

## WITNESSES AND THEIR WAYS.

BY ARTHUR T. PASK.

*Illustrated by* MATT STRETCH.

“**B**UT surely,” a friend once remarked to me, “witnesses made to order have no existence nowadays? Mock directors, I admit, there may be—although the leaden feet of Madam Justice in the end make their

still to be seen a choice collection of tools and instruments for “special witness” manufacture: to wit, the boot, the rack, and the thumbscrew!

Frederick the Great, indeed, was supposed to be turning his back on the law when, on mounting the throne (or rather the chair



WITNESSES AT THE CENTRAL CRIMINAL COURT.

way to the Board Room—but not mock witnesses—no, not those.”

Ah, witnesses are kittle cattle indeed! There is no knowing whence they hail, or how, when and why they have been got ready for the witness-box.

In the Tower of London, remember, is

covered with black velvet), he openly abolished the torture. But then old Fritz never had a proper respect for the black robe. His esteemed father, Frederick William, knocked out one of his judge's teeth with his ratan. He himself treated his chancellor and judges of appeal to a taste

of that violent language to which, despite the high-toned praises of the Diogenes of Chelsea, he was only too partial. Again, was not the torture of the Inquisition—always called the Question—*La Salle de Question*—an evidence of the manufacture of testifiers?

In England, it seems, the false witness has always more or less flourished. In Westminster Hall in the last century he was to be noted by the bunch of straw thrust in his shoes. In the good or bad year 1896 he still exists, minus the straw next his stockings, but mostly with the odour of spirits mixing with the lies that come from his mouth.

I think that the worst type of all our dear friends in this line is the "mounter." Why the mounter? Well, I know not the derivation of his professional name, unless it be from *menteur*. A liar of the first water he usually is. In nine cases out of ten he is found in some county court street collision case. He is generally a horsey individual, and has been, or is still, a stable hanger-on, or a disreputable cabman who has lost his licence, or perhaps he is a masterless solicitor's clerk.

In the event of some small tradesman claiming damages against a well-to-do brougham owner for "utterly destroying his property," the mounter, if the county court judge be perhaps too much a believer in human nature for his high office, can be made to prove eminently useful. The smart police and county court practitioner hears of him from his client and summons him to his presence, when he is carefully got ready for the witness-box. However it must be owned that in some cases the mounter is, so to speak, a mere amateur, say some humble hanger-on of the small tradesman. In the collision case it is not necessary to engage the services of more than two or three of the mounting fraternity. Too many cooks and too many mounters are apt to contradict each other. A case of this sort, arising out of a little cart-smashing down Tyburn way, occurred only quite recently.

Counsel for defence was cross-examining.

*Counsel*: You saw this collision take place, and the damage done?

*Witness (1st mounter)*: Yus, sir.

*C.*: Where were you standing at the time?

*W. (1st M.)*: I was on the pavemint.

*C.*: How far off was that?

*W. (1st M.)*: A matter o' four yards exact.

*C.*: You can stand down.

The rest of the mounters engaged by

the plaintiff have very properly been kept out of court until called.

Cross-examination of second witness.

*Counsel*: You saw this collision take place, and the damage done?

*Second witness*: Yus, sir.

*C.*: Where were you standing at the time?



*Second W.*: I was on the pavemint with Mister Jones (the last witness).

*C.*: How far off was that from the collision?

*Second W.*: About ten yards.

Same question put to witness No. 3, who answers:—

"I was standing on the pavemint with Mister Jones and Mister Smith, about twenty yards off."

Consequent wrath of county court judge:

"Stand down at once!"

This, of course, was a badly managed piece of mounting.

Sometimes the mounter himself, by the indulgence in too much stimulant, is the cause of the most disastrous results.

Only a sessions or two ago the suspected accomplice of a prisoner, blessed with the true Danton spirit, had the consummate impudence to make himself up as a respectable plumber and glazier in order to prove an *alibi*. So splendid was the make-up, and so perfectly clear his story, that the mounter, regarded as a coming hero, was so over-treated by his loving and admiring

friends that, when at length he appeared in the witness-box, his nerves were perfectly unstrung. It was as much as he could do to keep his feet by holding on to the box-rail. Somehow or the other he managed to kiss the book. He answered to his name; but on the counsel for the prosecution asking with much severity, "Now, sir, what do *you* know about this?" the helpless and hopeless mounter, almost bursting into tears, answered—

"Guilt-ish, my lord, guilt-ish," thus kindly killing two birds with one stone—giving away both himself and the prisoner at the same time.

