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CRIMINAL COURT SERIES

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# ***OLD MAN TUTT***

*By*  
ARTHUR TRAIN

Vol. 5

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ARTHUR TRAIN

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## PUBLISHER'S NOTE

“You’re Another,” first published in 1920, is reprinted here at the request of numerous friends of Mr. Tutt, who have expressed disappointment at not finding the story in either of the omnibus collections entitled *The Adventures of Ephraim Tutt* or *Mr. Tutt’s Case Book*. Indeed, Professor John Henry Wigmore in his introduction to the latter, assuming it to have been included, even made particular reference to the story’s aptness as illustrating the contrast between the rule of Law that forms the ostensible issue in the litigation and the merits of the parties when all the circumstances are considered—in short, the Justice of the case. We are glad to take this, the first, opportunity to remedy this deficiency.

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# OLD MAN TUTT

# JEFFERSON WAS RIGHT

Ephraim Tutt, his brief case on his knees, sat inside the rail, waiting for the prisoners' pleas to be taken before arguing a motion. He had watched that tragic procession a thousand times without ever losing interest in its melodrama.

Who were these men that, one after another, were led to the bar and answered "Guilty" or "Not Guilty"? What had they done? What was their past, and their future? How could the crude machinery of so-called justice properly evaluate the moral obliquity of their offenses? The mitigating circumstances?

The types in the courtroom always differed. The woman on the front bench, for instance, holding a baby—what was hidden behind the mask of her honest Irish face? And that near-by row of ragged urchins, all about the same age—what were they doing there?

The door leading to the prison pen opened and a big hulking man, his hair awry and his collarless shirt unbuttoned at the neck, stumbled in, shackled to a keeper, and clumped to the bar. One of the boys leaned over and slapped him good-naturedly on the shoulder as he passed, while the woman with the baby reached out and patted his arm. The prisoner turned and gave her a grim smile that tried hard to be encouraging. [2]

"Vance Halloran, you are indicted for murder in the first degree. How do you plead? 'Guilty' or 'Not guilty'?"

Halloran stared uncertainly at the clerk, then mumbled something to old Captain Gallagher, the court officer, beside him.

"He says he hasn't any money to hire a lawyer. Wants the court to assign him one."

Assistant District Attorney O'Brion, popularly known as the Bulldog, glancing up from his papers, caught sight of Mr. Tutt. The chance of a lifetime to hand the old boy a ripe juicy melon! Halloran was as good as in the chair already! Pity he wasn't some one more important than a mere newspaper-truck driver!

Stepping to the bench, the prosecutor whispered to the presiding judge, who coincidentally raised his eyes to the group of waiting attorneys.

"H'm! Let me see!... I'll assign Mr. Tutt to the defense in this case," he announced finally.

O'Brion couldn't help grinning.

The old lawyer, thus unexpectedly yanked back from his philosophical speculations, arose.

"If the Court please," he said, "while I much appreciate the compliment paid me by Your Honor, I beg to state that my health and professional engagements are such that I must ask you to excuse me." [3]

"I wish I was half as tough," muttered O'Brion out of the corner of his mouth. "He'll live to be a hundred."

"This is a very serious case," replied the judge. "Its defense will demand ability and experience. I know of no one better qualified than yourself to undertake it."

Mr. Tutt realized that he was licked before he started.

Twice before in recent years he had thrashed O'Brion in seemingly hopeless cases, and now the Bulldog intended to get even with him. Well, no use kicking against the pricks.

"I bow to Your Honor's decision."

Mr. Tutt stepped across to where the prisoner stood bewilderedly at the rail. He certainly was a tough-looking customer!

"If the Court please, under the circumstances, I request that the pleading in this case be adjourned for one week, so that I

may have proper opportunity to confer with my client.”

“I object to any delay,” interposed O’Brion. “I ask that the defendant be compelled to plead and that the date of the trial be set here and now.”

“He ain’t got a chance!” Captain Gallagher informed the lawyer. “Shot a feller right on Centre Street in broad daylight. They found the gun and everything. Better plead him to murder in the second, if you can get O’Brion to take it.” [4]

“If the case is as serious as Your Honor indicates, I should have ample time in which to prepare my defense,” answered Mr. Tutt.

“The facts are perfectly simple,” insisted the prosecutor. “There isn’t any defense.”

“You may have until day after tomorrow in which to plead,” ruled the judge. “That should be long enough to review the evidence and decide upon your course.”

“I serve notice on the defense that I shall move for an immediate trial and a special jury,” warned O’Brion. “Take him back to the Tombs. Next case!”

Halloran was led away and Mr. Tutt, forgetful of his motion, walked out of the courtroom. Pausing to light a stogie in the rotunda, he was overtaken by the woman with the baby and the covey of little boys.

“I’m Mrs. Halloran, sir,” she said, laying her hand on his arm. “Thank God, he’s got a good lawyer to defend him!”

“I’ll do my best! Tell me about the case.”

“They say he shot Mike Kelly, but I’m sure he didn’t. He ain’t that kind. He works nights drivin’ a delivery truck for the *Star*. Kelly drove for the *Express*. They had some sort of a row once, but it was nothing—Kelly quarreled with everybody. The other afternoon my husband went out for a walk. On his way home he heard a shot just beside him, and a man comin’ in the opposite direction dropped to the sidewalk. It was Kelly!” She shuddered. “Vance didn’t come back, and it wasn’t until next day that I found out he was in the Tombs, charged with murder. But he didn’t do it!” [5]

“Course he didn’t do it! He’s a swell guy!” interrupted one of the boys, stepping forward. “Me and these other fellers buy our papers off him. We’re the Halloran Club. I’m president. My name’s Iky Morris. We know all about Vance. This Kelly was a bum. Vance never shot him. He wouldn’t kill a dog.”

“So you’re the Halloran Club?” smiled the old man. “What does the club do?”

“It’s a social organization. Vance takes us for walks on Sunday afternoons and sometimes on picnics in summer.”

“He got it up before he was married,” explained Mrs. Halloran.

“If there’s anything we can do to help, just call on us.”

Mr. Tutt patted the boy’s head.

“I certainly will, Mr. President! He needs every friend he’s got. I’m glad he has such a lot of good ones!”

“Tell me the truth, Vance,” said the old lawyer, as he sat opposite his unprepossessing client in the counsel room of the Tombs. “It’s your only chance. Did you shoot Michael Kelly?” [6]

Halloran tried to avoid the old man’s glance. His chin shook. He was obviously gutted by fear.

“I swear to God, I didn’t!” he stammered. “I hadn’t seen him for weeks, so help me! I’d just gone out for a walk. I had to be home early, because it was our wedding anniversary and we was goin’ to have a bit of a celebration. All of a sudden I heard a shot at me elbow. Then I saw people runnin’ and Kelly lyin’ on the sidewalk. There’s an alley there and,

naturally, I sort of dodged back into it. Next thing the cops had me. One of them found a gun. He asked was it mine; I said no. It wasn't either! I swear I didn't have no gun! Then they took me to headquarters, and from there to here. Some guy must have shot him from the alley and made a get-away. That's the truth—if anyone will believe it!"

"Was the gun yours?"

"I told you it wasn't!"

"Do you own one?"

Halloran hesitated. "No-o. Not now. Last year, with all them gangsters around, I did get a permit from Judge Fitzpatrick to carry one."

"What became of it?"

"I toted it awhile, but it was too heavy and I left it in the flat. One night we came home late and found the door unlatched. A sneak thief had cleaned out the place and taken Nora's pocketbook, with six dollars in it, and a bracelet. Next day I missed the gun. It's a tough break all right!"

[7]

Mr. Tutt's eyes probed Halloran's. "Did you tell your wife you had a revolver?"

"I didn't want to frighten her."

"So you didn't mention the loss of it either?"

Halloran shook his head.

"Looks bad for me, don't it, counselor?"

Mr. Tutt regarded him thoughtfully.

"If you didn't shoot Mike Kelly, you're in the toughest jam I've ever heard of," he said.

Ten minutes later, Mr. Tutt entered O'Brion's office. "Good afternoon," he said, politely removing his stovepipe hat. "I've come to talk to you about the Halloran case."

"Then you're wasting your time! This bird has got to go to the bat, prontissimo!"

"But why the hurry? A little delay might be advantageous, even to the prosecution. You might prove that the defendant owned the pistol."

"He could have used it even if he didn't own it," retorted the assistant district attorney.

"True, but it would vastly strengthen your case to show that he did. On the other hand, it would seem only fair to give us a chance to prove that he didn't."

O'Brion leaned back.

[8]

"This fellow is guilty as hell," he declared. "You know it, I know it, everyone knows it. The electrodes are on him already. There's no sense fooling around about the pistol."

"But, Mr. O'Brion," protested the old man, "this is a case of circumstantial evidence. Facts apparently inconsequential may prove to have great significance. Do give me reasonable time. You have no excuse for railroading this defendant."

"There's the most excellent excuse that for the protection of society all murderers ought to be convicted as soon as possible."

“Not to mention the additional—and less worthy—one that you want to even up the score between us,” commented Mr. Tutt bitterly. “I know that you suggested my assignment to this case. And I know the reason why.”

The prosecutor grinned. “You do me a grave injustice.” He scrunched out his cigarette. “No! Forget it. The sooner he goes to the chair the better.”

“But aren’t you willing to give me a chance for this man’s life? Think of what it means to his wife and child.”

“Don’t appeal to my better nature, because I haven’t any,” replied O’Brion sarcastically.

“I’m glad you appreciate the fact.” Mr. Tutt’s lips quivered. “All right! Go ahead. There are more ways than one to fight a case—as you may learn, to your surprise. Good day, sir.” [9]

The old lawyer clapped on his hat, turned and walked out.

“Jumping Jehoshaphat!” he muttered as he paused outside to light a stogie. “If I do find a way to defend this case, I’ll be more surprised than he is!”

That O’Brion was sincere in his belief in Halloran’s guilt Mr. Tutt did not for an instant doubt. The difficulty was that he was so firmly convinced of it that he would have regarded any counter opinion on the part of a jury as a gross miscarriage of justice. He was one of those now fortunately rare prosecutors who allow their prejudices to overcome their scruples. He not only disliked but distrusted Mr. Tutt, who felt the same way, even more strongly, about him. The old lawyer did not object to a hard fight; some of his best friends had been on the district attorney’s staff. If an honest prosecutor occasionally overstepped the mark, he was ready to forgive him. But Mr. Tutt knew that once the legal steam roller had started, it would crush Halloran flat. And in this instance, in spite of his most urgent appeals for delay, it did start with the ordering of a special jury and the trial being set within the fortnight.

“Fat chance we’ve got!” growled Bonnie Doon, as he and the old man bucked the crowd at the door of the courtroom on the day of the trial.... “What’s the row here, Captain Gallagher?” [10]

“All these boys are afther tryin’ to get in. I tell ’em they’re too young. ’Tis agin the rules!”

Mr. Tutt pushed forward.

“Let me look at ’em!... Hello, Iky!... They’re Okay, Gallagher—friends of mine.”

“All right, if you say so, sor.”

He opened the door and the Halloran Club surged through in full force.

O’Brion, lounging inside the rail, instantly spied them.

“What are all those boys doing in here?” he demanded. “Put ’em out.”

“I should greatly appreciate your allowing them to remain,” pleaded Mr. Tutt. “They’re friends of the defendant.”

“This isn’t a ball game,” returned the prosecutor.... “Throw ’em out, Gallagher.”

While the officer obediently herded the Halloran Club into the corridor, Mr. Tutt muttered an order to Bonnie Doon; then, as his henchman hurried out, he made his way inside the enclosure and took his seat at the counsel table. Shortly thereafter there was another uproar outside; the door opened and the Halloran Club filed in again. O’Brion jumped up.

“I told you to keep those boys out! I intend to have my orders obeyed!” [11]

Gallagher exhibited a bundle of paper slips.

“They’ve all got subpoenas, chief.”

“Subpoenas!”

“Character witnesses for the defendant,” explained the old lawyer.

“Ptah!” grunted O’Brion, realizing that he had been outmaneuvered at the starting line.

“Sit down, boys,” beamed Mr. Tutt.... “Officer, will you please put these witnesses on those two front benches, where they will be easily accessible?”

Almost at once thereafter, Halloran himself was brought in; Judge Babson, gray-haired and benign, entered in his silken robes and took his place on the dais, and the case was called.

“Impanel a jury,” directed His Honor.... “Mr. Tutt, if you desire to examine any juryman upon the *voir dire*, you must do so before he is sworn.”

The trial was on.

## II

The talesmen had been drawn from what Tutt & Tutt sardonically referred to as The Standing Army of the Gibbet—that is to say, from a panel composed entirely of experienced and substantial citizens, wise to all the tricks practiced at the criminal bar since the days of Howe & Hummel down through those of Big Bill Fallon; a proper jury, who [12] respected the sworn officers of the law, detested crime, distrusted all defense attorneys, and would do their duty as they saw it, irrespective of the consequences; a jury who, if necessary, would convict their own mothers; a jury, in short, to make any prosecutor’s heart sing for joy.

Mr. Tutt’s heart sank as he looked at them. Yet he must sow the seed of doubt—of reasonable doubt—in the jury’s minds before the conclusion of the testimony, or Vance Halloran, guilty or not guilty, would die.

He studied them shrewdly from under his shaggy eyebrows. A hard-boiled bunch, those importers, civil engineers, bankers, accountants, manufacturers and retired merchants. That Prussian-necked foreman, with his veined red face and waxed mustaches, was ready to convict already! The only countenance in which he could read a trace of sympathy was that of No. 7, a good-natured-looking man with a close-cropped mustache—“T. Jefferson Lee, landscape gardener.”

“There’s only one way to try this case, Bonnie,” whispered Mr. Tutt. “I’ve got to turn this courtroom into a monkey house. If I can get Babson’s goat and make O’Brion mad enough, I’ll have a fighting chance; otherwise not! Leave me absolutely alone. I’ve got to be a feeble old man struggling for justice against the irresistible forces of the law.”

“I get you, boss,” replied his henchman. “I’ll be sitting back there with the boys if you want me.” [13]

Judge Babson tapped with his gavel, and O’Brion arose to make his opening speech. The jury, giving him their strict attention, were manifestly impressed. Brick by brick, the prosecution built up the wall of evidence that was to entomb the defendant. His witnesses more than substantiated his statement of what he intended to prove. Five testified that, from across the street they had heard a report and seen a flash at Halloran’s right side; three more swore to a quarrel between him and Kelly a month before the shooting; Judge Fitzpatrick that he had issued a pistol permit to Halloran; and two police officers that they had arrested him in his tracks and found a revolver about fifty feet down the alley, where he might easily have thrown it.

“I offer the gun in evidence,” said O’Brion, holding it up for the inspection of the jury.

“I object to its admission,” countered Mr. Tutt firmly, “without evidence that it belonged to my client.”

“That is a matter for the defense. You are free to prove that it is not Halloran’s gun, if you can do so.”

“Why not be fair for once, Mr. O’Brion?” the old man twitted him. “You know perfectly well that we have no resources to conduct an adequate investigation, whereas you have the entire detective force at your disposal. If this gun [14] belongs to my client, it would seem up to you to prove it. I further object that the defendant has not been given time in which to prepare for trial. It would take us weeks, perhaps months, to trace the purchase of that pistol. This homicide was committed less than a fortnight ago. The indictment was returned the next day. The defendant was forced to plead ‘Not guilty’ forty-eight hours later. And here he is on trial! It is an exhibition of the most unseemly and unjust haste. I protest.”

Judge Babson tapped with his gavel.

“That will do! I shall admit the pistol in evidence. Mark it ‘People’s Exhibit A.’ Either side may argue as it sees fit upon the lack of evidence as to ownership.”

“And I except,” answered Mr. Tutt.

“The People rest,” announced O’Brion, glad at last to be through with his side of the case, for Mr. Tutt had been at him like a gadfly from the start.

“By cripes!” muttered Captain Gallagher. “If the old boy beats this, he’ll be a wonder!”

“Proceed with the defense.”

Mr. Tutt arose.

“Vance, take the stand.”

Halloran, realizing the odds against him, sat there, sullen and defiant, after taking the oath—a hopeless figure. [15]

“You are the defendant in this action?”

“Sure I am.”

“Did you kill Michael Kelly?”

“I did not!”

“Did you have any motive to kill him?”

“No.”

“Where were you going when you heard this shot beside you?”

“I was on me way home to supper. It was the first anniversary of our wedding and——”

“One moment! I move the last part of the answer be stricken out!” interposed O’Brion. “It is irrelevant and immaterial.”

“Strike it out!” directed Babson, on the theory that the answer was technically unresponsive, although O’Brion had carelessly failed to base his objection on that ground.

It was the chance for which Mr. Tutt had been waiting, and he took it.

“Can it be irrelevant or immaterial that the defendant was on his way to celebrate his wedding anniversary when the alleged murder was committed?” he demanded, in a tone of indignation. “Would not any reasonable human being question whether the defendant would select that particular moment to commit a murder? I ask that, in fairness to the defendant, he be allowed to answer my question.”

“I have ruled upon the objection. You may have an exception,” replied Babson, doing the best he could.

Mr. Tutt fingered a piece of paper.

“I offer in evidence the certificate of marriage of Vance Halloran and Nora O’Conner, dated April 21, 1936.”

O’Brion sprang to his feet.

“Object!”

“Excluded!”

“Exception!”

Tit-tat-Tutt! It was beginning to get messy. O’Brion had stated no ground of objection, and Babson, who was easily confused, supposed vaguely that he was adhering to a ruling he had, in fact, never made.

The jury were puzzled. They could not know either that O’Brion, realizing the point to be the only dangerous feature of the defense, had determined that the evidence must be kept out, even at the risk of a reversal in the higher courts, or that the dignified Babson was in reality a dunderhead.

Mr. Tutt waved the certificate threateningly at the judge.

“I cannot believe that Your Honor, after proper consideration, will exclude so vital a bit of testimony. I——”

His Honor flushed uncomfortably.

[17]

“I shall not change my ruling! I do not care to hear further argument.”

“But I have a right to be heard!” challenged Mr. Tutt. “I am responsible for the life of this defendant! I insist——”

Bang! went the gavel. “Sit down, sir!”

The old lawyer genuflected slightly, then bobbed up again.

“I rise to make an objection!”

“Your objection is overruled! Sit down!”

“I desire to state the grounds of my objection.”

“I do not care to hear them,” snapped Babson, making his first tactical slip. “I shall not give you the opportunity to make speeches out of order, for their effect upon the jury.”

Mr. Tutt drew himself up to his full height.

“I object to Your Honor’s remarks as prejudicial and uncalled for!” he thundered.

“Sit down, sir!”

“I also object to your Honor’s tone and manner as hostile and showing obvious bias. This isn’t a Nazi court!”

Bang! Bang! “Sit down! Unless you wish to be committed for contempt!”

Mr. Tutt looked toward the jury and shrugged hopelessly. No. 7 had slightly raised his eyebrows.

“I have no desire to be committed for contempt, but whatever course Your Honor sees fit to pursue, I must protect my client. I except to Your Honor’s ruling and to Your Honor’s threats!”

[18]

He sat down, leaving poor Babson in a dither of rage. A judge had to protect the dignity of his own court, didn't he? He couldn't let himself be insulted, could he?

From his seat upon the dais, he looked appealingly at the prosecutor, but O'Brion, blaming Babson for having lost his self-control, promptly lost his own. The judge should have put old Tutt in his place once and for all! The jury must be shown that this was no tea party, but a murder trial!

This he proceeded to do in his cross-examination of the defendant. Halloran was, at best, not quick-witted, and now, before he could get out his full answers, O'Brion worried, tore and twisted them into seeming contradictions. The effect was as if Carnera had been bound to a post, with Bomber Louis left free to slug him in the face as he would. And after O'Brion had got through with his bear-baiting, Babson, who had once himself been a prosecutor, could not refrain from taking a hand and showing by his questions that he regarded Halloran's explanation of the loss of his revolver as fantastic.

Indeed, when the defendant climbed down and stumbled back to his seat, Mr. Tutt's worst fears had been realized. True or not, no jury would ever believe his story!

"Nora, please take the stand."

[19]

Hugging her baby, Mrs. Halloran came timidly forward. O'Brion, flushed with victory, proceeded to put his foot in it. "Sob stuff!" he croaked, for the benefit of the jury.

Mr. Tutt saw an expression of disapproval flit across the face of No. 7 and took courage.

"You are the wife of the defendant?"

"Yes, sir."

"Tell us, Nora, the date upon which you were married to Vance Halloran."

O'Brion, still gambling on the overwhelming proof of guilt to swamp technical errors, leaped up. Babson, now wholly lost, simply followed his lead.

"Object!"

"Sustained."

"Does Your Honor deny to this woman the right to show that her child was born in lawful wedlock!"

"That is not an issue in this case," sneered O'Brion. "It is immaterial whose this child is, or whether it was borrowed for the occasion!"

Mr. Tutt turned furiously on the prosecutor.

"Such remarks are unconscionable and highly prejudicial to the defendant! I ask the court to declare a mistrial."

"Motion denied," retorted Babson, still smarting under the lash of Mr. Tutt's reference to a Nazi court of justice.

"I take an exception," said Mr. Tutt.... "That is all, Nora!"

[20]

"Wait a moment!" ordered O'Brion. "You say your flat was burglarized and that six dollars and a bracelet were taken?"

"Yes, sir."

"Did you tell your husband about it?"

"Naturally."

“Did he in turn, tell you that his gun had been stolen?”

The witness lowered her eyes.

“No.”

O’Brion exultantly faced the jury.

“That is all!”

Mr. Tutt shivered in spite of himself. As far as the facts went, she had done more harm than good. What a case! He had no other witnesses, save those as to character! Impressively as he could he called Father O’Conner, the parish priest; Murphy, the boss truckman of the *Star*; Schwartz, the butcher; Lefkowitz, the tailor; Tibberman, the undertaker; and Donovan, a retired policeman—all of whom swore that Vance Halloran’s reputation for honesty and truthfulness, peace and quiet, was good. O’Brion did not so much as glance at them, indicating by his manner that anyone—even a murderer—could obtain character witnesses for the asking.

“The defense rests.”

“The People rest.”

[21]

“Go to the jury!”

Mr. Tutt, with shoulders hunched, walked slowly to the front of the box.

“Mr. Foreman and gentlemen of the jury,” he began quietly enough, “the New York Code of Criminal Procedure was enacted for the purpose of insuring to every defendant accused of crime a fair and impartial trial under the established rules of evidence—a right asserted by the signers of our Declaration of Independence and guaranteed to us under the Constitution of the United States. The personal safety of each and every one of you depends upon the preservation of the inviolability of due legal process, uninfluenced by any sort of pressure, official or unofficial——”

“One moment! I object!” interrupted O’Brion. “This harangue has nothing to do with the case!”

Babson took the hint. He had a feeling that things were not going just right and that, somehow or other, the old man was putting something over on him. The jury must not get the idea that Mr. Tutt was running the show.

“Confine yourself to the evidence, counselor.”

“Does Your Honor mean to suggest that I may not comment upon the constitutional guaranties under which this and every other defendant must be legally tried?”

“I merely said to confine yourself to the evidence.”

“I surely have the right to explain the rights for which our forefathers fought and died.”

[22]

“I will take care of all that!”

“I conceive it my duty to take care of it myself.”

Judge Babson drew in his lips.

“Proceed, counselor.”

Mr. Tutt turned again to the jury.

“Gentlemen, you are the sole judges of the evidence. While His Honor may comment upon the testimony, even he cannot substitute himself for you in determining what that testimony may or may not establish.”

Babson was narrowing his eyes.

“Much more, then, is it beyond the right of the district attorney to attempt to sway your judgment by innuendo, unfair emphasis, false construction or by official pressure.”

Bang! went the gavel. “That will be enough. It is within my judicial discretion to limit the speeches of counsel. Get off generalities. Come down to business.”

“Very good, Your Honor.... Then, gentlemen, if I am to come down to my business, let me but point out to you that the much-heralded fact that this defendant was indicted and brought to trial in the record time of fourteen days is not evidence of his guilt, nor the obvious intention of Mr. O’Brion to exclude every fact favorable to our side of the case and to attempt, by securing a conviction at any cost, to advance his own political fortunes.”

“I object!” bawled O’Brion.

[23]

“The galled jade will wince!” Mr. Tutt taunted him.

“Stop!” exclaimed the miserable Babson. “I will permit no more of this! The jury will pay no attention to statements of counsel.”

“If the court will not allow me to sum up my case in my own way——”

“You may, but within proper bounds!”

Mr. Tutt’s face froze.

“I cannot tell what Your Honor may regard as proper bounds,” he answered sternly. “Under the circumstances, I refuse to sum up this case, let the consequences be what they will!”

He sat down and bowed his face in his hands. Jury, spectators, court officers held their breath. Nothing like this had ever occurred in their experience.

Babson, not knowing what to do, decided to do nothing. Swallowing his wrath, he said: “Were this not a crucial moment in an important trial, I would deal with this incident in summary fashion. As it is, I shall not do anything which might prejudice the defendant’s interests. If his counsel does not see fit to go on—whatever his reasons may be—you may proceed with your summation, Mr. District Attorney.”

Caught off guard by being thus thrown unexpectedly into action, O’Brion hesitated as to what course to pursue. Curse the old shyster! He’d thrown a nut into the whole legal machinery; had managed to put both Babson and himself in the wrong! Should he try to laugh him out of court, explain that the old fellow’s outbursts of indignation were all put on—the last attempt of a desperate man to confuse the issue? If he did, the jury might get the impression that he was trying to justify himself. Probably that was just what old Tutt hoped for. No, he had a perfect case, and neither Babson nor he had anything to apologize for in the way it had been conducted. He must not let Mr. Tutt’s red herring lure him off Halloran’s trail. He had no time for finesse. He’d simply give Halloran the works. [24]

He did it in masterly style. With jaw outthrust and arms flailing the air, he delivered a spread-eagle oration that held the jury spellbound, tore the defense to tatters, excoriated Mr. Tutt and finally pictured the weeping widow and bereaved children of the deceased and demanded vengeance upon the murderer. The blood of Michael Kelly “called to them from the ground! Whoso sheddeth man’s blood, by man shall his blood be shed!” and all the rest of it, and then some more, until, as old Gallagher remarked, the walls of the courtroom were “plastered with blood and guts.”

He even, in his enthusiasm, bettered his usual peroration: “You have sworn a true deliverance to make. You have no choice. The only honest deliverance in this case will be a verdict of murder in the first degree. As the representative of the People, I demand it. If you fail to return it, you will have violated your oaths, betrayed the confidence of your fellow citizens, stamped yourselves as either craven or corrupt and made yourselves a laughingstock in the community.” [25]

Mr. O’Brion sank back into his chair. Instantly, Mr. Tutt’s tall form shot up.

“I object to the remarks of the district attorney as highly prejudicial to the rights of the defendant. So far from it being obligatory on this jury to return a verdict of guilty merely because he orders them to do so, it will be their duty to weigh the evidence conscientiously and, if they have a reasonable doubt of the defendant’s guilt, to acquit him. In so doing, they will be fulfilling the obligation of their oaths and vindicating the confidence of their fellow citizens. Such a verdict will not stamp them as cowards or bribe takers, but as honorable, fair-minded men. I ask Your Honor so to instruct the jury.”

Judge Babson did not disregard O’Brion’s gesture of protest. It would not do to let the jury gain the impression that the prosecutor’s summation had exceeded the bounds of propriety.

“Mr. Tutt,” he replied severely, “your objection to the district attorney’s remarks is uncalled for. He has a perfect right—nay, it is his duty!—to present the People’s side of this case to the jury and ask them to accept his interpretations of the evidence—namely, that the defendant has been guilty of deliberate premeditated murder—just as it is yours to try to persuade them that he has not. I will now charge the jury.” [26]

“Are there any requests?” he asked, when the charge was concluded.

Mr. Tutt leaned toward Bonnie Doon.

“All set?” he asked behind his hand.

“Okay, chief!”

“All right then. Go to it. It’s a desperate chance, but we’ve nothing else.”

As Bonnie slipped out of the court-room, the old lawyer arose. Looking straight at No. 7, he said: “I ask Your Honor to charge that if, in the jury’s opinion, the defendant has not received a fair trial, it is their duty to acquit him.”

There was no sound save the ticking of the clock upon the rear wall. The veins in Babson’s forehead swelled and his neck reddened.

“I decline so to charge. I am the sole judge as to whether or not the defendant has had a fair trial. Your request is a reflection upon the Court.”

Mr. Tutt gazed at the unfortunate Babson as if he were a worm.

[27]

“I except to the refusal to charge as requested. I ask Your Honor to charge the jury that it is more important to preserve the integrity of the administration of criminal justice than that a particular defendant be convicted or acquitted.”

The muscles of Babson’s jaws twitched. “I decline to charge in the language requested. It is no part of my duty to instruct the jury in metaphysical generalities.”

Then Mr. Tutt, his eyes lifted to the Goddess of Justice above the dais, cried: “I ask Your Honor to charge further, in the language of the Declaration of Independence, that ‘all men ... are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it.’ That—in the words of Thomas Jefferson—‘rebellion to tyrants is obedience to God.’”

Smash! went Babson’s gavel. “Sit down! The jury will entirely disregard this stump speech of counsel!”

Mr. Tutt did not sit down. On the contrary, he raised his voice: “I accuse this court of bias, intimidation and unjudicial conduct. I charge the district attorney with prejudicial and unfair methods. In a word, I allege that my client is being railroaded to the electric chair.”

[28]

“Sit down, sir!” shouted Babson. “Or I shall declare you in contempt of this court!”

“I have nothing but contempt for this court!” coolly replied Mr. Tutt.

“In that case, I shall order the sheriff to place you under arrest and to remove you from the courtroom.”

O’Brion shook his head warningly toward the bench. That would be going too far.

“Or rather, under the circumstances,” temporized Babson, “I order you to appear before me tomorrow morning to show cause why you should not be fined five hundred dollars for contempt.”

“I shall appear, Your Honor,” answered the Old Man resolutely. “And if this defendant be convicted of murder, may his blood be upon your head.”

Mastering his fury, Babson turned to the men in the box: “The jury will retire!”

[29]

### III

“Gee, Mr. Tutt!” quoth Officer Gallagher, following the lawyer into the corridor. “You sure had your nerve wid you! I bet no one iver talked like that before to the ould he-devil!”

Mr. Tutt’s trembling lips drew into a wry smile. “And perhaps no one ever will again, Pat! You recall Foch’s famous dispatch to Joffre at the Battle of the Marne? ‘My right has been rolled up; my left has been driven back; my center has been smashed; I have ordered an advance from all directions.’”

“You did that, all right!” quoth the officer. “’Twas like the advice the ould criminal lawyer was afther givin’ to the young feller goin’ to court for the first time: ‘If ye’ve got a good case, harp on th’ facts; if ye’ve got a weak one, attack the law; but if ye’ve got no case at all, lambaste th’ disthric attorney!’”

“That was the general idea,” agreed Mr. Tutt. “Have a stogie?”

The twelve good men and true, carrying their coats and hats, filed out to the jury room and took their seats around the oak table.

“Well,” announced the foreman, without even lighting his cigar, “I guess there’s not much use wastin’ time on this case. It’s clear what the judge expects us to do. Let’s take a ballot and get it over with.”

The tallies showed eleven for conviction and one for acquittal.

“Good Lord!” groaned the foreman in disgust. “Who’s the only wise man?”

“If you mean who voted for acquittal, I did,” quietly replied No. 7. “I don’t propose to help railroad any man to the electric chair. This feller Halloran didn’t have a fair trial.” [30]

“But the judge practically told us to convict!”

“Exactly! Babson’s no right to try to dictate our verdict. We’re the only judges of the defendant’s guilt or innocence. Didn’t you hear Mr. Tutt say that it was more important to preserve the integrity of the administration of criminal justice than that any particular defendant should be acquitted or convicted?”

“Yeah, I did. And I heard the judge soak him five hundred dollars!”

No. 7 swept the circle.

“Let me ask a single question, gentlemen. How many of you honestly think this defendant had a fair trial?”

No one spoke for a full quarter minute.

“Well,” finally admitted one juror, “they did seem to be givin’ him the bum’s rush!”

“Suppose you got the same kind of bum’s rush?”

“That’s right too!”

“The whole trial was rotten!” declared No. 7 heatedly. “If men like that are to administer the laws, no one of us is safe! Why, they wouldn’t let Mr. Tutt show it was Halloran’s wedding day! No feller in God’s world would choose that anniversary to kill a man! And they never even tried to pin the gun on him! If it was his, why didn’t they prove it? [31] What’s the detective bureau for, anyhow? They had twenty thousand cops and no need to hurry!”

“You said something!” came from across the table.

“As for O’Brion,” continued No. 7, “did you hear the things he said about Halloran’s wife and baby? He’d do anything to get a conviction! Use any kind of pressure! Thomas Jefferson did say that rebellion to tyrants was obedience to God!”

“I don’t think O’Brion’s so hot!” retorted the foreman. “But that don’t mean we shouldn’t convict Halloran. He’s guilty as hell!”

“Only if you take O’Brion’s word for it!” commented someone. “But I wouldn’t believe that bastard under oath—or Babson, either! Imagine him refusin’ to charge the Declaration of Independence!”

“Gosh! Was that the Declaration of Independence?” exclaimed a fat man who was a little hard of hearing.

“O’Brion’s a louse, all right!” remarked another with feeling.

“That don’t make Halloran any less guilty, does it?” reiterated the foreman. “It’s up to us to protect society!”

At that instant through the open windows came, from the street below, the shrill cry of a newsboy: “Extry! Extry! [32] Halloran Convicted of Murder! Jury Finds Murderer Guilty! Extry!” Others joined the chorus:

“Extry! Extry!”

“Vance Halloran Guilty of Murder in the First Degree!”

“Jury Convicts Halloran in Record Time!”

“Listen!” said No. 7. “How about that? Doesn’t it prove exactly what I say? O’Brion’s trying to force us to convict by giving out word that we’ve agreed already!”

A change had come over the face of the foreman. For a moment he seemed to be on the verge of apoplexy. He grew red, his jaw stiffened and his mustaches bristled.

“That settles it for me, by heck!” he declared. “Thomas Jefferson was right! If you fellows will back me, I’ll vote for an acquittal.”

“We will!” they chorused.

“How say you? Do you find the defendant guilty or not guilty?” inquired the clerk as they shuffled in and lined up at the rail.

“Not guilty,” stoutly answered the foreman.

Babson and O’Brion stared at each other. An acquittal? It was inconceivable!

“Strike the names of these men from the rolls of the Special Jury!” ordered His Honor. “They’re a disgrace to the administration of justice! The defendant is discharged! Adjourn court until tomorrow morning!”

The foreman and No. 7 stalked defiantly out of the courtroom, side by side. Pausing to light their cigarettes by one of the big pillars in the rotunda, they observed Bonnie Doon hurriedly approaching his chief. [33]

“Excuse me, Mr. Tutt,” said he breathlessly. “Do you happen to have a dollar bill on you? I want to give the Halloran Club some ice-cream soda.”

Vance Halloran had been back on his truck for more than a month when Mr. Tutt, glancing over the paper, happened upon the following item:

ROCHESTER, N. Y., June 5, 1937, Special to The New York Times: James Breslin, an escaped convict, wounded yesterday while resisting arrest, died last night in the Eastman Hospital after confessing various crimes. Among them was the shooting of Michael Kelly, who, he claimed, was responsible for his imprisonment. He had been unaware, he said, that Vance Halloran, truck driver for a New York evening paper, had been indicted and tried for the homicide until after the latter’s acquittal by a special jury.

“Well,” chuckled the old lawyer as he handed the paper to Bonnie Doon, “Jefferson was right—sometimes!”

[34]

## HER FATHER'S HOUSE

Mr. John De Puyster Hepplewhite, chairman of the board of Home for Aged Gentlewomen, Inc., tapped upon his rosewood writing desk.

"The meeting will please come to order," he said. "We are all of us busy men and I personally have but a few minutes to spare. I suppose we can dispense with reading the last minutes?... Very well; they stand approved.... Have you anything special to report, Mr. Gobbet?"

Mr. Gobbet, conscious that he dominated the situation, complacently twiddled his glasses.

"No, there's nothing particularly on my mind at the moment. Everything seems to be going fine. We might have another special investigator. I know of an excellent man whom we can get for forty-five hundred a year. And the country staff needs a new automobile."

Mr. Hepplewhite, whose social and artistic interests left him comparatively little time for philanthropy, always felt at a disadvantage with Gobbet. At the moment his mind was completely occupied with a contemplated \$40,000 purchase of Ming porcelain. He now looked inquiringly at the two other gentlemen present, both of whom nodded without comment.

"Seems reasonable. It is so voted. Is there anything else?"

[35]

"Carson, my assistant, has been with me ten years," went on Mr. Gobbet. "He gets only twelve thousand dollars a year. In view of our highly satisfactory financial condition—the treasurer's report shows assets of over five million—would not a slight increase—say to fifteen thousand—be in order?"

"It doesn't seem out of line to me," concurred Mr. Hepplewhite. "Agreed?... So voted. Anything else? I fear I shall have to hurry along, gentlemen. The meeting stands adjourned."

Stifled sobs awoke Grandma Benton. Poor Leila! She got up and went to the door leading to the hall. With her hand on the knob, she paused.

"It simply can't be done, darling!" she heard Richard Bryant, the girl's fiancé, saying. "What with my own grandmother and Auntie Bess living with us, I can only just stagger along as it is. Anyhow, I don't want my wife to have to run an old ladies' home!"

"All right, dear," answered Leila bravely. "After all, we're young and can afford to wait."

"If you're willing to, sweetheart. It's a tough break for both of us. I hope you understand."

"Oh, I do, Richard! I do!"

[36]

The outer door closed and his footsteps rattled down the stairs. Grandma stood motionless, her delicate profile silhouetted against the white wall. Her parents had said precisely the same thing fifty years ago. If only she had married Lawrence Pell instead of "waiting"! Could half a century have flown since they had stood together under the cedar of Lebanon on the terrace behind her father's house and watched the moon come up across the East River? Could anyone afford to wait? Youth came but once!

There were no more sounds from the other side of the partition, and Grandma went back to bed. Strange, how she thought so much these days about Lawrence, so much about the old brick mansion with its terraces sloping down to the river, the humid greenhouse with its overpowering odors, the stable with its dovecotes, ancient Pompey driving the pair of bays in the C-spring victoria. Incredible that she could be seventy-one! The clang of streetcars and the hoot of motors from Amsterdam Avenue four flights below filled her ears as she lay there in her little cubicle.

There was not a trace of unhappiness on the girl's face next morning when she brought in Mrs. Benton's breakfast tray. "Oh, grandmother, what great big eyes you've got!" she said.

"The better to see through you, my dear!"

Mrs. Benton's smile faded as Leila went out. Could she live without Leila? No, that wasn't the question! Could Leila really live with an old woman hanging like a millstone about her neck? From her wallet she removed a slip of paper with some notes copied from the Registry of Social Services. [37]

Home for Aged Gentlewomen, Incorporated. Coverdale, Westchester, New York.

A home for aged women of good breeding and refinement who have fallen into adverse circumstances. Apply in person to the supt. For women of 65 years or over. Adm. \$500; transfer of property if not willed to relatives. Visiting three times a week.

"Sounds very nice," she declared resolutely. But her sight blurred as she looked around the sunny little room. Could she bear to leave it? "Where's your nerve, Leila Wadsworth?" she murmured, dashing her eyes. "Be a sport."

Mr. Wallace Gobbet, after an excellent luncheon, sat smoking in the bay window of the old Wadsworth house overlooking the East River. He had sat there comfortably most of the time for eighteen years. In fact, his two daughters had been born upstairs. He could see them now, playing tennis on the lawn with Gosford and Ashley, his two secretaries. A swell place, the only one of its kind left, now that the section was becoming fashionable and huge apartments were going up all along the water front. No reason why he shouldn't live there indefinitely. Next summer maybe he could wangle a motor launch.

The desk telephone buzzed and he reached over. "Hello, Carson. Everything all right?" [38]

"Okay, Mr. Gobbet," answered the assistant superintendent at Coverdale. "I just thought I'd let you know we've had a new application—a Mrs. Benton."

"But we're full up!"

"All the same, I'm shooting her in to see you this afternoon. She's Eben Wadsworth's daughter."

A prolonged pause followed.

"But I thought she'd disappeared years ago!" protested Gobbet.

"She was living in Europe for a long time, but now she's back again, completely busted. Naturally, she thought of us."

"Naturally! Hold on a minute while I think."

What had possessed Carson to send the old girl in there? They'd have to make room for her in Westchester somehow.

"What's she like?" he asked finally.

"Very much the lady. In fact, it was quite a shock to learn that she was down and out."

"Did you explain to her about our conditions? The five-hundred-dollar admission fee and assignment of property?"

"Yes. She's only got two hundred and fifty. I thought you might want to waive it, under the circumstances." [39]

"How soon will she be here?"

"Within an hour probably. I hope I did the right thing?"

“I suppose so,” grunted Gobbet. He pressed a button. “Tell Mr. Gosford I’m sorry to have to interrupt his game, but I must see him immediately,” he said to the maidservant.

It was four o’clock, she had had no lunch and, after her long trip to Westchester, Mrs. Benton was feeling very tired. The cross-town bus had deposited her in a little street, hardly more than a cul-de-sac, in what seemed a totally unfamiliar part of the city. Strange that it should be marked “Wadsworth Place.” At the end of it she stopped before a double iron gate over which hung a large sign HOME FOR AGED GENTLEWOMEN, INC. Her heart fluttered. Surely it was the same gate through which, during all her early years, old Pompey had driven her in the C-spring victoria! She turned the handle of the green door beside it, peeked through and gave a little cry of joy. Nothing was changed. Even the cedar of Lebanon was still there. Time had turned back for her in its flight. How large the lawn seemed—almost a whole block! And there was one of the old ladies sitting on a bench. A very nice-looking old lady. What a lovely place for them to live, where all day long they could rest under the trees and watch the traffic on the river.

A maid led her down the familiar tessellated-marble hall to her father’s library, where Mr. Gobbet, pinkly bald, well fleshed, with cold gray eyes, was waiting. [40]

“It is a pleasure to meet you, Mrs. Benton,” said he. “I am happy to tell you that I have already arranged for your admission to Coverdale and for the waiving of the customary fee.”

“How kind of you! But, couldn’t I stay here in the house where I was born?”

Mr. Gobbet shook his head. “I’m sorry, but that is impossible. You’ll really be much happier in the country. You appreciate the fact that you are rather lucky, Mrs. Benton? We are, in fact, full in both places. A special dispensation has been extended in your case.”

“I am very grateful.”

Mr. Gobbet waved his cigar in deprecation. “Your father left us a considerable bequest! I understand that you filled out a complete questionnaire at Coverdale this morning. There’s only one other little formality, which can be attended to right now.... Come in, Mr. Gosford. This is Mrs. Benton. Have you prepared her agreement?”

Mr. Gosford, a husky, white-flanneled youth destined for one of the Misses Gobbet, handed his chief a bundle of typewritten sheets. [41]

“It’s all ready for signature. I’ll take her acknowledgment.”

Mr. Gobbet spread the paper on the desk. “Sign here, please.”

“What is it that I am to sign?”

“Just an assignment of property. If you had any, of course you couldn’t be admitted.”

Through the window Grandma could see a shiny limousine being backed out of the stable by a liveried chauffeur.

“Shouldn’t I—read it first?” she hesitated.

“If you care to do so,” returned Mr. Gobbet stiffly. “However, it’s the merest formality.”

But Grandma’s daemon had stepped to her side. She recalled how she had once signed a paper without examining it for Joshua Benton, her former husband, and what the consequences had been.

“I think, if you’ll excuse me, I’ll take it away and read it after I’m rested. I’ve had a rather fatiguing day.”

“Very well,” said Mr. Gobbet in a tone of disapproval. “As you deem best.” He rang. “Tell Judson to bring round the car,” he ordered.... “Good afternoon, Mrs. Benton.”

“Dey’s a lady askin’ fo’ you, Mr. Tutt.” Mandy, exhausted with climbing the steep flight, leaned against the library doorpost. “An old lady. She say how she know you long time ago.”

The lawyer, comfortably elongated in his sway-backed rocker before the fire, paused in the act of draining a glass of Burgundy. [42]

“What’s her name?”

“Mis’ Joshua Benton.”

“Don’t know any such person. What does she look like?”

“Jes’ lak’ a flower! She say you knew her father—a Mr. Eben Wadsworth.”

Mr. Tutt straightened his long legs and put down his glass.

“Eben Wadsworth? Send her up at once!”

The courteous old gentleman who greeted Mrs. Benton on the landing was not the Ephraim Tutt whom she recalled as a clerk in Judge Fernald’s office. That Mr. Tutt had been a young man with black wavy hair; a long straight nose and whimsical smile. But yes, the smile was the same!

