order to allow the atmosphere to cool." A memorable day concluded with a long argument between the justice and the police on the subject of what Mr M—— described as the "extraordinary powers which the police assumed and presumed to exercise." The climax to this came when Detective Hill

objected to being referred to by the justice as "a third class constable." His protest evoked a characteristic response:

"All right. I hope you will be an inspector some day. You are a very intelligent man."

And having delivered himself of that pearl of wisdom, Mr M—— reached for his hat and left the Bench.

CHAPTER VIII.

Conduct of Cases.

I.

According to the measure of my powers may I be permitted, at this stage, to endeavour to show that the advocate's calling is that of an artist, and to inquire, if I may do so without presumption, into its conditions and lay down some of the principles of its rightful practice—those at least which I consider to be such from my own experience, an experience extending over a period of fifty years? My remarks and comments in this connection will be very brief, because there is a multiplicity of books on the subject that may be consulted, and my desire is merely to place before the young lawyer such considerations as, in a long practice, I have found to be of value and importance.

Probably the first thing the inexperienced young barrister will be called upon to do before a jury is to open the case for the plaintiff. This is generally regarded as easy, and it is if proper preparation is made. But what does such preparation involve? In the first place it is necessary to ascertain what facts must be proved to sustain the claim and to find out what witnesses are available to prove those facts. With this knowledge a speech can be prepared which, when delivered, will enable the Judge and jury to appreciate exactly what the case is about, and to grasp what they have to look for from the witnesses. To do this, the facts must be set out chronologically, and the whole speech must be orderly in its arrangement. In delivering himself of the speech counsel should speak deliberately and

loudly enough for the Judge and jury and his opponents to hear every word without difficulty. The essential thing is to be understood, and that is why one must accustom oneself not to go too fast. Volubility leads to gabbling, than which nothing is more tedious.

These remarks apply equally to the opening speech for the defence, with the addition of possible references to the evidence of the plaintiff, the object of which is to show the jury how far, and in what direction, the evidence for the plaintiff will be affected by the evidence proposed to be called for the defence. In either case counsel must be meticulously careful not to overstate his case, because if he does his opponent will be sure to take immediate advantage of such a mistake. If there is any doubt about evidence it is far better to understate it and be safe. There is always an opportunity of speaking again after the evidence has been heard.

Now with regard to summing up addresses. If, as is the case if no evidence has been called for the defence, counsel for the plaintiff has to speak first, he will be wise to employ a tone quite distinct from that which he would use had he the last word. In my judgment he should be restrained, avoiding oratorical effort, and submitting his analysis of the evidence to the jury in a quiet yet forcible manner, with a view to showing that his case is strong enough not to require bolstering up with the fireworks that will probably be used by his opponent in reply. If evidence has been called for the defence, then the defending cousel has to speak first, and I think that he too will be wise if he adopts the tactics I have outlined, unless he wants his case well flailed by the opponent, who has the last word.

Whichever counsel has the last word has a definite advantage, because there is no one to speak after him, except the Judge, who, of course, deals with the whole case in a quiet, judicial manner that does not always remove the impression already created in the minds of the jury, even when that is the Judge's intention. In criminal cases the order of speaking is the same as in civil proceedings. The Crown begins, and unless evidence is called for the defence, the defending counsel speaks last. The right of the final address is of supreme importance, and if a defence can be devised that renders unnecessary the calling of evidence it is generally wise to adopt it. But having ensured that last word, care should be taken to see that the right is not unwittingly sacrificed. There are many traps for the inexperienced and the unwary in this respect, as I have cause to remember.

II.

In one of my very early cases I was cross-examining a witness, and found he was going back on something he had said in the Lower Court. I went to the witness box with the idea of showing him his deposition, and was on the brink of a fatal error when the Judge, Mr Justice Williams, asked:

"Are you calling evidence for the defence, Mr Hanlon?"

"No, your Honor," I replied, and from the expression on the Judge's face I realised that I was on the point of making a serious mistake. I kept the deposition to myself, and felt afterwards that I had definitely learned something that day. Unless he is willing to abandon his right to the last word, counsel should never put in any document or article,

nor should he ask any Crown witness to produce any document or other exhibit. If he does he makes it evidence for the defence and gives the Crown the right to reply.

By giving this right of reply to the Crown, counsel may easily jeopardise the cause of his client. In my young days it was fatal to make that mistake with the late Mr B. C. Haggitt, who would, in a quiet, insinuating way, ingratiate himself with the jury, and then, without raising his voice, proceed to tear the defence to pieces. Although invariably considerate and fair, he was conscientious in the performance of his duty, and, as a Crown Prosecutor, was, indeed, a model.

Having reserved to himself the right to speak last, counsel for the prisoner has provided himself with an opportunity to indulge in forensic rhetoric, and, if he so chooses, with appropriate gesture. But at the risk of contradiction one must emphasise here the paramount importance of avoiding either excess or artificiality. An advocate whose diction is too marked, who emphasises every detail overmuch, and cannot content himself with broad levels out of which he can afterwards build up important points is a poor pleader. Success depends upon the extent to which the impression of sincerity can be conveyed to the jury. A good advocate must be sincere, and he is when he throws himself heart and soul into his client's case. There is no more effective approach to the attention and, perhaps, sympathy of a jury than sincerity, but it must not be carelessly expressed, nor must it rely purely on effect. The reproduction of a pose, a mere trick of bearing or of feature do not necessarily give the appearance of sincerity, and very often after intriguing the

jury momentarily they merely weary. Irritation will quickly follow the repetition of such an effect, and you will be made to feel it in the most disagreeable manner.

Nothing is more dangerous than wearying a jury. If counsel loses his hold on the jury through perhaps too frequently referring to his notes, or partially reading his speech, most of the value of an address is lost. The symptoms are unmistakable, and when he sees some of the jury gazing at the ceiling instead of looking at him, counsel has no alternative but to leave the argument he may be developing at the time and make a fresh start with just the briefest explanation that he proposes to proceed with some other aspect of the case, preferably some point which he has been holding in reserve against just such an eventuality. Only in this way can he hope to win back his jury. Prolixity must be avoided at all costs for the reason that it is unnecessary, and it wearies a jury. Say all that can be said about each aspect of the case and leave it at that.

To obviate the necessity of reading a speech or of too frequently consulting notes, the young advocate must learn to rely on his memory, particularly with respect to what witnesses have said on any special topic. If he can do this, all he will require in the way of notes is a list of points covering a sheet or two of paper, and written in a hand bold enough to be read by him as he stands erect at the table. Thus only is he able to keep his eye fixed on a jury, which, of course, is of supreme importance.

Before passing to a discussion of the examination of witnesses may I stress the value of a strong

but pleasant voice, a good personality, and a complete vocabulary. These attributes will be found to be of the greatest assistance, and they should be sedulously cultivated. It is wonderful what training can do to the human voice. The great Coquelin said, "Articulation is the draftsmanship of diction," and although his reference was to the voice in acting, the same applies to the art of the advocate. An exhaustive vocal training which sets the voice in tune and leaves it safe from all mischance in any type of delivery should be the aim of all young lawyers. The study of elocution under a good teacher will never be time wasted if it can shear the diction of any suspicion of slovenliness, and produce a speaking voice that is pure and pleasant to listen to.

For the word "actor" in the following advice of Coquelin substitute the word "advocate," and the emphasis on speech should be complete:—

> "Here is at once the A B C and the highest achievement of our art. We must begin with the study of articulation, as children begin with courtesy, because articulation is the courtesy of the actor as punctuality is the courtesy of kings, and having begun with it, we must study it all our lives."

And now one final word. Develop your vocabulary. It can be done in a variety of ways, according to the tastes and the inclinations of the individual, but for myself I know no more effective means of gaining this most desirable end than a profound and diligent study of Shakespeare.

III.

Dissertations on the technique of advocacy too often seem to end in mere hair-splitting, but at the risk of falling into that error I feel constrained to add

here some brief remarks on the examination of witnesses which the young advocate may find helpful. According to their own temperamental peculiarities, pleaders of equal merit may favour entirely different methods, but there are certain practical and fundamental aspects which remain the same for everyone. It has been said that examination-in-chief is more difficult than either cross-examination or re-examination. But in my view such a distinction is only apparent. I do not agree that it exists, nor am I prepared to admit that cross-examination is the most difficult of the three. On the contrary, I insist that re-examination presents more serious problems than either of the other two, although I will concede that so definite an opinion requires some explanation to make it comprehensible. This I will endeavour to supply later.

If a barrister is to conduct the examination-in-chief of a witness properly, it is essential first that his brief should contain a full and accurate statement of the evidence such witness can tender, with every fact and admissible conversation clearly set out in a strict sequence. Should his brief not be so compiled the barrister should make sure that the necessary adjustments are made before he goes into court, and if he does he will experience little difficulty at all, except, of course, in the case of a stupid or very nervous witness. It is a mistake to rush a witness as soon as he is sworn. Better far to rise slowly and begin very quietly, giving the witness as much time as possible to compose himself and adapt himself to the unusual surroundings of the court room. The expert, whether he is a barrister, a police officer, or a court official, thoroughly accustomed to the atmosphere and etiquette of a court

of justice, is too often inclined to overlook the fact that the average witness, generally a man off the street, who is present through no desire of his own, does not find it easy quickly to achieve composure when he finds himself in the box. In my own case, on the three or four occasions on which I was called to give evidence, the effort required to adjust myself to my situation was considerable.

My first experience in the witness box was not an unpleasant one. I was called to swear that I had paid a premium of 8s to the accountant of an insurance company, who had embezzled it. The case did not come on until the fifth day of the sessions, and in the meantime, I worked as usual in the office. I was sent for on the Friday, and I do not think it took me more than three minutes to give my evidence. The accused was convicted, and at the close of the hearing the witnesses were told to go to the court office and lift their expenses. I followed the rest, but since I was at that time earning only 5s a week, I estimated that my expenses would be very small. But I was greatly mistaken. The Deputy-Registrar asked me if I was an articled law clerk, residing at Port Chalmers, and when I admitted it, he asked me to sign a paper which lay on the desk. I did so, and then to my unutterable astonishment he handed me £3 12s. As I pocketed the money I could not help reflecting that I would have no objection to being subpoenaed often.

But to return to the subject of examinations-in-chief. As a rule, a witness is at his ease after the first few questions have been successfully negotiated, and if he exhibits an inclination to go on with his story he should be allowed to do so. All

that counsel requires to do is to see that he does not make his narrative too rapid, and to prompt him with a judiciously interpolated interrogative "yes?" if he looks as if he is going to stop. A witness can generally be relied upon to tell his story better in his own way than if it is drawn out of him by a monotonous succession of questions. Of course, counsel must be on the alert for the omission of any important detail which, if detected, can be rectified quite easily by a quiet question in the right place as a reminder. If in the course of the recital of his evidence a witness should make any assertion that is unfavourable, counsel should be very careful to avoid any display of surprise or annoyance, as the man in the box may very easily react disastrously. He will probably consider that he has made a serious blunder, and without realising what it is he may become upset and perhaps be very difficult to put back on the right track again. And finally, if the interest and attention of a jury is to be held, it is most important that the evidence should not be overburdened with a lot of unnecessary detail. A straightforward story, simply told, with a minimum of digression and explanation, will always make the strongest appeal.

IV.

Cross-examination is something totally different and distinct from examination-in-chief. It is a subject upon which volumes could be written, but on which it is impossible to dogmatise. There are a hundred ways of conducting a good cross-examination, and yet the closest study of all of them would not necessarily make a cross-examiner. It is an art that is best cultivated by practice. The advocate must employ every artifice he can summon to his

aid to trap the untruthful witness, or to overcome any reluctance there may be to disclose the whole truth. It is the merest platitude to say that cross-examination consists of more than securing a repetition of the evidence with the aid of a loud voice. Such a course does infinitely more harm than good, since its only result is to impress upon the minds of the jury the very evidence which the cross-examiner hopes to discount or destroy.

Another method frequently used, which is of little or no value, is pelting a witness with a string of questions from a catalogue prepared the night before. No advocate can make up his mind what questions he may safely put to the witness until he has seen his subject in the box, and has had an opportunity of studying his style and demeanour. Everything depends on the attitude of the witness. Is he truthful and honest, or is he shifty and unreliable? Is he hostile or sympathetic? These are the things that determine the line of cross-examination, and when they have been determined, counsel must decide what course he thinks will produce the best results. Short, crisp questions are the most effective, but above all, fix your eye on the witness and hold his, so that his gaze becomes riveted on you. That fixture of eye is of the utmost importance, and should be held at all costs, so that the witness is compelled to follow everything said by his interlocutor. Short questions right to the point give the dishonest witness most trouble, because he has less time than he would like to think out his answers, and he is, or should be, all the time under the penetrating gaze of the cross-examiner.

But there are many pitfalls in the game, and constant care is necessary. The cross-examiner may

think he can elicit certain information helpful to his case by some particular line of questioning. It is here that he must be wary. It is often fatal to proceed merrily along without closely studying the witness, whose attitude to the questioning should decide whether it is wise to pursue the matter further. One should feel instinctively whether it is safe to go on or whether the matter should be dropped. Once convinced that nothing is to be gained by continuing, the cross-examiner should feign satisfaction, and turn his attention to some safer or more fruitful line of attack. One question too many is enough to wreck a case. I really believe that the best cross-examination is of the moment inspirational. Counsel may have been plodding along for a considerable time without making any headway whatever, when suddenly the right question flashes into his head at just the appropriate moment. Inspiration! Actually there is nothing new in the points I have raised, but they happen to be some of the considerations that have been emphasised for me by a long practical experience. The young advocate, however, will find expert and valuable instruction in the art of examining and cross-examining various types of witnesses in Harris's "Hints on Advocacy."

V.

As I have already said, I consider that re-examination is the most difficult and discouraging part of the advocate's duty, particularly when it has to be directed towards the building up of a witness whose testimony and presence of mind alike have collapsed in the face of a gruelling cross-examination. Sir Frank Lockwood, Q.C., has described it as a matter of "putting Humpty-Dumpty together

again," but my experience has taught me that when it is most necessary "all the king's horses and all the king's men cannot put Humpty-Dumpty together again." I have never been able to do it myself, and probably because of my own failure, I have watched with more than usual care the attempts of others to do it; and I can truthfully say that not even among the ablest and most eminent advocates of my time have I found anyone equal to the task. Glance for a moment at the cartoon on the opposite page. There you have the result of a clever and successful cross-examination. Show me the counsel who could not only unravel the knot into which the witness has been tied, but at the same time give him back sufficient confidence or self-respect to make re-examination worth while. It cannot be done.

Of course, it is not impossible to quote cases of effective re-examination that have been perfectly simple. For instance, a witness may in cross-examination give an answer which appears unfavourable to the side by which he has been called, but in most instances of the kind the apparent faux pas is capable of an explanation that will put an entirely different complexion on the facts. In such an event one judicious question will probably suffice to put the whole thing right. But one swallow does not make a summer. Re-examination is a far more intricate process than that. What about the witness who has been completely broken down in cross-examination, and is left standing disconsolately in the witness box, firmly convinced that every eye in the court is upon him, enjoying his discomfiture, and debating whether he is an unconscionable liar or just a witless fool? His brain is in a whirl, and he

CROSS-EXAMINATION.

asks nothing more of a benevolent Providence than that he should be allowed to leave the box, or, alternately, that the floor should open and swallow him up. How is counsel to pick up the broken pieces and put them together to make anything remotely resembling a useful witness?

The advocate rises to his feet with something of the feeling of hopelessness that envelops the witness. The unfortunate being has made a mess of things, and counsel must by some magic or abracadabra rebuild the tumbled edifice of testimony. What means can he adopt? His first move probably is to ask a leading question, which is promptly objected to; trying again, he asks:

"Do you remember saying so-and-so in your examination-in-chief?"

"Yes," is the hesitating reply.

"But that is not what he swore to me," booms the opposing counsel in a voice which the jury cannot fail to hear.

Stalemate again. Then comes the next question.

"Did you make a different statement in answer to my friend?"

"Yes. I suppose I did."

"Was that statement true?"

"As far as I can remember it is true."

Such a re-examination is worse than useless, because it simply consolidates the position of the opposing side. And yet I have time and again seen this or some equally futile method adopted. I say again, I have seen some of the most brilliant men in this country attempt to set up a broken witness, but I have never seen one of them succeed.

In my opinion, it is impossible, and the best thing to do with such a witness is to let him out of the box as quickly as possible.

Before I conclude these comments on the examination of witnesses I would like to urge upon the young advocate the folly of wasting time. There are few things that juries resent more than the wanton waste of their time over needless detail. No matter how tediously minute and prolix the other side may be, counsel should let the jury see that he at least is determined, without prejudicing the case of his client, to have no unwarranted prolongation of the proceedings.

But whatever the trials and tribulations of the advocate may be with his witness safely in the box, they are as nothing to his dilemma when the horse, having been taken to the water, refuses to drink. I had one such experience when two witnesses, on whom my client depended, took fright at the last minute, and decided that they would have nothing more to do with the case. I was defending a man who relied upon an alibi to prove his innocence. Everything had been arranged, and he was to be supported by two men who would give evidence to show that he could not possibly have been at the scene of the crime when it was supposed to have taken place. Since an alibi, to be convincing, must be produced at the earliest possible moment, I put the accused into the box in the lower Court and called his two witnesses to substantiate his story. All three gave their evidence well and showed a bold front to a barrage of cross-examination. Not one of them could be shaken, and it looked as if the defence was sound enough to succeed. But there's many a slip. . . .

The day of the Supreme Court hearing came round, and my witnesses duly arrived at the court-house. It was the opening of the criminal sessions, and several barristers who had cases were present in Court, wigged and gowned, when the Judge took his seat on the Bench. With customary solemnity the proclamation was recited by the crier, and then the Grand Jury was empanelled and sworn in. While the Judge delivered his charge to the Grand Jury, the barristers, according to practice, retired to the robing room. I had been in the room for a few minutes when a police constable informed me that two young men were waiting in the corridor to see me. I went out and found my two witnesses looking very anxious and harassed. It was not long before I discovered the reason for their discomfiture.

It appeared that both of them had been in the Court listening to the formalities. They had noted the Judge enthroned upon the Bench, resplendent in wig and gown, and the barristers with their similar accoutrement. The effect of it all was too much for them. It looked too solemn and portentous, and they no longer wished to give evidence.

"But," I protested, "you gave evidence before."

"Oh, yes," one of them replied, "we didn't mind doing it in the Police Court to help ——, but I wouldn't tell lies in this Court for anything."

"Neither would I," rejoined the other.

"Was your evidence untrue, then?" I asked.

Both of them admitted that their story was false.

"Well," I replied, "you will not be asked to give evidence here, and I will tell —— that he had

better plead guilty, because without your evidence he hasn't got a chance."

I suggested to them that the wigs and gowns and the solemnity of the proceedings had frightened them.

"Too right they have," was the reply.

When I told the accused what had happened, he took it very philosophically. "Oh, well," he said, "I'll just have to plead guilty"—and he did so.

CHAPTER IX.

Questions and Answers.

I.

That the vital art of cross-examination is best acquired by actual experience was impressed upon me very early in my career, and I found that proficiency in eliciting the facts by this method generally rises Phoenix-like from the ashes of one's own blunders. There are those who believe that good cross-examiners are born, not made, but without going as far as that I would suggest that success in this field has never come out of a text book or from any hard and fast set of rules. There are too many aspects of cross-examination which depend entirely on the man at the counsel table, the witness in the box, or the nature of the case under consideration for even the most elementary rules of thumb to have any real meaning or value.

In one of my early cases I received a sharp lesson which needed no repetition in the years that followed, for from that day onwards I was consciously, or subconsciously, on the alert for that one question too many which may frequently make all the difference between triumph and disaster. In this instance I lost a case for no other reason than that I took just a step too many.

One of the witnesses for the prosecution was a little Chinese whom I knew very well. When he went into the witness box he immediately asked for an interpreter. His request was acceded to, and the examination-in-chief was conducted entirely through that medium—an unsatisfactory arrangement at the best. When I arose to cross-examine, the witness smiled at me in the most friendly fashion.

"You understand me all right, Ah Chuen," I began.

"Oh, yes, Missa Hanlon."

"We don't need an interpreter?" I asked.

"Oh, no, Missa Hanlon."

So I began, and to all my questions I received a smiling and satisfactory answer. So far, so good, but I could not resist the temptation to ask one crucial question, an affirmative answer to which would have secured an acquittal. It was the one question too many, as I quickly realised when my little friend replied:

"Oh, me know you, Missa Hanlon. You just tlying to makem de law clooked."

Another embarrassing experience that befell me is worthy of inclusion here. I was defending a female shop assistant on a charge of theft from her employer, who was a lady very highly respected in Dunedin. The modus operandi of the accused had been to make up parcels of goods and consign them to fictitious persons at addresses which she noted. The packages were delivered by the firm's van, and in the evening the accused would call at the addresses and ask if a parcel had been left for her by mistake. In each case she used the name inscribed on the parcel and collected it. The docket system had been in use in the business, and I was standing beside the witness box, which was raised above the level of the floor, cross-examining the old lady with respect to a bundle of dockets which I held in my hand. I thought I was meeting with some little success when I suddenly felt myself being patted on the top of my wig. As I looked up she said:

"Now, my dear boy, there is no use trying to bamboozle me, because you simply can't do it."

Everybody, including the Judge, who, when at the Bar, had been the old lady's solicitor, laughed heartily, and when the interruption ended the witness went on:

"Why, I've known you since you were a little boy so high. You just go over to your chair and sit down."

There was another outburst of merriment in which I joined involuntarily, and after that there was nothing left for me to do but to act on her suggestion. Of course, the defence was unsuccessful.

II.

Frequently one inspired question will turn a whole case. In a country court I was defending a young man charged with indecently assaulting a young woman. The complainant was a glib witness, and told the court that the accused took her for a walk one evening and, on reaching a deserted spot, attempted to take advantage of her. In the struggle which accompanied the alleged assault, her hat blew away across the paddock, and was afterwards found by another witness some distance from the spot where the offence was supposed to have taken place. The girl was unshaken in cross-examination, and I was on the point of resuming my seat, completely baffled, when a question occurred to me.

"Before your hat blew away where had you put it?" I asked.

Without stopping to think, she replied: "I just put it down beside me."

The next moment she was in tears and her case was lost.

I recall another example of a chance remark at the right moment which won me a case. My client in this instance was facing a charge of sheep

stealing, and the principal witness for the Crown was a hard-headed, middle-aged Scot with a richly pronounced accent. He gave his evidence-in-chief admirably, and my case looked pretty hopeless. Still, despite the apparent futility of such a course, I was bound to cross-examine him, and I plunged in with a spate of questions. It was obvious that the witness had made up his mind to divulge nothing to me that he could safely conceal. My queries seemed to irritate him intensely, and his replies were frequently accompanied by a vicious thumping of the witness box with his fist. I protested that because of his thumping I could not hear his answers properly. He took little notice, and when I asked him a further question he became noticeably more angry. Then when I said, "I'm afraid I don't understand you," his ire burst all over me.

"Don't you understand Scotch when you hear it?" he roared.

More out of nervousness than anything else, I retorted: "No, I'm afraid I don't know much about any of those foreign languages."

What was a purely chance remark scored a bull's-eye. It put him into a veritable frenzy, and he shouted:

"How dare you call Scotch a foreign language!"

The Judge said, "Just calm yourself and answer the questions."

From that stage on he was hopeless, and, try as he would to retrieve his previous studied calm, he failed dismally. His answers were a mass of contradictions, and I had little difficulty in the end in securing an acquittal.

As an illustration of the dangers attendant upon cross-examination, let me refer to a separation

and maintenance case in which I appeared. I acted for the wife, who was the complainant, and the husband was defended by an eminent barrister who was afterwards elevated to the Supreme Court Bench. After giving her evidence-in-chief the woman was subjected to a brisk cross-examination which was meant to show that she was stupidly jealous of her husband.

"You are much older than your husband, are you not?" my learned friend asked.

"Yes, a few years."

"Perhaps that accounts for your jealousy?"

"That has nothing to do with it."

"Well, has your husband ever been familiar with any woman in your presence?"

"No, he took fine care of that, but he used to write to them."

"Really! How do you know that?"

"I found a letter in his pocket that he had forgotten to post."

"So your jealousy led you to search his pockets?"

"No. I was simply fixing his coat."

"Was the letter addressed to a woman?"

"Yes. One that he was too friendly with."

"So you know who she was?"

"Of course, I saw her name on the letter."

"How long ago was this?"

"Nearly twenty years ago."

And then came the fatal question:

"Twenty years ago! Then, unfortunately, you won't have the letter to show us?"

"Oh, yes, I have," replied the witness, as she plunged her hand deep into a bag that hung on her

arm. After some fumbling about she produced an envelope containing the letter.

The cross-examiner asked to see the missive, and after glancing at it, showed it to his client. Then, turning to the witness, he said:

"Your husband will swear that he didn't write this. What do you say to that?"

"He may swear what he likes, but he wrote it all right," said the wife.

"Very well, we'll see."

The defendant was called later and strenuously denied having written the letter.

On looking at the epistle I noticed something which I thought might discredit the witness, so I asked him to write two lines that I dictated, and to add the word "Dunedin." Each of the two lines contained a misspelt word, one of which I have since forgotten, but when his transcription was handed to me I found that he had made the same mistakes that day as he had made twenty years before. "Dunedin" had no capital "D" and the word "petticoat" was spelt "petycote."

My friend and I left the courthouse together, and, as we walked along the street, he said:

"I got a hell of a knock when the old girl dug up that letter."

"Yes," I replied, "but that sort of thing is always on."

III.

The cross-examination of police witnesses is one of the more uncertain aspects of this branch of advocacy, and presents many a problem to young pleaders. Their testimony is usually better founded, and more securely substantiated, than that of the

average lay witness, but without imputing anything such as perjury or a deliberate distortion of the facts to police officers, I would say that they can be just as successfully cross-examined as anybody else. A blue tunic is no more the criterion of a retentive memory than a dominie's black gown. Many years ago I was engaged to defend three or four persons charged with sly-grog selling on a large scale at one of the construction camps on the Central Otago railway. Two probationary constables had been sent to work at the camp, near the Poolburn Gorge, with a view to detecting offences against the Licensing Act, and these prosecutions were the result of their efforts. After one of these officers had given his evidence in the first case called, I cross-examined him at length. He did not seem to have a very good memory, and I asked him if he had any notes relative to the case in his pocket book. He said he had, and the magistrate told him he could refresh his memory by reference to them, provided they had been written shortly after the time of the alleged offences. I found that his notes did not always agree with his evidence-in-chief, and then asked him if I could see what he had written. In answer to a question as to when he had made the notes he said:

"When I went to my room at night."

"Was the other constable present at the time? Did he share your room with you?"

"Yes. He was there when I made the notes each night."

"Did the two of you discuss the various aspects of the case while making your notes," I asked.

"Yes, we did, but we wrote our notes independently of each other."

The second constable was then called. He had been out of the courtroom when his companion was in the witness box, and when, during the cross-examination, he also was invited to refer to his notes, he accepted gladly. He fumbled about with his book for a while, and I offered to help him with it. A casual glance at the notes was sufficient to convince me that the handwriting was the same as I had seen in the previous witness's book.

I then asked him to write a line which I dictated from his book. Sensation followed. He had to admit that he was unable to write, and, fainting, fell out of the witness box. Both witnesses having been discredited, the case was dismissed, and the charges against the other accused were withdrawn. It was fortunate for the defendant that these witnesses could be tempted to rely on their notes.

Probably one of the most surprising strokes of good fortune that came my way was in a sheep-stealing case in a country town in South Otago. I defended a man charged with the theft of two hoggets, and I secured a dismissal of the case in the lower court before a stipendiary magistrate. As is often the case in small provincial centres, the hearing attracted widespread local interest, and the courtroom was well-filled when my client was charged. The hoggets had been killed, and the skins, which were produced, were alleged to have been found in the possession of the accused. There were no earmarks by which the skins could be definitely identified, because, as strangely happens in sheep-stealing cases, dogs had eaten the ears. The complainant said, however, he was satisfied that the wool was the same as that carried by his

hoggets, and he was further confirmed in his opinion by the presence on the skins of a very unusual paint similar to that which he used at branding time. Moreover, he said that there were few, if any, other sheep of that breed in the district at that time.

The evidence seemed conclusive enough, but while the examination of the complainant was proceeding I examined the skins closely, spreading them out and handling the wool with all the assurance of a woolclasser, although I knew absolutely nothing about it. I also examined the paint with a magnifying glass which I always carry with me. Then I turned my attention to the teats, which I found to be pliable and elastic. This discovery seemed to be the only factor on which I could rely. I continued to finger the teats until the time came to cross-examine, when I rose and, speaking very quietly and deliberately, said:

"Did you swear that these were hogget skins?"

"Yes, sir."

Then I went quickly to the skins and, seizing one of the teats by the tip, I lifted the skin upwards, making the teat about two inches long.

"Did you ever see a teat like that on a hogget?" I asked.

"No, sir."

"Or like this?" lifting the other skin in the same way.

"No, sir."

"Then they are not hogget skins?"

"No, sir."

"And if they are not hogget skins, they can't be yours?"

"No, sir."

The case was dismissed at once.

IV.

On yet another occasion the outcome of a case hinged on the sheer accident of locality—my own front gate, in fact, which has not once or twice been used for the lingering farewells of young people at nights. I was defending a man in an affiliation case, and he stoutly maintained his innocence. The complainant in her evidence definitely fixed paternity on the defendant, and no matter how closely I cross-examined her I could make no headway whatever, although I felt certain that she was not telling the truth. Then, acting on an impulse, I turned to something that looked like a forlorn hope. Even if it did not turn the trick, I could be in no worse position than I was at that moment.

I recalled that the girl had told the Court that at the time of the alleged intimacy, which she stated was in November, she was working in Queen Street. One end of Queen Street runs into Pitt Street, and my home is on the opposite corner of Pitt Street and Elder Street. At that time there was a hawthorn hedge in front of the house and a hawthorn arch over the gateway, which was situated right on the corner. On many occasions I had found young couples standing under the arch when I was leaving the house at night, and it was possible that a young woman who worked so near at hand might be one of them.

After describing the house, hedge, and arch very carefully to the witness, I asked her if she knew the place. She said she did.

"Do you know that I live there?"

"No."

"Well, I do. And I want to ask you whether you were standing under that arch with a young

man one night when somebody came out of the house and walked out of the gate? "

"Yes, I was."

"You moved up Elder Street a little way, did you not? "

"Yes."

"And the man who came out of the house stood at the gate? "

"Yes, I think so."

"Did the two of you then walk up the steps and into Argyle Street? "*

"We did."

"Now will you tell me truthfully where you went from there? "

"On to the Town Belt."

"Into the bush? "

"Yes."

"Wasn't that in November of last year, about the time that you got into trouble? "

"Yes."

"And the defendant was not the young man you were with that night? "

"No." And then tears.

The magistrate stopped the case at once.

How fortunate was the defendant that he had selected to defend him the only solicitor in Dunedin who could have adopted the line of cross-examination that proved so successful!

Another case of a very different kind which may be cited here concerns another aspect of the evidence which an advocate instinctively disbelieves. It is included to illustrate the fact that a lawyer cannot afford to overlook even the most improbable factors in a client's case. Some years ago I was sitting

*Argyle Street has been renamed Cobden Street.

in the Supreme Court waiting for a case of mine to come on when a boy of fourteen was placed in the dock to answer a charge of indecent assault on a little girl of seven. Only the young prisoner's head could be seen above the ledge of the dock.

Mr Justice Pennefather was on the Bench, and asked if the boy was undefended. When the Crown Prosecutor said he understood so, His Honor said that the charge was a very serious one which he thought justified the Court in adopting the course of assigning counsel to the accused. There were three or four barristers who were my seniors at the Bar in the court at the time, and any one of them would have been assigned before me in ordinary circumstances, but they asked me to offer to take the assignment, as none of them had appeared in a criminal case before. The Judge was informed of the position, and he assigned me to defend, standing the matter down for half an hour to give me a chance to read the depositions taken before the Magistrate.

The boy pleaded not guilty, and the trial was proceeded with. The mother of the little girl gave evidence to the effect that she saw the accused, who was employed as a stable boy and general rouseabout, coming out of the stable in company with her daughter. She took the girl inside and examined her, and it was in great detail that she described to the Court what she saw at that examination. I did not believe her, but she could not be shaken. A doctor, who, however, was not consulted until some time after the alleged assault had taken place, was called, but his evidence was not of much value, and there was other testimony also which was of no great consequence.

Addressing the jury, I criticised the mother's evidence, and invited them to disregard certain aspects of it which they, as men, had probably noticed for themselves. I emphasised the lack of corroboration, which meant that everything depended on the mother's story. The jury disagreed, and a new trial was ordered for the following day.

As soon as the boy was taken down into the cells I went down myself and thoroughly examined him physically. What I found convinced me that the mother's evidence was untrue. I then went to see a medical friend of mine and explained the circumstances of the case to him. He assured me that if I were correct in my description of the result of my examination, the mother's story could not possibly be true.

"In that case," I said, "do you think the medical witness will be bound to agree with your opinion if I put the matter to him?"

"Yes," he replied, "and I can give you an authority on the subject if you want it."

At the second trial the mother repeated her story of the previous day, and during my cross-examination I contrived without the least difficulty to emphasise the points on which I proposed to rely. When the doctor was again called, I asked him what I had asked my friend the evening before, and the reply was the same. I then applied to the Court to have the boy removed and examined by the doctor before I completed my cross-examination. The Judge agreed, and on the witness returning to the box he stated the result of his investigation and added that it showed conclusively that the mother's

evidence was not true. The rest was simple, and the boy was acquitted. Still it was a narrow escape for him.

After his term of office on the Supreme Court Bench expired, Mr Justice Pennefather went to South Australia, and while there he was engaged to codify the criminal law of that State. An interesting sequel to the case I have just related occurred some time later when I received from the Judge a copy of the draft Bill to go before the Legislature, in which he had included a clause directing that all prisoners should be provided with counsel. As an illustration of the necessity for such a provision being embodied in the law of South Australia, he had set out on the interleaving a statement of my small client's case.

CHAPTER X.

Trial by Jury.

I.

Fifty years' experience of juries is more than enough to make one familiar with the quarrel many people have with the jury system. Personally, after facing scores of them across the floor of a court, I am still wholeheartedly in favour of the principle, notwithstanding the criticism, generally negative, and frequently destructive and derisory, that I have heard hurled against it. After all, a fair test of the system is its universality, at least in the English-speaking countries of the world; and it is my firm belief that as long as it remains intact (and here I may as well confess that I still have rare anticipations that it may some day be improved) it will have a legitimate place in our social and juridical structure, and will remain what it is at present—a safeguard of the life and liberty of the individual.

Criticism, in the final analysis, matters little. Trial by jury does not require to be popular. It is sufficient that it be apprehensible to the man in the street—the ordinary adult male who comprises the staff of which juries are made. Of course, one could hope, too, that eventually it will become apprehensible to the professional politician and the administrator as well, but to date the only light or lead most of them have afforded has been represented by well-meaning though misguided efforts to tamper with that most vital and indispensable feature—the unanimity of verdicts.

Volumes could be written, and many have been, on this cornerstone of British justice, but all the wild

writing of newer ideals by its opponents cannot shake it any more than the rhetoric of its protagonists can consolidate it. It is at once a symbol and a tradition. I can recall no more convincing touchstone for the system than the late Mr Chesterton's simple little defence of "The Twelve Men," which concludes with an unanswerable recognition of the value of the principle and the unchallengeable nature of its origin:

> "Our civilisation has decided, and very justly decided," he wrote, "that determining the guilt or innocence of men is a thing too important to be trusted to trained men. . . . When it wants a library catalogued, or the solar system discovered, or any trifle of that kind, it uses up its specialists. But when it wishes anything done which is really serious, it collects twelve of the ordinary men standing round. The same thing was done, if I remember aright, by the Founder of Christianity."

II.

Nor does my allegiance to the principle of trial by jury exclude the Grand Jury, which I believe must be retained in its present form, notwithstanding opinions to the contrary, some of which I know are held by my contemporaries. There can never be too many safeguards of the freedom of the subject, and I have learnt by experience to regard the Grand Jury as a protection of inestimable value. There are those who still challenge its worth—it has outlived its usefulness; and I have myself heard Grand Juries making presentments to the Court in which they question the necessity for its retention and suggest its abolition. With respect to such presentments I have always suspected that they are born of a disinclination on the part of business men to waste their valuable time, for an hour or two once or twice a year, in the service of their country.

Surely it is a small sacrifice that is demanded of them in the cause of the administration of justice to their fellow-men.

Of the scant certainties that are vouchsafed to us in this life a glimpse into the future is not one, and no man knows what the morrow may bring forth. And I venture to suggest that not one of those who complain to-day would not, if by some misdeed or mischance he found himself charged with some crime, be more glad to know that a Grand Jury would consider his case before he could be put upon his trial.

How many people appreciate the importance of the Grand Jury in the judicial system? When a man is charged with a crime and arrested, he has arrayed against him all the resources of the State. Any safeguard of his interests is welcome. He may be remanded from time to time to enable the police to build up their case against him by the accumulation of the evidence necessary to a conviction. Then he is brought before a Magistrate to be prosecuted by a senior police officer or, if the charge is a serious one, by the Crown Prosecutor himself. His accusers have all the facilities they require to prove him guilty, but the prisoner, even if he is in a position to afford the most eminent counsel in the country, is handicapped by his inability to explore every last possibility of collecting the evidence that might assist the defence to establish his innocence or to rebut the testimony of the police to an extent that will make it unsafe to convict.

The Magistrate, who is a Crown official, decides whether a prima facie case has been made out, and if he is convinced, the accused is committed to the Supreme Court for trial before a Judge and

jury. There is now nothing between the prisoner and the ignominy and expense of a trial but the Grand Jury. I have known many cases in which a committal has been made on the flimsiest of evidence, and it was only the Grand Juries' "no bills" which saved the persons concerned from standing their trial. In many instances, if a case appears to a Judge on the depositions alone to be too weak to justify a "true bill," he suggests that the Grand Jury, on hearing the witnesses, may consider that a strong enough case has not been made out, in which event "no bill" should be returned. That frequently happens, but just as often the Grand Jury, having seen and examined the witnesses (which the Judge has not), is not satisfied that a case has been established. In such an event also "no bill" is returned and the prisoner is discharged.

It may be difficult for those who have not been marked out for the vengeance of their fellows to appreciate the importance of such a safeguard, but, no matter how hopeless their situation, those who find themselves indicted, at some time between committal and trial, derive a brief satisfaction, and perhaps hope, from the prospect of a Grand Jury "no bill" at the last moment.

The Grand Jury is a refuge that should not be carelessly thrown into the discard, and certainly not because some of its members consider it an unconscionable waste of time. At least something better should be found before its abolition is considered. To date I have heard of no method that has been devised to afford the same protection to the individual. What could replace it? Some Crown Law officer perhaps—a Solicitor-general or the

Crown Prosecutor—either of whom would be a poor substitute, if only because they are experts.

Most of the objections to Grand Juries that I have encountered have been based on only minor grounds which are easily exaggerated, but which, even in their over-statement, carry no weight against experiences such as that of an unfortunate sailor in a case I had some years ago, who was saved by two Grand Juries from being tried for his life.