In the preparation of the ordinary *alibi*-proving mounter, there is but little difficulty. The sharp solicitor always puts the questions in his mouth during the one private interview before the trial. The conversation might be somewhat as follows:—

*Solicitor*: You were with him at the "Blue Pig" at four o'clock?

*Mounter*: We wos at the "Blue Pig" at four o'clock.

*S.*: And I suppose you were having a drop of half-and-half?

*M.*: We wos 'avin' a drop o' 'arf-an'-'arf.

*S.*: And you stayed there together just over an hour?

*M.*: We stayed there together jest over a *h-our*.

The examination concluding with a discourse on the local colour of the "Blue Pig," habits of landlord, potman, barmaid, position of seats, etc.

With a certain degree of truth it has been held that much of the same kind of working up and putting words in his witnesses' mouth is done by the unprincipled detective in charge of a criminal case. This arises from the fact that his professional reputation depends so much on his obtaining a conviction. Be it remembered, however, that none but a few of the very lowest order of detectives descend to such practices.

In giving his evidence no honester or fairer witness ever stands in the box than the senior detective of the force. The veracity of the City of London police is above reproach.

Still keeping to the witness of humble standing. In important cases of felony the peasant witness is often enough, unknown to himself, converted for the time being into an amateur mounter. In most instances this special duty of Hodge and Giles' mounting falls to the lot of the smart solicitor's clerk.

Let us suppose that a serious crime has been committed in a somewhat remote rural district. At the village alehouse there naturally has been much keen discussion on the subject. The possible witnesses



BAMBOOZLING THE RUSTICS.

also suddenly find themselves to be the popular lions of the taproom. It is not often that poor Giles and Hodge have much chance of being listened to by even their fellows, with any kind of respectful attention. Now at length their chance has come. The tale of what they have seen and heard is repeated over and over again. It is not at all likely to diminish in dramatic force. Before it has time to grow stale a new-comer appears on the scene, clad as a modest tourist, small clerk or shop-assistant on his travels. Chatty, pleasant, and ready to stand any number of half pints, he is soon treated to the local news and the all-absorbing and

never-ceasing topic of the crime. Before an hour is over the genial young man has gleaned every morsel of genuine evidence, and by artful suggestion added more and more colour to the tale. Soon the recital has, in many important details, entirely changed its character. The disguised solicitor's clerk has, in the particular direction required, moulded the rustics' evidence into shipshape order. Unsuspected by themselves, honest Giles and Hodge have been manufactured into mounters.

Approached formally and in cold blood, the British peasant would, on the other hand, prove to be a most difficult subject to tackle. His stolid stupidity is in all cases assumed as an armour of defence. A word from master, parson, or village tradesman may at any time send him to the workhouse with less than a week's notice. Let him chatter ever so little about his master's affairs, and, if found out, he runs the risk of being turned off the farm. Let him only speak chaffingly of Mr. Jones, who keeps the chandler's shop, and his credit for tea, bloaters, cheese, bread, etc., is at an end.

Not stupidity but necessary caution is the true cause of his much-sneered-at reticence. When in the witness-box, however, it must be owned in common fairness that both Hodge and Giles really wish to bear honest testimony.

Our judges also can never be too highly commended for the kindly manner in which they adopt every means to help the poor fellows to give a true and accurate recital of facts. As to Mrs. Giles and Mrs. Hodge, in nine cases out of ten they are even more stolidly cautious than their husbands. On the other hand the rustic countrywoman, when once inspired by vindictive feeling, will sometimes perfectly deluge the court with a screaming torrent of words.

Only a short time back, in a northern county, a Mrs. Giles and a Mrs. Hodge, subpoenaed on opposite sides, actually started a game of fisticuffs (or rather scratchicuffs) within the precincts of the court. And the indulgence in such vagaries is not at all confined to women of the lower orders.

Many years ago, outside Old Judges' Chambers, in Serjeants' Inn, Chancery Lane, the writer had the ill fortune to see two *real* ladies (at least by birth and education) tear the hair out of each other's heads, one of them also pulling the other's ears vigorously.

Speaking of the peasant witness generally, despite the assumed and sometimes real fog

of dullness that surrounds him, he can at times be most successfully got at by a skilful counsel who refrains from harassing him by over questioning. In most cases his recollection of events is far better than that of the intelligent working man. He sees so little of the world, so few things happen to him, that his impressions of a particular event cannot easily be blotted out.