“Do you recognize me?” she asked.

“I’d know you anywhere, Miss Leila! You haven’t changed a bit! You look——”

“Nonsense!” she panted. “May I sit down?”

Mr. Tutt waved her gallantly to the rocker, noticing as he did so the threadbare coat and cracked shoes.

“Will you have a taste of Chambertin?”

He poured her out a creaming glass and lifted his own.

“To the memory of a great and generous man,” he said reverently. [43]

They sipped the toast in silence.

“I hope you’ll forgive my breaking in on you so unexpectedly,” she apologized. “But you were my father’s lawyer and I didn’t know to whom else to turn.”

“His attorney was Judge Fernald,” he corrected her. “I was associated with him and took over his practice when he died.”

“That explains it! I looked for his name in the telephone book and couldn’t find it anywhere. Then I thought of you. So here I am.”

“I remember the first time you came to our office,” said Mr. Tutt reminiscently. “It must have been—no, no, it couldn’t have been that long ago! You were waiting for your father in a victoria driven by an old Negro coachman. You were about twenty then, I should say, and quite the loveliest girl I’d ever seen. I made an excuse to go downstairs and speak to you.”

She flushed. “I remember. I had on my new spring dress. I’d been to the Patriarch’s the night before,” she sighed. “I sometimes wonder if those days ever could have been.”

He lit a stogie and pulled a rocker to the other side of the fire.

“You’ll never know what you did to that lanky country boy! I cut your picture out of the paper and pinned it to the mirror in my bedroom. I was always reading about you, in another world from mine entirely.” [44]

“Why didn’t you ask if you could come to see me?” she asked almost coyly.

“I was afraid to! All the beaux in town were at your feet! I knew I hadn’t a chance!”

“I think that you’d have had a chance!”

“Then I heard you’d gone to Europe and, later, that you had married. Didn’t you have a daughter?”

“Yes, Phœbe. Her husband was killed at the Marne. By that time I’d divorced my husband, who’d spent most of my money, besides treating me rather badly in other ways. So I took Phœbe to Italy, where her baby was born. She died there soon after. When Leila was twelve, I brought her home to be educated. My income had been growing less every year, but I still had enough to put her in a good school and to live at a small hotel. Then the depression came, and I lost everything. We moved into a little flat in the upper part of town and she started looking for a job. At last she found one as a translator with the Foreign Policy Association.”

“Leila must be a great comfort to you.”

“She is. But—but now she wants to marry a young architect named Richard Bryant, and—well, he can barely get along as it is, and I—I stand in the way! I remembered that father had left a sum of money to a home for aged women, and I thought perhaps, on that account, they might be willing to take me in. The book said that Coverdale was in Westchester, so today, without her knowledge, I went out there and made an application. They sent me back to an address in New York. Where do you suppose it was? Our own old house on the river!” [45]

“It had been converted into a home?”

“Yes. It would have been marvelous if I could have gone back there, but it was full. The superintendent said they would waive the five-hundred-dollar fee, but that I must make over my property to the institution.”

“That is customary.”

“All the same, it frightened me a little. He didn’t seem to want me to take away the paper, but I held out firmly and did.” She opened her bag. “I wonder if you’d be willing to read it over for me before I sign it.”

She handed him the typewritten document. He looked at her solicitously.

“You must be very tired if you have done all that today.”

“I am,” she admitted.

“Then this will have to wait until tomorrow. I’m going to take you right home in a taxi. It’s time for you to be in bed.”

It was eleven o’clock before Mr. Tutt got back to his library. To think of Eben Wadsworth’s only daughter living in a dump like that! He sat down before the fire and took up the agreement.

Whereas Leila Wadsworth Benton, hereinafter referred to as the party of the first part, desires to become an inmate of Home for Aged Gentlewomen, Incorporated, party of the second part, and to fulfill all the requirements governing admission to the same, now, therefore ... the said party of the first part, in consideration of the premises, hereby agrees to transfer, make over and assign all her property, both present and hereafter to be acquired, to the said party of the second part, including all right, title and interest, of whatsoever kind, both real and personal, which she may have or be held to have, in the estate of her father, Eben Wadsworth, deceased, and to execute and deliver whatever instruments or deeds may be necessary thereto. [46]

Mr. Tutt's shaggy eyebrows drew into a knot. Why should they ask her to do that? Was there something here that did not meet the eye? The night was young. Mr. Tutt, stuffing his pockets with stogies, hailed a cruising taxi and ordered the driver to take him to his Broadway office.

"Here it is!" said Grandma Benton two days later, as their taxi came to a stop before the iron gates of her former home. "It's very kind of you to come with me, but I'm afraid it won't do any good."

"You never can tell," Mr. Tutt grunted, noting the party of four young people playing tennis at the farther end of the lawn. "Anyhow, keep your eyes open." [47]

"Have you an appointment?" cautiously inquired the maid who answered their ring.

"Tell Mr. Gobbet that Mrs. Benton is here with the papers and has brought her attorney with her."

"What name, sir?"

"Tutt—Ephraim Tutt."

Impressed with the old man's quiet air of authority, the maid led them into the library.

Mr. Gobbet, who, although it was nearly half after ten, was still luxuriously breakfasting in bed, learned who was below with some annoyance. He had heard of Mr. Tutt and had no wish to have the old fox nosing into his affairs. Not that he had anything to conceal. Suppose he did have a cushy job? Hadn't the state and C. O. S. inspectors passed everything as O.K. year after year? After a testator had been dead and buried a quarter of a century, one ought to have the right to rely on his staying so. Nevertheless, he showed no perturbation as he entered briskly and shook hands.

"So you represent Mrs. Benton? Good! We want everything fully understood. 'Open covenants, openly arrived at,' eh?"

"Exactly, Mr. Gobbet," nodded Mr. Tutt affably.

Through the open door of the library he could look across the hall to a dining room, where, apparently, the table had been laid for eight. [48]

The superintendent nervously followed the lawyer's glance. The old Paul Pry!

"Has your client signed the agreement?"

"Not yet. There are one or two details I'd like to ask you about first. Suppose we excuse Mrs. Benton while we discuss them."

"By all means! ... Do you remember the way to the garden, Mrs. Benton?"

"Indeed I do! It's just behind the stairs in the conservatory."

"Charming! Charming!" murmured Mr. Gobbet, after Grandma had gone out. "Sad to think of the daughter of Eben Wadsworth having lost everything she had in the world! May I offer you a cigar?"

Mr. Tutt shook his head.

"That suggests something I want to know, Mr. Gobbet. Will you kindly tell me why, if Mrs. Benton has, in fact, nothing in the world, you are so anxious to have her deed over to your institution all her interest in her father's estate?"

Grandma paused only long enough in the conservatory to observe that it was even fuller of plants and flowers than in her own day, before stepping out upon the greensward. How trim and well-kept everything was! She looked about for the old ladies, but could see only the same one who had been there on her first visit. Perhaps it was too early for the others

to be out.

“Good morning,” she said. “What a lovely day!”

[49]

The old lady looked up with a cordial smile. “Isn’t it? I love to sit under this tree and watch the boats. Won’t you join me?”

“I used to live here when I was a child,” Grandma informed her new friend. “I was born in that corner room up there.”

“Really? That’s my room now. But if you come back you shall have it. I wouldn’t think of keeping it from you.”

“Oh, no! You mustn’t!” protested Grandma. “Besides, I’m not coming here. They’re sending me out to Coverdale. Have you been here long?”

“Eighteen years. You see, I’m Mrs. Liscomb, Mr. Gobbet’s mother-in-law. You say you were born here? Well, both my granddaughters were born here, too.” She nodded toward the tennis court.

Grandma was puzzled. “How many old ladies are here now?” she asked.

“I’m the only one. Mr. Gobbet’s mother lived here until she died about ten years ago.” Mrs. Liscomb reached over and patted Grandma’s hand. “I’m sure Wallace will let you stay here if I ask him to. It would be lovely to have you to walk and read with, and maybe”—a touch of color came into her faded cheeks—“maybe sometimes we could steal away and go to the movies! Wouldn’t that be fun?”

[50]

While Mr. John De Puyster Hepplewhite, as the scion of one of the city’s oldest and richest families, served by social inheritance as director or trustee of a large number of its philanthropic and artistic institutions, he, unfortunately, knew less than might have been reasonably expected about their affairs. He was just showing to his friend, Mrs. Rufus Witherspoon, a Renoir recently acquired for his private gallery, when his butler appeared and, with a deprecating cough, summoned him to the telephone.

“Some person named Tutt, sir. Most persistent. ‘Threatening,’ if I may use the word, sir.”

“Bless me!” exclaimed Mr. Hepplewhite. “What can he want? ... Hel-lo? Hel-lo! ... Yes, this is Mr. Hepplewhite speaking.”

“Are you chairman of the board of the Home for Aged Gentlewomen, Incorporated?” came the voice of the lawyer.

“Why, yes. I have been such for twelve years.”

“Then I advise you to telephone its attorney and join me at your Wadsworth Place office immediately.”

“But—but really! Isn’t this rather precipitous?” objected Mr. Hepplewhite. “I’ve a lady guest here with whom I have a luncheon engagement.”

“Sir,” said Mr. Tutt sternly, “if you keep that luncheon engagement it may cost you a million dollars!”

[51]

When Mr. Tutt escorted Grandma Benton back to her father’s library, she found the party augmented by two well-dressed gentlemen who had evidently just arrived.

“This is the lady whom I represent,” he announced. “Mrs. Benton, allow me to introduce Mr. Hepplewhite and Mr. Edgerton. Mr. Gobbet, here, you know.”

Mr. Hepplewhite pushed up an upholstered armchair for Grandma to sit in. She saw that they both were quite different from Mr. Gobbet, who had retired sullenly behind his desk.

“Mrs. Benton is the only daughter of General Eben Wadsworth,” Mr. Tutt informed them. “As such, she has a deep interest in the home.”

The faces of both the visitors brightened.

“I am delighted to hear it, Mrs. Benton!” exclaimed Mr. Hepplewhite. “It is a pleasure to meet the daughter of one of the institution’s benefactors.”

“As attorney for her father’s estate I have a similar interest,” continued Mr. Tutt. “Since we have a complaint to make as to its management, we wanted you to hear what we had to say firsthand.”

“Complaint!” exclaimed Mr. Hepplewhite nervously. “I hope it is not serious!” [52]

“I am sorry to say that it is. When Mrs. Benton sought to be admitted to the home, your superintendent insisted upon an assignment of all her property, including her interest in her father’s estate.”

“You mean that Mrs. Benton is an applicant for admission to the institution?” asked Mr. Hepplewhite in a horrified tone.

“She has suffered financial reverses.”

“I am greatly distressed to hear it! Of course, room shall be made for her at once.”

“I have already arranged for that,” growled Gobbet. “I’ve done everything possible for Mrs. Benton, even to waiving the payment of the required fee.”

“It is true that you have agreed to take her into Coverdale, but you have refused to admit her here—to her own father’s house.”

“I was born here,” pleaded Grandma. “I would like to come back to it.”

“Why can’t you take Mrs. Benton in here, Gobbet?” inquired Edgerton.

“Simply because we’re full up,” sourly replied the superintendent. “I’m naturally very sorry for her. It’s just a question of room. As for the assignment of property, Mr. Edgerton, you know we insist upon it in every case, as a matter of good faith.”

“Good faith!” ejaculated Mr. Tutt. “Do you seek to take the widow’s mite away from her in every case?” [53]

Gobbet jumped up, red about the collar. “What is this?” he rasped. “A criminal trial? Have I got to sit here quietly and be insulted without a word of defense?”

“Certainly not!” answered Mr. Tutt. “Your defense is just what we want to hear. You call this a home for aged women. How many inmates have you accommodated in the last eighteen years?”

Gobbet’s color deepened and spread upward. “Why—er—a good many—several. The number, of course, varies.”

“How many at present?” persisted the old lawyer.

“I—I can’t say exactly,” stammered the superintendent. “Come to think of it, I guess at the moment there’s only one.”

“What is her name?”

The superintendent hesitated.

“Well, what is it?” reiterated Mr. Tutt.

“Mrs. Liscomb.”

“Any relative of yours?” coaxed the old lawyer.

“She—she happens to be my mother-in-law,” admitted Gobbet thickly.

“She’s not enrolled as an inmate, is she?”

“I suppose not, but—she’s an old lady.”

Mr. Tutt smiled genially at Mr. Hepplewhite. “Well—if she’ll pardon my saying so—so is Mrs. Benton! Now, Mr. Gobbet, I notice that the dining table across the hall is set for eight. For whom are the places laid?” [54]

“For the—er—inmates, my family and a few of the higher employees.”

“I see. How many in your family?”

“Five.”

“I don’t quite see the relevancy of this,” interpolated Mr. Edgerton. “If you want to show that there’s room here for Mrs. Benton, let’s agree that it can be made.”

“Will you agree further that this particular property has never, in fact, been used for the purposes of an old ladies’ home?” inquired Mr. Tutt sternly. “Mrs. Benton, please repeat to these gentlemen what Mr. Gobbet’s mother-in-law told you on the lawn.”

Grandma turned to Mr. Hepplewhite. “She told me that she had lived here for eighteen years—ever since her son-in-law had been superintendent—and that there had never been any old ladies here except herself and Mr. Gobbet’s mother.”

“I don’t get your drift,” remarked Edgerton, wrinkling his forehead. “We own this property and can use it as we see fit.”

“The Wadsworth property has always been used for administrative purposes,” put in Gobbet. “It is steadily increasing in value. Sometime, no doubt, it will be sold.” [55]

“Isn’t this all a question of management, Mr. Tutt?” asked Mr. Hepplewhite politely. “I really fail to see how it concerns you or Mrs. Benton.”

Mr. Tutt took a paper from his pocket. “Have you ever seen the phraseology of the devise? I’ll read it:

“To the Home for Aged Gentlewomen, Incorporated, I give the sum of \$25,000, together with my lot of land bordering upon the East River in the city of New York, the house and all other buildings thereon, absolutely and in fee simple, provided that the same be used for an old ladies’ home, otherwise said house and land shall fall into and become a part of my residuary estate.”

He paused and peered over his glasses at the two gentlemen.

“Well,” replied Edgerton, “what of it?”

“Merely that my client, Mrs. Benton, happens to be the residuary legatee of her father’s estate and that, since your corporation has never used the property for the purposes specified in his will, it has reverted to her.”

Mr. Edgerton was the first to break the silence which followed the detonation of Mr. Tutt’s legal bombshell.

“Your claim is preposterous!” he asserted vehemently. “So long as our plant in Westchester remains sufficient for our needs, Mr. Wadsworth would not wish us to cramp ourselves financially by duplicating it in the city. He certainly intended to allow some discretion in the handling of this property!” [56]

“Discretion!” cried Mr. Tutt. “That is precisely what he did not intend to allow! His language is perfectly plain. Green versus Old People’s Home of Chicago, 269 Illinois 134, directly establishes my contention. The corporation has

forfeited the devise for the simple reason that it has neglected to fulfill his conditions.”

Mr. Edgerton rubbed his chin. It certainly was a tough one, but as a high-priced lawyer, he could not afford to yield without putting up some sort of an argument.

“It’s not so easy as that!” he retorted. “I concede that the corporation, by accepting the devise, covenanted to carry out its terms, but a breach of covenant—even if there had been one, which I do not for a moment admit—is quite different from a forfeiture under which a residuary legatee can enter and take possession of the property. In *Graves versus Deterling*—in 120 New York, I think it is—it was held that where there is any doubt whether a clause contains a covenant or a condition, the courts will construe it so as to avoid a forfeiture.”

“Covenant my eye!” snorted the old man. “Any first-year law student could tell that this was a condition and not a covenant!”

“Anyhow,” continued the attorney feebly, “the law will allow a reasonable time for any condition to be carried out, particularly by a charity. A complicated institution can’t be organized in a minute.” [57]

“Twenty-seven years is rather more than a minute, isn’t it?” grinned Mr. Tutt. “You haven’t a leg to stand on, Edgerton, and you know it. Why drag out the agony? Mrs. Benton has only to bring an action in ejectment and the courts will instantly hand the property over to her.”

“I hope you do not mean to imply, Mr. Tutt, that we have been recreant to our trust,” said Mr. Hepplewhite.

“I certainly do,” retorted the old man. “Your institution has hardly made even a colorable attempt to serve the purposes for which it was originally founded. What it does is pure camouflage—window dressing. Its investments yield upwards of two hundred and fifty thousand dollars per annum, out of which it supports exactly twenty-two old ladies! I hold in my hand a list of the salaries paid to its officials. They aggregate more than eighty thousand dollars. There’s something wrong when it costs an institution twelve thousand dollars a year to support each object of its charity. I make no charges against the board of management save that of negligence. There has been no dishonesty in the technical sense. But for the last eighteen years the Home for Aged Gentlewomen has been run as a racket. It is a shocking example of one-man control.”

“Do you refer to me, sir?” choked Mr. Hepplewhite. [58]

“I do not. The man to whom I refer is the one who, throughout that time, has lived in luxury with his wife and family in the former home of Eben Wadsworth, drawing a salary of twenty thousand dollars per year, with all expenses, and whose friends and relatives pad the pay roll of the corporation. I refer to that man behind the desk—Wallace T. Gobbet!”

The superintendent sat slumped in his chair, his head sunk on his breast, his face a sickly yellow.

“That is why he was so anxious to get Mrs. Benton to assign her interest in her father’s estate, for he very well knew that, owing to his own misconduct, this property has now, through legal reversion, become hers by right. I believe I told you that a million dollars hung on your coming here; I might better have said three millions.”

And then it was that Mr. Hepplewhite proved himself a man. Grandma Benton could not but feel sorry for him.

“I am chagrined and humiliated at what you have disclosed,” he confessed. “It could not have occurred had I given proper attention to the affairs of the institution. I’m not an attorney, but what you say as to the law seems clearly good morals and good sense. I have no doubt it is correct. I have rarely visited Wadsworth Place and I am astonished to learn the actual use to which it has been put.” He faced the wretched superintendent. “As for you, Gobbet, I’ve no words to describe what I think of you. We directors have been negligent, but you have been far worse. You treacherously took advantage of our negligence to feather your own nest and tried to extort from Mrs. Benton a deed for this property which would cover your delinquencies. You are discharged! Make arrangements to leave here with your family at once!” [59]

“But,” whined Gobbet, getting to his feet, “are you going to put me out of my home without a hearing?”

“Hearing! Home!” sputtered Mr. Hepplewhite.

“How about Mrs. Benton, you—you——”

“The boys have a word for it,” suggested Mr. Tutt. “It begins with an *I!*”

“Anyhow, g-get out!” shouted the chairman of the board. He turned to the others after Gobbet had slunk past them. “And, of course, I shall resign myself,” he added.

“What would be the point of that, sir?” returned Mr. Tutt sympathetically. “Probably the same thing would have happened whoever had been chairman. This isn’t the only institution that suffers from absentee landlordism. If the Home for Aged Gentlewomen has got to be a one-man show, why not be that man?”

Grandma Benton’s heart was thumping and her eyes were bright.

[60]

“I don’t want to do anything to thwart father’s wishes,” she said, “but I don’t think he would have approved of Mr. Gobbet, and I’m sure he wouldn’t have wished me to go to the almshouse. I’m not so very old yet and I’m really quite strong. Couldn’t the corporation keep the property, turn it into a real old ladies’ home, just as he intended, and let me run it as resident manager? Of course, I should want to make a clean sweep of everyone that’s here now—all except Mrs. Liscomb. I’d like her to stay. She’s really a dear old thing.”

Mr. Hepplewhite blew his nose. Then he put his handkerchief carefully back in his pocket, walked over to Grandma Benton, bowed and raised her wrinkled hand to his lips.

“May I be permitted to say the same of you?” he asked.

One evening a month later, Grandma Benton stood with Mr. Tutt on the terrace, watching the electric signs as they flashed on and off, making paths of red and yellow across the blue-black river; behind them rose the glittering escarpments of the city, dominated by the spire of the Chrysler Building; a steamer bedecked with lights swam gleaming beneath the festoons of the Queensborough Bridge.

The old lady was very happy. Mr. Tutt had arranged that part of the property should be sold and a trust fund created for her benefit; Mr. and Mrs. Gobbet, their daughters and the two secretaries had moved out, bag and baggage, several weeks before; the entire former executive staff had been dismissed, including Mr. Carson and the investigators, four of whom were discovered to be related by marriage to the former superintendent; an additional wing to accommodate fifty inmates was already in contemplation at Coverdale, which Mr. Hepplewhite now visited so frequently that his collection of porcelains was almost neglected; and Grandma Benton herself had been duly installed as matron of the new Wadsworth Home, with old Mrs. Liscomb as her assistant, and Leila and Richard to keep her company.

[61]

It was dark before Grandma Benton had shown Mr. Tutt all the favorite spots of her childhood, the greenhouses and the stable with its dovecotes, from whose eaves came drowsy cooings. Then the moon thrust itself in a golden haze above the roofs on the opposite shore and drowned the lawn in a fairy mist. It might, she thought, have been that night fifty years ago, the very night that Lawrence had taken her in his arms, and told her that he loved her. As they rounded the corner of the house, Leila and Richard were standing together under the cedar of Lebanon.

“When are they going to be married?” asked Mr. Tutt.

[62]

“Next week,” said Grandma. “They’re young and can’t afford to wait.”

[63]

# YOU'RE ANOTHER!

“I am further of opinion that it would be better for us to have no laws at all than to have them in so prodigious numbers as we have.”

Montaigne. Of Experience.

Mrs. Pierpont Pumpelly, lawful spouse of Vice President Pumpelly, of Cuban Crucible, erstwhile of Athens, Ohio, loved her husband, but regarded him socially as somewhat of a liability. Out home the Pierpont had been simply a P. and no questions asked as to what it stood for; P. Pumpelly. But whatever its past the P. had now blossomed definitely into Pierpont.

Though the said Pierpont produced the wherewithal, it was his wife, Edna, who attended to the disbursing of it, and Society was now, as she informed everybody, her “meal yure.”

She had eaten her way straight through the meal—opera box, pew at St. Simeon Stylites, musicales, hospital entertainments, dinner parties, lunch parties, supper parties, the whole thing; and a lot of the right people had come, too.

The fly in the ointment of her social happiness—and unfortunately it happened to be an extremely gaudy butterfly indeed—was her next-door neighbor, Mrs. Rutherford Wells, who obstinately refused to recognize her existence.

At home, in Athens, Edna would have resorted to the simple expedient of sending over the hired girl to borrow [64] something. But here there was nothing doing. Mrs. Wells had probably never seen her own chef and Mrs. Pumpelly was afraid of hers. Besides, even Edna recognized the lamentable fact that it was up to Mrs. Wells to call first, which she didn't. Once when the ladies had emerged simultaneously from their domiciles Mrs. Pumpelly had smilingly waddled forward a few steps with an ingratiating bow, but Mrs. Wells had looked over her head and hadn't seen her.

Thereupon the iron had entered into Mrs. Pumpelly's soul and her life had become wormwood and gall, ashes in her mouth and all the rest of it. She proposed to get even with the cat at the very first chance, but somehow the chance never seemed to come. She hated to be living on the same street with that kind of nasty person. And who was this Wells woman? Her husband never did a thing except play croquet or something at a club! He probably was a drunkard—and a roo-ay.

Mrs. Pumpelly soon convinced herself that Mrs. Wells also must be a very undesirable, if not hopelessly immoral, lady. Anyhow, she made up her mind that she would certainly take nothing further from her. Even if Mrs. Wells should have a change of heart and see fit to call, she just wouldn't return it! So when she rolled up in her diminutive car and found Mrs. Wells' lumbering limousine blocking the doorway she was simply furious.

“Make that man move along!” she directed. [65]

Jules honked and honked, but the limousine did not budge. Then Mrs. Pumpelly gave way to a fit of indignation that would have done her proud even in Athens, Ohio. Fire-breathing, she descended from her chariot and, approaching the limousine, told the imperturbable chauffeur that even if he did work for Mrs. Rutherford Wells, Mrs. Rutherford Wells was no better than anybody else, and that gave him no right to block up the whole street. She spoke loudly, emphatically, angrily, and right in the middle of it the chauffeur, who had not deigned to look in her direction, slyly pressed the electric button of his horn and caused it to emit a low scornful grunt. Then a footman opened the door of the Wells mansion and Mrs. Rutherford Wells herself came down the steps, and Mrs. Pumpelly told her to her face exactly what she thought of her and ordered her to move her car along so her own could get in front of the vestibule.

Mrs. Wells ignored her. Deliberately—and as if there were no such person as Mrs. Pumpelly upon the sidewalk—she stepped into her motor and, the chauffeur having adjusted the robe, she remarked in a casual, almost indifferent manner that nevertheless made Mrs. Pumpelly squirm, “Go to Mr. Hepplewhite's, William. Pay no attention to that woman. If she makes any further disturbance call a policeman.”

And the limousine rolled away with a sneer at Mrs. Pumpelly from the exhaust. More than one king has been [66]  
dethroned for far less cause!

“You telephone Mr. Edgerton,” she almost shrieked at Simmons, the butler, “that he should come right up here as fast as he can. I’ve got to see him at once!”

“Very good, madam,” answered Simmons obsequiously.

And without more ado, in less than forty minutes, the distinguished Mr. Wilfred Edgerton, of Edgerton & Edgerton, attorneys for Cuban Crucible and hence alert to obey the behests of the wives of the officers thereof, had deposited his tall silk hat on the marble Renaissance table in the front hall, and was entering Mrs. Pumpelly’s Louis Quinze drawing-room with the air of a Sir Walter Raleigh approaching his Queen Elizabeth.

“Sit down, Mr. Edgerton!” directed the lady. “No, you’ll find that other chair more comfortable; the one you’re in’s got a hump in the seat. As I was saying to the butler before you came, I’ve been insulted and I propose to teach that woman she can’t make small of me no matter what it costs—and Pierpont says you’re no slouch of a charger at that.”

“My dear madam!” stammered the embarrassed attorney. “Of course, there are lawyers and lawyers. But if you [67]  
wish the best I feel sure my firm charges no more than others of equal standing. In any event you can be assured of our devotion to your interests. Now what, may I ask, are the circumstances of the case?”

“Mr. Edgerton,” she began, “I just want you should listen carefully to what I have to say. This woman next door to me here has——”

At this point, as paper is precious and the lady voluble, let us drop the curtain upon the first act of our legal comedy.

“I suppose we’ll have to do it for her!” growled Mr. Wilfred Edgerton to his brother on his return to their office. “She’s a crazy idiot and I’m very much afraid we’ll all get involved in a good deal of undesirable publicity. Still, she’s the wife of the vice president of our best paying client!”

“What does she want us to do?” asked Mr. Winfred, the other Edgerton. “We can’t afford to be made ridiculous—for anybody.”

This was quite true since dignity was Edgerton & Edgerton’s long suit, they being the variety of Wall Street lawyers who are said to sleep in their tall hats and cutaways.

“If you can imagine it,” replied his brother irritably, “she insists on our having Mrs. Wells arrested for obstructing [68]  
the street in front of her house. She asked me if it wasn’t against the law, and I took a chance and told her it was. Then she wanted to start for the police court at once, but as I’d never been in one I said we’d have to prepare the papers; I didn’t know what papers.”

“But we can’t arrest Mrs. Wells!” expostulated Mr. Winfred. “She’s socially one of our most prominent people. I dined with her only last week!”

“That’s why Mrs. Pumpelly wants to have her arrested, I fancy!” replied Mr. Wilfred gloomily. “Mrs. Wells has given her the cold shoulder. It’s no use; I tried to argue the old girl out of it, but I couldn’t. She knows what she wants and she jolly well intends to have it.”

“I wish you joy of her!” mournfully rejoined the younger Edgerton. “But it’s your funeral. I can’t help you. I never got anybody arrested and I haven’t the least idea how to go about it.”

“Neither have I,” admitted his brother. “Luckily my practice has not been of that sort. However, it can’t be a difficult matter. The main thing is to know exactly what we are trying to arrest Mrs. Wells for.”

“Why don’t you retain Tutt & Tutt to do it for us?” suggested Winfred. “Criminal attorneys are used to all that sort of

rotten business.”

“Oh, it wouldn’t do to let Pumpelly suspect we couldn’t handle it ourselves. Besides, the lady wants distinguished [69] counsel to represent her. No, for once we’ve got to lay dignity aside. I think I’ll send Maddox up to the Criminal Courts Building and have him find out just what to do.”

It may seem remarkable that neither of the members of a high-class law firm in New York City should ever have been in a police court, but such a situation is by no means infrequent. The county or small-town attorney knows his business from the ground up. He starts with assault and battery, petty larceny and collection cases and gradually works his way up, so to speak, to murder and corporate reorganizations. But in Wall Street the young student, whose ambition is to appear before the Supreme Court of the United States in some constitutional matter as soon as possible, is apt to spend his early years in brief writing and then become a specialist in real estate, corporation, admiralty or probate law and perhaps never see the inside of a trial court at all, much less a police court, which, to the poor and ignorant, at any rate, is the most important court of any of them.

Mr. Wilfred Edgerton suspected that a magistrate’s court was a dirty sort of hole, full of brawling shyster lawyers, and he didn’t want to know any more about such places than he could help. Theoretically he was aware that on a proper complaint, sworn to by a person supposing himself or herself criminally aggrieved, the judge would issue a warrant to an officer, who would execute it on the person of the criminal and hale him or her to jail. The idea of Mrs. Wells being dragged shrieking down Fifth Avenue or being carted away from her house in a Black Maria filled him with dismay.

Yet that was what Mrs. Pumpelly proposed to have done, and unfortunately he had to do exactly what Mrs. [70] Pumpelly said; quickly too.

“Maddox,” he called to a timid youth in a green eye-shade, “just run up to the—er—magistrate’s court on Blank Street and ascertain the proper procedure for punishing a person for obstructing the highway. If you find an appropriate statute or ordinance, you may lay an information against Mrs. Rutherford Wells for violating it this afternoon in front of the residence next to hers; and see that the proper process issues in the regular way.”

To hear him one would have thought he did things like that daily before breakfast;—such is the effect of legal jargon.

“Yes, sir,” answered Maddox respectfully, making a note. “Do you wish to have the warrant held or executed?”

Mr. Wilfred Edgerton bit his mustache doubtfully.

“We-ell,” he answered at length, perceiving that he stood upon the brink of a legal Rubicon, “you may do whatever seems advisable under all the circumstances.”

In his nervous condition he did not recall what, had he stopped calmly to consider the matter, he must have known [71] very well,—namely, that no warrant could possibly issue unless Mrs. Pumpelly, as complainant, signed and swore to the information herself.

“Very well, sir,” answered Maddox, in the same tone and manner that he would have used had he been a second footman at Mrs. Pumpelly’s.

Thereafter both Edgertons, but particularly Wilfred, passed a miserable hour. They realized that they had started something and they had no idea of where, how or when what they had started would stop. Indeed they had terrifying visions of Mrs. Wells being beaten into insensibility, if not into a pulp, by a cohort of brutal police officers, and of their being held personally responsible. But before anything of that sort actually happened Maddox returned.

“Well,” inquired Wilfred with an assumption of nonchalance, “what did you find out?”

“The magistrate said that we would have to apply at the court in the district where the offense occurred and that Mrs. Pumpelly would have to appear there in person. Obstructing a highway is a violation of Section Two of Article Two of the Police Department Regulations for Street Traffic, which reads: ‘A vehicle waiting at the curb shall promptly give way to a vehicle arriving to take up or set down passengers.’ It is not usual to issue a warrant in such cases, but a

summons merely.”

“Ah!” sighed both Edgertons in great relief.

[72]

“Upon which the defendant must appear in default of fine or imprisonment,” continued Maddox.

The two lawyers looked at one another inquiringly.

“Did they treat you—er—with politeness?” asked Wilfred curiously.

“Oh, so-so,” replied Maddox. “I can’t say it’s a place I hanker to have much to do with. It’s not like an afternoon tea party. But it’s all right. Do you wish me to do anything further?”

“Yes!” replied Wilfred with emphasis. “I do. I wish you would go right up to Mrs. Pumpelly’s house, conduct that lady to the nearest police court and have her swear out the summons for Mrs. Wells herself. I’ll telephone her that you are coming.”

This was a wise conclusion, in view of the fact that Edna Pumpelly, née Haskins, was much better equipped by nature to take care of Mr. Wilfred Edgerton in the hectic environs of a police court than he was qualified to take care of her.

And so it was that just as Mrs. Rutherford Wells was about to sit down to tea with several fashionable friends her butler entered, bearing upon a salver a printed paper, in manner and form the following:

CITY MAGISTRATE’S COURT, CITY OF NEW YORK

In the name of the people of the State of New York To “Jane” Wells, the name “Jane” being fictitious: [73]

You are hereby summoned to appear before the ——— District Magistrate’s Court, Borough of Manhattan, City of New York, on the eighth day of May, at ten o’clock in the forenoon, to answer the charge made against you by Edna Pumpelly for violation of Section Two, Article Two of the Traffic Regulations providing that a vehicle waiting at the curb shall promptly give way to a vehicle arriving to take up or set down passengers, and upon your failure to appear at the time and place herein mentioned you are liable to a fine of not exceeding fifty dollars or to imprisonment of not exceeding ten days or both.

JAMES CUDDAHEY, Police Officer,  
Police Precinct ———,  
New York City.

Attest: JOHN J. JONES,

Chief City Magistrate.

“Heavens!” cried Mrs. Wells as she read this formidable document. “What a horrible woman! What shall I do?”

“I have been thinking over what you said the other day regarding the relationship of crime to progress, Mr. Tutt, and I’m rather of the opinion that it’s rot,” announced Tutt as he strolled across from his own office to that of his senior partner for a cup of tea. “In the vernacular—bunk.”

“What did he say?” asked Miss Wiggin, the chief clerk, rinsing out Tutt’s special blue-china cup, in the bottom of which had accumulated some reddish-brown dust from Mason & Welsby’s Admiralty and Divorce Reports upon the adjacent shelf. [74]

“He made the point,” answered Tutt, helping himself to a piece of toast, “that crime was—if I may be permitted to use the figure—part of the onward urge of humanity toward a new and perhaps better social order; a natural impulse to rebel against existing abuses; and he made the claim that though an unsuccessful revolutionary was of course regarded as a criminal, on the other hand, if successful he at once became a patriot, a hero, a statesman or a saint.”

“A very dangerous general doctrine, I should say,” remarked Miss Wiggin. “I should think it all depended on what sort of laws he was rebelling against. I don’t see how a murderer could ever be regarded as assisting in the onward urge toward sweetness and light, exactly.”

“Wouldn’t it depend somewhat on whom you were murdering?” inquired Mr. Tutt, finally succeeding in his attempt to make a damp stogy continue in a state of combustion. “If you murdered a tyrant wouldn’t you be contributing toward progress?”

“No,” retorted Miss Wiggin, “you wouldn’t; and you know it. In certain cases where the laws are manifestly unjust, antiquated or perhaps do not really represent the moral sense of the community, their violation may occasionally call attention to their absurdity, like the famous blue laws of Connecticut, for example; but since laws as a whole do crystallize the general opinion of what is right and desirable in matters of conduct, a movement toward progress would be exhibited not by breaking laws but by making laws.” [75]

“Isn’t the making of a new law the same thing as changing an old law?” argued Mr. Tutt, abandoning his stogy. “And isn’t changing a law essentially the same thing as breaking it?”

“It isn’t,” replied Miss Wiggin tartly. “For the obvious and simple reason that the legislators who change the laws have the right to do so, while the man who breaks them has not.”

“All the same,” admitted Tutt, slightly wavering, “I see what Mr. Tutt means.”

“Oh, I see what he means!” sniffed Miss Wiggin.

“But the making of laws does not demonstrate progress,” perversely insisted Mr. Tutt. “The more statutes you pass the more it indicates that you need ’em. An ideal community would have no laws at all.”

“There’s a thought!” interjected Tutt. “And there wouldn’t be any lawyers either!”

“As King Hal said: ‘The first thing we do, let’s kill all the lawyers,’” commented Mr. Tutt. [76]

“I wonder,” hazarded Miss Wiggin thoughtfully, “if there isn’t some sociological law about crimes, like the law of diminishing returns in physics?”

“The law of what?”

“Why, the law that the greater the force or effort applied to anything the greater the resistance becomes, until the effort doesn’t accomplish anything; increased speed in a warship, for instance.”

“What’s that got to do with crime?”

“Why, the more statutes you pass and more new crimes you create the harder it becomes to enforce obedience to them, until finally you can’t enforce them at all.”

“That is rather a profound analogy,” observed Mr. Tutt. “It might well repay study.”

“Miss Wiggin has no corner on analogies,” chirped Tutt. “Passing statutes creating new crimes is like printing paper money without anything back of it; in the one case there isn’t really any more money than there was before and in the other there isn’t really any more crime either.”

“Only it makes more business for us.”

“I’ve got another idea,” continued Tutt airily, “and that is that crime is a good thing. Not because it means progress or any bunk like that, but because unless you had a certain amount of crime, and criminal lawyers to attack the law, the state would never find out the weaknesses in its statutes. Therefore the more crime there is the more the protective power of the state is built up, just as the fever engendered by vaccine renders the human body immune from smallpox!”

“I never heard such nonsense!” exclaimed Miss Wiggin. “Do let me give you some more tea!”

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But at that moment Willie announced that Mr. Rutherford Wells was calling to see Mr. Tutt and tea was hastily adjourned. Half an hour later the old lawyer rang for Bonnie Doon.

“Bonnie,” he said, “one of our clients has been complained against by her next-door neighbor, a got-rich-quick lady, for obstructing the street with her motor. It’s obviously a case of social envy, hatred and malice. Just take a run up there in the morning, give Mrs. Pierpont Pumpelly and her premises the once-over and let me know of any violations you happen to observe. I don’t care how technical they are, either.”

“I’ll settle her hash for her, the hussy!” declared Mrs. Pumpelly to her husband at dinner the following evening. “I’ll teach her to insult decent people and violate the law. Just because her husband belongs to a swell club she thinks she can do as she likes! Wait till I get her in court tomorrow!”

“Well, of course, Edna, I’ll stand back of you and all that,” Pierpont assured her. “No, thank you, Simmons, I don’t wish any more ‘voly vong.’ But I’d hate to see you get all messed up in a police court!”

“Me—messed up!” she exclaimed haughtily. “I guess I can take care of myself most anywheres—good and plenty!”

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“Of course you can, dearie!” he protested in a soothing tone. “But these shyster lawyers who hang around those places—you ’member Jim O’Leary out home to Athens? Well, they don’t know a lady when they see one, and they wouldn’t care if they did; and they’ll try and pry into your past life——”

“I haven’t got any past life, and you know it, Pierpont Pumpelly!” she retorted hotly. “I’m a respectable, law-abidin’ woman, I am. I never broke a law in all my days——”

“Excuse me, madam,” interposed Simmons, with whom the second footman had just held a whispered conference behind the screen, “but James informs me that there is a police officer awaiting to see you in the front ’all.”

“To see me?” ejaculated Mrs. Pumpelly.

“Yes, madam.”

“I suppose it’s about to-morrow. Tell him to call round about nine o’clock in the morning.”

“He says he must see you to-night, ma’am,” annotated James excitedly. “And he acted most hobnoxious to me!”

“Oh, he acted obnoxious, did he?” remarked Mrs. Pumpelly airily. “What was he obnoxious about?”

“He has a paper he wants to serve on you personal,” answered James in agitation. “He says if you will hallow ’im to step into the dining-room he won’t take a minute.”

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“Perhaps we’d better let him come in,” mildly suggested Pierpont. “It’s always best to keep on good terms with the police.”

“But I haven’t broken any law,” repeated Mrs. Pumpelly blankly.

“Maybe you have without knowin’ it,” commented her husband.

“Why, Pierpont Pumpelly, you know I never did such a thing!” she retorted.

“Well, let’s have him in, anyway,” he argued. “I can’t digest my food with him sitting out there in the hall.”

Mrs. Pumpelly took control of the situation.

“Have the man in, Simmons!” she directed grandly.

And thereupon entered Officer Patrick Rooney. Politely Officer Rooney removed his cap, politely he unbuttoned several yards of blue overcoat and fumbled in the caverns beneath. Eventually he brought forth a square sheet of paper—it had a certain familiarity of aspect for Mrs. Pumpelly—and handed it to her.

“Sorry to disturb you, ma’am,” he apologized, “but I was instructed to make sure and serve you personal.”

“That’s all right! That’s all right!” said Pierpont with an effort at bonhomie. “The—er—butler will give you a highball if you say so.” [80]

“Oh, boy, lead me to it!” murmured Rooney in the most approved manner of East Fourteenth Street. “Which way?”

“Come with me!” intoned Simmons with the exalted gesture of an archbishop conducting an ecclesiastical ceremonial.

“What does it say?” asked her husband hurriedly as the butler led the cop to it.

“Sh-h!” warned Mrs. Pumpelly. “James, kindly retire!”

James retired, and the lady examined the paper by the tempered light of the shaded candles surrounding what was left of the “voly vong.”

“Who ever heard of such a thing?” she cried. “Just listen here, Pierpont!”

“CITY MAGISTRATE’S COURT, CITY OF NEW YORK

“In the name of the people of the State of New York To ‘Maggie’ Pumpelly, the name ‘Maggie’ being fictitious:

“You are hereby summoned to appear before the —— District Magistrate’s Court, Borough of Manhattan, City of New York, on the tenth day of May, at ten o’clock in the forenoon, to answer to the charge made against you by William Mulcahy for violation of Section One, Article Two, of the Police Traffic Regulations in that on May 7, you violated Section Seventeen, Article Two of Chapter Twenty-four of the Code of Ordinances of the City of New York in that on the date aforesaid, being the owner of a vehicle subject to Subdivision One of said section and riding therein, you caused or permitted the same to proceed at a rate of speed greater than eight miles an hour in turning corner of intersection highways, to wit, Park Avenue and Seventy-third Street; and upon your failure to appear at the time and place herein mentioned you are liable to a fine of not exceeding fifty dollars or to imprisonment of not exceeding ten days or both. [81]

“PATRICK ROONEY, Police Officer,  
“Police Precinct ——,  
“New York City.

“Attest: JOHN J. JONES,

“Chief City Magistrate.”

“Well, I never!” she exploded. “What rubbish! Eight miles an hour! And ‘Maggie’—as if everybody didn’t know my name was Edna!”

“The whole thing looks a bit phony to me!” muttered Pierpont, worried over the possibility of having wasted a slug of the real thing on an unreal police officer. “Perhaps that feller wasn’t a cop at all!”

“And who’s William Mul-kay-hay?” she continued. “I don’t know any such person! You better call up Mr. Edgerton right away and see what the law is.” [82]

“I hope he knows!” countered Mr. Pumpelly.

“Eight miles an hour—that’s a joke! A baby carriage goes faster than that. You wouldn’t arrest a baby!”

“Well, call him up!” directed Mrs. Pumpelly. “Tell him he should come right round over here.”

The summons from his client interrupted Mr. Edgerton in the middle of an expensive dinner at his club and he left it in no good humor. He didn’t like being ordered round like a servant the way Mrs. Pumpelly was ordering him. It wasn’t dignified. Moreover, a lawyer out of his office was like a snail out of its shell—at a distinct disadvantage. You couldn’t just make an excuse to step into the next office for a moment and ask somebody what the law was. The Edgertons always kept somebody in an adjoining office who knew the law—many lawyers do.

On the Pumpelly stoop the attorney found standing an evil-looking and very shabby person holding a paper in his hand, but he ignored him until the grilled iron *cinquecento* door swung open, revealing James, the retiring second man.

Then, before he could enter, the shabby person pushed past him and asked in a loud, vulgar tone: “Does Edna Pumpelly live here?”

James stiffened in the approved style of erect vertebrata.

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“This is Madame Pierpont Pumpelly’s residence,” he replied with hauteur.

“Madame or no madame, just slip this to her,” said the shabby one. “Happy days!”

Mr. Wilfred Edgerton beneath the medieval tapestry of the Pumpelly marble hall glanced at the dirty sheet in James’ hand and, though unfamiliar with the form of the document, perceived it to be a summons issued on the application of one Henry J. Goldsmith and returnable next day, for violating Section Two Hundred and Fifteen of Article Twelve of Chapter Twenty of the Municipal Ordinances for keeping and maintaining a certain bird, to wit, a cockatoo, which by its noise did disturb the quiet and repose of a certain person in the vicinity to the detriment of the health of such person, to wit, Henry J. Goldsmith, aforesaid, and upon her failure to appear, and so on.

Wilfred had some sort of vague idea of a law about keeping birds, but he couldn’t exactly recall what it was. There was something incongruous about Mrs. Pierpont Pumpelly keeping a cockatoo. What did anybody want of a cockatoo? He concluded that it must be an ancestral hereditament from Athens, Ohio. Nervously he ascended the stairs to what Edna called the saloon.