The man had been committed for trial to the Supreme Court on a mass of conflicting evidence, and between him and the ordeal of standing his trial for his life was the Grand Jury, which, after deliberations extending over some hours, returned "no bill." The prisoner was discharged, but the Crown Prosecutor was not content to accept the finding of the Grand Jury, and as the man left the Courtroom he turned to a police official sitting with him and said, "Arrest that man again immediately." Once again a charge was laid, and the prisoner appeared before a Stipendiary Magistrate and two Justices of the Peace in the Police Court to answer a charge of murder. He was committed for trial a second time, and again the Grand Jury saved him. In this latter instance the Grand Jury had the benefit of a learned and instructive dissertation on its duties with respect to such a situation from the Judge, and after a retirement of several hours it, too, ignored the bill, and the prisoner was again discharged. Thus the efforts of the Crown to have him tried in spite of the decision of a Grand Jury that the evidence did not warrant a true bill being found were brought to nought.

In the circumstances no one could say that these Grand Juries were wrong in the stand they

took, particularly in view of the fact that the depositions included evidence against at least three individuals. In my own opinion that evidence was stronger against two other men than it was against the man charged. Very early in the proceedings, and after hearing the prisoner's story, I felt that there was a lot of false witness in the testimony of the accused's shipmates, and I was convinced that there was an attempt to make him the scapegoat. Consequently I took the unusual course of cross-examining several of the witnesses in the lower Court, and the information I elicited served to confirm my view. The case merits special mention here, not alone for the extraordinary outcome of the proceedings, but also for the skilful and well-informed direction which the Judge, Mr Justice Williams, gave to the second Grand Jury to which the indictment was referred. Whether I am right or wrong in persisting in the belief that both Grand Juries were justified in throwing out the bill, the fact of their doing so illustrates strikingly the great value of the Grand Jury system as a safeguard of the life and liberty of the subject. The evidence was so diffuse and contradictory, and so much of it pointed to the guilt of persons other than the man accused, that it was only right and proper that the excessive efforts of the Crown officials to put the man on trial for his life should be nullified. One thing at least is certain, that if there had been no Grand Jury, and the decision had rested with a Crown official, the prisoner would have stood his trial. It is doubtful whether any jury would have convicted him on the evidence, but there can be no doubt that he would have been subjected to a terrible ordeal.

CHAPTER XI.

Twice Charged and Discharged.

I.

The case arose out of the murder of a greaser named George Gibbs in the sailors' quarters of the s.s. Otarama at Port Chalmers on February 2, 1901. During a fracas on board ship after a wild night in town the victim was stabbed, and died within 48 hours. Most of those concerned had been drinking in Dunedin, and on the way back to Port an argument arose in the train as a result of what the murdered man described in his dying depositions as "two men running down the Englishmen." The bad feeling engendered by this disturbance of the peace had its sequel in the sailors' room when a contingent of firemen appeared to demand satisfaction. A general melee followed, during which the forecastle was plunged in darkness, and it was in the brief interval between the extinguishing of one light and the lighting of another that Gibbs was fatally stabbed. According to the evidence it all happened in about a minute.

At the inquest voluminous evidence was given by various members of the crew of the vessel, and the jury eventually returned a verdict that "the death of the deceased, George Gibbs, was caused by his having been stabbed with a knife by Alexander Thompson, a seaman on the Otarama." The Coroner, a Stipendiary Magistrate, said he concurred entirely in the verdict. Thompson was present at the inquest, in custody, and with him was another seaman, Carl Kunst, who was later discharged. Thompson duly came before the

Police Court, and after hearing a lot of evidence along the lines of that tendered at the inquest, the Magistrate committed him to the Supreme Court for trial.

I was engaged to defend the accused, and from the outset was struck by the contradictory nature of the evidence, which seemed to me to be anything but reliable. In the first place, several of the men involved in the fracas were under the influence of liquor when the stabbing took place, and the general gist of the story was that Thompson, tiring of the noise, suddenly jumped from his bunk and, crying, "I can't stand any more of this," reached for his knife and rushed at the deceased. One man said he saw a knife gleam in Thompson's hand, and it was immediately after that that he was alleged to have rushed at the deceased. There was police testimony of the finding of a blood-stained knife in its sheath in the accused's bunk, together with two pieces of paper with smears of blood on them. A third piece of paper bearing bloodstains was found on the floor. Roughly this was the evidence on which the accused was committed, notwithstanding that the deceased in a dying statement emphatically accused the man Kunst and others of having stabbed him. It all seemed very unsatisfactory to me, and the more I heard of the evidence, the more firmly I was convinced that one of two men was guilty, and that neither of them was the accused. In an endeavour to show the grounds on which that view was based, let me summarise the evidence of the various witnesses.

II.

In the first place, the dying deposition of the victim was taken before a Justice of the Peace in

the Dunedin Hospital in the presence of the accused and Kunst. It was shown conclusively that Gibbs was dying at the time, but that he understood everything that passed and was able to guarantee the truth of the deposition when it was read over to him. The material part of his statement was as follows:

> "I remember what happened when I was wounded. A fellow named Kunst stabbed me. I identified him. It was dark at the time, and I was struck just as a man lit a match. I never in my life had a quarrel with Kunst, and I cannot account for his stabbing me in any way. . . . I saw Kunst come deliberately before me and put out his arm; I then felt the stab. I could see the man, and knew him because he was tall. I recognised the man Kunst as the one who stabbed me. When he drew the knife out I recognised his face, and Kunst said, 'That will finish you.'"

In answer to a cross-examination by Kunst the dying man said:

> "I was talking to one of the quartermasters when you stabbed me."

Continuing his statement, Gibbs said:

> "I saw Kunst with the knife, but I do not quite know what sort of knife it was. I accused a man named Simons as being the cause of the disturbance. Charlie the Dutchman came out in his pyjamas and wanted to fight all hands. I said, 'What is the use of causing all this disturbance for nothing?' I don't know that I accused Charlie, but I told him that he had a hand in it. Kunst stood before Charlie the Dutchman. I could not rightly swear to the man who stabbed me."

In answer to a question by the accused, Gibbs said:

> "Thompson had nothing to do with it last night."

More than a dozen witnesses were called at the preliminary hearing of the charge of murder against Thompson, and among their testimony was evidence

which pointed directly to the guilt of persons other than the accused. For instance, one man had borrowed the accused's knife, the weapon found in Thompson's bunk with the tell-tale bloodstains, and there was only his word for it that he had returned it before the stabbing. Moreover, it turned out that the man who told the police about Thompson did so only after his own friend had been arrested, and there was also the interesting circumstance that this informer had himself been seen wiping his hand very furtively immediately after the knifing. It was possible that his hands were wiped with the paper found in Thompson's bunk, and if he were connected with the stabbing he had ample opportunity of placing the knife and sheath in Thompson's bunk before he went to the police to tell them that he knew who had committed the deed. If he had told the police what he professed to know when they visited the ship Thompson could have been awakened and his bunk examined for evidence. But at that time he held his peace. The question was why? Could it have been that the knife and the blood-stained paper had not been put in the man's bunk at that time? It was only when the police paid their second visit to the vessel that the incriminating evidence was found, but whatever the true story was, I think it was plain that both juries considered the evidence wholly unreliable.

Stiles, a seaman, in his evidence told of the development of the fracas in the sailors' quarters, and described how his friend, Kunst, intervened to try and stop the melee. Someone threw a lamp at Stiles and hit him, and Kunst replied with a pickle jar. Things were flying about in all directions, and

the deceased was abaft the mess table, while Thompson was in his bunk. The witness told how Thompson finally objected to the noise and, getting up from his bunk, grabbed a knife and made towards Gibbs. With both knife and sheath in his hand, he was standing near Gibbs when suddenly the light went out. At that moment Gibbs cried out, "I'm stabbed." A man named Neilson struck a match, and Stiles lit a candle and went to Gibbs, who was lying at the after end of the table. Immediately after the stabbing the witness said he saw Thompson go past his bunk on his way to his own, and when the candle was lighted he saw the accused in his bunk. Stiles had no difficulty in identifying the knife produced as belonging to Thompson, because he had borrowed it to shave some leather some weeks before the ship reached port. He had had it only once, and returned it when he had finished with it. Stiles denied that he and Kunst were especial friends, and said he knew of no one but Thompson who had quarrelled with him on the voyage, but before and after such disagreements as they had had they were good friends. The witness said he had made his first statement to the police at Port Chalmers after Kunst had been arrested, and had gone to the police station only because he thought he might be needed. He said to the police, "I think I know the man who done it," and had then described Thompson's movements and the clothes worn by him at the time.

Cross-examined, Stiles said he had not warned the others that Thompson had a knife when he got out of his bunk because he was too busy looking after himself. The light was extinguished before Thompson reached the actual spot where Gibbs was

standing. Although he said he saw Thompson make a thrust with the knife, Stiles admitted that the accused was not near enough to Gibbs at the time to strike him. He did not know whether anyone else saw what happened, and he did not mention it to anyone before he told the police about it.

One of the quartermasters, Neilson, said he was standing beside Gibbs when the light went out. He saw a figure lunge towards the deceased, coming from the upper corner of Stiles's bunk. The next moment Gibbs cried out that he was stabbed, and when asked by Neilson who had done it, he said, "Charlie the Dutchman." Neilson replied, "It can't be him, because he is in the doorway." He then asked Gibbs again, and some of the firemen shouted, "It was Kunst," and Gibbs said, "Yes, that's right. It was Kunst." Neilson, however, said he could see that it was not Kunst. Neilson said he did not see Thompson at all that night until he was arrested, but if he had been on the floor of the forecastle when the light was burning he could hardly have failed to see him.

A youth named Bonner, a deck boy, said he saw a man, bending low, pass the mess table at the time when the light went out. He went close to Gibbs, and the witness then heard the deceased cry out. The boy had already seen Thompson come in and go to bed. Evidence was also given by a seaman, Ohlson, otherwise known as Charlie the Dutchman, who said he did not see the actual assault, notwithstanding that Gibbs accused him of the stabbing.

Henry Standen, another quartermaster, awakened by the noise of the fight, said he saw Gibbs come in. He had a kettle in his hand, and crying,

"Is it kicking they want?" he lifted it above his head and tried to strike Kunst with it. Ohlson intervened, and Kunst went on fighting with three firemen at the top end of Stiles's bunk. When Gibbs cried out the witness got out of his bunk. He could see Gibbs's body on the floor by means of a reflection from the door, and he saw Stiles standing to the rear and the left of Gibbs. He heard Ohlson and Kunst accused by Gibbs, and when one of the firemen said, "It was the tall colonial," meaning himself, Gibbs replied, "Yes, it was you." Standen said he was sure Gibbs was very drunk.

Carl Kunst's evidence included a detailed description of the fight, in which he was one of the chief performers, and was very damning against Thompson. Kunst said he saw the accused after leaving his bunk crouching three or four feet in front of Gibbs, with something bright in his hand. Just before the light went out he moved close to Gibbs, who, a minute later, cried out about being stabbed. At the same time someone brushed past Kunst, but the witness, under cross-examination by me, said that he could not be sure whether it was Thompson or Stiles. The witness mentioned that he had been accused by the firemen and by Gibbs, and said that he had made his statement to the police only when he thought he was himself going to be charged with murder. He further admitted having previously said he saw Thompson leaving his bunk, but he rejected that statement under cross-examination.

Copland, a quartermaster, swore to the sobriety of Thompson, Kunst, and Stiles, and Thomas Murray, a seaman, told how he had seen Stiles running in a crouching position from the head of

the forecastle. Kunst at the time was fighting several men, and knocked two or three over. After Gibbs was carried out, Stiles sat for a few seconds on a seat, and then got up and rubbed both his hands very quickly with some rag or waste, looking round all the time to see if anyone were taking any notice of him. Murray said Thompson was never out of his bunk, and took no part in the fight.

Frank Simons, another quartermaster, said he was confident that Thompson had not sufficient time to get out of his bunk and return to it while the light was out. He saw the accused in his bunk prior to the extinguishing of the light, and he was still there when the candle was lighted. Another interesting contribution to the maze of facts was the statement of the ship's carpenter that about 4 a.m., after the stabbing, Gibbs said, "I will put it in for Kunst."

The presence among Thompson's effects of a blood-stained dickey was explained by the evidence of a seaman, Wade, who said he had borrowed it, and had been wearing it during the affray in the forecastle, and there was a sensational turn to the testimony of Winters, a fireman, who told the Court that he heard Kunst say, after knocking Gibbs down, "I'll kill that b——." Winters had gone to the assistance of Gibbs when Kunst knocked him down, but was knocked down himself. He saw no more before he heard Gibbs say he had been stabbed.

Constable McQuarrie explained how Kunst and Stiles had been taken to the chart room, where Gibbs lay. A sergeant asked Gibbs who had stabbed him,

and Gibbs said it was Kunst, persisting in his accusation even after Kunst protested, "You must be making a mistake. I wouldn't use a knife." Kunst was arrested. Later, at about 2.30 a.m., the witness saw Thompson asleep in his bunk. He was awakened and asked what he knew about the fight. Thompson said he knew nothing, and when asked if he had a knife he said, "Yes, I'll get it for you," and produced it with its sheath and belt from his bunk. They had been tucked under his mattress near his shoulder. The knife had bloodstains on it, and there were also two pieces of paper with fresh bloodstains on them. Another piece of paper was found on the floor similarly stained. Asked to produce the shirt he was wearing, the accused went to a tin box, which he opened with a key. On the top was a blood-stained dickey, which he said had been returned to him by Wade, to whom he had lent it that night. Thompson was now arrested, and later Kunst was released, when the Crown asked leave to withdraw the charge against him.

Thompson was, upon this evidence, committed for trial to the Supreme Court, where the Grand Jury ignored the bill. But he was re-arrested as he left the Court, and within a few days he appeared again before the same Stipendiary Magistrate and two Justices of the Peace, who, on similar evidence, re-committed him for trial.

III.

When the case came before the Supreme Court for the second time Mr Justice Williams, who had been on the Bench on the previous occasion, again presided, and in his charge to the Grand Jury delivered himself of a carefully reasoned and thoughtful estimate of the duty of a Grand Jury in such

circumstances, dealing fully with the peculiarities of the case and stating clearly and simply the legal issues involved in the second committal of the accused. His remarks are of sufficient interest and value to be repeated in full here.

"The accused," he said, "was a seaman on board the steamship Otarama, and he is charged with having killed a man named Gibbs, who was a fireman on board the same ship, by stabbing him with a knife. The case presents some peculiarities. At the last sittings of this Court a bill was presented against the accused for the same offence and the Grand Jury ignored it. The case now comes before you, and, as I understand, upon precisely the same evidence, neither more nor less, as when it came before the previous Grand Jury. It is a case which is almost, if not altogether, unprecedented, but, curiously enough, a very similar case came before a Court in England three months ago. A bill had been presented against a man at the quarterly sessions for indecent assault. The Grand Jury there ignored the bill. Then the Magistrate committed the man to the Assizes on precisely the same evidence, and a bill was again presented to the Grand Jury. The remarks of the learned Judge who presided, Mr Justice Wright, have been reported. I will read them to you, and you may take it from me that they represent the law on the subject. The report runs as follows:

> Mr Justice Wright spoke of this proceeding, and said that it was strange and might, unless it was explained, seem harsh; but it was his duty to tell them that there was nothing contrary to the law in it, and that they must inquire into the case, and not regard it as in any

way concluded by the finding of the former Grand Jury. Moreover, if a different finding were now arrived at, the result need not be taken as in any sense disrespectful or discourteous to the previous Grand Jurors.

"That, gentlemen," continued Mr Justice Williams, "is the law. At the same time, it is for the Grand Jury, and the Grand Jury alone, and not for a Magistrate or any public officer, to say whether a man shall be placed upon his trial. The reason for that is given by Blackstone, and I will read to you what that very learned author says:

> So tender is the law of England of the lives of the subjects that no man can be convicted at the suit of the King of any capital offence unless by the unanimous voice of 24 of his equals and neighbours—that is, by 12 at least of the Grand Jury in the first place, assenting to the accusation, and afterwards by the whole petty jury, of twelve more, finding him guilty upon his trial.

"That, gentlemen," Mr Justice Williams said, "is the law in England, and it is also the law of New Zealand. Further than that, it is also the law throughout the United States of America. A very early amendment of the constitution of the United States provides that no person shall be held to answer for a capital, or otherwise infamous, crime unless upon the presentment or indictment of a Grand Jury. This case, however, presents some further peculiarities. You are probably aware, because the Grand Jury is nearly always told so, that the duty of a Grand Jury is not to decide finally on the guilt or the innocence of the accused, but simply to ascertain whether a prima facie case is made out which the accused is called upon to answer. In ordinary cases there is no difficulty in applying this rule. All the evidence is one way, and if the Grand Jury believe the witnesses and the facts testified to

constitute the offence with which the accused is charged, the Grand Jury find a 'true bill.' If the witnesses are not to be believed, or if the evidence does not show that the offence has been committed, then the Grand Jury ignore the bill. But in the present case there is a difference. The names of a number of witnesses are on the back of the bill of indictment. These witnesses are offered to you as witnesses for the prosecution. Now some of these witnesses give evidence tending to implicate the accused, while others of them give evidence distinctly tending to exculpate him. You have, therefore, as part of the case for the prosecution, a story which is in some respects conflicting.

"What, then, is the duty of the Grand Jury in such a case?" His Honor asked. "I refer again to Blackstone. He speaks definitely of the duties of Grand Juries in the following terms:

> They are only to hear the evidence on behalf of the prosecution, for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined, and the Grand Jury are only to inquire upon their oaths whether there be sufficient cause to call upon the party to answer it.

"He goes on, however, to say this:

> A Grand Jury ought to be thoroughly persuaded of the truth of an indictment so far as their evidence goes, and not to rest satisfied with remote possibilities.

"And another very learned author says:

> A Grand Jury has no concern with any testimony but that which is regularly offered to it with the bill of indictment, on the back of which the names of the witnesses are inserted.

"It is part of the business of the Grand Jury," Mr Justice Williams went on, "to take the evidence of the witnesses for the prosecution. You have no

right to go outside of that, or to consider any evidence for the defence. But where witnesses for the prosecution tell a conflicting story, it certainly is within the province of the Grand Jury, though not to decide finally which story is true, at any rate to weigh the evidence and the probabilities to some extent. For instance, if the evidence which is tendered to you by the Crown shows that it is more probable that the accused is innocent of the offence than that he is guilty—if the evidence of the witnesses brought forward by the Crown tending to show guilt is less credible than that of the witnesses tending to show innocence, you could hardly accuse the prisoner of having committed the crime with which he is charged. If a Grand Jury is asked, say, to accuse A of the murder of B, and the Crown offers evidence tending to show that A committed the murder, and also tending to show that he did not, the Grand Jury could hardly accuse A of committing the murder if they thought that the probability of the truth of the evidence tending to show the innocence of A was greater than the probability of the evidence tending to show his guilt. It seems, therefore, in the present circumstances that you can hardly avoid going to some extent into the probabilities. Certainly it is not for you to decide finally the guilt or innocence of the accused; all you have to say is whether there is sufficient preponderating evidence against the accused which makes a case which he should be called upon to answer.

"I make these remarks," Mr Justice Williams concluded, "partly because when the last Grand Jury took some time to consider the bill, and finally ignored it, they were made the subjects of some hostile comment. That they should have taken

some time to consider the bill, looking at the way in which it ought to be considered, was only natural. Whether they were right in throwing out the bill is a question which, unless one hears the witnesses, one can hardly speak with any certainty upon. However, gentlemen, your business is certainly to consider the case altogether, independently of the decision of the former Grand Jury."

After the jury had been out for some hours, the foreman asked His Honor's direction as to whether the verdict of the majority would be acceptable and binding. His Honor replied that before the bill could be confirmed no fewer than twelve of the jurors must agree to such a course. Within a few minutes of receiving this direction the Grand Jury returned with the announcement that they found "no bill." The accused was then discharged from custody for the second time, and no attempt was thereafter made to place him upon his trial again.

CHAPTER XII.

The Twelve Men.

I.

But of even more humanitarian interest in the fascinating drama of criminal law is the petty jury, the panel of his peers to which in the long run the prisoner must look for justice. No matter how astute the prosecutor, how earnest and pertinacious his counsel, or how able and impartial his Judge, the accused is finally dependent upon his fellow-men for his freedom or, perhaps, even for his life.

The system may not be ideal, but I submit that no better method operates in any part of the world. Trial by jury has stood the test of centuries in England, and in the multiplicity of countries which comprise the British Commonwealth of Nations it has operated with conspicuous success. Through hundreds of years it has undergone flux and change. From the earliest times when juries were the accusers until to-day when they are independent judges of the facts, dominating and regulating the administration of the law, their very nature and constitution have been revised out of all recognition. But continuous improvement has brought about a condition fatal to stability. The reformers are at a loss for something to reform, so they pounce on the inevitable defects of a system that is a national tradition and seek to foreshorten its functions to an extent that is in danger of defeating its objects. I refer, among other things, to the agitations for the recognition of majority verdicts.

Fortunately, in New Zealand unanimity of juries in criminal actions is still statutory. No man

may be convicted of a crime, for which he is tried by a jury, unless every man of the twelve admits to a certainty of his guilt. Such a provision is, in my view, no more than fair and right, and I can never restrain my feelings of impatience at the attempts that are made from time to time to substitute a majority vote for that unanimity. Amendments in this direction have been proposed in different quarters in the past, with an insistence on a ten-twelfths majority for either an acquittal or a conviction, but fortunately no one has yet contrived to make it a stupendous issue, and, despite great argument and learned dissertations, the Juries Act remains intact in this respect at least.

More than a score of years ago, when jury reform was a live subject in both Houses of the Legislature in this country, I found myself drawn into the controversy, first by the Press and then by the politicians. In 1917 I was invited by the Evening Star in Dunedin to comment on a Bill which, inter alia, aimed at the substitution of majority verdicts for unanimous agreements in criminal trials. I stated my views, which to-day are still unchanged.

About four years later, when the Hon. John MacGregor, of Dunedin, introduced his Juries Amendment Act into the Legislative Council, one of the staunchest opponents of the measure, the Hon. O. Samuel, of New Plymouth, quoted at length the opinions against such a change of "one who has probably had at least as much experience in criminal trials as any counsel in New Zealand." It was my comment which he presented for the guidance and instruction of his colleagues, and, as the experience of the intervening years has served to

intensify rather than to diminish the strength of those views, I have interpolated them here, with the comforting consolation, however, that the responsibility for their perpetuation is Hansard's and not mine.

II.

In the interview with the Evening Star I said that the Jury system had proved such a bulwark of personal liberty that it should not be lightly interfered with. In my view then, as now, it seemed pertinent to inquire whether the supporters of this reform wished to alter the existing system with a view to its ultimate abolition, or were they prepared to regard the substitution of a majority verdict as the actual and final objective.

> "What confuses me about this issue," the extract reads, "is that almost all the arguments used in favour of a majority verdict are equally arguments for the abolition of the jury system. They expose weaknesses that will not be cured by majority votes. It is said that if a unanimous verdict is required, one or two stupid, perverse, or corrupt jurors may cause a miscarriage of justice, but it is well known to anyone with any experience of juries that a disagreement rarely occurs where there are only one or two dissentients from the common view. Such a minority is generally overruled before the jury has been closeted for very long. Then, again, in cases of disagreement the Crown has the right to try a man again and again. Moreover, the Crown's prerogative rights in selecting a jury are so overwhelming that a miscarriage of justice is unlikely, and, indeed, rare, unless, of course, an acquittal for lack of evidence can be regarded as a miscarriage of justice."
>
> "It is probable that the statutory and prerogative rights of the Crown in this respect are not generally known. In the first place, the jury list is prepared by

the police, and while it is true that Justices of the Peace sit to revise the list, in practice no one bothers to get put on. Almost invariably the reverse is the case. Now, although the Crown has only the same statutory right of challenging jurors as the accused has, the prosecution may 'stand aside' as many jurors as it pleases until the panel is exhausted. Thus in a panel of, say, forty jurors the Crown can virtually select its own jury."

On this point I quoted to the Press a case in which the Crown exercised this right to such an extent that every member of the jury chosen had already found another person guilty on a similar charge with respect to which identical evidence had been tendered. It simply meant that the trial was a farce. The result was a foregone conclusion. In addition, I cited a number of cases that lay within my own experience in which disagreements had been followed by acquittals at the succeeding trials. These I mentioned to illustrate my contention that disagreements are not necessarily the work of an unscrupulous minority determined to shield guilty persons.

Quoting further from Hansard, the extract of my views continues:

"It seems to me that the real object of the proposed amendment to the Juries Act is to render it much easier for the Crown to obtain convictions. Why is that necessary? Are there too many acquittals? An acquittal means that twelve men are unanimously convinced that evidence strong enough to justify the conviction of a prisoner has not been led by the Crown. It is with respect to cases in which the jury has unanimously found against the summing up of the judge that the term 'miscarriage of justice' is very often used, but is there any reason why an unfavourable summing up should necessarily be followed by a conviction? The jury approaches the matter with open mind and with nothing

before it but the evidence upon which it swears to give a verdict. The judge, on the other hand, has before him the depositions of witnesses in the preliminary hearing, which frequently contain matters that may not legally be placed before a jury. Moreover, he has before him the antecedents of the accused, and these may put quite a different complexion on the evidence. No, while I am prepared to concede that the jury system is not faultless, I would like to know if anyone has devised a method of trying accused persons which has all the advantages of the present system without its defects."

The protagonists of jury reform at that time (and my opinion is still unchanged) lacked definite ideas. A three-fourths or five-sixths majority was suggested as sufficient. Why not a two-thirds vote, or even a bare majority? And why was an exception to be made in the case of capital charges? Nothing is more certain than that juries are too chary about taking life ever to convict on a capital charge without absolute assurance of guilt, and for that reason unanimity, one way or the other, is an almost invariable rule in such cases. Perhaps that was why the exception was provided. My concluding comment on the efforts of the reformers in 1917 was:

> "I can see not the slightest reason for any such change as the Bill proposes, and I think it is the duty of the people as a whole to see that their rights in this respect are not whittled away by any departure from unanimity of verdict."

III.

The Bill had many strong supporters when it was debated in the Legislature, and for my part I was in no way surprised to learn that some of them were unable to agree that I was entirely disinterested in the stand I took. The late Sir Francis

Dillon Bell, who was Attorney-general at the time, was particularly outspoken in the Legislative Council, when he chided Mr Samuel for inviting the Council to give the same care and attention to my opinions as it seemed disposed to vouchsafe to the numerously quoted sentiments of Judges.

"My honourable friend, Mr Samuel," he said, "has asked this Council to listen with equal care and attention—I do not know whether he did not say with 'more'—to the opinion of the most distinguished advocate for criminals in this Dominion. He asks the Council to rely upon the advice of a counsel whose business it is to defend and to obtain acquittals—that is, if he is retained. To ask him whether he would prefer the chance of a dissent is to ask him a question that is already answered. It needs no ghost to tell us what Mr Hanlon would think of such a change in the law as is proposed; but that is not the question."

My point of view was not entirely without its friends, however, and in the Hon. T. W. Hislop, of Wellington, they found a champion, although here again the sentiments expressed were open to a charge of bias, since Mr Hislop was also a criminal barrister of long experience. He said:

> "I disagree altogether with the Attorney-general when he suggests that Mr Hanlon's remarks are without authority. I feel that Mr Hanlon's comments are worthy of perhaps even more consideration than that which has been given to the remarks of the judges who have been quoted. The judges have not supported their views with references to what has taken place in the past, and I think that we must remember what Mr Hanlon has said—that the question of unanimity goes right away back into our history, a very long way back. . . . We should

also be very careful to remember that the whole State is against the prisoner, and that the State practically has the choice of a jury."

So much for the reaction of the politicians to this important question, but I think I should cite the opinion of Mr W. C. MacGregor, K.C., afterwards Mr Justice MacGregor, who was at that time Solicitor-general, and had been for many years a Crown Prosecutor with a long and varied experience at the Bar. He was quoted by Mr Samuel in the Council as follows:

"I am not convinced that it would be wise to introduce a majority vote in criminal cases. No doubt there have been criminal cases in New Zealand in which juries have returned extraordinary verdicts, but at the same time I am not prepared altogether to condemn juries for such individual miscarriages of justice. In my opinion, unless twelve men composing a common jury are individually convinced of a person's guilt, the accused should be discharged. In most cases where there are one or two dissentients, these are overruled by a majority of the jury in the jury room. My experience of the jury system in New Zealand does not lead me to believe that it is necessary to introduce a majority verdict in criminal cases."

IV.

Now an acute person may ask why, if juries are so much to be trusted and commended, does the Crown experience so much difficulty in securing verdicts of "guilty" in cases of bookmaking and abortion? There can be no denying it, the hard fact being that juries have time and time again exhibited a peculiar reluctance to convict persons charged with such offences. And by adopting that attitude they have subjected themselves, and the system they represent, to lively argumentative criticism. A tacit mutual reservation appears to exist

between even strikingly opposite types with regard to responsibility in this matter, and the reasons for what occurs are worth studying.

Let us consider first the problem of book-making. It is hardly possible to exaggerate the place of gambling in the modern community. Like the poor, it has always been with us, and no interference by a guiding government, no organisation of the law, and no attempt to introduce moral or economical considerations into the welter of shillings, half sovereigns, and sovereigns "each way" has had the power to remove the impulse or seriously reduce the craving to bet. Gambling pervades our national life, in fact bestrides it like a Colossus, and is scarcely less of a craze with women than it is with men.

Probably three-fourths of the population indulge in it in some form or another—at horse racing, in art unions, at cards, at mah-jongg, or on the Stock Exchange. Prize fighting long ago succumbed, and of late years the practice of wagering has increased in both football and athletics. Not governments or kings, priests or providences, can be expected to stamp it out or, for that matter, perceptibly to decrease it. How, then, expect a Gaming Act to do it, more especially when the agency that seeks to enforce the Act itself authorises and benefits by the use of the greatest gambling machine in the world—the totalisator?

The stars in their courses fight against the whole structure of the Act. Somewhere in New Zealand, every two or three days, people in nearly every walk of life risk their money on the totalisator from the sheer joy of easy money, "something for nothing." Every year millions of pounds pass

through this machine, and the Government takes a generous share of it, as it does of everything else. But no one may use the totalisator unless he can present his money at the machine itself. Telegraphic facilities are not available to enable people to send money to a racecourse, and so thousands of people who wish to wager on horse races in other centres than their own are deprived of their "flutter," or would be were it not for the bookmaker who is more than willing to lay them totalisator odds (subject to a comfortable limit, of course), and even to provide them with "doubles," which the State-sponsored machine refuses to recognise.

What is the result? People have compromised with themselves, and with the Government, by setting up an image of Public Opinion that refuses to tolerate any interference with British liberties. It is a truism that if there were no receivers of stolen goods, there would be very few thieves. In the matter of illegal betting it is possible to go even further than that and say that if there were no betters there would be no bookmakers at all. Actually, however, there are thousands of betters and therefore hundreds of bookmakers, with probably thousands of agents, who handle at least twice as much money as the totalisator every year. For every five or six thousand people who attend a racecourse on any one day, and invest up to £40,000 or £50,000, there are thousands more in every city, town, or hamlet in the country making use of the facilities which his lucrative calling enables the bookmaker to afford.

How, then, is it possible, when a bookmaker is arraigned, to find a jury anywhere in any ordinary panel that does not contain at least one man who has himself condoned the offence he is asked to try by betting with his own bookmaker? Obviously, the law is unpopular, and, human nature being what it is, it should surprise nobody if juries cannot be found to convict a law-breaker whose business some of their number may patronise themselves. On strictly ethical grounds, the juror who allows such a consideration as his own habits to weigh with him in the assessing of the value of evidence may be wrong, but I think that as strong a case could be made out against him if, by a conscious act of his own, he rendered liable to the rigours of the law a man who lives by the kind of law-breaking he indulges himself.

At least no serious-minded person could reasonably advance such a situation as a condemnation of the jury system. And yet I have heard it done. Better far were the searchlight of criticism turned on a legislature which naively closes its eyes to the problem because it lacks the courage to take the obvious course and either permit the telegraphing of bets or license the bookmaker.

V.

Contrary to a commonly held belief, juries are actuated by totally different motives in their treatment of the average abortion case, in respect of which they are frequently accused of deliberately defeating the ends of justice by their disinclination to convict, even in the face of the most conclusive evidence. Personally, I doubt whether it is the ends of justice they defeat when they continue to disagree on such matters. The whole thing resolves

itself into a revolt against the violation of the ordinary principles of good faith. The only point in common that the two groups of cases possess is the factor of cause and effect. If there were no people seeking the services of abortionists, there would be no illegal operations. The practice, like bookmaking, survives only because there is a demand for it.

That cannot, however, be regarded as an excuse for it. As well say that the only way to stop drunkenness is to flood the country with cheap gin and let the fittest survive. But the point does persist that the practice of abortion continues for no other reason than that there are people who demand it, and the aspect of the matter which disturbs juries more than anything else is the frequency with which abortionists are exposed by the very people they have risked imprisonment to serve.

Consider what nearly always leads up to the indictment of this class of offender. In the majority of cases the patient is, voluntarily or involuntarily, the informer upon whose testimony the Crown relies for a conviction. A young woman finds herself in trouble, and immediately concerns herself with the maintenance of at least an outward show of respectability. It must be concealed from her parents, her friends—in fact, from everybody—and the price to be paid cannot be too high. Either she or the man responsible seeks out a reputed abortionist, and the felony is compounded. When everything is over, if no complications arise, nothing more is heard of the matter. Everybody is satisfied.

But let things go wrong and there is a very different story. The patient finds herself in hospital. The truth is out, so nothing else matters.

There are suspicions of illegal interference. The police come into the picture and question both the man and the woman. Before long one or both of them, probably protected by a promise of immunity, furnish all the information that is required to warrant a serious criminal charge being laid against somenone to whom, so short a time before, they were only too anxious to rush.

I honestly believe that there are few, if any, jurors who would consciously and deliberately encourage the abominable practice of abortion, but I am equally certain that a great many of them have refused to return a verdict of " guilty " in such cases for the simple reason that the accused persons have been betrayed by accomplices who, in the first place, were only too willing to take the risk and condone the crime to escape the consequences of their own folly.

CHAPTER XIII.

Verdicts and Cases.

I.

But although I have a lively appreciation of the virtues of the jury system, personal experience has emphasised for me one of the worst defects it has in this country. I have long been convinced that there is neither right nor justice in the advantage which the prosecution has over the defence in the matter of "standing aside" jurors. It would be idle to deny, in this instance, that in taking up the cudgels at all I am looking at the matter purely from the standpoint of the prisoner, but that does not alter the facts. I have already referred in passing to a case in which the Crown exercised its right to "stand aside" jurors to a degree that made a conviction inevitable, but for the purpose of substantiating my argument I will relate the occurrence in full.

Four Chinese were charged separately with indecently assaulting a young woman, and I was retained to go to Auckland to defend them. The case for the Crown, in each instance, was that the girl went to the laundries at which the accused were employed, and that each of the four assaulted her. For corroboration of the girl's story the prosecution relied upon the evidence of police officers who were able to swear that the description of the interiors of the various premises sworn to by the girl were correct. In the first case the jury apparently believed the girl and convicted the accused, and in the second and third cases the result was the same.

When the jury was being empanelled for the fourth case an unusually large number of jurors was either challenged or ordered to "stand aside" by the Crown Prosecutor, and I noticed that before each "stand aside" was called his gown was tugged by a police officer sitting immediately behind him. While the case was proceeding I examined the jury panel and found that every man in the box had already served in one or other of the three previous cases, in all of which the Crown's case had been accepted and the accused convicted.

I also found after further investigation that none of the jurors who had been ordered to "stand aside" had served in any of the cases that had already been heard. There could be no shadow of doubt as to what had happened. A conviction was rendered absolutely certain by the exercise by the Crown of a right that was denied to the defence.

In the circumstances my position was hopeless, and when the time came for me to address the jury I delivered myself of easily the shortest speech I have ever made to the "twelve men and true."

"Gentlemen," I said, "my learned friend, by the exercise of his right to 'stand aside' jurors, has seen to it that every man who was allowed to take his seat on this jury had served in one or other of the previous cases, which means that every-one of you has already believed the girl. If I were to ask you now to disbelieve her, I would be asking you all to stultify yourselves. I have nothing more to say."

After the jury had retired, the trial Judge, Sir Walter Stringer, who, when he was himself Crown Prosecutor in Christchurch, was admired and

esteemed for his infinite fairness and unshakeable impartiality, turned to the Crown Prosecutor and said:

"Mr ——, I am surprised at what Mr Hanlon has just said, and if it be correct, I should deem it my duty to make some report on the matter. What do you say about it?"

The Crown Prosecutor replied that he did not know that every juror in the case had already served on one of the three previous juries, and he declared that he would not lend himself to such a scheme.

"I am very glad to have that assurance," said His Honor.

I then said that I accepted my friend's word, but I still insisted that I had seen the police officer plucking at his gown every time a juror was called who had not served in one of the other cases.

Of course, the prisoner was convicted.

This group of cases merely serves to illustrate the pronounced advantage enjoyed by the Crown in the selection of a jury to try an accused person, whose right peremptorily to challenge jurors is limited to six. Only a few years ago in a case in which I appeared which was of no great consequence no fewer than nineteen jurors were ordered to "stand aside" by the Crown Prosecutor; but there is less reason for surprise at such a state of affairs to-day than there used to be, as I am convinced that the prerogative of the Crown in this respect has been exercised much more freely of recent years than was once the case.

One point that Crown Prosecutors might well bear in mind, however, is suggested by complaints

that have been made to me personally. Many jurymen have told me that they regard it as a personal affront for the Crown to treat them as if they were unworthy to sit on a jury, and I think that they speak no less than the truth.

II.

One frequently hears it said when a jury has disagreed that the prisoner must have had somebody "squared." This I refuse to believe, for during fifty years at the Bar I have never heard of a juryman having been corrupted. A copy of the jury panel—the list of all persons who will be summoned for jury service during the session—is available to every prisoner, and the opportunity is generally taken to study it carefully, but even that concession does not justify allegations of "squaring." My own practice, and I believe it is a general one, has always been to peruse the list with the accused and ascertain from him if there are any persons on the panel who, for any reason, would be unlikely to give him a fair trial. Should there be any, they are promptly marked for challenge.

Then it is customary to find out if there are any people on the list who, through association with the accused at school, in business, in sport, or in lodges, might be expected to take a sympathetic view of his case. Naturally, these would not be challenged, but such a precaution is generally a dubious one, as the police would most certainly have made the fullest inquiry about the accused's associates, and the Crown would therefore be in a position to order such jurors to "stand aside."

Disagreements very often result from a bona fide difference of opinion as to what constitutes proof of guilt, and in many such cases the jury is fairly

evenly divided. Strong religious beliefs and ingrained prejudices have been the cause of many failures to agree, and in most instances the dissentients have been perfectly honest in their attitude, although there are many of the majority who find it extremely difficult, at the end of a sitting of several hours, to understand how any man can conscientiously refuse to admit any possibility of a doubt in the face of the cumulative suasion of the other eleven. Of many such occurrences within my experience, two in particular come to mind.

Some years ago I defended a man for manslaughter. The trial lasted for three or four days, and was very costly, as witnesses had to be brought from a distance. When the jurors were being called, one man stepped forward whose appearance I did not like, and I told my junior so. He, however, knew the man well. He was one of his clients, he said, and a very good living chap. Against my better judgment, I let him take his seat. The jury had been out for nearly four hours when the Judge sent for them and asked if there was any point on which he could help them.

"No, sir," the foreman replied. "There are eleven for acquittal, but there is no chance of an agreement."

"I didn't want you to tell me that," said His Honor, "but since you have done so, I would suggest that the dissenting juror might see his way to fall in with the majority, especially as, if he errs at all, it will be on the side of mercy."

The jury retired once more, and after the statutory four hours had expired they were again brought into court. But once again the foreman intimated that there was not the slightest chance

of an agreement. The jury was discharged, and when the case was referred to the Crown Law Office it was decided not to proceed with a second trial, and the prisoner also was discharged.