The myriad experiences and incidents that make up the life of the toiler in the busy world are apt to become mingled and blurred. The stonebreaker on the lonely road hails the sight of any newcomer as a relief in breaking the monotony of his work. Anything out of the common about him is sure to be pigeonholed in his memory. The same may be said of the shepherd.

The principal trouble with Giles in the witness-box, however, arises from his always having some preconceived notion absolutely fixed in his mind. He has a way of talking about that instead of answering questions in a straightforward manner. Again, some small detail has always kept itself in his memory which leavens the whole of his otherwise honest evidence.

If we make comparison between male and female witnesses when taken from the ranks of the poor, the old psychological rule still applies. When a woman is a drunkard she is always a worse drunkard than a man. When a woman becomes lying and vindictive she becomes a more malignant and dangerous liar than ever a man can be. "Let 'em cross-examine me, that's all, and I'll jest let 'em have somethin'!" *i.e.*, she will stand at nothing to thwart any attempt to put the prisoner's actions in a favourable light. Before now a woman who has been lying at her best, or rather worst, when thoroughly caught by the cross-examining counsel, has absolutely from sheer chagrin fallen down in a fit.

Not so long ago, during the Hertford Assizes held at Barnet, a woman flung herself down on the floor of the court and absolutely went into convulsions from vexation and annoyance at the discovery of her vindictiveness.

Another bad type of the lying woman witness is what might be styled the flippantly spiteful. In a recent wife murder trial two women gave evidence against the husband, both of whom were manifestly annoyed with the prisoner, yet by no means bearing him any particular hatred. "To put up a little bit more against him" they evidently regarded as a high-class joke. They had

watched the murder take place through the crack of the door, and in describing the details displayed an amount of ready-witted impudence that would have reflected credit on an East London potboy. The man was sentenced to fourteen years' penal servitude. At the time of the trial it was thought by police, counsel and solicitors that far too much reliance had been placed on the statements of these creditable ornaments of their sex. But *salut aux femmes*. As everyone knows without telling, there are hundreds of women who every year are ready to perjure themselves that the brute who has ill-treated them may escape scot free.

In many cases also a marvellous degree of truly generous magnanimity is displayed by men whose pals have murderously maltreated them. At one of the London police courts a rough was charged with breaking a bottle over a brother coster's head. The result was a partially fractured skull—a really dangerous wound. Yet the prosecutor, who had been bound over to appear (otherwise he would never have come into court), in his anxiety to screen his kindly pal, merely said, "There wos jest a bit of a sort o' scrappin' (fighting). But we'd both



THE STREET ARAB AS WITNESS.

been on the booze. I dessay I began it all." The medical evidence was distinctly opposed to any theory of this kind, and the prosecutor was genuinely angry at the sentence which was passed on the man who had tried his best to take his life.

The children of the poor are by no means unfamiliar with the witness-box; yet only too often they have learnt their evidence by rote. A smart counsel easily manages to make this apparent by "my dearing" them carefully, and allowing them to tell their story their own way, which they generally repeat as glibly as a Board School lesson. By asking, "You are quite sure," etc., and getting them to repeat the same yarn in exactly the same words three or four times over, the artificial character of their evidence is quickly made apparent to the judge and jury.

The London arabs, however, are more often than not the very best of the Old Bailey witnesses. Their standard of honesty is far higher than is universally supposed. Offers of "squaring" are constantly refused, and threatened brutality openly defied. Naturally smart, the little halfpenny newspaper seller tells his story in a coolly fluent style, and seldom indeed becomes "rocky" under the severest cross-examination. So much for the poor in the witness-box.

To take a higher flight. There is no doubt whatever that the *cause célèbre* is greatly on the increase in the present day. The great ones of the earth are more often than not mixed up in some judicial proceedings. The question will naturally be asked: "Is the mounter to be found among the upper classes?" Verily he, or more particularly she, is.

"Take," says an eminent criminal solicitor, "the highest type of woman—the woman of birth, education and culture, self-possessed, and, if good looking, the most dangerous of all witnesses. To conceal her divers intrigues she has developed a naturally powerful instinct of caution. She has a consummate knowledge of the world. Such women have a better knowledge of the wire-pulling of the world than men have. Many and many a time she is far more than a match for counsel.