“So you’ve come at last!” cried she. “Well, what have you got to say to this? Is it against the law to go round a corner at more than eight miles an hour?”

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Now, whereas Mr. Wilfred Edgerton could have told Mrs. Pumpelly the “rule in Shelly’s case” or explained the doctrine of *cy pres*, he had never read the building code or the health ordinances or the traffic regulations, and in the present instance the latter were to the point while the former were not. Thus he was confronted with the disagreeable alternative of admitting his ignorance or bluffing it through. He chose the latter, unwisely.

“Of course not! Utter nonsense!” replied he blithely. “The lawful rate of speed is at least fifteen miles an hour.”

“Excuse me, madam,” said James, appearing once more in the doorway. “A man has just left this—er—paper at the area doorway.”

Mrs. Pumpelly snatched it out of his hand.

“Well, of all things!” she gasped.

“To ‘Bridget’ Pumpelly,” it began, “said first name ‘Bridget’ being fictitious:

“You are hereby summoned to appear ... for violating Section Two Hundred and Forty-eight of Article Twelve of Chapter Twenty of the Health Ordinances in that you did upon the seventh day of May, fail to keep a certain tin receptacle used for swill or garbage, in shape and form a barrel, within the building occupied and owned by you until

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proper time for its removal and failed to securely bundle, tie up and pack the newspapers and other light refuse and rubbish contained therein, and, further, that you caused and permitted certain tin receptacles, in the shape and form of barrels, containing such swill or garbage, to be filled to a greater height with such swill or garbage than a line within such receptacle four inches from the top thereof.”

“Now what do you know about that?” remarked the vice president of Cuban Crucible to the senior partner of Edgerton & Edgerton.

“I don’t know anything about it!” answered the elegant Wilfred miserably. “I don’t know the law of garbage, and there’s no use pretending that I do. You’d better get a garbage lawyer.”

“I thought all lawyers were supposed to know the law!” sniffed Mrs. Pumpelly. “What’s that you got in your hand?”

“It’s another summons, for keeping a bird,” answered the attorney.

“A bird? You don’t suppose it’s Moses?” she exclaimed indignantly.

“The name of the bird isn’t mentioned,” said Wilfred. “But very likely it is Moses if Moses belongs to you.”

“But I’ve had Moses ever since I was a little girl!” she protested. “And no one ever complained of him before.”

“Beg pardon, madam,” interposed Simmons, parting the Flemish arras, upon which was depicted the sinking of the Spanish Armada. “Officer Rooney is back again with two more papers. He says it isn’t necessary for him to see you again, as once is enough, but ’e was wondering whether being as it was rather chilly——” [86]

“Lead him to it!” hastily directed Pierpont, who was beginning to get a certain amount of enjoyment out of the situation. “But tell him he needn’t call again.”

“Give ’em here!” snapped Mrs. Pumpelly, grasping the documents. “This is a little too much! ‘Lulu’ this time. Fictitious as usual. Who’s Julius Aberthaw? He says I caused a certain rug to be shaken in such place and manner that certain particles of dust passed therefrom into the public street or highway, to wit, East Seventy-third Street, contrary to Section Two Hundred and Fifty-three of Article Twelve of Chapter Twenty of the Municipal Ordinances. Huh!”

“What’s the other one?” inquired her husband with a show of sympathy.

“For violating Section Fifteen of Article Two of Chapter Twenty, in that on May 7, I permitted a certain unmuzzled dog, to wit, a Pekingese brown spaniel dog, to be on a public highway, to wit, East Seventy-third Street in the City of New York. But that was Randolph!”

“Was Randolph muzzled?” inquired Mr. Edgerton maliciously. [87]

“Of course not! He only weighs two pounds and a quarter!” protested Mrs. Pumpelly.

“He can bite all right, just the same!” interpolated Pierpont.

“But what shall I do?” wailed Mrs. Pumpelly, now thoroughly upset.

“Guess you’ll have to take your medicine, same’s other violators of the law,” commented her husband.

“I never heard of such ridiculous laws!”

“Ignorance of the law excuses no one!” murmured Wilfred.

“It don’t excuse a lawyer!” she snorted. “I have an idea you don’t know much more about the law—this kind of law, anyway—than I do. I bet it is against the law to go round a corner at more than eight miles! Do you want to bet me?”

“No, I don’t!” snapped Edgerton. “What you want is a police-court lawyer—if you’re goin’ in for this sort of thing.”

“My Lord! What’s this now, Simmons?” she raved as the butler deprecatingly made his appearance again with another paper.

“I think, madam,” he answered soothingly, “that it’s a summons for allowing the house man to use the hose on the sidewalk after eight A.M. Rooney just brought it.”

“H’m!” remarked Mr. Pumpelly. “Don’t lead him to it again!”

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“But I wouldn’t have disturbed you if it hadn’t been for a young gentleman who ’as called with another one regardin’ the window boxes.”

“What about window boxes?” moaned Mrs. Pumpelly.

“He says,” explained Simmons, “he ’as a summons for you regardin’ the window boxes, but that if you’d care to speak to him perhaps the matter might be adjusted——”

“Let’s see the summons!” exclaimed Wilfred, coming to life.

““To Edna Pumpelly,”” he read.

“They’re gettin’ more polite,” she commented ironically.

““For violating Section Two Hundred and Fifty of Article Eighteen of Chapter Twenty-three in that you did place, keep and maintain upon a certain window sill of the premises now being occupied by you in the City of New York a window box for the cultivation or retention of flowers, shrubs, vines or other articles or things without the same being firmly protected by iron railings——””

“Heavens,” ejaculated Mr. Pumpelly, “there’ll be somebody here in a minute complaining that I don’t use the right length of shaving stick.”

“I understand,” remarked Mr. Edgerton, “that in a certain Western state they regulate the length of bed sheets!”

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“What’s that for?” asked Edna with sudden interest.

“About seeing this feller?” hurriedly continued Mr. Pumpelly. “Seems to me they’ve rather got you, Edna!”

“But what’s the use seein’ him?” she asked. “I’m summoned, ain’t I?”

“Why not see the man?” advised Mr. Edgerton, gladly seizing this possibility of a diversion. “It cannot do any harm.”

“What is his name?”

“Mr. Bonright Doon,” answered Simmons encouragingly. “And he is a very pleasant-spoken young man.”

“Very well,” yielded Mrs. Pumpelly.

Two minutes later, “Mr. Doon!” announced Simmons.

Though the friends of Tutt & Tutt have made the acquaintance of Bonnie Doon only casually, they yet have seen enough of him to realize that he is an up-and-coming sort of young person with an elastic conscience and an ingratiating smile. Indeed the Pumpellys were rather taken with his breezy “Well, here we all are again!” manner as well as impressed by the fact that he was arrayed in immaculate evening costume.

“I represent Mr. Ephraim Tutt, who has been retained by your neighbor, Mrs. Rutherford Wells, in connection with the summons which you caused to be issued against her yesterday,” he announced pleasantly. “Mrs. Wells, you see, was a little annoyed by being referred to in the papers as Jane when her proper name is Beatrix. Besides, she felt that the offense charged against her was—so to speak—rather trifling. However—be that as it may—she and her friends

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in the block are not inclined to be severe with you if you are disposed to let the matter drop.”

“Inclined to be severe with me!” ejaculated Mrs. Pumpelly, bristling.

“Edna!” cautioned her husband. “Mr. Doon is not responsible.”

“Exactly. I find after a somewhat casual investigation that you have been consistently violating a large number of city ordinances—keeping parrots, beating rugs, allowing unmuzzled dogs at large, overfilling your garbage cans, disregarding the speed laws and traffic regulations, using improperly secured window boxes——”

“Anything else?” inquired Pierpont jocularly. “Don’t mind us.”

Bonnie carelessly removed from the pocket of his dress coat a sheaf of papers.

“One for neglecting to have your chauffeur display his metal badge on the outside of his coat—Section Ninety-four of Article Eight of Chapter Fourteen.

“One for allowing your drop awnings to extend more than six feet from the house line—Section Forty-two of Article Five of Chapter Twenty-two. [91]

“One for failing to keep your curbstone at a proper level—Section One Hundred and Sixty-four of Article Fourteen of Chapter Twenty-three.

“One for maintaining an ornamental projection on your house—a statue, I believe, of the Goddess Venus—to project more than five feet beyond the building line—Section One Hundred and Eighty-one of Article Fifteen of Chapter Twenty-three.

“One for having your area gate open outwardly instead of inwardly—Section One Hundred and Sixty-four of Article Fourteen of Chapter Twenty-three.

“And one for failing to affix to the fanlight or door the street number of your house—Section One Hundred and Ten of Article Ten of Chapter Twenty-three.”

“I dare say there are others.”

“I’d trust you to find ’em!” agreed Mr. Pumpelly. “Now what’s your proposition? What does it cost?”

“It doesn’t cost anything at all! Drop your proceedings and we’ll drop ours,” answered Bonnie genially.

“What do you say, Edgerton?” said Pumpelly, turning to the disgruntled Wilfred and for the first time in years assuming charge of his own domestic affairs. [92]

“I should say that it was an excellent compromise!” answered the lawyer soulfully. “There’s something in the Bible, isn’t there, about pulling the mote out of your own eye before attempting to remove the beam from anybody’s else?”

“I believe there is,” assented Bonnie politely. “‘You’re another’ certainly isn’t a statutory legal plea, but as a practical defense——”

“Tit for tat!” said Mr. Edgerton playfully. “Ha, ha! Ha!”

“Ha, ha! Ha!” mocked Mrs. Pumpelly, her nose high in air. “A lot of good you did me!”

“By the way, young man,” asked Mr. Pumpelly, “whom do you say you represent?”

“Tutt & Tutt,” cooed Bonnie, instantly flashing one of the firm’s cards.

“Thanks,” said Pumpelly, putting it carefully into his pocket. “I may need you sometime—perhaps even sooner. Now, if

by any chance you'd care for a highball——”

“Lead me right to it!” sighed Bonnie ecstatically.

“Me, too!” echoed Wilfred, to the great astonishment of those assembled.

## TIT, TAT, TUTT

Mr. Ephraim Tutt, on his annual fishing trip to the Mohawk Valley, dropped off the train at Pottsville one early May morning to find the station deserted.

“What’s happened to this town?” he demanded of the station agent. “Where’s the taxi man?”

“Up to the courthouse with all the rest of the folks. Want me to help ye?”

“No, thanks,” answered the old lawyer. “I guess I can manage to toddle as far as the Phoenix Hotel.”

So Mr. Tutt, with an ancient leather rod case under each arm, and carrying a valise in either hand, staggered across the village square. Although only half after nine o’clock, the crowd milling around the Brick Block resembled that on Fair Day. As he reached the courthouse, a motor drew to the curb beside him and a young woman, accompanied by a decrepit old man, got out. Though Mr. Tutt knew most of the local inhabitants, he did not recognize her—one of those new summer people, he decided, from Rochester or Utica, probably. Certainly she was unusual both in looks and distinction. Mr. Tutt liked dark girls, especially trim girls with black curly mops and eager eyes, like this one. A girl of spirit, evidently, and in any event, whether native or imported, an acquisition to Pottsville.

Arriving exhausted at the Phoenix Hotel, where he was affectionately greeted by Ma Best, he sensed at once that the old lady had something on her mind. [94]

“What’s happened?” he inquired, dumping his paraphernalia on the rickety piazza. “Has anyone dynamited the bank? Or has Squire Mason been up to his old tricks?”

“I’ll say he has!” she fumed. “Wait till you’ve swallowed your vittles, an’ I’ll give you an earful about him.”

Mr. Tutt, who was hungry, followed her into the little dining room and obediently “swallowed his vittles,” as ordered.

“Now,” he said, lighting a stogie, “unfold your harrowing tale.”

Ma seated herself in the chair at the end of the table. “Remember Judge Gamage?”

“Sure! Married the late Mrs. Tarleton, didn’t he? I thought he was Pottsville’s leading citizen.”

“Leading scalawag! You knew her daughter by her first husband, Dorothy Tarleton? ... No? Well, I guess she always was away at boarding school when you were here. She’s just about the sweetest and prettiest girl in town. How she ever could abide that old potato bag for a stepfather, I never did see! Anyhow, she fell in love with Doctor Alan Kellogg, a young surgeon that moved here last summer. A fine fellow he was, and doin’ well too. Her mother was on her deathbed at the time, but when Dorothy and Alan told her they were engaged, it bucked her up considerable and she give ’em her blessing an’ said as how at last she could die in peace.”

“A pleasant romance,” nodded Mr. Tutt. “Where does Squire Mason bob up?” [95]

“Right now! No sooner had Dorothy’s mother died and her will been probated than it appeared Squire Mason had pulled a more-than-ordinary fast one. Mrs. Gamage had signed her will when she first got ill, long before she knew that Dorothy and Alan were interested in each other. Mason had put it away in his strongbox and, naturally, she’d forgot all about it.”

“What was in it?” asked Mr. Tutt, with interest.

“That’s what I’m goin’ to tell you. It seems the Squire and Gamage had from the very start been tryin’ to wangle things so that she would leave the Judge all her property, but while she’d been willin’ to give Gamage her money, she wanted the homestead to go to Dorothy, because it had belonged to her father. Mason had done his best to persuade her out of it, but she wouldn’t budge. So the sly old fox pretended he thought she was quite right, but suggested that Dorothy—without her

mother's guidance—ought to be protected against makin' an improper marriage. Said some rascally fortune hunter might marry her and get it! So he induced her—after he'd writ in the clause leavin' the homestead to Dorothy—to let him put in another providin' that, if she married before she was twenty-five without her stepfather's consent, the property should go to him."

"Well, what was the harm in that?"

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"Harm!" snorted Ma, kicking the table leg in her wrath. "Why, not satisfied with gettin' a lot of money for nuthin', and in spite of his knowin' that his dead wife had approved of Dorothy's marryin' Doctor Kellogg, that old rascal, Gamage, refused to give his consent. He was her guardian under the will, with full charge of her property, and he wouldn't even let Alan come into the house. So there was nuthin' fer 'em to do but to run away."

"And the girl, knowing the consequences, was satisfied to sacrifice her inheritance?"

"Sure! She wasn't goin' to wait any six years!"

"More power to her!" commented Mr. Tutt. "And then?"

"So she wrote the Judge a letter tellin' him what she thought of him, and her and Alan motored over to Canajoharie and got married."

"And the Judge claimed the homestead, as forfeited to him under his wife's will?"

"You've said it!" assented Ma. "Up to that time, most of us had liked the Judge well enough, albeit we figured he'd done pretty well for himself, marryin' the Widow Tarleton, but now we woke up to what he really was. And then came the toughest break of all. Alan got sick and was ordered to Arizona. He had to give up his practice; they spent all the money he'd saved, and Gamage—the old skinflint—wouldn't turn a hand to help them. Of course, if Dorothy hadn't married Alan, she'd own the homestead and could raise money on mortgage, but, as it is, the bank—it's Mason's bank, at that!—won't lend her a cent. An' now some realty company has offered the Judge fifty thousand dollars for it, provided he can give 'em a clear title, and he's brought an action to have the Court declare that the place belongs to him. The town is all het up about it. The case is goin' to be tried this very mornin' down to the courthouse, before Judge Tompkins." [97]

"What does Mrs. Kellogg look like?"

"She's dark and slim and has beautiful eyes. You'd love her."

Mr. Tutt allowed the smoke of his stogie to eddy slowly from his nostrils.

"Has she got a lawyer?"

"Only sort of. Of course, she couldn't afford to pay a reg'lar fee, but old Mr. Lecky, from Patterson Corners, has offered to defend her. Do you think she's got any chance?"

"Not if she acted with her eyes open."

"Well, she did! She had it out with her stepfather over and over again. The hull town knew about it." [98]

"Then, in my opinion, she hasn't got a leg to stand on," replied Mr. Tutt, pushing back his chair.

"Where are you goin'?" asked Ma anxiously.

"I had intended to go fishing," answered the old man. "But after what you've told me, I think I'll wander over to the courthouse instead."

The judge had just gone on the bench when Mr. Tutt succeeded in working his way through the throng inside the courtroom to the rail. The entire countryside had turned out to see the legal melodrama in which Judge Gamage was

playing Doctor Jekyll and Mr. Hyde. The parties and their respective lawyers were already in their places—brick-cheeked Squire Mason opposite the jury box, beside a flabby Buddhalike man with a vacant, pasty face and no eyebrows; Dorothy Tarleton—whom Mr. Tutt instantly recognized—at the adjoining table with her counsel, Mr. Lecky, a mild-mannered, asthmatic octogenarian, who had been a friend of her father’s.

“Gamage versus Kellogg,” called the clerk.

The courtroom hushed and Squire Mason stood up.

“If Your Honor please,” he began pompously, “this is an action for a declaratory judgment of forfeiture under the will of the late Louisa Gamage, who devised her two-hundred-acre estate, together with the house and buildings thereon, to her daughter, then Dorothy Tarleton, now Dorothy Kellogg, provided, however, that the latter should not marry before she reached the age of twenty-five years without her stepfather’s—my client’s—consent, in which case the property should go to him. There is no dispute whatsoever as to the facts. At nineteen years of age the defendant did marry, not only without the consent of the plaintiff, her legally appointed guardian, but in absolute defiance of his wishes. In fact, she eloped. That’s all there is to the case. I have here certified copies of the will and marriage certificate, also an original letter to the plaintiff in the defendant’s handwriting, which she left behind her. I offer them all in evidence.” [99]

“Any objection?” inquired Judge Tompkins.

“No, Your Honor,” said Mr. Lecky. “There is no dispute as to the facts. Squire Mason has stated them quite correctly. My client, Mrs. Kellogg, did marry before she was twenty-five without her stepfather’s consent.”

“What, then, is your defense, counselor?”

The old man tottered to his feet.

“Our claim,” he wheezed, “is that the condition in her mother’s will limiting my client’s right to marry is void as against public policy.”

“A pure question of law?”

[100]

“Purely a question of law.”

“In that case,” suggested Tompkins, “why should not both parties stipulate on the record that the facts are as stated by counsel for the plaintiff?”

“That is satisfactory to me,” replied Mr. Lecky.

The judge nodded to the stenographer.

“Note the stipulation, Mr. Grady,” he directed... “Now, counselor, why do you say that the testatrix couldn’t legally make the provision in question?”

“Because the law has always frowned upon limitations upon the right to marry as against public policy,” declared Mr. Lecky stoutly.

“Pardon me,” interposed Mason, “but such conditions have repeatedly been held valid in this state. Your Honor is, of course, familiar with Hogan versus Curtin, 88 New York 171.”

Dorothy looked up anxiously at her aged champion.

“Hogan versus Curtin does not apply,” answered Mr. Lecky, “for the simple reason that there the condition against marriage was limited to twenty-one years. Since, at the time that case was decided, a woman could not legally marry under twenty-one in any event, no additional limitation was placed by the will upon her right to marry. Now, if, in the present instance, the testatrix had been content to provide that her daughter must secure her guardian’s consent to marry

merely before she became of age or else forfeit her property, I concede that the clause would have been a proper one. When, however, she sought to extend the period to twenty-five years, she went too far. To attempt to limit the defendant's freedom to marry after her majority is unreasonable, and hence void."

Judge Tompkins peered over his spectacles at Mason.

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"How about it, counselor?"

The Squire, with a complacent grin, lifted a volume of reports from the table before him.

"The question of minority or majority doesn't come into it!" he asserted triumphantly. "In the English case of *Yonge versus Furse*, 8 D. M. & G. 766, it was held that a precisely similar condition against a person marrying under the age of twenty-eight was valid."

Mr. Tutt's heart sank beneath his waistcoat. His sympathies were already enlisted upon the side of the dark-haired girl, who had tossed her future over the wall to marry for love.

"Is that so?" exclaimed Tompkins, reaching for the book. "H'm! That would seem to settle it, unless Mr. Lecky has some other authorities."

Mr. Lecky shook his head.

"I have none. But in view of Your Honor's attitude, I should like to have the plaintiff take the stand for a moment."

"I object," answered Mason. "The facts in the case have been conceded. Both sides have so stipulated."

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Tompkins hesitated.

"I am inclined to agree. However, I'll hear what Mr. Lecky wants to ask. Let the plaintiff be sworn."

A murmur of hostility ran along the benches as Gamage seated himself in the witness chair. His hairless baby face was as inscrutable as that of a poker player who holds four aces.

"Mr. Gamage," said Mr. Lecky, "please tell the Court your reasons for refusing to give your consent to my client's marriage."

Squire Mason shot up:

"I object. The plaintiff's reasons for his refusal are wholly irrelevant."

Several boos came from the crowd in the rear.

Judge Tompkins pounded angrily with his gavel.

"If I hear anything like that again, I shall clear the room!" he said severely.... "Mr. Lecky, I don't see what difference it makes what the plaintiff's reasons may have been. I exclude the question as irrelevant."

"Very well," plaintively replied Mr. Lecky. "Then I will make an offer of proof. I propose to show from this witness' own lips that long after his wife, a dying woman, had executed her will, she learned of her daughter's engagement to Doctor Kellogg and gave it her approval. In spite of which, and for the sole and obvious purpose of securing the estate for himself, the witness deliberately declined to honor his wife's wishes and refused the consent which she had, in fact, already given."

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A chorus of jeers and catcalls burst from the remoter spectators.

"Order! Order in the Court!" shouted Sheriff Higgins, pounding on the rail.

Judge Tompkins stood up.

“I decline to receive the evidence offered and I give the defendant an exception to my refusal.... Sheriff Higgins, clear the room! The Court will take a recess for ten minutes.”

He stalked out, his robe bellying behind him. Mr. Tutt picked up his stovepipe hat and followed to the judicial chamber.

“Well, Eph,” remarked the judge, pacing up and down, “there seems to be an all-fired lot of feeling about this case. What’s your opinion about it?”

“That Gamage and Mason are a pair of first-class crooks.”

“Looks that way,” admitted His Honor, accepting a stogie from his friend. “Between them, they’ve got that girl hog-tied. It’s an outrage, but I guess I’ll have to render judgment for the plaintiff.”

“I’m afraid you’ll have to. Mason apparently has the law on his side. There doesn’t seem any way out of it—at least for the moment.” [104]

Judge Tompkins peered searchingly at the old lawyer.

“What do you mean by that?”

“Nothing in particular. But I’ve a firm conviction that, in a situation so manifestly inequitable, justice is bound to triumph in the end,” replied Mr. Tutt earnestly. “I’ve got a vague sort of hunch that I read of a case something like this one, years ago, but I haven’t the remotest idea where.”

The business of an Appellate Division of the New York Supreme Court is to determine whether, on the facts proved at the trial of any case, the judge has rightly interpreted and applied the law. Throughout the entire procedure there is one unalterable rule—their decision must be made exclusively upon the record as sent up from below. Nothing can be added to or subtracted from it. As the justly celebrated Prof. James Bradley Thayer, of the Harvard Law School, used to say: “As we find it here, it is as it is, and whatever it is, this is it.”

Judge Tompkins’ decision in favor of the plaintiff in Gamage versus Kellogg was received throughout Somerset County with indignation. He must be a bum judge to let Squire Mason bamboozle him in any such fashion. Even poor well-meaning Mr. Lecky came in for a share of the universal odium. Justice! Boloney!

All the good burghers could do was to ostracize Judge Gamage and kick him out of the Order of Abyssinian Mysteries, and this they did with alacrity and enthusiasm. The Judge, however, did not seem to mind any of it in the least, clearly content to remain placidly fanning himself upon the veranda of the Tarleton house, awaiting the confirmation of the judgment in the Appellate Division, to which Mr. Lecky had, as a matter of form, taken an appeal. What did he care if Squire Mason was the only person who would speak to him? What was the good opinion of a parcel of hicks like Toggery Bill Gookin, Cy Pennypacker and Mose Higgins compared with fifty thousand smackers? He should worry! [105]

But when he learned that Lawyer Ephraim Tutt had prolonged his vacation and was taking an incomprehensible interest in the case, he did begin to worry a little. Durn the old cuss! And had he known of a certain conversation between the old cuss and Ma Best, his own former landlady, he might have worried even more.

“How long has Judge Gamage adorned Pottsville?” Mr. Tutt had asked her meditatively, one evening after supper.

“About ten years. He lived here at the Phoenix House until he married Mrs. Tarleton.”

“How long?”

“Almost four years.” [106]

“What was he a judge of, besides whisky?”

“Said he was a justice of the peace one time.”

“Ever see any of his mail?”

“No. He had a private box at the post office.”

“Didn’t he ever mention where he had come from?”

“Nary a word.”

Mr. Tutt coddled his long chin.

“When he left you—the time he married—did he take away all his belongings?”

“Sure!” Ma pursed her lips meditatively. “I donno. Come to think of it, I believe he did leave some old duds behind. They didn’t amount to nuthin,’ though. Seems to me, I put ’em in an old cracker box up in the attic. If I did, they’re up there yet.”

Twenty minutes later, Mr. Tutt and Ma Best, under the hanging kerosene lamp, were examining the duds on the dining-room table—a soiled collar, a frayed pair of old suspenders, a broken comb, a rusty pocketknife, a tobacco tin and an empty envelope addressed to “Hon. Thos. Gamage, Phoenix Hotel, Pottsville, N. Y.,” faintly postmarked “Topsfield, Iowa.”

That night Mr. Tutt sent a telegram to his legal handyman, Bonnie Doon, in care of Tutt & Tutt, Broadway, N. Y.

ASCERTAIN IDENTITY OF OLEAGINOUS EX-JUSTICE OF THE PEACE KNOWN AS THOMAS [107]  
GAMAGE WHO LEFT TOPSFIELD IOWA SOME TEN YEARS AGO STOP THIS MAN  
MOUNTAIN WEIGHS ABOUT THREE HUNDRED POUNDS HAS A FACE LIKE A TUB OF BUTTER  
AND A SMILE THAT IS CHILDLIKE AND BLAND STOP CHARGE EXPENSES TO ME PERSONALLY  
AND DO YOUR STUFF

E TUTT

While Justice is proverbially blind, she is not necessarily either deaf or dumb. It is true that judges are not supposed to discuss the cases which come before them, but judges are human. There is a grapevine among the judiciary just as in most professions, and sometimes the grapes are sour. Mr. Tutt and his old friend, Tompkins, fished Chasm Brook several times together that spring, and perhaps all their conversations did not relate to Brown Hackles, Silver Doctors and Parmachenee Belles. Indeed, more than one letter passed between the two old men during the summer, pending the appeal, each containing cryptic references and esoteric symbols intelligible only to votaries of the law. And just as the maples were turning red and the air had a nip of autumn, Mr. Tutt was unexpectedly substituted as counsel for the defense for old Mr. Lecky, to the latter’s great relief.

The New York Appellate Division for the Fourth Department, in which Pottsville is located, sits in Rochester, [108] and “Gamage versus Kellogg” was among the appeals set for argument at the October term. Dorothy, who had secured a job as governess to two children belonging to the Hillsdale summer colony, had lost it with their departure for the city and had found nothing to take its place. Alan, though rapidly improving, was still in Arizona. She had been living on credit for more than a month, and the future looked more than dark. Nevertheless, she resolved that nothing should keep her from going to Rochester to hear Mr. Tutt argue her appeal, even if she had no chance to win and had to walk to get there. When the morning came, she was surprised to find how many of her fellow townsmen had experienced the same impulse. Indeed, it seemed as if, in addition to Ma Best, most of the Sacred Camels of King Menelik had boarded the train with her.

“You just keep your courage up, dearie,” encouraged Ma as she squeezed in beside her. “If anybody can win your case for you, it’ll be Mr. Tutt. He knows more than all the judges put together.”

“I made up a limerick last night!” announced Toggery Bill Gookin proudly from across the aisle. “Listen, folks:

“There was an old fellow named Tutt,  
Who at law surely knew what was what.  
He’d twist any case  
Into right-about-face,  
And make the judge look like a nut!”

“Never knew you was a pote, Toggery!” exclaimed Sheriff Higgins, with genuine admiration. “But that’s good, I’ll say!” [109]

“Why not make one about Gamage?” suggested Ma. “Let’s try! ‘There was an old buzzard named Gamage——’”

“‘Who always was up to some damage,’” supplemented Toggery. “Can’t finish it, though. Ain’t no other rhyme for ‘Gamage’ except ‘damage.’ I’ve been through the hull durn alphybet.”

“Never mind!” commented Mose. “Ma got the pint into the fust line.”

Dorothy glanced about the great courtroom timidly. It was already three-quarters full, but, since she wanted to hear everything Mr. Tutt had to say, she nerved herself to take one of the unoccupied front seats. On the other side of the room, Squire Mason was ostentatiously joking with her imperturbable stepfather. Inside the rail, the dignified clerk was arranging five little piles of pamphlets upon the dais before five empty chairs. If only the law were not so impersonal! Then she felt a hand on her shoulder and looked up to see Mr. Tutt’s tall, ramshackly figure beside her.

“Can’t you sit here with me?” she urged.

“I’d like to, my dear,” he smiled down at her. “But I’ve got to get nearer the bench. Some of those old bozos are a little deaf.”

“Have we any chance?”

[110]

He raised his eyebrows quizzically.

“Who knows? The law is always a gamble. No one can ever tell what judges will do.”

Just then the clerk intoned: “Order in the Court! Their Honors, the Justices of the Appellate Division.” Mr. Tutt hurried forward to the enclosure, and the five “old bozos” filed in and took their seats.

“Really,” thought Dorothy, in spite of herself, “they seem like a very nice lot of old gentlemen.”

The presiding judge, a white-haired, rosy-cheeked, golfing-looking judge, arranged his robe, settled himself and took up the calendar.

“Kellogg versus Gamage?” he called inquiringly.

“Ready!” answered Mr. Tutt and Squire Mason in unison.

The rest of the cases were marked either “ready” or “adjourned,” and the presiding judge—familiarly known as the “P. J.”—leaned back and directed Mr. Tutt to proceed.

“If Your Honor please,” stated the old man, “this is an appeal from a judgment of the Supreme Court of Somerset County in favor of the plaintiff, Thomas Gamage, in an action brought for a declaratory judgment of forfeiture. Before I commence my argument, I respectfully ask permission to submit a supplementary brief. The fact is, I didn’t have the good fortune to find the authority upon which I chiefly rely until late yesterday.”

The P. J. reached for the bundle of slim brochures tendered him by Mr. Tutt and distributed them among his

[111]

fellow bozos.

“I think we can extend you this courtesy,” he replied good-naturedly. “Of course, you’ll hand your opponent a copy and, if necessary, give him time to file an answer.”

“Of course,” bowed Mr. Tutt, proffering a similar leaflet to Squire Mason. “The case is here on stipulated facts. The testatrix, from whom title to the property in question derives, devised it to her only daughter, the appellant, on condition that the latter should not marry before she attained twenty-five years without the consent of her stepfather, the respondent, under penalty of forfeiting it to him.”

The youngest old bozo, who had comparatively little white in his hair and sat at the extreme left, glanced up suddenly, as if in recollection. Then his eyes slowly traveled the courtroom and came to rest on Dorothy.

“The appellant did marry without her stepfather’s consent and before that age,” continued Mr. Tutt. “The question before this Court is as to the effect of the clause limiting her freedom to do so.”

“Are those all the stipulated facts?” inquired the chief bozo.

“Yes. It’s a pure question of law.”

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“This Court has repeatedly upheld the validity of conditions in trusts or wills restraining marriage on the part of the beneficiaries before a certain age without the consent of a third party,” interrupted the P. J.

Mr. Tutt bowed.

“We do not rely upon the claim that the limitation is invalid,” he remarked, almost casually.

Dorothy stiffened. But that was the only point in the case! What, in heaven’s name, did he rely on, then?

The old lawyer cleared his throat.

“We rely solely upon the facts”—he glanced sideways at Mason, whose nose was securely buried in Mr. Tutt’s supplemental brief—“which are, to say the least, unusual. Some ten years ago, the respondent-plaintiff, Gamage, appeared in the town of Pottsville, took up his residence at the local hotel, and made himself popular with the inhabitants—especially the more well-to-do, among them Samuel Tarleton, the original owner of the property in litigation and father of the appellant. When Tarleton died, Gamage married his widow, a sickly woman, over whom he had acquired a strong influence. During her last illness, she executed a will leaving her entire personal estate to her new husband, but devising the homestead, which had been in her husband’s family for more than a century, to her only daughter—now Mrs. Kellogg—whom I have the honor to represent on this appeal.”

He waved toward Dorothy, and the five old bozos looked at her with interest and obvious approval. Mason was still reading feverishly. [113]

“However,” went on Mr. Tutt, “through some mysterious influence, upon the nature of which we can only speculate, the testatrix was induced to add the clause limiting the girl’s power to marry. The will was signed on April ninth.

“On April eleventh, Dorothy, then nineteen years of age, brought her fiancé, Doctor Alan Kellogg, to her mother’s bedside, informed her of their engagement and received her blessing. All this was known to the respondent. Nevertheless, the testatrix having died a few days later and the will having been probated, this man, Gamage, for the obvious purpose of acquiring the property for himself, refused to give his consent to the marriage.”

“I object!” roared Mason, coming suddenly to himself. “This is utterly improper! These alleged facts are entirely outside the record!”

“But are they true, counselor? I merely ask out of curiosity,” inquired the youngest old bozo.

Mason flushed.

“There is not a word of evidence in the record that any of them are true!” He glared at Mr. Tutt. “My opponent’s reference to them is outrageous.”

“Squire Mason is quite right,” answered Mr. Tutt patiently. “No, the facts to which I, unfortunately, referred are not in the record. I hope the Court will overlook my transgression.” [114]

“This court has got to decide this appeal solely upon the record and nothing else!” declared Mason with severity.

“Don’t excite yourself, counselor,” remarked the youngest bozo. “You may rest assured that the Court will do as you so properly insist.”

“Go on, Mr. Tutt!” directed the P. J. “On the facts stipulated, how can you claim that your client has not forfeited the estate?”

Mr. Tutt paused dramatically.

“For the simple reason that under the law she has not done so. The plaintiff-respondent, Gamage, in the lower court failed to make out any case whatsoever. The governing rule, as set forth in my supplemental brief, is to be found in Jarmon on Wills, Volume II, at Page 853. It is to the effect that where a person would take an estate by inheritance, had there been no will, but does take it under a will containing a condition by which he may forfeit the property, he cannot be held to have incurred the forfeiture unless it be first shown that he was aware of the condition and broke it with full knowledge of what the consequences would be. The principle has been followed in Shackleford versus Hall, 19 Illinois 212; Merriam versus Wolcott, 61 Howard’s Practice 377, and several other cases in this country as well as in England. I have found none to the contrary.”

“I am not familiar with the doctrine you mention,” commented the P. J. “It must have been rarely applied, but it is eminently just. So you claim that your client knew nothing about this condition in her mother’s will?” [115]

Mr. Tutt’s face assumed a mask as inscrutable as that of Judge Gamage. He, too, could hold four aces.

“My claim, Your Honor, is that there is nothing in the record—that record so zealously guarded by Brother Mason—to so indicate.”

Squire Mason leaped to his feet.

“Those aren’t the facts at all! Dorothy Tarleton knew all about her mother’s will. Judge Gamage warned her over and over again that if she married Doctor Kellogg she’d forfeit her share in the estate. The will was probated and public property. Everybody in town had read it. She did the whole thing deliberately. She never pretended she didn’t. Mr. Lecky always conceded she had.”

“If Brother Mason,” said Mr. Tutt quietly, “will show me a single word in the record to prove that Dorothy Tarleton had any notice whatever of the condition, I will consent to an affirmance of the judgment in his favor.”

Each of the old bozos had reached for the printed record before him and was studying its pages.

“What Mr. Tutt claims is all nonsense!” declared Mason excitedly. “Read the note she left! ‘This is to tell you that, although you are my guardian, I am going to marry Alan Kellogg without your consent, and in spite of what the consequences may be.’ That proves she knew there would be unfavorable consequences!” [116]

“There are always consequences to every step in life, counselor,” returned the youngest bozo. “The sentence you have just read does not prove that the defendant knew she would forfeit anything under her mother’s will. *Non constat* that she wasn’t referring to any one of the many well-known dangers following upon matrimony.”

“But how about the next sentence?” demanded Mason. “Of course, I know that in refusing to approve my marriage, you

are actuated only by the basest motives.’”

“Do you concede your client’s motives to have been base?” inquired his tormentor.

“No, of course not! Merely that she claimed they were, because he’d get her property.”

“Well, then, what were they?” persisted His Honor.

“Why—why, perhaps he didn’t approve of her marryin’ so young!” stammered the Squire. “Or, mebbe, he thought the doctor couldn’t support her properly.”

“Perhaps! Maybe!” mused the justice, with a meaning look at the unhappy lawyer.

Mr. Tutt cleared his throat.

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“In *Shackleford versus Hall*, Chief Justice Caton, while holding the marriage limitation legally proper in its terms, declared it to be ineffective, since there was no proof that the plaintiff had knowledge of it. To quote his exact words: ‘One who has an estate or title real independent of the deed or instrument containing a condition of forfeiture, shall not be presumed to have notice of the condition, and he shall not be held to have incurred the forfeiture unless he committed the breach with knowledge of the condition and the consequences.’ This court cannot, without proof, presume that my client had knowledge of the condition in her mother’s will.”

The P. J. nodded thoughtfully.

“There is certainly no proof of it in the record. If it ever were conceded—as to which I, naturally, can have no knowledge—whoever assented to this stipulation omitted that essential fact either inadvertently or through ignorance of the law. *Shackleford versus Hall*, and *Merriam versus Wolcott* seem directly in point. The doctrine, while unfamiliar—perhaps, even unique—is sound. In the absence of affirmative evidence to the contrary, we must presume that Mrs. Kellogg had no knowledge of the condition or the intent of her stepfather to claim a forfeiture if she broke it... Have you anything further to say, Mr. Mason?”

It was clear that the Squire had nothing to say, for he was teetering back and forth on the balls of his feet, his jaws agape, apparently on the verge of apoplexy. [118]

The five old bozos put their heads together, conferred, nodded; then each took up his pen, dipped it and scribbled something across the cover of “*Gamage versus Kellogg*.”

“The judgment of the court below is unanimously reversed,” announced the P. J. “There is no need of an opinion. Judgment is hereby directed to be entered for the defendant. Call the next case.”

Mr. Tutt turned from Dorothy Kellogg’s joyous smile to the other side of the courtroom, where Judge Gamage had melted into a grotesque and deflated huddle.

“Your Honors,” he said, addressing all five old bozos, but the youngest one in particular, “may I make an announcement that is strictly off the record?”

“You may,” acquiesced the P. J., with a look at Mr. Tutt that was almost affectionate, for a judge.

“It is merely that, even if you had confirmed the respondent in his claim to the Tarleton homestead, he could not personally have enjoyed the occupancy of it. An officer with a warrant of extradition is waiting in the corridor to take him back to Iowa. ‘Whoso diggeth a pit shall fall therein.’”

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# BLACK SALMON

DURBAN NEW BRUNSWICK CANADA

SALMON RUN DOWNSTREAM JUST STARTING IN NIPSICODIAC STOP BETTER HUMP IT

ANGUS OGILVY

Mr. Tutt handed the telegram to Minerva Wiggin.

“I’m off!”

“But this is only April,” she protested. “Besides, salmon run upstream in spring, not down.”

“Not always. In some rivers they get trapped by the ice and can’t get back to the ocean. When it breaks up the following spring, they bolt for the sea—‘black salmon’ they call ’em.”

“There’s something queer about the whole business,” remarked the chief clerk. “Doesn’t the Canadian law prohibit salmon fishing until June?”

“In most rivers, but not in the Nipsi. For some reason—political, I fancy—it’s an exception. Not many fishermen know about it, luckily.”

“You’ll freeze to death in the woods this time of year,” she warned him.

“My dear Minerva,” he answered patiently, “I never went on a fishing trip yet that I didn’t have a good time. So [120] be a good girl and wire Angus to engage a cook and meet the Halifax Express tomorrow afternoon. Don’t worry. I’ll catch something.”

She made a face at him. “Pneumonia, probably.”

The spring had been well advanced in New York, but Mr. Tutt stepped out of the sleeper at Durban, New Brunswick, into the depth of the Canadian winter.

“We had quite a warm spell last fortnight,” said Angus, greeting him on the station platform. “Enough to start the ice in the Nipsi, but it looks now as if we were in for more cold weather.”

“Did you hire a cook?”

“Yes, but I had a tough time locatin’ one. Most of the men are off in the lumber camps or loggin’ it on the river. But I found a feller finally, and paid him something in advance. Maybe that was a mistake. Anyhow, he’s promised to meet us at the train tomorrow morning. You better buy yourself some warm clothes.”

“I certainly had!” agreed Mr. Tutt, who was already half frozen. “If you’ll carry those things to the George, I’ll go over to the store and re-outfit myself.”

Mr. Tutt, having purchased a heavy mackinaw and sweater, thick woolen cap and high-laced boots, walked back [121] to the little hotel. Lugging his rod case, he followed the clerk to the sagging corridor above the office.

“Here, Martha!” called the clerk into the darkness beneath the stairs. “Hot water for Number Nine!”

The lawyer stacked his luggage, lit a stogie and looked about him. The room was clean, but the rug was full of holes, the wallpaper discolored and hanging in strips, the ceiling mappd with islands, coast lines and inland seas. Thank heaven he’d only have to stay there one night!

There was a step in the hall outside, a light tap, and an elderly woman in spotless calico entered, carrying a steaming pitcher.

“I’ve brought you some hot water,” she smiled. Mr. Tutt withdrew his hand from his trousers pocket, where he had automatically thrust it. One couldn’t offer a dime to a woman like that. She seemed to be so glad that she could bring him his hot water.

“Thank you! I need it.”

“Mr. McCrea planned last summer to put runnin’ water in all the rooms,” she apologized, placing the pitcher beside the washstand. “But he says now the trade don’t warrant it.”

Her voice was deep-throated, soft and clear, with a faint Scotch burr; her face, of an unusual dignity, was made almost beautiful by her smile.

“Is there anything you want?”

[122]

She was like a considerate and interested hostess. She did not once call him “Sir.”

“Let me see!” deliberated Mr. Tutt, wishing that there was. “Do you suppose I could find anyone to sew on this button?”

“Yes, indeed! Let me have it, please.”

“I’ll have to sit here until it comes back.”

“It won’t take me a minute.”

Mr. Tutt shed his old Prince Albert and handed it to her. Not since his boyhood had he seen a woman quite like her. One didn’t find them in cities. He had rarely seen a face that held more appeal for him. Character was written all over it. A chambermaid in this third-class hotel, he perceived that she was a valiant soul. One who had suffered, yet retained her faith in what was good.

“There!” she said, giving him back his coat. “It won’t come off again in a hurry. Do you need anything else?”

“Perhaps you can tell me where Doctor Blake lives?”

“Certainly I can. You go right down Queen Street. Doctor Blake’s is the fourth house on the right.” She glanced at the washstand. “I’ll fetch you a fresh cake of soap.”

“Do you come from around here?” he asked in his customarily friendly tone.

“I’m a ‘Bluenose,’” she laughed. “I was born in Nova Scotia.”

[123]

“Worked here long?”

“Only about a week.”

There was no reproof in the brevity of her reply, but there was obviously no reason for her to amplify it.

“Well,” she said after a moment, “I must be going back to my work. I hope you enjoy Durban. It’s a nice place.”

“I’m sure it is. Anyhow, it has nice people in it.”

Outside the door, she paused.

“If you want anything, just call ‘Martha,’” she said.

Ten minutes later, when Mr. Tutt went out to pay his call, he found Martha on her hands and knees beside a pail of soapsuds, scrubbing the grimy little office.

“Martha?” returned Doctor Blake to the old man’s question. “You must mean Martha MacDonald. I heard she’d gone over to the George to work. What about her?”

“Isn’t she a person of unusual refinement to find drudging in such a—if you’ll pardon the word—dump!”

The doctor laughed.

“Go as far as you like about the George, except to ask me to eat there! Yes, Martha is an unusual person. Quite a wonderful character, in fact. She’s had a tough break all her life.” [124]

“Tell me about her.”

“Her story is simple enough. She’s of Scotch stock, from down East somewhere. As a mere girl she married a man who turned out to be a drunkard; left him to become a nursemaid in Toronto; then, about thirty years ago, she came here to work for John Mack.”

“And who’s John Mack?”

Doctor Blake stuffed his pipe.

“Old John’s another unusual character. As a young fellow he was the most beautiful human being I ever saw; the best woodsman and lumberjack on the river. At about forty he decided to settle down, married a Durban girl and got a job as express agent. His wife died giving birth to their first child—a boy. There was no one to look after it. Martha’s a sort of distant cousin of John’s. He heard that she was working in Toronto and asked her to come and keep house for him. She’s been here ever since.”