Of a different type was the juror who relied upon divine guidance. My client on this occasion was indicted for theft. We fought it out for a whole day, and when the jury retired it was thought that they would be absent for only a few minutes. After some hours had elapsed, they were brought back by the Judge, but, since they said they did not require any help, they were consigned once again to the jury room. As they had reached no agreement at the end of four hours, they were discharged.

The foreman told me later that only one juror insisted on a conviction. He was a very religious man, and the best efforts of the other eleven were powerless to persuade him to change his mind. Toward the end of the four-hour period he said:

"If you will give me a few minutes, I will ask for divine guidance."

He dropped to his knees, buried his face in his hands, and began a murmured prayer. In two or three minutes he rose, and on the instant a juror asked:

"Well, what did the Almighty have to say about it?"

"The Lord told me to stick to my opinion," was the reply.

"I like that!" his questioner retorted. "He didn't even hear the evidence."

The next day the prisoner stood his trial again, and the jury, without even leaving the box, returned a verdict of "not guilty."

III.

An occasion on which a jury meted out rough justice was in a case in which a farm lad was charged with the theft of some articles from his employer. He was paid 15s a week and found, but, tiring of the job, he made up a swag and left the place. Shortly afterwards he was arrested for the theft of several articles that were found in his swag, and he was committed for trial. I appeared for the boy in the Supreme Court, and in the course of my cross-examination of the employer I elicited the fact that he paid the lad his money on Saturdays and got it all back again on Sunday at "pitch and toss." The jury evidently was not disposed to stand for that sort of thing, and promptly returned a verdict of "not guilty."

One cannot help remarking on the curiously fortuitous circumstances that frequently turn the scale in a case. When the defence of a prisoner is offered to a barrister it is not often easy for him to decide the chance of success. If the possibility of an acquittal is remote, he may advise the accused to plead guilty. Such advice is sometimes accepted, but a man who is determined to defend seldom gives up, in which event the barrister will either take the brief himself or refer the accused to someone else whom he thinks may be able to detect some weakness in the Crown's case which he himself has missed. But it so often happens that hopeless cases can be won, that it is wiser sometimes to see the thing through. Let me illustrate.

A country storekeeper's van driver was charged with embezzlement, and the method alleged to have been adopted by him involved the manipulation of receipts and counterfoils. It was his job to deliver

goods to customers, and from time to time he received payments, in return for which he gave receipts from a folio book containing carbon and counterfoils, on which duplicates of all receipts could be recorded. It was alleged by the Crown that he did not allow the amount to be copied on to the counterfoil when the rest of the receipt was made out. That figure was impressed later, the result being that the customer got a receipt for the full amount, but the employer received only the amount impressed on the counterfoil, which was less than the payment received by the accused.

Such a puerile form of deception could not fail to break down under its own weight, and in a very short time the employee found himself faced with a prosecution. The brief was offered to me, but whichever way I looked at it I could see no escape from a conviction. I informed the accused's solicitor, and thought I had heard the end of it, but a little later the accused's father and mother came to see me. I told them also that the case was hopeless, but the mother, with tears in her eyes, begged me to take the case. I felt truly sorry for her, and promised that I would do what I could. Her reply rather startled me, as she said that she could now go home happy because she knew that everything was going to be all right. Such sublime faith I was inclined to regard as embarrassing, and I feared that it would soon receive a very rude shock.

The case eventually came on for trial, and late in the evening the jury returned with a verdict of "not guilty." I think the only one who was not

surprised was the accused's mother, who had been present at the trial and waited at the door of the robing room to thank me.

"Didn't I tell you you would get him off," she cried delightedly as soon as she saw me.

I knew that nothing I had said or done had secured his acquittal, but the next day I found out how the unexpected had happened.

If the lay reader is to understand the significance of this story, I should explain that when documents are produced in Court as evidence they are marked with letters of the alphabet and signed and dated by the Magistrate in the lower Court and initialled by the Registrar in the Supreme Court. In this case the receipt was marked "A" and the counterfoil "B," and so on with the rest of the exhibits as they were produced.

The day after the trial a fellow-barrister came into the robing room and said that a juryman had just told him how my client got off the previous night. It appeared that the Judge secured his acquittal. In his summing-up His Honor said the jury might place the receipt on top of the counterfoil and hold them both up to the light. If the two were the same in every particular but the amount, they would then be able to decide whether a fraud had been committed.

The juryman said they did that, and saw that they were not the same at all. "One was exhibit 'A' and the other was exhibit 'B,' so we had to let the chap off."

All the uncertainties are not on racecourses!

CHAPTER XIV.

Present-day Problems.

I.

How fares the art of advocacy in these days of up-to-the-minute criminology and modern detective method? The question is of interest, and a true answer is not difficult to discover. It cannot be denied that to-day it is infinitely less easy to secure a high percentage of acquittals than it was forty, or even thirty, years ago. The position of the forces of the law, whose duty it admittedly is to protect the property and security of the individual, has been notably consolidated of late years. The prosecution has been endowed and equipped with aids and facilities which are not only denied to the defence, but which, in addition, can seldom be checked or effectively refuted. The plain truth is that the advantage is definitely with the Crown. In the harsher view of the matter such a situation could be interpreted as an invitation to injustice, but it is not my desire to insinuate anything of the kind. What I would suggest, however, is that the abuse of any of its recently acquired advantages by the prosecution may often be very unfair and unjust.

The first matter upon which I will comment in this respect is the finger-print system, which alone should give a very strong indication of the new problems to be faced. Confronted by finger-print evidence, the advocate is immediately in deep water. In fact, with the facts substantially established, the whole business of defence boils down to pretty near nothing at all. The second problem—and a very

real one—is the development of scientific investigation along the lines of the expert analysis of substances, particularly blood. And finally there is the question of police practices—the growth of a sort of "third degree" method, which, though intermittent, is very common, and therefore to be coped with. Such things may not bear the full approval of authority, but the significant fact is that they do go on, and, in my opinion, to a greater extent than used to be the case in this country. The appalling lengths to which the "third degree" has gone in other countries, notably the United States of America, should furnish awful lessons and to spare in illustration of what may be expected if it should be allowed to rear its ugly head in our midst, in even its most perfunctory form.

Consider first the finger-print method of connecting an accused person with the commission of a crime. It has been perfected to the status of a fine art, and the recognition that has been accorded it the world over makes it a vital factor in detection. Its adoption in this country lies well within my own recollection. For its proper exploitation the Police Department has a finger-print section in which can be found a library of infamous finger impressions. All manner of persons imprisoned for criminal offences are required to leave behind them an identification mark for future reference in the form of an impression of their finger prints. These are filed away and indexed in such a way that instant recourse may be had to them at any time for comparative purposes. When a crime has been committed, one of the first things the police investigators look for is a finger print, which may be found

on some article or chattel connected with the perpetration of the offence or on some part of the premises, such as a window pane, a glass panel, a door handle, or any clear, polished surface. Anything the perpetrator has touched is examined for finger prints. It may be a revolver, a rifle, a knife, or, perhaps, a tin cashbox or metal jewel case. Notwithstanding the publicity given by writers of detective "thrillers" to finger prints, and the expert manner in which fictional rogues avoid leaving such damning clues behind them, the telltale impressions are frequently found somewhere. Any article carrying a print is commandeered and forwarded to the nearest finger-print department, where experts, employing established and well-tried processes, compare the impressions with the indexed records in their possession, and particularly with the prints of suspects, if they are available.

In the matching of finger prints it is not necessary that one hundred per cent. identity should be established. The expert in these things requires only to satisfy himself with regard to certain points of resemblance between the prints found at the scene of a crime and those of a suspect to be quite sure in his own mind, and his views on such matters are generally accepted. The odds against his being wrong have been variously calculated at up to millions to one, the millions against increasing with every point of resemblance. This being so, it should be obvious that the chances of upsetting expert testimony of this kind are extremely remote. An accused person, confronted by finger prints proved to be his and found on the scene of a crime, finds it very hard to explain the circumstance away. It would be the purest naivete to claim coincidence, and it is next to

impossible to discredit such expert evidence. It may, in isolated cases, be possible to produce an innocent and convincing explanation for the presence of accusing prints on any particular article or appurtenance, but when it comes to combating expert testimony on the subject of similarity the prospect is hopeless. Evidence of that kind cannot be challenged. As far as I know there are no outside or unofficial experts whose services could usefully be employed for the purpose of examining finger-print records and testing the accuracy of official comparison with a view to contradicting the police experts. In the circumstances, therefore, it has always seemed to me that where such evidence relates to a crucial or pivotal point in a case, a successful defence is wellnigh impossible.

II.

Many years ago, just about the time that the finger-print system was gaining its first recognition, I appeared for the defence in a case in which the prosecution relied very largely upon it. The man whom I represented was charged with breaking and entering a country store, and theft. The offenders, whoever they were, had gained access to the premises by breaking a window, and to facilitate their entry they had lifted out the broken pieces of glass still adhering to sashes. These fragments, of course, carried finger prints, and the Crown Prosecutor, opening his case, indicated that a finger print expert would be called. I was still quite unfamiliar with what was then still regarded as a new-fangled system, but I thought it would be just as well to establish that as many people as possible had handled the glass. To this end I asked every witness I cross-examined if he had himself shifted

any of the glass or if he had seen anybody else lay hands on it in any way before the broken pieces were gathered up by the police. This line of questioning proved very fruitful. It was astonishing how many hands, on the admission of the Crown witnesses, had touched the shattered glass before it was collected as evidence, at which time, of course, the police also were responsible for further handling. When it came to cross-examining the finger-print expert, I requested him to demonstrate to me the points of resemblance upon which he relied. He admitted that they were few, mainly, he said, on account of the fact that the impressions had become partially obscured as a result of the handling of the specimens by several different people. Still he insisted that points of similarity did exist, and he proceeded to show them to me. I told him that I could detect nothing myself, but I suggested that he should point them out to the jury, which, after all, was of more importance.

The foreman and two other jurors stood up to examine the prints with the aid of a magnifying glass, while the witness indicated the points he wished to make with a pencil. The meanest intelligence would have had no difficulty in deciding that the jurymen had not the faintest idea what the expert was talking about, but when the demonstration was concluded the prints were handed round to the rest of the jurors, all of whom glanced at them more out of curiosity than in the hope of learning anything from them. That ended the expert testimony, and as there was very little other evidence brought, it was an easy matter to demolish

the Crown's case by submitting to the jury that it could hardly convict the accused on the strength of evidence which it could not see without the assistance of a microscope, and which, if seen, could not be properly understood. Not much time was occupied by the twelve men in bringing in a verdict of "not guilty."

But what could be done at that time in those circumstances can seldom, if at all, be repeated to-day. Finger-print evidence is now accepted as reliable in practice as well as theory, and with adequate materials and careful preparation the students of this branch of investigation have been able to produce results which entirely justify its general acceptance. For many juries the matter has frequently been clinched by Judges whom I have heard declare, in the course of their summing-up, that as the chance of a mistake is only one in many millions, there are good grounds for acting upon such evidence. Nevertheless, these odds are calculated on points of agreement or resemblance existing between comparative sets of prints, and it is not impossible that even the experts may be in error. Here, therefore, emerges what I consider to be probably the only real weakness in the system. There is no means that I know of by which expert evidence of this nature can be checked or verified, and in the interests of the individual some such safeguard should be available. The experts, after all, are police officers with a special interest in the success of the prosecution, and a particular, and not unnatural, desire to demonstrate the efficacy of this factor in crime detection.

III.

Then there is the place of applied science in the method of prosecuting authorities. The analyst occupies a much more important place in criminal investigation to-day than he did when I began practice, and he is almost as formidable an opponent as the finger-print expert. Frequently, in the case of crimes of violence, it is of the greatest significance if the Crown can prove that stains found on the clothing of an accused person, or on a weapon or other chattel identified as his, were made by human blood. This can be done very simply to-day, but it is not so long ago that the scientists could certify to the mammalian character of blood alone, without any distinction between the animal and the human. The fact that the analyst could do no more than swear that certain stains were made by the blood of an animal that suckles its young has in the past been very fortunate for some people, but the definite pronouncements of modern science on this point have entirely changed the complexion of bloodstain evidence, and have at the same time reduced the chances of an acquittal in such cases.

In this connection an amusing incident comes to mind arising out of a murder trial in which I defended two men on a charge of killing a Chinaman at Tapanui. Among the exhibits produced as evidence by the Crown were articles of clothing which bore unmistakable stains of blood, and the question arose, of course, whether they had been made by the blood of the victim, who had met his death by shooting. The position was complicated to some extent by the fact that the accused men had recently been doing some deer stalking, and it was more than possible that in skinning the carcases

and salvaging such of the venison as they required they had become spattered with the blood of their game. Expert evidence was called to deal with this point, but the witness could not assist the Court beyond declaring that he was satisfied that the stains had been caused by mammalian blood. However unhelpful his testimony may have been to the prosecution in the circumstances, it had its effect in one corner of the courtroom, whence there issued a loudly sibilant whisper:

"Did yer 'ear that? They're done for. He says it was mammalian blood they had on their pants!"

"What's mammalian blood anyhow?" came the reply.

"Don't yer know that? It's Chinaman's blood."

IV.

And now we come to the subject of police methods. Of late years the police have adopted a practice of interviewing a suspected person and "inviting" him to "accompany" them to the detective office for the purpose of making a statement with respect to the crime with which he is thought to be connected. It all sounds very informal, but it needs no great stretch of the imagination to decide what would happen if the suspect declined the "invitation." Indeed, there is no need to dwell on such an eventuality, because the "invitation" is invariably accepted, and once he is safe inside the police precincts the "guest" is bombarded with questions. Every answer is recorded, and at the end of the document is inserted a declaration by the suspect that he has read the statement over and certifies to its truth. This done, he is asked

to append his signature to the paper, and here again the "invitation" is usually accepted, so that nothing then remains for the police to do but to charge the suspect and arrest him, and this is generally done irrespective of whether his statement comprises an admission of guilt or a firm denial. The cast iron nature of the proceedings and the monotonous regularity with which results are achieved should more than suffice to show the pure sophistry of the claim made by the police that the suspect was merely "invited" to accompany detectives to the police station.

After his arrest the accused is brought before a Magistrate and the depositions of witnesses are taken to enable the Magistrate to determine whether the evidence discloses a case which the accused should be called upon to answer in the Supreme Court. Should the Bench decide to commit the man for trial a warning is issued to the accused to the effect that he is not obliged to say anything in answer to the charge, but that if he does it will be taken down in writing and may be used as evidence against him at his trial. Is not this sheer farce, considering that the police have already questioned him thoroughly and put his statement in as evidence against him? When he finally faces his trial in the Supreme Court, that statement, provided it is in any way incriminating, will most assuredly be put in as evidence by the Crown Prosecutor, but, on the other hand, if it contains only a denial of the charge, nothing will be said about it. The whole business is nothing more than a trick of advocacy, designed to compel the counsel for the defence to call the accused to give evidence on his own behalf, and thus make him

liable to cross-examination regarding what he told the police when he was "invited" to the detective office. And, incidentally, such tactics may conceivably result in the defence conceding to the Crown the right to have the last word with the jury.

There can be no question about the risk of grave injustice being done to suspected persons if this sort of thing were allowed to go on unchecked. In every case what actually appears on paper is merely the construction which the interlocutor or the typist puts upon the answers that are given to the barrage of questions, and it is quite possible that such interpretations may be entirely erroneous. On many occasions I have seen the Judge's notes of evidence altered when a dispute has arisen between counsel as to what the witness said. Generally in such cases when the matter is referred to the witness, it is found that the notes do not accurately express what the witness intended. If a witness can be misunderstood in the Supreme Court, how much more likely is it that a misinterpretation of some point may occur during the course of the police examination? To avoid any possibility of any misunderstanding of what a witness may mean in cross-examination some Judges have their notes of evidence taken in question and answer form. If the learned and skilful occupant of the Bench considers such a precaution worth while, how much more necessary must a similar system be in the detective office?

In my opinion, no signed statement taken by the police from a suspected person who is afterwards charged with a crime should be admissible as evidence unless it is set out in the form of questions and answers. The Court or the jury can then, and

only then, determine the true value of the statement. Nothing haphazard or slipshod should be tolerated in proceedings that are being taken against anyone whose life or liberty is at stake. After all, even the most efficient and conscientious police officer is as likely to make mistakes as anybody else. Enthusiasm in the execution of his duty or his desire to achieve a successful prosecution may quite conceivably result in his being led astray unintentionally.

Recognition of the dangers inherent in the growth of such a tendency as I have instanced here was contained in some remarks addressed by the Rt. Hon. Sir Michael Myers, Chief Justice, to a Diamond Jubilee gathering of the Wellington Law Society, when he sought to impress upon members of the Bar the urgent need for the maintenance of an incessant vigilance with respect to the rights of the individual.

> "This Society has now been in existence for sixty years," he said, "and during all those years no society's record could have been better. At the head it has always had men of integrity, knowledge and wisdom. Its foundations were well laid, its traditions have been well maintained, and its members have always done their best to maintain the liberty and privileges of the individual. The whole world has changed and is changing. Are your privileges worth maintaining in the future years of the Society's existence? Are the rights and privileges of the individual worth maintaining? Of course they are. I know they are, and you all know it. But I want to utter a word of warning. My memories of the law go back to 1897. Occasionally I have seen indications of a departure from the strict maintenance of those rights and privileges, which, if not carefully preserved, will in time

disappear. I refer more particularly to the rights and liberty of the ordinary individual, which it is your duty to maintain and that of the Judges to preserve."

His Honor went on to deprecate the practice of opening speeches by those appearing for the Crown in indictable cases in the lower Court, whence nothing should go forth to affect subsequently the rights of an accused person when he appears on his trial before a jury in the Supreme Court. He did not care what the practice was elsewhere; it was wrong wherever it appeared, and it should not be tolerated anywhere. He then referred to the questioning by police officers, without a caution, of persons who, to the knowledge of the police, would be charged with crime. This, he said, was a practice that should not be permitted.

In conclusion, the Chief Justice declared that it was the duty of the Judge and of the profession to see that any abuse that affected the rightful liberty of the individual was not tolerated. If the members of the Law Society desired to maintain—and they did—the rights and privileges of the individual, their watchword must be "Incessant Vigilance" in respect of all that they stood for and should stand for.

V.

In illustration of the point I have sought to make in this connection and to emphasise the unfairness of the action of the police in "inviting" co-operation from their suspects, I will refer to a case in which I appeared (Mr B. S. Irwin with me) for a man and his wife who were charged before the late Mr Justice Hosking with the murder of their infant child.

A detective was called as a witness, and said that he had questioned both the accused in the course of his inquiries. Some time later, he said, he interviewed the female accused alone, and it was

at this stage that the Judge made his first comment on the procedure. Had the witness warned the two accused that anything they said might be used as evidence against them? Apparently the detective had not, his explanation being that he had not at that time formed the opinion that any more suspicion attached to the two accused than to other persons. Continuing his evidence, the police officer said that he went to Invercargill to see the accused, and during this interview the female prisoner agreed to undergo a medical examination. In addition, she made a statement.

Here again the Judge interrupted the witness to remark that he doubted very much whether the police should have gone as far as that in so serious a matter as a murder charge, and more especially in the light of circumstances as they existed at that time.

The witness, continuing his story, told how the statement of the female accused was read through in the presence of the woman and her husband. Later both "accompanied" him to Dunedin, and after the woman had been examined by the police surgeon the witness obtained a warrant charging husband and wife with murder, and forthwith arrested them. But this was not all. From the house in which the murder was alleged to have been committed the detective brought away exhibits in the form of a blood-stained suitcase containing several towels similarly stained with blood. The male accused was now brought from his cell and confronted with this evidence.

Once more the Judge intervened to say that such a course of action was simply inviting the male accused to speak up. He did not think he would

admit the further evidence arising out of the showing of the articles to the accused. The action of the police in showing the suitcase to the accused after he had been arrested amounted to an obvious invitation to him to speak.

The detective said that the male accused appeared to be just as anxious as the police were to get to the bottom of the matter, but His Honor insisted that it was just the same as asking a question.

"This blood-stained suitcase was produced, and as far as the accused was concerned the implied query was, 'What do you say to that?' and I must say that I do not think it should have been done," His Honor continued.

The Crown Prosecutor then said that that sort of thing was permissible after a warning had been given to the accused that what he said might be used against him.

"Well, it is in the discretion of the Judge whether such evidence should be admitted or not," replied Mr Justice Hosking. "We must assume that after the accused was arrested the police considered that they had sufficient evidence to establish a prima facie case. I will exclude the evidence. The responsibility rests entirely with me in this matter, but I think I am justified in taking this course."

It should not be necessary to stress the point any further. This case shows definitely the unfairness of the practice of producing incriminating articles in order to try and induce an accused person to make some statement or admission that may assist in his conviction.

Perhaps, having mentioned this case, which was an unusual one and attracted widespread public interest, I might say a few words with regard to the outcome of it.

It was alleged by the Crown that the child with respect to which the charge of murder had been brought, was strangled at birth by means of two pieces of tape tied around the neck in such a manner as to interfere with respiration. The medical evidence, sworn to by only one doctor—a fact which was commented on by both Bench and jury—showed that the child had breathed; that complete respiration had been established and that the lungs had completely filled the chest cavity. To succeed in its case it was incumbent upon the Crown to prove that the child had been strangled after it had become completely detached from the mother's body in a living state—in other words, it had to be shown that the child had been a living human being in the meaning of the law.

When the Crown case was concluded, I submitted very emphatically that there was no evidence to prove and establish this vital point, and I therefore suggested that the only alternative the Court had was to withdraw the case from the jury. Some discussion then ensued between the Judge and counsel, at the end of which I suggested that this one question might be made a special issue for the jury. If they answered it in the negative, then there was nothing more to be done. The case would automatically fall to the ground.

His Honor agreed that this was the simplest way of dealing with the matter, and thereupon submitted the point to the jury as follows:—

"Are you satisfied beyond any reasonable doubt

that the child in question met its death after completely proceeding in a living state from the body of its mother? "

After a retirement of 15 minutes the jury returned and the foreman handed the Court a written answer.

" Well, the answer is 'No,' " His Honor said, " and that being so there is no other course for you to follow but to say that the prisoners are 'Not guilty'; I will ask you what verdict you return? "

" Not guilty," replied the foreman, bringing to a close in a very unusual manner a most interesting case.

It is worth noting that the jury drew attention to the desirability of two doctors being required to give evidence in such cases. His Honor, referring to the matter, said that the police were not absolutely responsible in that connection. It was probable that consideration of it would have to be referred to Wellington, but, speaking for himself, in serious cases of that kind it was his strong conviction that there should be more than one medical witness.

CHAPTER XV.

The Strange Story of a Wreck.

I.

Long after I had renounced for ever my cherished ambition to go to sea my interest in matters nautical remained a lively one, and a great deal of my spare time was devoted to a study of seagoing craft of all descriptions. The rudiments of navigation and seamanship which I had acquired in my boyhood proved a useful foundation for the more serious explorations I made in this fascinating field later on. It was not surprising, then, that when in my early thirties a brief was offered me to appear at the Nautical Inquiry into the stranding of the Ariadne on the Waitaki Beach, north of Oamaru, I accepted with alacrity.

At the time there was nothing to suggest that the case would develop into a cause celebre, and even when the master of the vessel was found guilty of a grave error of judgment, few of those interested were prepared for the sensational turn the affair was so soon to take. Before the case was finally disposed of, accusations of conspiracy to defraud and of casting the craft away were made against the owner, the master, and a member of the crew, and a great many issues were raised.

The Ariadne was a schooner-rigged yacht, built as a pleasure craft on a most lavish scale at a cost that was said to be about £30,000. In 1898 she was purchased by Thomas Caradoc Kerry for £2000 and insured with Lloyd's for £10,000. Kerry was a man of means and an explorer who had travelled extensively, latterly in the South Sea

Islands, New Guinea, and Central Australia. He had also been in New Zealand. A couple of years after changing hands the Ariadne sailed from Southampton for Sydney under the command of Captain Willes. The voyage, which was made via Durban, occupied several months, and included a detour to Thursday Island, where Kerry was picked up. When within sight of Thursday Island the vessel touched on a reef, finally being got off without serious mishap by the strenuous efforts of the owner himself. In February, 1901, Sydney was reached.

Shortly after her arrival a new crew was engaged, and Captain Willes was replaced by Captain Mumford. Then, with a view to re-provisioning at Port Chalmers, the Ariadne set sail for New Zealand with Mumford as master. Kerry remained in Australia. Crossing the Tasman Sea very rough weather was encountered and the ship's lifeboat was lost. The New Zealand coast was finally reached, however, and Mumford set a course for Port Chalmers down the east coast of the South Island. While sailing off the mouth of the Waitaki River, just north of Oamaru, the Ariadne ran ashore at night and was eventually abandoned by the underwriters as a total wreck.

The customary Nautical Inquiry was constituted to investigate the cause of the wreck, and it was at this stage that my connection with the affair began. I was retained to appear for the owner, Kerry, at the inquiry, the result of which was a finding to the effect that Mumford, the master of the vessel, had been guilty of a grave error of judgment while navigating his ship on the night of March 24. His master's certificate was suspended for three months and he was ordered to pay £15 15s

towards the cost of the proceedings. And so the first chapter of this amazing story of double-dealing and intrigue ended.

II.

To all appearances the case was closed, but rumours of a seriously compromising nature dealing with the loss of the ship which suggested that everything was not above board began to be circulated. Naturally, Lloyd's Surveyor in New Zealand, Captain Willis, of Lyttelton, who must not be confused with the original master employed by Kerry, began to make inquiries. He finally sought out Mumford and invited him to tell the true story of the wreck. At first Mumford refused to be drawn, but at a subsequent interview with Captain Willis in May he made a confession in which he alleged that the yacht had been cast away by arrangement with Kerry, who had promised to pay him £400 for doing it.

His story was that it had been originally intended to wreck the Ariadne on the West Coast of the South Island, but that his plans had had to be changed on account of the loss of the yacht's lifeboat in the Tasman on the voyage from Sydney. He had therefore deliberately run her ashore on the Waitaki Beach. But that was not all. He further alleged that it had been arranged that Kerry and himself should return to England, collect the insurance money, and buy another ship which was to be wrecked in the same way in the Magellan Straits. The explanation of the choice of the New Zealand coast as the scene of the crime, according to Mumford, was that there was no time to get the vessel to a more suitable spot before Lloyd's policy expired.

Captain Willis's next move was to persuade Mumford to put his story in writing, and this the ex-master of the Ariadne agreed to do on condition that he was rewarded to the extent of the sum which he should have received from Kerry for his part in wrecking the ship. On the following day he wrote a full confession, and Captain Willis, promised to pay him £400. This sum was later paid over according to the admission of Captain Willis himself.

It remained now for the written confession to be corroborated by any incriminating documents which Mumford might have in his possession. He told Captain Willis that he had nothing that he could place his hands on at the moment, but he recalled an agreement between Kerry and himself which he thought he must have lost or mislaid before or after the wreck. Mumford did not disclose the text of the agreement at this stage, but in the presence of Captain Willis he wrote to Kerry demanding payment of the amount agreed upon for the successful wrecking of the Ariadne. In view of the significance of this letter in relation to subsequent events an extract from it is of interest. Mumford wrote:

> I admit that I have no written agreement from you agreeing to pay me to wreck the yacht. I know you were sharp enough not to do that, but I also have a certain amount of experience in such matters, and generally prepare myself for such little emergencies as these.

It was not until June that the agreement which was the subject of a dramatic turn of events during the trial, was shown to Lloyd's representative. When he had perused it, Captain Willis demanded to know how Mumford reconciled the existence of so conclusive an agreement with his

previous reference, in the letter quoted, to the absence of any such document. To this Mumford replied that the paragraph in the letter related to a second agreement which Kerry had refused to give him at Oamaru. The agreement now produced was alleged to have been signed by Kerry, Mumford, and a member of the crew, a young man named Freke, who signed as a witness. The data collected by Captain Willis were now handed over to the police authorities, who, after further investigations, arrested Kerry, Mumford, and Freke on a charge of wilfully wrecking the Ariadne.

The trial judge in this extraordinary case—in some respects unique of its kind in New Zealand and full of interest for the legal mind—was Mr Justice Denniston (afterwards Sir John Denniston), and the Crown Prosecutor was Mr T. W. Stringer (now Sir Walter Stringer), who had with him Mr Michael Myers, now the Rt. Hon. Sir Michael Myers, Chief Justice of New Zealand. Kerry was represented by the late Mr C. P. Skerrett, later Chief Justice as Sir Charles Skerrett, and myself, and Mumford's defence was in the hands of Mr George Harper, later Sir George Harper. Mr Harry Harvey, who when I commenced practice was associate to Mr Justice Williams, appeared for Freke.

Strong exception was taken by Mr Skerrett at the trial to the written confession being put in as evidence against Kerry, on the very proper ground that the promise by Captain Willis to give a monetary consideration for such a confession was calculated to induce Mumford to make an undue admission of guilt. The objection was upheld by His Honor.

III.

Opening the case for the Crown, Mr Stringer laid special emphasis on the importance of the alleged written agreement between Kerry and Mumford. He described it as, for the most part, merely the usual formal agreement between owner and master with the exception of the concluding words, written in the same handwriting as the rest, which was Mumford's:

> . . . and a further sum of £400 if the vessel is totally wrecked.

Mr Stringer said that the document had been examined by experts, whose opinion it was that the incriminating words were written at the same time, and with the same pen and ink, as the purely formal text of the agreement. In the light of after events, it is amazing that the Crown experts should have omitted to test the writing from the angle, or point of view, which occurred to me when I first saw the document at the preliminary hearing at which I appeared alone for Kerry.

It will be appreciated that a vast array of evidence was adduced at the trial. Much of it does not require mention here, but it should be of interest to dwell briefly on the more material points. The most damning indictment was the alleged agreement which was sworn to by Mumford, and which was accepted by the experts; but, in addition, there was evidence of conversations between Kerry and Mumford which alleged such an arrangement as was charged against them. Fortunately for Kerry, and to the confusion of Mumford, I was able to expose the unmitigated fraud of that agreement and prove beyond question that the master of the Ariadne was a liar, a perjurer, and a forger.

Before leaving Christchurch after the preliminary hearing I arranged with my agents in that city to have the agreement photographed, and after the negatives had been brought to me at Dunedin I consulted a well-known Dunedin photographer, Mr Fieldwick, who undertook to have substantial enlargements made. Then in his studio the enlargements were thrown on to a screen by means of a magic lantern, and the handwriting was carefully examined. Without difficulty it was possible to detect a point of the greatest importance, which indicated the perpetration of an impudent fraud. The words in the main part of the agreement had been traced over, apparently by the same pen and with the same ink that wrote the latter part, and my conclusion was that the incriminating words had been added to the agreement at that time, since they showed no sign of having been overwritten.

It was at the adjournment on the second day of the hearing that we decided to disclose to the Counsel for the Crown what I had discovered by means of these practical tests. Among the witnesses already called was a seaman named Wynd, who said he had overheard a conversation between Kerry and Mumford in which reference was made by Kerry to the agreement to wreck the yacht, and also to the specific amount of the consideration to be paid to Mumford. The witness also spoke of the special provisioning and fitting of the ship's lifeboat at Sydney prior to the voyage across the Tasman. Wynd also gave evidence of the stranding of the yacht, but under cross-examination admitted having quarrelled with Mumford on the trip over to such an extent that the master had tried to strike him.

The last Crown witness on this second day was a bank official who said he considered that the whole agreement had been written by Mumford, and that he could find no indication of any part of it having been written after the main text had been penned.

This, we thought, was the appropriate time to make our disclosure, and that evening we apprised Mr Stringer and Mr Myers of what had been discovered. I detailed the tests made, and invited them both to examine the enlarged photographs under a microscope. Both did so, and after the copies had also been examined by Dr Chilton, one of the Crown's expert witnesses, my learned friends were satisfied that the document, which the defence admitted had been written in entirety by Mumford, was in part at least a forgery. They were agreed that the latter portion had been penned subsequently to the signing of the document by Kerry, Mumford, and Freke, and that the original text had been traced over in an attempt to make it appear that the whole was written in the same ink and signed by all three.

There was a sensational opening to the third day's hearing. Mr Stringer, with characteristic fairness, intimated that the Crown did not desire that the agreement should be presented for the jury's consideration, and asked for its unreserved withdrawal. He explained to the Court the tests that had been applied, and concluded with the observation that the Crown experts were satisfied beyond any doubt that the vital words in the agreement had been added by Mumford after the three signatures had been appended.

His Honor, at the request of Mr Stringer, promptly directed the jury to find Freke "not guilty," and he was at once discharged.

IV.

Mumford's fate at the hands of the jury was now sealed, but the Crown continued to adduce evidence against Kerry. An A.B. named Olsen, who had been a member of the crew of the yacht on the voyage to Thursday Island, said he had been told by Mumford that he intended to wreck the Ariadne, and was offered £20 if he would go to New Zealand as mate. This offer he refused. He further deposed to having heard certain incriminating conversations between Kerry and Mumford. From his evidence it appeared that he was a close friend of Mumford's, and had been in correspondence with him.

A Mrs Downing, barmaid in the Port Jackson Hotel in Sydney, also swore that she had overheard Kerry and Mumford in a private bar discussing the casting away of the yacht. In cross-examination it was disclosed that she had been a good deal in Mumford's company in Christchurch after the wreck, but she denied being in league with the police to trap Mumford, although it transpired that during one of her interviews with Mumford two detectives were hiding behind some curtains in the room.

Kerry's defence was opened by Mr Skerrett, and his masterly address was of great assistance to the defence. Most of the evidence called was of an expert character, that of Captain Spooner, of London, a naval architect and master mariner, being specially singled out for mention by Mr Justice Denniston on account of the lead it gave the Court on the subject of the value of the yacht.

Captain Patteson, one of the assessors at the Nautical Inquiry, said that there was nothing about the yacht's course to suggest that she had been wilfully wrecked.

Captain Crouch estimated the course taken on the night of the wreck at about 12 miles from the shore instead of 20 miles as Mumford believed. The coast at that point, he said, was a most dangerous one to navigators unfamiliar with it. This was confirmed by Captain McLellan, who said that currents off the Waitaki coast were variable and a source of danger at all times.

Captain Spooner was unusually well informed as to the value and type of the craft in the case, as he had been aboard the Ariadne at Cowes in 1897, when he found her a well-built boat from the stocks of one of the best firms in England, and a fast sailer. As she was then, excluding ballast, he thought she was worth from £6000 to £7000. About 1897, he said, schooner-rigged yachts had gone out of fashion, but they had since come into favour again, and he considered that the Ariadne was then worth more than when he had seen her at Cowes. The witness explained that it was a usual practice at Lloyd's to insure such a craft for an amount about twenty-five per cent. in excess of the purchase price, and stated that he himself had purchased a yacht at Cowes for £9500 which he had insured for £15,000. He was of the opinion that £10,000 was not too high an insurance for the Ariadne to carry.

Further suggestion of conspiracy was introduced by the evidence of Mr Walter L. Thompson, a Sydney solicitor who acted as Kerry's legal adviser. He told the Court that in April the witness

Olsen and a man named Day came to his office looking for Kerry. When told that Kerry was in New Zealand, Olsen said he knew the Ariadne had been wrecked, and wanted some money from the owner, who, he said, had engaged him at £6 a week until the yacht was lost, with a lump sum of £20. The other man supported this story, and Mr Thompson asked them to return in the afternoon. In the meantime he referred the matter to the police, and when the two men returned he informed them of what he had done, and said also that he would report the whole thing to Kerry. Both men then stated that it was Mumford who had arranged with them about the wreck, whereupon Mr Thompson ordered them out of his office and warned them that he would advise Kerry to prosecute them.

Kerry was not called to give evidence in his defence, and when the final witness had been heard it became my duty to address the jury and review the evidence. A vivid memory with me is the feeling of gratification with which I received Mr Skerrett's suggestion that I should make the final plea to the jury. To one so young in his profession it was a Heaven-sent opportunity, and I recall still the assurance and vigour with which I addressed myself to the task.

V.

Separating the case against Kerry into two sections:

(a) That Kerry counselled Mumford to wreck the Ariadne, and

(b) That the vessel was deliberately cast away,

I submitted, first, that nothing Mumford said could be regarded as evidence against Kerry. The reason for Kerry's staying in Sydney had been explained by his solicitor, and it was absurd to suggest that the portmanteaux, travelling bags, and personal chattels which he took ashore at that port constituted stripping the yacht, more especially as he removed them quite openly and without stealth. Moreover, the refitting of the yacht's lifeboat prior to the voyage was no more than the proper thing to do. In rebuttal of the Crown evidence there was the testimony of Captain Patteson, Captain Crouch, and Captain McLellan, all of whom were agreed that the Waitaki coast was dangerous, and that a stranger might easily encounter trouble there. If, therefore, Mumford was guilty of an error of judgment, there was some excuse for it. It did not point to a deliberate casting away of his ship.

The Crown had suggested that the over-insurance of the yacht provided a motive for the crime, but it was my contention that Lloyd's must have been aware of the ship's value when they gave a £10,000 cover. In addition to Captain Spooner's evidence on this point, there was the fact that the Ariadne cost £30,000 to build and was purchased at a very low figure by Kerry. Then again the yacht was insured when she accidentally struck the reef at Thursday Island. If the intention was to cast her away for the insurance money, why did not Kerry let her bones rot there? Were not both time and place opportune for the carrying out of the criminal design alleged against the owner? Actually it was Kerry himself who came off from the shore and, by his own efforts and skill, successfully refloated the vessel.

Dealing with the second aspect of the case—that Kerry procured Mumford to cast the ship away—I showed that the Crown relied mainly on the alleged agreement and the testimony of Mrs Downing and the seaman, Wynd. It was ridiculous in the first place for anyone to ask the jury to believe that two men would hatch such a crime in a hotel bar in the presence of a barmaid, and it was hardly likely that if what Wynd said were true he would not, in his evidence at the Nautical Inquiry, have made some mention of the conversations he said he heard between Kerry and Mumford. In any case, if he were an honourable man, would he not in the circumstances have refused to sail under Mumford or be employed by Kerry? I submitted that if the jury doubted the evidence of these two witnesses the Crown case must fall to the ground.

Turning then to the agreement, which until two days before the Crown had asked the jury to regard as genuine, I emphasised how it had been proved to be a forgery. The Crown itself was prepared to admit that this cornerstone of its case was false. What did this mean? It meant that if Captain Willis had not dangled £400 under Mumford's nose that agreement would never have been produced at all. If evidence was to be paid for in that way, who would be safe from false witness? If evidence was to be bought, there would always be men blackguard enough to manufacture it, provided the price was high enough, and in the present case, if it could be proved that some of the evidence was purchased at a price, who was to say that the rest of the testimony was not also

procured in the same way? If one part of the evidence were false, there was justice in submitting that it was all open to doubt.

Mr Stringer replied on behalf of the Crown, and, looking back over his remarks, I cannot help being struck by the singular impartiality of his approach to a situation that could not have been very satisfactory to him. The Crown, he said, held no brief for Captain Willis, and did not propose to defend his conduct in purchasing Mumford's evidence. There could be no question that the offering of a reward was calculated to induce false admissions, and when the reward was offered by a private individual that danger was increased. He said that the course which Mumford said had been taken was not correct, and that weight was lent to that view by the fact that the chart had been mysteriously burnt. Wynd's story, he admitted, was highly improbable, but there was no reason to believe that Mrs Downing hoped to reap any particular reward, or that her story was an invention.

Mr Stringer questioned Kerry's object in sending the Ariadne away from a free port like Sydney to be fitted and provisioned in New Zealand, and he suggested that it was strange that a man of means with such a craft as the Ariadne would entrust the vessel to a man like Mumford on an introduction by Olsen. In conclusion, he said that he was not concerned about obtaining a verdict for the Crown, but he felt it to be his duty to assist the jury to wade through the maze of fraud and trickery which had characterised the case.