"Yes, and women are more indifferent than men as to the injury they may do by the statements they may make. Some stupid women, too, are almost ridiculously reckless in swearing affidavits concerning their enemies. They won't draw the line at the most horrible accusations. No, I'm not cynical about the sex. I'm only speaking about what I've come across in my own experience." This was how it was put to the writer.

To obtain a still more lurid light on the subject, make your way to the offices or chambers of

*célèbre* solicitor is a thoroughly honest as well as curiously able and brilliant man. Excuse me for saying that unless you are very alert this fact is not easily discernible. If you are a smart interviewer, bent on getting information, you will discover on leaving his presence that he has gained far more material for a nice little descriptive article about yourself than you have obtained from him.

And now as to his methods of discovering what evidence

can be gleaned from the witness before he is placed in the box. Our solicitor starts by saying that he has no belief whatever in generalising. According to his theory every man is different to every other man. Any man may make a statement one day and change it in all its colouring the next. For this reason, when he has taken down the evidence of a future witness, he as a rule asks him to sign it, so that if by any chance he can be approached and

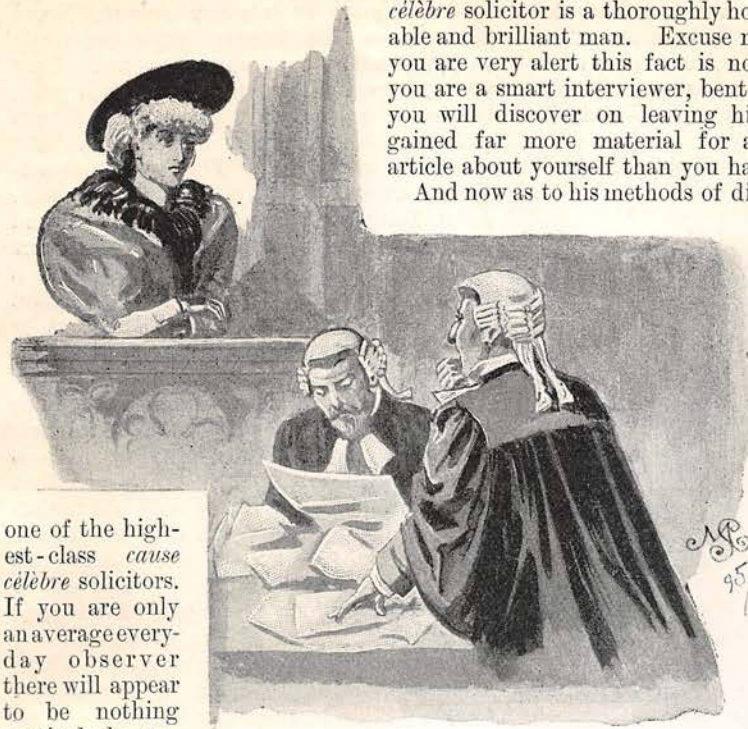
squared by the other side, there will be written proof of his backsliding. Sometimes he has a shorthand writer concealed within hearing.

In moulding his witnesses he has a curious power of adapting himself to his company. Perhaps the best style of all is the jocular "you're a man of the world and I'm a man of the world" style. But then this is equally efficacious with most witnesses when in open court. Flatter their vanity somewhat, be struck with their genial sense of humour, and the salt is popped on their tails easily enough.

An eminently practical person is this evidence-making solicitor, yet for all that he has theories of his own which seem to border on the romantic.

"Yes," said a well-known solicitor to me on one occasion, "I *do* believe that many women witnesses are so affected by hysteria that they frequently give evidence which is utterly false, although at the same time they are quite unconscious of lying. A malicious mind and a hysterical temperament combined may work wonders in the way of evil."

"And do you think that, as the Romans gloated over a murderous gladiatorial show,



PUZZLING THE COUNSEL.