“But where does her hard luck come in?”

“Because she gave her life to this kid, nursed him like a mother, sacrificed her youth—for nothing. He turned out a bum, always in trouble. Every once in a while he’d stage a reform, and Martha and John, between ’em, would give him a fresh start. But he always tricked ’em somehow. Finally, after he’d been sent to jail a couple of times, the old man kicked him out. About two years ago, John contracted a fatal illness. He knew his number was up, and, realizing what Martha had meant to him all these years, he made over his life-insurance policy to her. It’s for ten thousand dollars, fully paid up.” [125]

“That was pretty decent of him.”

“Little enough in return for her lifetime of devotion. Martha stripped herself of most of her own savings to get Lem out of his difficulties and put him back on his feet, from time to time; and after John’s operation and his wages had stopped, she supplemented his tiny pension, paying for doctors, medicines and household expenses until she had nothing left. She adores him. He’s been the real love of her life, I guess, but being a married woman—her husband died only about six months ago—there’s been no suggestion of romance between them. Recently, John’s illness took a turn for the worse, and, as often happens in such cases, he passed through a depression during which he became so irritable, at times even abusive, that she could stand it no longer, secured a village girl to act in her place and left the house. Not having a penny to her name, she had to take any job she could get, which happened to be chambermaid at the George.”

“I understand now what you mean by her having had a tough break,” said Mr. Tutt. [126]

It was Martha, fully and crisply dressed, who awoke the old lawyer before daylight next morning and, a few minutes later, brought him a tray of hot rolls, coffee, eggs and bacon which she had cooked herself.

“Be sure to keep warm,” she urged, as she let him out into the darkness. “I’ll keep an eye on your belongings while you’re away. I hope you have good luck.”

“I’ll save a salmon for you,” promised Mr. Tutt.

The Whooper was panting beside the platform, its overheated smoking car already crowded with lumberjacks going back to camp after the week end, the air foul with the fumes of whisky and bad tobacco. A series of snorts, followed by a terrific jerk, and the little train started. Angus hopped on and assisted another man, obviously the worse for liquor, up the steps. The guide’s face was dour as he entered.

“All set!” he growled. “This is Lem Mack, our cook.... Say howdy to Mr. Tutt, Lem.”

The man, without replying, collapsed into a seat and closed his eyes.

“He’ll be all right,” remarked Angus. “He was on a binge all yesterday. I had to drag him out of bed and help him [127] on with his clothes to get him here at all.”

“Do you know anything about him?”

“I don’t know any of these hairy apes from around here. They say he comes of good people. He was all I could get.”

Angus’ “hairy ape” lay there, snoring, a trickle of tobacco juice meandering across his unshaven chin. So this was the swine that old Martha had sacrificed her youth and savings for!

They rode on in the fetid atmosphere without speaking. Those of the lumberjacks who were not playing Forty-five were either singing or sleeping. There were a few short-lived fights. Suddenly the kerosene lamps paled in their haze of smoke; the sky above the racketing pine and spruce tops turned yellow; day broke through the frosted windows. Some hours later, the Whooper uttered a prolonged wail, and, rattling over a trestle, came to a standstill on an embankment above a swift molasses-colored stream.

Angus took the sleeping man by the shoulders and shook him.

“Wake up! We’re most there!” he ordered.

Mack sat up and wiped his mouth with the back of his fist. “Take your damn hands off me!” he snarled, getting slowly to his feet.

The crew unloaded the two canoes, the engine coughed, there was a succession of jerks, a whistle, and the three [128] men were left alone in a white and silent world. Launching the canoes, they divided the dunnage between them. With the old man sitting in the bow of the first, Angus took the paddle in the stern, leaving the cook to follow in the second and smaller one. The stillness was unbroken save by the dip of the paddles and the snap of the ice panes as their wake reached the shore. No hawk hung suspended overhead; no beaver slapped the water in warning of their approach; no kingfisher dipped ahead of them, an avant-courier. There was no indication of life in this vacuum of sound and sight. Yet Mr. Tutt knew that beneath the skim along the snow-covered banks and motionless upon the bottom of the shallows were lying hundreds of great fish, caught the preceding autumn by the sudden forming of the ice which had turned the sand bars into ramparts, hermetically sealed the pools, closed the mouths of the brooks where they had been spawning, and held them prisoners, rationless, until the spring.

They swept on down the river. The sun had slipped under a bank of cloud and a knifelike wind had come up. Mr. Tutt thrust his mittened hands deep into his pockets and wiggled his old toes. Gad! It was cold! The cook had fallen a quarter mile behind. At ten o’clock, when they stopped to “bile,” Angus had already got the fire going, long before he overtook them. It was clear that he was in a recalcitrant mood. Grudgingly he dug out the bacon and eggs, and squatted down without speaking, with the frying pan in his hand.

“How much farther are you guys goin’?” he growled at length. “I didn’t sign up for no polar expedition!” [129]

“To the Schoolhouse.”

“That’s forty miles! There won’t be time to make camp before dark. Besides, it’s goin’ to snow. We better stay here,” he rasped.

“I shall decide where to fish,” replied Mr. Tutt curtly.

They paddled on under a leaden sky. Presently it began to snow. The great flakes came floating down like feathers, melting in the black water, but accumulating in a heavy blanket upon the canoes and dunnage. It was four o’clock when the Schoolhouse—a wrecked shanty without doors or windows, reeling drunkenly at the edge of what had once been a clearing—came into view. The cook was nowhere to be seen. Angus carried their paraphernalia up the bank and piled it inside, while Mr. Tutt, standing half-congealed amid broken glass and the filth left behind by porcupines, set up his rod and rigged it, putting on a huge flamingo fly he had seen in a window in Durban. Then they pushed off into the blinding snow.

“They’ll be in midstream,” said Angus. “The best place is on the other side of the bend.”

He dropped the killick and steadied the canoe with his paddle blade while Mr. Tutt, with numb fingers and the wet flakes stinging his cheeks, made a short cast preliminary to getting out a full line. The fly had no sooner touched the water than two black shiny backs rose on either side of it and, with a tug that nearly tore the rod from his hands, the reel began to scream. Mr. Tutt braced the rod against his old belly and held on for dear life. [130]

“We can’t see to follow!” warned Angus. “Give him all you’ve got!”

Mr. Tutt lifted the rod with all his strength. Unexpectedly, the big fish broke behind them. The old man dropped his tip, swung about in what he thought the right direction and reeled in the slack as fast as he could. Again the salmon broke—this time downstream. There was no way to tell, in that white dizziness, where it was. This time, when he reeled in his line, the salmon even more unexpectedly came with it, towing straight for the canoe.

“Look out! He’ll break your rod!” yelled Angus. “He’s ducked under the bow!”

Mr. Tutt was nearly hysterical. It was exciting enough to hook a salmon in a driving snowstorm—he had never heard of its being done before—but what should one do when a fish you couldn’t see decided to rush into a clinch, overrunning your line? Where was the brute? With the line slack, Mr. Tutt reeled and reeled. The salmon must be somewhere! Suddenly the canoe swerved and tipped. The line, tangled around the bow, had brought the salmon up short, midway between bow and stern. Fortunately, the leader held, and Angus leaned over, gaffed it and heaved it in. [131]

“Twenty pounds,” he estimated. “Would weigh thirty-four in summer.”

It was a silver fish with only a suspicion of black along its dorsal, lean as a race horse, hard and clean. The fly was unharmed; Mr. Tutt cast again, and once more it was seized as soon as it reached the surface. For an hour he forgot cold, snow, wind and wet in the greatest fishing of his life. Only when he could no longer see the shore did he reel in. Black salmon? What of it! They could fight all right! All the same, a warm tent and a hot supper would seem pretty good!

They rounded the point, but no welcoming beam came from the direction of the Schoolhouse. There was no sign of a canoe anywhere. The cook should have been there an hour ago.

“The so-and-so must ha’ quit on us!” Angus spat wrathfully as they grounded.

“You mean he’s gone back?” asked Mr. Tutt incredulously.

“Just that! Wait until I meet him in Durban! I’ll knock the lights out of the hairy ape!”

Ripping a couple of boards off the shanty, they scraped clear a spot for the tent, pegged it down and unrolled their blankets. Their stove had gone back with the cook, but they tore up part of the floor, built a fire in the opening and heated some beans and bacon. [132]

The old man awoke at daylight with a sore throat and a bad cold in the head. It was still snowing. Angus had patched the windward side of the cabin with planks and they managed to eat breakfast in a fair degree of comfort.

The black salmon were as insatiable as ever, but after a couple of hours on the river, Mr. Tutt, who had developed a splitting headache, decided that he had had enough.

“How far is it to the nearest settlement?” he asked when they stopped to “bile.”

“Ste. Marie des Isles—sixty-five miles. If we move right along, we ought to make it by tomorrow night.”

“And if we turn back?”

“It will take us even longer and we might miss the Whooper at the bridge.”

“Let’s go on,” said Mr. Tutt weakly.

They camped at Burnt Hill, about forty miles above Ste. Marie des Isles, where there was a cooking shack used by summer sportsmen. Mr. Tutt ached all over, he had a sharp pain in his chest and was running a temperature. Next morning Angus bundled him in blankets, propped him against the tent and, realizing that he had a sick man on his hands, paddled so furiously that they reached the settlement in time to catch the evening train back to Durban. It was after midnight when they arrived at the George. Martha and Angus, after sending for the doctor, managed between them to get the old man to bed. [133]

“Pneumonia,” said Blake shortly, finding the patient’s temperature to be 105 degrees. “You’ll stay right here until you get well. You’ll need a good nurse too. Shall I send for a girl from the hospital or—” He looked at Martha.

“Please, doctor. Let me take care of him.”

“Well, which shall it be?” asked Blake. “No doubt I can arrange with the proprietor——”

Mr. Tutt’s head was whirling. Through his blurred vision he saw the kindly face of the old nurse. Next to Minerva Wiggin, she was the one woman that he wanted near him.

“I—want—Martha,” he whispered.

He lay there cursing himself for an old fool. Why had he attempted any such expedition at his age? Why reverse the order of nature? Salmon were intended to be caught in June, not April! Was he going to die, he wondered. Martha had turned down the night light and stolen away to her cubbyhole under the stairs. He tossed from side to side, fighting the fever, bells ringing in his ears, voices.

The sounds grew louder and more distinct. They seemed to be coming through the partition of the wall from the next room. Was he merely imagining that clink of glass, that coarse laughter, those curses? He raised himself on his elbow and listened. [134]

“It’ll be a cinch,” said a rasping familiar voice. “The old bird’s nearly cuckoo, anyway. He’ll do anything we ask.”

“I can swear he’s competent,” commented another. “But you’ll need two other witnesses.”

“What’s the matter with Doctor Kelly and Ed here?”

“They’re all right!” There was a gurgling sound, as from a bottle. “Well, boys! Here’s luck!”

Mack! Mr. Tutt relapsed upon the pillow. What devilry could he be up to now? He tried to concentrate, but without avail. Who was the old bird? Tomorrow he’d find out—do something about it! But when tomorrow came, Mr. Tutt had become delirious.

For a week Mr. Tutt hung between life and death. Then, largely owing to Martha's expert nursing, the fever broke and he passed into a profound slumber from which he did not awake for thirty-six hours. When he opened his eyes, Minerva Wiggin was bending over him.

"Minerva! How did you get here?" he asked faintly. "I thought Martha was taking care of me."

"She was, and she saved your life. But you're all right now and I've come to take her place. Drink this, like a good boy, and then turn over and go to sleep again." [135]

The next time he came to himself, Doctor Blake was sitting by the window.

"You old rascal!" he grunted. "Think twice before you go salmon fishing again in winter!"

"I'll think twice about who I take with me! That damned Mack——"

"He told everyone you sent him back!"

"He lies! By the way"—Mr. Tutt sat up—"I heard him plotting something the night I got here. He and some other men were in the next room, drinking and talking about witnesses. It may have been an illusion."

Doctor Blake shook his head.

"It was no illusion. They got into old John's house while his attendant was out and induced him to make a will leaving everything he had to Lem. The irony of it is that he passed out of that phase of his illness soon after, regretted what he'd done and sent for Martha to return. That's why she isn't here."

"But she still has the life insurance?"

"No. He reappointed it to Lem by the will, which is safely locked up in Lawyer Quinlan's deposit vault."

Mr. Tutt started to get out of bed.

"No, you don't!" Doctor Blake forced him back. "There's nothing to be done—old John is dying. The will can't be obtained for cancellation by destruction. He's too feeble to make a new one and, if he did, there'd be a serious question as to his competency—a contest anyway—and Martha has no money to litigate." [136]

"How long have I got to stay here, doctor?"

"You shan't put your foot to the floor for a couple of days at least."

"How long can old John last?"

"Perhaps a week."

"Where's the nearest law library?"

"Across the street, at Weld and Potter's."

Mr. Tutt turned to Miss Wiggin.

"Minerva," he ordered. "Go get me the Revised Statutes of New Brunswick."

Mr. Tutt proved a refractory patient. He spent the first day of his convalescence in bed, smoking innumerable stogies and perusing the volumes procured for him by Miss Wiggin; but on the second, in defiance of the doctor's orders, he insisted on getting dressed and sending for Martha.

"If you weren't so tough, you'd have been dead long ago," grinned Doctor Blake the next morning. "Imagine your talking

to that old woman for three hours when you ought to have been resting quietly in bed.”

“I’m going to return her call this afternoon.”

“Over my dead body!”

[137]

“How long is old John likely to live?”

“He’s going fast. His mind is perfectly clear, but he has no strength. He won’t last over forty-eight hours.”

“That settles it,” declared Mr. Tutt. “I must see him this afternoon.”

Muffled from head to foot, and assisted by Doctor Blake and Miss Wiggin, Mr. Tutt tottered over to John Mack’s little house. Martha opened the door for them, her sleeves rolled to her elbows. The fine white texture of her arms was in curious contrast to the cracked hands and rough nails. For the first time she seemed depressed in spite of her attempt to smile.

Martha went back to the kitchen and Doctor Blake led the way upstairs to John Mack’s bedroom. The sunlight fell full upon the emaciated form of the dying riverman and turned his waxen cheeks to alabaster. His hands lay folded upon his bosom and the white hair surrounding his sunken features upon the pillow gave him an almost saint-like appearance.

“I’ve brought a visitor to see you, John,” said Blake. “This is Mr. Tutt, an old friend of mine. He wants to talk to you about Martha.”

The thin blue lips quivered, the faded eyes lighted.

“Yes,” came in a whisper. “Martha.”

Mr. Tutt sat down by the bed.

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“Martha is a very fine woman,” he said gently. “She has served you for over thirty years. She is devoted to you.”

“Yes. Yes.”

Mr. Tutt bent closer.

“I understand you tried to reward her, but that something has happened to interfere with your plans.”

Tears gathered in the old man’s eyes.

“Has it occurred to you that one way to show your gratitude would be to give her your name—to marry her?”

The magazine in Doctor Blake’s hand dropped to the floor. Miss Wiggin gasped.

The look of surprise that fluttered over the lumberman’s face was succeeded by one of deeply realized satisfaction.

“I’d—like—to—marry—Martha.”

“Very well!” exclaimed Mr. Tutt. “The Reverend McCook is waiting across the street. Doctor Blake can act as your best man.... Minerva, ask Martha to come upstairs!”

Ten minutes later, John Mack and Martha MacDonald having been made man and wife, the little party returned to the hotel. A first-class fight was in progress outside. Angus Ogilvy was engaged in knocking the lights out of Lem Mack, as promised, and he was doing it not only to the Queen’s taste but to that of most of the male population of Durban. Strangely enough, the sheriff, who was among the gallery of spectators, made no effort to separate the combatants. A final hook to the jaw sent Mack spinning against a pile of coal, where he remained, prostrate and bleeding.

“Well, that’s something!” said Mr. Tutt, and he allowed himself to be put to bed.

[139]

John Mack died forty-eight hours later. When Lawyer Quinlan appeared at the office of the registrar to file an application for the probate of the will, he was astounded to find that a caveat had been lodged, requiring the testament to be proved “in solemn form,” together with notice that the contestants were prepared to appear on twenty-four hours’ notice. He was even more disgruntled when, having secured an appointment from the probate judge to make his proof the following morning, he discovered Mr. Tutt, together with Doctor Blake, Martha, now neatly dressed in black, and Mr. Montrose, a distinguished local K. C., gathered before the bench in the adjoining courtroom.

Lawyer Quinlan, knowing that, for once at least in his professional existence, everything had been clean and aboveboard, felt the strength of ten because his heart was pure, and for the moment was undismayed. The probate judge, a kindly looking grayhead, entered and took his seat under a wooden canopy bearing the British coat of arms. There were no other cases, and Quinlan, as solicitor for the executors, promptly offered the will of John Mack for probate.

“I see that a caveat has been filed, Mr. Quinlan,” remarked the judge, lifting a paper.... “Do you represent the contestants, Mr. Montrose?”

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“I do, Your Honor,” answered the K. C., arising.

“What does the estate consist of, Mr. Quinlan?”

“A house, here in Durban, assessed at thirty-five hundred dollars and mortgaged for three thousand, a few pieces of furniture, and a paid-up life-insurance policy for ten thousand dollars. The equity in the realty isn’t worth more than five hundred dollars and there are debts of at least four hundred.”

The judge nodded.

“So Mr. Mack’s life insurance is practically all there is?”

“Exactly, Your Honor.”

“Is there any question as to testamentary capacity, Mr. Montrose?” asked the judge.

The K. C. looked at Mr. Tutt.

“None whatever, Your Honor.”

“Or undue influence?”

“We prefer to await proof of execution.”

“What in hell—” whispered Mack.

“Keep still!” ordered Quinlan, who was getting jittery. “They ain’t got anything on us!”

[141]

“Proceed with the proof.”

The solicitor stepped forward.

“I drew the will and superintended its execution. Will Your Honor grant me leave to act as a witness?”

The judge nodded.

“I apprehend there will be no objection.”

Quinlan took up the Bible, and the registrar administered the oath.

“On the morning of April twenty-seventh,” testified the solicitor, “I attended the late John Mack at his home, where he was confined to his bed. With me were Doctor Kelly, Mr. Edward Murphy and Mr. Lemuel Mack, here. Doctor Kelly engaged the testator in conversation in order to determine his mental condition. I asked him if he wished to make a will, whether this paper now offered for probate represented his wishes, and whether he desired the gentlemen with me to act as witnesses. He signified that he did. I then handed him a pen and he subscribed his name. After reading the attestation clause aloud to him, I signed, together with Doctor Kelly and Mr. Murphy.”

“And, in your opinion, was Mr. Mack of sound mind and disposing memory?”

“Beyond any question!”

“Do you wish to cross-examine, Mr. Montrose?”

The K. C. got up.

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“If Your Honor please, I ask leave to introduce Mr. Ephraim Tutt, of New York, an eminent member of the bar of that state. He is even more familiar with the facts than I am. I move that he be accorded the privilege of interrogating the witnesses.”

“We all know Mr. Tutt,” the judge smiled. “If he’s as good a lawyer as he is a fisherman, I’ll be glad to hear him.”

He bowed; Montrose, K. C., bowed; Mr. Tutt arose rather weakly and bowed.

For an instant, his eyes sought the entrance to the courtroom. Then he said: “While Lemuel Mack is not a witness, I should like to examine him.”

“That is rather out of order, Mr. Tutt. Are you prepared to concede the technical fulfillment of the legal requirements for execution?”

“Yes, Your Honor. We make no point as to that. I also concede that in calling this witness, we shall make him our own.”

“Then let him be sworn.”

The former cook, exhibiting an unprepossessing pair of blackened eyes, stumbled forward. The judge studied his disfigured appearance with interest. He knew a thing or two himself about Lem.

“How old are you, Mr. Mack?” asked Mr. Tutt.

“Thirty.”

“You are the only child of the testator?”

[143]

“Yes.”

“What do you do for a living?”

“Most anything that comes along.”

“How many times have you been in jail?”

The witness scowled.

“What business is that of yours?”

“Answer the question!” interrupted the judge.

“Twice.”

“For stealing?”

“Once for larceny, once for assault.”

“Do you know this lady here beside me?”

“Sure.”

“Who is she?”

Mack shrugged contemptuously. “Martha MacDonald. She was our cook, did general housework.”

“She was also the only mother you had?”

“My mother died when I was born.”

“Martha brought you up, didn’t she? Taught you your lessons, pulled you out of scrapes, slaved for you, got you what jobs she could, tried to make a man of you?”

“I object!” snapped Quinlan. “He’s attacking his own witness!”

“Technically, yes,” ruled His Honor. “But I’ll allow it.”

The witness did not answer.

“For thirty years,” continued Mr. Tutt, “Martha cooked, washed, cleaned, mended, and when your father fell ill, three years ago, tended him day and night?” [144]

“She lived in the house and was paid for it.”

“You know, don’t you, that she spent all her savings to pay your debts and to procure doctors and medicines for your father?”

“She always seemed to have plenty of money.”

“You are aware that, when her savings were exhausted, she even went out and did washing by the day to earn enough to keep your father alive?”

“I don’t know anything about it.”

Mr. Tutt paused again, glanced toward the door and proceeded: “Five years ago, your father kicked you out of the house, didn’t he?”

“I got out.”

“Now, how long was it before you saw him to speak to him again?”

“Not until about three weeks ago, I guess.”

“That was when, owing to some phase of his illness, he became so crotchety that Martha, who was nursing him, could stand it no longer, engaged someone to look after him and went to work at the hotel?”

“I know she left.”

“And you took advantage of her absence to sneak back and reinstate yourself in your father’s favor?”

“I object!” shouted Quinlan.

“Oh, I’ll give Mr. Tutt some leeway,” replied His Honor. “I find this story quite engrossing. It seems to have what, I [145] believe, is sometimes referred to as ‘human interest.’”

“And during this period, which lasted less than a week, you induced him to make a will leaving everything to you?”

“I didn’t induce him! He wanted to!”

“Oh, he did? Didn’t you tell Mr. Quinlan what to put in the will?”

“My father told me first.”

“Did you know what property he owned?”

“Sure.”

“Did you know that he had appointed his ten-thousand-dollar life insurance—his only asset of value—to Martha in recognition of her thirty years’ devotion?”

“He said he was sorry he’d done it.”

“So the chief purpose of the will was to alter the appointment of the policy to yourself?”

“One of the purposes.”

“Did you not know that your father had made the original appointment to Martha, partly to reimburse her for the money she had expended for you and for him?”

“I didn’t know anything about it.”

Mr. Tutt lowered his voice: “Didn’t you think it was a dastardly thing to take advantage of his condition to jockey her out of her inheritance and to deprive her of support in her old age?”

“I object to this!” cried Quinlan. “A man has a right to dispose of his property as he sees fit. My client is his own [146] son; this woman is only——”

“His wife!” finished Mr. Tutt dramatically.

“His wife!” ejaculated judge and solicitor in chorus.

Mr. Tutt turned and beckoned to a messenger from the local post office, who had entered during the debate and was standing by the door with an envelope in his hand.

Tearing it open and removing a formal-looking document, the old lawyer said: “Justice sometimes triumphs in unexpected ways. John Mack and Martha MacDonald were married five days ago by the Reverend McCook, acting under a special license issued in accordance with the New Brunswick Marriage Act. Rather than call witnesses to the ceremony, I have taken the precaution of obtaining an official certificate thereof from the Vital Statistics Department for this province at Fredericton. It has just been delivered and I offer it in evidence. Since I was present at the wedding, I can testify that the John Mack mentioned therein is the same John Mack whose will is now being offered for probate.”

There was no sound in the courtroom. The witness and the solicitor both gaped helplessly at the judge.

“But, Your Honor,” finally protested the latter, “John Mack wasn’t competent to get married! He was practically [147] non compos!”

“Non compos?” retorted the judge. “When you claim he was competent to make a will just a few days before that? You can’t have your cake and eat it, Mr. Quinlan!”

“I shall bring an action to have the marriage declared invalid!” threatened the solicitor.

“My learned friend overlooks the fact that, under the laws of Canada and of this province, a marriage in legal form is not subject to question save at the instance of one of the parties,” commented Mr. Tutt quietly. “I move that this application for the probate of the document submitted as the last will and testament of John Mack be denied.”

“Have you any reasons to advance why I should not grant the motion?” inquired the judge of the crestfallen solicitor.

Receiving no answer, he continued:

“Under the laws of the province of New Brunswick, a will not made in contemplation of marriage is revoked by [148] the subsequent marriage of the testator. This document, while it may have been a valid will when executed, not being made in contemplation of marriage, was revoked by the testator’s subsequent marriage to Martha MacDonald. The situation regarding the assignment of his insurance policy remains as if that will had never been made. Hence, the appointment of the policy previously made in favor of Martha MacDonald, now Martha Mack, still stands. The application for probate of the document submitted as the will of John Mack will be refused, the applicant to pay the costs of the respondent, fixed at one hundred dollars. Since no valid will exists, I am prepared to consider an application by the widow for administration of the estate.... Have you the necessary inventories and affidavits, Mr. Montrose? If so, in view of the unusual facts which have come out at this trial, I shall be pleased also to entertain an application to dispense with a bond for the administratrix. If there is nothing else before me, this court stands adjourned.... Glad to have met you, Mr. Tutt!”

Once the excitement was over, the old man was beginning to feel very shaky. Doctor Blake and Mr. Montrose each took an arm as he dragged himself out of the courthouse.

“And now, old stragvager, you’ll go straight back to bed again!” ordered Blake.

“I don’t object,” he admitted, “so long as I’ve got two such good nurses to look after me.... I told you I always caught something when I went fishing, Minerva.”

“Yes, and I told you what it would be!” she returned.

“I’ll look after him,” said Martha Mack.... “Oh, Mr. Tutt, how can I ever thank you!”

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“It’s fifty-fifty, my dear,” he answered. “I owe you my life! Come to think of it, I owe you a black salmon too.”

[150]

## JUST AT THAT AGE

Just at the age 'twixt boy and youth,  
When thought is speech, and speech is truth.

—*Marmion, Introduction to Canto ii.*

“Sonny Boy” Pumpelly, heir apparent of “Duchess” Edna Pumpelly, relict of P. Pumpelly, vice-president of Cuban Crucible Steel Co., deceased, swung his mother’s big Powerplus under the sagging porte-cochere of the Phoenix Hotel and honked arrogantly. He was an overgrown pup with a puffy, dissipated face and straw-colored hair already thinning over his frontal lobe, so that he looked nearer thirty than twenty-one.

“Hey, Betty!” he called. “Get a move on!”

Miss Elizabeth Barrows Best, only daughter of Ma Best, just back from boarding school, appeared in the doorway.

“Ma doesn’t want me to go.”

“Aw, what’s biting her?”

“Says you drive too fast.”

“I c’n stop in less’n ten feet, travelin’ at ninety. You’re safe as in church.”

“I know, but—” she vacillated.

Ma stuck her head out of the office window.

“I don’t want to deprive Betty of her rightful pleasure,” she remarked. “If you promise not to go over thirty-five, I’ll let her go. That’s the speed limit.” [151]

Sonny Boy winked at Miss Best.

“Sure! Anything you say.... Hop in, Betty.... Want to come along, Ma?”

“Me! Not much! ... Remember now! I’m trustin’ Betty to your hands.”

Betty climbed into the front seat and the Powerplus crawled discreetly down the street, across the square and around the courthouse. Once out of sight, the White Hope of the Pumpellys jumped on the gas and the car shot like an arrow toward the open country.

“You’re goin’ a lot over thirty-five!” protested Betty in delicious titillation.

“Shucks! She’d stall on me if I didn’t. The old bus won’t go under sixty. Why, I c’n steer her with my little finger!”

This he proceeded to demonstrate, while the needle crept up to 79 ... 80 ... 81.

Toggery Bill Gookin, in his new Cytherea, was just turning at the crossroads when the Powerplus swept round the corner. There was a scream of brakes, a stutter of tires, a crash, as the five thousand pounds of chromium-plated steel took the little car in the midriff and tossed it over the adjacent alders, projecting Toggery through the air like a flying squirrel into Sheriff Higgins’ potato field, while the Powerplus remained stolidly, even proudly, erect in the road, unharmed save for a twisted bumper.

“Gee,” muttered Edna Pumpelly’s lamb. “And my license suspended for three months!”

Toggery lay motionless upon his stomach amid the budding rows.

“Isn’t it awful!” shivered Betty. “Do you s’pose he’s killed?”

Presently the haberdasher stirred, crept cautiously to his hands and feet, and then, spitting blood and mud, struggled to his feet.

“Hey, there!” called Sonny Boy. “Are you hurt?”

Toggery, ruefully contemplating the remains of the Cytherea, limped toward his assailant with his hands pressed to his abdomen.

“Nuthin’ left of the car!” he groaned. “An’ I got an awful pain in my vitals!”

“You’re all right if you can walk!” declared Sonny Boy cheerfully. “’Twas my fault, all right, and I’m mighty sorry. I’ll see that you’re properly compensated.”

“You bet you will!” replied Toggery. “I’m goin’ down street right now to see a lawyer.... Oh, my belly!”

Sonny Boy got out, lit a cigarette and offered one to Toggery.

“Listen, pal!” he cajoled him. “There’s no need of your goin’ to see any lawyer. I’m perfectly willin’ to concede [153] my personal responsibility and I’ll do the right thing by you, but if you try to soak my mother simply because she happens to be a rich woman, you’ll get left. I was driving her car without her permission and against her orders, so that relieves her of liability. Now, how much did you pay for your car?”

“Eleven ninety-five, and two dollars for the cigar-lighter,” replied Toggery. “Oh, my back!”

“Now don’t play—act!” warned Sonny Boy. “You got your breath knocked out of you, that’s all. I’m goin’ to give you a big break, Gookin. And I’m goin’ to tell you why. I don’t want my mother to know about this, ’cause if she did, she’d give me hell and cut off my allowance. But I’ve got plenty of money of my own—or will have—and if you won’t say anything about this, I’ll give you five thousand dollars. How’s that?”

“You ... give ... me ... five ... thousand ... dollars!” stammered the haberdasher.

“Five thousand smackers just to keep your mouth shut!”

“It’s a bargain!”

“All right. Come down to Squire Mason’s and I’ll sign you a note for five thousand bucks payable in three months. Of course, you’ll have to give me a release. Climb into the back seat.”

“Mr. Pumpelly,” fervently answered Toggery, “there’s some folks in this community who don’t think you and your [154] ma are so hot, but, by cripes, you’re a fine, honest, generous young feller!”

Abandoning the remains of the Cytherea among the potatoes, Sonny Boy turned the Powerplus in the direction of Pottsville. At the Brick Block he jumped out and hurried into Mason’s office, leaving Betty to assist Toggery up the stairs. An hour later, the deal had been concluded. Toggery had his note; Sonny Boy his release; Mason had bought what was left of the Cytherea for \$13.25, and the Powerplus had a new bumper. For the moment, everyone concerned was happy, especially Toggery, who allowed it was jest like findin’ money. By this simple, if apparently expensive expedient Edna Pumpelly was kept in ignorance of the disobedience of her darling boy and its unfortunate consequences, and so was the district attorney, who had convicted him for reckless driving less than two weeks before, but had consented to a fifty-dollar fine and a three months’ suspension of his driving license in lieu of a prison sentence.

Edna had selected Hill View, the new development near Pottsville, for a summer residence because she hadn’t [155] been able to make Newport or Southampton. All day long her cars honked insultingly up and down Main Street in

front of Cy Pennypacker's Drugstore & Art Foto Saloon, Colson's Grocery, Toggery Bill Gookin's Dry Goods Emporium, and Meachem's Notion Store, filling the air with clouds of Mohawk Valley dust and forcing the worthy burghers to leap for their lives. Gosh, how they hated her and her airs of superiority, but, gosh, how they loved her money. And equally, if not more, did they loathe the pimply, overgrown Pumpelly universally known as "Sonny Boy," who patronized them and insulted them, ogled the girls and spent more money on chocolate sundaes than Cy Pennypacker would otherwise have taken in during an entire month. They called her the "Duchess," and Sonny the "Prince of Wales." It was nuts for Edna.

And it continued to be nuts for her until, on September twenty-third, Sonny Boy's note to Toggery Bill came due and the latter failed to receive a check in the morning mail.

Not that Toggery had even then the slightest suspicion that the note wouldn't be paid. It was only after three days had gone by without his hearing so much as a word from that fine, honest, generous Sonny Boy that he began to be puzzled and worried. Finally, a week having elapsed, he wrote a letter requesting payment; and, receiving no reply, called on Squire Mason.

"Say, Squire, I ain't heard nothin' about my note."

The lawyer twisted his cigar and went on reading a paper.

"'Tain't *my* note," he answered curtly.

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"Well, I want my money!"

"Why don't you ask fer it?"

"I am askin' fer it! Hear me?"

"Better ask the man who owes it, if he does owe it."

"You're his lawyer. You drew that note."

"I ain't responsible."

Then Toggery Bill—the pain in his stomach dwarfed by his rising indignation—shook his fist at Mason and yelled:

"Then I'll put it through the bank and see how he likes that! I give him three months, so his mother wouldn't know, but now, by golly, I'll go and tell her myself!"

"Why don't ye?" suggested the Squire absently.

The Duchess of Pottsville was just about to sit down to a light *déjeuner* of *bisque de langouste* and *volaille à l'orientale* when Grafton, the butler, obsequiously said: "One of the villagers is askin' to see you, modom."

Now, Edna, owing to having been invited out to dine with a hitherto snooty neighbor, happened for once to be in a gracious mood:

"A villager? What is his name?"

"Gookin."

"Oh, the haberdasher. A rather nice man. Let him come in."

Toggery entered, holding his hat in one hand and his stomach in the other.

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"What is it?" said Edna, graciously inclining her mottled dewlap.

“I’ve come to see you about the note your son gave me.”

“A note! What for?”

“He didn’t want me to mention what for,” stammered Toggery. “Perhaps I’d better not.”

“Perhaps you better had!” flared Edna, forgetting her position in the social hierarchy. “You just tell me what my son gave you a note for or—” It sounded as if she might have added: “Get the hell out of here!”

“All right then! He give it to me for running into me and smashing up my car.”

“Sonny Boy! Ran into you!” exclaimed Edna, suddenly suspicious. “When did he run into you?”

“On the twenty-third of June.”

“Ha!” she chortled triumphantly. “He wasn’t driving his car on the twenty-third of June. I’d forbidden him to go out in any of the cars without a chauffeur.”

“That’s what he said. He didn’t want you to know, so he gave me his note to avoid having me tell you about it.”

“Oh! How much was the note?”

“Five thousand dollars.”

Edna trembled like a glass of jelly.

“Five thou—I never heard of such a thing! How much did he damage your car?”

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“Smashed it to bits. I sold what was left for thirteen dollars. Besides, I was injured internally.”

“Injured internally! They always say that!” She paused with a strange fixed look in her pale green eyes. “I see it all! You knew he’d had his license suspended and you took that chance to blackmail him!”

“I didn’t know anything about it. Why was his license suspended?”

Edna perceived that she had made a break.

“I don’t know!” she replied, swiftly covering herself. “Perhaps it hadn’t been. Anyway, five thousand dollars is ridiculous. What do you expect me to do about it?”

“Tell him to pay it.”

“I have no control over him. He’s of age.”

“If he doesn’t pay, I’ll sue him.”

“Go ahead! Sue!” sniffed Edna. “I might—if my son confirms what you say—give you a couple of hundred dollars, but five thousand! It’s a laugh!”

“It’ll be a laugh, all right,” retorted Toggery Bill, “but I’ll be doin’ the laughin’!”

Edna arose haughtily.

“Grafton,” she said, “show this person to the door!”

[159]

Mr. Ephraim Tutt and Sheriff Mose Higgins were trudging down School House Hill road, carrying their rods and creels,

after a couple of hours' fishing on Chasm Brook. The Sacred Camels of King Menelik were to meet in P. of H. Hall 769 for their monthly fodder that evening, and the two oldsters were engaged in weighty discourse appertaining thereto. Unexpectedly, from a few feet in the rear, came a blast like Gabriel's last trump: "Uh-r-r-r-h-h!"

"Jumping Jehoshaphat!" yelled Mr. Tutt, springing aside with an agility that would have done credit to an intercollegiate champion.

A huge red roadster, streamlined like the Flying Yankee, had crept up behind them in slow motion.

"Ha-ha-ha!" guffawed Sonny Boy. "Oh, my aunt! Ha-ha-ha!"

"I'll ha-ha ye, you jackanapes!" roared the sheriff.

Sonny Boy drew the car to a standstill.

"Oh, you will, will you? What for? I wasn't going over twelve miles an hour!"

"Le's see your license!" demanded Mose. Sonny Boy handed it to him.

"H'm! Got it back, ain't ye?"

"It's as good as gold. Even if I should break some fool ordinance, it wouldn't make any difference. It wouldn't be retroactive."

"Retro what?" inquired the sheriff.

"Retroactive. Once the three months is over, I've got a clean slate so far as the old offense is concerned. You can't touch me!" [160]

"Quite a lawyer, ain't ye?" sneered Mose.

"I'm taking Elementary Principles as an elective. I should say that was more than you had! Come on, Mr. Con-sta-bule! Arrest me if you want to!"

Mose glared at him.

"Beat it, fresh guy!" he snorted, and Sonny Boy, observing something extralegal in the sheriff's mien, pressed the accelerator and, with a scornful toot, purred on.

"By cripes! I'd like to wring his neck!" quoth Mose. "And his ma's too!" he added, ejecting a thin brown stream in the direction taken by the roadster.

Just in front of Cy Pennypacker's they encountered Toggery returning from Hill View.

"What's the matter, Bill? Ain't you feelin' well?"

"No so hot," replied the haberdasher. "I got a pain in my gizzard, an' I've been gypped besides."

"Gypped?"

"That Pumpelly kid! Durn his hide! Run into me three months ago, smashed up my car and hurt me something fierce. But he was so nice and friendly I let him talk me out of goin' to a lawyer ez I should ha' done. Said he couldn't afford to let his ma know he'd been disobeyin' her an' offered to pay me handsome to keep my mouth shut, so I agreed. Wisht now I hadn't."

"How much did he give you?" asked Mose curiously.

“He give me his note for five thousand dollars.”

“Five thousand dollars!”

“Sure. Way I feel now, I ought to ’ve asked him ten.”

“Did he pay ye?”

“Not yit.”

“Well, let’s hope there ain’t nothin’ phony about it,” remarked Mose.

“How could there be anything phony about it?” demanded Toggery. “Those folks has all the money in the world. That big car of his must ha’ cost nigh onto fifteen thousand.”

“Mebbe it ain’t his,” said Mose. “Suppose y’ get judgment on the note, how d’ye know he owns anything I kin levy on? They don’t carry no insurance.”

Toggery paled.

“I never thought of that! He claimed he had all kinds of money!”

Mr. Tutt put down his creel and leaned against one of the pillars of the drugstore veranda.

“Don’t worry, Toggery. I happen to know that his father left a million-dollar trust fund for his young hopeful. If you can’t levy on anything else, you can garnishee ten per cent of the income. You won’t have any trouble in that direction. But you’d better engage a good lawyer.”

“Dunno who ter git!” groaned Toggery. “They’ve got Mason under retainer, an’ there ain’t no one as slick as him [162] in these parts.”

Mr. Tutt exhaled a cloud of smoke.

“Toggery,” he said, “we’ve just had an encounter with the young man and he boasted to us that he knew more law than the sheriff. It’s just possible”—he looked at Mose—“that he does. I came up here to go fishing, but there sometimes seems to be a providence in these things. How would you like to have me take your case?”

Toggery regarded the old man suspiciously.

“I’ll do it for the fun of it. If we win, you can buy me a box of stogies.”

“How much be they?” asked Toggery.

“The brand I smoke costs \$2.85 per thousand. But I’ll waive my fee. All good Camels ought to stand together.”

When, forty-eight hours later, Mose Higgins drove over to Hill View and served papers on Edna, she nearly burst her evening dress. Probably she would have set the dogs on him if he hadn’t been the sheriff.

As for Sonny Boy, putty-faced and bulbous in an elegant Tuxedo jacket, he merely grinned and told Mose he [163] should have gone to the servants’ entrance instead of disturbing them while at dinner. The papers consisted of the summonses and complaints in two suits—an action in tort against Edna and Sonny Boy jointly, demanding damages in \$100,000, and an action against Pierpont individually on his note for \$5000, with interest at 6 per cent, together with the costs and disbursements in the action.

“Outrageous!” snorted Edna. “The cheek of him! One hundred thousand fiddlesticks! I wish now I’d had the car insured, though!”

“No need to!” airily answered her son. “These suits aren’t worth the paper they’re typed on. I know what I’m up to. I’ve coached the Squire and taught him a thing or two. We won’t have to pay a cent. You’ll see!”

That a mere hick or yokel should threaten her with the law was in Edna’s eyes nothing less than *lèse-majesté*. She would show this Toggery person where he got off. Demonstrate once and for all the power, influence and authority of the Great House of Pumpelly over the townsfolk of Pottsville.

The townsfolk of Pottsville had experienced, *seriatim*, as the lawyers say, a variety of emotions. Shrewd and cautious, the Pottsvillains observed the strict neutrality dictated by their self-interest, until they learned that Edna’s Sonny Boy had refused to pay his note save under court order and that she was aiding and abetting him. Then, with one accord—since, if she would do this to one she might do it to all—they rose in wrathful indignation. Not pay Toggery his money! Nex’ thing she’d be tryin’ to get out of payin’ her butcher’s and baker’s bills!

Suspicion of her innate spuriousness crept like a cloud of poison gas over the Pumpelly realm, and when, on the morning of the trial, Edna drove with Sonny Boy to the courthouse, no huzzas rent the autumn air. No murmur of admiration or applause greeted her entrance. A lot she cared! She’d show ’em all! Including that old shyster, Tutt! Wait till they found out what she had up her sleeve! [164]

The two actions of “Gookin versus Edna and Pierpont Pumpelly”—in tort—and “Gookin versus Pierpont Pumpelly”—action on a note—stood side by side at the top of the calendar. The benches were full. Mr. Tutt sat beside Toggery Bill at the table opposite the jury box, Squire Mason near by at another, with an expression of confident inscrutability on his brick-red face.

The sheriff rapped for order.

Judge Tompkins came in with a rustle of silk—which was, in fact, mostly cotton—bowed to the assembled multitude, sat down and took up the calendar, while Mose intoned the antique incantation bidding all who had business with the honorable Court to draw near, give their attention and be heard.

“Gookin versus Pumpelly?”

“This is an action for damages caused by the negligence of the defendant, Pierpont Pumpelly, while driving an automobile belonging to his mother, the co-defendant, Edna Pumpelly,” began Mr. Tutt. [165]

“What’s your defense?” inquired the judge of Mason.

“We have two complete defenses,” replied the Squire. “First, the motor had been taken out of the garage without the defendant, Edna Pumpelly’s, knowledge and against her express orders, which relieves her, as owner, of any liability whatsoever. Second, the plaintiff, Gookin, executed a release to the defendant, Pierpont Pumpelly. Since the plaintiff, in order to hold the owner of the car liable, must claim that the driver was acting as the owner’s agent, a release to one acts as a release to the others.”

Judge Tompkins stroked his chin.

“Apart from liability, how about the amount of damages?”

“Oh, we admit negligence on the part of the driver,” answered the Squire, with a great show of fairness. “There is no doubt but that the driver, Pierpont Pumpelly, was negligent. As to the amount of damages, that can be taken up later, if Your Honor should—which I regard as inconceivable—overrule our defense.”

“What do you say, Mr. Tutt?” inquired Tompkins. “Shall we postpone the question of damages until we have passed on the defense?” [166]

“That is agreeable to me,” replied the old man. “Of course we do not wish unnecessarily to take up the time of the Court.”

“Very well, then. Let the jury be sworn. Put in your defense, Squire.”

Mason beamed.

“Mrs. Pumpelly, please take the stand.”

Edna arose, waddled to the witness chair and was sworn.

“You are one of the defendants in this action?” asked Mason.

“I am, but I don’t see why I should be!” she replied.

“Strike out all but the ‘I am,’” ordered Tompkins. “Please confine yourself to answering the questions put to you,” he admonished her.

“Were you the owner of the motorcar in question, on the twenty-third day of June last?”

“I was!”

“Are you the mother of the codefendant, Pierpont Pumpelly?”

“I am.”

“Had you forbidden him to use the car?”

“I had. I told him not to dare to take out any of the cars for three months, unless he had Adolph—that’s our private chauffeur—drive him,” said Mrs. Pumpelly.

“Did you know or even suspect that he had disobeyed your orders?”

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“I did not.”

Mason looked at the judge.

“I think that’s all.”

Mr. Tutt got up.

“Mrs. Pumpelly, please tell the Court and jury just why you had forbidden your son to drive any of your cars.”