It did not take the jury long to make up its mind. After a retirement of two hours it returned

with a verdict of acquittal for Kerry. Mumford was found guilty, and was sentenced to four years' imprisonment.

Undoubtedly one of the outstanding features of the case was the extreme fair-mindedness and impartiality which Mr Stringer brought to his task as Crown Prosecutor. After the trial Kerry expressed his appreciation of that attitude in a letter to the Press, and since his retirement from the Bench I have more than once expressed similar sentiments to Sir Walter on what was in many respects a model of prosecution. At this juncture, too, I should also refer to the able manner in which Mr Harper conducted the case for Mumford. His position was a difficult one from the outset, but he fought valiantly, and it was only the insurmountable barrier of evidence that defeated him.

The case had its sequel in London later in the year, but I was not professionally concerned in the final washing up of the Ariadne wreck. Kerry returned to England and took the necessary steps for the recovery of the insurances held by Lloyds. What was actually paid I never heard, but I believe the matter was settled to the satisfaction of Kerry and everybody concerned, except Mumford.

CHAPTER XVI.

Baby-Farming at Winton.

I.

Among the twenty murder cases in which I have been briefed—and the reference may even be extended to cover the history of crime in this country—there has surely been no sorrier dossier than that of the infamous Minnie Dean, who, a little over forty years ago, was widely spoken of, with approximate accuracy, as the Winton baby-farmer. Under the guise of philanthropic and benevolent motives this sordidly mercenary and, in many respects, amazing woman received infants as a profession, and, apparently, destroyed them. Generally they were the unwanted children of youthful folly and disgrace, a circumstance which no doubt contributed largely to the temporary success of her gruesome operations.

Mrs Minnie Dean was tried for the murder of only one child, but the mass of evidence piled up against her during the protracted proceedings that followed the discovery in a flower bed at "The Larches," Winton, of two bodies and the skeleton of a third, strongly suggested a systematic programme of child murder. It would be idle, and at this stage unpleasant, to speculate how many of the young lives entrusted to her care were ruthlessly ended, but the front garden of the small and unattractive farmsteading occupied by the murderess and her husband in the obscure little Southland township yielded up the remains of at least three. Whether her victims were few or many, she paid

the supreme penalty of crime, and achieved the highly dubious distinction of being the only woman ever to die on the scaffold in New Zealand. Incidentally, she was also the only client of mine to suffer the death penalty.

There was an incredibly macabre touch to the woman's operations which at the time set the country agog with horrified interest. Although the mind shrinks with loathing from the conscienceless brutality of her crime, it is impossible not to be impressed by the iron nerve and immovable composure of Minnie Dean in circumstances that might reasonably have compassed the distraction of a strong man. With ignominious death staring her in the face throughout the long and weary days for which she confronted her accusers across the floor of a crowded courtroom, she held her head high, and when it was all over listened unmoved and with expressionless face to the awful pronouncement of her doom by a Judge who had almost dared the jury to compromise by returning a minor verdict of manslaughter. As she climbed calmly to the gallows, she retained perfect command of speech and movement, and in the moment when she looked into eternity she continued stoutly to protest her innocence.

One of the most curious features of this extraordinary crime was the complete ignorance of Charles Dean of the bloody practices indulged by his wife. Early in the case he was coupled with the woman in the charge, but while the hearing was still in its preliminary stages he was discharged, in the words of the presiding Magistrate, " without a stain on his character." Sober, home-loving folk from end to end of the country shuddered under a

thousand evening lamps when the grim and ghastly story of Minnie Dean's infamy was narrated by the prosecution. Imagine a being with the name and appearance of a woman boldly using a public railway train for the destruction of her helpless victims, sitting serene and unperturbed in a carriage with one tiny corpse in a tin box at her feet and another enshrouded in a shawl and secured by travelling straps in the luggage rack at her head. The very thought of it is like the wind in the chimney of a haunted house, chill, blood-curdling, frightening. And at the end of one of her journeyings she carelessly gives a boy sixpence to carry her ghastly burden from the railway station to an hotel. Her methods were simple for all their furtiveness, and they were materially strengthened by the fear of exposure which sealed the lips of those who unwittingly supplied her with victims.

For a premium, never apparently very large, she would undertake the adoption of " nobody's child." Her affectations included a mock concern and anxiety for the health and comfort of her charges, which found expression in such of her correspondence as has been preserved. But these representations of benevolence barely outlived the financial settlements upon which she insisted, for on the receipt of the stipulated amount the child would generally disappear, ostensibly passing into the care of " a lady " whose name or abode was never mentioned. This profitable procedure might have gone on unmolested for a much longer time had it not been for the sombre reflections induced in a railway guard, who could not understand how a woman could board a train at one station with a child in

arms and alight at another without it. The exhaustive inquiries that were subsequently made, and the excavations undertaken by the police at "The Larches," disclosed the evidence that was to deliver the criminal to the hangman. Concentrating on the case of one cnild, the authorities built up a convincing story of sudden and violent death, and at the same time presented suggestions of foul play with respect to half a dozen other children which could hardly be ignored. Tried and found guilty on this single indictment, the miserable woman went to her death with the mystery of these others still officially unsolved, but completely and terribly explained in the public mind.

II.

On June 18, 1895, the trial of Minnie Dean was commenced at Invercargill, the charge being that "on May 2 she did murder an infant named Dorothy Edith Carter." Mr Justice Williams was on the Bench, and the prosecution was in the hands of Mr T. M. Macdonald and Mr W. Y. H. Hall, of Invercargill. I appeared for the accused, who from the commencement of proceedings was perfectly calm in her demeanour, and showed no visible sign of being greatly concerned about her precarious plight.

No doubt by this time she had become to some extent accustomed to her position, having already appeared at three inquests and a magisterial inquiry, at which I appeared for her with Mr J. A. Hanan (now the Hon. J. A. Hanan). As it was thought that the child had been murdered somewhere in the Otago district, probably at Clarendon, the accused was taken to Dunedin and held in

custody there pending the opening of the case. The Milton Court, being nearest to the supposed scene of the crime, was chosen for the original proceedings, but after an intensive but unsuccessful search of the country around Clarendon, including the swamplands adjoining Lake Waihola, the prisoner was remanded to Invercargill.

An unfortunate demonstration of public opinion occurred in Milton on the morning of the hearing, and I could not help feeling at the time that it was hardly fair of the police to ask the accused woman to walk through the streets of the town on her way from the railway station to the courthouse. She was the cynosure of all eyes, and among the remarks flung at her from the groups of bystanders that collected to observe her progress was, "Where's the rope?" After all, the woman had still to stand her trial, and whatever the evidence against her, she had yet to be found guilty.

The hearing in the Supreme Court occupied over three days, during which time no fewer than forty witnesses were called by the Crown. Very few of these were cross-examined at all, and those that were singled out were not kept long, with the exception of a young girl of fifteen years of age, who had lived with Mrs Dean for five years, and was able to speak of her general treatment of the children under her care. At the close of the first day's sitting the Crown Prosecutor intimated that he proposed to adduce evidence relating to the death of another infant, Eva Hornsby, whose body had been found with that of the child Carter in the garden at "The Larches." His object was to show that the death of the Carter baby had not been accidental. I objected to such a course, and the admissibility of

the evidence was argued on the following morning. His Honor decided to admit the evidence, and refused to reserve the point, although he noted the objection.

At a later stage of the trial evidence was also tendered that the prisoner on previous occasions had received four other children, and that these also had disappeared, the accused's story being that she had given them to other people to adopt. This evidence, together with police testimony of the finding of the skeleton of a child about four years old in the garden at the accused's home, was made the subject of a further objection by me, but His Honor ruled as before. In July the matter was argued before the Court of Appeal, which held that all the evidence objected to had been properly admitted, and that the fact that it merely fortified an already strong case of design made by the Crown was no objection to its admissibility. The Court regarded it as immaterial that the bodies of four of the infants received had not been recovered or identified, and that the skeleton found could not be identified as that of any child received by the prisoner.

III.

The story told by the various witnesses for the prosecution was a simple one; too simple, in fact, to encourage any real hope of a successful defence, and sufficiently direct to represent a genuine challenge to a young man who was, I fear, still at that idyllic stage when he considers that obstacles are only set up to be surmounted and that difficulties only exist to be conquered. The evidence showed that on May 23, 1894, an unmarried woman living with her mother in Christchurch gave birth to the

child which Minnie Dean was alleged to have murdered. Some months after its birth the grandmother negotiated with the proprietress of a small registry office in the Canterbury centre for the adoption of the child. Advertisements were inserted in the newspapers inviting someone to adopt a female child, and in due course they brought a response from someone who signed herself "M. Cameron," and gave her address as "'The Larches,' East Winton, Southland." Some correspondence followed between the two parties, and "M. Cameron" finally wrote as follows:—

> Dear Madame,
>
> In reply to yours of March 6, I will take the child referred to on the following terms: That my train fare be paid, and that I receive £4/10/- per quarter for twelve months; that my solicitor prepare the deeds of adoption at my cost. I will also register the adoption, and they to pay your office fees. I would like, if it could be arranged, that the child be brought part of the way to meet me. I would like to be assured that the child is healthy. If terms accepted, will you send particulars, so that my solicitor, Mr Raymond, could prepare the deed, which would be forwarded to you to witness the signature. On the other hand, I am willing to take the child without any knowledge as to its parents, so long as they remain in ignorance of my name. In that case, I would register the adoption just the same, but would not require an agreement, and I would pay half of your fare. The quarterly payments could be paid into your office, which, you, after deducting commission, could post to me.
>
> P.S.—I should like if this could be arranged as soon as possible, as the days are advancing, and it will be chilly travelling for the little one at night.

In the light of subsequent events, what a curious epistle to be penned by one whose intentions

were so grim. It was eventually decided that "M. Cameron" would send an elderly woman, "Mrs Grey," to Bluff to take delivery of the child at an appointed place. The child's grandmother took the infant to the Bluff by steamer, and after handing it over to "Mrs Grey," left on her return north. It was shown by the Crown that all the letters addressed from "The Larches" were written by the accused, and that, in fact, "M. Cameron," "Mrs Grey," and the prisoner were one and the same person.

Leaving her young charge in the care of a Miss Cameron, who kept the private hotel where the rendezvous had been fixed, the accused's next move was to visit the only chemist in the Bluff and buy sixpenny worth of laudanum, signing the poison book in her capacity of "Mrs Grey." The handwriting in this book was the same as that in the letters to Christchurch, and was identified as that of the accused. That afternoon Mrs Dean left for her home, taking the infant with her. She did not leave the train at the Winton station, but alighted at a flag station, known as Gap Road, where she was met by a young girl, Esther Wallis, who accompanied her to "The Larches" on foot. Her reason for leaving the train at this point was said to be that the accused did not want the police to know that she had the custody of a child under two years of age in an unregistered house, that being an offence under the Infant Life Protection Act.

For two days the child remained at "The Larches," and the girl Wallis became very familiar with it. Its days, however, were numbered, for on May 2 Mrs Dean said she was going away. Esther Wallis accompanied her a part of the way to a

station north of "The Larches." She had with her the child, whose name she said was Dorothy Edith, a small handbag, and a tin hat box, which was empty. She boarded the Invercargill-Kingston train and travelled with the child and her packages as far as Dipton, where she alighted and went to an hotel. A man named Baker met her at the train and carried her hat box to the hotel, where she stayed until the evening train at about 7 or 8 o'clock. Baker saw her back on to the train, and told the jury that the hat box was very light and, he thought, empty. Mrs Dean had the carriage to herself after leaving Dipton, and the railway guard gave evidence that on his first passage through the train to check tickets he noticed the prisoner, the baby, and the tin hat box. On his return later he did not see the child, but noticed the hat box again. On arrival at Lumsden the accused gave a boy sixpence to take her hat box across the road to Crosbie's Hotel. This boy, together with servants at the hotel, testified that the box was by this time very heavy, and the wife of the licensee of the hotel gave evidence that Mrs Dean had no child with her when she arrived at the hotel. On the following morning the accused left on her return to Gore, whence she took train for a northern destination, this time to take delivery of another child, Eva Hornsby, with respect to whose death evidence was adduced during the trial for the purpose of showing that the Carter baby did not die as the result of accident or criminal negligence.

It transpired that the Hornsby infant had been entrusted to the prisoner at a meeting which she had arranged with the child's grandmother at Milburn. The extraordinary nerve of the woman

is illustrated by the fact that she brought the body of the Carter baby all the way from Lumsden in a tin hat box to meet Mrs Hornsby. The two women met at Milburn, and went by train to Clarendon, the hat box with its gruesome contents being left in the waiting room at Milburn. Arrived at Clarendon, Mrs Dean alighted from the train and was handed the Hornsby baby, plus £9/10/- by Mrs Hornsby, who, it should be stated, had got in touch with Mrs Dean through a newspaper advertisement inserted by "Childless." Mrs Hornsby now returned to Dunedin, leaving the accused to await the south train by which she proposed to return home. While she waited for her train, Mrs Dean asphyxiated the child and then rolled it up in a shawl, which she fastened with travelling straps. When she boarded the train, she placed this in the rack above the seat, and at Milburn she collected from the waiting room the tin box with the corpse of the other child, so that on the journey to Clinton she had one body beneath her feet and one above her head. Before she reached Winton both bodies had been placed in the tin hat box.

On the following evening the prisoner was again heard of at Winton, arriving with the inevitable tin box, a brown paper parcel, another parcel wrapped in newspaper, and a third enclosed in a red shawl secured with travelling straps. Two of these were left at the local butcher's and the box and the third parcel were carried home by Mrs Dean and the girl Wallis, who met her at the train. The accused said that the hat box contained bulbs with earth around them when Wallis remarked upon its weight, and as they were nearing the house she told the girl to hide the box among some rushes

THE AUTHOR IN HIS LATE TWENTIES.

growing beside a ditch. That night Charles Dean asked his wife where the tin box was, and was told by the accused that it was outside, full of bulbs and earth. The next morning the girl was instructed to bring the box into the house, which she did. Mrs Dean met her at the door and took the box from her, placing it under her bed. The parcels which had been left at the butcher's and the one brought with the box were opened in the presence of the girl, but the box was not, and the girl did not see it again until the following Wednesday, when she noticed it standing open outside the front door. The plants that had been brought home had by this time been put into the garden, and it was in the plot which contained them that the police, after Mrs Dean had been arrested, found the two bodies.

IV.

Medical and pathological examinations and analyses of various organs of the body of Dorothy Edith Carter, carried out by Drs Young and McLeod and Professor James Black, were outlined, and served to show that death was due to a poisonous dose of opium administered by someone. What the jury was asked to determine was whether the accused caused the child's death, and if so, whether she did it intentionally. The recital of heartlessness and brutality up to this point was shocking enough in all conscience, but the narrative of this amazing woman's machinations was by no means complete. Further evidence was adduced to show that the accused made a practice of receiving children into her care, and that they eventually disappeared. The finding of the skeleton of one of these was definitely established, but there were others of whom no trace whatever could be found.

A single woman at Bluff told the Court how she had given her child to a strange woman named Minnie McKellar, who, she believed, got a premium with the infant. Later, when she visited "The Larches," the witness was told by Mrs Dean, whom she identified as the woman who took her child, that no child of hers had been received at any time. The mother never saw her child again.

Then there was the case of a woman who had had a child prior to her marriage. She entered into an agreement with Mrs Dean to adopt the boy, who was named Willie Phelan, for a consideration of £20. The accused took the child at the Dunedin railway station, and the £20 was paid over about two years later, after Mrs Dean had sued her for it. Here again the woman never saw her child after the payment of the premium, but at one of the inquests it was decided by the jury that the skeleton found in the garden at "The Larches" was that of Willie Phelan.

Mary Cameron, who had lived at "The Larches" for fourteen years, and whose name had been used by Mrs Dean in her correspondence with the relatives of Dorothy Edith Carter, supplied particulars of other mysterious disappearances. There was the case of Cyril Scoular, who disappeared about three years after his arrival at the Dean home at the age of a few weeks. One day the boy was dosed with laudanum so that he would not be cross when the lady by whom he was to be adopted came to get him. Significantly, Mary Cameron was sent away for the day, and when she returned she was told by Mrs Dean that he had gone away with "a lady in a buggy."

The same witness recalled the advent at "The Larches" of a boy named Henry. After eight or nine months he, too, disappeared, again on a day when Mary Cameron had been sent on an errand to a neighbour's. This time Mrs Dean said the child had been taken away by a lady from Wallacetown. Like Cyril Scoular, this child was never seen by Mary Cameron again.

Sidney McKernan apparently suffered a similar fate. He lasted only a few months at "The Larches," disappearing at a time when Mary Cameron was away for three weeks. On her return, she was told by Mrs Dean that Sidney had been adopted by "a lady at Woodlands," but, as usual, the accused did not say who the lady was. About two years later a woman arrived at Mrs Dean's looking for Henry. The prisoner would not allow her into the house, meeting her at the gate and insisting that no child of hers had ever been there.

The web of evidence would seem by this time to have been well and truly woven, but there was also the testimony of the police with respect to the recovery of the bodies from "The Larches" in the rude grave on which the accused had planted flowers to explain away the recent disturbance of the soil. Then there was the identification of the tiny corpses and the repetition of the long tale of intrigue and bargaining with the unfortunate mothers. An amazing feature of the proceedings still was the complete unconcern of the prisoner. No matter how damning the evidence, she listened unmoved to it all, and her composure was the subject of general comment.

On the train journey from Invercargill to Dunedin with Detective McGrath this extraordinary

woman noticed a fellow-passenger staring very hard at her. Turning to the detective, who was reading an evening newspaper at the time, she said:

"Is there anything terrible about me in the paper? That woman is giving me awful looks."

The detective replied that he could not tell her what was in the paper.

"Are they bringing up old matters or are they making fresh discoveries?" she then asked. But once again the detective said he would not tell what the paper said about her case.

Throughout the whole weary business of inquests and trial the iron nerve of Mrs Dean never gave way. From first to last the only time I saw the slightest exhibition of distress or sign of strain was when I told her in the gaol at Dunedin that the police were digging up her garden, and that I had heard that they had found the bodies of two children. She was wearing an apron, and I noticed her pluck agitatedly at the hem of it with the thumb and two fingers. The momentary weakness passed almost as quickly as it came, and I do not think it ever recurred. There was never a tremor in her voice, and she followed the proceedings with the appearance at least of a lively interest, as if she were hearing the slow unfolding of an unfamiliar tale for the first time.

And yet this was the woman who wrote to conclude the arrangements for the reception of Dorothy Edith Carter:

> "You can post me the £10 when it is paid, less the cost of Mr Worthington's sermons. I am well pleased with the account of the child's parentage, and I in return promise to do my duty to the child before God and man, and will try and train her to become a good, useful

woman. When you wire me that the person leaves for the Bluff, please do not mention the child, as I do not wish anyone to know where the little one comes from. When she comes to me, I wish all trace of her parentage to be lost. I want the child to be mine and mine only."

This also was the woman who promised Willie Phelan's mother that she would send a photograph of the boy.

"I have got the boy to bring him up as my own," she wrote, "and I do not want anyone in after years to tell him that I am not in truth his mother. Perhaps you will be able to come and see us some time soon and stay a while with us. It would be a change for you."

V.

Late in the afternoon of the third day of the trial I rose to address the jury on behalf of the accused. Mr Macdonald had been on his feet for an hour and a-half, and in a forceful and vigorous speech he sought to show that the evidence, as a whole, definitely proved that the prisoner had intentionally killed Dorothy Edith Carter. My own task had not been lessened by the introduction of a mass of evidence relating to the death or disappearance of children other than the infant named in the indictment, and I think that the complications arising out of this factor in the case had much to do with the large attendance in the Court at the conclusion of the Crown's address. There was a noticeable curiosity as to the line that would be taken by the defence to answer the submissions of the prosecution.

Only one course was open to me in the light of all that had gone before, and from the outset I endeavoured to show that although many of the facts adduced in evidence were consistent with guilt,

they could also be regarded as establishing another theory—that death was caused by misadventure or by the negligent administration of laudanum. When I sat down at 5 o'clock after speaking for ninety minutes, there was an outburst of applause from the spectators, which, however quickly it was suppressed by the Court officials, encouraged me without in any way altering the expectations I had concerning the ultimate outcome of the case.

After reviewing the evidence in detail and the accused's action as indicated by her own admissions and the statements of witnesses, with special reference to intention and her reasons for concealing from the police her practice of foster-mothering unwanted children, I submitted that the jury could not accept the theory of wilful murder unless they were absolutely convinced that the evidence was not consistent with any other theory. I then turned my attention to the evidence adduced by the Crown with respect to other children who had disappeared. Why had these matters been brought into the case at all? Because the Crown's case was so weak that it needed bolstering up in this manner. If the prosecution's case were a strong one, there would be no necessity to call such evidence. Why had my learned friend called it? Because he knew it was perfectly open for the defence to say that the child died accidentally, in which event his case would fall to the ground. It did not matter if forty children were found buried at "The Larches"; that could not possibly affect the circumstances surrounding the present case. It did not matter whether all those children were murdered; what the jury had to do was to find a true verdict according to the evidence so far as the death of Dorothy Edith Carter

was concerned. Mrs Dean was not being tried for the murder of Eva Hornsby or any other child, but Carter, and with regard to the other remains found, it did not matter how these children came by their deaths if the jury were convinced that Dorothy Edith Carter was accidentally killed.

On the question of motive, I reminded the jury that my learned friend had said that in nearly all cases of murder a motive was assigned. What motive had been shown in the present instance? All the evidence was purely circumstantial. Why should Mrs Dean kill the child? She had received nothing for it. My learned friend had suggested that although she had not been paid the premium, she expected to get the money, and had disposed of the child in the meantime to save expense and trouble. But that theory could not hold water. What security had she for the payment agreed upon if the child had disappeared? Here was an illegitimate child which the parents wanted taken away from home. If she did not get her money, all she had to do was to take the child back to its parents, as she did in the case of the boy Phelan. What was her position if she no longer had the child? She could hardly expect to get her money in that case, so how could the Crown assign a motive for murder. There was absolutely no motive, because it was to her interest to keep the child alive, at least until she was paid.

His Honor summed up on the morning of the fourth day of the trial in his characteristically learned and thorough style. He spoke for two and a-half hours, and the summing-up was very unfavourable to the accused. The verdict of manslaughter for which I had worked obviously did not

appeal to him as a suitable conclusion for the jury to arrive at with regard to the amazing happenings related in the evidence, and on this point he was particularly outspoken:

"It has been suggested to you," he said, "that in this case you could properly find a verdict of manslaughter—that is, if you are satisfied that the accused caused the death of the child by the negligent administration of opium, but are not satisfied that the administration of an overdose was intentional. No doubt if a person administers a poisonous drug, and is culpably negligent in the administration of it, and it was shown that there was no intention to kill, a verdict of manslaughter would be a proper verdict. Such a verdict, however, assumes that the intentions of the person administering the drug are perfectly honest; that the drug, although carelessly administered, is administered in good faith and without the slightest intention to do harm. If the evidence, in your opinion, really points to that conclusion, then manslaughter would be a proper verdict; but I warn you, gentlemen, against returning a verdict of manslaughter unless you are satisfied that that conclusion is fully justified by the evidence.

"Looking at the evidence as it came before the Court," he concluded, "I must say that it seems to me that such a verdict would be a weak-kneed compromise. It seems to me that the real honest issue in this case is whether the accused is guilty of intentionally killing the child or is innocent altogether. I don't think, gentlemen, that I need trouble you any further."

It was not long before the result was known. The jury retired at 1 o'clock and returned in half an hour with a verdict of "Guilty." For all the

impression the foreman's solemn declaration made on the prisoner in the dock, she might not have heard it. She stood unflinching and, to all outward appearances, unperturbed. Asked whether she had anything to say why sentence should not be passed upon her, she replied in a firm, clear voice:

"No. I have only to thank Detective McGrath for the kindness I have received from him."

Every eye in the court was upon her as the Judge assumed the black cap and pronounced sentence of death, but not even the awful periods of the traditional formula could visibly disturb her self-control. There were probably many people in the grim silence of the Court precincts, with no other interest in the proceedings but their own morbid curiosity, who were more affected by the fatal words than the woman who had just been found guilty of the murder of a helpless child, and who, in the opinion of most people, was responsible for the deaths of several more. After His Honor had retired, Minnie Dean walked from the dock without assistance, with head erect and tread as firm as if she were going about the daily routine of duties at home. Her disregard for the doom that had overtaken her seemed complete.

The carrying out of the sentence was delayed by a motion to the Court of Appeal to consider objections raised by me at the trial regarding the admission of evidence relating to the deaths and disappearance of other infants, and on July 27 the Chief Justice, Sir James Prendergast, Mr Justice Williams, Mr Justice Richmond, Mr Justice Denniston, and Mr Justice Connolly refused the motion for leave to appeal, deciding unanimously that the

Crown had no case to answer. Later the Executive Council considered the sentence, and decided that the law should take its course. Two weeks later Minnie Dean paid for her crimes with her life.

VI.

A humanitarian Legislature has placed a ban on the execution of murderers as a diversion for the idly curious or morbidly-minded, but when Minnie Dean went to her death a spellbound journalist was among those who witnessed the final office of her shameful end, and, to the tune of a column and a-half, captured the scene as something to be remembered. Memorable, perhaps, the occasion was, in the respect at least that at no time throughout the nerve-racking ordeal of arrest and trial did this remarkable woman face her accusers more boldly or confidently than during her progress up the broad, sloping steps that led to the gallows.

After four hours' sleep on the night preceding her execution, Minnie Dean rose at 3 o'clock in the morning and wrote a letter in which she casually remarked that when it was delivered she would be in the presence of her Maker. The last quarter of an hour in her cell was spent with the clergyman who had been a constant visitor since her condemnation, seven weeks before, and the only comfort she seemed to require was to be allowed to rest her hand in his until the arrival of the sheriff a few minutes before 8 o'clock with a formal demand for the handing over of her body for execution. This was apparently one of her greatest consolations, for in the early stages of her trial, when she stood with her husband in the dock in the lower court, she frequently clasped his hand

and held fast to it. And, again, when she stood on the drop awaiting the fatal moment, she maintained a firm grasp of the warder's hand until he withdrew it just before the bolt was drawn.

When the doctor arrived and heard that she had eaten no breakfast, he recommended that she be given spirits, but the whisky and water that was brought her remained untouched. For one fleeting moment there were signs of agitation when she said:

"For goodness, doctor, get it over quickly."

At her trial it was stated in evidence that she was addicted to drink and was frequently drunk, but for the seven weeks of her imprisonment awaiting death, when she was entitled to demand any spirits she might desire, she refused all offers of stimulants. Those who witnessed the procession from the condemned cell across the gaol yard to the scaffold were impressed, however unwillingly, by the dignity of her carriage and bearing. With uncovered head held high, she walked to the gallows, mounting the steps to the platform, as one eye-witness said, "more gracefully than I have seen many women ascend the staircase of a first class hotel." Unhesitatingly she made her way to the drop-door, gave a scrutinising glance, first at the gallows and its appurtenances, and then at the little group standing below, and after a loathing look at the hangman, finally took up a stance that facilitated his work as much as possible.

When the sheriff asked her if she had anything to say, she replied:

"I have nothing to say, except that I am innocent."

Then with a muttered "Thank you" to the sheriff, she swayed ever so little, and those who stood close at hand heard her say under the white calico cap which covered her face:

"Oh, God, let me not suffer."

At two minutes past eight the bolt was drawn, and Minnie Dean's debt to society was paid.

So ended the story of one of the most notorious episodes in the annals of crime in this small country, the final echo of which may be said to have been contained in a letter received after her death by Mr J. A. Hanan, who had briefed me to defend her. The document is of interest for the commentary on the woman's character which it comprises. Minus passages of a purely personal nature, it read as follows:

Dear Sir,

I know that in you I can place trust, and that you will act for me in every way as though I were present. I will leave it to you to do the best you can with the manuscript I have left, and, for my husband's sake, to make it as profitable as possible. It will require a great deal of revising, for my brain and memory have been all but gone. Indeed, for weeks after I received sentence I could not put three consecutive words together. The composition and spelling are very defective. In it I have satisfied no morbid curiosity. My aim was to exonerate myself and not to incriminate anybody. [Here follow instructions to her husband about the disposal of the proceeds of the sale of the manuscript.] I trust in you to do your best. Remember me, and that the hand that now is writing will, ere you receive this, be cold in death. I thank you for the attention and kindness you have shown me, and if I am here to-day the fault has not been yours. If I only knew where my children were and what was to become of them I would be at

rest and say God's will be done. I also want you for ——'s sake to have it publicly contradicted about my being a drunkard. There are three hotelkeepers in Winton, and I know that they would be quite willing to sign their name to that effect, and that if I was a drunkard I did not get the drink from them.

Good-bye. May you live to a ripe old age, and may your end be peace, for long ere this time to-morrow I will be cold in death. God bless you.

M. DEAN.

CHAPTER XVII.

The Defence of Prisoners.

I.

The career of Minnie Dean, and the circumstances of her trial and conviction, induce some interesting reflections on British justice which, I think, could profitably be considered here. Superfluous though it may seem at this stage of our national development to dwell upon the virtues of a judicial system which for many years has had no superior in the world, no reminder of the features which distinguish it from the codes of other countries should come amiss. In the first place, let us consider the extreme jealousy of the State in the matter of the life of the subject. No matter how abhorrent the crime, English law displays, perhaps more clearly than it enforces, a respect for human life. Even the worst of atrocities does not expose the prisoner to a hasty vengeance. Time and again it has been strikingly demonstrated that the justice of the nation hedges itself about with every precaution that will ensure for the accused person a calm and impartial trial.

Trials such as that of the Winton baby-farmer illustrate beyond all question the extent to which our criminal code has attained to a proper respect for the life and liberty of the individual. It is a not uncommon attitude in some people to criticise and condemn the system and the principle of the defence of accused persons whose guilt seems apparent. The practice is frequently referred to as an attempt to defeat the ends of justice, or perhaps as an unwarranted interference with the immovable

laws of crime and punishment. I can imagine no more convincing reply to such illogicality than the extent and the effect of the tyranny of the law in days gone by, even in the comparatively recent history of British courts. Life and liberty were not always held sacred by the laws of England or in many of the tribunals which, a couple of centuries ago, rejoiced in the appellation of courts of justice. Time was, within the last two hundred years, when men on trial for their lives were not permitted to defend themselves by counsel, and this deprivation was made because it was considered that the testimony and proof of crime should be so absolute and manifest as to leave no defence against it.

And if we travel back a little further still, it is possible to name a time when no prisoner was entitled to a copy of the indictment against him, or of any of the proceedings. Hearsay evidence and testimonies of the loosest kind were admitted against accused people in the middle of the seventeenth century, and it was not usual to admit to examination at all any witnesses whose evidence might be against the Crown's case. More significant still, persons prosecuted by the Crown were tried by judges holding place and favour at the pleasure of the prosecutors, and by juries that were liable to a fine or imprisonment should they dare to return a verdict that was unpalatable to the court. Officials also were submissive to the influence and domination of the Crown, and commonly procured the services of juries so partial that, as Wolsey said of them, "They would find Abel guilty of the murder of Cain."

> These things have passed upon their mournful way,
> Like the wild wind and the shadows grey,

and through the years that have elapsed there has been a steady but determined process of reform that to-day is reflected in the existence of privileges which the citizens of many other countries may well envy. The accumulation of these privileges has developed in step with, and as relentlessly as, the spirit of English liberty that gave rise to the sense of the equal rights of all men before the law. With such certainty is a fair hearing secured to every man charged with a crime for which he is liable to forfeit his life or liberty, that we are inclined to be forgetful of how hardly this perfection has been won. There were those who wished to, and did, oppose it, even in our own national history, and it is an odd fact that the Habeas Corpus Statute, one of the cornerstones of British law and one of the surest guarantees of public justice in the world, found its way on to the Statute Book in the first place as a result of a practical joke.

When the vote on the Bill to introduce the Statute was being taken in the House of Lords, Lord Grey and Lord Norris were appointed tellers or scrutineers to count the votes. Lord Norris, it is related, was a man "subject to vapours," and was not at all times attentive to what was going on around him. While the peers of the realm were filing in he stood with Lord Grey counting their heads. When a very fat lord came in Lord Grey counted him as ten, as a joke at first, but, realising that Lord Norris was unaware of what he had done, he continued with his misreckoning. The result was that the total of the votes for the Bill was greater than it should have been, and the Bill was passed, notwithstanding that the majority was actually on the other side.

II.

By no standard can there be any justification for the suggestions, so often made in the case of heinous crimes, that a lawyer should not defend the person concerned. It is the duty of every barrister, when offered a brief with an appropriate fee, to undertake the defence. The official recognition of the defence of prisoners is contained in the action of the Legislature in this country in providing indigent persons with counsel by an order of the Court. An accused man, irrespective of circumstances, is entitled to a fair trial, and it is the responsibility of the defending counsel to see that he gets it. For that reason he cross-examines the witnesses for the prosecution to break down the evidence if he has reason to believe that it is untruthful, or perhaps to elicit such additional facts and considerations as might be helpful to the prisoner. He objects to any evidence which for any reason may be inadmissible, and even if such evidence is admitted despite his objection he may still apply to have the question reserved for the Court of Appeal. He may at his discretion call the accused to give evidence in his own behalf, or perhaps produce witnesses to support his story, and finally he addresses the jury and advances any argument that will, in his judgment, put the case in the most favourable light for the accused. Can there be any design on the ends of justice in such a procedure? And how can a prisoner, even if he is entirely and absolutely innocent, do the best for himself in the unfamiliar surroundings of the Court, confronted on every hand by officialdom, of which he may be making his first acquaintance?

Another aspect of the question is that when an advocate appears for the defence the Judge is

relieved of a great responsibility. The Minnie Dean case was an excellent example of the fairness of a criminal trial in this country. As is fortunately always the case in New Zealand, an upright Judge presided, an honourable and fair-minded barrister prosecuted, and the prisoner had the benefit of a defending counsel. The veracity of every witness was carefully tested, and when the evidence relating to other children that were said to have disappeared was challenged the objection was noted. Since the child who was the subject of the charge preferred against Minnie Dean had died of laudanum poisoning, two defences were open to the prisoner. In the first place it was competent for the defence to submit that the overdose of laudanum had been administered by misadventure, in which event the accused would have been entitled to an acquittal. Secondly, it was possible that the fatal dose might have been given as a result of criminal negligence, in which case the woman was entitled to escape on the major indictment of wilful murder and pay only the penalty for the lesser crime of manslaughter. These considerations were submitted to the jury, but they were rejected, and a verdict of guilty of murder was returned.

The noting by the Judge of a counsel's objections to the admission of evidence gives the accused person the right, subject to certain formalities, to have the question of admissibility decided by the Court of Appeal. In the Dean case this was done with respect to the evidence tendered by the Crown on the subject of the disappearance of other children entrusted to the care of the prisoner, but the

Court held that the evidence had been properly admitted. So it will be seen that before punishment can be inflicted for any crime the offender has the benefit of every possible opportunity of refuting the charge made against him. Every ingredient of the crime must be examined and proved against him, and proved beyond any reasonable doubt, and it is difficult to imagine fair-minded persons entertaining any real objection to the operation of such a principle.

CHAPTER XVIII.

The Case of Charles Clements.

I.

Great crimes are commonly produced out of a cold intensity of selfishness or a hot passion of anger, and it is not difficult to say which generally leads to the more detestable results. The visible ferocity or the glare of envy and wild hatred in the criminal who slays his victim is not so loathsome as the cool and tranquil calculation of the wretch, utterly lost in self-content, who is ready, without a particle of malice or compunction, to pluck the lives of others like fruit for no better reason than personal gain or material advancement. Such a contrast exists between the tragic plight of Charles Clements, who was hanged at the end of last century for the murder of his wife, and the notorious Minnie Dean, who, about the same time, suffered a similar penalty for child murder at Winton. His trial was one of the most unorthodox I have ever witnessed, and his persistent refusal to accept the services of counsel, together with the frantic circumstances of the crime and his strange attitude on his indictment and after, strongly suggested that the events which led up to the tragedy had unseated the man's reason, at least temporarily. No evidence was adduced to point to insanity, however, and the issue was never seriously raised nor actually determined.

Notwithstanding that I appeared in the prisoner's behalf at the inquest on his wife, and subsequently at the magisterial hearing, Clements steadfastly refused my assistance in the Supreme Court unless I permitted him to determine the

manner of his defence and more or less direct the conduct of the case. With great scrupulousness the Judge, Mr Justice Denniston, and the Crown Prosecutor, Mr F. R. Chapman (later Sir Frederick Chapman) put everything that was said and proved fairly and legally before the jury, minimising to the utmost the disadvantage under which the accused laboured as his own lawyer; but the just and convincing statement of the case tended—as being the whole truth it could only tend—to the complete assurance that the prisoner was guilty of unjustified and unlawful killing. He was declared guilty by a jury that took only half an hour to consider his case, and was sentenced to death and hanged on April 13, 1898.

II.

My connection with the case went back to some time before the tragedy. Clements murdered his wife on November 15, 1897, but in October a woman came to my office complaining about her husband's treatment of her, and after relating her story she asked me to arrange a separation. I wrote to the husband, and when he came to see me it was arranged that he and his wife should come along together the next day. This they did, and after a general discussion of their respective grievances I suggested to them that for the sake of their two children, aged five and four years, of whom they both seemed to be very fond, they should compose their differences and start afresh.

To the husband I said, "You seem, from what you say, to be very fond of the children and of your wife also, and your wife tells me that she is still fond of you and the children as well. Why can't the two of you make it up?"

The man replied that he was quite agreeable to do what I suggested, but he must insist that his wife sever her relations with a Mrs Ashton. He did not seem to be jealous, but he was obsessed with the idea that his wife went to see this woman only for the purpose of undergoing illegal operations. I asked the wife if she would keep away from Mrs Ashton, and she said she would, although she protested that there was nothing improper in her friendship for Mrs Ashton.

Emphasising once again that it was absurd for two people who still retained an affection for each other and for their children to be quarrelling, I urged them to kiss and "be pals." After they had embraced each other, I gave them half-a-crown and told them to go and make friends again over a cup of tea, and to take some sweets home to the children. "And don't forget there is to be no more talking about the past," I called out after them as they left the room reconciled and, to all outward appearances, prepared to start over again.

A day or two later I went away to Christchurch, and was absent from Dunedin for about a week. On my return I was met as I alighted from the train by a clerk, who said that I was being inquired for by a man at the Public Hospital who had cut his wife's throat and tried to cut his own. I asked who the man was, and learnt that it was Charles Clements. Instantly my mind flew back to the scene of reconciliation in my office. This was the man whom I had last seen going out of my chambers with his arm around his wife a little more than a week before. In spite of myself I could not help wondering whether the dreadful tragedy might

have been avoided if I had not brought the couple together again.

Strictly speaking, there was no reason why I should reproach myself. Like most lawyers, I have, again and again, induced couples to start afresh when they have been drifting apart, and in scores of instances the reconciliation has been lasting. Few people realise how many young people risk letting their marriages go completely on the rocks through a lack of proper appreciation of what they owe to each other as partners in an undertaking, and I do not think it is generally understood how much unhappiness is averted by solicitors who furnish the right word in time. Trifles cause so many upheavals in the early years of married life that kindly advice and sound counsel can often accomplish far more good than separation and maintenance proceedings. Every day some young man is causing trouble because he is disinclined to moderate the habits or pastimes of his single days, or some young woman is responsible for domestic friction which may lead to something worse simply because she cannot spare from her friends, the shops or the pictures the time that is necessary to keep her husband comfortably housed and well fed. Such cases can generally be settled without recourse to the courts, and it is to be hoped that the Domestic Proceedings Act recently introduced into Parliament by the Attorney-General (Mr H. G. R. Mason) will have the result of obviating a lot of this domestic litigation. The idea is an excellent one, and it should succeed if the right type of conciliator is appointed. In the first place, the conciliators should be men of wide worldly experience, with a general understanding of the ordinary human frailties. Women,

I fear, could not be expected to succeed, for the reason that erring husbands generally resent any female interference in their affairs. I wonder how many times it has been found, after sifting squabbles to their origin, that the whole trouble has had its beginning in the meddlesome advice of female relatives of either of the parties. I have had personal assurances to this effect from clients on many occasions, and the women have admitted it as freely as the men.