one of the highest-class *cause célèbre* solicitors. If you are only an average every-day observer there will appear to be nothing particularly noticeable about

the place. Open your eyes just a little wider, and kindly put on your considering cap. See, there are several sets of waiting-rooms; two or three different exits. Visitors can come and go without meeting. Family squabblers can be judiciously separated. The solicitor himself—the *deus ex* of everything—can slip out unobserved. Pass into the great man's room, pleasantly and cheerfully, not flashily, furnished. No dirty black japanned boxes with names on them. Airy and bright—well, as the dentist's waiting-room; not, however, with the artistic flippancy that is so often displayed in the *atrium* of the half-guinea tooth-puller. All the same there is one arrangement of conditions peculiar to both. In the operating-room of the dentist you sit down in a chair with the light full in your face. In the operating-room of the *cause célèbre* solicitor, where evidence, not teeth, is going to be pulled out of you before you appear in court, you also are made to sit with the light full in your face. The dentist makes a study of your painful molar; the solicitor tries to discover by any varying expression on your face whether you are keeping strictly to the truth. It is the apotheosis of Mr. Wemmick, with this saying clause though: the high-class *cause*

anyone could gloat over the imaginary details of a modern murder to such an extent as to lose their moral balance altogether and commit themselves to statements that might—I only say possibly might—lead the innocent to the gallows?”

“It is quite possible, though not probable.”



BUCKSTONE AS A WITNESS.

Here are some very unpleasant grounds for mild reflection.

“And is it possible that even, so to speak, red-handed justice is not always in the right?”

“I think that if some violent act were suddenly committed before them, the shock would be so great to many people that they really could not exactly realise what had taken place. Supposing in your own presence two men were to start firing at each other, you would be pretty considerably upset, and being upset at the time the crime took place you perhaps could not very well tell who of the two men had fired first. We know that in ship collision cases there is more variance than in any other. But then one suffers a great shock when there is a strong likelihood of being drowned. In cases like the *Elbe*, say, all narratives should

be taken more or less *cum grano*. No, I don't know that artistic people are likely to *invent* more than other witnesses. They are not good witnesses though, as a rule; they're a great deal too nervous. Actors and actresses are fond of being a little theatrical in the box. They're honest witnesses enough, but not good witnesses. John Baldwin Buckstone was a bad and nervous witness, though he did set the court in roars. Mr. Toole, oddly enough, is a very good witness indeed. Mrs. Bernard Beere is also excellent. I think it was in some copyright case that I once heard her.”

Here the writer calls to mind having once seen Sothern in the box. To prove the rule by an exception, he was perfectly cool—a first-rate witness. It is true enough that gentlemen and ladies of the sock and buskin are not good witnesses, but they are not the worst of all. Who do you think are? Why, barristers themselves! You see it must be a pretty considerable shock to them, after being masters of the situation every day, to suddenly become the servants. Then, again, the barrister often has his mind carried away by the professional bearings of the case. He cannot—although he ought for the time being—remember that he is a witness and not an advocate. In the famous Digby-Seymour case, when the benchers were all put in the witness-box, it was quite noticeable how badly they gave their evidence.

Again, your men of brawn and muscle, whom you would think would not be very likely to become nervous from excitement, are not, as a mere matter of fact, to be strictly relied on.

In the great sculling case of Kelly *v.* Sadler, although Kelly and Willan were cool enough (especially Willan), Sadler was exceedingly nervous, and Chambers terribly so. “Came out in a regular perspiration,” said a solicitor's clerk who was present at the time. The nervous, perspiring witness is a very common type indeed, rolling his handkerchief up in a ball and polishing his red face with it.

I remember, by the way, that Mr. Justice Chitty was called as an expert in Kelly *v.* Sadler. Mr. (afterwards Justice) Denman was engaged as counsel; both the legal luminaries being noted oarsmen. During the trial Tom King, the famous pugilist, who was in court, and the court being crowded, sat down in front of the jury box. This was objected to by Serjeant Ballantine on the score of his causing intimidation.

The usher, who was a very little man, was sent to order the conqueror of Heenan to adjourn. It looked extremely ridiculous when he tapped him on the shoulder. The court official's head was no higher than that of the pugilist.

It is interesting to discuss as to who make



SOTHERN IN THE WITNESS-BOX.

the very best witnesses. One of the best ever in the box is his Royal Highness the Prince of Wales. In the *baccarat* case, although most severely cross-examined by Sir Edward Clarke, his Royal Highness never for a moment turned a hair or went back from his word. Somehow or the other there is an erroneous idea prevalent that when a peer is in the witness-box he cannot be compelled to make oath. This is utterly wrong. In the House of Lords, however, the peer only gives his word of honour. The Duke of Westminster was remarkable for the composure with which he gave his evidence in the racing case about Peck's place. The same may be said of the Duke of Cambridge. But the best of witnesses for cool deliberation, although not so quick as the Prince of Wales, was Mr. Gladstone. The box being nowadays on the bench itself, there is no need for noble witnesses to sit beside the judge.