“Because his license had been suspended for three months and——”

“You did not wish to have it revoked and possibly have him sent to jail as well?”

“Precisely.”

“What did you say when you forbade him?”

“I just told him not to, very firmly.”

“By the way, what do you call your son when you speak to him? I mean in ordinary conversation, not calling him names.”

“I object!” snapped the Squire.

“Mr. Tutt was merely removing a possible ambiguity from his question,” smiled Tompkins. “I’ll allow it.”

Edna hesitated.

“Sonny Boy,” she said faintly.

“I beg your pardon?” said Mr. Tutt, cupping his ear.

“Sonny Boy.”

There was a snicker from the jury.

“Oh! Do you call him Sonny Boy because you are his mother or because of the sunny quality of his disposition?” [168]

“Both, I guess.”

“What had this Sonny Boy of yours done to have his license suspended?”

“A man said he ran over him.”

“A man said he ran over him! Didn’t he run over him?”

“How should I know? I wasn’t there!”

“Didn’t the man who said Sonny Boy had run over him stay in the hospital for eight months?”

“I—I believe so.”

“And didn’t you settle with him for twelve thousand dollars?”

“Object!” shouted Mason. “This is irrelevant and incompetent.”

“I think it’s proper cross-examination,” said Tompkins. “I don’t see why you should object to it. It heightens the probability that she would have forbidden—er—Sonny Boy the use of her cars.”

“Quite true!” agreed the Squire, relieved that the Court seemed to be with him on the main issue.

“What courses is your son taking at college?”

“English, mathematics, fine arts and law—the elements of law.”

“Something of a lawyer already, isn’t he?”

“He has a very fine mind.”

“His instructors think well of him?”

“They regard him as a most promising young man,” replied Edna proudly. [169]

Mr. Tutt regarded her quizzically.

“How odd!” he chuckled. “Just what I was thinking! Thank you, Mrs. Pumpelly. That will be all.”

Edna couldn’t believe she had got off so easily. Why, old Tutt hadn’t so much as scratched her! She must have made a splendid witness, in spite of the scowls Sonny Boy had cast at her. She found it even harder to believe her ears when she heard Mr. Tutt say to the Court:

“I think it has been clearly established that—er—Sonny Boy was driving the car against his mother’s orders. Irrespective of the question as to whether a release to one joint tortfeasor releases the other in this case, I consent that the action against her be dismissed.”

Edna, trailing clouds of perfume, toddled back to her seat. She'd won the first round, anyway—the only part she was afraid of. Superciliously she gazed about her at the assembled Pottsvillains.

The judge addressed Mr. Tutt:

“How about the co-defendant? I understand that the plaintiff gave him a release.”

Mason bobbed up.

“Here it is, Your Honor.”

“This was prepared in your office, Squire?” the judge asked.

“Yes, sir. It's in the customary form.”

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“It seems to release Pierpont Pumpelly from all claims of every sort on the part of the plaintiff from the beginning of the world down to the day of its execution, especially any arising out of the accident in question. It is dated on Thursday, June 23, 1936, and recites that it was given in return for a good and valid consideration.... Do you challenge its validity, Mr. Tutt?”

“I would like to ask Squire Mason one question,” answered the old man. “Is it the fact that this release was given for a good and valid consideration?”

“It certainly was!” returned the Squire. “A promise to pay money is a valid consideration, and I saw my client give the plaintiff a note for five thousand dollars in return for the release.”

“In that case, I consent that the tort action of Gookin versus Pierpont Pumpelly be dismissed,” said Mr. Tutt.

A series of dissatisfied grunts arose from the herd of Sacred Camels of King Menelik there assembled. Was Old Man Tutt going to let Mason walk away with it?

“I suppose I'll get costs?” piped the Squire.

“Certainly,” agreed Mr. Tutt, followed by further Dromedarian manifestations of disapproval.

“Now,” went on His Honor, “we come to the action on the note itself.... May I see it, Mr. Tutt?”

His Honor examined the note carefully.

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“It bears date June 23, 1936, the same as the release,” stated Tompkins, “is payable at the First National Bank of Pottsville in ninety days, and is signed ‘Pierpont Pumpelly.’ It bears the usual protest certificate of presentation and nonpayment.... What is your defense, Squire?”

“Just a general denial,” answered Mason airily.

“Do you deny execution?” persisted His Honor.

“I expect the plaintiff to prove his case,” said Mason.

“Very well.... Proceed with your proof, Mr. Tutt.”

Tompkins leaned back and looked out the window. Cut-and-dried technical proof bored him to death.

“Will Sonny Boy—I mean Mr. Pierpont Pumpelly—honor us by taking the stand?” said Mr. Tutt, with the urbanity of a Chesterfield, and as Joseph H. Choate once added, the suburbanity of a Westchesterfield.

Sonny Boy arose. He threaded his way among the townspeople and ascended the witness chair with haughty confidence.

“I do!” he caroled blithely in answer to the stereotyped formula of the oath.

Mr. Tutt blandly bowed.

“Mr. Pumpelly, did you sign and deliver this note on Thursday, June 23, 1936, to William Gookin, the plaintiff, in exchange for a release?”

“I suppose so!” chirped Sonny Boy.

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“I offer it in evidence,” said Mr. Tutt quietly.

“Received.”

“The plaintiff rests.”

Judge Tompkins looked inquiringly at Squire Mason, who, with an affectation of unconsciousness, was studying the big calendar hanging above the jury box. Then, as if seeing something for the first time, the latter got up, put on his glasses and leaned forward intently, his brows puckered.

“If Your Honor please,” he said in a tone of astonishment, “unless my eyes deceive me, the twenty-third day of last June was not a Thursday but a Tuesday.”

“Let me see that calendar!” directed Tompkins, and Mose unhooked and brought it to him.

“You’re quite right, Squire,” he agreed. “The twenty-third fell on Tuesday. Thursday was the twenty-fifth.”

“That is most surprising!” exclaimed Mason. “It’s the first I’ve heard of it!”

“What difference does it make?” asked Tompkins. “The note is long overdue in any case. Why shouldn’t I direct a verdict for the plaintiff?”

Squire Mason thoughtfully studied the spittoon, which was conveniently located at the focus of the jury’s convergency.

“It might possibly make some sort of difference,” he mused. “By the way, Mr. Pumpelly, how old are you?”

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“Twenty-one.”

“When is your birthday?”

“June twenty-fourth.”

“What day of the week was that?”

“According to that calendar, it seems to have been on Wednesday.”

“Can you positively fix the date on which you signed this note?”

“Yes, the day before my birthday. It was the same day as the accident, the same day I got the release.”

Not a breath was drawn in the entire courtroom.

“What day of the week?”

“Tuesday. I had a birthday party, with a cake, the day following—Wednesday.”

“Then you had not come of age when you signed this note?”

“No, I was a minor. The party next day was a coming-of-age party.”

Sonny Boy tried hard to conceal the gloating triumph in his tone.

Squire Mason removed his glasses.

“In that case, Your Honor, I move to dismiss this action,” said he. “It is apparent that this note was signed during my client’s minority.”

“Wal, I’ll be doggoned!... Ping!” ejaculated the foreman, missing the Squire’s ankle by the fraction of an inch. [174]

A chorus of protesting growls and rumblings arose from the Sacred Herd.

Judge Tompkins was scowling incredulously at the Squire.

“You did not know this?”

“You c’d knock me over with a feather! Never suspected it until this minute!”

His Honor turned to Sonny Boy.

“On your own statement, you must have known you were a minor when you signed and delivered this note.”

“Sure, I did,” grinned Sonny Boy.

“Did you tell Mr. Gookin that you were a minor?”

“Course not! Why should I have?”

“You let him accept it in exchange for a full release, under the mistaken impression that it was a valid note, signed when you were of legal age?”

“That was his lookout.”

“Just at the age ’twixt boy and youth,  
When thought is speech, and speech is truth,”

murmured Mr. Tutt.

Most of the spectators were on their feet by this time, and Edna began to feel slightly nervous.

Tompkins threw a contemptuous glance at Sonny Boy.

“If I ever learn of your applying for admission to the bar, I shall have something to say to the committee on qualifications.” Then to Mr. Tutt: “Can you suggest any reason why I should not direct a verdict for the defendant?” he inquired hopelessly. [175]

Mr. Tutt smiled. He alone in the room had remained calm.

“Certainly!” he replied. “Since the note is perfectly valid.”

“Valid! How can it be valid when this witness signed it on the twenty-third of June and did not attain his majority until the next day?”

“Because, Your Honor, he became of full age at one second past midnight on the twenty-third.”

“Nonsense!” sputtered Mason.

“How can that be? When his birthday is on the twenty-fourth?” inquired Tompkins, puzzled.

“It is, and always has been, the law,” replied Mr. Tutt, “that a man attains his legal majority on the day before his twenty-first birthday. While, perhaps, not a matter of common knowledge, even among lawyers, it is absolutely settled.

“In Chitty’s General Practice at Page 766, the author states:

“It is to be observed that a person becomes of age on the first instant of the last day of the twenty-first year next before the anniversary of his birth; thus, if a person were born at any hour on the first of January A.D., 1801—even a few minutes before twelve o’clock of the night of that day—he would be of full age at the first instant of the thirty-first of December, A.D., 1821, although nearly forty-eight hours before he had actually attained the full age of twenty-one, according to years, days, hours and minutes; because there is not in law in this respect any fraction of a day; and it is the same whether a thing is done upon one moment of the day or another.’ [176]

“So in Blackstone’s Commentaries at Page 497:

“Full age in male or female is twenty-one years, which age is completed on the day preceding the anniversary of a person’s birth.’

“In Bardwell versus Purrington, 107 Mass. 419, at Page 425, it is stated:

“A person who was born on the eighth day of September, 1852, would become of the full age of twenty-one years if he should live to the seventh day of that month in 1873. He would be entitled to be considered as having attained his majority at the earliest minute of that day.’

“In the third year of Queen Anne’s reign, Chief Justice Holt said, in Fitzhugh versus Dennington, 2 Lord Raymond, 1094:

“It has been adjudged, that if one be borne the first of February at eleven at night, and the last of January in the twenty-first year of his age, at one of the clock in the morning, he makes his will, of lands, and dies, it is a good will, for he was then of age.’

“This doctrine is conclusively established. To cite but a few instances: State versus Clark, 3 Harrington, Delaware, 557; Wells versus Wells, 6 Indiana, 447; Herbert versus Turboll, 1 Keble 589; Re Shurey, Savory versus Schurz, 1 Ch. 263; Howard’s case, 2 Sackeld 625; Todar versus Sansam, 1 Parliamentary Cases 468.” [177]

By now Squire Mason had completely collapsed, and Edna Pumpelly was gathering her avoirdupois into the best shape she could, convenient for flight.

“So, Your Honor,” continued Mr. Tutt, smiling genially at the delighted rows of Sacred Camels, “the little trick sought to be pulled off by this brilliant young sea lawyer avails him nothing. In fact, it but confirms the general opinion entertained about him throughout the community.... I think you may step down, Sonny Boy! You are certainly a most promising young man!”

## MR. TUTT TAKES THE COUNT

Old Sam Grigsby's fortune didn't give him half so much trouble as his twenty-year-old daughter Dorothy. He couldn't understand her. Offhand, to glimpse her elegantly sipping iced drinks at the Everglades, you might have taken her for a highly sophisticated female orchid, unless you watched her, next morning, smashing a tennis ball across the court or handling an eighty-pound tarpon.

Temperamentally, she was equally deceptive; the perfect lady on the one hand, the reckless hoyden on the other; wild enough so that, at the slightest slip, all the old gossips on the verandas would nod their false fronts and say: "Of course, we knew what she was all along! There couldn't be all that smoke without some fire!"

When the old man expostulated with her over something exceptionally crazy she'd merely slap him on the back and say:

"Don't worry, pater. Let the motherless child find out for herself. Give me a run for your money!"

And now she was hooked good and plenty, and he'd have a slick, fortune-hunting Austrian loafer on his hands for [179] life. The engagement had been the sensation of the year.

### AMERICAN HEIRESS TO MARRY AUSTRIAN NOBLEMAN DOROTHY GRIGSBY ANNOUNCES HER ENGAGEMENT TO COUNT ALBRECHT VON GRYP-STAZ

Samuel Grigsby, president of Irakol, confirmed today, at Casa Forte di Marmi, the current rumor that there was more than friendship between his beautiful daughter Dorothy and the heir to one of Austria's oldest titles. Miss Grigsby, the season's most popular debutante, is a daring horsewoman, swimmer, golf and tennis player. Count von Gyr-Staz, besides being a famous pigeon shot, is an expert at court tennis. He has a seat in several Austrian towns.

A "seat"! That was just about what shrewd old Sam thought he had. A folding camp-chair, most likely!

Dorothy accused her father of prejudice.

"Why should you be so snooty about Bertie, just because he doesn't run a garage or hold down a desk in a real-estate office? In Austria, young men of title don't do those things. Show me any other chap who is one half as good-looking or well-mannered, or with a tenth of his charm!"

"T. Baxter," answered Grigsby shortly. "You were a fool to let that boy go, simply on account of a few flies." [180]

Old man Tutt and old man Grigsby sat in the patio of the Casa Forte di Marmi on either side of a rattan table weighted down by a heavily frosted silver pitcher. The right hand of each caressed a tall tumbler decorated with sprays of mint.

"Well, Eph," grunted Grigsby. "Go ahead and spill it."

The old lawyer reverently sniffed the aromatic foliage, tilted the tumbler and allowed the iced amber to trickle down his esophagus. He murmured:

"But might I of Jove's nectar sup  
I would not change for thine!"

"Have another."

"No. Business before pleasure. Point 1: Irakol is busted—at least temporarily. Point 2: Young Baxter is a grand guy. Point 3: Your count is a washout."

Grigsby poured out a fresh glass of julep.

“About as I suspected,” he remarked. “Proceed to develop in order.”

Mr. Tutt nodded.

“Irakol: You already know about the default in P. S. & O. We’re liable on both issues. The market’s all shot to pieces and we’ve had to support it. It’s taken all the company’s resources. We need at least a quarter of a million liquid cash. Irakol’s tottering. You’ve got to shore it up—with your private fortune, if need be.”

His host shrugged.

“How? My securities are all in hock; my income’s only a quarter of what it was; I couldn’t pare down my living expenses any lower, to save my soul.” [181]

“How about your philanthropies? Think of all you give to those hospitals and things!”

Grigsby stared out under the rattling palms across the winking gray ocean to the blue line of the Gulf Stream.

“Whatever happens, I won’t cut down on my support of the Archaeological Fund.”

Mr. Tutt peaked his heavy eyebrows.

“So you’re the mysterious benefactor?”

“You knew I was chairman of the board.”

“But I didn’t know where that hundred thousand a year came from.”

“And you don’t now. Forget it!”

Mr. Tutt took a pull on his stogy.

“Now I can understand your interest in Point 2. Baxter’s certainly done a swell job in Yucatan. His finding of that ruined city—Yaxchakmal, or whatever they call it—with its Temple of Lions, has made him internationally famous. He went out merely as an assistant to Doctor Hale at a salary of twelve hundred dollars. When Hale died of typhus, Baxter took up the work. The wet season is coming on now, so they’re closing down and shipping him to Peru—that Inca dig at Piqui-Llactja—to see if he can find Atahualpa’s treasure. The trustees propose to make the appointment permanent, with a salary of eight thousand a year.”

“I know. I voted for it.” [182]

“Well, I looked him up, as you directed, and he’s clean as a hound’s tooth. Comes from Middlebury, Vermont, of old New England stock; A.B., Harvard; M.A., Oxford; Ph.D., Heidelberg; three years in Mesopotamia; two in Honduras; healthy; a fiend for work; no bad habits; agreeable personality——”

“Stop! You’re breaking my heart!” groaned Grigsby.

“Why, for heaven’s sake?”

“Because that fool girl of mine didn’t marry him when she had the chance last year!”

“Did he ask her?”

“Not that I know of,” answered his friend. “But that wouldn’t have made any difference. I happened to overhear a slight quarrel between them, from which I gathered that Baxter entertained the curiously archaic idea that a man shouldn’t marry until he could support a wife by his own efforts. Moreover, what he said about the lack of water in Yucatan, typhus, flies, mosquitoes, and having to live in tents sort of dashed her. Lot of flies down there, it seems. Dot hates ’em! Anyhow, he went off without their coming to any understanding, and then this Austrian came along——”

“Which brings us to Point 3,” said Mr. Tutt, at last refilling his tumbler. “To make it short, if not sweet, Count Albrecht von Gryr-Staz, your prospective son-in-law, owes money in every capital of Europe, has tried to marry every famous heiress between Cannes and Oshkosh, and has been engaged to three of ’em, each of whom broke the engagement. In every instance he brought an action for alienation of affections or breach of promise, and stirred up such a confounded stink that he had to be bought off before the case came to trial.” [183]

Grigsby set an empurpled jaw.

“So now it’s my turn!”

“Unless you let him marry Dorothy and get his money that way.”

“Only over my dead body.”

“Then it’ll be a finish fight, and a dirty one—assuming, of course, that she can be persuaded to give him up.”

“She will, all right, when she hears what you’ve got to tell her. I think she’s a bit fed up with him, anyhow.”

“You must be prepared for the lowest sort of tactics. He’ll use ’em... By the way, has she written him any letters?”

“I suppose so—and they’ll probably make your hair curl. She never did have any reticences.” Grigsby looked limply at the old lawyer. “We got to buy him off, Eph! How much do you suppose he’ll want?”

“Between a quarter and half a million, probably.”

“But I haven’t got it! Besides, anything I can possibly raise must be used to keep Irakol afloat.” [184]

“It’s a mess,” agreed Mr. Tutt. “I’m leaving tomorrow for Oklahoma to try to put a second mortgage on the Tulsa field. If I succeed, Irakol may pull through, but that won’t give you any cash for Von Gryr-Staz. Couldn’t you sell this place?”

“Not a chance!”

“You’ll have to get it somehow! By the way, I brought Baxter along. He talked so much about Dorothy that I asked him to fly with me to Oklahoma. It’s on his way to the Coast and I wanted to give him an excuse for seeing the girl. I hadn’t the heart to tell him of her engagement. I’ve a suspicion, now he’s got a real salary, that he’s planning to ask her to marry him.”

“He won’t marry her unless he can keep his job. Even if I’m able to raise the money for the fund, the count will still be in the way, and I’ll have nothing to buy him off with. Some mess is right. What the deuce can I do?”

“Make the best bargain you can with Von Gryr-Staz and trust to luck. Don’t rush things. Feel him out gradually. It’s too bad I must leave so soon.... Have you got five thousand dollars cash?”

“I can manage that much, I guess.”

“Well, give him the five thousand down in exchange for the letters—they’re the most important item—and agree to pay him the balance in installments, provided he’ll break his engagement to Dorothy and clear out.”

“Who’ll draw the agreement?” [185]

“I’ll draft it now and you can copy it in duplicate and fill in the amounts after you come to terms with Von Gryr-Staz. Got a sheet of paper?”

“Here’s a bridge pad.”

Mr. Tutt scribbled several sheets and tore them off.

“There,” he said, “that ought to protect you, but don’t sign anything different without first wiring me at Tulsa.”

“All right,” replied Grigsby. “I’m under your orders.... How about another drink? I need one!”

“You’ll need plenty before you finish with the count,” said Mr. Tutt grimly. “Anyhow, here’s luck!”

“As you wish, *Liebchen!*”

Albrecht Karl Otto Sigismund, Count von Gyr-Staz, rose to his feet amid the fashionable crowd along the water’s edge and stood with folded arms, gazing down upon what the gossip writers called “the most beautiful back at Palm Beach.”

Its owner did not look up; one brown shoulder merely twitched.

“Have a good time,” she said apathetically.

Von Gyr-Staz bowed stiffly from the waist.

Dorothy Grigsby watched his blue pajamas disappear around the cabana, as did several hundred discreet observers. Why had she ever agreed to marry him? Merely because she, a spoiled debutante, had momentarily fallen for his title, his expert love-making, his dark, aristocratic good looks and languid charm. Besides—and this was no small part of it—she had wanted to show the others that she could get him. [186]

Their betrothal had been the event of the season; if she broke it, there would be a terrific amount of talk.

She wasn’t so sure of Bertie, either; he might not be willing to let her go. She wished she hadn’t written him all those letters. Still, it was better to risk humiliation—perhaps downright shame—than to spend the rest of her days drifting from one fashionable watering place to another—Venice, Monte Carlo, Antibes, Deauville, Palm Beach, sandwiched between doses of Vienna, Salzburg, London and Paris. A hell of a life!

The sand beside her crunched sharply and a shadow fell across her back.

“Hello! What luck!” exclaimed a familiar voice.

This time Dorothy sat up. A freckled young man with reddish hair was grinning down at her.

“Tommy!” she cried, holding out both her hands. “Where did you come from?”

“Yucatan. We’ve closed the dig at Yaxchakmal until next November. They’re sending me on to Peru, to our new camp at Piqui-Llactja, to look for Atahualpa’s treasure.” [187]

“What are you doing here?”

“Well,” he said seriously, “I read in an etiquette book once that a man should always propose standing up. That’s what I’m doing now.”

“Tommy!”

“Yes, I am. I’m earning eight thousand bucks a year running two swell digs, and my reports are all going to be illustrated with plates in full color! Will you marry me, and so forth?”

“Are you crazy?” She stared at him, still clinging to his hands.

“Sure, a little! Incidentally, you ought to see that Temple of Lions that we uncovered at Yaxchakmal last month.”

“Almost thou persuadest me to be an archaeologist, Tommy.”

“Marry me and see the world.”

Her blue eyes clouded and she withdrew her hands.

“Do you really mean you haven’t heard?”

“Heard what?”

“Of my engagement.”

“Your engagement! To whom?”

“Bertie von Gyr-Staz.”

Baxter winced.

“I’m sorry!” he stammered. “Gee! You must think me an ass!” He looked at her pathetically. “Of course, I hadn’t! [188] You don’t hear things out there in the brush. We don’t read much except Mayan inscriptions. Well, he’s a lucky fellow. I—I wish you happiness.”

“Thanks, Tommy.”

Something in her tone made him look at her again.

“Does he by any chance wear sky-blue pajamas?” he asked.

“He does,” she answered. “Oh, Tommy! I really don’t think I’d mind flies much.”

He plopped down on the sand beside her and searched her eyes.

“Are you telling me something?”

She nodded, violently, her wind-blown yellow mop.

“Neither flies, nor mosquitoes, nor even centipedes, compared with blue pajamas! I simply loathe ’em!”

“Meaning?”

“That in spite of your disreputable clothes, your red hair and funny little nose, your horribly inconvenient profession and the fact that I seem to be temporarily engaged to someone else, I accept you, Tommy darling.”

“Sweetheart!”

He ran his fingers through the sand until he found hers and gripped them.

“But there must be a trick in it somewhere,” he added gloomily. [189]

“No, there isn’t. I’d just made up my mind that I’d made a terrible mistake, when you suddenly appeared. It must have been a premonition or something. It was almost as if I had heard a voice saying: ‘There’ll be a dark man go out of your life, and a redheaded one come in.’”

“Listen, Dot!” he said severely. “This is all fine and dandy, provided you’re not kidding me—and if you are, I’ll strangle you!—but what is the dark man going to do about it? Down in Yucatan he’d put a poisoned arrow in me.”

“Bertie wouldn’t do anything like that,” she reassured him. “I don’t believe he ever so much as slapped anybody or said anything more insulting than ‘Naughty! Naughty!’”

T. Baxter, Ph.D., jumped up and yanked her to her feet.

“I’m all mixed up! If I’m not dreaming, I’ve got a whole lot to do in eighteen hours! Let’s go and see your father.”

“I’m all of a twitter myself!” declared Dorothy. “Oh, Tommy! Isn’t it wonderful?”

They walked, hand in hand, into the patio of the Casa Forte di Marmi just as the Irakol conference was breaking up.

“Hello, Uncle Eph!” Dorothy cried, kissing the old lawyer’s weathered cheek.

“Dorothy! My dear child!”

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“How are you, Baxter?” exclaimed Grigsby. “Congratulations on Yaxchakmal. What brings you here?”

“Just dropped in on my way to Piqui-Llactja. I’m a high-salaried official now. Thought you might like to hear something about the Temple of Lions at firsthand.”

“Is that all?” Old Sam narrowed his eyes at the youngster. “Sure you’re not here to make trouble?”

“Yes, he is!” answered Dorothy for him. “And how! Listen, pater! This is the only man I’ve ever really loved. I should have snatched him last autumn, only he was a bit offish and I foolishly wanted a season at Palm Beach. When he went away without even proposing to me I was sore and—well, you know the rest of it. I made the mistake of my life. I can’t stand Bertie. If I married him we’d be on the rocks in six months. I’m going to break our engagement. Are you interested?”

Old man Grigsby winked at old man Tutt.

“Very. I can’t say I’ve ever cottoned much to Bertie, even if he has a couple of seats in Austria. I’d a damn sight rather he’d sit there than in my drawing room. And I’ve no objection to your second choice either. I’d consider it a good swap. Only——”

“Oh, you dear! Only?”

“In the first place, I can’t be sure how long we can keep on digging at Piqui-Llactja. We may have to shut down for lack of funds after a few more months, and then your future husband would be minus his job. Second, you mayn’t find getting rid of Bertie so easy.”

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“All I’ve got to do is to give him the mitt! And watch me do it!”

Mr. Tutt flipped a three-inch ash off his stogy.

“That’s just the one thing you mustn’t do,” he said emphatically.

The fact that Bertie von Gyr-Staz was an engaged man did not, for some reason, render him any less popular among the ladies. His sky-blue pajamas were inevitably the center of a cluster of skirts—or rather shorts—at the noonday cocktail parties which he so obviously enjoyed. His fascination was undisputed.

Ever since his graduation from Oxford, with a taste for clothes, an excellent imitation of an English accent, a perfumed reputation and an indebtedness colossal even for a count, he had lived on his looks and the foolish women who fell for them. His height, his lean brown face, his sleek black pomaded hair, even his narrow shoulders, were a perfect setoff for his suave gallantry, his well-bred insolence and his temperamental fits of anger when, if beaten at tennis, he would hurl his racket furiously into the net and march off the court. Funny, perhaps, to the male American, but it took and it paid, for Bertie had never spent less than fifty thousand a year. Usually he had at least three women on his string at once—in different parts of the world, of course. Actually engaged to one, he would be partially engaged to the other two. Just now there was the somewhat withered Lady Isabel Denby-Fortescue in London and the plump, satin-skinned Mrs. Marcus Mandlebaum, a wealthy widow residing in Paris.

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The Grigsby millions had attracted him and he had taken Dorothy in his stride, but he was too clever not to perceive that if he actually married her, the old man might prove a confounded nuisance. It was not inconceivable that the president of Irakol would insist on his going to work. And Dorothy herself was too much like her father. Already he had begun to lay his plans: He would finish out the season and then gradually lead her on to break her engagement. The rest would follow as a matter of course. Her letters alone ought to be worth a hundred thousand. Hence he was not wholly unprepared when, a few days later, he followed his prospective father-in-law, at the latter's request, into the smoking room after lunch. Grigsby waved him to a chair.

"Sit down!" he directed in his abrupt chairman-of-the-board manner.... "No. If you don't mind, I'll stand up.... [193]  
The fact is, Bertie, I've decided I don't want you for a son-in-law."

Von Gyr-Staz drew his eyebrows together over his high-arched, aristocratic nose.

"You astonish me, Mr. Grigsby. Does Dorothy wish to break our engagement?"

"I didn't say that. I want it broken. At the same time, I don't think she'll be heartbroken if you release her."

"What have I done to displease you?"

"I have other plans for her," answered Grigsby shortly.

Von Gyr-Staz trickled some cigarette smoke through his curved nostrils.

"What, pray, do you wish me to do?"

"Simply fade away. Later you can write to her breaking the engagement and, in due course, it can be announced that it has been canceled by mutual consent."

"You are asking a great deal, Mr. Grigsby," said Von Gyr-Staz. "If I do this, you naturally expect to do something for me in return?"

"Do you mean, how much am I willing to pay you?"

"You are a very rich man. Such a sacrifice on my part ought to be worth half a million dollars."

Grigsby grunted.

"Strikes me you rate your nuisance value pretty high." [194]

"If Dorothy breaks our engagement," said Von Gyr-Staz coolly, "she will regret it and you will pay for it!"

"Are you threatening me?"

"Call it what you please. I must live, like everyone else. I've already been offered quite a sum by one of the New York tabloids for a series of articles on How I Won Dorothy Grigsby. If she throws me down, naturally, I shall accept it."

Old man Grigsby's features hardened to granite; his fingers drummed the arm of his chair.

"Old as I am, I'd knock your block off right here and now, if it wouldn't raise the very sort of rumpus I'm trying to avoid!"

"Besides which," continued Von Gyr-Staz, unperturbed, "I should seek compensation in the courts for your interference in my marital affairs. In support of my claim, I should produce your daughter's letters. And I might do other things equally unpleasant for you both."

"You skunk! How much do you really want?"

Von Gyr-Staz studied the face of the man before him. One mustn't crowd the mourners too hard; and this mourner could be a fighter.

"Three hundred and fifty thousand dollars," he said at length.

"Too much! I haven't got it. My finances are in bad shape. My oil company is practically bankrupt. I can't raise any more cash. I've got to have time. This is my only proposition: I'll give you five thousand dollars down and sign an agreement to pay you twenty-five thousand dollars every three months until you've received two hundred and fifty-five thousand, provided you agree to end your engagement with my daughter, not to publish anything reflecting upon her character, and to return to me at once all her correspondence. I've drawn up such an agreement in duplicate. It is signed and lying on the table. I haven't mentioned the letters because, if the document ever becomes public, people would infer they must contain something scandalous, if I were willing pay a quarter of a million dollars for 'em. Here are five thousand dollars in bills. They are yours in return for your signature and the letters. Take it or leave it." [195]

"I'll take it," said Von Gyr-Staz without hesitation.

The president of Irakol motioned toward the agreements and the count picked them up and read them carefully.

"You're a pretty good lawyer, Mr. Grigsby, if I do say it," he remarked, taking a package from his pocket. After all, a quarter of a million was a quarter of a million. "The agreement, as you say over here, is okay by me. Have you a pen handy?... Thanks!" He put his name on both sheets under the old man's. "Now, if you'll hand me the five thousand dollars, I'll give you the letters," said he.

And so Count Albrecht Karl Otto Sigismund, with five thousand dollars and a written agreement in his pocket for two hundred and fifty thousand more, faded, for the time being, out of the picture; Mr. Ephraim Tutt vanished into the oil fields of Oklahoma; T. Baxter flew to Peru and started digging high in the Andes for the long-hidden treasure of Atahualpa, the last of the Incas; the Palm Beach season came to an end; the Casa Forte di Marmi was closed; the Grigsbys returned to their country place at White Plains, Westchester County, New York, and the three months' period at the end of which the count's second installment under the agreement would be payable drew rapidly toward its end. Irakol's financial situation had been improved, since Mr. Tutt had succeeded in placing a second mortgage on the Tulsa field and, by throwing every available cent into the pot, old man Grigsby had tided the company over its most crucial period, but the cupboard was bare. He had nothing either to finance the digs in Yucatan and Peru, or with which to pay Von Gyr-Staz. [196]

Then, almost miraculously, a week before the due date, he had been able to place a first mortgage upon the Casa Forte di Marmi for twenty-five thousand dollars.

Twenty-five thousand dollars? Five years before, it would have seemed no more than twenty-five cents to the old man. Yet it now meant that, if he used it to pay the count under his agreement, he would have to give up the work of exploration that was so dear to his heart and, incidentally, jeopardize Dorothy's happiness, for without a job Tommy Baxter was just enough of a crazy fool to tell her that she would have to wait. [197]

As it was, although the girl was nearly distracted at the thought of the money being diverted into Bertie's pocket, she, nevertheless, on the bare chance that a like sum would mysteriously appear from somewhere, went on with her plans to fly to Peru by Pan-American, marry Tommy in Lima and go up country to Piqui-Llactja from Trujillo, via Cajamarca.

If only Mr. Tutt would come home, he might be able to devise some way to extricate them from their difficulty, but nothing had been heard from him for weeks.

"Where can he be?" despaired Dorothy, as she and her father sat in the offices of Tutt & Tutt, trying to make up their minds what to do, a couple of days before the deadline.

"I can't imagine," answered Miss Wiggin, Mr. Tutt's chief clerk and right-hand "man." "Maybe he's gone fishing again. He's often spoken of wanting to try some river in Colorado."

"Fishing!" snorted Grigsby. "He's got no right to absent himself at a time like this!" [198]

“He’s getting pretty old,” answered Miss Wiggin defensively. “Maybe he’s forgotten all about it.”

“Then it’s the last piece of business he’ll ever get from me,” declared the oil man.

“We might send him a telegram,” suggested Miss Wiggin.

“I guess that’s about all we can do,” replied Grigsby. “Give me a sheet of paper.”

EPHRAIM TUTT ESQ  
EAGLE HOTEL  
TULSA OKLAHOMA

(IF NOT LOCATED AT THIS ADDRESS TRACE AND FORWARD BY WIRE)

HAVE RAISED TWENTY-FIVE THOUSAND PAYMENT TO VON GRYR-STAZ DUE DAY AFTER  
TOMORROW STOP WOULD LIKE TO USE MONEY FOR CONTINUANCE PERU EXCAVATIONS  
STOP WIRE INSTRUCTIONS

S GRIGSBY

Mr. Tutt’s reply did not arrive for thirty-six hours. It was dated Yampa, Colorado, and was both definite and succinct:

SAMUEL GRIGSBY  
WHITE PLAINS NEW YORK

USE MONEY FOR PIQUI-LLACTJA STOP TELL COUNT TO GO TO HELL STOP FISHING SWELL

E TUTT

“Hurrah!” cried Dorothy, throwing her arms about her father.

[199]

“Hurrah nothing!” roared Grigsby. “That old bozo gives me a pain in the neck! If we send the cash to Peru, Von Gryr-Staz will bring an action against me. We’ll have no defense. It’ll look fine to have a twenty-five-thousand-dollar judgment against the president of Irakol, won’t it? I’m going to pay him off!”

“I wouldn’t do that!” begged Miss Wiggin, when they telephoned his decision to her. “Mr. Tutt has never failed you yet. Why not follow his advice and see what happens?”

“Well,” grumbled the old man, “I will, provided he starts for home at once.”

EPHRAIM TUTT ESQ  
CAMP YAMPA  
YAMPA COLORADO

WILL DO AS YOU SO SAY PROVIDED YOU RETURN IMMEDIATELY STOP YOUR ABSENCE IS  
PREPOSTEROUS AND INEXCUSABLE STOP IF TROUBLE RESULTS YOU AND NOT THE COUNT  
CAN GO TO HELL

S GRIGSBY

To which Mr. Tutt did not deign an answer.

Then things happened, one after the other, with celerity. The due date arrived, Messrs. Steiglitz & Steiglitz, the count’s lawyers, demanded payment and were refused, and the next day Mr. Grigsby was promptly served at his home in White Plains with a summons and complaint in an action upon contract for twenty-five thousand dollars and costs, with a copy of the agreement annexed.

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Waving it in his hand, he stormed into the offices of Tutt & Tutt and thrust it into Minerva Wiggin's face.

"What'd I tell you?" he shouted. "Look at this! Now the fat's in the fire, all right! They'll take judgment, and it'll be in all the papers that Samuel Grigsby hasn't got twenty-five thousand measly dollars! Where's Tutt?"

"Still at Yampa, I suppose," she stammered.

"Yampa! He would be at a place with a name like that! Send him this wire immediately."

EPHRAIM TUTT ESQ  
CAMP YAMPA  
YAMPA COLORADO

HAVE BEEN SERVED WITH PAPERS IN TWENTY-FIVE-THOUSAND-DOLLAR ACTION BROUGHT  
BY VON GRYR-STAZ ON AGREEMENT YOU DRAFTED AT PALM BEACH STOP WHAT SHALL WE  
DO NOW STOP COME BACK AT ONCE

S GRIGSBY

To which Mr. Tutt nonchalantly replied:

S GRIGSBY  
WHITE PLAINS NEW YORK

HAVE MISS WIGGIN MOVE TO DISMISS COMPLAINT STOP YOU HAVE SPOILED MY HOLIDAY  
STOP RETURNING BY PLANE

E TUTT

"Well, that's something!" growled Grigsby. "Old Tutt got me into this mess, and I'm glad he's at least got the decency to try to get me out of it." [201]

Relying upon Mr. Tutt's timely reappearance, Miss Wiggin did as directed, and noticed a motion in Special Term, Part I, of the Supreme Court of Westchester County at White Plains for a dismissal of the complaint in Von Gyr-Staz vs. Grigsby for the following Monday. Mr. Tutt, perhaps, had something up his old sleeve, were it only a means to procure delay. But when the morning came and Dorothy drove her father to the county courthouse to watch Mr. Tutt perform his miracle—if miracle there was to be—there wasn't any Mr. Tutt. Only Miss Wiggin stood disconsolately waiting on the steps.

"Where's Tutt?" demanded his irate client.

"I don't know, Mr. Grigsby!" she answered. "I'm afraid something has happened to him! I shall have to ask for an adjournment."

A few people were already in the courtroom, conspicuous among them, and elegant as ever, in a double-breasted suit of blue flannel, mauve waistcoat, rose-colored socks and tie, Count Albrecht Karl Otto Sigismund von Gyr-Staz. But there was no sign of Mr. Tutt.

Judge Preston was a kindly looking, gray-haired man with a firm jaw and keen blue eyes, whom Grigsby recognized as having met at the golf club; and the president of Irakol began to feel rather uncomfortable, lest it might appear that he was not a man of his word. Miss Wiggin, even more upset, kept dabbing her nose with her handkerchief and turning anxiously toward the door. Grigsby had told her nothing of the case, first, because she was only a woman, and, second, because he had not wished to exhibit the family linen. If only the old rascal would turn up! [202]

"Von Gyr-Staz versus Grigsby!" called the clerk, and they all three jumped.

“Ready for the plaintiff,” briskly announced a seedy-looking, little attorney.

Miss Wiggin’s knees trembled; she felt almost ready to cry. How could her idol, Mr. Tutt, have put her in such a terrible position?

“If your honor please,” she faltered, “the defendant is not ready. Mr. Tutt, his trial counsel, is not here. I must ask for an adjournment.”

Judge Preston listened sympathetically. He knew, from his experience as a former law clerk, what it was to be caught in a jam. This was a nice-looking woman, and she was obviously laboring under a terrific strain.

“Where is he?” inquired his honor pleasantly.

“We—we don’t know!” stammered Miss Wiggin. “We had a telegram from him, saying he was on his way from Colorado. We fully expected him to be here in time. I——”

“That is no excuse!” interrupted the count’s lawyer. “Mr. Tutt should be here. I insist that we proceed.” [203]

“But I don’t know anything about the case!” answered Minerva. “I can’t possibly argue the motion!”

“There’s nothing to argue,” retorted the attorney arrogantly. “The contract is before your honor. Its breach is admitted. The Court has no choice but to order judgment for the plaintiff, with costs.”

“You seem extremely confident, Mr. Steiglitz,” remarked Judge Preston coldly. “Let me see the papers.”

“Please, your honor, don’t make me go on!” implored Minerva. “Mr. Tutt may come in at any moment. At any rate, I’m sure he’ll be here by tomorrow or next day at latest!”

But the judge had already unfolded the complaint and was perusing it with knitted brows.

“H’m!” he mused. “Well, Miss—Miss——”

“Wiggin—Minerva Wiggin.”

“Well, Miss Minerva Wiggin, if you didn’t know anything about this case, why did you move to dismiss the complaint?”

“Because Mr. Tutt telegraphed me to,” she answered faintly.

The judge leaned back in his chair, a faint smile hovering about his lips.

“Mr. Steiglitz is entirely right,” he said. “There is no reason whatever to adjourn this argument. But since you are [204] not familiar with the matter, I’ll hear his side of it first.”

Mr. Grigsby and Dorothy exchanged hopeless glances. Oh, where, oh, where, was Ephraim Tutt! “Sister Ann, Sister Ann, do you see anyone coming?”

“If the Court please,” began Steiglitz boldly, “this is an action on a written contract under which the defendant, Grigsby, agrees to pay my client, the plaintiff, Count von Gyr-Staz, a total of two hundred and fifty-five thousand dollars in seven installments—only one of which has been paid. The second installment for twenty-five thousand dollars is in default. That’s all there is to the case. The motion to dismiss should be denied.”

“Is your client in court, Mr. Steiglitz?” asked the judge curiously.

“Please stand up, Count von Gyr-Staz.”

Bertie arose with his usual air of nonchalance, while Judge Preston gave him the once-over.

“That will do,” said the latter shortly. “I already know Mr. Grigsby by sight. Is Miss Grigsby present?”

Dorothy stood up.

“I am Dorothy Grigsby,” she said. “Please, please, don’t make us go on without Mr. Tutt, your honor.”

Judge Preston regarded her benevolently.

“I shall see that justice is accomplished, Miss Grigsby, even if Mr. Tutt is absent.... How long have you been practicing law, Mr. Steiglitz?” [205]

“Twenty-three years,” replied the lawyer, who apparently was somewhat taken aback.

“Has it not occurred to you that this agreement isn’t worth the paper it’s written on?”

Steiglitz paled.

“I—I don’t understand!” he gasped.

“Did you ever hear of a contract being void as against public policy, or *contra bonos mores*?”

“Why, yes, naturally,” stammered Steiglitz. “But no such claim has been made by the defendant in his answer or elsewhere in the case.”

“It’s not necessary to plead the illegality of a contract contrary to public policy. Any court may, of its own motion, refuse the relief sought under such a contract without reference to the pleadings.”

The bench on which Von Gyr-Staz sat creaked sharply as he started to his feet.

“It is true that this contract is based upon a consideration, but that consideration must be legal,” continued Preston. “What was the consideration in return for which Mr. Grigsby undertook to pay this money to the plaintiff? It was the latter’s promise to break his existing engagement, or contract, to marry the defendant’s daughter, Dorothy. Such an agreement is null and void as contrary to public policy. It is an agreement on the part of your client to commit a wrong, Mr. Steiglitz.”

He took up a book from the row before him. [206]

“In *Attridge versus Pembroke*, 235 Appellate Division 101, my colleagues recently said: ‘The Court will not lend its aid to one who bases his cause of action upon his illegal act in breaking his contract with a third party.’ That is precisely what you are doing here, isn’t it?”

“Not at all, your honor!” protested Steiglitz excitedly. “There is a tremendous difference between the law governing engagements to marry and that applying to others. It is quite true that in the case of an ordinary business or employment contract, a person who induces one of the parties to quit or violate his agreement commits a wrong. But the rule is wholly different with regard to marriage contracts. Had Grigsby cajoled and persuaded my client to break his engagement, instead of paying him to do so, he would not have committed any wrong whatsoever, for the reason that the law wisely makes an exception in the case of matrimonial engagements and allows any friend or member of the family to induce either of the parties to break the engagement. Therefore, if it would not have been wrongful for Grigsby to persuade my client to break his engagement with words, it was equally within the law for him to offer a pecuniary inducement to accomplish that result. While the means may have been different, the intent and result were the same.”

Judge Preston looked down quizzically at the little man. [207]

“I agree with your premise, but I don’t accept your conclusion,” he said tartly. “It is perfectly true that the law gives to anyone eligible to marry, freedom of choice as to whom he will wed. And it is also true that oral or written persuasion by a third party to the effect that such choice is unwise is proper and lawful. But the law will not countenance bribery

when arguments fail, Mr. Steiglitz.”

“But, your honor,” pleaded the little lawyer, his voice rising, “it would be manifestly inequitable to allow this defendant to escape his obligations by pleading that what he induced the plaintiff to promise was illegal! He is estopped from making any such contention!”

Steiglitz’s eye sought where the count was sitting, in order that he might observe the effect of this harangue for the latter’s benefit:

“Who asked my unfortunate client to make these promises? Grigsby! Who tricked him into breaking his engagement? Grigsby! Who deliberately led him to believe that he would be paid over a quarter of a million dollars? Grigsby!”

“No, I didn’t!” interrupted Mr. Grigsby. “I supposed all along that the agreement was legal.”

“This man Tutt was Grigsby’s attorney, and acting for him,” retorted Steiglitz furiously. “He can’t hide behind Tutt’s coattails! He must shoulder the responsibility for Tutt’s chicanery! Picture the situation! This multimillionaire wants to persuade my client to give up his daughter in order that she may marry another man, whom, for some reason, he prefers. The girl doesn’t wish to break the engagement. So the rich man sends for a crafty shyster who deliberately draws up an agreement he knows to be legally valueless, that any lawyer knows to be legally valueless \_\_\_\_\_” [208]

“Did you know it to be legally valueless?” softly inquired Judge Preston. “And did you bring this action before me knowing it to be so?”