A case of this kind in my experience will illustrate what I mean. I had succeeded in reconciling a young couple who had two very young children. There had been a lot of trouble, but nothing very serious, and both of the parties were very glad to have it settled. When they left me I was sure that everything would be all right. Judge my surprise, therefore, when a few weeks later I encountered the wife in the corridor of the Law Courts. I asked her what she was doing there, and she replied:

"They've got Jack up for a separation."

"Who's got him up?" I asked.

She then explained that a society had persuaded her to take proceedings against her husband, and when I inquired if she wanted a separation, she told me that she did not.

At that I went into the court, and in the capacity of amicus curiae I asked leave of the Bench to intervene. After I had explained the circumstances to the Magistrate, he adjourned the Court and invited myself and the young couple into his room. The upshot of it was that the Magistrate declared very emphatically that the case should never have been brought, and the young people left the Court. I believe they are still living happily

together, but there would have been a very different story if feminine interference had been allowed to have its way.

III.

In the case of the Clements family, however, the reconciliation was not permanent, as was shockingly demonstrated to Peter Ross, who called at the Clements home on the morning of Sunday, November 16. Unable to rouse anyone in response to his urgent knocking, he forced an entrance and went into the bedroom which was shared by the whole family. The drawn blinds shut out the morning sunlight, and he could not see the shambles which was later revealed by the flickering light of a match. Clements half sat, half reclined on the bed, on the opposite side of which lay a huddled heap which turned out to be the body of Mrs Clements. At the foot of the bed lay the two children, wide awake but deathly silent. The bedding was spattered with blood, and Clements himself was bleeding profusely.

Horrified, Ross asked Clements what he had been doing, and the husband replied:

"I've done it at last," later adding, "I've had great provocation."

Mrs Clements had been attacked with a tomahawk and her throat cut with a knife, which Clements then turned upon himself. In due course Clements was committed for trial to the Supreme Court, where the story of the crime was narrated in full. I appeared for him in the lower Court, but between the time of his committal and his appearance in the dock he conceived some strange ideas as to the way his case should be conducted and as to who should be called to give evidence in his behalf.

I was unable to consent to his proposals, and he thereupon decided that he would defend himself.

But worse was to follow. The prisoner created his first sensation when he pleaded guilty to the charge of murdering his wife. For a moment the Court was nonplussed, and then the Judge, leaning forward, addressed the accused:

"Are you aware of the consequence of your present plea? Do you know what it means? It means that there is only one possible sentence that can be passed upon you, and it involves, of course, the admission on your part that you have done what the law defines murder to be; that is, that you intentionally and without legal excuse murdered your wife. You realise all that, I suppose?

"Oh, no, sir, I deny that," was the prisoner's reply.

At this point I stood up and told the Judge that I understood that the accused's intention was to plead not guilty.

"Well," said His Honor, "he has deliberately pleaded guilty. But the fact that he has in some way or other been misunderstood, or has misunderstood his own conduct, relieves me of a very great responsibility. There is no reason why such a plea should not be recorded, but I would accept it with the greatest hesitation."

After the prisoner's plea had been amended to one of "not guilty," it became my duty to inform the Court that Clements desired to defend himself. I explained that I had acted for him at the Coroner's inquest, and again at the preliminary investigation in the Police Court, but that since then he had informed me that he wished to plead his own cause.

"You are still willing to act for him?" asked the Judge.

"Certainly, your Honor."

"You have told Mr Hanlon you did not want him?" said His Honor, addressing the accused.

The accused replied that he wanted certain witnesses called, and that I had told him that they were no good. He was about to explain why he wanted to call them when the Judge interrupted him:

"I can only say this. You are being tried for your life. You are offered counsel of experience to put the case as favourably as possible to the jury. You may be sure that if he advises you that certain witnesses should not be called, that advice is more likely to be sound than any ideas of your own on the subject. I cannot prevent you from defending yourself, but I can tell you that that is as foolish a course as you could pursue, and it appears to me that, in the painful circumstances in which you are placed, you should reconsider your decision, and think not once nor twice, but many times, before abandoning the offer of legal assistance. Of course, if you accept Mr Hanlon's offer, you must be governed by his advice in the last resource as to the conduct of the case, and if he, in spite of your wishes, declines to call certain witnesses you cannot object to it. I can only advise you, in the circumstances, to reconsider your decision not to be represented by counsel. If you wish to speak to Mr Hanlon about it, you may."

But the accused was adamant. He wished to have his witnesses so that he could speak to them himself.

I then emphasised that the only condition upon which Clements would accept my services was that he should be allowed to call his witnesses. Personally, I was convinced that it would be an outrage to call them, and although he had insisted on them for two months, I thought he would in the end change his mind.

His Honor said there was nothing more he could do in the matter, but he suggested that I should watch the case without actually appearing. Clements agreeing to my assisting him as solicitor, the case proceeded.

IV.

Mr Chapman, opening the case, stressed the deliberate nature of the act with which the prisoner was charged, and referred to the fact that in such a case there was no necessity for the Crown to provide a motive. There was neither difficulty nor doubt as to who perpetrated the deed. The prisoner was a labourer, and his wife, who was 27 years of age, worked as an office cleaner. They had been on very bad terms, and for some short periods had lived apart. Some of their quarrels had been marked by violence. Who exactly was responsible for the conditions under which they lived he could not say, but he did not think that that information was material to the present charge. Counsel referred to the discovery of the crime by Ross, and quoted a police constable who stated that the prisoner had said in the first place that his wife had destroyed herself, and then had told him that he had done it with a tomahawk and a knife. Clements had a punctured wound in his own throat, but he had not completed the act by drawing the

weapon across in such a manner as to sever the large blood vessels.

When Dr Fulton spoke to the prisoner, he said, "All this was brought on by her undergoing illegal operations. She has been carrying on with Mrs Ashton." On the subject of provocation, Mr Chapman said the jury would find no such element in this case. Provocation, he reminded them, was a very different thing from justification for homicide. No amount of quarrelling or, as the accused called it, "jawing" could be regarded as justification for an act of that kind.

Ross, who was married to Mrs Clements's sister, gave evidence of the relations existing between the prisoner and the deceased, and Clements cross-examined him about his sobriety and his treatment of his own wife, to which Ross replied, "If you had been as good to your wife as I have been to mine, you'd do."

Dr Fulton described the wounds inflicted on the woman and the self-inflicted gash in the accused's throat. He said that when he asked Clements why he did not make a good job of himself while he was at it, the prisoner remarked, "It isn't my fault I'm here. If the knife had been long enough I'd have done it." Clements denied that there had been any row, and said that it was all the result of illegal operations.

Further evidence by relatives of the deceased woman and the police provoked the accused to the most wildly irrelevant and improper cross-examination, which drew several rebukes from the Bench. Nothing the Judge said seemed to have any effect on the prisoner until His Honor interrupted determinedly, and said he had already allowed far

greater latitude than the accused was entitled to. With respect to the woman, Ashton, the accused's questions had been improper in any event, and he had no alternative but to direct the witness to leave the box. But when the next witness was called Clements was as bad as ever, and when remonstrated with by the Judge, he said he wanted the public to know the cause of all the trouble. Even when His Honor suggested that the public had nothing to do with it, and advised him to stick to questions that would help his case, the prisoner continued in the same vein.

A police constable who had been placed in charge of Clements while he was in hospital gave particulars of a statement made by the prisoner about his wife. She was always jawing him, he said, and on the night of the tragedy she had taken a tomahawk to him and cut his hand. When she did that, he took the hatchet from her and used it to drive the knife into his own throat. He had not touched his wife, and he could get plenty of evidence to prove it.

When Dr Burns was called for the purpose of stating whether the accused had had any mental treatment when he was in hospital, His Honor said he was satisfied from the accused's conduct in the case that no such state of mind could be attributed to him, so that the point could not arise. That being so, it was not necessary to examine Dr Burns.

At the conclusion of the Crown's case the prisoner called his witnesses. Ignoring the advice of the Judge that his evidence was worthless, Clements continued to try and extract information as to what people had told him and what his wife had told them.

His Honor insisted that it was not legal evidence, and suggested that the prisoner should avail himself of my advice as to what evidence could or could not be given. But Clements refused to seek any help from me, and went on with his questions until His Honor again checked him.

"But even if you prove all you suggest against your wife, it would be no good," Mr Justice Denniston said. "We are not trying to find out whether your wife was faithful or unfaithful, but whether you killed her. Even if what you suggest were a fact, it would not be evidence in your favour. It would only be evidence against you as showing a motive on your part. Do be advised by those whose advice is likely to be sounder than yours, and give up this sort of evidence. Your counsel understands these things far better than you do."

"I cannot understand it," the accused said. "Everything is one-sided here, and one side must be kept completely dark."

"I am sorry you should say so," said His Honor, "but we cannot alter the law of the land as to what is evidence."

When the first of the prisoner's witnesses was ordered to stand down, I rose and explained to the Court that this was the sort of evidence that the prisoner had insisted on calling. There were thirteen such witnesses, and if they all told the story that Clements said they would, the whole of their evidence would be irrelevant.

After again chiding Clements, His Honor said that the only thing to be done was to allow the witnesses to be called, and then to decide whether their evidence was admissible or not. One by one the witnesses filed in and out of the box, and before

any of them had gone very far His Honor had to reject the testimony on the ground that it was not evidence. Some of them did not give the answers the accused expected, and roused him to the complaint that "nobody seemed to know anything about anything."

Clements himself then went into the box and described a quarrel just prior to the affray. He was castigating his wife for taking drugs, and she said she would take them as much as she liked. He said she was very foolish, whereupon she cried out that if he did not stop growling she would knock him down.

"She stooped to pick up the tomahawk to let me have it," he said, "but I stopped her. Then she grabbed a knife off the washstand and slashed my wrist. There are marks to prove it. When she did that I hit her on the head and lifted her on to the bed, where I cut her throat. I did not use the tomahawk on her, but I did use it on myself. The children did not see it. They were asleep. Some time next day when I got up, the children asked me for something to drink, and it took me all my time to walk into the kitchen to get it. That is all I know about it."

When asked if he wished to address the jury, Clements said there were one or two things he would like to have said, but they had gone out of his head.

His Honor said that if he thought there was anything that the prisoner could say to the jury that might help him he would adjourn the case to allow him an opportunity of doing so, but he could not see that such a course would benefit the accused in the least.

There were no addresses to the jury either by the prosecution or by the prisoner, and His Honor summed up very briefly. Throughout the whole of his experience in Court at the Bar and on the Bench, he said, he had never had to deal with a case that presented such painful and peculiar features. It was a capital crime, but it did not follow that it possessed any special difficulty. Although the case had taken a considerable time to try, the questions had been narrowed down to the very simplest. It was, he regretted to say, a very painful and simple case, and he felt bound to say that the prisoner's lack of counsel, which he had obstinately refused to employ, could not be said to have affected his chances in any way. The case was so simple in its character and the evidence of the witnesses so uncontradictable and incontestable that he could not conceive any line of cross-examination that could have been pursued by counsel to the advantage of the accused.

His Honor traversed the evidence, and dealt with the aspects of mitigation and insanity. He feared there was nothing to suggest that the killing was justifiable, and on the score of insanity it was for the jury to say if it was possible to suggest that the accused was not capable of knowing what he did or that it was wrong. The fact that it was one of the most painful cases he had ever encountered could not remove it from the ordinary principles of justice and rules of evidence, and, that being so, it was only the duty of the jury to be satisfied that the accused inflicted the wound from which the woman died.

The jury took half an hour to make up their minds, and returned with a verdict of "Guilty." In

reply to the traditional question whether he had anything to say why sentence should not be passed upon him, Clements said:

"No, only that I had cause to do what I did do. If she had not picked up the tomahawk I should not have done it."

When sentence of death was passed upon him, he showed not the slightest emotion, and left the dock unaided.

On the fateful morning when he stood upon the scaffold he appeared indifferent to what was going on about him. He interrupted the reading of a prayer by a clergyman to say, "God bless Maggie and Willie," and immediately followed those words with imprecations. Then in a quieter tone he said: "A policeman said I told him I killed my wife. I deny using those words."

Within a few minutes he had expiated his crime.

V.

From what I knew of Clements, and I had many opportunities of studying the man from the time of his first interview with me in my office to the conclusion of his extraordinary trial, I was satisfied that, although he may not have been insane in the eyes of the law, his mental condition was such that the extreme penalty should not have been exacted. His attitude throughout the trial, and in the weeks that led up to it, showed that although he may have known the nature and quality of his act in taking his wife's life, his mind must have been at least temporarily deranged. Is it possible to believe that any man in his right senses could have so brutally murdered the mother of his children while

they were lying at the foot of the bed on which the woman was killed? It was stated in evidence by the accused that the children were asleep when the deed was perpetrated, but I cannot conceive of anyone sleeping through the noise that must have accompanied or preceded the killing. But whether the children were asleep or awake, it is not to be thought of that a man in a normal state of mind could be so lost to all sense of the enormity of his crime as to carry out so terrible a design in the presence of such infants.

Being firmly convinced on this point, I wrote to the Executive Council, and made various representations with the object of obtaining the commutation of the death sentence. I was informed that the Executive Council, after considering my representations, had decided to postpone further consideration of the matter until it had received a report on the condemned man's mental condition from three alienists who had been appointed to examine him. The letter to the Executive Council is of interest for the statement which it contains of an aspect of the case which, in the absence of addresses by either the prosecution or the defence, was not fully explored at the trial. It read:

> Gentlemen,
>
> In the case Regina v. Charles Clements I was acting for the prisoner until the day before his trial, and had carefully prepared and considered his case with a view to putting it in its most favourable light before the jury, but on the day of the trial he conducted his case in person. This prevented my view from going before the jury, and I beg now to take the liberty of addressing you upon the matter, as I hold very strong and decided views with regard to the responsibility of the prisoner for his act.

During the time Clements was awaiting trial I had frequent interviews with him, and although it did not appear to me as a layman that he was a lunatic, still it was apparent that his mind was unbalanced. He seemed to have no appreciation of the gravity of his crime or of the seriousness of his position, his whole theme at all times being the infidelity of his wife, which, as far as I could ascertain, could not be established by the evidence. This suspicion, I take it, was merely a delusion of the mind.

Again, his sense of proportion is considerably deranged, for he believes that for his wife's supposed misconduct he was justified in killing her, and it appears from the evidence that he thought it necessary in order to kill himself to drive a knife into his throat with a tomahawk. He said he would have succeeded only the knife was not long enough. The blade was about three inches long. Further, the most trifling and harmless act or remark of his wife was construed into the clearest evidence of her infidelity.

Dr Brown's evidence went to show that the condemned man had been operated on for varicocele [here were included technical details of the complaint with surgical opinions on its effect]. . . . I gather from the references quoted, and from the medical experts here to whom I have referred the matter, that Clements is a monomaniac, suffering from delusions of suspicion, and it is laid down in "Clouston on Mental Diseases" (second edition, p. 258) that the most painful cases of monomania are those where a husband, suffering from delusions of suspicion, becomes insanely jealous of his wife and suspicious of her fidelity without reason.

I know, too, from an interview which Clements and his wife had with me in my office a week or so before the tragedy that he was passionately fond of his wife. The conduct of the prisoner at the trial was of a most extraordinary character, as you will observe from the reports of the proceedings which I append hereto.

There is only one other matter which I would draw your attention to. The learned Judge who presided at the trial, in effect, stated that there was no suggestion of the defence of insanity, or I would, in the interests of the prisoner, have submitted it to the Court. No doubt it is true that there was no defence of insanity; but I felt then, and feel now, that there is some derangement of the condemned man's mind, not amounting to what is called "legal insanity," but nevertheless claiming your consideration, and I now beg to submit, with the utmost deference, that this is a typical case for the exercise of the royal prerogative of mercy.

The alienists, however, certified that Clements was sane, and the law was allowed to take its course. The unfortunate man's conduct and language on the scaffold in the very last moments of his life were consistent only with some derangement of the mind, and it is still my view that this condition entitled him to some mercy.

CHAPTER XIX.

A Political Interlude.

I.

Official, and probably subterranean, in the library of the General Assembly of the Parliament of New Zealand in Wellington, lies the three hundred and eighty page report of the Marine Commission of 1899, which represents my only serious incursion into the realm of politics. A copy of the report, with its voluminous evidence and detailed appendices, reposes in my own bookcase, but for many years I have had neither the courage nor the curiosity to examine this relic of one of the most interesting and unusual cases in which I was briefed —a case which excited sufficient public interest for the man in the street to refer to it glibly as the "Marine Scandal," and which was distinguished from many of its kind by the fact that the Premier of the Colony himself spent several hours in the witness box refuting definite charges made against him and one of his Ministers by a member of the House of Representatives.

These charges, and the inferences which were sought to be drawn from them, were publicly commented upon in the strongest terms in many parts of the country, and not always favourably to the exalted personages whose integrity was impeached. Upon the whole, public opinion was inclined to be less condemnatory than the gravity of the allegations might have suggested, but the Government of the day brought the matter forward not as the grievance of two individuals, but as the affair of

every member of the administration who had an interest in seeing the reputation of the State for common honesty and integrity maintained. What various results the "scandal" may have produced on the mind of the electorate I cannot pretend to say, but the virtual impeachment of Mr Richard John Seddon, and one of his principal Ministers, was a matter of sufficient importance to arouse feelings of gratification in the young advocate, when, almost by accident, he found himself engaged to represent the Government before the Royal Commission of Inquiry set up by the Premier.

II.

To consider everything in order, it is necessary to indicate how I, who had been admitted to the Bar hardly more than a decade previously in a city at the other end of the colony, had the good fortune to be briefed "to appear to get out all the facts, so far as they are known to the Government, in connection with matters relating to the inquiry." I had been in Wellington conducting a case in the Supreme Court, and at the conclusion of the trial I was taken in hand by a friend of mine who undertook to help me pass the time until I should return south. Among the places of interest which we visited were the Houses of Parliament, and while there my friend said:

"You have never met the Premier, have you?"

I replied that I had not had that pleasure.

"Come along, then, and I'll find out if we can see him," he said.

Within a short time we were being ushered into the sanctum of Mr Seddon. When the introductions had been effected the Premier said:

"Oh, yes. You're Mr Hanlon from Dunedin.

I've heard of you, and I've been following the way you handled that case in the Supreme Court. You're just the man we want to take on this Marine Commission business for us."

With that he touched a bell, and told an attendant to ask Mr Hall-Jones if he could spare a moment. This was the Hon. W. Hall-Jones, Minister of Marine, and it appeared that as a result of a speech delivered in the House of Representatives some time previously, various charges had been preferred against the Premier and Mr Hall-Jones by another member of the House, Mr Fred Pirani. A Commission had been set up to inquire into all the matters raised, and the Government required somebody to appear in its interests.

When Mr Hall-Jones arrived I was introduced, and Mr Seddon said:

"I have just been thinking that Mr Hanlon is just the man to appear for the Government before the Marine Commission. What do you think about it?"

Mr Hall-Jones appeared to be of the same mind, and the Premier asked me if I would accept the offer. Almost before I was aware of what the brief entailed, I had decided to accept it. The following day I was accommodated in a spacious office in Parliament Buildings, and set to work on the maze of detail which comprised the material of the inquiry. The sittings of the Commission occupied nearly three weeks, and resulted in the complete exoneration of the Premier and the Minister of Marine from any suggestion of irregularity or improper practice, although, as a result of the evidence adduced, the Commissioners handed certain

allegations and charges to the legal representatives of various departmental officials and private individuals.

III.

The affair had its beginnings in the determination of Mr John Hutcheson, a member for Wellington City, that the public should know about certain irregularities of which he had been informed in connection with the examination of candidates for mariners' certificates in the coastal passenger services. Although Mr Hutcheson did not lay any specific charges against the Government, the allegations contained in his speech in the House led Mr Pirani to do so, and these were the matters referred to the Commission.

Mr Hutcheson had himself had considerable experience of the sea and ships, and was in business in Wellington as a ship-rigger, from which he derived the sobriquet "Jack the Rigger." His warm sympathies for the calling from which he graduated, and his keen and practical interest in nautical affairs, made him well qualified to speak on the subject, and his disclosures at this time were not without result.

> "I am informed by a responsible citizen," he told the House of Representatives, "that there is at the present time a captain in command of a passenger-carrying coastal steamer who was allowed to fill in his examination papers in a private house. My informant also informed me, on his word of honour, that the candidate's hand was guided in the formation of every letter and figure in the examination papers. If I were to give a vivid picture of this man engaged in the laborious task of holding the candidate's hand, I would require to be allowed the same privilege which was claimed by the Minister of Lands, and I should have to put into Hansard

a sketch of the two men's hands doing the work, but unfortunately I am limited to the meagre resources of my tongue to depict the process. But the point is, Sir, that this captain is in command of a vessel carrying living souls every day on the coast of New Zealand, and that is how he obtained his certificate of competency."

The Premier: "It is almost impossible for that to be correct."

"Well," replied Mr Hutcheson, "I asked my informant, if he were compelled by a superior authority to go and give evidence, what he would say in the event of his being charged with the onus of proving his statement. He replied that he would simply ask the man to write his own name, and he would not be able to do it. And, further, does the Right Hon. the Premier know of a case of a candidate for a master's certificate who was failed simply because he could not perform a mechanical and physical impossibility. The candidate was given the data for a cross-bearing, and because he could not make the bearings cross the examiner failed him. He came to me and complained and said he was sure the examiner was wrong and he was right. It was a difficult matter to sheet home, but pressure was brought to bear on the authorities, and Mr Seddon knows that when he submitted the matter to the Nautical Adviser to the Government, who was instructed to test the problem and project it on a chart, he produced parallel lines. Now every tyro in geometry knows that parallel lines never meet, consequently the bearings could not cross. That candidate was allowed to resume his examination from the point where he had been wrongly failed, and although I am given to understand that the examiner tendered his resignation, I do not know that it has yet been accepted by the Government. Whether he has done so or not, there is, at any rate, a copy of the examination paper somewhere in the archives of the Marine Department.

"What I know has come to me without my seeking," the speaker continued, "and knowing something of what

I am talking about, I have grave reasons for great dissatisfaction as to the administration of this particular department."

Apart from the question of the issue of irregular masters' and mates' certificates, Mr Hutcheson alleged that there was a certain port in New Zealand in which an incompetent person had been appointed to test the variation of compasses, and when it was understood that a very slight error in a ship's compass might mean her wreck and the loss of many lives, the seriousness of the charge became apparent. He also declared emphatically that a wholesale system of "crimping" was openly and defiantly carried out in the Port of Wellington, and he gave the names of two persons who were notoriously active in that "nefarious system." The modus operandi, he said, was to procure the discharges of men who had completed their articles at Wellington, and to transfer these discharges to mere lubbers and incompetents who were anxious to return to England. These men received a shilling a month for the voyage, and when it was stated that the rate of pay was £12 a month, and that as much as £30 was paid on the voyage from Lyttelton to London, it was evident that the men engaged in the "crimping" trade made enormous profits, which were divided between them and unscrupulous masters of vessels, who, of course, entered in the ship's books against the names of the shilling-a-month men the full average rate of pay at the port of departure. It was also alleged that crews, signed on for the return trip, were frequently encouraged to desert in order that the master and his accomplices of the "crimping" fraternity might benefit. The member for Wellington City explained that very often youths

of 16 shipped as A.B.'s on the strength of a discharge issued to a man of 50, while old men past the age of efficiency were represented on their alleged certificates as mere juveniles. "We want a sort of nautical Tunbridge," he said, "to detect and put a stop to these gross abuses."

IV.

District Judge Ward and Dr Joseph Giles comprised the Commission, and my task was to conduct the inquiry generally on behalf of the Government. I had no instructions to appear for either the Premier or Mr Hall-Jones, and it was not necessary to address the Commission on the case except to open it. But the examination and cross-examination of the numerous witnesses occupied fifteen days.

Both Mr Seddon and Mr Hall-Jones came into the picture through the affair of Captain James Jones, of the "Duco," and all the charges formulated against them had reference to the sham examination of Jones and the irregularity of his master's certificate. It was this Jones who was the subject of Mr Hutcheson's severest strictures in the matter of examination methods.

The charges which the Premier was called upon to answer were:

That, knowing that one James Jones had not performed the service entitling him to a certificate of service, he did endeavour to procure the issue of such a certificate by representing to the Hon. W. Hall-Jones that Jones was entitled to it.

That he boasted to James Jones, after the issue of a certificate, that he had been able to procure it in contravention of the law.

That, after it had been alleged that irregularities had taken place, he denied during the session of Parliament, in his place in the House of Representatives, that there had been any irregularity, although he knew that there had been.

That with a view to preventing the true circumstances of the matter being known, he stated to the Press in Dunedin that he had not spoken to or communicated with Mr Hall-Jones on the subject, and knew nothing of it until it was raised in the House by Mr Hutcheson.

That he knew that certificates had been wrongfully issued and took no steps to have them cancelled.

Mr Hall-Jones was charged with wrongfully using his power as a Minister to have a certificate issued to James Jones; with permitting the certificate to be retained for a long time without having it cancelled; with inducing Captain Allman, who granted the certificate, to make an incorrect report of the circumstances, knowing such report to be incorrect; and finally with attempting to prevent the facts of the matter being known.

For my purpose I subpoenaed eight witnesses—the Premier, Mr Hall-Jones, W. T. Glasgow (Secretary of Marine), G. Allport (Chief Clerk of the Marine Department), Captain G. Allman (Nautical Adviser), Captain George Von Schoen (master mariner and teacher of navigation), Captain R. A. Edwin (Nautical Examiner), and Captain James Jones. Several other members of Parliament also gave evidence, including Mr Hutcheson, whose speech in the House was the cause of the inquiry.

The first witness was Mr Seddon, whose examination and cross-examination involved more

than five hundred questions. The position as stated in his evidence was that in 1895 Captain Jones applied for a service certificate to enable him to sit his master's examination, but the schedule of his service was below the requirements, and his application was refused. Jones appealed to the Premier, and was supported by certain deputations. He was known to be an exceptionally good seaman, and owing to the destruction and loss of records there was some doubt whether his application should have been refused. In the following year Mr Seddon referred the matter to the Secretary of Marine, but the refusal was confirmed. Jones made a further appeal to the Premier, and another deputation lent him its support. This time Mr Seddon asked the Nautical Adviser (Captain Allman) if anything could be done for Jones, and although he thought Jones was highly qualified, Allman said that there was no way of getting over the difficulty of his lack of a mate's certificate. Still Jones persisted, and in 1897, when the Premier was on his way to Auckland in the Tutanekai, preparatory to going to Great Britain, Captain Fairchild, the master of the Government steamer, made an appeal on behalf of Jones. Mr Seddon, therefore, sent the following telegram to Mr Hall-Jones (Minister of Marine):

> I should be glad if you would have the question of issuing a certificate to Captain Jones, of the "Duco," settled. From papers presented to me, I am of the opinion that he is entitled to what he wants, and is better qualified than —— or ——. Captain Allman thinks that he is highly qualified.

Mr Hall-Jones, after consulting with Captain Allman, decided that as there was no fresh evidence in the matter nothing could be done. I was able to show that this was the sum total of the Premier's

connection with the affair until the setting up of the Commission, and the Commissioners decided that Mr Pirani had failed utterly to prove his charges. On the subject of his alleged boasting the Premier was also exonerated. The Commission said the charge was obviously unfounded, as it relied on the evidence of Captain Jones, who declared that everything he said was "gospel truth," but who contradicted himself and his own declaration in such a manner as to show that not the slightest reliance could be placed on his testimony.

V.

The Minister of Marine's connection with the case was less simple, and the situation was greatly complicated by the mass of contradictory evidence adduced with respect to what was said and done. After Mr Seddon's departure, Captain Jones approached Mr Hall-Jones personally and asked him to reconsider his decision, but the Minister refused to do so. Two days later Jones was back again, and the Minister discussed with Captain Allman whether he had the power to dispense with the necessity for a certificate. The story told by both Allman and Jones was that Mr Hall-Jones agreed to use that power and permit Jones to sit the examination. Mr Hall-Jones, on the other hand, denied it, and said the question remained open. He gave Captain Allman an envelope with the following memo. on it: "Jones, 'Duco.' Permit exam. master" as a reminder to him to look further into the position. Captain Allman denied receiving the envelope, but said he saw it delivered to the chief clerk of the Department by the Minister's secretary. The chief clerk said he got the envelope from Allman, and the Minister's secretary swore

that he did not deliver it to Allport. After this Mr Hall-Jones heard no more of the case until Mr Hutcheson raised the matter in the House.

Allport, the chief clerk, in his evidence said that when Allman gave him the envelope he also gave him verbal instructions, purporting to come from the Minister, that Jones was to be allowed to sit his examination. In due course he handed the instruction on to the Secretary of the Department, W. T. Glasgow, and the necessary permit was issued to Jones. Glasgow said those instructions were "practically confirmed" by the Minister in an interview later, but this was denied by Mr Hall-Jones, whose word was supported by the fact that when Glasgow and Allport were censured for acting upon an unsigned, undated, and unaddressed memorandum, their own memorandum admitted that they had had no authority to act other than the unsigned instruction from Allman and the verbal message conveyed by him.

The Commission did not attribute deliberate violation of the truth to either of these officers, but felt that it was "impossible to rely on their intermittent memories." With respect to Allman's testimony, it was contradicted by so many witnesses, and on so many points, that very slight reliance could be placed upon it. The examination was admitted by both Allman and Jones to be a pretence and a sham. Captain Edwin, the examiner, was present at the commencement of it, but he quitted the room when the written questions were begun. Later he signed as one of the examiners present during the whole of the examination. Allman assisted Jones throughout the examination, and Captain Von Schoen provided him with written

answers to the qeustions in consideration of a payment of money. It was Von Schoen who induced Jones to apply for a certificate, and it was Von Schoen who, when Jones got his certificate, told Mr Hutcheson all about it, informing on his own client with the idea of having examinations properly conducted in future, possibly with himself as examiner.

The Commission decided that the charges against Mr Hall-Jones were also unfounded. The Commissioners found that the Minister did not order that Jones be allowed to sit the examination, considering that he expected further information from Allman before anything was done. With reference to the charge that the Minister induced Allman to make an incorrect report, the Commission said it was not proven, as it had reason to accept Allman's narratives of conversation with caution and to distrust his memory.

But although the Premier and his colleague were entirely vindicated by the evidence, there were others who were less fortunate and had occasion to regret the dubious action of Von Schoen in making the disclosures he did to Mr Hutcheson. The Commission found that there had been irregularity and impropriety in the conduct and transactions of several of those concerned, and Von Schoen himself was charged with fraudulently assisting Jones to pass his examination. Other charges were preferred against Captain Allman in connection with his conduct in the examination room, against Captain Jones for the manner in which he passed the examination, and against Captain Edwin, the examiner, and Messrs Glasgow and Allport.

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What effect the investigation had on the future administration of the Marine Department I am unable to say, but the concluding paragraph of the Commission's report is of interest:

"Finally, taking into consideration the immense comments on the Jones case, and the minuteness of the facts, we desire to express our respectful astonishment at the 'intolerable deal of sack' that has been poured over this 'pennyworth of bread.'"

CHAPTER XX.

The Tapanui Murder Trial.

I.

I shall not be telling my readers anything new if I say that circumstantial evidence is not always a reliable foundation upon which to build up a case against a suspect. Innumerable juries have been warned against it by countless advocates. There is always a danger that things may not be what they seem, and that an innocent man may be convicted on appearances. In this connection there is a moral, and an impartial moral, to be found in the history of the Tapanui murder trial, which, about thirty-five years ago, attested the insufficiency of purely circumstantial evidence and showed how the same story could be given totally different meanings and directions.

In this case two men, Thomas Stott and George Hill Bromley, were indicted for the murder, at Tapanui, of Ham Sing Tong, a well-known and esteemed Chinese resident of the district. The Crown relied for a conviction entirely upon circumstantial evidence, but failed to get a verdict for no other reason than that I was able to show that the evidence adduced by the prosecution against the two accused made out a stronger case against one of the Crown witnesses than that proved against the prisoners. Mr Justice Williams, who tried the case, was candidly impressed by the strange turn the proceedings took, and felt constrained in his summing up to tell the jury that in consequence of it they must be particularly careful in considering their verdict.

The portions of the trial to which I will specially refer should enable the reader to form his own opinion on the case and to decide whether this type of evidence is as dependable as many people think it is.

Let us for a moment examine the differences between direct and circumstantial evidence by reference to "Wills on Circumstantial Evidence." The learned author says:

> The words "direct and circumstantial" denote only the different modes in which those classes of evidentiary facts operate to produce conviction. Circumstantial evidence is of a nature identically the same with direct evidence; the distinction is that by "direct evidence" is intended evidence which applies directly to the fact which forms the subject of inquiry. "Circumstantial evidence" is equally direct in its nature, but, as its name imports, it is direct evidence of a minor fact or facts, incidental to, or usually connected with, some other fact as its accident, and from which such other fact is, therefore, inferred. A witness deposes that he saw A inflict on B a wound of which he instantly died. This is a case of direct evidence. B dies of poisoning; A is proved to have had malice and uttered threats against him, and to have clandestinely purchased poison wrapped in a particular paper, and of the same kind as that which has caused death; the paper is found in his secret drawer and the poison gone. The evidence of these facts is direct. The facts themselves are indirect and circumstantial, as applicable to the inquiry whether a murder has been committed, and whether it was committed by A.

It has frequently been said that circumstantial evidence is more reliable than direct evidence, because in the case of direct evidence there may be room for doubt—as, for instance, in the identification of the prisoner as the person who struck the fatal

blow, and the case might turn upon that one particular point, whereas in circumstantial evidence there may be direct evidence of a chain of circumstances, and although there may be some doubt as to the reliability of the witnesses upon one or even more points, there may be ample evidence left to show that the crime has been committed and that the prisoner was the person who committed it. Circumstantial evidence has been likened to a rope of many strands, and although there may be a weak strand in it, still there are enough sound strands left to make the rope reliable.

II.

In the Tapanui case a formidable succession of circumstances was sworn to by a host of witnesses, and it was the contention of the Crown that these "mirages in the gulf of appearances" should suffice to sheet home the guilt to the two prisoners. But the unexpected happened when I was able to extract from a Crown witness a sufficient number of admissions to show that the Crown evidence comprised a more damning indictment against him than that which it proved against my clients. Actually the circumstantial story produced was not reproached by its insufficiency as much as by the fact that it could not be controlled. The facts it proved applied with equal force to a young man whom the Crown Prosecutor described with considerable fervour as "an innocent youth." His vigorous defence of his witness suited my purpose admirably. The more the jury were convinced of the young fellow's innocence of the crime, the more chance I had of making them believe that the prisoners were innocent also, for were not the circumstances of the case less damning against them than against the Crown witness?

The murdered man was credited with having a tidy hoard of money somewhere in the rude dwelling in which he lived on the outskirts of the township of Tapanui, and his habit of carrying several pounds' worth of change on his person was well known. He lived alone, and was not accustomed to admitting anyone whom he did not know well to his home. On August 22, the day after he was last seen alive, a countryman of his from Beaumont arrived to visit him, and it was he who discovered Sing Tong's death. He knocked at the front door and got no reply, and then he noticed that, despite the old Oriental's habit of always locking up the place at night, or when he was out, the door was not locked. On entering the house, he found Sing Tong lying dead on the floor with a handkerchief clutched in his hand. The police were summoned, and a closer investigation showed that the body was lying in a pool of blood. The deceased's clothing was burnt In several places, and a number of articles in the room were also charred. The lamp was broken, and the drawer in which Sing Tong was accustomed to keep his money was empty, but about £74 was found elsewhere. There was a bruise on the left temple and a cut on the cheek, in which a piece of glass was still embedded. Underneath the body was a belt, also partially burnt. The man had apparently been struck with a glass bottle and subsequently shot, after which the murderer, or murderers, had attempted to set fire to the building. Had the hut been successfully fired, it is doubtful whether the murder would have been discovered at all.

Stott and Bromley were engaged on scrub-cutting in the vicinity at this time, and they lived

with the latter's parents, about a mile and a-quarter from Tong's hut, sharing a whare between them. It was shown in evidence that both men were in the township on the night of the killing, and that they reached home together, Bromley going to see his parents at the house before he retired into the hut with Stott. It was the contention of the Crown that after he left his parents' room Bromley could have joined Stott, gone to Tong's, killed the old man, and returned home without their absence being noted by the elder Bromleys.

Young Bromley had Tong's esteem and confidence, and this was stressed by the Crown as facilitating an entry into the Chinaman's hut at about half-past ten at night, which was the time that several people heard the fatal shot. Among the articles found to be missing from the dead man's hut after the tragedy was a familiar dun waistcoat in which Tong used to carry his money and a supply of tobacco and sundries which the old man kept always by him. Later a "plant" was found on the Bromley property containing a supply of tobacco similar to that kept by Tong, a bunch of skeleton keys, and a handkerchief corresponding to one sold by a Crown witness to Stott. Most of the keys were rusty, but one was comparatively new, and it was found that this key would open both the back and front doors of Tong's hut.

But there was much more to it than that. Prior to the murder Stott was pushed for money, and had had to borrow a couple of pounds. When he was in Tapanui on the night of the murder he had no money at all. For a few days after the tragedy he continued with his penniless role, and then all of a sudden he commenced to disburse funds

lavishly, giving out that he had received some cash from a man named Macdonald. Macdonald denied giving him any money at any time. After his arrest Stott told the detective that he was very drunk and did not know where he got the money. Moreover, an identifiable pound note, defaced and torn badly at one particular spot, which it was proved had been given to Tong by a man from Christchurch shortly before his death, was traced to Bromley.

There was also evidence that the deceased was shot with a .32 bullet, and it was shown that Bromley had a rifle of that calibre in his possession, having borrowed it two days before the murder. He had also purchased cartridges in Tapanui, although he denied having done so when questioned. The belt found under the body in the hut was also connected with Bromley, who had borrowed it two months previously from a young fellow named R—— to enable him to carry home some venison he had shot. It had never been returned, and the Crown submitted that the man in whose possession the belt was at the time shot Tong. Bloodstains found on Stott's trousers also figured largely in the evidence, although it was not possible in those days for the experts to determine whether it was human blood. The best they could do was to swear that it was mammalian blood. There was also a bloodstain on Bromley's borrowed rifle. All these facts, together with the behaviour of the accused after the killing, were represented by the Crown as convincing proof of the guilt of the two prisoners.

III.

In an endeavour to show that the Crown had not proved the case against Stott and Bromley, I reviewed the evidence at length for the benefit of

the jury, and after endeavouring to discredit the points upon which my learned friend so much relied, I turned my attention to the young witness, R——, who was intimate with the deceased, had access to his house, lived nearby, knew he had money in the hut, and was aware of where it was kept. In addition, it was his belt that was found beneath the body, and he had a rifle of the same calibre as that with which the Chinaman was shot. On the subject of Bromley's reticence concerning the rifle and its cartridges, I showed that he had been poaching, and, fearing detection, denied having bought ammunition. The evidence concerning the money Stott and Bromley suddenly acquired, I submitted, had neither weight nor value, because the Crown had not proved that Tong had lost any money in notes. He might have, but the Crown had been unable to prove it, because the police found about £74 in the hut, and there was no sign of the place having been ransacked. That Stott's account of the money in his possession after the tragedy was unsatisfactory had to be admitted, but I reminded the jury that when he was questioned he was drunk—the wine was in and the wit was out—but although he was intoxicated and stupid, he made no damaging admissions. In any case, he could not be called to account for money in his possession until a robbery had been proved, and the Crown had not proved that.