Authors do not shine, as a rule, when

under examination. The late Charles Reade may be cited as a type of a nervous, excitable, too-ready-to-talk witness.

When some years ago there was a case of disputed contract before the court between a Hindu and a Mohammedan, it was almost impossible to keep the parties in order. During the progress of the plaintiff's examination the defendant shook his fist at him and cried out, "He lies! The man is a liar, a liar, a liar!" When the late Maharajah Dhuleep Singh was in the box, anent the action brought against him by his falconer, he proved himself to be as cool and collected as Mr. Gladstone.

There is no doubt that people are beginning to regard breach-of-promise cases in a more business-like aspect than in days of yore. It is worthy of note, though—to show the interest taken by the average woman concerning all matters relating to marriage and giving in marriage—that the most minute points of detail are, as a rule, well kept in memory by the most flippant of young witnesses.

Oddly enough, immediately after the passing of the famous act by which a plaintiff was entitled to give evidence, no case of the kind happened for some time. Then came two before the court on the same day. The first of the plaintiffs was determined to take full advantage of the powers granted to her, in order to make extra capital out of her beauty and her woes. As luck would have it, Justice Blackburn was presiding—a judge who had almost a morbid hatred of anything like "romantic twaddle" being brought into the court. The trial was held in the old bail court at Westminster, and as the lovely plaintiff was so overcome by her woes that she was unable to stand, a chair was provided for her in the well of the court. She sighed, she writhed, she clasped her hands together as if appealing to heaven. When at length, after nearly choking herself with a long course of sobbing, she burst out with, "I loved him! oh, I loved him!" the learned judge almost ground his teeth with disgust, and in summing up took the utmost pains to inform the jury that they were not to allow themselves to be carried away by any displays of emotion; that it was simply and purely a question of contract, etc. Result—merely nominal damages.

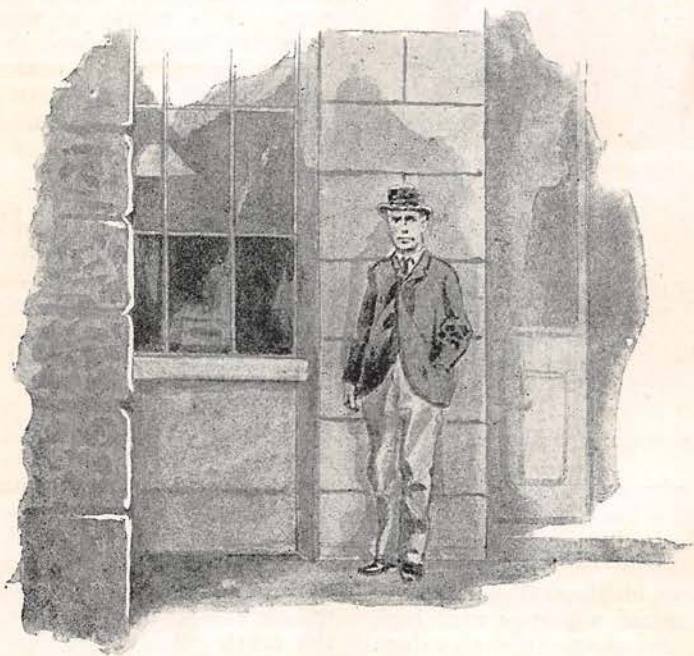
Still, the modern plaintiff, when her own witness, has the distinct advantage of being able to speak her part as well as act it. Poor Mrs. Bardell could only content herself



with sobbing in comparative silence and getting up an interesting swoon. The quietly respectable, both in manner and attire, is nowadays regarded as the most efficacious style for the witness-box. Yet for all this it has happened before now that the whole court has been carried away by the evidence of an interesting witness.

During Sir Alexander Cockburn's Chief Justiceship a tea-ship case was tried before that acute and wondrously brilliant judge. A ship had become dismasted and wrecked from being crossed by a cyclone.

One of the witnesses, a merchant skipper, who possessed the power of dramatic description in a high degree, in giving his explanation of the effect of the disastrous storm became so absorbingly interesting that for some time—although in many instances he was drifting quite far from legal evidence—the judge himself seemed to be unaware of the *lapsus*, and even when at length he remarked, "This is most amusing and instructive, captain, but it does not bear on the case," the rebuke was uttered in almost regretful apologetic tones.



'TWIXT THE OLD BAILEY AND NEWGATE.