Beads of sweat bedewed Mr. Steiglitz’s forehead.

“Why, of course not, your honor! There were other and valid considerations for the defendant’s promises.”

“What were they, may I ask?”

“His promise not to publish anything reflecting upon the character of the defendant’s daughter!”

“But wouldn’t any such publication have been a crime under the laws of both New York and Florida?” countered the judge, opening the Restatement of the Law of Contracts. “It says here very plainly that: ‘Though it is not only legal but praiseworthy to refrain from committing a crime or a tort, or from wrongfully injuring the other party to the contract or a third person, it is an illegal bargain to exact pay for such negative conduct. If such a bargain were allowed, threats of various wrongs might be made a means of exacting payment.’ In other words, the law won’t encourage blackmail.”

“No! No! Wait!” exclaimed Steiglitz agonizedly. “There is much more here than meets the eye!” [209]

“You said a mouthful!” ejaculated Grigsby.

“Order!” smiled Judge Preston. “Let’s have the whole story, by all means.”

“If I may call my client to the stand,” asserted Steiglitz stubbornly, “I can prove legal consideration easily enough.”

“All right,” said his honor. “Let the plaintiff be sworn.”

“You are Count Albrecht Karl Otto Sigismund von Gryr-Staz?” inquired Steiglitz deferentially, after his client had taken the oath.

“I am,” answered Bertie.

“Did you sign the agreement attached to the complaint at the request of the defendant?”

“I did.”

“And did he give you five thousand dollars?”

“Yes.”

Steiglitz glanced triumphantly toward the bench.

“Did you, at the time, have in your possession certain letters from Miss Dorothy Grigsby, which you delivered to the defendant not only in return for the initial payment of five thousand dollars, but as a consideration for his promise to pay you further sums aggregating two hundred and fifty thousand dollars?” [210]

“One moment!” interrupted Miss Wiggin. “The agreement recites the full consideration and speaks for itself. I object to the witness varying it by parol evidence.”

Judge Preston smiled.

“Without ruling on your motion, I don’t believe the evidence offered helps your opponent, since it is already clear that the consideration was tainted with illegality. If one part of the consideration is bad, the whole contract fails; no one can say that the parties contracted for only a part of the consideration.... Have you anything further, Mr. Steiglitz?”

But Mr. Steiglitz was already hastily assembling his papers.

“No, your honor,” he mumbled.

“I press my motion!” urged Minerva triumphantly.

The judge rapped for order.

“I hold that the agreement before me, being one which required the plaintiff to do an illegal act—namely, to break his contract to marry—is void as against public policy; the law will not lend him its aid in an attempt to enforce it. The motion to dismiss the complaint is granted, with costs to the defendant.”

Haughtily, and with the dignity befitting his long line of noble ancestors, Count Albrecht Karl Otto Sigismund von Gryr-Staz descended from the witness chair and, with his face studiously averted from the Grigsbys, stalked from the courtroom. He did not know exactly what had happened, but he realized that he had been outwitted and that, in all probability, his attorney had known it all along. Never mind! Rosie Mandlebaum would be waiting for him in Paris, and Paris was a thousand times better than New York or even Palm Beach. What really hurt him most was having paid Steiglitz that thousand dollars. Dirty little crook! [211]

Judge Preston leaned across the bench and beckoned to Minerva.

“Congratulations,” he whispered. “I fancy that justice has been done.” He handed her a telegram.

HON FRANCIS X PRESTON  
SPECIAL TERM PART I  
WESTCHESTER COUNTY COURTHOUSE  
WHITE PLAINS NEW YORK

THANKS STOP SEE ATTRIDGE VERSUS PEMBROKE 235 APPELLATE DIVISION 101 STOP FISHING  
GRAND

EPH

“What was that paper the judge gave you?” asked old man Grigsby in the corridor.

[212]

Miss Minerva Wiggin smiled enigmatically.

“A confidential communication,” she answered, thrusting it in her pocket.

As they came out of the courthouse, who should they see but Mr. Tutt, smoking his inevitable stogy on the steps outside.

“You old scalawag!” exclaimed his client. “Where the dickens have you been! Why didn’t you tell me that agreement was no good?”

Mr. Tutt grinned disarmingly.

“Well, Sam,” he explained, putting his arm about the president of Irakol, “I thought of doing so in Palm Beach, but I decided that, if you knew and the count fell for it, I couldn’t trust you to keep your face straight. Besides, I wanted to be the goat, if there had to be one.”

Dorothy was already halfway across the sidewalk.

“Where are you going?” called her father.

“Just to send a cablegram. Want to see it?”

He took it from her:

THOMAS BAXTER  
PIQUI-LLACTJA PERU

KEEP ON DIGGING I’M ON MY WAY

DOT

[213]

## MR. TUTT GOES FISHING

“Want a lift, Mr. Tutt?”

The Old Man, slogging down School House Hill in his waders, drew aside to let the truck rattle up.

“You bet I do. These old shanks—!” Mr. Tutt tossed his creel on the load of furniture and climbed in beside Bruce Tapley, the young man at the wheel. “Moving day?”

“This is the last load. The old buzzard only gave me seventy-two hours.”

The lawyer glanced sideways at him from under his shaggy brows. The Tapley Farm was one of the best in the Mohawk and had been in the same family over two hundred years.

“What buzzard?”

“Squire Mason.”

The tires stuttered on the dry ruts and the truck lurched forward down the hill through the dusk.

“What’s Mason got to do with it?”

The young man grunted.

“You’re kind of behind the times, aren’t you?”

“I haven’t had any news for six months. I only got into Pottsville at five this morning and started right off to Chasm Brook fishing.”

“Then you didn’t hear about mother dying?” The driver looked straight ahead.

[214]

“Your mother!” Mr. Tutt laid his hand on the boy’s arm. “My poor boy! I’m indeed sorry, Bruce! She was a good friend of mine. What was the trouble?”

“Pneumonia. We had the funeral Monday. Next morning the Squire come around with a deed father had signed way back in 1915. It was the old man’s John Hancock all right; and, subject to his own life estate, surrendered all his title and interest to Mason. I was flabbergasted. I asked Mason how come he hadn’t told us about it before—when Dad died five years ago. He said he’d held back out of consideration for my mother, but now that she was gone there was nothin’ to prevent him takin’ what was his. He allowed three days was enough for me to move out. So here I am!”

“Jumping Jehoshaphat!” ejaculated Mr. Tutt. “How about the standing crops?”

“He claimed ’em. And all my improvements too. Said as we’d occupied the farm rent free for five years he guessed I’d no kick comin’. When I thought of everything I’d done and put in—the well and the new silo, to say nothin’ of all that cord wood I cut last winter, I got mad and let him have it.” Tapley spat over the jiggling wheel. “Yes, sir! I told him what I thought of him good and plenty! A hell of a note! A week ago I owned the best farm this side of Canajoharie. Now I haven’t anything but debts! I’d even borrowed against my crop to fix up the ell Betty and I were goin’ to live in after we were married.”

“Betty? O, yes. Ma Best’s daughter. A grand girl!”

[215]

They struck the concrete level and the truck picked up. The flame of Mr. Tutt’s match showed the grimness of his face. It was a hell of a note, as Bruce had said!

“Mason didn’t lose any time!” continued Bruce. “He moved in this very afternoon. Lucky for you he was too busy to be

'round or he'd have kicked you off the brook!"

"But I've fished Chasm Brook for thirty years!"

"Sure you have! None of us ever objected to any one fishin' there, but Mason's already got it posted all the way from the forks clear to the road."

"The scalawag!"

Mr. Tutt's sympathy for young Tapley was almost equalled by his indignation at being deprived of his favorite fishing ground.

"Where're you going to live?"

"Ma Best's putting me up at the Phoenix House for the present. I'm parkin' the furniture in her shed."

They were entering the village square.

"You may drop me here, Bruce. Tell Ma Best I'll be along in a few minutes. Have her fry some of those Chasm Brook trout for supper. It may be the last time she'll eat any!" [216]

The old man clambered down and, carrying his rod, strolled over to where "Toggery Bill" Gookin, Sheriff Mose Higgins, and various other Sacred Camels of King Menelik were chewing their cuds on the veranda of Pete Colson's grocery waiting for the mail to be sorted.

"If it ain't Eph Tutt!" exclaimed Toggery. "Up to his old tricks, I bet!"

Mr. Tutt handed around his stogy case.

"Well, boys, you can't teach an old dog new ones! I see Mason has been up to his!"

The sheriff ejected a thin amber stream over the steps.

"Ain't that the darndest thing! Queer too—lettin' Martha stay there so long!"

"I seen the deed and it's O. K.," remarked Toggery importantly. "The Squire owns the farm. Jed sold out to him five months before he married her, providing he could stay there during his own life."

"That was all the right he had under his father's will anyhow," commented Mose. "He didn't really sell Mason nothin'!"

Mr. Tutt's old ears flapped.

"Then how does the Squire come to be in possession?" he inquired, pulling up a chair.

"'Cause afterwards Jed married and had a child. You see, Mark Tapley had two sons, Jed and Alan, and he left each of 'em half his farm. Alan was already married and had a family, while Jed was a kind of odd stick and didn't care for girls. Now the old fellow was hell bent the whole of his land should go down to a Tapley, so while he left Alan his half outright, he only gave Jed a life interest in the other half unless he should marry and have a child, in which case he got it fer keeps." Toggery cocked his head at Mr. Tutt. "Get the idee?" [217]

"I think so. Jed got a life estate which under certain conditions could ripen into a fee simple."

"You don't say! Well, anyhow, that's where the Squire was cute. He'd drawn old Mark's will an' knew what was in it, and so he took a chance that Jed might marry and have a kid after all. No wuss'n the Sweepstakes!"

"There was a colored cook up to Utiky last week bought part of a ticket for half a dollar an' won seventy thousand bucks!" groaned Cy. "Th' Squire didn't take half as long a shot as that nigger!"

“Gees!” wheezed Bellows the fat deputy sheriff. “Some folks hez all the luck! What do you s’pose Mason paid Jed for his deed?”

“Nuthin’ to speak of, I bet!” answered Toggery. “It’s tough on Bruce, ain’t it!”

“An’ Betty!” added the sheriff. “They was goin’ to get married next month and start right in housekeepin’!” [218]

Mr. Tutt let the smoke curl slowly from his nostrils.

“What was Martha Tapley’s maiden name?”

“Farwell,” replied Cy. “She lived over t’other side of the river. Jed hadn’t known her long before he married her—a few months, maybe. You see, she was goin’ on an old maid—musta been forty and Jed was nigh onto fifty-five when they hooked up. Kinder took the valley by surprise!”

“Did she live alone before she was married?”

“Yes, ’cept when that old uncle of hers stayed with her. You remember Old Cap Farwell, Mose? He navigated a tramp steamer out of New York fer some tradin’ comp’ny an’ used to put up with her off and on ’tween voyages. Sometimes he was here fer months on end. If I ain’t mistaken he was with her when she married Jed.”

“That’s right!” agreed Toggery. “That was the last time he come to Pottsville. He was a queer sort of duck. I guess Jed didn’t like him much. He ain’t never been back here so fur as I know. He’d be an old feller now. Darn near eighty, I reckon!”

Long after Ma Best and everyone else had gone to bed, Old Man Tutt, lighting one stogy after another, tramped the creaking floor of his little bedroom in the Phoenix House. He had known Bruce and Betty all their lives, had seen the latter grow from an awkward freckle-faced little girl into a trim, capable young woman, had watched the boy’s career as a student in the agricultural department at Cornell and had admired the way in which, at his father’s death, he had come home and worked on the farm. Sleepless, he descended at five o’clock to the kitchen. Bruce was starting the fire and Betty setting the table for breakfast. [219]

“Goin’ fishin’?” asked the boy.

“Not today. By the way, what ever became of your great-uncle Tom, the sea-captain?”

“No idea! I don’t believe mother knew either, or that she ever got so much as a letter from him!”

“Did she keep her letters?”

“Some of ’em. What she saved are in that old cowhide trunk out in the shed.”

Mr. Tutt filled a saucepan and put it on the stove.

“Mind if I muss through that trunk? I know a small boy who collects foreign stamps.”

That afternoon the old lawyer indited a telegram to his henchman, Bonnie Doon:

BONRIGHT DOON ESQUIRE  
C/O TUTT & TUTT  
ATTORNEYS & COUNSELLORS-AT-LAW  
61 BROADWAY NEW YORK CITY

[220]

DO YOUR DAMNEDEST TO LOCATE ANCIENT MARINER BY NAME THOMAS FARWELL WHO CAPTAINED A FREIGHTER OUT OF NEW YORK TWENTY YEARS AGO STOP ACCORDING TO BEST INFORMATION HE WAS AN IRASCIBLE OLD CUSS GIVEN TO PROFANITY AND DRINK IN SHORT A MAN AFTER MY OWN HEART STOP IF HE IS IN JAIL BAIL HIM OUT STOP IF DEAD AND

“How about fishing Chasm Brook?” he asked Bruce early one morning ten days later. “The trout should be rising after this rain.”

“Chasm Brook?” Bruce knocked the ashes from his pipe. “I told you the Squire’d got it posted from end to end. He’s even got himself appointed a special game inspector and put up a notice in the post office sayin’ he’ll arrest anyone he catches there as a trespasser.”

Mr. Tutt chuckled.

“That’s why I want to fish there. I don’t want to give up fishing Chasm Brook! But we needn’t start too early—say about nine o’clock. We’ll cut across the front pasture. I want the Squire to be sure to see us.”

The Honorable Hezekiah was smoking an after-breakfast cigar on his piazza when they drove by, parked their car on the roadside and crossed the meadow to the woods. As Mr. Tutt had foreseen it was not long before he appeared, red-faced and puffing on the bank above where they were fishing.

“Here, you!” he shouted, throwing back his lapel to disclose his shield and pointing to a neighboring tree. “Can’t you read? Come along with me to Judge Enders—both of you! And don’t make no trouble either.” [221]

“You’re not going to arrest us!”

“Sure I be! Fer trespassing on private posted property—a criminal misdemeanor! Now come along quiet. This is goin’ to cost you money!”

County Judge Eben Enders interrupted the case before him long enough to allow the Squire to lodge his information.

“I’m sorry, gentlemen,” he said. “While I have no choice but to entertain Mr. Mason’s complaint, if you care to plead guilty I will impose a merely nominal fine of two dollars each and let you go.”

“Two dollars!” exploded Mason. “These men between ’em took half a dozen trout out of my brook. The statute says they’re liable \$25 for each trout, besides a \$50 fine for trespass. Two dollars, my hat! It’ll cost ’em nearer five hundred! I’ve a right to personal damages, and to collect ’em all in the same action!”

The Judge turned to Mr. Tutt.

“Have you anything to say as to all this?”

“We stand on our rights, plead not guilty, waive examination, and demand a jury trial at the earliest possible moment.”

Judge Enders scrawled something on the papers.

[222]

“Very well. I’ll set the trial for this day week and parole both defendants in their own custody.”

“Ptah!” exclaimed Mason disgustedly. “You don’t seem to realize, Judge, that these men are criminals—have deliberately broken the statute!”

Enders regarded the Squire contemptuously.

“The jury will decide as to their criminality in fishing Chasm Brook,” he replied. “Good day, Mr. Tutt. We will proceed with the case on trial.”

The news that Mason had personally arrested Mr. Tutt and Bruce Tapley and lodged a criminal complaint against them

for trespass set all Pottsville by the ears and roused the Sacred Camels of King Menelik to smouldering fury. Old stinker! Just like him to try to make money out of a few measly trout.

Local feeling ran so high, indeed, that on the morning of the trial it seemed as if most of Somerset County were attempting to gain admittance to the courthouse. Already by nine o'clock the benches were completely filled and Sheriff Moses Higgins—after careful inspection and a “Move up now everybody and give other folks a chance, can't ye!”—had officially announced that there was standing room only.

Promptly at ten Judge Enders entered, took his seat, glanced with surprise at the amazing throng and rapped for order. The box had, as usual, already been filled, most of the talesmen there seated being well-known members of the Sacred Camels of King Menelik. [223]

The Squire, confident that his case was impregnable, had appeared in person to prosecute his complaint; while at the counsel table reserved for the defense sat the little party from the Phoenix House, consisting of Mr. Tutt, Bruce Tapley, Betty and “Ma” Best.

“This is a combined criminal action and civil suit,” announced His Honor, “brought in the names of The People of the State of New York and Hezekiah Mason, as complainants, against Ephraim Tutt and Bruce Tapley, as co-defendants, for the violation of Section 365 of the Conservation Law which makes it a misdemeanor to take fish on posted private land or to trespass thereon having a rod in one's possession. The defendants have pleaded not guilty, waived preliminary examination, and demanded a trial. Is the jury satisfactory, Mr. Mason?”

“I'm satisfied,” declared the Squire confidently. “You'll obey the law, won't you, gentlemen?”

“Sure! You betcha! Okay, Squire!” came in varying tones from the Sacred Herd.

“And you, Mr. Tutt?”

“It's a jury to make the angels sing!” murmured the Old Man.

So the twelve, with “Toggerly Bill” Gookin as foreman, stood up and were sworn, while Mason, the sole witness for the State, pinned on his silver shield, seated himself complacently in the chair and took the oath. [224]

“The case couldn't be simpler,” he announced. “As a special game inspector the statute requires me to be on the lookout for violations of the Conservation Act; and natcherly that includes my own land, which is properly posted in accordance with the law. Last Saturday afternoon I caught these two fellers fishin' Chasm Brook. They'd each taken three trout. Now first on behalf of the State in both cases I claim a sixty-dollar penalty for possessing trout illegally under Section 182, Paragraph 1, and an additional fine of twenty-five dollars for each fish—that's one hundred and thirty-five dollars each.”

“Do you concede the number of fish taken, Mr. Tutt?” asked Enders.

“Yes, Your Honor, I only wish there had been more!”

Mason shot him a hostile glance. The old shyster'd laugh on the other side of his mouth before he got through with him!

“And now we come to my side of it,” he continued confidently. “Under Paragraph 5 of the same Section I claim the maximum penalty of fifty dollars for private trespass, together with costs and personal damages. Trout is worth about a dollar a pound on the market and each of these men had took over three pounds. Then there's my actual damage—from their trampin' over my land, crushin' down plants and bushes, and scarin' the fish so't'll be harder fer me to catch 'em myself, say a hundred dollars each—that makes a hundred and fifty-three dollars apiece. I'll be satisfied with that, although my time and trouble is worth considerable more! The clerk'll assess the costs. That's the case!” [225]

He nodded with assurance at the twelve Camels, who regarded him stolidly with rhythmic moving jaws.

“Does the defense wish to cross-examine?”

Mr. Tutt pushed back his chair and picked up the copy of the complaint lying in front of him.

“In addition to laying these criminal charges against us you are seeking personal damages for trespass upon your land? How long have you owned it?”

“Accordin’ to law, ever since Jed Tapley died.”

Mr. Tutt gazed sternly at the witness.

“What is your real reason in trying to make us pay fines and damages aggregating five hundred and eighty-one dollars?”

“Because it’s my right and duty.”

“Is that your only reason?”

“Yep. It is.”

“Have you ever treated anyone else like this?”

[226]

“I’ve put off trespassers plenty of times!”

“Have you ever tried to soak ’em twenty-five dollars a trout?”

“Mebbe. I don’t recall.”

“Your trout, perhaps, are exceptionally valuable?”

There was a subdued dromedarian guffaw from the back row. The Squire ignored the question. Mr. Tutt stepped towards him.

“Do you deny that your real reason,” he challenged sharply, “is that you have a bitter personal grudge against both Mr. Tapley and myself?”

Mason compressed his thin, purple lips.

“I don’t give a damn about ye. I’ve no feelin’s one way or t’other.”

“Balm to my wounded soul! But how about Bruce Tapley? You hate him, don’t you?”

“Hate him? Not for a minute I don’t!”

“Come, come, Squire! You know you hate him, always have hated him! You hated his mother too!”

“No, I didn’t! I liked her a lot!” answered the Squire with a show of indignation. “She was a fine woman.”

“Why not be frank with us!” shouted the Old Man shaking his finger under Mason’s nose. “Why not admit that you always hated the defendant Tapley’s father and mother!”

“Nonsense!” sputtered the Squire. “‘Tain’t so at all! Everyone knows I was the best of friends with both of ’em. In fact,” he grinned knowingly at the crowd of spectators, “it was me that brought ’em together.”

[227]

“Indeed! How was that?”

“I introduced ’em at Maria Fitch’s weddin’. Her folks had a big barn dance. Jed Tapley was an old crony of mine.”

“Why did you ‘bring them together,’ as you call it?”

“I thought they’d make a good match.”

“You were a match-maker as well as a lawyer?”

“I was that time, I reckon,” grimaced Mason, rather enjoying this publicity.

“Why did you think they’d make such a good match?”

“Well, Jed was single and along in years, besides havin’ money, and Martha was a poor girl likely to stay an old maid if she didn’t hurry up and find someone to marry her.”

“You told Jed he ought to have a wife to make him comfortable in his declining years, and Martha that Jed was a good catch?”

“Something like that.”

“Just why was Jed such a good catch?”

“He was a nice easy-goin’ feller with a lot of land.”

“You did everything you could to accelerate the marriage?”

“I was Jed’s best man!”

[228]

“So in arresting Tapley you were not satisfying any ‘antique grudge’?”

“Not by a darn sight!”

Mr. Tutt shrugged as if baffled.

“I’m afraid the witness has exploded any suggestion of animus, Your Honor!” he conceded good-naturedly. “I have to beg your pardon, Squire!”

Mason was distinctly pleased with himself. Mr. Tutt hadn’t contested any of the essential points of the case—in fact, seemed to be just floundering around without knowing what he was driving at! Even “Ma” Best, seemingly discouraged, had left the courtroom.

“By the way,” unexpectedly inquired the lawyer, “what other reason did you give Martha Farwell why it would be a good thing for her to marry Jed Tapley?”

“None that I recall ’specially.”

“Didn’t you explain to her about Jed having only a life interest in the Tapley Farm so that if he died without issue it would go to his brother Alan, while, on the other hand, if he should marry and have a child, his heirs would inherit?”

“I may have. That’s the way it was left to him.”

“You knew because you had settled his father’s estate?”

“I was Mark Tapley’s attorney and drew his will.”

“Didn’t you tell your friend Martha that it was too good a chance to miss and that she’d better grab it?”

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Something in the Old Man’s tone aroused the Squire’s suspicions.

“I don’t remember anything about what I told her,” he replied sullenly.

“A moment ago you seemed to remember a good deal.”

“Only that Jed had money.”

“I thought you said you told Martha Farwell that Jed had ‘a lot of land’.”

“Right!” chirped Toggery Bill. “He did say ‘land’.”

The stenographer flipped back to his notes:

“By Mr. Tutt: Why was Jed such a good catch?

“The Witness: He was a nice easy-going fellow with a lot of land.”

“Let me see if I can refresh your recollection. Did you not write to Martha Farwell on June 24, 1915, as follows:

“Dear Martha—

Now that you have met Jed Tapley and seen what a nice fellow he is you better think over what I said last night. The Tapley Farm is the richest anywheres around here. I could see Jed got a sneaker for you right off. How would you and one of your girl friends like to drive over to Safron Springs some afternoon and have me bring Jed along? I don’t blame you a mite for being cautious, and so that you can be sure I am not giving you any song and dance I am sending you a certified copy of Obediah Tapley’s will.

Yours truly, [230]  
Hezekiah.””

“Where’d you get that letter?” demanded Mason suspiciously.

“That is immaterial if you wrote it. Did you?”

“I—guess—I must have,” hesitated the Squire. “She natcherly wanted to know how things stood. So I told her the—the facts and sent her a copy of the will.”

“And you did all this just after Maria Fitch’s barn dance in June 1915?”

“I—suppose—so.”

Mr. Tutt nodded to Judge Enders.

“No more questions,” he remarked resuming his chair. A suspiration of disappointment swept the benches occupied by the Brotherhood of Abyssinian Mysteries. Gol darn it! They’d had their expectations all jacked up for nothing! No defense after all! Shucks!

“That’s my case!” affirmed the Squire, leaving the stand, his equanimity entirely restored.

“Has the defense any evidence to offer, Mr. Tutt?” inquired His Honor. “If not I——”

“I should like to call just one witness—if he has arrived?” interrupted Mr. Tutt, looking interrogatively at Betty, who nodded.

“Captain Farwell! Call Captain Thomas Farwell to the stand,” ordered Mr. Tutt.

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There was a stir in the rear of the courtroom and a general craning of heads towards the door, which opened to admit Bonnie Doon accompanied by a short, heavily built old man, almost as broad as he was tall, with shaggy white hair, large blue-veined nose and a beard that spread over his pea-jacket like a huge table napkin.

“By gum!” muttered Toggery Bill. “If it ain’t the old rooster himself. I ain’t seen him in twenty years!”

Even Mason was obviously taken back.

Captain Farwell waded to the witness chair, climbed into it and touched his forelock to Judge Enders.

“What is your name, sir?” asked Mr. Tutt.

“Thomas W. Farwell.”

“Where do you reside?”

“Sailor’s Snug Harbor, New York City.”

“How long have you lived there?”

“Goin’ on sixteen years—ever since the *Emmy D.* foundered in the Molucca Passage in ’22.”

“What is your occupation?”

“Retired sea captain. I worked for Black, Wallis & Co. forty years off and on takin’ their freighters out to Formosa, Hong Kong, Taitay, through the Mindoro Sea, and generally ’round the Spice Islands and Celebes.” He paused, looked about and casually scored a bull’s eye at the spittoon distant some eight feet from the jury box. “The *Emmy D.* sprung a leak in her for’ard plates,” continued Captain Farwell, “and went down unexpected like. Most of the crew was lost. I floated around eleven days on a chicken coop until some natives picked me up.” Ping! [232]

“And now you are taking your ease after a long and adventurous life?” inquired Mr. Tutt.

“I ain’t set foot on a quarterdeck in fifteen years.”

“You were the paternal uncle of the late Martha Farwell?”

“Her father was my younger brother.”

“You lived here in Pottsville with her at various times?”

“I did.”

“Do you remember Squire Mason?”

“That lubber there?—Sure I remember him. He was considerably younger last time I saw him. He came over fer a gam with Martha one day, lemme see—that was the spring of ’15 the year the *Emmy D.* run aground in Macassa Strait—he pulled over alongside and said he had something of importance to tell her. She was out in the potato patch—so——”

“I object to all this!” interposed Mason. “What have Captain Farwell’s recollections of a potato patch got to do with this case? What’s it got to do with Tutt and Tapley bein’ on my land?”

“I confess I don’t see its relevancy,” smiled Judge Enders.

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“I’ll try to make it as brief as possible, Your Honor. Captain Farwell—leaving the potato patch for the moment—do you recall when Jed Tapley first began to court your niece Martha?”

“I object!” interposed Mason.

“Over-ruled.”

“Kin I go on? All right? Sure I do. She’d never sighted Tapley up to the time of Maria Fitch’s barn dance. I was

anchored alongside of her after the weddin' and Mason hauled over to us and says to her 'Martha,' he says, pointin' out Jed, 'D'ye see that tall feller over there with the moustache? That's Jed Tapley an' he's got the finest farm in this part of the state. I'd like ye to meet him.'"

"This is all utterly irrelevant and immaterial," shouted Mason angrily getting to his feet.

"I don't see its bearing," Enders shrugged, "but since this is in one aspect a criminal trial I'm willing to allow the defense some latitude, subject to connection."

"I shall connect it up, Your Honor!—Go on, Captain Farwell."

"Ez I was about to say—Hezekiah Mason brought up Jed and introduced him to Martha and me. We'd never met [234] him, 'cause he lived 'crost the river, and anyhow he was a bashful kind of feller and didn't cruise 'round much; but he made out all right with us. Later on that evening after he'd gone home this lubber here pulled alongside ag'in with a plate of ice cream. 'Martha,' he says, 'you ought to set your signals fer that Jed Tapley! I drew his dad's will,' he says, 'an' there's a funny thing about it. His father left him the farm,' he says, 'but unless he marries and has a child when he dies it'll go to his brother Alan. But,' he says, 'if he should marry and have a baby, his heirs would inherit the farm and you'd be rich,' he says. Well, Mason kep' after her so, tellin' her how Jed was so much older she'd have a long time to enjoy the property, that she finally got to take it serious and married him."

"Did she have a child?"

"Sure.—Bruce—that boy there!"

"That is all, thank you, Captain Farwell!" bowed Mr. Tutt.

"I move to strike all this out!" bawled the Squire. "It's irrelevant and scandalous!"

"Over-ruled—at this time," replied Enders. "Do you wish to cross-examine?"

"How old did you say you were?" sneered Mason.

"Eighty-two last February."

"And you pretend you can remember conversations that happened over twenty years ago?"

"I kin remember all about it, Mister," the Captain roared back at him. "'Twould be funny if I didn't, I reckon, when Martha had never had a real beau an' here was my niece marryin' one of the richest men in Patterson County—or thought she was!" Ping!

"Ptah!" snorted the Squire. "Go on back to your Alms House!"

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"Don't hurry, Captain!" remarked Mr. Tutt. "Stick around a little. What you hear may interest you."

The Camels sensing that something unusual was about to happen leaned forward; so did Judge Enders; one could hear a bumble bee booming against the window behind the witness chair.

"I offer in evidence a certified copy of a deed to the Tapley Farm from Jedediah Tapley to Hezekiah Mason dated January 15, 1915, but not recorded until three weeks ago," said Mr. Tutt. "Also the letter dated June 24, 1915, and the certified copy of the will of Mark Tapley sent with it."

"How can it possibly be material to the charge of trespass against you?" inquired Enders. "I have already given you the greatest leeway!"

"As to myself it may not be," answered the Old Man. "But as to my client, Bruce Tapley, it is a complete defense—that of superior title. He owns the Tapley Farm, not Mason!"

There was not a breath drawn throughout the room. Even the bumble bee had stopped its booming. Judge Enders was clearly puzzled.

“I don’t understand your point, Mr. Tutt. It is true that the evidence tends to establish—I may even say *does* establish—that this witness was guilty of certain misrepresentations to Martha Farwell, afterwards Martha Tapley, by which he later profited. It is conceivable that, were she alive, she might have a right of action against him for fraud, but that is a personal tort and as such could not survive her: but even if the complaining witness secured his title to this land through chicanery he owns it none-the-less and can maintain an action for trespass upon it.” [236]

Mason, who was now thoroughly frightened, suddenly had, as he thought, a clever idea. Perhaps if he could drop the darn case there and then he could sidestep the uncomfortable question of how he had become possessed of the Tapley Farm. With an oily smile he turned to Enders.

“I only wanted to teach these defendants a lesson, Judge, and I guess I’ve done it. I don’t want their money. If Your Honor will give them due warning I’m willing to drop the charges against both of them.”

“Thank you, Squire,” answered Mr. Tutt. “I accept your offer so far as I am concerned and the stenographer will note your withdrawal. On behalf of my co-defendant Tapley it is politely declined. You cannot withdraw your complaint against him without the Court’s permission and he demands the right to have the issue determined here and now.”

“To what issue do you refer, Mr. Tutt?” asked Enders bewilderedly. [237]

“The ownership of the land.”

“But this isn’t a suit in ejectment or an action to determine title!” retorted Enders.

“Naturally the complainant didn’t intend it to be,” answered Mr. Tutt, “but that is where he tripped. In fact he is hoist by his own petard. At common law the preferred method of trying title was by bringing an action in trespass—precisely as Mason has done here before Your Honor. This jury, in order to decide whether or not Bruce Tapley was a trespasser as claimed, must first determine who is the true owner of the Tapley Farm. Moreover, once they have done so the issue will be *res adjudicata* and settled forever—unless the judgment be reversed by some higher court.

“Twenty years ago Mason deceived Martha Farwell into believing that, if she married Jed Tapley and bore him a child, such child would inherit this land in fee under the provisions of Mark Tapley’s will. It was in fact true that, if the required condition were fulfilled, Jed’s original life estate would ripen into absolute ownership, but it was false that her child would or could inherit it, since Tapley had already sold his interest to Mason, who would alone reap the advantage. Under such circumstances the law will not permit a cheat to keep what he has thus fraudulently procured, but will declare him to be a trustee for the party defrauded and compel him to surrender the property.”

“To a person who was not in existence when the fraud was perpetrated?” asked Enders sarcastically. “The defendant was not born when these representations were made!” [238]

“They were made to the defendant’s mother for the purpose of inducing her marriage; without them he would never have been brought into the world; had they been true he—as the sole living heir of Jedediah Tapley—would have become the owner of this particular property. Bruce Tapley has been directly injured by the fraud perpetrated by Hezekiah Mason upon his mother.”

Judge Enders smiled tolerantly.

“I’ve heard you advance a good many ingenious arguments, Mr. Tutt, but never anything quite so fantastic as this. It amounts to saying that an action for fraud may accrue to a person as yet unborn. I can see that if that were in fact the law there would be much to say for it—but it isn’t. It would be stretching the doctrines of equity until they snapped!”

Again there was a totality of silence. Mason, still in the chair, nodded vigorously. It was all hocus-pocus!

Mr. Tutt reached over and lifted up a volume of reports.

“I respectfully call Your Honor’s attention to the case of Piper versus Hoard in the New York Court of Appeals, volume 107 at page 77. It is directly on all fours with the present. There the Court held that the child of the marriage [239] could compel the author of similar false representations to make them good. I quote from the opinion: ‘Where a marriage is induced under circumstances such as exist in this case\*\*\* the maker should be held to make good the thing to the person who would have had the property, if the facts were as he represented, assuming such person to be the fruit of the marriage brought about by those very representations.’”

“What!” ejaculated Enders in amazement. “You say there is actually a case directly in point? Well, I never heard of it, and—” he glanced at the Squire—“I fancy that Mr. Mason never did, either! Let me look at it!”

Mr. Tutt handed the book to the Judge and waited: the jaws of the Sacred Camels temporarily ceased to move: the stenographer heard a muttered “I’ll be damned!” from the dais, which he wisely neglected to record.

“You’re right, Mr. Tutt,” said Judge Enders. “I had no idea that the courts had gone so far! I have renewed respect for our Seven Old Men at Albany! On the authority of Piper against Hoard I shall refuse to permit the plaintiff to withdraw his charge against the defendant Tapley and I shall admit the exhibits offered in evidence.”

“But, Judge!” desperately protested Mason. “The law can’t take my land away from me this way! It ain’t givin’ [240] me my day in court!”

“You’re having it now!” retorted Enders icily. “You asked for it by charging these defendants with trespass. And you are now under oath testifying on your own behalf.” His voice vibrated with scorn. “Do you admit that in 1915, after securing this deed from Jedediah Tapley, you represented to Martha Farwell that he was still the owner of the land?”

Mason’s lips were glued together.

“Answer!” ordered Enders smashing his gavel down upon the bench. “Unless of course you wish to claim that your reply would tend to degrade or incriminate you!”

The Squire hung his head. After all the Statute of Limitations would keep him from going to jail.

“I may have,” he faltered. “Yes—it looks as if I had.”

“And you concealed your ownership until Martha Tapley’s death three weeks ago and then recorded your deed and kicked her son off the farm!” shouted Mr. Tutt.

“Holy gosh!” exploded Cy Pennypacker, who had married the Squire’s sister and had repented ever since. “And [241] I’ve let that feller pick on me all these years!”

The Court was in an uproar. Judge Enders pounded for order.

“Step down, sir! In view of the complainant’s admission upon the stand it is unnecessary that this case should be summed up.” He faced the twelve good Camels and true. “Gentlemen of the Jury, the defendant Tapley is charged under Section 365 of the State Conversation Law with the misdemeanor of fishing upon posted land alleged to be owned by Hezekiah Mason. His defense is that, although Mason has nominal title, he does not own the land, which in the eyes of the law belongs to Tapley himself. If you find that Mason is the true owner you will return a verdict of guilty and decide to what damages he may be entitled. Whether, in that event, a fine should also be inflicted is for me to determine.” He paused, opened 107 New York at Piper versus Hoard, and continued:

“I charge you, however, if you find that Mason induced Martha Farwell to marry Jedediah Tapley in 1915 by falsely representing to her that if she did so and had a child it would inherit this farm, when in fact he himself had already bought Tapley’s entire interest in it subject to the latter’s life estate, you will return a verdict of ‘Not guilty by virtue of superior ownership.’ You may retire, gentlemen.”

“Toggerly Bill” Gookin craned his head around the box at his brother Camels.

“Want to go out, fellers?”

There were unanimous indications, audible and otherwise, to the contrary. “Hell, no!” whispered Cy Pennypacker. “We kin soak the so-and-so right from where we be! Not guilty by virtue of superior ownership.”

# TOOTLE

Mr. Ephraim Tutt had dined alone that evening at the home on West 23d Street, where he had lived for over thirty years. Ascending to his library he exchanged his Congress shoes for carpet slippers, opened a bottle of Burgundy, which he placed upon the hearth before the sea-coal fire, picked up a magazine, lit a stogy, and settled himself comfortably in his sway-backed horsehair-covered rocker in expectation of a quiet evening. The room was silent save for the occasional muffled roar of the elevated, the tick of the clock on the mantel, and the hiss and snap of the fire in the grate. The Old Man filled a glass with the creaming contents of the bottle beside him and sipped it slowly. Yes, life was good. Then he laid the magazine upon his knee and idled through it before deciding what to read.

Suddenly his own face looked up at him. Beneath was his own name—"Ephraim Tutt!" He glanced at the cover. [244] No, it was not the magazine in which the accounts of his various legal adventures habitually appeared. What could it mean? He turned back to the illustration which had so disconcerted him. "A short story by Jasper Gilchrist." He knew no Jasper Gilchrist. Below the drawing appeared—not the familiar signature of Arthur William Brown—but the name of a total stranger. Thank Heaven! "Brownie," at least, was no party to this outrage! Hurriedly he began to read, becoming more and more bewildered, as he observed that "Jasper Gilchrist" had successfully imitated the vocabulary and style of his literary creator.

"Mr. Ephraim Tutt had dined alone one evening at his home on West 23d Street, where he had lived for over thirty years. Ascending to his library after dinner he exchanged his Congress shoes for carpet slippers, opened as was his invariable custom a bottle of Burgundy which he placed upon the hearth before the sea-coal fire, picked up a magazine, lit a stogy, and settled himself comfortably in his sway-backed horsehair-covered rocker in expectation of a quiet evening. The room was silent save for the occasional muffled roar of the elevated, the tick of the clock on the mantel, and the hiss and snap of the fire in the grate. The Old Man filled a glass with the creaming garnet contents of the bottle beside him and sipped it slowly. Yes, life was good. Then he laid the magazine upon his knee and idled through it before deciding what to read.

"Suddenly a tremor passed through his ancient frame, his head sagged, the magazine slipped to the floor, the stogy fell from his lips. Ephraim Tutt was dead!"

Mr. Tutt rubbed his forehead. Of course he wasn't dead! That is to say his physical self wasn't, but how about the familiar personality known to hosts of readers who counted themselves his friends?

After all, which was the real Ephraim Tutt—the three-dimensional one who breathed, ate, talked and walked, [245] known to comparatively few, or the "Ephraim Tutt," albeit of only two dimensions, familiar to millions of readers of *The Saturday Evening Post*, who tried queer cases, rescued those unjustly accused of crime, raised odd points of law, and made monkeys out of judges? Surely the latter was the true "Mr. Tutt," the worth-while "Mr. Tutt," the "Mr. Tutt" beloved of a vast multitude to whom he was in fact a living person.

William James' famous analysis of the personality of John Smith recurred to his mind. There was, Professor James had said, "my John," "your John" and "John's John," and each one was separate, distinct and different. Just so there was "my Mr. Tutt," "your Mr. Tutt" and "Mr. Tutt's Mr. Tutt." Each of those millions of readers had a "Mr. Tutt" of his own. And all those "Mr. Tutts" were dead, slaughtered by a stroke of Jasper Gilchrist's pen—which, mightier than the sword—had committed murder wholesale. The actual physical Tutt, with its corporeal hereditaments of tall hat and ivory-headed cane, was nothing; the spiritual Tutt, created by author and artist, was everything. Was their brain child to be wantonly put to death!

"I won't be murdered!" cried out the Old Man. "I won't be cut downright in my—well, perhaps I shouldn't say [246] 'my prime,'" he shrugged, "but why not? I'm only seventy years old—and I've been seventy-odd for the last eighteen years! So far as a human being—I mean an imaginary human being—can be, I'm static. I never propose to get a day older. I could have gone on forever if this unscrupulous rascal hadn't deliberately and with malice aforethought killed me off! I'm entitled to the life, liberty and the pursuit of happiness guaranteed by the Constitution—what there is left of it! Can a mere literary pirate make me walk the plank against my will? Haven't the public any rights? Haven't my

author and my artist any?"

Mr. Tutt poured out another glass of Burgundy, tossed it off and felt a little better. "By Jumping Jehoshaphat!" he exclaimed, "if there's no law to cover a literary homicide it will be only because this is the first time it's ever been committed. Suppose some Grub Street assassin had killed off Henry Esmond, or Don Quixote, or Huckleberry Finn, or David Copperfield, or Sherlock Holmes, do you think people would have stood for it? Not much!"

Just then Mandy, Mr. Tutt's negro cook, came panting up the stairs.

"Scuse me, Mr. Tutt! But dere's a young gen'man down below says he heard you is dead. I tole him no, but he says he mus' see fo' hisself!"

"Send him up."

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Mr. Tutt arose, brushed the ashes off his waistcoat and placed the bottle on the mantel. Entered the "young gen'man"—a humorous-looking young gen'man tousled of hair, impudent of nose, cigarette adhering limply to nether lip.

"The news of your unfortunate demise has only just reached us," he grinned. "Please don't say it's 'been grossly exaggerated!"

"It isn't exaggerated at all," replied Mr. Tutt. "It's quite true that"—he pointed to the open magazine—"I've been assassinated."

"Our City Editor sent me round to see what you propose to do about it."

"If I knew I'd tell him. Naturally, if it is legally possible, I shall bring my murderer to justice. Do you suppose a character of fiction once he has been definitely wiped out can be successfully resuscitated?"

"That's beyond me!" admitted the youth. "Anyhow I'm glad to see that you're still with us!"

"But am I?" queried the Old Man. "What you see before you is only the earthly cocoon of Ephraim Tutt. My true self—my essential personality—the actual character with whom you apparently are familiar—is gone, extinguished."

The reporter nodded.

"I get you! Anyhow it was a dirty trick! I hope you'll indict the so-and-so and convict him of something or other —and may the punishment fit the crime! Good night, Mr. Tutt!"

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Mr. Tutt lit a fresh stogy, replaced the bottle upon the hearth, sat down again before the fire and poured himself another glass of Burgundy. Yes, it was the dirtiest sort of trick!

What could you do to a fellow who stole your name? Arrest him for grand larceny? Mr. Tutt leaned over and picked the New York Penal Law from the bottom shelf.

"Sec. 1294. Grand Larceny in first degree.

"A person is guilty of grand larceny in the first degree, who steals, or unlawfully appropriates, in any manner specified in this article ... property of the value of more than five hundred dollars, in any manner whatever."

One's name was one's property, wasn't it?

"Who steals my purse steals trash;  
But he that filches from me my good name  
Robs me of that which not enriches him  
And makes me poor indeed."

Certainly the name of "Ephraim Tutt" was worth more than five hundred dollars! Grand in the first! Gilchrist could get

ten years! And, of course, in addition the double-crossing rascal would be civilly liable in an action for trespass for the value of the property misappropriated.

Mr. Tutt drained another bubbling glass and smacked his withered lips. And how about libel? It surely must be libel to publish a statement that a man had died when he hadn't. It must be *libel per se*! The worst sort of libel! Both criminal and civil. Yes, sir! Gilchrist should be made to pay and sent to jail as well. [249]

Thirdly and lastly Gilchrist had of course violated the copyright law and could be mulcted in heavy damages for plagiarism.

And might there not also be an "action on the case?" When all else failed there was always good old "Action on the Case"!

Yes, by Golly! he'd swandangle the wretched Gilchrist on every side—including homi-cide—larceny, libel, trespass, plagiarism and false pretenses! He'd arrest him, indict him, prosecute him, convict him, sue him at law and at equity, attach his person, jail him, beat the pants off him, wipe up the ground with him. The law should be vindicated! Justice should triumph! The rights of the public should be preserved! He'd——

"A tremor passed through his ancient frame, the magazine slipped to the floor, his head sagged, the stogy fell from his lips. Ephraim Tutt was——!"