Turning to the matters made so much of by the Crown—the belt under the body and the kerchief clutched in the dead hand—the theory that Tong grabbed the belt from Bromley's waist during the struggle and snatched the handkerchief from Stott's neck was palpably absurd, since

two men who had just committed a murder were not likely to go away and leave such incriminating evidence behind them. But apart from that, it had been shown in evidence that Stott had not been wearing a handkerchief on the night of the murder, and there was no proof that Bromley was wearing the belt. In fact it had not been proved that Bromley ever borrowed the belt from R——. When the belt was shown to R—— he claimed it as his property, but when he was told that it was found under the Chinaman's body he immediately said that he had lent it a couple of months ago to Bromley, whom he knew to be under arrest for the murder. As for the bloodstains on the rifle and the accused's clothing, there was nothing to show that one drop of it was human blood. The accused had been out after rabbits, and what more probable than that they should get their clothing stained with rabbits' blood? There was no evidence to connect the accused with the "plant" found on the Bromley property except a handkerchief which was said to have been sold to Stott nearly a year before.

In any case, the whole question of the "plant" and the handkerchief, as well as the torn pound note traced to Bromley, had been introduced at the trial as new evidence, and I complained that the accused's counsel had been given no opportunity to secure evidence in rebuttal. The Crown had introduced new evidence without giving the accused the notice which it was usual to give in such cases. These men stood in peril of their lives, but by the act or negligence of the Crown they had been denied an opportunity of making inquiries that might be material to their case. The thing was altogether

unfair, and the Crown Prosecutor's excuse of inadvertence, accompanied by an apology, did not help the position at all. It was for the jury to say whether that was a proper way for the Crown to treat persons who were on trial for their lives.

So much for the Crown's submissions. It became my duty to show that it was possible, on the evidence, for young R—— to have committed the murder. I urged the necessity for the greatest care in dealing with circumstantial evidence, and, while I admitted that it was no part of the duty of the advocate for the defence to fling a murder charge at any man, I felt I must ask the jury to consider closely the position of R——. The Crown Prosecutor had said that, by a skilful line of cross-examination, I was suggesting that the murder had been committed by an innocent youth. I was quite prepared to admit that R—— was innocent, but at the same time I could not refrain from illustrating to the jury that on the evidence before them they could not be blamed if they thought that R—— might be guilty. All I wanted to do was to show that, if I so desired, I could make out a charge of murder against a person who, the Crown was convinced, was innocent. Perhaps the jury did not realise how easily it could be done, if one wanted to do it.

What, I asked the jury, would have been the position of R—— if the police had arrested him first instead of Bromley? His situation would have been precarious indeed, and he would in all probability now be in the dock instead of the two prisoners. This, in brief, would have been the evidence against him. R—— had frequently been at Tong's hut at night, on one occasion until after midnight.

He was in the habit of drinking with the Chinaman, and often took liquor up to the old man's hut. He could gain admission to the hut at any time at night, because Tong was a friend of his and would open the door to him without question. He knew the Chinaman had money, and had previously changed notes for him. Also, R—— possessed a rifle and cartridges, and in that rifle were found cartridges identical with those found in the body of Tong. Moreover, it had been shown that R—— had the rifle and the ammunition at or about the very time that Tong was killed, and it was also proved that he passed Tong's hut on the night of the tragedy. He was, therefore, in exactly the same position as Bromley as far as the circumstantial evidence went, but actually the case against him appeared to be blacker than it was against Bromley. It was his belt that was found under the body when the murder was discovered. Was not that a startling array of evidence against him?

"And now," I continued, "still assuming that R—— is in the dock, you, gentlemen, must admit that the case against him is stronger than that made out against the two prisoners. Yet you have the assurance of the Crown that there is not a shadow of a reason for connecting R—— with the murder of Tong. I agree with that assurance, and you may accept it, but the fact still remains that there is a stronger case against R—— than there is against either of the two men now in the dock. How is that to be explained away? You must be scrupulously careful in the weighing and consideration of such evidence before you arrive at a verdict."

I emphasised the fact that there was nothing to show that, if R——'s clothes had been examined,

bloodstains could not have been found on them, and that it amounted to this, that R—— must rely on the alibi provided by a brother who saw him in bed at 10 o'clock, or another brother who saw him asleep about midnight. For practical purposes, he would have to confine himself to the alibi sworn to by the first brother, who said he was in bed at ten o'clock. Now was such an alibi as strong as the one that had been provided by the elder Bromleys for the accused? Young Bromley spent some time talking to his parents after he got home, and, later, his parents heard the sound of dropping boots in the hut, which showed that the two prisoners were going to bed. Those facts, I submitted, should give the jury food for a lot of serious thought. The Crown's case was made up of assumptions, and assumptions only. It had not been proved that Tong was killed with the rifle produced. The jury were asked to assume that he was, just as they were expected to assume that the prisoners were responsible for the "plant" of tobacco and keys; that the blood on their clothes was human blood; that the Chinaman had been robbed of his money; that the money Stott and Bromley had was Tong's property; that Bromley was wearing R——'s belt at the time; and, most important of all, that the motive was gain. The Crown submitted that the motive for the murder was robbery, but had it proved that? Actually the evidence went to show that gain was not the motive at all; there was still a large sum of money in the hut after the killing of Tong.

The jury brought in a verdict of "Not guilty" after ninety minutes' deliberation. They returned at 6 o'clock for the purpose of asking the Bench a question.

"We wish to ask your Honor," said the foreman, "Is a verdict of 'Not proven' the same as 'Not guilty'?"

"Exactly," replied the Judge.

Without leaving the box again the jury returned their verdict, and the two men were discharged.

It will be seen from this outline of the case that if the police, knowing what they did about R——'s familiarity with the murdered man's hut, his associations with the deceased, and his possession of a rifle of the calibre produced, had approached him first, he would probably have been arrested, and, just as probably, wrongly arrested. Asked for an explanation of the presence of his belt under the body, he would have said that he had lent it to Bromley. But what would have happened when the police questioned Bromley on this point? Bromley would no doubt have denied that he had ever borrowed the belt, particularly if it was necessary to do so to save himself and his friend. In such circumstances what chance would R—— have had of escaping conviction? Or even if he were not actually convicted, he would most certainly have been committed for trial, and would have had to fight for his life. Few barristers would relish the idea of having to defend such a case, even though there was every reason to believe that the youth was entirely innocent. Circumstantial evidence might easily have been his undoing.

CHAPTER XXI.

Memories of the Road.

I.

In an earlier chapter I have referred to some of the changes that have made the profession of the advocate to-day more difficult than it was thirty or forty years ago. Back in the first years of this century, and in the final decade of the last, however, there were factors of hazard and inconvenience with which the modern lawyer no longer has to cope. Reviewing such ancient history as the Dean case, and the steady development of a substantial country practice which began for me about this time, I am reminded of the difficulties of travelling in those far-off times, and if anything were needed to make the recollection more complete, it was provided in the unprecedented snowstorms experienced throughout Otago this year, nearly every hour of which brought back memories of some of my uneasy perambulations around the district courts of the province while transport was still in its infancy.

The comparison between to-day and yesterday is rendered the more striking by the frequency with which many members of the profession now use the national air services in their lightning visits to the Court of Appeal and other assignments in the North Island. Indeed, I think it is not unlikely that if these reminiscences should happen to be conned by representatives of the profession in the next generation it may be difficult for some of them to believe that members of so august and honourable a calling could ever have been subjected to some of the indignities which many of us had perforce to put up

with in the days before railways had supplanted the stage coach and when motor cars were still "new-fangled monstrosities."

To me the development of speed and power in transport and communications has been bewildering in its completeness and continuity. The machine has virtually taken charge, and its swift perfecting comprises one of the greatest stories in the world. In less than half a century we have learnt to hurtle across the earth and through the air at more than five miles a minute, and nearly every aspect of life, work, and pleasure has been influenced by this. The number and the variety of our statutes have been increased tremendously as a result of it, and there has developed at the same time a class of litigation that furnishes almost a full-time occupation for some barristers.

A few years ago I had a striking example of the sort of thing that was soon to become a mere commonplace. The inability of an Auckland firm of barristers and solicitors to secure by correspondence my acceptance of a brief in one of the most protracted and sensational murder trials in the history of this country resulted in a literally flying visit by a delegation of two which chartered an aeroplane to make the journey from the northern city in the shortest possible time. One of my visitors at that time has since been elevated to the Supreme Court Bench, but I mention the incident because of the contrast it presents between modern conditions and those of a few decades ago. Fifty years ago the electric telegraph could not have bridged the gap and established contact much more rapidly, and the ordinary mail channels would require the better part of a week to accomplish the same purpose.

II.

To-day the scene is transformed. Railway services link nearly every centre in the Dominion, and where the iron horse does not penetrate powerful service cars speed along on balloon tyres over well-formed roads, replacing the slow but sure old stage coach. Electric trams clang and clatter past the windows of my chambers instead of the lumbering old horse cars of my early professional days, and the regular drone of huge aeroplanes overhead brings the farthest city of the Dominion within a few hours of my door. Was there ever such an age of change and development?

When I was admitted to the Bar the main arterial railway services between Dunedin and Invercargill and Dunedin and Christchurch were less than ten years old, but although these provided an adequate if not over-comfortable journey between terminal points, Dunedin was still a long way from the country. The horse still did duty for most purposes of private haulage, and the stage coach system, which had been inaugurated twenty years before under the famous name of Cobb and Co., was the only reliable means of passenger communication between the capital of the province and the greater part of Central Otago.

The evolution of the motor car from a glorified buggy robbed of its shafts and its horse—a noisome, clattering monstrosity—into the "smooth, unpassioned beauty of a great machine" has been one of the swiftest and most amazing developments of an age remarkable for rapid changes. I well remember the first demonstration of the steam locomobile from Auckland in the year 1900 and the arrival in Dunedin in the following year of the first

locally owned car, which was the proud possession of the late Mr T. W. Kempthorne, at that time managing director of the firm of Messrs Kempthorne, Prosser and Co. And later still I watched, not without a tremor of regret at times, the substitution of the motor taxi for the old hansom cab and the traditional four-wheeler, which for years had rendered a serene and dignified service. But to-day it is all speed. A barrister need have few fears about the country work he accepts. In a week he can cover the whole circuit of country courts and still not lose contact with his business in the city. What was once a week's hard travelling can be achieved to-day within the round of the clock.

There were few good roads when I commenced my journeyings through Central Otago to Warden's Court and provincial sittings in outlying centres, and an out-of-town trip was generally an adventure. In fifty years I think I may say that I have experienced, in this respect at least, the best and the worst that the country has provided, and it is my view that there are few greater civilising agencies than good roads. Imperfect highways still mean acute discomforts, not only on the road itself, but in indifferent hotels and meagre, inadequate services. Much of our present civilisation, and practically the whole of the improved standard of living outside the cities, can be traced back, directly or indirectly, to the time when it fortuitously occurred to an astute Scotchman named Macadam to strew our path with pulverised metal. Metalled roads, however, were slow in making their appearance in several parts of Otago at the beginning of this century, and it was only after many a year of waiting that the level, paved highways of to-day replaced the pot-holed

roads and coach tracks that were flung in slovenly fashion, like the clothes of a drunk man, across hills and valleys and unbridged rivers and dried-up watercourses.

III.

What a dreadful though delightful place Central Otago was when I first knew it! It was during the great blizzard of July and August, 1895. After finishing a case at Invercargill I had to go to Queenstown to take a case in the District Court before District Judge Ward. For days it had been snowing, and there was no telling how far one would get on the way to the Lakes District before communications were interrupted. The journey itself was rigorous enough, but the prospect of being marooned somewhere in the snow-bound countryside was infinitely worse. I travelled by the north-bound express from Invercargill to Gore, and then took the train for Kingston. The bleak wind whistled round the carriages and found every crack and cranny in doors and windows, and it is doubtful whether it was colder outside or inside. The only way of heating the train in those days was by means of chemical footwarmers, which were generally too hot when the journey was begun and stone cold before it was half over. With only three or four in each carriage, it was a question of " First in first served." It was not long, however, before the fortunate possessor of such a comforter tossed it aside and tried to make the best of the cold leather upholstery of the seats, which seemed to force its frigidity through the stoutest tweeds.

Long before Lumsden (or The Elbow, as it was then called) was reached I was all but frozen with the cold. Still, we seemed to be making remarkably

good progress. But fate was only playing with us. After leaving Lumsden the train ran into a snowdrift in a deep cutting and came to a dead stop. I forget how long we were delayed there—mental effort in such circumstances was as difficult as physical movement—but I remember well the gang of men which worked feverishly in feet of snow to clear the obstruction. Night overtook us with Kingston still miles away in the gloom. I defy anyone who has not experienced the misery of night travelling in winter on a branch line of the New Zealand Railways in the 'nineties to conjure up an adequate conception of the ordeal. After darkness fell it was impossible to read by the light of the smoky oil lamps, and the passenger had no option but to peer in deepening despair at the dismal scene around him. Sleep was impossible, and all one could do was hope.

Finally the train was left behind at the pier at Kingston, and the journey up Lake Wakatipu, after a good hot meal provided on the steamer, was an experience to be remembered. The mountains that rose direct from the lakeside were covered with snow to the water's edge. As far as the eye could see there was not a jutting crag or promontory of rock free from the enveloping mantle of white. It was one of the most magnificent sights I have ever seen, and in my reaction to it I achieved a momentary forgetfulness of the horrors of the day between Gore and Kingston. I have made the same trip many times since, but I have never seen the landscape so completely obliterated as it was for weeks on end in the 1895 snows.

The courthouse in Queenstown was the same as most premises of the kind throughout the country

districts are—draughty and imperfectly heated, and with an inside temperature in winter that differed little from that of the snow-covered street outside. What the result of the case was I am unable at this stage to recall, but I am certain that I earned my fee, because, if anything, the return journey was colder and more miserable than the trip up. Of course, it was not always like that. But for many years travelling in this district was a definite hardship, even in the best of weather. Later, faster trains and a well-appointed steamer with a fair turn of speed produced a great improvement; but now the trip can be made in perfect comfort by motor car through the goldfields in a day.

Scarcely less unpleasant was a subsequent appearance in Naseby, where I had to attend the District Court. Once again I was unlucky enough to arrive in the middle of a snowstorm of unusual severity. The township literally lay feet beneath an over-burden of snow, and on the morning of the court sitting a track had to be cut from the door of the hotel, where the Judge and most of the litigants and their solicitors had spent the night, to the court-house, some distance down the straggling main street. The depth of the snow was phenomenal, and only a narrow right-of-way could be provided down the side of the street. When the courthouse, which lay on the opposite side of the street from the hotel, was reached, the track took a right-angled turn across the roadway and up to the steps of the buildings. Standing at the door of the hotel, I watched the others negotiating the slippery track, and I chanced to be still an interested spectator when the first of them crossed the road towards the court. Some were tall and some were short, and

all that could be seen of them above the piled up snow were heads and shoulders. Indeed, in some cases it was only a short head that rose above the white banks. The impression they gave was of the varying figures and targets that pass across the vision in the old-fashioned shooting gallery. Inside the court a large circular stove did its best to warm the freezing atmosphere, but its effect was lost on most of those who could not legitimately crowd within a few feet of it.

My case concluded, I addressed myself to the problem of getting back home. There was no Central Otago railway beyond Middlemarch as yet, and between Naseby and the railhead there stretched about sixty miles of coach riding under the most unfavourable conditions. When the coach, one of the old thorough-brace type, arrived, I found that I was the only passenger, so I climbed up on the box beside the celebrated Jimmy Sutherland, who was widely known as an expert and reliable driver. Everything went like clockwork for the first ten miles or so to Kyeburn, and I began to feel a trifle ashamed about the apprehension I had felt earlier at the prospect of the return trip. But before long I found that I was quite entitled to any fears I had felt. My first premonition came shortly after leaving the Kyeburn Hotel, when I noticed a horseman with a large coil of rope dangling from his saddle following close behind us.

"What's that fellow following us for?" I asked the driver.

"Oh, he's just coming our way, that's all," was Sutherland's evasive reply.

For some reason I was quite unconvinced, but I held my peace until we came to the unbridged

Taieri River, which to my anxious eye seemed to be running very high. The coach drew up at what was ostensibly a ford, but which looked to me exactly the same as any other visible stretch of the rapidly flowing river. The horseman dismounted, and for a moment he and Sutherland held a quiet colloquy. Then the pair of them began piling large boulders on the floor of the coach. This curious operation concluded, the horseman mounted once more and rode down stream for about five or six chains to a bend in the river, and, dismounting, stood at the water's edge with his coiled rope in his hand.

"What's the idea?" I asked a trifle fearfully.

"Just in case of accident," the driver replied nonchalantly as he set the horses in motion again.

As we approached the muddy waters of the river, Sutherland unbuttoned his greatcoat, and when he carelessly suggested that I should do the same, I began to think that after all it might have been better if I had not been in such a hurry to get out of Naseby. The next minute the coach was deep in the swirling river, and to my 'prentice eye seemed to be making desperate attempts to forsake its wheels and float across. The suspense was actually very short, and I breathed a sigh of relief when I felt the swift tug as the horses found their feet in the shallow water of the opposite bank. When we were safely over I turned and surveyed the scene.

"That looks a bit risky to me," I suggested to Sutherland.

"Perhaps," he countered, "but it's all right as long as I can see those rushes over there sticking up above the water. When they disappear the ford isn't safe."

Said quickly, it was convincing enough, but as we continued the journey to Middlemarch I reflected gravely on what would happen some day if those rushes were shifted by some means. The idea of my life and safety depending upon such slender safeguards was a disturbing one. But when I was safe back in Dunedin I had my doubts about which was the more uncomfortable part of the trip—the ride in the coach from Naseby to Middlemarch or the slow, grinding journey by train from the Strath Taieri township, which at that time was the terminus of the Central Otago railway.

IV.

Among other rural adventures I experienced was a visit to Nenthorn goldfield in the Waihemo County at the time of the discovery of the gold-bearing quartz reefs, which brought a mild boom. I was engaged to put several applications for mining privileges through the Warden's Court at Macraes, and made the trip north by rail and stage coach. The two tiny hotels in the township were crammed to overflowing, and the nights were filled with incident and excitement. The weather was bitterly cold, but nobody seemed to want to go to bed. The result was that the bars did a thriving trade, and "hot toddies" followed each other in quick succession down scores of throats. Of course, the inevitable happened; there were thick heads and unsteady gaits all over the place.

I had retired to my room late on the evening of court day, and had not been between the chilly sheets very long when I heard someone making his precarious way along the passage. Just as the footsteps reached my door there came a terrific crash, followed by a portentous silence, which was broken

only by some stertorous breathing. Whoever it was made no attempt to regain his feet, and I was still considering what I should do when, by the light of a candle I had just lit, I noticed a dark red, sluggish stream oozing under the door into my room. This finally roused me, and, not a little alarmed, I opened the door to find a man lying with his head against the door jamb and bleeding freely from an ugly gash. He had apparently fallen and struck his head against the sharp edge of my doorway, and he seemed to be in a bad way. I found the proprietor, who was still discharging the duties of "mine host" with vigour, and with the aid of one or two others we carried the poor fellow to his room, and, after washing and bandaging the wound, put him to bed. I returned to my room, but by now the cold had got into my bones and I was unable to sleep. As hour followed wakeful hour I became more and more sorry for myself, and I determined that as soon as I had concluded my business I would shake the dust (actually, on this occasion it was mud) of Macraes from my feet and get back to the rail head at Dunback by any means that offered. It was not coach day, but I refused to allow that to deter me.

Shortly before midday I was free to take the road. But the question was how. I did not relish a walk of sixteen miles, so that, although I had never ridden a horse in my life, my only alternative was to take to the saddle. Through the good offices of Constable Conn, of Palmerston, who had also been attending the court, I was provided with a steed. And what a horse! It was a half-broken two-year-old draught, which was brought round to the door of my hotel just after lunch. Of course,

everybody in the township had to be lounging about the two hotels, and I was tempted to postpone my departure until after the court had resumed. But as it was beginning to rain again and I was not at all sure how long it would take me to reach Dunback, I decided to make my break, despite the fact that I was sure that everybody was anticipating my departure with some amusement.

What proficiency my audience expected me to display as a horseman I do not know, but I received my first round of applause when I mounted my horse on the wrong side. Actually I knew nothing of right or wrong sides, choosing the side I did simply because it was nearest to the footpath. When I finally rode out I fear I gave an exhibition which delighted everyone. There was a Don Quixote and Sancho Panza effect to my departure that amused them mightily, and I felt that they must all be thinking:

> And when again he rides abroad,
> May I be there to see.

It had been my intention to arrange my departure on a strictly dignified note, sitting bolt upright on my walking horse until I had passed out of view around a conveniently handy bend of the road. But hardly had I raised my hand in uncertain farewell to such of those in the gathering who might in turn wish me well than some jovial soul brought his cap down upon my charger's rump with a resounding smack. Away went the horse and away went I! The day might still have been saved if the animal had jumped into an easy canter, but, of all the most embarrassing gaits he knew, he chose a trot. Nothing I could do would produce anything approaching the synchronisation of my movements with those of

the horse. As I rose into the air his broad back receded away from me, and as I came down again the hard, unsympathetic leather of my borrowed saddle came up to meet me with a teeth-rattling bump that all but unseated me. Alternately jerking at the reins and reviling the beast in the best vocabulary I could muster, I tried in vain to persuade him to my way of thinking, but the last thing in the world he appeared to want to do was to walk. At the end of a quarter of a mile I had decided that there could hardly be a whole bone left in my pain-racked frame, when all of a sudden the animal stopped to a walk.

We were now out of sight of the hotel, and out of earshot of the derisive gallery of spectators, and I determined that even if it took me a week to reach Dunback I would maintain the quiet walk with which the horse now seemed perfectly content. It was pouring, the rain coming down not in the sudden, sluice-like, flood-gate fashion which offers promise of a quick cessation, but in a concentrated, compact, fine, unceasing descent, cautiously and remorselessly, like the sand in an hour glass or the conversation of a fluent and well-informed bore. The horse was unshod, and it slipped and slithered all over the road. Everywhere there was mud which leaped up at me, almost to the eyebrows, like a dog glad to recognise a friend. Still I was on my way, with no one to see me or jeer at me. Then all of a sudden the horse jibbed. He would go in any direction but straight ahead. I coaxed, threatened, and, I think, almost prayed, but the brute refused to change his mind.

The cause was a horse cover which some settler, showing, I thought, a disgraceful disregard

for his own property, had left flapping in the wind and the rain on the barbed wire of the roadline fence. Eventually I dismounted and tried to drag the horse past the spot, but after several fruitless attempts I hitched the animal to a fence post and, rain and mud notwithstanding, filled my pipe and sat down in the shelter of some ridiculously small bushes to await the coming of my friend, Constable Conn, who had told me that he would be following on shortly after me as soon as he had finished his duties. My second pipe was glowing, as well as the humid conditions would permit, when I heard the sound of a horse approaching. It was the constable, swinging along at a spanking pace which I was too discouraged even to envy.

"What's the matter with you?" he cried in astonishment when he saw me sitting at the roadside.

"This damned horse you got for me is a jib," I complained querulously. "He won't go past that horse cover on the fence."

"I suppose it wouldn't occur to you to shift the cover instead of sitting there in the rain," he replied.

"No, I hadn't thought of that," I admitted.

"A fine lawyer you'll make," he said as he led my horse past the offending object.

For about a mile we rode together, but the pace was too slow for Conn. My horse had difficulty in keeping its feet on the slushy clay road, and after a while my companion said he thought he had better push on, as he had to get to Palmerston that night and I had only to make Dunback.

"You'll get to Dunback all right," he shouted as he cantered off.

Wishing I could share his optimism, I pushed on slowly, and I finally reached my destination; but the constable's "all right" scarcely fitted my condition. What parts of my legs and seat were not blistered were skinless. I was wet and cold and thoroughly miserable, and could hardly get out of the saddle. After some sort of a meal I limped unhappily to bed, where I lay in torment on my stomach all night.

V.

The following morning I boarded the train for home, but it was a physical impossibility for me to sit on the hard seats of a railway carriage, which in those days ran the full length of the car, so I knelt at the window and affected for several dreary hours a keen interest in the wet and windy landscape outside. I could not read or even think, and I certainly could not sleep. I just took it for granted that I was coming from somewhere and going somewhere else, and summoned up barely enough energy to reflect on my own misery. When my knees gave out under my weight and felt like snapping, I would go and stand in the cold on the platform, but that was a very brief respite, and I was generally glad to go back to a contemplation of the countryside on my knees. Arrived at Dunedin, I hailed a hansom cab to drive me home, and spent one of the most agonising quarters of an hour of my life. In due course my wounds healed and my pride was lifted out of the dust, but I never forgot my first experience on horseback.

At this time I had a considerable country practice, and with the Macraes adventure still fresh in my memory I decided that it would be a good thing to acquire the art of horsemanship. I went to a

client of mine, the proprietor of a livery stable, whose mounts I had been led to believe were the reverse of high-spirited, and discussed the question of my instruction. He knew just the horse I wanted, and produced it; but it happened rather whimsically, and perhaps unfortunately for me, that my first lesson was my last.

The horse was a white one, and, in the words of its owner, "as quiet as a lamb." I told him to saddle it up, and a few minutes later I mounted and started to walk it out of the loose box. But I forgot to duck as we passed through the door, and I struck my head, splitting and completely ruining a new bowler hat that I was wearing and nearly knocking myself senseless. By some miracle, however, I retained my seat and contrived to emerge into the yard considerably battered but in complete command of the situation. It had been raining heavily earlier in the day, and the water channels were full, although at the time I had not noticed it. My horse, however, had, its attention having been directed to the gutter outside the stable by the reflection of a street lamp in the water. When it reached the gutter it jumped, and the next minute I found myself perched dangerously on its rump, struggling to get back into the saddle. Once again I managed to save the day, and we set off gingerly down the street.

At the first corner the horse turned automatically to the left, but since that was the direction I wished it to take I gave it its head. A little further on, however, when I wanted it to turn right, it insisted on another left-hand turn. I pulled on the rein as hard as I could, but the horse, divining no doubt the inexperience of its rider, turned its head

to the right, but continued to proceed to the left. The same thing happened at the third and fourth corners, and at the end of a few minutes we were back at the stables again. The gutter, however, had still to be negotiated, and since to be forewarned is to be forearmed, I grasped the pommel of the saddle and avoided repeating the undignified performance of the outward journey.

The proprietor of the stables met me in the yard.

"Back so soon?" he queried.

"This horse has never been properly mouthed," I complained.

"Oh, that's rot," he replied. "Why, he's eighteen years old."

He promised to furnish me with another horse the next time I called, but I never went back. My first lesson cost me 1s 6d for the horse and half a guinea for a new hat, and I spent the rest of the evening picking white hairs off my blue serge trousers. I have not been on a horse since, and can safely say now that I never will be.

CHAPTER XXII.

A Peculiarly Unpleasant Case.

I.

On March 26, 1902, the rural quiet of the little Taieri township of Allanton was rudely disturbed by the tidings of the death, under distressing circumstances, of a well-known woman, whose charred body was recovered from the blazing debris of a rude hutment in which she had been living intermittently with a man who was later charged with being the cause of her death. A Coroner's jury found that death had been caused by the woman being stabbed with a carving fork, and that the house had been set on fire at the same time, but the verdict stated that there was no evidence to show who was responsible. Hugh Sweeney, who was under arrest when the inquest was held, was later committed to the Supreme Court on a charge of murder, but after a two days' trial was acquitted.

The horrible circumstances of the woman's death and the sordid details of the events leading up to the tragedy, aroused general public interest in the case, not only in the immediate locality, but very much further afield as well. The victim was Mrs Annie Sinnott, the widow of a once prominent farmer and contractor of the Waihola district, who had died several years previously. Her private life was a minor tragedy in itself, since from the time of her husband's death she seemed gradually to lose her grip on life altogether, developing an unfortunate addiction to drink and a moral standard very much lower than that to which she had been raised. Despite the efforts of her family to reclaim her, she

degenerated from a strikingly handsome and generally popular figure to the merest shadow of her former self. She had been living with Sweeney, a labourer about 50 years of age, for some time prior to her tragic death, and both were prone to frequent bouts of intemperance. Latterly the accused had been living in a small hut by himself on the opposite side of a small paddock from where Mrs Sinnott lived, and it was generally known that quarrels between them were numerous and bitter.

On the evening of March 26 neighbours and passers-by had their attention drawn to one of the common disturbances at Mrs Sinnott's hut by the sound of high-pitched and agitated voices, and a short time afterwards the local storekeeper, who lived close at hand, noticed that the house was on fire. An alarm was raised, but when a party of helpers arrived the flames had a strong hold, and were bursting out through the front wall. In the absence of fire-fighting appliances of any kind, the unsubstantial building was completely gutted. As the fierceness of the blaze increased, the roof fell in, and the body of Mrs Sinnott could be seen lying on the floor. Attempts had already been made to force an entry into the hut, but without avail, the heat and smoke driving the would-be rescuers back.

When the body was discovered, desperate efforts were made to remove it from the fire. The site of the cottage had been excavated out of the hillside. At the rear of it there was a sloping bank, and between this and the back wall there was a shallow ditch. With the aid of props and a rake, and working from the top of this bank, some of the spectators contrived to drag the burning body into the ditch and then up the bank, but although they

protected their hands with old sacks, the heat was so great that they were forced to let it roll back into the ditch. At another attempt it was recovered, and presented a gruesome appearance. The chest wall was almost entirely burnt away, and a carving fork could be seen completely transfixing the heart. Sweeney was present at the fire, having just returned in an intoxicated condition from the Allanton Hotel. When he arrived he was heard to ask some bystanders to "try and get the old girl out of the fire." Later he accused one of his neighbours of having set fire to the hut.

After the recovery of the body the police saw to it that the carving fork was left just as it had been found until a post-mortem examination could be made. It was removed after the post-mortem and put carefully away in a box, wrapped up in cotton wool so that the prongs could not be touched or their condition in any way altered. The reason for these elaborate precautions was that, as the prong points protruded through the heart, their condition and appearance might be expected to establish whether the fork had been plunged into the body before or after the burning took place. I defended Sweeney, and when he was committed to the Supreme Court for trial, I realised that the evidence of the carving fork would play a very important part in the case. The only thing to do, then, if such evidence were to be adequately met, was to undertake a few experiments of my own.

II.

The tests I made were exhaustive, and, I fear, not a little trying to the members of my

household and some of my neighbours. To facilitate my experiments I first bought several old carving forks from a second-hand dealer. Armed with these, I descended on the family butcher, and from him I procured some pigs' hearts, which resemble very closely the human heart. When I reached home I stabbed one of the hearts with a fork, piercing the organ after the manner of the transfixing of the heart of Mrs Sinnott. I then burnt fork and heart in the kitchen range and carefully noted the effect of the burning on the exposed portion of the fork prongs. My next move was to burn another heart, stick it with another of the forks, and let it cool, again studying the reaction of the metal at the tips of the prongs. After a couple of nights of this sort of thing, I was summarily dismissed from the kitchen and told to continue my diabolical practices in the washhouse. But here again I encountered opposition, for now the unsavoury odours of burning flesh that had previously filled the house were wafted from the low chimney of the copper to the protesting nostrils of the man next door, who inquired very indignantly "what the hell I thought I was doing?" My end was finally achieved, however, and I provided myself with a lot of interesting data which should have proved invaluable later on.

But all my work was rendered useless and unnecessary when I elicited from the medical witnesses in cross-examination that they had not cut the fork out of the heart, but had pulled it out. As cavalier treatment of an important piece of evidence, that was bad enough, but they then proceeded to experiment with the thing on the liver, jabbing it

in and withdrawing it again two or three times, thus polishing the prongs and completely destroying the only valuable piece of evidence in the case.

Of course, the question immediately arises, If the woman was not stabbed to death with the fork, how could its presence in her heart be explained? That was not difficult. It came out in evidence that a kitchen dresser containing the usual assortment of household cutlery stood against the back wall of the hut. When it was burnt the contents fell to the floor where the body of the woman lay. When the body was dragged out through the rear of the building some of the cutlery went with it and lay in the ditch from which the corpse was ultimately retrieved. It was quite reasonable to suggest, therefore, that when the body rolled down the bank after the first attempt to recover it, it fell on the fork, which then entered the heart. As the condition of the fork had been completely altered by the polishing it received at the post-mortem examination at the hands of the medical witnesses, it was impossible for the Crown to negative the theory. The consternation with which the Crown Prosecutor heard the facts about the experiment elicited in the cross-examination was almost ludicrous.

III.

The preliminary hearing of the charge against Sweeney was complicated in its early stages by the interference of a belligerent Justice of the Peace, concerning whom I had some comments to make in an earlier chapter. Mr M—— excelled himself on this occasion, and shared some lively passages with the Crown Prosecutor (Mr J. F. M. Fraser).

When the case was called the ubiquitous Mr M—— appeared from nowhere and took a seat on the Bench with the Stipendiary Magistrate (Mr C. C. Graham). Within a minute he was at odds with Mr Fraser, and it was some time before their differences were sufficiently composed to enable the hearing to proceed.

The trouble arose out of Mr Fraser's decision not to open on the facts, as they had been recently stated in evidence before the Magistrate at the inquest. He would, he said, proceed to lead the evidence. Mr M—— had other ideas on the subject, however, and said so. He would like to hear the case opened up. Mr Fraser insisted that it was not necessary, as the facts had already been published, and Mr M—— could get an idea from those reports of the nature of the case.

"I know absolutely nothing of it," Mr M—— bridled. "I do not read such accounts, and I come here with my mind completely free of any opinion whatever on the subject."

"But as I have only to prove a prima facie case," Mr Fraser continued, "it is beside the point to comment on it at this stage."

"Do I understand," said the now thoroughly irate Mr M——, "that you refuse to open the case because I am here? I feel it very keenly that you should refuse, and I ask you once again to give me an outline of the case."

But the Crown Prosecutor continued to stand his ground, and I think would have persisted in his refusal had it not been for the unwarranted waste of time involved. After another demand from the

Justice, he gave a brief and hasty opening, which he concluded with a further protest against being virtually forced to do so.

Mr M——, however, was still not satisfied, and asked the Crown Prosecutor if he could open anything about a motive. In the past, he said, the prosecution had always opened fully in the lower Court as to the facts. This time I joined Mr Fraser in his protest, and it was pointed out by my friend that it might almost be an injustice to an accused person to comment on evidence in the lower Court, as it was only a small community, from which the jurors, who would in any case have read the newspapers, would have to be drawn. Only the evidence should be adduced so that it might be possible for the jurors to go into Court with open minds.

"Yes, I thank you very much for your remarks," Mr M—— rejoined, "but you have not mentioned motive. I should like to hear something about that."

Mr Fraser said that the motive would become apparent as the evidence was adduced, but the worthy Justice, giving a fine imitation of a terrier worrying a bone, said he would like the case opened with some suggestion as to motive. Or perhaps the Crown Prosecutor would like the Court simply to gather what it could on the subject.

"I do not know that it is a part of your duty to gather motive," Mr Fraser replied, "but I propose to leave it to the evidence. I will not submit to cross-examination by the Bench."

"I dwell on this particular fact," Mr M—— persisted. "Do you open with motive or do you not?"

"Pardon me, Mr M——," the Crown Prosecutor replied, "I cannot allow myself to be questioned by you. With all due deference to the Bench, I refuse to allow myself to be cross-examined."

Even when Mr Graham interposed to suggest that the business of the Court might be proceeded with, Mr M—— continued to drone on about motive, and said he was afraid he would have to draw his own inferences. With a final rejoinder from the Crown Prosecutor that the Justice had no right to draw any inferences at all, although he could draw them from the evidence if he wanted to, the incident looked like closing. But once again we had reckoned without the tenacious Mr M——.

When the first witness was called the Crown Prosecutor began to lead the evidence given at the inquest. Like a shot out of a gun came the protest:

"That won't do, Mr Fraser. I certainly won't allow that," Mr M—— declared pontifically. "You cannot lead evidence given at a Coroner's inquest. Mark you, you may think I am taking an extraordinary course, but I am right. Metaphorically speaking, the rope is already around the man's neck."

"I always thought an accused person was assumed to be innocent until he was proved guilty," Mr Fraser replied, "but it would seem that that is altered now."

Before another storm in a teacup could brew Mr Graham interposed to remark that the leading of the evidence was only done as interrogatory, and I explained that I consented to it in the hope that it would expedite matters, adding also that I objected strongly to so much useless waste of time. At this

Mr M——subsided and was hardly heard of again until after the committal of the accused, when he expanded on the subject of bail.

Asking the Magistrate to fix bail, I submitted that it was quite reasonable, and that it was sometimes done in murder cases.

The Magistrate declined to accept the responsibility, but said that the prisoner might, of course, appeal to the Judge.

This was Mr M——'s chance. In most cases now, he said, Judges admitted prisoners charged with murder to bail.

"I have an instance in mind now that I will give you," he continued. "Mr Justice Hodges granted bail in Melbourne to Mrs Fraser, who was charged with shooting her husband. Understand I am not going against the opinion of my brother Magistrate, but Mr Justice Hodges said that we have no right to consider what an accused person may do when out on bail. Notwithstanding what my brother Magistrate says, I must remind you that in nearly all murder cases now they admit to bail."

Mr Fraser was leaving the room at this time, but returned to say: "Well, it looks as if the safest crime to commit now, if you want bail, is murder."

Bail was not granted, and Mr M——'s final observations on the subject were drowned by the sounds of people leaving the courtroom.

IV.

The case was tried in the Supreme Court by Mr Justice Williams. There was a great deal of evidence by neighbours and others, but the most important was that of two doctors who were called. It was shown in evidence that the deceased was

alive and speaking in a high-pitched voice at about 8 p.m., just before the fire was discovered, and that Sweeney left to go down the hill to the hotel at 7.30 p.m. Apparently he became very drunk. He vigorously denied having been near the dead woman's hut that night, and the fact that he was leaving the hotel bar when the fire was discovered was established beyond question.

Dr E. E. Blomfield, in the course of his evidence, said he was convinced that the stabbing took place before the fire and while the woman was still alive. In his examination of the body he encountered nothing that would disprove the possibility of the fork having entered the body after it was taken from the floor of the burning hut. If it had been inserted afterwards, it would have had to be done very carefully and with a clean stab. He had since conducted experiments that had fortified his belief that the fork entered the heart before death.

Cross-examined by me, the witness said that his experiments showed that a fork embedded in a heart and then burnt carried very little carbonising on the part that was covered, and he considered that the instrument produced in Court showed more carbonising than any of those he had used. He also admitted that at the post-mortem he had used the fork in the body for an experiment with the liver, and had found it required a definite pull to withdraw it. And when I asked him what effect such experimentation would have on the fork which was such an important exhibit in the case, he said he did not think it would make any difference to its condition.

Dr Cattan, the other medical witness, was substantially of the same opinion. He did not think

the wound in the heart could have been inflicted when the body was being removed from the flames. All the indications pointed to the fork entering the body before death. On the subject of the experiments with the liver at the post-mortem, he said they thrust the fork into the liver two or three times.

Replying to my questioning, he said he thought it was unlikely, but not absolutely impossible, that the fork could have been lodged in the heart by the body falling on it. When the fork was withdrawn it clearly showed the part that had been embedded. I suggested that the insertion of the fork into the liver two or three times would have some effect on its appearance, and the witness admitted that it would, adding, however, that the instrument was not then in the same condition as it was when it was found. It seemed to have become rusty. He also said that from the appearance of the prong at that time the main part of the fork could not have been exposed to fire, although it had obviously been subjected to great heat. Probably the exposed part had become red hot, and the heat had been conducted along to the embedded portion of the fork.

The evidence of Thomas Christie dealt largely with the recovery of the body from the hut. This witness was present when it was brought to the top of the bank, and in cross-examination he said he did not see the fork when the body was dragged up the first time. Nor did he see it when the body was lying in the hut, although the light was good at the time and he could see the body very plainly where it lay on the floor, which was covered with all sorts of debris. The police constable who actually dragged the corpse out told a similar story, and a detective who examined the debris on the floor of

the hut said that he saw a collection of knives and forks lying just about where the body was first discovered.

Dr Cattan was recalled at the suggestion of His Honor, and, in reply to a question by Mr Fraser, said it was quite possible for the wound to have been self-inflicted, although it would have been a physical impossibility for the woman to fire the house after she had stabbed herself.

V.

No evidence was called for the defence, but my address to the jury was a lengthy one. The issues I put to them were whether the woman was murdered, and, if so, did the accused commit the murder? And I submitted that the first question depended on whether the fork was thrust into the heart before or after death. On that point there was no direct evidence at all, only the opinions of the two doctors—opinions that were not worth very much. I reminded the jury that one of the reasons advanced by Dr Blomfield for his view was the fact that the wound was a clean one, and yet in cross-examination he had admitted that it might have been just as clean if it had been inflicted after death. Moreover, he had also admitted that the state of the body as noted by him could have been just the same if the fork had been inserted after death. The jury could gather very little from testimony of that kind, nor could they determine anything from the condition of the fork, because the doctors had taken it and thrust it two or three times into the liver. That fork should have been produced in Court in the exact condition in which it was extracted from the body. The jury could then have judged for themselves. The police had gone to great pains to keep

the fork from contact with anything, even to the extent of wrapping it up in cotton wool, so that no marks of carbonisation or anything else could be wiped off. And yet nobody seemed to know, until the facts were elicited quite by accident, that the doctors had been experimenting with it.

I dealt very carefully with the whole of the medical evidence, and submitted that an analysis of it would show that the opinions of the doctors that the wound was inflicted before death were not worth a snap of the fingers. They proved anything or nothing, and it was for the jury to consider the rest of the evidence with great care to see if any of it supported the views held by the medical witnesses. They had the word of a detective that knives and forks were found in the ruins of the hut near where the body had been lying, and I submitted that it was reasonable to suggest that the carving fork, with other cutlery, perhaps, had been dragged out into the drain with the body. Then when the body rolled down the bank after the unsuccessful attempt to recover it, it fell on to the fork. None of the witnesses had noticed the fork in the body when it was first drawn up the bank or when it was in the fire, but the next time it was dragged up they saw it immediately.

Inviting the jury to discard altogether the theory that the woman was murdered, I submitted that no man, after murdering anyone by stabbing, would be foolish enough to leave such incriminating evidence in the body if it was his intention also to set fire to the house. All the indications were that the unfortunate woman was not murdered at all, but that she had perished in an ordinary accidental fire. I wasted no time at all on the suicide possibility,

but proceeded to show that even if the woman were murdered, it was a physical impossibility for the accused to have done it. The accused's movements from 7 o'clock until after 8 o'clock had been carefully checked, and he could not have had time to go and quarrel with the woman, murder her, and then set fire to the hut.

I emphasised the complete absence of anything like a motive for the crime. Of course, the accused and the deceased had quarrelled, but that was by no means unusual, particularly in view of the fact that both of them were intoxicated at the time. They frequently had violent disagreements, but it had not been shown that at any time the accused had ever threatened the deceased. Was it not the accused, in spite of his drunkenness and the quarrel they had had so short a time before, who had asked someone to "try and get the old girl out of the fire"? And it was Sweeney who urged that the police should be sent for. Were these the reactions of a guilty man? He had certainly lied when he said he was never near the hut on the night of the fire, but that was not unreasonable. He was probably afraid of being connected with the burning of the building. That lie might weigh against him if there were any other evidence to connect him with the crime, but there was not one single circumstance that pointed to his guilt.

In his summing up His Honor said that if the woman had been alive when the house caught fire there was nothing to prevent her from walking out of the place to safety. Possibly in answer to that it might be said that she had been drinking for some days, and was drunk when she was overtaken by the fire. Unless the jury were convinced that the

fork entered the heart during life, the case must be at an end, and the accused was entitled to an acquittal. But if they decided that the woman was stabbed before death, they must ignore the suicide theory, because death would have been instantaneous, and she could not have fired the hut afterwards. Even then they had to be convinced that it was the accused who perpetrated the deed. His Honor referred to my remarks about the absence of any motive and the lack of evidence of any threats against the deceased by Sweeney, and said that I had very rightly drawn attention to the conduct of the accused after the fire. These were all matters which the jury must consider carefully before they decided that the accused had murdered the woman.

A little over an hour after they had retired the jury returned with a verdict of "Not guilty," and the accused was discharged. His Honor, thanking the jury for the attention they had devoted to the case, said, "I must say that I concur in the verdict you have given. I think you have come to a very right decision."

CHAPTER XXIII.

Perjury and Manslaughter.

I.

A case of wide interest and unusual circumstance which set the cathedral city of Christchurch agog for the four days of the trial in 1909 concerned the killing of Ernest John Bourke at Westport, and resulted in the conviction of William Connelly on a charge of manslaughter after he had already been sentenced to seven years' imprisonment for perjury. The chronicle of the West Coast murder case, as it was known, takes some curious twists, the most amazing of which was the trial for murder and the conviction, largely on the perjured evidence of Connelly, of Olaf Hallinen and his friend, Andersen. Twelve months after the death of Bourke, and several months after they had been found guilty of manslaughter and sentenced to imprisonment, Hallinen and Andersen were pardoned and Connelly went to prison for ten years.

When the body of Bourke was found in a shed in Westport, suspicion immediately pointed to Connelly, who was the last person to be seen in the deceased's company, and when he was questioned by the police he made a long written statement in which he confessed that he and Hallinen and Andersen took Bourke into the shed, and that all three were implicated in the assault that resulted in his death. Hallinen and Andersen were tried for murder before Mr Justice Chapman (afterwards Sir Frederick Chapman) at Nelson, and were found guilty of manslaughter. The principal factor in their conviction was the evidence of Connelly. The

startling developments that followed began with the arrest of Connelly on a charge of perjury—his perjury being the story that had incriminated Hallinen and Andersen. He was tried at Hokitika before Mr Justice Cooper (afterwards Sir Theophilus Cooper), and on being found guilty, was sentenced to seven years' imprisonment, the jury, in effect, reversing the Nelson verdict with respect to the other two men. After the perjury trial Connelly made a clean breast of the whole affair in a lengthy statement which concluded:

> I now confess that I alone killed Bourke. It was in the shed. I robbed him and hit and kicked him myself. I implicated Hallinen and Andersen, thinking that I would get myself out of it. Hallinen and Andersen are innocent.

And so the whole business of the trial began all over again. Connelly was charged with murder, and it was at this stage that I came into the picture. Mr Justice Denniston (afterwards Sir John Denniston) heard the case, and I was engaged to defend Connelly. I had with me Mr M. Donnelly, of Christchurch, and the Crown Prosecutor was Mr T. W. Stringer, K.C. (now Sir Walter Stringer). After a long trial Connelly was found guilty of manslaughter, and received a ten-year sentence, to run concurrently with the seven-year term imposed on him at Hokitika. Hallinen and Andersen had been previously released, but a pathetic feature of the occurrence was the death from natural causes of Andersen shortly after having gained his freedom.

II.

The tragedy arose out of a drinking bout. Bourke was a middle-aged man addicted to drink, and on the night of his death he became intoxicated in one of the Westport hotels. The licensee discovered him

lying apparently asleep on a settee in one of the public rooms, and told him that he would have to leave the premises. Connelly came along at that moment and said he would take the man away. Connelly, who was a youth of 19, had himself been drinking, and when he left the hotel, leading the older man, he shepherded him into a shed about seventy-five yards away. A woman who passed the two men in the street saw them enter the shed, and in evidence she said that almost immediately after she heard sounds of a scuffle and a groan. That, apparently, was the last that was seen of Bourke until he was found, practically dead, about an hour later. In the meantime Connelly returned to the hotel, arriving there very much out of breath, as if he had been running, and with his clothes generously spattered with mud. His explanation of his condition was that he had fallen in the road while conducting Bourke to the shed, but he did not say why he should have been running.

Connelly had a drink in the bar, and then, with a companion, went to another hotel on the opposite corner of the street. Within a few minutes a police constable came in to use the telephone, and Connelly endeavoured to gain admittance to the telephone room, but was pushed out. When the officer came out he said a man had been found dead in McLaughlin's shed, and that he wanted some assistance. Bourke had been found by a man named Duncan, and was not quite dead. He had been brutally knocked about. Both jawbones were broken, one eye was severely cut, and there were other serious injuries which suggested the use of extreme violence by his assailant. He had been robbed, and his clothing was torn in several places. Connelly was in the vanguard of the group that went with the constable

to the shed, and made a considerable show of being helpful. Later he returned to the hotel and continued drinking, finally becoming violently drunk and starting to break windows. He was arrested for drunkenness and locked up. A little later Hallinen and Andersen were also put in gaol, on a charge of being absent without leave from the steamer Canopus. Thus the three men who were to figure so prominently in the exhaustive inquiries into the death of Bourke spent the night of the tragedy in prison together before the investigation began. For some reason the police took time to decide that Bourke had been the victim of foul play, but, once the official mind was made up, Connelly was asked to explain his movements and actions on the night of the killing.

It was at this point that he made his statement to the police incriminating Hallinen and Andersen, who were arrested, tried, and convicted of manslaughter. Subsequent inquiries, set on foot by a man named Haakonson, proved the falseness of Connelly's story, and, as has already been related, he was convicted of perjury and then charged with murder. About a dozen witnesses were called by the Crown to fortify the evidence against Connelly that was contained in his admission to the police, the most important being Chief Detective W. B. McIlveney, who detailed the various statements made by the accused at the time of the original inquiries.

Connelly, the detective said, admitted having struck Bourke, and he was then taken to the police station for further examination. He was told to please himself how much he told the police, because his position was a serious one; but he was advised

to tell the truth whatever he said. He then made a full statement. After his trial for perjury at Hokitika, Connelly was again approached by Mr McIlveney, whose opening remark was:

"Well, Connelly, you have had a fair trial."

"Yes, sir."

"You have heard the verdict and received sentence," the detective continued. "Now answer me truthfully. Are you rightly or wrongfully convicted of perjury?"

"Rightly," Connelly replied.

"What part of your evidence was false?" he was asked.

"I did it myself," the accused said. "Hallinen and Andersen were not there."

Later Connelly signed a statement embodying his confession, and in the presence of the gaoler, two warders, and the court crier he stated that he had not been influenced by any promise or inducement, and that nothing had been said or done to persuade him to confess against his will. His sworn evidence at the trial of Hallinen and Andersen was false, and the true facts of the case were set out in his statement.

In cross-examination by me Mr McIlveney said that Connelly had given evidence five times on the lines of his first statement to the police, and after the conviction of Hallinen and Andersen he had been asked if there was any possibility of his evidence being wrong. He said that there was no mistake about what he said, and, later, when he was questioned in the presence of the Crown Prosecutor and told that it was not yet too late if he had any-

thing to add to his evidence or anything to retract, Connelly became very vehement and said:

"There is nothing wrong with my evidence. If God should strike me dead, the three of us are in it."

I questioned the detective closely on the subject of the statement, and suggested that its language was hardly what one would expect from an illiterate youth, who could hardly write his own name. The word "implicated" could hardly be Connelly's, and I doubted whether he knew what it meant. Mr McIlveney said he adopted the usual course of asking the accused questions, and then read the statement over to him. The accused appeared to understand it quite well. The words "I alone killed Bourke" were the accused's own, and he also used the actual words, "Hallinen and Andersen are innocent men."

The action of the detective in questioning the accused in the courthouse at Hokitika immediately after his conviction for perjury was the subject of pointed comment during the case. The Crown Prosecutor told the jury that it was not for him to say whether Mr McIlveney had been discreet or not in what he had done, and said he did not want to try to justify him, although he thought that if it had been realised that a murder charge was likely to follow, the confession would not have been obtained.

His Honor, too, commented on the manner in which the confession was secured. It was not justifiable, he said, and although he did not suggest that there had been any improper intention, a mistake had been made. His Honor also referred to the form of the statement, and said that it should have been taken as question and answer.

Without doubt that is the fairest way of dealing with all such statements, and throughout my career it has been my firm conviction that the interests of everyone, Judge and jury, accused and accusers, would be best served if the practice were invariably adopted.

New evidence adduced at the trial of Connelly, which might have had a marked influence on the fate of Hallinen and Andersen if it had been called at their trial, was that of a Salvation Army woman who saw Connelly leading Bourke into the shed and heard sounds of a struggle immediately afterwards. Instead of going for help, or even telling the police about it later on, she ran away, and kept her counsel throughout the trial of the two men. Under cross-examination she said she was too frightened even to tell the police.

"You knew that Hallinen and Andersen were tried for their lives for murder in Nelson," I said, "and you still did not tell the police what you had seen?"

"I was frightened on account of my health," she said. "I thought that, as I was in ill-health, I would not be able to stand the ordeal of giving evidence at the trial."

She vigorously denied a suggestion that she had been paid £15 to come forward and give her evidence at this stage, and to every question concerning her tardy revelations she replied that she was too frightened to have anything whatever to do with the matter.

The accused, in the face of the evidence of his confession and the story of the woman who saw him with Bourke and heard the commotion, was in a very difficult position, and to convince the jury that he did not kill the other man, it would

help if he could show who did. To this end I called several witnesses to testify to certain things done and said by Hallinen and Andersen that night. There was the matter of a melee in a fish shop, in which Connelly broke a glass door and cut his hand. Hallinen and Andersen had bloodstains on their clothing that night, and their story was that they got the stains through coming into contact with Connelly. Three witnesses swore that the bloodstains were visible on the clothing of Hallinen and Andersen while they were in a hotel prior to the disturbance in the fish shop. Moreover, when Hallinen was asked by the bo'sun of the Canopus the next morning how he came to have blood on his clothes, he replied that he had been fighting, but he did not know whom. The suggestion was that he was referring to the assault on Bourke. Then again Hallinen had been heard describing with many gestures and movements of legs and arms how he had given a man a "doing" that night, and it was submitted that here again he was referring to the quarrel with Bourke.

III.

Having called evidence for the defence, I addressed the jury first, and began with a review of the evidence, specially attacking that of the Salvation Army woman who ran away and refused to tell what she had seen. Her story was a most unlikely one in every respect, I submitted, and her ill-health was a lame and decrepit excuse for the silence she had maintained for nearly a year. I had to admit that Connelly had made a lot of conflicting statements, but I pointed out that he was an illiterate youth, and did not appear to have a great deal of intelligence. In fact, he was just the sort of fellow

who could hardly help making varying statements. But in its essentials his story was constant, and it had been impossible to shake him on it. Dealing with the failure of Hallinen and Andersen to go into the witness box at their trial at Nelson, I submitted that they had not done so because they were afraid, and the reason for their fear was the evidence that had been adduced against them.

I then turned to the question of the treatment that had been meted out to the accused. One complaint was that the prosecution at Hokitika had grossly abused its privilege of ordering jurors to stand aside. Out of forty-six people called twenty-nine had been ordered to stand aside, so that the accused had been tried by a jury of the prosecution's choosing. That could not be regarded as fair. Then after his conviction, and with a seven year sentence hanging over his head, Connelly had been taken from the court, no doubt dejected, miserable, and wretched, and the chief detective of the New Zealand police force had questioned him. Did the jury believe that Connelly in his reply to what the detective had asked him had said, "Rightly, sir"? Would an illiterate person answer in such terms? And then, "I alone murdered Bourke." Was that the way such a youth would speak? I did not attribute to Mr McIlveney anything but the best intentions, nor would I suggest that he had been dishonourable or unfair to the accused, but I asked the jury to consider the confession in relation to the circumstances in which it was obtained, and also in the light of the other evidence adduced. If the evidence did not support the confession, then they could hardly accept the accused's admission.

Where, too, I asked, was the motive for this brutal murder? The Crown said it was robbery, but Bourke was not likely to have sixpence, seeing he had just been turned out of an hotel. I submitted that on the Crown evidence alone the accused was entitled to an acquittal, but that he had gone further than that and produced an affirmative defence, showing not only that he did not commit the crime, but that others did. Hallinen and Andersen were discovered with blood on their clothes, and, in addition, Hallinen had been very anxious to get the accused away from the police, a fact which suggested that he thought Connelly knew too much about what had happened the night before, and should be got out of the hands of the authorities as soon as possible. No attempt had been made to explain the blood on Andersen, who had not been in the fish shop with Hallinen and Connelly.

Mr Stringer said that the case for the Crown was very simple. It was contended that Connelly took Bourke away, and after beating and kicking him, causing his death, robbed him. He referred to the confession as satisfactory evidence, and said that confessions, when they were backed up by circumstantial evidence, very rarely led juries astray. He agreed that it was unfortunate that Hallinen and Anderson had not given evidence on their own behalf at Nelson, but he reminded them that there was nothing that exercised the mind of defending counsel more than the question whether or not he should put the prisoner in the witness box. In any case, Hallinen and Andersen could not be blamed for it, and he did not think it was fair to draw any unfavourable conclusion against them on that score. Whether the jury found Connelly guilty of murder

or manslaughter depended on what the original intention was, the degree of malice. It was a common thing to find low, depraved men shepherding drunken men and assaulting and robbing them. If a motive were required, that explanation supplied it.

IV.

His Honor, summing up, said the case was one which presented unusual features, and his comments on some of those features are of interest. On the subject of the failure of Hallinen and Andersen to give evidence at their trial, he said that it was very unfortunate, but it would be very unfair of the jury to allow that circumstance to influence them in any way.

Referring to the matter of the rejection of twenty-nine jurors out of a panel of forty-six at the time of the prosecution of Connelly for perjury, His Honor said he had never seen such a heavy challenge by the prosecution before. In the hands of the Crown, he said, the right of challenge was exercised fairly and impartially, but this was a most unusual case. The accused challenged six, and that had left only eleven jurors available. It was clear, therefore, that the prosecution selected its own jury, which suggested that it was interested in its client and not in securing a full and fair trial for the accused. Nevertheless, the prosecution was quite within its rights in ordering so many jurors to stand aside, and he would not suggest that as a result of the number stood aside the accused did not get a fair trial.

Dealing with the confession, His Honor suggested that if the detective had known that a

murder charge would follow he would not have obtained the accused's statement in the way he did. Nor would Connelly have given it so readily. It was evident that both of them thought that the conviction of Connelly for perjury and the imposition of a sentence of seven years' imprisonment, a sentence as great as that imposed on Hallinen and Andersen, had vindicated the law, and that the lengthy and costly proceedings in the case were at an end. In the circumstances it had been a mistake, but no matter how the confession was obtained, there could be no doubt that it came before the jury as legitimate evidence. The jury must consider, however, how far that admission of guilt out of the accused's own mouth would influence them. The only real points at issue were: Was Connelly alone in causing Bourke's death or was the original statement true? And if it was decided that he alone was responsible, it had then to be determined whether he was guilty of murder or manslaughter.

After reviewing the evidence at great length, His Honor put the following four issues to the jury:

Is the accused "guilty" or "not guilty"?

If guilty, is he guilty of murder?

Or is he guilty of manslaughter?

If you find him guilty of either, then do you find that it is proved that he was assisted, as alleged in his original written statement?

After a retirement of about an hour and a-half the jury returned and the foreman handed His Honor the result of their deliberations.

"The jury must be unanimous," the Judge said. If you find an answer to the fourth question, it will assist me in the question of penalty. Of course, it is not imperative that an answer be given. The

main point turns on the view you take of the difference between murder and manslaughter. It seems to me that he is guilty of manslaughter."

"We are unanimous on the main charges," said the foreman.

His Honor then said they would have to wait a while before he could discharge them. They must be kept locked up for a certain time. "I am very glad that you have not disagreed. It would be a public misfortune if the case had to be tried over again."

The jury then retired again, and in a little less than an hour returned with a verdict of guilty of manslaughter. They found that the accused was not guilty of murder, and in reply to the question whether he was assisted by anyone, they found a negative verdict. A strong recommendation to mercy was added.

Addressing Connelly, His Honor said that after a very careful trial, in which he had received every possible assistance from counsel, he had been found guilty of manslaughter. Considering the history of the case, His Honor thought he ought to express his entire concurrence with the jury's findings on all points. It had been impossible to listen to the evidence without coming to the conclusion that the verdict of the Hokitika jury was a correct one. It was clear that the true account of the occurrence was that disclosed in the confession which the prisoner had belatedly made. The jury had taken a favourable view of the prisoner's action, and in recommending him to mercy they must be assumed to have found that he acted possibly under the influence of liquor, and certainly without any realisation of the consequences of his brutality. To that,

and also to the prisoner's age, His Honor thought he should give consideration. Nevertheless, the offence had been a very serious one, and he must inflict a substantial sentence, which to some extent would go beyond the one he was already serving.

His Honor then sentenced the prisoner to ten years' imprisonment, the term to be concurrent with the sentence imposed on him for perjury.

It would probably be a satisfaction to the jury, the Judge remarked, to feel that their verdict confirmed the Hokitika verdict and placed beyond all reasonable doubt the true nature of the transaction, and finally removed any stigma attaching to Hallinen and Andersen. He added also that the verdict arrived at that day attached no stigma to the jury which had dealt with the case in Nelson.

CHAPTER XXIV.

Who Shot William Wogan?

I.

One of the unsolved mysteries of sudden and violent death of recent years was the case of William Edward Wogan, a barman-porter at the popular Hermitage tourist resort at Mount Cook, who was discovered one summer evening in 1931 in his bedroom with a fatal gunshot wound in the head. It needed no great imagination to reconstruct the brief occurrence. Beside the man's body on the floor lay a discharged rifle, with a spent shell a few feet away. A couple of moments after help arrived Wogan breathed his last. A suggestion of suicide by a fellow-employee who had been in the deceased's room a minute previously was generally discounted by reason of the position of the wound and the absence of any sign of such burning or singeing as would be expected if the wound had been self-inflicted.

The tragedy occurred in November, and it was not until several months later that William John Thomas Whalley, chef at the Hermitage when Wogan was killed, was arrested at Hokitika, on the West Coast, and charged with murder. Whalley had been the last person to see Wogan alive, and he told the police that he was on the point of leaving the deceased's room—actually he had his hand on the doorknob and his back to the other man—when he heard a rifle discharged, and, looking round, found that Wogan had shot himself. Whalley was tried in July of the following year before the Chief Justice (the Rt. Hon. Sir Michael Myers) and was acquitted. I appeared for the

accused, and had with me Mr L. E. Finch, of Timaru. The prosecution was in the hands of Mr W. D. Campbell, also of Timaru.

Almost from the date of the crime Whalley achieved a wide notoriety in the South Canterbury centre of Timaru, and also on the West Coast as a result of his connection with the tragedy, and in the months that elapsed between the killing and his arrest he was frequently embarrassed by the conjectures and often openly expressed suspicions of those with whom he came in contact. The happenings at the Hermitage seemed to be a general subject of discussion everywhere he went, and he confessed to a deep feeling of relief when he was finally arrested and charged with the crime and provided with an opportunity of resolving the question of his participation in the occurrence once and for all.

But the suspicion he encountered among his fellows was not the only price he had to pay before he stood in the prisoner's dock on trial for his life. The presiding Magistrate at the inquest delivered himself of certain observations concerning Whalley's connection with the affair, the effect of which was not improved by the omission of vital points from the newspaper reports of the proceedings. And then to make matters worse, the committing Magistrate, at the preliminary hearing, made a public statement from the Bench that was distinctly prejudicial to the accused, more especially as his remarks were widely circulated throughout the whole district as a result of the generous space given to the case by the Timaru press.

The Coroner's verdict was as follows:

> That Wogan died on November 5, 1931, at the Hermitage, Mount Cook, from laceration of the brain substance and haemorrhage, the result of a wound from

a bullet fired from a .22 rifle. The facts so far proved, in my opinion, definitely exclude the conclusion that the deceased committed suicide. They are also, in my opinion, inconsistent with a conclusion that the deceased accidentally shot himself. The matter is now one for the police to take such further action as they might be advised, and the inquest may be legally reopened if the occasion warrants this course.

The committing Magistrate was even more outspoken in his comments, and added to them a suggestion that the police had been very dilatory about the whole matter. At the conclusion of the hearing he said:

In cases of a grave nature like this I do not usually make any remarks, but I consider it necessary to do so in this case, and in the public interest to comment on the evidence. There is one theory that must have been present in the mind of every person who knew anything about the case, and that was the theory of suicide. That, to my mind, has been entirely precluded from all possibility by the evidence. It can be entirely discounted. There is another theory that might possibly have been thought to have been in the mind of the Court, and that was of accidental shooting by the deceased, and that theory is to my mind entirely dispelled by the evidence. The records of forensic medicine and the evidence of the doctor might entirely preclude such a theory. Taken in connection with the situation of the deceased, as has been told by the accused himself—he told three or four different stories—but taking almost any one of them, precludes the idea of accidental shooting of the deceased by himself. Having precluded these two, there is then the deceased and the accused present in the room, and it is quite clear that the Crown have to establish a case of murder or manslaughter, and on that I am not going to say anything at all. There is one other thing I deem it my duty, sitting here as a Magistrate, to refer to, and that was the extraordinary delay in getting expert

investigation of the matter. It seems to me the delay has been most extraordinary. I am not going to say more than this beyond calling public attention to the fact that there was an extraordinary delay. Accused will stand committed to the next sitting of the Supreme Court in Timaru for the trial of criminal cases.

II.

These extraordinary features of the affair were commented on very strongly by the Chief Justice, in the first place in his charge to the Grand Jury and later in his summing up. He stressed the inalienable right of every accused person to face his trial unembarrassed and unprejudiced by prior comment, and said that what had occurred in the lower court was to be deplored, because that sort of thing created an embarrassment to the Supreme Court Judge who had to try the case. It had not happened previously in his experience in New Zealand, and he hoped it would never happen again. The Crown Law Office took a similar view of the matter, and very properly offered a change of venue for the trial on the ground that what had happened might be prejudicial to a fair trial. Taking everything into consideration, however, my junior counsel and I decided that such a step was not necessary, and we went to the trial before a jury of the district.

The evidence showed that a shot was heard by several people in the hotel at about 6 o'clock. A couple of minutes later Whalley arrived and shouted to one of the witnesses, "Go to Bill. He's shot himself." When the licensee of the Hermitage arrived on the scene he found Whalley and a man named Williams in the room. They were holding Wogan up against the wall, and in reply to a question, Whalley again said that the deceased had shot

himself. The rifle was lying on the floor and the magazine was empty, the only shell it had contained having been automatically ejected after the shot was fired. According to some witnesses, Wogan had never been seen to use firearms of any description, and one police witness declared that he was actually afraid to handle a rifle.

Relating what he knew of the affair to the general manager of the Mount Cook Tourist Company before the arrival of the police from Fairlie, the accused said that he had been talking to Wogan in his room. The deceased was sitting on the bed with a rifle between his knees. The rifle had been borrowed by Whalley some days before to go rabbit-shooting, and he said that on the day of the tragedy Wogan had taken the rifle and had asked him to show him how it was operated. After talking for some time, Whalley turned to leave the room, and with his hand on the doorknob and his back to the deceased, he heard a shot. He sprang round, fearing at first that the rifle might have been fired accidentally in his direction. And then he saw that Wogan was shot. He seemed to stagger towards a settee near the wall and then sank down upon it. Immediately Whalley went for assistance.

There was conflicting evidence as to what Whalley actually said to different people when he described where Wogan was lying, and several witnesses told of betting transactions shared by Whalley and the deceased and of commissions laid on their behalf in Fairlie. One witness said that about a week before the tragedy Whalley had asked him to say that he had taken money down to Fairlie if Wogan should question him about it.

Medical and police testimony were unanimous about the absence of burning, singeing, or any sign of powder, and Constable Macintosh said that Whalley in a signed statement had declared that Wogan was unlikely to have deliberately taken his own life. An expert gunsmith told the court that the rifle was functioning satisfactorily, although the trigger pull was a little on the light side.

Addressing the jury, Mr Campbell submitted that there were four issues involved. In the first place, the deceased might have committed suicide; secondly, he might have shot himself accidentally; thirdly, the accused might have shot him unintentionally; and, finally, the accused might have wilfully murdered him.

With regard to the first possibility, letters written by the deceased just prior to his death gave no indication of an intention to end his life. In addition, the evidence was definite and uncontradicted that Wogan was shot at right angles to the head, the bullet passing into the brain. There was no burning or singeing of the hair, and there was no sign of powder marks. An expert had said that if the rifle had been discharged at a distance of about a foot from the deceased, such signs would have been present. There was nothing attached to the rifle to facilitate suicide, and no nail or hook on the wall to which it could have been attached. If Wogan had wished to commit suicide, counsel said, there were other easier ways of doing it.

The Crown Prosecutor went on to say that if the jury dismissed the possibility of suicide or an accidental discharge of the rifle by the deceased himself, it was for them to decide how the man was killed. Counsel referred briefly to the discrepancies

in the story of the accused with respect to the position of the deceased when he was shot. He had given three different versions of the scene. To one witness he had said Wogan was sitting on a chair with the rifle between his knees. To another he said he was on the settee, and to a third he said the man was on his bed. If the deceased had been on either the bed or the settee, it would have been impossible for him to shoot himself and finish up where he did on the floor against the wall. Counsel asked the jury to believe that Wogan was sitting on the chair when he was shot, and if they did that they disposed of all suggestion of self-destruction, because the rifle had been found on the settee against the wall. It had been shown that an appreciable time—about two minutes—elapsed between the firing of the shot and the raising of the alarm by Whalley. It was for the jury to determine what the accused was doing in the meantime..

Mr Campbell said there was little that could be said on the subject of motive, but he submitted that if the jury saw a man deliberately shoot another, it would not regard it as necessary to look for a motive. If they were satisfied that Whalley shot Wogan, then they were entitled to assume that he did so from some motive known only to himself. But there was some suggestion of a motive. It had been shown that the accused was anxious that Wogan should be told that certain money had been sent down to Fairlie, and in this connection he had asked a witness, Elms, to lie to the deceased. He must have had some reason for approaching Elms in that way. Counsel asked the jury to consider the accused's explanation of the presence of the rifle in the deceased's room. Here was a man

timid with firearms, who had never been known to borrow a gun, or even to carry one, in the whole eleven months of his stay at the Hermitage. What would he want with a rifle?

III.

One of the first points I tried to make when I opened my address to the jury was the outstanding fairness of the Crown Prosecutor in presenting the case. I did this, I explained, because everybody had not acted with a sense of fairness in the opening stages of the proceedings. In all such cases there was a presumption of innocence, and if he said no more than "I am not guilty" a man was entitled to an acquittal, unless the Crown could prove beyond all reasonable doubt that he was guilty.

The essential facts of the case on which the Crown relied, I continued, were that the accused and the deceased were the only two persons in the room when Wogan was shot; that the suggestion of suicide was discounted by the absence of burning, singeing, or powder marks; and that there were variations in what the accused said about the deceased's position in the room when he was killed. Emphasis had also been laid on the deceased's unfamiliarity with firearms. All that the witnesses could say in this connection was that the deceased had never been seen going shooting, but it was possible that he had learnt to shoot unknown to anybody.

On the question of motive, I submitted that the Crown asked the jury to believe that it was a matter of a paltry pound or two. Could they, as reasonable men, be expected to believe that because

a man asked another man to tell a lie to the deceased he would go to the deceased's room and take the life of the man to whom the lie was to be told?

His Honor interrupted at this point to say that I had not quite fairly put the point. The Crown had emphasised that point, but had not put it forward as a motive.

I then asked the jury if they could supply any other motive. Had there been anything whatever in the evidence laid before them to suggest a motive? The Crown contended that if the possibilities of suicide and accidental shooting were dismissed there could be only one other possibility. The case was one of circumstantial evidence, and if all the essential facts did not fit the theory on which the Crown relied, then they must give the accused the benefit of the doubt. I put it to the jury that the evidence showed that there was no great likelihood of Wogan committing suicide. But did they prefer murder to accident? Why should the accused kill Wogan, who was his friend? The Crown did not have to prove motive when the issue was beyond doubt, but in all murder cases there was motive. Those who dealt with such cases might not always be able to establish it, but it was reasonable to suggest that a motive would be there somewhere.

Referring to the comments that had been made on the variations in the accused's story, I suggested that it was not unreasonable to say that Whalley, and others as well, would be very excited and agitated in the circumstances, Whalley particularly, because he was in the room at the time of the shooting. It was possible that other witnesses, similarly excited at the time, might have been guilty of

slight inaccuracies in what they said. Whalley had maintained all through that he was at the door when the shot was fired. Was that the attitude of a man who had something to hide? Moreover, he had not acted like a guilty man after the event, and there was no evidence to show that his conduct beforehand was that of a man with murder in his heart. His statement showed that he was prepared to answer all questions put to him, and I submitted that the jury could not put the statements of the accused in the balance as evidence against him. According to the evidence, the accused said to one witness: "They want me to say I shot him; but why should I when I didn't do it?" Could he have adopted a more reasonable attitude than that?

Dealing with the evidence of the shell and its position under the bed, I reminded the jury that there was a lot of traffic in the room before the shell was found, and that when it was discovered it bore an elliptical shape, suggesting that it had been trodden on. In the whole of the evidence there was nothing to prove that the shot had been fired from a position near the end of the bed. The question was really one of trying to reconstruct the whole scene. The Crown had attempted to do so, and had suggested that Wogan was shot by the accused because the wound was a horizontal one; but actually if Whalley had fired the rifle the bullet would have gone into the head on a downward slope. It was not incumbent on the accused to prove that the shooting was an accident. It was for the Crown to show that it was wilful. Actually it looked as if no one knew how the accident occurred. There was no direct evidence. Some extraordinary and unaccountable accidents were

always happening with firearms, and in this instance a jury was being asked to determine what had occurred. Was it not possible that Wogan had picked up the rifle by the muzzle with the idea of putting it on the settee, and that the trigger had become caught on the corner of the furniture? That would have been sufficient to cause the gun to discharge, and if he had been sitting at the moment the bullet would have entered his head horizontally.

At this stage I warned the jury that its duty was to be satisfied beyond all reasonable doubt of the guilt of the accused, and that its conviction must arise only out of the evidence it had heard within the four walls of that court. Everything they had heard or read outside the court precincts must be obliterated from their minds. There had been some peculiar and extraordinary features about the case, I said, and the most unusual was the conduct of the Magistrate who had committed the accused for trial and, to a lesser degree, of the Coroner who presided at the inquest on Wogan.

"These two gentlemen," I said, "made statements from their respective Benches that were definitely prejudicial to the accused, who was faced with a trial for his life. What they said, they said in public, and they knew it would be published in the Press. You, gentlemen, probably saw an account of their comments in the papers. That sort of thing is highly improper, and I think that I am perfectly at liberty to tell you so. The Crown Law Office seems to have taken that view of the matter, because it offered us a change of venue on account of what took place, and because they feared that it might affect the chances of the accused getting a fair trial. We appreciated the offer of a trial in a

different centre, but we decided that it was unnecessary to accept it. We were prepared, without going any further, to place the fate of the accused in the hands of a Timaru jury. You will all no doubt have noticed that yesterday when the jury was being empanelled we did not exercise a single challenge. We accepted the first twelve men called, and we acted in that way because we knew that whatever jury was chosen it would do what it thought to be right."

Concluding my address, I stressed the fact that the jury alone were the judges, and I submitted that in dealing with the case by the methods that had been suggested to them by the Crown they would be laying themselves open to a charge of what a learned judge in England had termed "a ghastly speculation." There must be no speculation and no acting on mere suspicion. A man's life was at stake, and theirs was a serious and solemn duty. They must decide the issue purely and simply upon what they heard and learnt in the court during the two days just past. If they did that, they would have no difficulty in reaching a proper verdict.

IV.

Sir Michael Myers, in the early stages of a lengthy summing up, referred to an aspect of the case which had not previously been mentioned. He said that in some cases in which the main facts had been proved, but in which there was an apparent absence of motive, the jury was competent to bring in a verdict of manslaughter. If the fatal shot was fired by the accused, it was not unreasonable to suppose that some dispute had preceded the shooting. But the only person who could enlighten them as to that matter was the deceased.

His Honor then went on to say that there was one matter to which he felt impelled to refer. It was a feature of the case of which mention had already been made by the counsel for the defence.

"When I was charging the Grand Jury yesterday," he said, "I myself, knowing that something of the kind had occurred, ventured to deal with it in a guarded and general way, without making particular reference to this case. I had hoped that that would have been sufficient, but counsel for the defence has made reference to the same matter, and certainly not improperly, so I feel it incumbent upon me to say a word or two on the subject now with the idea of clearing the matter out of the way. Every person who is accused of a crime in a British community," His Honor said, "is entitled to a fair trial. During the course of a trial a Judge may express an opinion about the evidence, but when he does so he tells the jury that they are the judges of the facts, and that they are not bound by any expression of opinion the Judge may utter. I said yesterday, and I say again now, that a person who is accused of a crime has a right to come before the trial jury unprejudiced and unembarrassed by prior comment.

"Counsel for the defence has said—and I must accept it as correct, because if it had not been so I would have been told, and properly so, by the Crown—that there has been certain comment by the Coroner and the Magistrate. I did not stop counsel when he mentioned the matter because the accused is on trial for his life, and I have to see that he gets a fair trial. Counsel has told you about the comments of the Coroner and the Magistrate, and I feel that it is my duty to

say a word or two about the duties of a Coroner and a Justice of the Peace, because a Magistrate, when he is sitting in a preliminary hearing of an indictable charge, is sitting merely as a Justice of the Peace. It is the Coroner's duty to ascertain the cause of death, and so far as a Justice of the Peace or a Magistrate is concerned, he is merely sitting ministerially as a recorder of the evidence before him, except, of course, to the extent that he may have to decide provisionally, leaving it ultimately to the Supreme Court, if the case should go to trial, to determine the admissibility of evidence, and when all the evidence has been taken, he has to decide whether or not a prima facie case has been made out. If so, he commits for trial, and if no case is proved, he can then give his reasons for dismissing the charge. If, as I have gathered from the statement made by the counsel for the defence, anything has been done in the present case contrary to what I have said, all I can say is that it is to be deplored. It has never happened previously in New Zealand in my experience, and I hope it will never happen again.

"It is to be deplored," His Honor continued, "because whenever anything of the sort occurs it creates an embarrassment to the Judge who has to try the case, and the jury has to be especially careful to see that the accused person is not prejudiced by any comment made and published previous to the case coming to court. As the guardians of the State, you, gentlemen, must see that the interests of the public are not prejudiced, and you have also to see that there is not created in your minds a feeling prejudicial to the accused. I ask the jury to eliminate entirely from their minds anything of

the sort. You must forget it, and not let it affect you one way or another. You must give your verdict on the evidence you have heard, and on counsels' addresses, and what I am saying to you now."