He was soaring effortlessly as in a vacuum above the surface of a tumultuous sea of translucent white, shot through with ruby, amethyst, topaz, gold and crimson. Without bodily sensation, and unconscious of wings, he nevertheless realized that he must be flying through space with incredible velocity and that millions of others were flying with him. A mighty host—like an army corps of airplanes—was sweeping over the cloudscape in the same direction as himself, gradually converging towards what resembled a gigantic colosseum of oyster-tinted cumuli.

As they drew nearer together he perceived to his astonishment that these flying souls all wore copies of *The Saturday Evening Post*, attached to their shoulder blades in place of wings, and that multitudes of them were replicas of himself, in black frock coat, string tie, and stovepipe hat, differing only slightly in facial expression, each volplaning along horizontally, smoking a stogy and with coattails streaming out behind. [250]

Neither was he the only member of the office force of Tutt & Tutt there present. There were likewise thousands upon thousands of Samuel Tutts, "Bonnie" Doons, Minerva Wigginses and Willie Toothakers coasting along too, each alike, yet each infinitesimally different; and he knew that each was the astral body of the character as realized by some one of the public and that in killing him Jasper Gilchrist had killed them too, for the office of Tutt & Tutt without himself at the head of it, could exist no more.

All these myriads swept like swarming bees through an aperture marked "Public Entrance" into a vast stadium ringed by overlapping edges of cirro-stratus cloud crowded with rows of other Mr. Tutts like unto himself. As he hovered over the field in search of a place to land the voice of a radio announcer crackled through an amplifier. [251]

"Here he comes, folks! Only a minute more before you'll hear the bell. My, my, but the Old Boy is looking fit! He's flapping right down now using our new gyroscope tip. Looks like he meant business! But so does Gilchrist! And while we're waiting let me say just a word about that new tip. You'll never know 'wing-comfort' until you try it. Any of our agents will be glad to give you a free demonstration of the new safety device that has revolutionized landing. Don't forget the name. 'Wingcom'—'W-I-N-G-C-O-M!' And now we're on the field again. Mr. Tutt has won the choice of weapons! He's selecting his spear—a gigantic pencil! O, boy! It looks sharp! There comes Gilchrist! He's hefting his toadstabber too! The crowd's all het up. Can you hear the cheering sections? It's the new Tutt song. Join in, folks!"

"There was an old fellow named Tutt  
Who at law surely knew what was what,  
He'd twist any case into right-about-face,  
And make the judge look like a nut!"

"Okay! That was bully! Here they are! The weather's perfect. It's exactly 2.01 Upper Celestial Time. Now [252]

they're pacing off the distance. The umpire is giving them final instructions. Don't forget it's a finish fight, folks! There's the bell! They're charging at one another! Bingo! Ugh! Ugh! That was a nasty one! He's down——"

"Fo' de Lawd sakes, Mis' Tutt! Haven't you been to bed a-tall?" gasped Miranda opening the library door, duster in hand. "Has you been asleep in dat chair ever since dat young man was here las' night? You must been mighty tired!"

Mr. Tutt stretched himself and felt his shoulder blades.

"Tired!" he groaned agonizedly. "You mean dead!"

When Mr. Tutt reached the office that morning he found the entire force already assembled like mourners at a funeral awaiting the arrival of the corpse—old Scraggs, the alcoholic scrivener puttering in his wire cage, Willie Toothaker, the freckled, gum-chewing office boy for once deflated of his animal spirits, Miss Sondheim, the golden-haired "stenog," "Bonnie" Doon, immaculate as usual but without his jauntiness, Miss Minerva Wiggins, the chief clerk, looking like a melancholy young widow, and pompous little Samuel Tutt at his desk gazing fixedly before him and muttering "Unprecedented! Utterly unprecedented!"

One and all they stared at the Old Man as if he were a ghost—as indeed, perhaps he was.

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"For Heaven's sake, cheer up! What's the matter!" he exclaimed.

"We—we—thought we'd lost you!" answered Minerva Wiggins, feeling tentatively of his coat sleeve. "Is it really you?"

"It is and it isn't. I don't know where I am just yet. I'm like Tomlinson suspended between two worlds and not belonging to either."

Tutt wriggled excitedly out of his chair.

"We've got to do something about this right away, Mr. Tutt," he said. "We can't let anybody kill you off like that! It's outrageous! It would be the end of all of us besides! You have a right to your literary life as much as to your bodily one. Who is this Jasper Gilchrist? Ever hear of him?"

"No. It's probably a nom de plume. He didn't dare to strike me down under his own name."

"Then indict the publisher!"

"What for?"

"Murder—conspiracy—anything!"

"But murder under the statute is the killing of a human being."

"That's true. But this is even worse! It must be a crime to take the fictional life of one as well known as you are! Jasper Gilchrist is to all intents and purposes a murderer and the publisher is his accessory before the fact."

"But not under the law as it stands. Still there must be some way to put these rascals behind the bars or at least make them pay through the nose. I don't look dead, do I?"

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"No—not exactly!" hesitated Tutt.

"Well, they'll find out I'm not! Now listen everybody! Perk up! Snap out of it! Willie, you go out and buy fifty copies of that—that death magazine—and hurry! Minerva, send for the latest copy of *Blackwell on Copyright*. Bonnie, get on the trail of this Gilchrist, find out who he is, and all about him. Tutt, you look up the law of libel."

"And what are you going to do yourself, Mr. Tutt?" inquired Tutt.

“I’m going up to beard that publisher in his den!”

Twenty minutes later Ephraim Tutt was ushered into the office of Mr. William Bunbury, editor of *Whiz-Bang, a Monthly*, who, receiving him complacently, shoved a box of cigars in his direction. Mr. Tutt waved them aside.

“I assume that you know what I’m here for?” he asked stiffly.

“I can guess. We did pull rather a fast one on you, but there’s nothing you can do about it. On the whole it was rather neat, wasn’t it?”

“Very,” answered the Old Man. “Very neat and very fast! Why did you do it?”

“Just for publicity. It’s something absolutely new. No one, so far as I’m aware, has ever committed a literary homicide before. Of course we had our lawyers look it all up first. The more you sue the better we’ll like it. Front-page stuff!”

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“Who is Jasper Gilchrist?”

“That’s our business. Naturally we protect our authors. He’s a nice young fellow without a cent to his name.”

“An exceedingly nice young assassin, I should say. Too nice to go to jail?”

“Jail my aunt!”

“We shall come nearer home than your aunt!” remarked Mr. Tutt. “If you and Gilchrist want to avoid going to prison for criminal libel there’s only one way to prevent it!”

“Yeah? What’s that?”

“Remove the entire issue—or such part of it as is yet unsold—from the news stands, publish a full retraction and apology in your next edition and also in such daily papers as I may select, with the explanation that the whole thing was intended as a joke, and——”

“And?”

“Pay me ten thousand dollars.”

Mr. Bunbury knocked the ash off his cigar.

“You may not be dead, but you’re crazy!” he laughed. “Your offer is politely declined.”

“Very well. The funeral will be yours, not mine. Why not be reasonable? You admit you’ve done me a wrong?”

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“Not an actionable one.”

“You know the maxim ‘Where there’s a wrong there’s a remedy?’”

“I’d put it the other way around. Why not say that, where the law doesn’t provide a remedy, there’s no wrong?”

“I prefer the customary arrangement. If you can do this to ‘Mr. Tutt,’ how can other authors be certain that you won’t kill their characters? I am not only attempting to save Mr. Tutt, but to prevent the murder of others, you cold-blooded butcher! For the last time; are you willing to do what you can to repair the injury you have done me?”

Mr. Bunbury leaned forward with a humorous expression on his fat face.

“Tut, tut!” he said. “What’s the use of getting sore over a little thing like this? Some fellow invents a character and

makes him do things in a story and we publish another story and say he kicked the bucket. Neither of 'em is true, so what's the difference?"

"You'll see what the difference is," Mr. Tutt informed him. "Probably within twenty-four hours! And it'll cost you about forty thousand dollars more than you could settle for now."

"Tootle!" answered Mr. Bunbury.

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"I'll tootle you!" said Mr. Tutt.

Back in the offices of Tutt & Tutt the staff were holding a council of war. Books were scattered everywhere—including the floor.

"It ought to be libel—criminal libel!" declared Samuel Tutt.

"Ought to be—but is it?" challenged Minerva. "According to the statutes criminal libel is a malicious writing which exposes a living person, or the memory of any person deceased, to hatred, contempt, or ridicule or which causes him to be shunned or avoided, or which has a tendency to injure him in his business. Now granted that this is a malicious writing——"

"Most interesting!" exclaimed the junior partner. "Do you really mean to tell me that I could be arrested for animadverting upon the character of Julius Cæsar or Napoleon Bonaparte?"

"I don't see why not!" she asserted. "If it exposed their memories to hatred, contempt or ridicule."

"Of course it wouldn't tend to injure them in their business—because they haven't any," mused Tutt, "but it certainly has a very important bearing on——"

"The trouble with libel," interrupted Minerva, "is that it must injure a living person or the memory of a person who once was alive. Now Mr. Tutt is only an imaginary person—a fictional character—and as such he has no rights under the law against libel, which like all criminal statutes, has to be strictly construed."

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"I'm not so sure!" meditated Tutt. "Mr. Tutt is a good deal more alive today than Julius Cæsar. If the memory of a dead man can be the subject of libel, so ought an imaginary one."

"Anyhow, it isn't a libel to say that a person is dead when he isn't," she added conclusively.

"Why not? If the public is led to believe that Mr. Tutt is dead—it might be argued that people won't want to read about him any more—would injure him in his business, so to speak."

"That's true!" she agreed. "I never heard of the point being raised before, but I should clearly be of the opinion that if a newspaper published a statement that a man engaged in an active personal business or profession had died it would be libellous—as tending to injure him in his business. Take a portrait painter, for instance—or a sculptor."

"Yes—or a surgeon or oculist or dentist."

"Or an actor—or a masseur."

"Right!" declared Tutt. "Only don't forget he must be a living person—and Mr. Tutt isn't."

"To say he was dead might injure the author's business!" argued Minerva.

Tutt scratched his nose.

"That's pretty far-fetched. The person injured must, of course, be the one written about and referred to in the libel—not someone else!"

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Minerva nodded disappointedly.

“And a living one as well! I guess libel is out! And we’re all in the same boat with Mr. Tutt. We can’t be libelled because we don’t really exist and never have existed. But there must be some way to prevent ourselves, just as much as our author and our illustrator, from being wantonly injured or exterminated.”

“Not under the criminal statutes!”

“How about Section 1425?” suggested Tutt. “‘Malicious injury to and destruction of property.’ Aren’t we all the property of our author and illustrator? And, if this miserable Gilchrist kills one of us, isn’t their property being maliciously injured or destroyed?”

“We’re not the kind of property protected under the statute. It’s very clearly defined.”

“Well, what kinds of property are protected against malicious destruction?”

“Fruit trees, fish, ice on a pond, birds’ eggs, squirrels or rabbits which live in a cemetery, oysters——”

“Oysters!” exploded Tutt. “Do you mean to say that I’m not as important to the public as an oyster?”

“Not according to the penal statutes,” she countered. “I’m afraid Mr. Tutt must look to the civil rather than the criminal law for a remedy.”

“How about copyright? We’re all properly copyrighted, aren’t we?”

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“O, yes. Six different ways. But I’m not at all sure a mere character can be copyrighted. A title can’t be. And if you can’t copyright a title—such as, for instance, ‘Tutt & Mr. Tutt,’ how can you copyright a single name, which is only a part of it?”

“Do you mean to tell me that an author can’t copyright the title to his story or book?”

“No he can’t—nor the idea back of it, either.”

“What the devil can he copyright then?”

“The exact words he has written or printed describing his characters or what they do, or perhaps the sequence in which they do it—it’s very complicated. He can only copyright his form of expression and general development of his narrative.”

“Well, I’ll be jiggered!” remarked Tutt ruefully. “Not much hope then!”

“Not for an action under the copyright law. But there must be some form of remedy——”

Just at that moment Mr. Tutt entered the office.

“Well!” he called out, “have you found a way to avenge my literary murder? ‘Murder most foul as in the best it is, but this most foul, strange and unnatural!’”

“Not yet,” answered Tutt, the lesser. “This is a most peculiar point—an extremely novel point—a point in fact that I fancy has never come up before in the entire history of literary jurisprudence.”

“Don’t forget that ‘where’s there’s a wrong there’s a remedy,’” Mr. Tutt reminded him.

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“Yes,” retorted Tutt, “but listen! You have to be a living person to be murdered, and you also have to be alive, or at least a person who once was alive, to be libelled; a name, however valuable, cannot be the subject of larceny or malicious destruction of property under the statutes; neither can a mere title, character or idea be copyrighted—so where do we get off!”

“We go into equity!” asserted Mr. Tutt. “This may, as you say, be the first time a character created by one author has been murdered by another; it may be unique, but if equity won’t cover it—I’ll eat my stovepipe hat!”

Since their lives literally depended upon it all the Tuttlings except Scraggs and Willie Toothaker took part in drafting the complaint:

“Ephraim Tutt, Curtis Publishing Company (publishers of *The Saturday Evening Post*), Arthur Train, and Arthur William Brown

VERSUS

William Bunbury, Jasper Gilchrist, and The Omega Publishing Company (publishers of *Whiz-Bang, a Monthly*).”

In substance it recited that for many years the plaintiffs had published a weekly periodical in which the character [262] known as “Ephraim Tutt” had been featured, serially and otherwise, and become known to many millions of readers, as a result whereof the said plaintiffs had acquired valuable property rights therein; that the defendants knowingly, wilfully and maliciously and with the intent to deceive the public and to induce the latter to believe that they were reading a piece of fiction written, illustrated and published by the plaintiffs, had printed a story featuring the said character of “Ephraim Tutt” in a magazine published by them called *Whiz-Bang, a Monthly*, wherein it was alleged that the said “Ephraim Tutt” had died; this to the great damage of all said plaintiffs and to the great impairment of their rights in said character and their ability to use the same in further fiction in *The Saturday Evening Post*; wherefore they demanded that the court issue a permanent injunction against the defendants enjoining them forever from printing, publishing or selling any article, story, or other literary composition in which said character of “Ephraim Tutt” should appear, as well as a mandatory injunction requiring said defendants immediately to do all in their power to buy up, withdraw from circulation and destroy all copies of the October, 1936, issue of the said magazine *Whiz-Bang, a Monthly*; and further order the said defendants to pay to the plaintiffs the sum of one million dollars in damages, together with the costs and disbursements of the action.

Thereupon, this complaint and a summons having been duly served upon the defendants, the latter moved to [263] dismiss the same in Part 3 of the Supreme Court of the State of New York in the County of New York and their motion was denied.

Mr. Justice Erskine, entering Part 5 at a somewhat later date, was interested to observe upon the front bench of the courtroom a row of familiar faces—those of the entire office force of Tutt & Tutt, including the venerable figure of his old friend Ephraim himself. Inside the rail sat Mr. Aaron J. Levitzky, of Levitzky, Levitzky & Levitzky, the attorneys for *Whiz-Bang, a Monthly*, William Bunbury and Jasper Gilchrist.

“Well, what is this?” inquired the Justice good-naturedly, taking up the papers.

Miss Wiggin arose.

“If Your Honor please this is an action in equity to enjoin the defendants from using the name of ‘Ephraim Tutt’ in their magazine, to compel them to destroy all available copies of the October issue, and to pay both actual and exemplary damages to the plaintiffs for alleging publicly in print that ‘Ephraim Tutt is dead.’”

Judge Erskine lifted his head in surprise.

“‘Dead’? Did you say—‘dead’!”

“Precisely. They printed a story in a magazine with 450,000 circulation, stating that he had died!” [264]

His Honor looked at Mr. Levitzky.

“Is this true?”

“Certainly, Your Honor. We do not seek to contradict the facts alleged in the complaint.”

“What is your defense?”

“That we do not need any defense. It is not actionable to print a statement—particularly in the form of fiction—that a purely fictitious character is dead. It cannot hurt the character. It can’t hurt the author and his publisher. The defendants did not appropriate any title used by the plaintiffs. The purchasers of the magazines were not deceived. The issue merely boils down to this: is it an actionable wrong for one author to kill off a character created by another author? There is no such thing as literary homicide. There is nothing to prevent the creator of ‘Mr. Tutt’ writing stories about him till Doomsday. Some other person has merely said he is dead, that’s all. Why it’s not even libel to say that a person, who is actually alive, is dead. Your Honor remembers the case of ‘Cohen versus *The New York Times*,’ in which that newspaper unfortunately stated that a certain Miss Cohen had departed this life. She instituted an action alleging that the death notice in question had brought her into contempt and ridicule. She was thrown out of court!”

“I remember ‘Cohen versus *The Times*’ very well, Mr. Levitzky,” replied Judge Erskine. “The present action is [265] not one of libel, but even if it were I’m not at all sure that I should regard that case as an authority. There was no allegation of malice in the Cohen case. *The Times* made an innocent mistake—one which must happen frequently. I’ve often had people come up to me on the street and say: ‘I’m so glad to see you!—I thought you were dead!’ On the other hand, however, if *The Times* had deliberately sought to injure a man by printing his obituary I should certainly go a long way to sustain an action against it.

“Now in the present instance the complaint alleges that your clients deliberately and maliciously published a story in which a character, created by the plaintiffs and in which they had valuable property rights, was declared to be no longer alive. In fact, from my point of view at least, they attempted to put an end to his literary career. Passing that for a moment, didn’t your clients deliberately make use of a character, both by name and lineal reproduction, which has become associated in the public mind solely and exclusively with the plaintiffs’ authorship?”

“We do not deny that, Your Honor,” blithely returned Mr. Levitzky. “But we made no pretense whereby we could have deceived the public into thinking that our story was written by the original creator of the character. It appeared under the name of Jasper Gilchrist. It is true that we said Ephraim Tutt was dead. But in doing so we committed no actionable wrong. That’s the point in a nutshell.”

Judge Erskine turned to Miss Wiggin.

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“Have you found any authorities that shed light upon this most extraordinary situation?”

“No, Your Honor, only the usual ones dealing with unfair competition.”

His Honor pursed his lips.

“Come up here, Mr. Tutt, and be sworn.”

When the Old Man was seated in the witness chair, Erskine remarked:

“Have you anything to say bearing on the question of damages?”

“I think so,” nodded Mr. Tutt. “The defendant Bunbury frankly acknowledged to me that the whole thing was an advertising stunt. In fact he seemed rather proud of it. He said that no one had ever committed literary homicide before, that his lawyers had looked it up and it was not either a crime or an actionable wrong; that it was front-page stuff, and the more I sued the better they’d like it.”

“O, he did, did he!” sniffed His Honor.

“And he said further that, even if I wasn’t dead, I was crazy and that the whole thing was—‘tootle’!”

“*Tootle?*”

“Tootle.”

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Mr. Justice Erskine swung his chair towards Levitzky, Levitzky & Levitzky.

“I am not advised as to the legal definition of ‘tootle,’ but whatever it may be there is to my mind a great deal more than mere tootle to this case. I admit that in certain respects it is in all probability *sui generis*. Hence it is only natural that there should be no authorities precisely in point. But that does not mean that these defendants can get away with—er—murder. Tootle, or no tootle, they have infringed upon the property rights of the plaintiffs and impaired their ability to sell their literary product. Moreover, what they did, they did deliberately. They invited legal action, they have got it, and they will get it in the neck. This so-called *Whiz-Bang* is an abominable sheet. It may serve some useful purpose, but I have yet to hear of it. Its publishers have taken many chances, but in my opinion they have taken one too many.

“There are plenty of authorities which, by analogy, support the claim of the plaintiffs. In *Patten versus Superior Talking Machines, Incorporated*, 8 Federal Supplement 196, the plaintiff was authorized by the creator of a fictional character known as ‘Frank Merriwell’ to produce moving pictures based upon that character. The Court in granting an injunction said that although the plaintiffs’ copyright did not cover the titles to his stories, a name which has become descriptive and is closely identified in the public mind with the work of a particular author, may not be used so as to mislead, and that the ordinary principles of unfair competition were peculiarly applicable. So in *Warner Brothers Pictures versus Majestic Pictures Corporation*, 70 Federal (2nd) 310 (C. C. A. 2) in 1934, the Court granted an injunction against the defendant’s use of the title ‘Gold Diggers of Paris,’ it being shown that the plaintiff had already produced a highly successful picture called ‘Gold Diggers of Broadway’ and were about to produce another on the same theme to be called ‘Gold Diggers of 1935.’ The Court said that although copyright does not carry with it exclusive right to the use of a title another party may not make use of a similar name to capitalize upon the plaintiff’s investment and good will. [268]

“On the strength of these authorities and by virtue of the equitable jurisdiction of this Court I hold that these defendants have invaded the right of the plaintiffs to the sole use of the character and name of ‘Ephraim Tutt.’ Both injunctions are hereby granted and an order may be so entered.

“I now come to the question of damages. What actual damages, if any, the plaintiffs have suffered is a matter of speculation. But in deliberately and maliciously attempting to create a belief in the public mind that the character of ‘Mr. Tutt’ was over and done with for literary purposes by printing the statement that he had died, the defendants have invited the full rigors of this Court’s disapprobation.

“I shall assess the plaintiffs actual damages at ten thousand dollars and award in exemplary damages an additional forty thousand, or fifty thousand dollars in all, together with costs and disbursements. If that is tootle, let the defendants make the most of it!” [269]

Mr. Tutt, who was still sitting in the witness chair, leaned forward.

“Then I’m not dead?”

Judge Erskine smiled.

“On the contrary I should say that you were very much alive!”

A suppressed cheer arose from the Tutt family upon the front benches, as Mr. Tutt descended from the stand. Making his way through the crestfallen members of the firm of Levitzky, Levitzky & Levitzky he passed close to Mr. William Bunbury.

“Tootle!” he whispered.

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## NO PARKING

The trouble with being rich is having poor relations. It had never occurred to Mrs. Pierrepont Pumpelly, otherwise known as “The Duchess of Pottsville,” that in adopting the Mohawk Valley, purely for social reasons, as a place of summer residence she was putting herself within range of her Uncle Ezra Hoskins, until, one August morning, she received, through the mail, an excessively dirty envelope containing the following:

*Dere neece edna*, i am wel and hope you ar same see in pepper how you ar know livin in Potsvil ony 2 hundred miles from here so if you ar wel I gess i will run down an visit with you fer awile an bring delia’s children i kin cum most enny time dependin on weather if you are wel

ure lovin unkel  
EZRA HOSKINS

Edna, who had received this harbinger of happiness while breakfasting in bed, collapsed amid her lace pillows with a groan.

“That revolting old man!”

And all those filthy little brats of Delia’s, too! If Grafton, the butler, or any of her other servants should ever lay eyes on him and so much as suspect that he was in any way related, she would never dare to look them in the face again. He’d come too! She knew it, she knew it, she knew it! In a tantrum of rage, swearing roundly—for she had acquired a rich vocabulary while a waitress at Nussbaum’s Quick Lunch in her youth in a little Ohio town—she nearly kicked the tray of breakfast dishes off the satin counterpane. She must do something to prevent his coming! Otherwise her social standing would be lost forever. For one wild moment it occurred to her to pretend that she was dead. But then, of course, Uncle Ezra would expect to come to the funeral! No, she must prepare for the worst. She sent for Grafton, he of the frozen face and mighty limb. [271]

“You rang, modom?”

“I’ve just had a letter from a crazy man,” she explained. “He’s got a delusion that he’s related to me in some way. If he should call, tell him I’ve gone away or that I’m not living here any more—anything to get rid of him!”

“Very good, modom!”

Yet it did not look at all good to Edna. Suppose the old ape should actually turn up! Needless to say she did not reply to his letter.

In order to get the right perspective on the situation, it should be recalled that when Pierrepont—originally baptized Pelatiah—Pumpelly married Edna out of Nussbaum’s Lunch, he was only an assistant yard foreman for The Cuban Crucible Co. and she lived with her younger sister, Delia, in the rear tenement. At that, she was all Pelatiah wanted. He always was a good old scout, who, to the very last, liked to tuck his napkin inside his collar and unbutton his vest at mealtimes, so as to enjoy diaphragmatic comfort. He didn’t even mind Uncle Ezra—probably never would have minded him—even after they had become lousy with money and built a château on Riverside Drive, New York City. [272]

Uncle Ezra, a ship’s carpenter, who had abandoned the sea at the age of thirty as the result of an alcoholic misunderstanding with his second mate, lived by himself in a shanty on the flats across the river. He was short and very hairy, slightly suggesting Popeye, the Sailor, without the spinach. There was no spinach in Uncle Ezra, who resembled the post-bellum photograph of a Confederate soldier just discharged from a Union concentration camp. On the contrary, he was a warmhearted, rather smelly old guy, with a strong sense of family solidarity, which Edna did not share.

In fact, after Pelatiah had been made vice-president of Cruce, Edna was so anxious to forget the whole kit and caboodle back in Ohio that, when the widowed and impoverished Delia died, leaving four small children, she made no move to come to their assistance, but left them to Uncle Ezra to look out for. How he managed it was a miracle. [273]

There was no room for them in his shanty, but, being a man of ingenuity, and clever with his hands at fixing things up, he had rescued an abandoned streetcar, marooned in the mud a short way downstream, hauled it ashore, blocked it up, fitted it with a stove and lodged the four kids in it. He was a simple-minded dreamer with little knowledge of the world, outside of boats and whisky, and the fact that Edna was so dirt mean hadn't really registered with him.

Edna, on the contrary, was socially ambitious. Money had never gone to Pelatiah's head, but it had to hers, and long before he passed out he was thoroughly sick of her and her Sonny Boy, an overgrown smart Aleck with a pasty face and a head even more swelled than his mother's. After a most uncomfortable career in New York and successive flops at Newport and Southampton, Edna had decided to go somewhere else and make a fresh start. Hillsdale was the place she selected—the new building development near Pottsville—because the people who summered there weren't so rich as those at classier places, and didn't know so much about her.

Naturally, the Pottsvillains had received Edna and her bank roll with open arms. They were even prepared to swallow the supercilious airs of Sonny Boy; Grafton, her major-domo; Adolph, her "private chauffeur"—as she always called him—and all the rest of her snooty crew of retainers. But after Sonny Boy's abortive attempt to do Toggery Bill Gookin out of \$5000 on the note he owed him, the tide had turned against her. And because old Ephraim Tutt had been the cause of her darling's exposure and humiliation in court, Edna had it in for the old scalawag. She'd give him an earful if she ever caught him! [274]

She had almost done so that morning when she stopped at Mose Higgins' showroom to look at the new Ne Plus Ultra Trailer on exhibition there, but the old man had side-stepped her while Mose, in his capacity as local agent for The Open Road Comfort Company, had been explaining the new vehicle's advantages.

"Yes'm! She sure is a daisy! Y'c'n live in her, winter and summer, with yer hull family. Every modern convenience! Hot an' cold! Icebox! Radio! Electric light! Sittin' room, dinin' room, kitchenette! Toilet!"

"How much?" asked Edna as Mr. Tutt slipped through the door.

"It's catalogued at \$2250, but if you're really interested——"

"Well, I ain't!" sniffed Edna. "I've got enough money to live in a proper house, not a chicken coop! I can see how it might do well enough for one of the lower middle classes!"

Mose, the Sheriff of Somerset County, and Past Grand Exalted Patriarch and Ruler of the Sacred Camels of King Menelik, grew red about his stubby gills. [275]

"And good enough for you, too, fat lady!" he commented, ejecting a thin brown stream at the sawdust box near by. Ping!

But in whatever estimation the serfs of the Pumpelly realm might hold the duchess and her heir apparent, Edna was quite sure she was making the grade. She had rented a pretentious villa about a mile from Pottsville, Le Petit Trianon, and almost everybody "who was anybody" within motoring distance had called upon her the first month. Now the season was at its height, and Edna, deciding that the time had come to take her proper place at the head of the social hierarchy, had sent out invitations to a combination housewarming, lawn and cocktail party, which she intended to be the swellest affair ever seen in that part of the Mohawk Valley.

Of course none of the local townfolk were to be invited, and only the very nicest people in Hillsdale, Fonda, Amsterdam, and adjacent towns, while there would be a special car attached to the afternoon train from Utica exclusively for her guests. It was to be the climax of her success. Newport and Southampton? Phooey!

It was upon the wide green lawn in front of Le Petit Trianon that the brawl was to take place. She and Sonny Boy had planned every detail with the utmost care. Here, about a platform for the orchestra, marquees and tables were to be set, for thus would the splendors of the entertainment be visible to the vulgar herd gawping from the highway. The motors would enter at one end of the driveway, deposit the guests at the house, and depart by the other. There would be a juggler, a magician, a mind reader and a gypsy fortuneteller to amuse the company, while dancing went on in a specially erected pavilion. Eight hundred beautifully engraved invitations had been discreetly scattered all the way from Schenectady to Buffalo. Needless to say, Mr. Ephraim Tutt, temporarily resident at the Phoenix Hotel, was not among [276]

those bidden. Nothing further had been heard from Uncle Ezra, and Edna had almost forgotten him in her excitement over the preparations.

Dawned a perfect day. As Edna arose and looked out of her window in Le Petit Trianon, the birds seemed to be singing a festal chorus in honor of her party. Already the trucks bringing tables, chairs and lumber from Pottsville had arrived and workmen, under the direction of Sonny Boy, in an elegant white doeskin suit, made in England, were setting up the bandstand and pavilion. A great day for Edna! A great day for Sonny Boy! A great day for the Mohawk Valley! And, incidentally, as we shall see presently, a great day for Uncle Ezra.

By four o'clock all was in readiness, the collation prepared, the cocktails mixed and ready to be shaken. The festive lawn was spotted with tables and gilt chairs, gay with the striped canvas of the marquees, and with flags fluttering from the pavilion and bandstand. There was not a single jarring note in the entire landscape. And as she contemplated the scene of her coming triumph, Grafton, the magnificent, moved here and there with majestic tread, to give a final touch and to make sure that everything was quite correct. Evidently satisfied, the lordly man departed. Edna continued dressing, not an easy task considering her avoirdupois, occasionally casting an appreciative glance at the crowd of Pottsvillains already beginning to gather in wondering admiration. The great House of Pumpelly was going to do itself proud! [277]

Presently she observed a shabby figure, carrying a fishing rod, emerge from the woods in the rear of the house and start to traverse a corner of the lawn toward the road. That old rascal, Tutt! This was her chance!

“Sonny Boy!” she called to her White Hope. “Go and put that man off our land! If necessary, Grafton will help you.”

The lawyer after a long day's trout fishing on Chasm Brook, having caught his full quota and innocent of any intention to commit a trespass, had taken a short cut through the woods, to find that, quite unintentionally, his route led past Le Petit Trianon. [278]

“Here you!” called out the Pride of the Pumpellys. “What are you doing on our land?”

“Trying to get off it as fast as possible!” answered Mr. Tutt good-naturedly.

“Well, turn around and go back the way you came!” ordered Sonny Boy, who had taken a course in elementary law at Yale. “This is private property! You're a trespasser! I can use all the force reasonably necessary to put you off.”

Mr. Tutt unslung his creel and nonchalantly lit a stogie.

“Mr. Pumpelly,” he said, “of course you have a perfect right to demand that I remove myself from your land, and also, as you so accurately state, to use all the force reasonably necessary to compel me to do so. I have no desire to remain in your vicinity a moment longer than I have to! But the high-road is only a short distance away. If you should attempt to compel me to retrace my steps across your mother's property—a distance of a quarter of a mile—when I can get off it merely by walking a few feet, you would not be using reasonable force. It would be most unreasonable. Even you ought to appreciate that! Stand out of my way!”

Whereupon, Mr. Tutt, brandishing his rod, and swinging his creel so that it narrowly missed the seat of Sonny Boy's white doeskin pants, stalked on to the road. [279]

“Beat it, old bozo!” yelled Sonny Boy scornfully, from a safe distance, after recovering himself. “Get off and keep off! If I catch you here again I'll punch you in the schnozzle!”

Edna, from her window, watched the result of the *rencontre* rather disgustedly. Anyhow, the old shyster had taken himself off! It was probably just as well that there hadn't been any mix-up. The lawn certainly looked lovely; and the crowd of peasantry already gathered at its edge had gratifyingly increased.

Just then the bucolic stillness of the afternoon was shattered by a strange and ominous sound like that of a defective machine gun—Pop! Pop! Pop-pety-pop-pop!—and an astounding object hove in sight from the direction of Utica and, with a final pop, careened to a stop directly between the two entrances of the drive at the foot of the lawn. Neither

trailer, in the accepted sense, covered wagon nor boat, it bore a fantastic resemblance to all three. Hitched to a dilapidated Model-T was a small canvas shanty on wheels, with a mast projecting from the roof at either end and a stovepipe between. Hanging from a clothesline connecting the tops of the two masts dangled a collection of children's undergarments of the most intimate character; smoke exuded lazily from the mouth of the pipe; while from the windows projected the tousled heads of a couple of ragged urchins. Something made Edna's heart stand still. She leaned against her dressing table. Her stomach fell. Could it be—? It was!

Before the interested eyes of the Pottsvillains there assembled, Uncle Ezra Hoskins, more whiskery than ever, [280] climbed down from the Model-T's front seat. Genially addressing those present, he inquired:

"Edna Pumpelly live here? I'm her Uncle Ezra Hoskins. We've drove clean from Ohio!"

Edna, in a spasmodic reaction of self-preservation, seized the bell.

"Grafton! Grafton!" she called, swathing her anatomy in a dressing gown and rushing out into the corridor.

"Yes, modom!"

"That—that crazy man—the one I told you about, is here! Send him away! Send him away!"

"Yes, modom. I'll tell him you're having a party."

"No! No! Don't tell him that, or he'll want to stay! Tell him to go away!"

"But suppose he won't, modom?"

"Make him!"

"Yes, modom. But suppose he——"

"Call an officer! Anything!"

"Yes, modom!" answered Grafton respectfully, but doubtfully. [281]

Edna anxiously watched Grafton approach Uncle Ezra. Two other even more grimy infants had evacuated themselves from the trailer, and all four, ranging from about three years of age to eleven, were now engaged in turning cartwheels on the lawn for the edification of the bystanders.

"Did you wish to see Mrs. Pumpelly?" inquired the magnifico with hauteur.

"Sure, I want to see her, I'm her Uncle Ezra."

"Mrs. Pumpelly is engaged."

Ezra stared at him. "Who's she engaged to—you?"

Grafton blushed. "I mean that Mrs. Pumpelly is occupied. She's dressing."

"Well, tell her we're all here, just as I writ her," replied Ezra. "These are her sister Delia's children. We've come fer a visit."

"I'm afraid that Mrs. Pumpelly will not be able to accommodate you," returned the butler stiffly. "The house is full."

"That's all right. We kin park on the lawn."

"That is out of the question!" replied Grafton sternly. "There is to be an entertainment here this afternoon."

“Then we’ll stay where we be,” answered Uncle Ezra.

“We shall need the side of the road for parking space.”

“Well, we’ll be parkin’.”

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“I mean Mrs. Pumpelly’s guests will want to park their cars there.”

It was gradually dawning upon Uncle Ezra’s limited intelligence that, possibly for some reason unknown to him, he was not wanted. The Hoskinses were a stubborn breed and Ezra was a Hoskins.

“Look here, mister! We’re guests ez much ez anybody! It’s mighty queer if a feller can’t park his car in front of his own niece’s house.”

Grafton began to be impatient.

“Mrs. Pumpelly cannot have her friends inconvenienced!” he announced. “If you don’t move that rattletrap of yours, I’ll send for the police!”

“Send fer ’em, if you want to!” shouted Ezra, now thoroughly angry. “I’ll be waitin’ fer ’em. An’ you kin tell Edna I’m ashamed of her fer treatin’ her own uncle this way. It’s most suppertime,” he added plaintively. “I give the children their milk at five o’clock.”

“You can buy all the milk you need in the village,” answered the butler. “There is an excellent public house, the Phoenix Hotel, where you can put up.”

“No, we won’t!” snorted Ezra. “We’re goin’ to put up right here.”

“Jackass!” exploded Grafton, losing all dignity.

“Swab!” retorted Uncle Ezra. “Nincompoop!”

Edna, observing the impasse from her window, decided to take a hand herself. Shrouding her elephantine figure in a pink wrapper, she hurried downstairs and came waddling across the lawn. Now, although none of the Pottsvillains had been invited to the party, it would have been contrary to the laws of human nature for them not to have treated the Pumpelly blow-out just as they would any other circus, parade or free show. Practically the entire populace, including the complete roster of the Sacred Camels of King Menelik, were now congregated along the edge of the lawn, their cars scattered up and down the roadway, taking the keenest interest in the argument. [283]

Ezra, perceiving that the public was with him, gained courage and bellicosity.

“Jackanapes!” he taunted the majestic manservant. “Fer two cents I’ll swat y’ in the kisser!”

“Go it, Popeye! Y’ c’n lick him!” incited the crowd.

The empurpled Grafton vacillated. He was proud of his kisser and he strongly desired to preserve the general integrity of his appearance in order to make a proper impression upon his mistress’ guests. He was jolly well sick of the whole business! Scum! Peasants! Rabble! He might even have retreated had not Edna, holding herself together the best she could, arrived to re-enforce him and to insist upon his carrying out her orders. Uncle Ezra, in all innocence, assuming that she had come to welcome him, hastened to her, only to be greeted with a Medusalike stare.

“Who are these people?” she demanded of the butler.

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“It’s me, Edna! It’s your Uncle Ezra!” he informed her. “I writ ye we was comin’.... Here, children! Go see your Aunt Edna!”

It was all the invitation necessary. Ceasing their acrobatics for the moment, the four gamins lowered their heads and

made a dash for her.

“Auntie Edna! Auntie Edna!” they shrilled. For an instant she hung on dead center. Should she admit the relationship before this jeering multitude and thereby lose caste forever in Pottsville, or should she face it out? Her decision was expedited, if not determined, by one of those simple little ironies of human destiny. Uncle Ezra, mistaking her momentary hesitation for an admission of their consanguinity, thrust his hairy countenance, with an ingratiating grin, into close juxtaposition with her mottled jowls.

“Ain’t yer goin’ to kiss me, Edna?”

Mrs. Pumpelly recoiled and took refuge upon the bandstand.

“Kiss him, Edna!” urged a voice. “Kiss your Uncle Ezra!”

“Smack her, Popeye!” encouraged others.

“Keep away from me, you dirty old man! Keep away, you brats! I don’t know any of you!” To Ezra, thus to be denied by his own flesh and blood, was the last, unkindest cut of all. [285]

“You know damn well who I be!” he flared. “You knew me well enough when you was waitin’ on table at Nussbaum’s!”

It was an awful moment for Edna Pumpelly. The crowd, fascinated, surged upon the grass and gathered about the bandstand, with Uncle Ezra to the fore, while behind him, at the edge of the lawn, the trailer, like a battleship dressed for some naval ceremony, stood fluttering with infants’ undergarments, smoke pouring from its funnel. A detestable, humiliating object! That she had lied about her relationship to Uncle Ezra was something between herself and God, and she hoped that God would be lenient. But on the question of her legal rights she stood on firm ground. One had to live up to one’s principles, and her chief principle at the moment was to get rid of Uncle Ezra, at any cost.

“Grafton,” she ordered, “put this person off of here! And get out, all the rest of you!”

But a devil had entered into Uncle Ezra. As the center of a melodramatic situation, he was, on the whole, rather enjoying himself. “Dirty old man” was he? He’d get even with the old cat!

“And she my own niece!” he declaimed. “Why, I kin remember when she was glad enough to come over to my shack fer a bite of chop suey on her afternoons off! She’s an ungrateful woman to treat her own father’s brother such a way! I’m downright ashamed of her!” [286]

“Get out! Beat it!” shrieked Edna, staring anxiously down the road to see if any guests were arriving prematurely. But Uncle Ezra did not budge.

And now Sonny Boy, as man of the family, decided to take a hand. From beside his mother upon the bandstand he pointed at the trailer.

“Get that junk wagon away from here!”

“Move my car? Not much I won’t!” returned Uncle Ezra. “My trailer’s goin’ to stay right where it is!”

“Oh, no, it isn’t!” quoth the Prince of Pottsville. “You’re a trespasser. We can use all the force reasonably necessary to put you off our property.... Come on, Grafton! Let’s start him rolling!”

Spinach or no spinach, this was too much for Uncle Ezra. Stationing himself defiantly in front of the Model-T, he bared his hairy arms.

“Don’t ye touch it!” he yelled, jumping up and down in a frenzy. “You white-livered pup!”

“That’s right, Popeye! Don’t let ’em bluff ye!” chorused the Sacred Camels of King Menelik, who had no use for either Edna or her pimply offspring. “Stick up fer yer rights!”

Now while Grafton and Sonny Boy were not insensitive to the temper of those about them, they realized that the honor of the Pumpellys was at stake. Actual violence might conceivably have ensued had not, at that moment, Mose Higgins, the sheriff, with Mr. Tutt at his elbow, forced his way through the throng. [287]

“What’s all this rumpus?” he demanded. “Who’s responsible for this disorder?”

Edna, in spite of her personal dislike for the sheriff, welcomed the appearance of the law with relief. Now everything would be all right. Uncle Ezra would have to go.

“Explain to Mr. Higgins, Pierpont!”

Sonny Boy inflated himself.

“This man is trespassing upon our property!” he replied. “We propose to put him off, unless you do it for us.”

“One moment!” interposed Mr. Tutt, who had been holding a whispered conversation with Uncle Ezra. “Mr. Hoskins has just retained me to protect his interests. He is not trespassing upon your property. His car is standing upon the public highway.”

“He is, too, a trespasser!” retorted Sonny Boy. “We own to the center of the road.”

“Pardon me,” replied Mr. Tutt, stepping forward with the Sacred Camels massed solidly behind him. “This highway was laid out during the Dutch occupation of New York and, hence, belongs in its entirety in fee to the state.”

“Poppycock!” answered Sonny Boy. “How do you know it was?”

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“Isn’t this the old Dutch Turnpike, Sheriff?” asked the old lawyer.

“It sure is!” declared Mose.

“That doesn’t give this old geezer the right to park in front of our property!” declared the pride of the Pumpellys haughtily.

Mr. Tutt shook his head.

“Even if this highway had been laid out in the later Anglo-American period—although that is not the case—and, in consequence, you did own to the center, it would make no difference, since your technical ownership would be subject to a paramount user on the part of the public, of whom my client is one. It is only when the use made of the road is not one contemplated by the law that it becomes objectionable. My client, who is using the road for the proper purpose for which it was intended, has a perfect right to leave his car where it is, and I advise him that he is under no obligation to remove it simply because you wish him to. Isn’t that the law, Sheriff?”

“Guess you’re right!” said Mose. “Anyhow, I take your word fer it!”

“But it’s a misdemeanor, under the statute, to obstruct any highway,” argued Sonny Boy hotly.

“Quite true,” agreed the old lawyer. “But, obviously, Mr. Hoskins, is in no way obstructing the highway. Is he, Sheriff?” [289]

Mose scratched his ear. “O’ course, it’s a misdemeanor to obstruct a highway, but I don’t see how this trailer, pulled off to one side as it is, can be an obstruction. Nacherly, any feller’s got to stop sometimes. Nobody seems to be havin’ any trouble in gettin’ by.”

“And if it is, then all these other cars are equally guilty of obstruction and the owners ought all to be arrested,” warned Mr. Tutt.

Sonny Boy, realizing that his contention might, if supported by the sheriff, lead to embarrassing consequences when the

invited guests should later arrive, shifted his position.

“I don’t claim that this trailer is actually obstructing the highway,” he conceded. “But I do claim that by leaving his car in front of our private property, this man is violating the vehicle and traffic law of the state.”

“What section of it?” queried Mr. Tutt.

“Have you got a copy of the state traffic law with you, Sheriff?” asked Sonny Boy confidently.

“Sure I got one,” answered Mose, pulling a bedraggled pamphlet from his pocket.

The embryonic lawyer seized and thumbed quickly through it. “I knew it!” he cried triumphantly. “There it is in black and white! Parking is absolutely forbidden, except for emergencies. A violation of the vehicle and traffic law is in the nature of a misdemeanor, for which any peace officer may arrest. [290]

“Sec. 58-a. No motor vehicle shall be parked or left standing on the paved portion of any state or county highway, or town road improved pursuant to the provisions of Sec. 320-a of the highway law, outside of cities or incorporated villages, except in an emergency——

“Sheriff, I call upon you to arrest this man for violating the vehicle and traffic law, for the reason that there is no emergency requiring his parking on this road.”

“Not so fast!” interposed Mr. Tutt. “The section of the vehicle and traffic law you invoke applies only to the paved portions of improved highways outside the limits of cities and villages. This road is neither paved nor improved. Moreover, it is within the limits of Pottsville. Hence the law does not apply. Parking—if this, in fact, be parking—in order to be illegal would have to be forbidden by some local ordinance.”