Resuming his formal summing up, His Honor said that the counsel for the accused had forcefully and properly referred to the question of motive, but the Crown Prosecutor had not put forward any definite motive. He suggested that the question of motive need not trouble them very much. What they had to consider was whether the Crown had excluded the hypotheses of suicide or accidental shooting. The case was by no means unique in that there was an absence of motive. They always looked for a motive in murder cases, but they did not always find it. The question of motive became immaterial if the evidence fully excluded the hypotheses of suicide or accident. It had been said that the case was one of circumstantial evidence, and that was true. But if convictions depended always on direct evidence, there would be a good deal of crime that went unpunished. The jury had to draw all reasonable inferences from the evidence put before them. When they found a number of facts fitting in to make a complete whole, that was very much what circumstantial evidence comprised. If the Crown failed to exclude all reasonable hypotheses other than the guilt of the accused, then they would have to acquit the prisoner. But if the Crown did exclude all these other hypotheses, then the jury's duty was plain.

After considering the various possible hypotheses in the case, His Honor said that the fact that the deceased died as a result of gunshot wound was undisputed, as also was the fact that the accused

and the deceased were the only two persons in the room at the time when the shooting occurred. Counsel for the defence had wisely not pressed the theory of suicide, for he probably thought, as the jury would no doubt think, that it was not open. Deceased apparently had been a bright and popular young man. He had been playing tennis, had returned to the hotel and written two sensible letters, and a few minutes later was found shot. If they excluded the theory of suicide, then only two hypotheses were left, namely, an accident without the intervention of the accused, and one involving him. They had also to consider the position of the wound; the direction of the bullet; the lack of evidence of burning, singeing, or powder marks; the position of the rifle when it was found; the fact that there was no blood on the rifle; that death must have been instantaneous; the evidence that when picked up the deceased's arms were at his side; the position of the empty shell; the different statements made by the accused; and the question whether the deceased could have, in the time and circumstances, loaded the rifle with the cartridge with which he was shot.

His Honor said that he did not think that the jury need bother very much about the discrepancies in the statements made by the accused, because they were as consistent with a state of innocence as with a state of guilt. Counsel for the accused had suggested that the deceased had been sitting on the chair, and as the gun was on the settee, this might be consistent with a theory of accident. That, however, was for the jury to decide. Then there was the question of the cartridge in the rifle. The accused had said that when he was demonstrating the gun for the benefit of the deceased he put two

cartridges in the rifle, but he was certain that he had taken them both out again. How had the other cartridge come to be in the rifle? Did the jury, knowing the deceased's horror and fear of firearms, think that he had put the cartridge in the rifle himself? If so, when had he had time to do it? The jury must consider all the circumstances and their cumulative effect. If they were satisfied that the tragedy was not accidental, what was the only other hypothesis? It must be that the accused shot the deceased.

V.

After a retirement of nearly three and a-half hours the jury returned with a verdict of "not guilty." The accused received the jury's announcement of its decision with no perceptible change of expression, and without any outward display of the emotions that must have stirred him at the realisation that after months of uncertainty he was a free man.

No so the crowded courtroom, however. The sound of the Registrar's low voice acquainting the Judge with the verdict was the signal for an outburst of almost hysterical applause. There was an immediate demand by the Court Crier for silence, and the Chief Justice leant quickly forward on the Bench and instructed the police inspector on duty to inquire whether the constables present could identify any of those who had participated in the unseemly disturbance of the atmosphere of the Court. None of the officials was able to name any offenders.

"I myself saw one man who took part in the demonstration," His Honor said, "but I would not like to take advantage of that."

At the conclusion of the trial His Honor said that there was one observation he would like to make with regard to his previous comments on the Magistrate who presided at the inquest into the death of Wogan. This had reference to a matter which I myself had brought to the notice of the Chief Justice. When I had been commenting on the action of the Coroner, I did so on the strength of a newspaper report which I later found to be not entirely correct. His Honor said he had been relying on the same source of information, but he had now found that the omission of two or three words from the report had made a material difference. Those few words were very important, and after a comparison of the original finding with the version of it contained in the newspaper, he had been able to determine more accurately the intention of the Coroner in saying what he did. Of course, the position of the Coroner was different from that of the committing Magistrate, and so far as the Coroner was concerned it would have been better if one of the paragraphs in his finding had not been published. What he now said, however, did not affect in any way his prior remarks concerning what the committing Magistrate had said, but he thought it was only proper that he should mention what had been brought under his notice by counsel for the defence and what he had himself been able to verify.

With the discharge of the prisoner a most interesting case came to an end, but I think that before the chapter is finally closed there should be included here the important pronouncement of the Chief Justice in his charge to the Grand Jury:

> "In saying to you what I wish to say," His Honor said, "I intend carefully and deliberately to refrain from

any comment of my own. For this reason my understanding is, and always has been, that one of the fundamental principles of our administration of justice in criminal cases is that the person accused of a crime has the right—I might almost say, the sacred right—of appearing before the trial jury unembarrassed and unprejudiced by any judicial comment, and, correspondingly, in my opinion, there lies on every judicial officer, be he a Justice of the Peace, a Coroner, a Magistrate, or a Judge of this Court, the sacred duty of avoiding any comment calculated prejudicially to affect that right."

CHAPTER XXV.

Some Thoughts on Divorce.

I.

"How this vile world is chang'd!" Away back in the 'eighties and 'nineties the Divorce and Matrimonial Causes Act could be relied upon to produce a cause celebre almost as often as the criminal law. To-day the defended action is the exception, and nine out of ten petitions for the dissolution of marriage are disposed of in Court on purely statutory grounds in a matter of minutes. Seldom in these days do the Divorce Courts present the old-time stories of "one falling Adam and one tempted Eve," which for days on end used to confirm for most of us the inescapable truth of the ancient couplet—

> Heaven has no rage like love to hatred turned,
> Nor hell a fury like a woman scorned.

I can remember many of them, strenuously fought, generally by a very strong Bar, and followed, as a rule, with keen interest by a wide public. In no circumstances would I like it to be thought that I have ever mourned their passing. On the contrary, the modern practice of securing a dissolution by the effluxion of a statutory period of time is to be preferred, more particularly in the interests of innocent persons, who may be saved much unpleasantness and notoriety. The change had its beginnings in the passing, in 1898, of an amendment to the Act which provided new grounds on which a divorce might be granted.

The amending legislation provided, inter alia, that a married person might file a petition praying for a dissolution of marriage upon the ground that

the respondent had, without just cause, wilfully deserted the petitioner for five years or upwards (this period was later reduced to three years). In addition, it was provided that if the respondent had, for four years or more, been an habitual drunkard, and had either habitually left his wife without means of support or been guilty of habitual cruelty towards her, a divorce might be granted. Conversely, if a wife were guilty of habitual drunkenness for four years, and neglected her domestic duties, and rendered herself unfit to discharge them, a husband might petition for a divorce.

In 1920 a further amendment to the law provided that a petition might be filed on the ground that the petitioner and the respondent were parties to an agreement of separation, made by deed or other writing, or verbally, and in full force for a period of not fewer than three years. Similarly, a separation made by a Stipendiary Magistrate, and remaining in full force for three years, constituted valid grounds.

The effect of such a revision of the law should be readily apparent. Prior to these amendments adultery was practically the only ground of a dissolution, and as such cases were generally defended, the outcome of them was seldom pleasant for any of the parties concerned, and frequently acutely embarrassing to innocent or disinterested persons. The process of proof in cases where adultery is alleged is never a very edifying business, but law to-day is much kinder in this respect to philandering husbands or errant wives. To-day the wronged spouse may achieve the same end with much more decorum, and little or no publicity, by

the simple means of waiting three years. This practice is very largely followed, and more than anything else accounts for the high proportion of undefended divorces that are put through our courts.

The method is very simple. The injured party may save embarrassment to children and other relatives, and avoid the limelight of unwelcome publicity, by entering into an agreement of separation. After the lapse of a period of three years, it is then possible to petition for a dissolution of the marriage on that ground alone. In all probability there will be no defence. In many cases there is not even an agreement of separation. The erring husband or wife is allowed to go his or her own way for the statutory period, after which it remains only for the petitioner to prove desertion. Here again the petition is seldom opposed. In the past I have handled scores of such cases, and experience has convinced me that the law as it stands regarding divorce is, on the whole, wise and beneficent. It has often appeared to me, however, that the period of separation or desertion necessary to justify proceedings for divorce could safely be reduced to two years without detriment to the sanctity of the marriage tie or to society generally.

After all, what prospect can there be of an effective reconciliation after a separation of two years? I have never been able to agree that any good purpose can be served by keeping two people tied together against their will for any longer period. To me, it has always appeared both unfair and unnecessary that a young woman who has contracted an unfortunate marriage, and has been deserted or

cruelly maltreated, should be prevented for three years from freeing herself from such a hateful bondage. For the whole of that period she must be in the unhappy position of being neither maid nor wife. Let the moralist say what he will. Such a situation is not in the best interests of morality.

Then, again, if the husband is an habitual drunkard and guilty of cruelty towards his wife, or fails to maintain her, for four years, she may petition for a divorce. Why such a period? Do our legislators consider that it takes four years' addiction to drink to make a man an habitual drunkard? Why should a woman have to tolerate such a husband for so long a time? Surely two years of such an existence should be sufficient, more especially as in the majority of cases those years have to be subtracted from the prime of life. Most divorces based on such grounds are in respect of very young or less than middle-aged people. If the best of life lies behind the parties, and the defection of one of them comes at the end of a long and reasonably successful married state, the last possibility of redemption may be worth exploring, but in the case of young women, and young men, too, for that matter, why embitter the future unnecessarily? To most people five years to come are worth a hundred that are past. My belief, founded on a substantial knowledge of the practical working of the Act, is that an amendment along the lines that I have suggested would be a valuable improvement, likely to accomplish much more good than harm.

II.

One of my first experiences of a defended divorce action dates back more than forty-five years, and was typical of the protracted proceedings of

those times, which often illuminated the quarterly civil sittings, but which were just as frequently a source of boredom to Judge and jury alike. This case was tried without a jury before Mr Justice Ward, who was appointed a temporary Judge of the Supreme Court during the absence of Mr Justice Williams. It was a husband's petition for divorce, and the circumstances were unusual enough to warrant some mention here. The counsel engaged were Sir Robert Stout (later Chief Justice) and Mr Saul Solomon (afterwards a King's Counsel) for the petitioner, Mr J. F. M. Fraser for the respondent, and myself for the co-respondent. It was a bitter fight, and at the close of the petitioner's case Mr Fraser and I had no alternative but to put our respective clients into the witness box. We felt that the respondent would stand up to cross-examination well enough, but we were both convinced that the co-respondent would prove a veritable "humpty-dumpty." Our fears were fully realised. The lady in the case acquitted herself quite well, but when her alleged lover, who did not even look the part, went into the box, he was hopeless. He was a poor enough witness; in fact, he began to crumble before I had completed my examination-in-chief. But in the hands of so able a cross-examiner as Mr Solomon his collapse was complete.

The court enjoyed it all immensely, but although it was very amusing, there were two people —the witness and myself—who were hardly in a position to appreciate the humour of it. With every question I put to the man I trembled, not knowing what his answer was going to be; and then when it did come it provoked such laughter that I was very

soon wishing that I had never seen the fellow. My opponent had a very pleasant half-hour, as was only to be expected with one so competent to deal with that type of witness. When Mr Solomon sat down the co-respondent left the box and returned to my side, asking in a whisper:

"How do you think I got on?"

I was in no mood to dissemble, and with considerable force and equal truth I replied:

"I think you succeeded admirably in making a damned fool of yourself."

Decision in the case was reserved, but the Judge later dismissed the petition. Referring to my client, he said that, whatever absurdities the co-respondent had been guilty of, there was no proof of adultery.

It was a long story that was told in court. A. A. and Mrs A. had been married for ten years, ostensibly happily. They had four children, had toured the world together, and with the exception of periodical conjugal disturbances, had between them presented a picture of complete matrimonial felicity. That, at least, was the petitioner's version of the matter. Then the co-respondent, F. H., appeared on the scene. He was an employee of A. A., and was often invited to his employer's home. Two years later the first difference arose between husband and wife over the friendship of the latter for F. H. They had met in town, and Mrs A. had lied about it. There was trouble, and the wife promised never to speak to F. H. again. But within a week they were again seen together, and an angry scene ensued in the street between the three of them. This incident ended with A. A. forbidding F. H. his house and ordering him never to speak to Mrs A. again.

Some time later A. A. was called to the North Island on business, but before leaving he extracted a promise from his wife that she would not call at his place of business, where F. H. was still employed. Mrs A. promised cheerfully, and to quote Mr Solomon in his opening of the case: "They parted on terms of the warmest affection—the lady being naturally broken hearted at a separation that was to last two months—and during his absence the letters that passed between them were such as one would expect to find in the earlier stages of a breach of promise suit, written by lovers in the spring time of youth rather than by a middle-aged married couple who had been married twelve years, and whose furniture had long ceased to be new. But after his return to Dunedin, and when the mutual joy of seeing each other was over, A. A. began to notice several small circumstances, each of which was so trifling as to make no impression on his mind beyond striking him as being peculiar, but which, when subsequently fitted together, forced upon him the conviction that things were not altogether what they seemed, and that, notwithstanding the ardent protestations of love contained in his wife's correspondence and her rapture at seeing him home once more, he was being deceived by her and by the former object of his suspicions."

A man was seen prowling around the house; the back door key disappeared; doors which the petitioner locked when he went to bed were found open the next morning; the Venetian blinds were left open, and Mrs A. was frequently discovered enjoying the view through the openings after having left the conjugal couch at dead of night; his wife began to insist on his enjoying himself in town with

his friends; and although she was not over-fond of work or ultra-economical, she decided to do without a maid. All these things led up to the climax one night when A. A. saw his wife talking to someone through the slats of the kitchen blind. Removing his boots, he crept round the house and found F. H. murmuring, " Don't be long, darling." Concluding that the remark was not addressed to him, A. A. yelled at the co-respondent, who ran away, but finally came back. There followed what the petitioner described as " a great row." About this time A. A.'s brothers came into the picture, and the whole family set about building up a convincing allegation of adultery against Mrs A. and F. H.

The petitioner's witnesses kept the court occupied for seven hours on the first day of the proceedings, and it was ten minutes to eleven on the following evening when the Judge said he would take time to consider his judgment. After Mr Fraser had finished with the respondent in the box, my ordeal with the co-respondent began.

F. H. told the court that he had never stayed at A. A.'s house unless the petitioner or his brother was there also. Actually he had had to cease even his brief visits because it was against his habit and tastes to spend Saturday and Sunday playing cards. Referring to the time when A. A. saw him in town with Mrs A., the respondent said that he had run after Mrs A. to find out why she had not recognised him when she passed. After lunch that day A. A. had called him into his office and asked him why he could not leave his wife alone. He added that he had seen F. H. running after Mrs A. To this F. H. replied that Mrs A. had passed him several times,

and he had gone after her on this occasion to get an explanation of her action. The witness said he was then told that he had been paying too marked attention to Mrs A., and that he would not again be asked to the house. Later, when Mrs A. came into the office, F. H. apologised for having caused trouble by running after her, and said that since he was now forbidden the house, no further explanation was necessary. Then came the story of the night outside the kitchen window.

It appeared that one of F. H.'s favourite hobbies was walking, and on the night of the fateful encounter in the kitchen garden his steps had led him down the Port Chalmers road past the petitioner's house. He was on his way back to town when he passed Mr and Mrs A. going home. For some reason, which he did not at the moment explain, he turned into the grounds of A.'s house and wandered about the garden for some time before he approached the kitchen window. For about ten minutes he stood gazing at the window, and he was on the point of turning to go home when A. A. came round the front corner. He swore that he did not utter a sound while at the window, and vehemently denied having used such endearing language as "Don't be long, darling." A. A. apparently made to grasp him from behind, but F. H. was not "having any." Turning quickly, he cried out:

"A., you lousy dog, what are you doing there?"

At that A. A. rushed at him and he put up his fists, accompanying the action with loud yells for help. F. H. struggled gamely in his efforts to get away from his captor, and when he finally wrested

himself clear A. A. tried to pick up an iron pump to use as a weapon. This was too much for the now enraged Lothario, who declared:

"If you don't get inside I'll put a bullet through you."

At this stage of the narrative F. H. naively informed the court that he had no pistol, and then went on to describe how Mrs A. came out and separated the combatants, dragging her husband inside. In the scramble F. H. lost his glasses, and it took him some time to find them in the grass. When they were once more perched on his nose, he stalked boldly to the front door for the purpose of making an explanation to the husband. His knock brought an ominous,

"Who's there?"

"It is I, H."

"What do you want?" asked A. A.

"I deem it necessary to give you an explanation," replied F. H.

"Yes? What have you got to say?" came the angry tones of A. A. through the fast closed door.

"Will you open the door, please?" F. H. persisted.

"Not I," quoth A. "Not after you threatening to shoot me."

But F. H. was adamant. He must give A. A. an explanation, but as a gentleman and not as a robber with the door bolted against him. He assured A. A. that there was no cause for fear. A. A. still refused to open the door, so the witness declined to give the promised explanation and turned on his heel. Halfway to the front gate he

bethought himself about the problem of his livelihood, and turned back to inquire whether he should go to the office on Monday morning. A. A. told him he had better turn up, and he then went home.

Came Monday morning, and in the private office of A. A. and Co. the injured husband sternly demanded the long-delayed explanation from his employee.

"I have altered my mind," said F. H. "I decline to give you any explanation."

"So," cried the astounded A. A., "you have seduced my wife, ruined her and broken up my home, and you calmly tell me that you will not give any explanation."

"I have seduced her! That is not true," replied F. H.

"You deny it although she has herself admitted it?" parried the husband.

"That is impossible. It is not true," F. H. replied. "Besides, I did not come here to discuss that. I thought we had to wind up our business affairs."

"Well, you have to clear out within 48 hours," said A. A.

"Clear out! What do you mean?" F. H. asked; and the answer came firm and clear:

"Clear out. Leave Dunedin."

Of course, F. H. refused to do anything of the kind, and the grotesque interview concluded with a cryptic warning from A. A. that the law would take its course.

The first intimation F. H. had of the law taking its course was a visit from a solicitor, who asked him what he was going to do. Was he going to leave the colony? F. H. certainly was not, and he

even refused to present himself at the solicitor's office next day. And so the story of F. H. ended, except that he added for the information of the court that he had never received any correspondence from Mrs A.; had never been intimate with her; and very definitely had not committed adultery.

III.

The co-respondent had little enough of assurance and confidence when my examination was completed, but he almost wilted right away after Mr Solomon's cross-examination had been in progress for a few minutes. Counsel asked him why, if his intention in running after Mrs A. in town on the day that he was seen by the husband was to get an explanation, he did not get it.

"If you had seen Mr A.'s face you wouldn't have waited for an explanation either," F. H. said amid laughter.

"How do you explain that after your employer had told you as plainly as he could that he objected to your meeting his wife, you went on seeing her?" was Mr Solomon's next query.

"I can assure you that I have never loitered about waiting for Mrs A.," said F. H., "except on one occasion when she asked me to bring a packet of medicine down to the station for her."

"How was it, then," Mr Solomon continued, "that you went at about 11 o'clock at night into your employer's grounds and stood at the kitchen window of a house that you had long ceased to visit?

"I was watching Mrs A. and the servant girl," F. H. replied.

"But suppose Mrs A. and her husband tell us that there was no servant girl there?"

"Well, then, I must tell you that I expected there would be a girl there that night."

"How could you expect that?"

"Because I knew that they were engaging a girl, and I thought she would arrive on the Friday or Saturday night" (Loud laughter.)

"Then you thought the girl would arrive that night?"

"No, but I thought I would go and see." (More laughter.)

"And what, pray, did the girl have to do with you?"

"I had nothing to do with the girl, but I went there to see whether anything would happen to her." (Here again the crowd was convulsed.)

"Nobody asked you to go?" continued counsel.

"No one."

"Then what on earth had it to do with you whether anything happened to the girl or not?"

"Well, I'll tell you, Mr Solomon. May I speak out?"

"Certainly."

"You won't interrupt me?" (Renewed laughter.)

"Well, what had you to do with it?" interposed His Honor.

"Well, by this time I knew all about Mr A. and his carryings on with servant girls. I knew also that Mrs A. was determined to leave the house in the middle of the night and take the children with her if anything happened between this servant girl and Mr A. I also knew that Mrs A. would not have left, as she was rather nervous and frightened at such a time of night."

"You mean, she would not have done it alone?" said Mr Solomon.

"Yes. Well, I knew also that her relations would have been only too pleased, at this stage of her married life, after A. had threatened her two or three times with separation, if she left the house."

"Come to the point. Why were you there?"

"I was there to see that nothing happened to Mrs A. or the girl." (Laughter.)

"And how were you going to prevent it as long as you were on the other side of the window? How could you see what was going on inside?"

"I did not know whether I would be able to see anything or not."

"Was it not a fact that you thought that if Mrs A. went away in the middle of the night you would be handy to go away with her?" Mr Solomon asked.

"That's what you think." (Another outburst of merriment.)

"Is that so, or is it not?"

"It is not, in the way you suggest."

"Is it so in any other way?"

"Yes. To the extent that if there was any disturbance in the house, or if A. did anything to either Mrs A. or the girl—you may smile or laugh—I would have interfered that very night."

"What were you going to do? Take Mrs A. away, I suppose?"

"No, not exactly. I did not go there with a pistol to shoot anybody."

"I suppose you went there as a friend of the family? (Loud laughter.) We are all anxious to know."

"In one sense, yes," was F. H.'s reply, again almost drowned in the laughter.

"What did you do in the other sense? How long were you standing outside the window as a friend of the family?"

"About half an hour."

"Why did you threaten to put a bullet in A?"

"Because he made such a fearful noise." (Here the gallery exploded in mirth once again.)

"I suppose you expected him to ask you in for a drink," suggested counsel.

"He could not be expecting anything dishonourable from me."

That was the close of the case for the co-respondent, and counsel proceeded to address the court until nearly 11 o'clock that night.

In a judgment delivered several days later, His Honor said there was no vestige of ocular evidence of familiarity between the respondent and the co-respondent. The testimony of the petitioner and his brothers concerning the alleged adultery was not clear and trustworthy evidence, such as that on which the decree asked for should be founded. He would, therefore, dismiss the petition.

One more reference to the past and I will leave the question of divorce. Some years ago I acted for a wife who obtained a decree nisi. After the expiration of the three months she wrote to me, saying, "The time is up, and I want my decree of absolution as soon as possible." When the application came before the court, I moved on behalf of the applicant, and mentioned to the Judge, Mr Justice Sim, what she had asked for in her letter.

"I am afraid that it is a little beyond my jurisdiction," His Honor replied promptly, "but I'll do the next best thing, and give her the decree absolute."

CHAPTER XXVI.

"The Dear Old Judge."

I.

Looking back on some of the more pleasant incidents of the time when I was struggling for recognition and still nourishing my dreams, it is singular how many of them seem to be connected with the Right Honorable Sir Joshua Strange Williams, P.C., in whose court I was privileged to practice for many years, and under whose benign guidance I learnt many valuable lessons. I can see him now, every detail of his personality etched on my memory, and to me, I am afraid, his august title conveys less than his earlier style of Mr Justice Williams. At the outset I had better, perhaps, admit that it is difficult indeed for me to form an entirely unprejudiced judgment of him. In attempting it, however, I feel I am performing a very pleasant duty, in which I have the concurrence of a wide circle of the profession.

The payment of adequate homage to so distinguished a jurist is no mean task, and if any explanation is required of the attempt, it may be found in my deep appreciation of his unfailing kindness, his constant encouragement, and those personal qualities of learning and wisdom which were his special distinction. Of the observations I propose to make concerning him, I can say that everything in them has been felt, and although to say exactly what one thinks can often be a costly pleasure, in the present instance it is possible to be sincere to the point of candour without the slightest reservation. Nor is my admiration for him based wholly upon such

selfish considerations as the benefit I personally derived from my association with him. To the majority of his contemporaries, lay and professional, and particularly to the considerable company of young barristers who spent their 'prentice days in his court, he was the most admirable of men.

To everything related to his profession, and especially to his position as a Judge of the Supreme Court of New Zealand, he brought an erudition that was allied to an exquisite kindliness. I believe he was beloved by all who knew him. Without doubt he was the type of man who is sorely needed in this prosaic, machine-driven age—and all the more because we appear to be in danger of losing the taste for his like. Loyal and obliging, he derived a genuine pleasure out of helping others. Absorbed as he was in the manifold duties of his office, he had a special regard for the junior Bar, to whom he was a friend as well as a Judge. And nothing gave a more peculiar charm to his qualities than the modesty with which he bore himself and the rare tact and delicacy of feeling with which he could put the nervous and uncertain beginner at his ease. He understood admirably how to content the great and encourage the small.

This, perhaps, is scarcely the place to attempt to paint him as he really was—in a kind of postscript to a recital of my own achievement—but no recollections of my career would be complete without a reference to Mr Justice Williams. The regrets that he left behind him in the hearts and minds of those who were privileged to argue or plead before him will not readily be effaced, but I cannot refrain from a few words concerning what he was to me and, I believe, to most of my contemporaries. In

the days of my apprenticeship at the Bar he encouraged me, and I have no doubt that a great many others could render the same testimony. I encounter them still, hair long since turned grey, prominent in their profession and in the community, and largely thanks to him whom they delighted to call, "The dear old Judge."

Some years ago, during one of those frequent soporific intervals in the Supreme Court sessions when the occupants of the Press table are at their wits' end to throw off the drowsiness which a court atmosphere engenders, I happened to notice Mr R. T. Little, of the editorial staff of the Otago Daily Times, who was then a reporter, busily shading in one of his delightful black and white sketches. Glancing over his shoulder, I discovered that he had just completed a life-like pencil portrait of Mr Justice Williams as he sat on the Bench. He had captured the personality of his subject to an extraordinary degree, and as I studied the drawing I noticed the caption he attached to it—"The Dear Old Judge." No more appropriate title could have been devised for his sketch, nor one that could command a readier acceptance from those who knew the personality depicted there. He was an old man then, but more than ever was he a Judge in the truest sense of the term, and one of the most intelligent and upright of men. A profound lawyer and a master of the English language, his written judgments were models of legal and literary style. There was no affectation in him. In fact, he was a hesitant, almost diffident speaker, but that characteristic merely seemed to render it more certain that, in his oral judgments or in summing up to a jury, he would choose the right word or the most felicitous phrase. I never knew

him to force his language or to descend to verbal extravagance. At all times he was very much at his ease and completely amiable, and for those who appeared in his court, the most lasting impressions of him will be his unfailing courtesy and patience, his integrity, and his constant striving to do justice by all men without fear or favour. He believed that mercy should temper justice, but appreciated also that it is not less necessary to the well-being of society that, in all dealings with wrong-doing, justice should not leave mercy to work alone. Throughout a long and honourable career on the Bench, which was terminated only by his appointment to the Privy Council, he devoted his time with exemplary diligence to the discharge of those duties which he considered to be most consistent with the dignity of his position.

II.

But not for him was the solitude that is the destiny of so many men who rise above their fellows, and who, in aiming at perfection, outsoar companionship. He had a positive genius for fostering and maintaining the happiest relations with everyone. In part, it was his quiet, unassuming manner that made this possible. We all loved his kindly laugh, his unceasing frankness, and even his abruptness. But there was something else beside; he had the qualities of a statesman, and once having established cordial relations in any direction, he seldom relinquished them. The relations we have with the things beneath us should be as carefully maintained as those we acknowledge with things above us. The truth of that has been freely admitted by some of the wisest of men. Goethe, for instance, calls upon us to "reverence even our sins" as the basis of

much that is grand in ourselves, in the institutions of society, and in the destiny of the world as a whole. Those who knew Mr Justice Williams best will agree that he displayed such an understanding to an unusual degree. He believed, and acted on the belief, that life is a system of relationships rather than a positive and independent existence, and the extent to which he applied that conviction to the profession, of which he was so eminent a member, was illustrated by his frequent admissions that the Bench was no less dependent upon the Bar than the Bar was upon the Bench.

Hear him at the ceremonial proceedings after the official opening by the then Prime Minister, Sir Joseph Ward, of the new Law Courts in Dunedin nearly 40 years ago:

> It is essential in the public interest that the Bar should be independent. It is also essential for the due administration of justice that relations between the Bench and the Bar should be those of mutual trust and confidence. That the independence of the Bar is entirely consistent with the maintenance of these relations, experience here has demonstrated. May those relations continue, and within these walls may both Bench and Bar apply to the utmost their learning, intelligence, and skill, so that the end of our existence—the administration of justice according to the law—may be the more surely attained!

Often have I fallen under the fascination of his style and been uplifted by his gracious personality, but my earliest and most grateful recollections of him date back to a time when I had scarcely more than an acquaintance with the problems and intricacies of advocacy. True, I was already not a little proud of my achievements, but I doubt if I had even then progressed far enough to be able to appreciate with how much truth Socrates made the

celebrated affirmation that "all he knew was that he knew nothing." From the "dear old Judge" I learnt much that could never be found in a text book. He never flattered us, nor did he scruple on occasions to assault our optimism; but, above all, he never cast anything down without suggesting something that might be set up in its place. Those who were wise took heart of grace from his instruction; those who were not turned their backs on opportunity.

For the young barrister he created a fraternity of feeling that was like a tonic draught. Instead of disporting himself as a god who condescends to walk among men but is not of them, he would put himself in the beginner's place, understanding his difficulty and setting him on the right track in the most unobtrusive and tactful manner.

He was of the type that delights to smooth and make clear the road for others. An anecdote from the many that could be related concerning him should serve to illustrate the point far better than any effusion of mine.

A young barrister, donning wig and gown for the first time, was appearing in a mining appeal case. He was a veritable novice—

> The world was all before him, where to choose
> His place of rest, and providence his guide.

When the case was called, he rose with quiet confidence and stated that he was appearing for the appellant, and when his friend on the other side had announced his appearance, the young counsel stood up to argue his case. But the calmness of a few moments before had incontinently fled. He was bathed in perspiration and shaking like an aspen leaf. Nothing of his laboriously prepared argument

would come to him. Deserted by his self-assurance, he was suddenly bereft of both speech and ideas. His stage fright was devastatingly complete, and disaster stared him in the face. But Mr Justice Williams was on the Bench, and immediately set out to assist him.

"I see from the papers, Mr ——, that your principal ground of appeal is ——."

"Yes, your Honor," the young barrister replied.

"Isn't there a case of X v. Y in which that question was discussed?" his Honor went on.

"Yes, your Honor."

"Would you kindly pass it up to me?" the Judge continued.

With grateful haste the youthful counsel complied with the request. Mr Justice Williams perused it for a minute or two and then said:

"This case is very much in point. I see you have some other reports on the table. Would you be good enough to give me the references?"

By this time the young man had completely regained his composure, and he proceeded to submit the well-reasoned argument which he had prepared. He did it exceptionally well, and in the end won his appeal. It would be impossible to measure the effect, direct or indirect, of the Judge's kindly and timely assistance in this instance, but it may be conjectured that it exercised a powerful influence on the immediate future of the young barrister concerned. Impatience or lack of understanding would almost certainly have had the most regrettable results. It was this sympathetic benevolence that endeared Mr Justice Williams to so many of those with whom he came in contact.

III.

Personally, I have no hesitation in saying that whatever distinction I have attained at the Bar can be attributed almost entirely to the fact that I had the advantage of practising for the first few years before Mr Justice Williams. Beginners in almost everything are generally nervous, and the young barrister is no exception to that rule. Being, in some respects, a nervous man himself, the Judge realised this perfectly, and I think that it was for that reason that he was never guilty of doing anything, however proper, which he thought might have the effect of aggravating the uncertainty of inexperience. Particularly commendable in this respect was his almost invariable practice of allowing counsel to proceed with the submission of his argument to a jury without interruption. He appreciated to the full what the result might be if he were to check counsel at a critical point in his address simply because an argument had been badly or incorrectly expressed. He realised how easily greater nervousness could be occasioned, and one so just and impartial would not need to be told that unnecessary interjection might conceivably prejudice a prisoner's case. His habit was to make a note of any error in counsel's speech and rectify it in his summing up.

I have always regarded this point as one of the greatest importance. Many times have I seen young men, in the middle of effective speeches, go completely to pieces after being suddenly checked by a Judge over some point that could easily have been set right in the summing up. It requires a seasoned speaker to recover properly and swiftly

from an unexpected interruption, and many an experienced advocate is none too happy about it. A classic illustration of the havoc that may be wrought on the concentrated mind of the emotional type of counsel, pleading with a jury when the life of a prisoner is at stake, was recently referred to me by a friend who was an eye-witness of the occurrence.

It happened at the Old Bailey during the trial for treason of the Irish patriot, Sir Roger Casement. My friend watched and listened with rapt attention to the address of Casement's counsel, Sergeant Sullivan, who, at the height of his eloquence, strayed from matters relevant to the charges preferred against the prisoner. From a particular discussion of his client's cause he turned to an impassioned defence of the principle of Irish Home Rule, and the more he animadverted on the theme, the more he became carried away by his subject. The Bench permitted him an unusual degree of latitude, having regard, no doubt, to the gravity of the indictment against the prisoner, but eventually counsel was, very properly and with great courtesy, interrupted by the Lord Chief Justice, Lord Reading. Sergeant Sullivan bowed to the ruling of the court and returned to the main subject of his address, but after a few moments he ceased speaking and informed the Bench that he found it quite impossible to continue. Immediately the court was adjourned until the next day.

Although, from the reference to this trial in Lord Birkenhead's biography, it might be inferred that the Lord Chief Justice's interruption had no relation to the collapse of Sergeant Sullivan shortly afterwards, my friend left the court with the strong belief, based on the closest observation, that it was

a clear case of cause and effect. Until Lord Reading was compelled to stop Casement's counsel from pursuing his irrelevant line of argument, Sergeant Sullivan had exhibited no sign whatever of breaking down, and it is significant that almost immediately after the interruption, while he was endeavouring to pick up the threads of his argument, he began to falter. The impression created was that the sudden termination of a discourse upon a subject which was very dear to the speaker's heart left counsel's mind, for the time being at least, wholly disorganised. From the information I have of the nature and scope of Sergeant Sullivan's digression I do not suggest for a moment that he should not have been checked. Indeed, I am informed by my friend that the Lord Chief Justice was obviously reluctant to intervene, and that before doing so he was noticed conferring with each of the other Judges on the Bench.

The incident may be regarded, however, as a perfect example of the disastrous effect which an interruption from the Bench may have on the mind and nerves of a counsel, striving, perhaps under a great strain, to present the prisoner's case to the jury in the most favourable light. Of course, the danger is likely to be greater in the case of an advocate of a highly-strung, emotional temperament, who cannot properly undertake a defence without almost entirely immersing himself in the prisoner's cause. Such men labour under nearly as great a strain as the person in the dock. In my opinion, a Judge should weigh the matter very carefully before he interrupts counsel for any reason at all, but particularly with reference to points that can be cleared up in the summing up later on. It is possible that there are barristers who would be in no way

disconcerted by such intervention, but I am sure most advocates would be more comfortable without it. Be that as it may, there are few if any young men who are proof against interruptions from the Bench.

Mr Justice Williams had a keen sense of humour, and was never the last to see the funny side of things even in the hallowed austerity of the court-room itself. He had the faculty of extracting all the enjoyment there was to be had from the many little unrehearsed interludes that break the monotony of court routine, and never objected to others doing the same within reason. An excellent after-dinner speaker, he was also an accomplished raconteur, and when he began to tell a story every-one listened. Let one anecdote be indicative of this. We were sitting one evening in the smoking room prior to going into dinner when the Judge told a story which I think is worth repeating.

"Some years ago," he said, "a prominent citizen of Dunedin died; in fact, his history was largely the history of the very early days of the province of Otago. A large number of his friends attended his obsequies, and several of us were waiting in the drawing room of the house before the actual funeral. The undertaker came into the room and, in a deep and solemn voice, asked if any of us would like to take a last look at the 'dear departed.' We all shook our heads, and he retired, carelessly pulling the door to behind him. Unfortunately, it did not close properly, and the next moment the ears of the assembled mourners were assailed by the undertaker's final instruction to his assistant:

"'It's all right, Joe, you can nail the old b——r down now.'"

IV.

In Mr Justice Williams heredity was amply justified and fulfilled, and he was intensely proud of the traditions of the law. It was his work that he looked to, more than to any reward it might bring him, and since he brought his work to an admirable completion, and did his share of good for both the Bench and the Bar in his day and generation, he had every reason to be satisfied and content when he finally relinquished his office to take a seat in the Privy Council in London. His estimate of the law and of its function in the life of the nation was strikingly expressed in the public speech he made at the opening of the new Law Courts in Coronation Week, 1901, to which I have already referred.

It was a great event in Dunedin, and the legal profession, having assembled by arrangement in the old court buildings, which stood on the site now occupied by the Chief Post Office, proceeded in "croc.," in wig and gown, via Bond Street and Lower High Street to the new courts. I happened to be President of the Law Society that year, and, with the Vice-president, led the procession. The Dunedin public, unused to such a display, accorded it a mixed reception, and I am afraid that the combination of the long and the short of it at the head of the parade did not improve matters. My six feet, and more, contrasted oddly with the abbreviated stature of the Vice-president, and the solemnity of the occasion was not enhanced by the rather aged and worn robes which some members had brought to the light of day for the first time for years. All the way down the street it was impossible not to hear some at least of the ribald remarks which greeted our

appearance, and at the conclusion of the march I think there was a feeling that such exhibitions should not be repeated too often.

The ceremony at the new courts was conducted with all the pomp of such occasions in New Zealand, but my recollection of it is confined mainly to the address delivered by Mr Justice Williams after the Prime Minister (Sir Joseph Ward) had spoken.

"If justice be duly administered," the Judge said, "it matters little where it is administered; whether under a tree in the open, in a barn, or in some stately palace. The dignity of a court depends not upon its surroundings, but rests upon the learning, integrity, diligence, and patience of those who preside there. But though the worth lies in the jewel and not in its setting, it is well that the setting should be appropriate and that the halls of justice should be convenient and seemly.

"It is further fitting that this present week should have been chosen for the dedication of this building for the purpose of a court of justice. The extent of the Empire over which our King rules can hardly be better illustrated than by the fact that we here, separated by a whole breadth of the habitable globe from the Royal Courts of Justice in London, and the House of Lords at the ancient seat of learning, Westminster, administer the same system of law as those tribunals observe. Nay, more than that, we are united to these tribunals by the most intimate ties of respect and reverence—not a superstitious reverence, but a reverence founded on reason. We recognise that the Judges of these courts possess not only the highest integrity, but the greatest intellectual power, and that they display in their judgments a breadth of view, a grasp of legal principles, and a lucidity in the exposition of those principles that elsewhere are unrivalled.

"And there is another reason why Coronation Week is an appropriate time for this ceremony. To secure due administration of justice is the noblest prerogative of the

> **Sovereign. Three days hence His Majesty, King Edward VII, will, as part of the Coronation oath, promise to the utmost of his power to 'cause law and justice in mercy to be executed in all his judgments.' May we, and all who hereafter sit in these seats, assist, by all that lies in our power, to enable that promise to be fulfilled!"**

The sentiments he thus expressed were without doubt the ruling force in his distinguished career on the Bench. In the evening a Bar dinner was held to conclude the commemoration. As President of the Society, I was in the chair, and had to propose the toast of the Bench, which gave me an opportunity to make reference to the good feeling then existing between "our Judge" and the Bar. On behalf of the junior Bar I assured Mr Justice Williams of the high regard in which he was held, and emphasised how grateful the younger generation was for his helpfulness and encouragement.

In reply the Judge made a characteristically delightful and happily phrased speech, full of humour, during which he made reference to what I had said about the consideration he had always shown to the junior Bar. He said he deserved neither praise nor thanks for such an attitude, and feelingly concluded with words which I do not think have been forgotten by those who heard them:

"After all, why shouldn't I be good to the young practitioners? Aren't they all my boys?"

THE END.

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P-244

P-244