“But there must be a local ordinance of Pottsville prohibiting parking opposite private property!” insisted Sonny Boy.

“There is,” acquiesced Mose. “We got an ordinance which forbids parking for more than six hours, but it only applies to Main Street from the deppo north to Ma Best’s Phoenix Hotel. It don’t carry ez fur out ez this. Anyhow, this man hasn’t been here more than half an hour.”

“Hurray!” crowed Toggery Bill Gookin, now hereditary enemy of the Pumpellys, amid murmurs of approval from the Sacred Camels. “Uncle Ezra’s got ye, Edna!” [291]

“I never heard such nonsense!” Mrs. Pumpelly protested. “It’s all hocus-pocus.”

“Not hocus-pocus but the law!” replied Mr. Tutt courteously. “All I am doing is to point out that my client has done nothing to subject him to interference, much less arrest! This is a free country. People cannot be prevented from coming, going or stopping merely on the whim of others, who imagine that their rights have been invaded. No one can take the law into his own hands. Such issues have to be settled by duly constituted judicial authorities.

“You claim, or your son claims, that Mr. Hoskins is ‘parking’ within the meaning of the traffic and vehicle law. Now, even if that law applied to this road, which it does not, and even if there were a local ordinance against parking to cover the case, which there isn’t, I call your attention to the fact that my client has not ‘parked’ his trailer within the meaning of the statute.

“Under Section 2, Subdivision 20, of the vehicle and traffic law, ‘parking’ is defined as ‘the stopping of a motor vehicle upon a public highway and leaving it unattended by a person capable of operating it for a period longer than is necessary for unloading passengers and freight.’ If you will look at the note upon the opposite page you will find that, according to an opinion of the attorney general rendered in 1930, no motor is parked, in the sense used in parking ordinances, if there is within it a licensed driver capable of removing it upon request or order to do so. Since my client lives, eats and sleeps in his vehicle, it is clear that the latter never will be ‘parked’ so as to be subject to the New York law prohibiting parking, and hence that, if he is guilty of any offense whatever, it would have to be for obstructing the highway, which the sheriff says he is not doing.” [292]

“Just words!” fumed Edna. “You can’t tell me there isn’t some law to prevent a man camping in his trailer right in front of my house! You and the sheriff are in cahoots! I shall complain to the authorities!”

“My dear Mrs. Pumpelly!” began Mr. Tutt.

“Don’t you ‘dear Mrs. Pumpelly’ me!” snorted Edna. “I know all about you. You’re just trying to mix everything up.”

“You do me a wrong!” answered Mr. Tutt. “I am merely warning you to the effect that my client has done nothing which would warrant you in attempting to remove his car by force, or to have him arrested.”

“But I read a case only last spring,” exclaimed Sonny Boy, in a sudden burst of recollection, “where the Supreme Court held that a man couldn’t park in front of another man’s house—even where there was a local ordinance that allowed parking for six hours—on the ground that it was a nuisance!” [293]

“You are quite right,” answered the old man. “The case is Decker versus Goddard, 233 Appellate Division 139. Mr. Goddard, relying on a local ordinance of the city of Rochester prohibiting parking for more than six hours, made a practice, day after day, of leaving his car for long periods, unattended, directly in front of Mr. Decker’s house on Goddard Avenue. The latter objected that, ordinance or no ordinance, no one could turn the street in front of a private house into a private garage.

“The court held that the defendant Goddard, by leaving his car in front of Mr. Decker’s house day after day, impaired the latter’s easement of access to and from his property, of light and air, and of the privilege of observing, without lawful obstruction, what was going on in the street.”

“Exactly!”

“Hence,” concluded Mr. Tutt quietly, “the court granted a permanent injunction against Goddard, forbidding him to park in front of Mr. Decker’s house.”

“Then,” declared Sonny Boy triumphantly, “on your own statement, this man has no right to park here.” [294]

“Quite the contrary! The case you have cited—or rather, with which I have supplied you—bears no resemblance to the present. Your Uncle Ezra——”

“He’s not my Uncle Ezra!” interjected Edna furiously.

“Mr. Hoskins, as I understand it, came here for the purpose of a social call, which is not yet terminated. The court in the Decker case expressly stated that parking in front of private property for such a purpose is permissible, just as it is for a business purpose. Moreover, even if Mr. Hoskins had not come here with an amicable intent, he has not remained an unreasonable length of time, nor is he causing you any special damage. Your house is fully a hundred yards from the road, and there is no impairment of access to your property, since his vehicle does not block your driveway.”

“But we want the space for our guests to park on!”

“They have no greater rights than your Uncle Ezra!”

“Well, I think it’s all rot!” sputtered Sonny Boy for the benefit of his mother. “It just doesn’t make sense to me. I say that this old bird with his silly old trailer sitting right in front of our private property is a nuisance—a damn nuisance!—and that, under the doctrine of ‘self-help,’ we have a personal right to abate that nuisance with our own hands without waiting to go to court.... Come on, Grafton, let’s push the old shebang out of the way!” [295]

The Prince of Pottsville ostentatiously grabbed the butler’s arm and led him rather unwillingly toward the trailer.

“I advise you to go slowly, young man!” said Mr. Tutt. “Whether or not your Uncle Ezra and his trailer constitute a nuisance, either public or private, only the state, through the legally constituted authorities, has right to abate it, unless you are specially damaged, which you obviously are not. Even if his presence constitutes a private nuisance, that does

not give you, as an abutting landowner, any right to remove his car by force if that is likely to involve a breach of the peace, as you may see for yourself by looking at Volume 20, Section 102, of Ruling Case Law, under 'Nuisance.' If I know your Uncle Ezra, he has no intention of letting you abate him, if he can help it. Your remedy, unless you are prepared to go to jail and pay him damages for assault, is to apply to the nearest court of equity and attempt to secure an injunction, as in the Decker case."

A whoop of gladness arose from the Sacred Camels. Sonny Boy looked helplessly toward his mother.

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"Do something! Do something!" she insisted. "Why don't you move that car away from here?"

"You will touch that car at your peril!" warned Mr. Tutt sternly. "Section 86, Subdivision 3, of the vehicle and traffic law reads:

"No person without authority of the driver shall set or attempt to set any vehicle in motion or in any way interfere with any vehicle; provided, however, that for the purpose of getting away from the place of standing, a driver may move another vehicle which is so placed that he cannot get his vehicle out, and immediately thereafter he shall reset the brake.

"You will note that a first violation of the statute is punishable by a fine of ten dollars, a second offense by a fine of twenty-five dollars, or from two to fifteen days in jail; a third by a fine of \$100 or six months' imprisonment. I am informed that you have at least half a dozen violations of the traffic law against you already. If you attempt to move Mr. Hoskins' car I shall ask Sheriff Higgins to arrest you. Moreover, I also advise you that to remove the car of another person, for no matter how small a distance, may constitute, in law, a conversion of property for which you would be liable in damages."

Sonny Boy's pasty face grew even paler.

"Oh, do something! Do something!" reiterated Edna.

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"What the hell can I do?" he snapped back at her. "So far as I can see, we've got to let this old beggar stay just where he is until we can apply for an injunction."

"And probably not succeed in securing one at that," concluded Mr. Tutt, "since you will have difficulty in establishing that your Uncle Ezra's presence here has caused you any damage—that is, any damage which the law would recognize as such."

"Do you really mean to tell me," she demanded, "that I have no way of getting rid of this man?"

"Only by satisfying some court of competent jurisdiction that his presence here constitutes a private nuisance," replied Mr. Tutt. "The nearest judicial officer to whom you can apply is Justice Tompkins, of the Supreme Court. He has adjourned for the day and won't be back until tomorrow morning at ten o'clock."

"A pretty kettle of fish!" she blustered. "I thought we had laws to cover everything!"

"We are supposed to have, madam," answered Mr. Tutt. "Only perhaps not always in exactly the way you want!"

The band had arrived in full regalia and was waiting to ascend the stand. Five o'clock—zero hour—was at hand. [298] A distant whistle heralded the approach of the train from Utica with its special car of invited guests. Edna clutched the rail of the bandstand and an expression of agony spread over her corrugated cheeks. Suddenly she seemed to go into a trance. It was as if she had received some mystic communication. Lowering her voice, she said hurriedly to Mr. Tutt: "Listen! Step this way a minute. I want to speak to you!"

The old lawyer accommodatingly joined Mrs. Pumpelly in the rear of the bandstand and for a moment or two they held inaudible but impassioned converse. Then Edna beckoned to Mose Higgins.

"Yes, ma'am," he was heard to say. "Finest trailer on the market! It's got every modern convenience. Hot and cold.

Radio. Kitchenette. Icebox. Toilet——”

“I’ll buy it!” cried Edna almost joyfully. “Give it to him! And send the bill to me. Only get him out of here quick! Oh, dear! There are some people coming in right now! And I ain’t half dressed!”

She turned, and, supported by Grafton and Sonny Boy, zigzagged hastily across the lawn toward Le Petit Trianon, just as the first load from Utica entered the drive.

Uncle Ezra, Sheriff Higgins and Mr. Tutt, enthusiastically assisted by the Sacred Camels of King Menelik, herded Delia’s brats into the trailer, climbed into the Model-T, and, followed by an exultant dromedarian cheer, popped off toward Pottsville.

“You sure threw a nut in her machinery!” commented Mose. “Say! Is that really the law about parkin’? Ain’t there [299] no way to stop a feller?”

Mr. Tutt smiled ambiguously. “Maybe there is,” he admitted, “but hanged if I know how, under these circumstances. The law about parking is, at present, decidedly complicated. Perhaps if I were retained on the other side—Anyhow, I put up a pretty good argument!”

“I’ll say you did!” ejaculated Uncle Ezra. “Whoopee!”

“Just imagine that old buzzard claimin’ you and me was in cahoots!” muttered Mose indignantly.

“Imagine!” chuckled Mr. Tutt.

An hour later, when the lawn party was at its height and the highway was jammed with motors, a mammoth, streamlined trailer that was a cross between a Pullman car, an armored truck and a steam calliope, lumbered into view from the direction of Pottsville. The dirty faces of the four urchins at the windows were in startling contrast to the delicate muslin curtains. Edna, who was standing on the lawn entertaining her guests, watched it curiously.

“What a perfectly marvellous trailer!” exclaimed one of her new friends. “How do you suppose people get the money to buy such things!”

“I wonder!” politely echoed Edna. [300]

As the Ne Plus Ultra, trailing clouds of chromium-plated glory, rumbled by, Uncle Ezra stuck out his head at her and grinned.

“I’ll be seeing you!” he shouted. Edna looked the other way. The radio was playing Pennies from Heaven.

[301]

## MR. TUTT'S QUEEREST CASE

“What was the queerest case you ever had, Mr. Tutt?” asked Minerva Wiggin.

The staff of Tutt & Tutt was gathered about the sea-coal fire in the old lawyer's library after the annual dinner; and now utterly content were draped in various characteristic attitudes over the mid-Victorian furniture, while Willie Toothaker lay on his stomach upon the floor.

Mr. Tutt poured out a glass of Burgundy and gazed ruminatively into the fire.

“My queerest case?” he mused. “That's a large order, but—let me think!—Yes, I have it! I fancy the Macklin case was the queerest I ever had. Not the most dramatic perhaps—but involving the weirdest environment, the strangest people, the most abnormal psychology, and—” he smiled—“the queerest introduction so far as I was concerned.”

They settled themselves and Miss Sondheim lighted a cigarette and pulled her chair a little nearer.

“Let's see,” Mr. Tutt caressed his chin. “It must have been about 1923. I remember it was a clear, but windy and raw March afternoon. I'd gone over to Baraccas' for lunch and had to fight my way through the crowd to get a seat. Not a living soul, so far as I knew, had any idea that I was there. I was just finishing my oysters when I heard myself being 'paged,' something sufficiently odd under the circumstances. I stepped to the telephone booth and took up the receiver. [302]

“‘This is Mr. Tutt,’ I said. ‘Who is this?’

“‘You are wanted at—West 86th Street,’ said a man's voice.

“‘Who is speaking?’ I repeated.

“‘Never mind!’ replied the voice. ‘You are wanted at—West 86th Street.’ And, then, whoever he was hung up abruptly.

“‘That's funny!’ thought I. ‘Shall I go or shan't I? Not on your tintype!’”

“I'm creepy already!” shivered Miss Sondheim. “*Did you go, Mr. Tutt?*”

“I went back to my table and tried to eat my lunch, but the telephone call had taken away my appetite. I was puzzled and piqued. The more I thought of it, the weirder it seemed; yet the very weirdness of it made me want to go up there. After all, one has to take a chance occasionally. You can only die once!”

“You might have been sand-bagged!” declared Mrs. Samuel Tutt.

“By the time I had paid my check nothing could have prevented me from answering that mysterious call. I went back to the office, concluded my business for the day, and took the El to the West Side, getting off at 86th Street. [303] The shadows were falling as I climbed down the stairs and started towards Central Park. The street was absolutely deserted and a slight cushion of snow had deadened the usual traffic noises to a sort of muffled silence. I began to have a sort of eerie feeling, which increased as I approached the number.

“It was a gloomy brownstone mansion, rising flush from the sidewalk and flanked on either side by a high wall, a sort of fortress impregnable save through treachery from within. I mounted the steps and, peering through the iron grill into the obscurity of the vestibule, perceived to my surprise that the inner door stood wide open. I found the antique bell-pull and by a vigorous yank elicited a distant smothered clang. But nobody came! There was not the slightest indication that the house harbored a single living thing. Then I thought I heard the faint far-away yelping of a dog.

“‘There must be someone in there!’ I thought, and pushing open the door of the vestibule I entered an old-fashioned entrance hall with hardwood floor and mahogany staircase. Through portieres of parti-colored glass beads I could look

into a huge, musty drawing-room, crowded with a menagerie of heavily upholstered sofas, armchairs, what-nots, mosaic topped tables, gilt easels, and vases full of cattails. It was the vintage of the Albert Memorial.

“Hello!” I called. ‘Anybody home?’ There was no reply. I couldn’t hear anything except the ticking of a clock somewhere. As I looked up the dimly lighted stairway that melted into darkness, I confess I hesitated. [304]

“Well,’ I thought, ‘now I’m here I might as well go through with it.’

“I climbed up to the second story and found myself at the end of another hall upon which opened a series of unlighted, silent, and deserted rooms. Nothing doing! Hoping that I wouldn’t be shot as a burglar I tiptoed up the next flight, then stood still and listened. Four doors led off that shadowy second hall, three of which were ajar; but the door of the front room was closed and from behind it came a faint murmur. An intermittent conversation was going on in there. At the first pause I knocked. No one answered and I knocked again. Eliciting no further response I opened it quietly and looked in.

“There were four persons in the room, grouped about an old lady who lay either dead, or in a faint, upon a couch in the center under a chandelier. She had aristocratic, delicately marked features—clearly a lady. She was dressed in purple velveteen, and her silver-black hair was piled on top of her head and set with a huge tortoise-shell comb. Two other old women, one in a red wig which was twisted askew over her right eye, and the other with faded yellow curls, a skirt with gores, and a lace fichu, were attempting to restore her to her senses. Sitting in a chair at the foot of the couch was a fellow who might have been cast for Simon Legree in ‘Uncle Tom’s Cabin.’ He was tall and sallow, with rolling black locks and wore a turn-down collar and black frock coat much too short in the sleeves. None of ’em paid the slightest attention to me, so I slipped in and sat down in a corner by myself. Then the old woman on the couch suddenly came to, raised herself on one elbow, and looking at ‘Simon Legree’ said with vehemence: [305]

“Go away, you wicked man!’

“As you choose,’ he replied in a sepulchral voice, reaching beneath his chair for a broad-brimmed black felt hat. ‘Have it your own way. Your blood is on your own heads.’

“And he walked out, shutting the door behind him.

“Then one of the old women—the wigged one—caught sight of me. She showed no surprise at my being there.

“Are you the lawyer?’ she asked, and they all looked at me like three little birds. I admitted I was a lawyer.

“You will get her back for us?’ she went on eagerly.

“I was stumped for a moment. [306]

“I certainly will!’ I said, without the remotest idea who ‘she’ was.

“Then everything will be all right!’ sighed the old lady on the couch.

“Please bring her back right away!’ ordered the one with the yellow curls, who seemed younger than the others.

“Now I was afraid that if they realized I wasn’t fully informed as to what was going on I might lose their confidence entirely. I waited for a moment to see if they mightn’t give me a lead, but they didn’t so I got up and went downstairs again.”

“Some case!” chirped Willie Toothaker crawling forward upon the floor on his elbows.

“Right! Some case! You see I didn’t even know who my clients were, let alone what had happened!

“I sat down in the drawing room and lit a stogy wondering what on earth I’d better do, when the door banged and in rushed a gangling young man, with hair like Willie’s, wearing a shabby polo coat and gray fedora.

“Hello!’ he said, ‘I thought it was about time for you to turn up.’

“Do you know who sent for me?”

“Sure,” he grinned. ‘I did.’

“He was a most engaging person—with a slightly impudent Irish nose, and a most infectious smile.

“And who are you?” I asked.

“Tom O’Malley of the *Star*.’ He fished out a package of cigarettes. ‘I must apologize for the way I got you into this, but you won’t be sorry. It’s a wow of a case, a regular lollapaloosa—the biggest scoop since Delilah bobbed Samson’s mop—and it’s all mine—ours, if you choose.’ [307]

“For Heaven’s sake tell me what it’s all about!” I begged him, and this is what he told me:

“The three old girls upstairs were Martha, Doris and Annabelle Macklin, the daughters of General John Macklin of Civil War fame, who had died when they were mere children leaving them a fortune of a couple of million dollars. They were recluses, rarely going outside the house, and knowing practically nobody save their doctor and clergyman. In lieu of human relationships they had turned their affections to animals—one keeping dogs, another cats, and the third birds—and the house had become a sort of ‘Bide-a-Wee Home.’

“The only other person living with them, except a couple of Negro servants who had run away, was their twenty-two-year-old niece Lucy, the daughter and heir of their deceased and widowed brother. She, it seemed, owned half a million dollars in her own right in negotiable bonds in the vaults of the Olympia Trust Company. Although apparently she had been a model child, they naturally had no idea how to keep her contented, and having become restive under their enforced restraint she had that very morning unexpectedly eloped with a person calling himself Prince Boto Borofsky. The couple were not as yet married, but they were going to be, and had sent ‘Simon Legree,’ whose name was Felix Trench, a friend of the Prince—with whom they had sought refuge in New Jersey—to make their peace and persuade the aunts to allow the ceremony to take place under the ancestral roof. It was upon this somewhat stormy interview, in which the aunts had refused Trench’s overtures, that I had projected myself. [308]

“Have you ever seen Miss Macklin?” I inquired. ‘What does she look like?’

“O’Malley pointed to a framed photograph of a young girl on the mantle. Her face—so sweet and trusting—went to my heart. All the same I couldn’t see that it was any of my business.

“What have you to do with this?” I went on. ‘And why have you dragged me into it? Isn’t she of age and entitled to marry whom she will? Why isn’t it the best thing that could happen to her?’

“Because Borofsky is a crook!” he said with conviction. And then he recounted the curious prelude to what had happened by which he had become involved in the affair. It was one of the most fantastic stories I had ever heard.

“One evening the winter before, he said, he had dropped into a speakeasy. The only other customer was a drunk in a dress suit who was sitting at a table by himself. He was tall, fairly young, obviously a foreigner, well tailored, and with a kind of distinction. Having nothing better to do, O’Malley had engaged the man in conversation, and in return for a couple more drinks had shortly elicited the story of his life—how his name was Prince Boto Borofsky, and how after the Revolution he had escaped from Russia, tried to find employment in America, had become a bootlegger, and eventually had encountered a certain Doctor Felix Trench, who offered to introduce him into New York society, with a view to his marrying an heiress, in return for a ten per cent commission on whatever the Prince should get out of it. They had even entered into a written contract to that effect which Borofsky was sufficiently egotistical then and there to produce from his breast pocket. [309]

“O’Malley had waited until the Prince was comatose, snatched the ‘contract,’ carried it down to the *Star* office, had it photostated, taken it back to the speakeasy, and replaced it in the nobleman’s pocket without the latter being any the wiser. Next day he had looked up Trench and found him to be one of those strange ambiguous creatures who live half around the corner from respectability—smooth, voluble, clever, brazen—and who had done everything from selling Indian remedies in a wild-cat medicine show to preaching the gospel.

“Well, there was no story in that, so O’Malley had stuck the photostat in the ‘Morgue’ and dismissed the incident from his mind for the time being until six months later, one of the *Star*’s outside men had telephoned in from Jersey that [310] a certain Prince Borofsky and a Miss Lucy Macklin had applied for a local marriage license. The Society Editor being for the moment out of the office, the City Editor had inquired generally of those present if anyone had ever heard of this Prince. O’Malley was on his feet instantly. Heard of him? He had him hog-tied!

“He told the City Editor what he knew, and having dug the photostat out of the Morgue, was then and there assigned to the case, had gone up to the 86th Street house, and disclosed the facts to the three aunts, who at first wanted to send for the police, but who finally yielded to his importunities to put him in exclusive charge of the case, in order, as he innocently advised them, to avoid publicity!

“Returning to the *Star* office to make his report he had happened to spy me going into Baraccas’, had decided instantly that I was the proper man to rescue the young lady, and had devised the telephone call as the surest way to excite my interest. He figured that, if he spoke to me direct, I might hesitate to take the case without being asked to do so by one of the family, whereas if he sent me a mysterious summons, my natural curiosity would be brought into play without any ethical scruples becoming involved. Anyhow, it had worked. Next morning the *Star* was to feature the story on the front page with a full-size reproduction of the contract.

“Then O’Malley went on to explain the scheme which Trench and Borofsky had evolved to ‘contact’ society. [311] They had organized a so-called ‘Round-the-World Club’ of which Prince Borofsky posed as president and patron, and circularized the *Social Register* including the Macklins. For five dollars one could have luncheon at the Plaza and listen to a lecture on the Holy Land or Hidden India or something by the ‘Reverend’ Felix Trench, the ‘famous traveller, scientist, and explorer.’

“Lucy’s Aunt Annabelle, the youngest of the three—she was only sixty-four—having some skittish desire to step out a little herself, proposed that she and her niece should join and learn about the Mysteries of Hidden India; and the other two—who were sixty-seven and sixty-nine respectively—regarding it as high-class family entertainment, consented. So they had sent in their ten dollars and duly received their tickets. The Prince had presided, Trench had given ’em a talk about temple bells, burning ghats and crocodiles that set ’em all a-flutter, and then the two adventurers had looked over the audience and selected Lucy as their best bet. They would have—naturally; she was obviously an easy mark, besides being so lovely. So the Prince, circulating among the tables after the lecture, introduced Trench, and Trench introduced Borofsky, and between ’em they whip-sawed the two innocents completely, and in the end escorted them back to 86th Street.

“Lucy was dazzled. She had never met any male before, except the postman, and when the Prince told her she was [312] the most beautiful woman he had ever seen, she swallowed it hook, line, and sinker. At that, by and large, he wasn’t so bad—compared with most of the morons one meets at Park Avenue parties. Of course the aunts wouldn’t allow a man in the house, and Lucy, who for the first time imagined herself in love, was easily persuaded to meet him outside. The affair had thus clandestinely progressed until, the Prince having proposed and been accepted, she had that very morning slipped away without saying good-bye. From New Jersey she had telephoned to her Aunt Martha who had refused to talk to her, and Trench’s visit had followed. Neither side was prepared to give way and it looked as if the marriage must take place.”

“I was in a peculiar position, as you will admit,” he went on. “Besides which the whole thing seemed absolutely [313] cuckoo—the three old women with their dogs, cats, and birds; the citadel of a house, the crazy furniture; the whole Arabian Nights story of the bogus bootlegger Borofsky and his contract with the mysterious Trench. Why should I, a respectable elderly lawyer, undertake the pursuit of a young girl whom I had never seen and attempt to separate her from her betrothed! It was really nobody’s affair but her own. There was no money in it. I hadn’t been properly retained. So far as I knew I might even get mixed up with a bunch of gangsters. Anyhow I’d waste an endless amount of time and trouble, for what?—that the *Star* might get a good story!”

“Why did you go on with it?” asked Minerva Wiggin.

“For two reasons: first, because this Donnybrook Lad of an O’Malley with his curly reddish hair and devastating smile had so completely sold himself to me, and, second, the girl’s picture. I can see it now—the odd, old-fashioned clothes,

the quaint way in which the hair was done, the white slender neck with the ribbon around it like her aunt Annabelle's, the brooch at her throat—the frank honesty and trustfulness in her eyes—she might have been Katherine Hepburn in 'Little Women.' I didn't know what on earth to do. There was something so appealing about its innocent sweetness that I couldn't bear to think of her in the hands of a couple of slimy confidence men. They had kidnapped her just as much as if they had held her up, gagged, and chloroformed her; and were probably holding her for ransom under the camouflaged threat of a proposed marriage. The fact that the 'Reverend' Trench had left his calling card on the hall table with the address 'Phoenix Park, New Jersey' certainly looked that way.

"I told O'Malley that I certainly wouldn't go on with the case unless the *Star* would agree not to print the young lady's name—a story like that would follow her all her life of course—and he said at once that the City Editor had already decided upon that, first for the sake of the girl herself, and, second, because in that way the story would remain the *Star's* exclusive feature." [314]

Mr. Tutt reached for a glass and poured himself out a drink.

"I haven't talked so much in years!" he remarked, smacking his lips.

"More power to you!" said Scraggs. "Bottle, please!"

"Where was I? O, yes. O'Malley and I are sitting in the drawing room on West 86th Street. It is about half-past six in the evening. The three old aunts are in a huddle upstairs. Lucy and the Prince are somewhere in Jersey, threatening to get married. There are five hundred one thousand dollar bonds on deposit subject to Lucy's order at the Olympia Trust and the 'Reverend' Trench is scheming how to get hold of them, and I have been willy-nilly elected to foil both him and his sidekick.

"Of course it was even more important to prevent the marriage than to save the fortune, but, by Jumping Jehoshaphat, it didn't look as though we could do either! If the Prince married the girl he'd have a natural stranglehold on the money, and, whatever the reason for the present slight delay, he would, of course, marry her as soon as the story of his contract with Trench was published. After he had read the front page of next morning's *Star* he wouldn't wait a second. They would keep the papers away from Lucy, put her in a taxi, and rush her to the City Hall before she learned anything about it." [315]

"I really don't see what you could do, anyway!" said Mrs. Tutt. "Young girls are so silly!"

"But," pondered Minerva, "why do you suppose Trench and the Prince cared in the slightest degree about patching up the affair with the aunts?"

"That is what I asked myself," said the Old Man. "The only answer I could give was that, besides making the whole thing easier and more agreeable, they hoped they might get solid with the rest of the family and perhaps cop the entire fortune. Anyhow it was clear enough that if we were to accomplish anything we must get busy at once. Now there was a bare possibility that if we could talk to the girl herself we might be able to persuade her to come home voluntarily, so I decided to go out to Phoenix Park and try it. O'Malley couldn't go with me because the Prince might have recognized him, in which case the fat would be in the fire. Anyhow, if I went alone it would make them less suspicious. Considering the character of the parties anything might happen or—for that matter—might have happened already. We really didn't know where she was or whether she were alive or dead. What I feared most was that they'd get an irrevocable power of attorney from her, enabling them to get the bonds, or would induce her to make a will in the Prince's favor, and then—push her quietly off a steamer. Somebody had to act and act quickly. There was just a chance that if I could speak with her—or made contact with the others—I could do something. Anyhow, I went!" [316]

"You certainly had nerve!" exclaimed Miss Sondheim. "Did you take a gun with you?"

"No. The only thing I took was my ivory-headed cane and a taxi to the Fort Lee ferry, and inside an hour I reached Phoenix Park, a real estate development behind the Palisades near Tenafly. I found the house easily enough, for it stood apart by itself on a half-finished boulevard in the full glare of several electric lights. And the very first person I saw was the 'Reverend' Trench, standing on the veranda. Evidently he expected me.

“Hello!” he said. ‘Glad to have you with us! Come right in. We’ve nothing to conceal. You can see the whole works; provided’—and he gave me a sidelong look—‘you don’t try to pull any funny business. Remember that Miss Macklin is on the eve of marriage.’ [317]

“May I speak to her alone?” I asked.

“Whatever you say must be in the presence of all of us,” he said.

“There were three people sitting around a card table in the front room—Mrs. Trench, a full-blown peroxide blond with cat’s teeth, the Prince—a tall bottle-shouldered, sappy-looking fellow with straw-colored hair—and the girl herself. She was a thousand times lovelier than her photograph. She seemed excited but happy, obviously completely under their influence. The air was heavy with flowers and behind some portieres there was a phonograph playing.

“I told her my name, that I was a lawyer sent by her aunts to try to induce her to return home and temporarily to postpone her marriage; that they were deeply hurt at her leaving them so unceremoniously; and that, as their only living relative and heir, she would seriously prejudice her material future unless she treated them with more consideration. If I had attempted to paint Trench and the Prince in their true colors I’d have prejudiced her against me forever. I’ve been retained in quite a lot of cases to prevent young ladies from making disastrous marriages and I never yet accomplished anything by blackguarding the intended bridegroom or casting aspersions upon his motives. Had I accused Borofsky of being a bad egg, he would have denied it and she’d have taken his word in preference to mine.

“The girl listened politely to my plea and shook her head. Nothing would ever change her aunts, she said. There [318] was no use seeing them unless they would first agree to her marriage. Any such interview would be merely painful and without result. I told her that I had no intention of coming between her and the man she loved, that I was very sorry she would not accede to her aunts’ request that she act less precipitately, but that if she ever needed a friend I hoped she would not hesitate to call upon me. At this she smiled very sweetly, thanked me for coming, gave me her hand and I was escorted out.

“Once on the veranda my suspicions proved true. Trench became as sweet as honey. He didn’t blame the aunts for [319] being nervous, he said, when they didn’t know the man their niece proposed to marry, and who might be simply an adventurer. The fact was, he admitted, he didn’t know so much about the Prince, either, and now that he’d seen Lucy he was inclined to feel that perhaps the marriage would be a mistake. In short he proposed that I retain him to break up the engagement. ‘One hundred grand’—I believe was the expression he used—paid before noon next day, and he’d deliver her safe and sound in a heated taxi at the Old Homestead. He was thoughtful enough to explain that I could charge a like amount for my own services, or that, if I preferred, I could say that his price was two hundred thousand and keep half. His motive was clear enough. A hundred thousand would be twice what he’d get under his contract with Borofsky. Nice fellow! I remember particularly his taking out a new gold cigarette case so that it flashed in the lamplight.

“Pretty thing, isn’t it?” he remarked. ‘Pity it will tarnish so easily!’ I wanted to strangle him.

“Instead I stalled, arguing that his price was too high and that, since the Prince was a free agent, I had no assurance that, even if we paid over the money, we’d ever see the girl again. He turned nasty at that. He was only being decent, he said, because he had taken a fancy to Lucy himself. Moreover he had the goods on Borofsky and could make him do absolutely anything he chose. If he didn’t have the money by noon next day the marriage would go through and they’d split up the whole half million.

“I didn’t have to pretend to appear worried. I was. I explained that my clients were eccentric old women and [320] difficult to handle and asked for more time. He refused. He’d fixed the deadline. I could take it or leave it. I said I’d call him on the telephone in the morning and rode back to town. I knew the aunts wouldn’t put up a cent, but I felt bound to lay the proposition before them and, as I had expected, they refused. ‘Millions for defense, but not a cent for tribute,’ Martha declared. Lucy had made her bed and she could lie in it. I saw that they were beginning to lose faith in my ability as a legal magician. I had myself.

“I left O’Malley on guard at the house to watch out for the old girls over night and drove down here—baffled. I wondered if it wouldn’t be wise to play along with Trench. Of course it’s bad business to start in paying blackmail. If

you once begin you have to keep on paying. But the girl was so lovely! I sat down right in this very chair and went over the whole case. One thing stumped me. Why hadn't Borofsky married Lucy in the first place? Did he doubt his ability after becoming her husband to persuade her to turn over her fortune? Even if he couldn't pry her bonds out of her, he could hold her up for a divorce or annulment.

"I must have smoked as many as twenty stogies before an idea came to me. It was a million to one shot, but I went over to the desk and called up a friend of mine on the *Star* and——"

"Well?" inquired Minerva Wiggin.

"—And then I went to bed," concluded the Old Man.

Mr. Tutt irrigated his throat; lit a fresh stogy and went on.

[321]

"Naturally I was up early to see the front page of the *Star*. The story was there all right, smeared half across: 'New Marriage Racket. Cupid Signed Up at 10 Per Cent.' Below was a photostatic reproduction of the Trench-Borofsky contract with the statement that the Prince had so far been successful only in becoming engaged and that Trench's commission was not yet fully earned. I could picture the consternation into which Phoenix Park would be thrown when Trench picked up the paper from the veranda steps. They would probably blindfold Lucy and hurry her to the nearest vestry bound hand and foot. There was just that millionth chance!"

"What millionth chance?" inquired Tutt.

"I'll tell you later." Mr. Tutt gave a poke to the fire and recrossed his long shanks. "I went down to the office at ten o'clock pretty well discouraged. I decided that I wasn't half as resourceful as I'd given myself credit for. Here I was doing nothing while one of the sweetest girls I'd ever seen—perhaps the sweetest—was being matrimonially manacled to a fortune-hunting crook. But beside my 'millionth chance' I had one faint hope—that something I had said the evening before might have touched her. Otherwise I was helpless.

"At eleven o'clock the first thing happened. The Warden at Sing Sing called me on the telephone—the *Star* had stated that I had been retained by the family—and said he'd recognized the handwriting of the name 'Boto Borofsky' at the foot of the contract as that of Boto Bernstein, who had served a three-year term up there for grand larceny in the second. The name Boto had attracted his attention first, because it was so unusual; he'd got out his records and compared the signatures; and there wasn't a shadow of a doubt about it. I thanked him, but I didn't see what good that would do me. My knowledge of this fact couldn't keep Lucy from marrying him.

[322]

"Then at eleven fifteen came the queerest break imaginable. The girl herself called me up! She was terribly distraught. I could hear her panting in the booth as she explained what she wanted me to do. She didn't give me a chance to speak. The story was so complicated that I better give you each fact *seriatim* as we lawyers say:

"1. She had been awakened by a violent quarrel between Borofsky and Trench over something in the newspaper and the 'Reverend' had called the 'Prince' terrible names.

"2. Then Boto had come upstairs looking very much frightened and had said that they had better get married at once, but that, since they were going to take the train for Chicago immediately after the ceremony and would need plenty of money, she must first go over to New York with Mrs. Trench and get her securities.

"3. That she was beginning to distrust Trench and fear that he might do some harm to Boto, whom he would not allow out of his sight; particularly since Trench insisted that his wife and not the Prince should accompany her to the safe deposit vaults.

[323]

"4. That Mrs. Trench had hurried her over to Newark immediately after breakfast to buy traveling clothes and that, remembering what I had said the night before about being willing to help her at any time, she had made an excuse to leave the woman for a moment and telephone me.

"5. That the plan was that, after lunch, she and the Trench woman should go to New York and take all her securities out

of the Trust Company; that she did not want to give them up but was afraid of what the Trenches might do to her fiancé if she did not. Hence she wanted me to devise some way whereby the Trust Company should decline to honor her demands while she should appear to be eager to have them do so, and then—she suddenly hung up! I hadn't even had the opportunity to tell her that she was proposing to marry an ex-convict.

“You may imagine the state I was in! It was true that she now wanted to save her fortune while pretending to be ready and willing to hand it over, but she clearly had no wish to leave her ‘Prince’ and was anxious to protect him from the unscrupulous Trench. I could picture the scene that morning which had aroused such distrust between the ‘high contracting parties’—Trench accusing Borofsky of letting him down and demanding to be told how the *Star* had got hold of the contract, and the Prince indignantly denying that he had ever shown it to any one. Boto must have been as flabbergasted as any of ‘em. Of course, now that the cat was out of the bag, it would be a rush for the money. [324]

“I hustled up to the Olympia Trust and found that there was a directors’ meeting going on in the board room. This didn’t bother me because I used to be counsel to the corporation and know the whole bunch. So I butted right in and asked leave to tell ‘em a story. They seemed to welcome the idea as a relief. You ought to have seen those white-haired old bozos sit up and take notice as I told them about the marriage contract and the three aunts and the Travel Club, and all. When I got through I asked if they’d be willing to co-operate in a rather unconventional way in attempting to save a young girl’s fortune and perhaps the girl herself, and with one accord, and to their everlasting credit whatever you may think of bankers, they shouted ‘Aye.’

“I went down to the vaults, lit a stogy and worked out a plan. Meantime O’Malley arrived. He had traced me to the bank, and insisted, quite naturally, that as it was his story he ought to be let in on the finale. So we gave him an alpaca jacket and made him ‘assistant vault custodian.’ Then I arranged that when Lucy and Mrs. Trench should arrive—if they ever did arrive!—only the former should be admitted to the vaults, while the older woman was kept outside on the pretext that but one person could be allowed in at a time. That would give us a chance to explain everything to the girl. [325]

“I put on another alpaca jacket—it came just below my ribs—stuck a pen back of my ear, sat down at a desk inside the vault, and waited. By that time it was nearly two o’clock. I was getting nervous. I had had no time to arrange things with Lucy over the telephone and I couldn’t be sure that she wouldn’t go and get married first before coming to the bank. But there was still that millionth little chance.”

“What chance?” interrupted Willie.

“A fat chance you’ll ever get another raise, infant!” growled “Bonnie.”

“Well, luck was with us. In about twenty minutes I heard voices at the head of the stairs, and Lucy came down followed by Mrs. Trench to the door of the vault.

“‘You wish to have access to your box?’ inquired the attendant.

“‘Yes, please. I want to get out my securities.’ [326]

“The attendant looked in his book and then unlocked the door. Both women started to go in.

“‘I am sorry,’ he said. ‘We can admit only one at a time.’

“Mrs. Trench seemed disappointed but did not protest, since it was clear that her prisoner could not escape without coming out through the same door. Once Lucy was inside I took her into one of the coupon rooms and showed her a copy of the *Star* containing the photostat of the marriage contract. As she read it all her color faded away. Then I told her that Borofsky was an ex-convict.

“‘Now that you know what sort of people you are dealing with, my dear, you will of course go back to your aunts,’ I said confidently.

“And then, I think, the queerest thing in this very queer case occurred.

“She looked at me in a puzzled sort of way as if not fully understanding what I said.

“‘But we are engaged!’ she stated as if that settled the matter. ‘I have agreed to marry him and he has promised to marry me.’

“‘That doesn’t make any difference so long as you didn’t know his true character,’ I argued. ‘He deceived you.’

“‘Not at all,’ she replied. ‘He did not deceive me. He never told me anything that wasn’t absolutely true. Besides, [327] I didn’t really care whom I married so long as I didn’t have to live with my three aunts any longer; and he seemed like a nice man. I am sure he’s a nice man. If I don’t go back I’m afraid Dr. Trench will do him some harm. I can’t desert him now!’

“It was highly aggravating, but considering her history, at least understandable. I felt terribly sorry for her. Her confusion was genuine—partly intellectual, partly emotional. The poor little thing was all mixed up between wounded vanity, loyalty to the man she had promised to marry, a desire for freedom, and the wish to save her fortune. But whatever he might have been or done she wasn’t willing to go back on her promise. It began to look serious. I hadn’t counted on anything absurd like that.

“Meanwhile the Trench woman was getting restless. She may have smelled a rat; anyhow, presently she came to the door of the vault and asked what had become of Miss Macklin and why she was taking so much time. O’Malley told her that they were having trouble over the lock of the safe deposit box. That seemed to satisfy her, and then he came to the little room where Lucy and I were talking and walked right in. He looked more engaging than ever in the black alpaca which set off his russet hair, blue eyes, and ruddy cheeks. He was a handsome lad, all right, and I could see that Lucy thought so too. As for O’Malley, if he was not already in love with her photograph he fell for her then and there, or I’ve never seen love at first sight.

“‘Listen, Miss Macklin!’ he begged. ‘You can’t throw yourself away on a man like that. It would be a crime. He’s [328] nothing but an adventurer. Give yourself a chance!’ I knew that he meant ‘Give me a chance!’

“Then we both piled in and argued and begged—I remember I threatened to have a guardian appointed for her—but it was no use. She had given her word, and whether it was for better or for worse she was going to stick to it. Maybe it was just her hard luck, but it couldn’t be helped.

“By that time the Trench woman was walking up and down in front of the vault like a caged lioness. We were all nearly frantic. By the greatest of luck we had it in our power to save this girl from a miserable future, and from a wholly misguided sense of honor she now refused to be saved. All our efforts were to go for nothing. O’Malley put on his coat and swore that if Lucy left the bank with Mrs. Trench he was going along, too—that he would never leave her.

“His saying this seemed to surprise and rather please her. But it didn’t affect her decision.

“The sight of her about to make a human sacrifice of herself turned O’Malley into a wild man. He lost all control, [329] stamping up and down, shaking his fists and swearing by all the Gods that she should never go back to Borofsky—unless over his dead body. But although I could see that Lucy liked it, she remained obdurate and pretty soon he calmed down and escorted her back to the door of the vault. After all, she was of age and could do as she chose. I followed at a distance.

“‘Where on earth have you been all this time!’ demanded the Trench woman.

“‘We have been trying to open the young lady’s box,’ explained O’Malley, ‘but she seems to have brought the wrong key and it will take our locksmith a good five hours to open it. She will have to return in the morning.’

“Mrs. Trench nearly fainted at that, and, when she came to, made a scene that brought the attendants and messengers crowding to the head of the stairs.

“‘It’s outrageous!’ she declared. ‘Miss Macklin has made all her arrangements to start for the West this afternoon and wants to take her securities with her. She must have them at once. I shall stay right here until the box is opened, even if

you have to smash it with an ax.’

“Lucy pretended to be almost equally indignant but said she supposed they’d have to postpone their trip until the box could be properly opened. Then the two of them started up the stairs. It was a footling situation, but apparently there was nothing to be done about it. If she were sufficiently loyal to Borofsky to return to him after what she had read in the *Star* and knowing that he had been in prison, she would undoubtedly marry him—that same afternoon probably. We had lost. Once she was Princess Borofsky they would overcome her scruples about surrendering her securities; and if she would not voluntarily give them up, Trench and the Prince would undoubtedly make life so intolerable for her that she would be willing to pay handsomely for a divorce or annulment. We would have saved her fortune only to have her lose it again. I had a feeling that, once she left the bank and got out onto the street with the Trench woman, everything would be over. [330]

“They reached the main floor and started towards the entrance—O’Malley a few feet behind them. I decided that, unless something unexpected happened, it wouldn’t be long before I’d be defending him on a charge of murder. Well, for the third time something unexpected did happen. As Lucy and the Trench woman approached the entrance a shabby middle-aged woman pushed her way through the revolving doors and stood there hesitating, unconsciously barring their way. In her hand she was clutching a crumpled copy of the *Star*.

“‘I am looking for Mr. Tutt,’ she said to them. ‘Is he here?’

“O’Malley sprang forward.

“‘What do you want to see him about?’

“‘About the reward.’ [331]

“The Trench woman grasped Lucy’s arm and attempted to lead her through the door.

“‘Just a minute!’ ordered O’Malley and Lucy hung back. ‘What reward?’

“‘The one offered in the paper this morning for information about the Princess Borofsky. A thousand dollars. It said to communicate with Mr. Ephraim Tutt, 61 Broadway. So I called his telephone number and was told I’d find him here.’

“Lucy had torn herself from Mrs. Trench and had taken her place beside O’Malley.

“‘So there’s a Princess Borofsky already?’ he cried as I joined them.

“‘No,’ said the woman, ‘there isn’t any Princess Borofsky—nor any Prince Borofsky either! His name is Oscar Tannenbaum and I’m his lawful wife.’”

“So the million to one shot won?” nodded Bonnie Doon.

“Yes,” answered his employer. “My hunch turned out to be correct. The reason Borofsky hadn’t married Lucy was for the simple reason that he couldn’t. He had to cash in before the wedding or not at all. He had taken out the license, but that was as far as he could go. Well, to make a long story a bit longer, I saw that Mrs. Trench had heard enough and was making for the door.

“So I took Lucy and O’Malley and Mrs. Tannenbaum into the directors’ room, where she told us her story. It boiled down to this: She had met Boto Tannenbaum and married him while she was a saleswoman and he a floorwalker in a Hoboken department store. He was an East Prussian, with a smattering of Polish and a few words of Russian. They had lived together about five years, after which he had deserted her and their two children. She had not seen him since then, although she had heard vaguely from time to time that he was posing as a Russian under the name of Prince Borofsky. She had had hard work to get along and had just received a dispossess notice when in the morning paper she had read O’Malley’s story and the advertisement which my friend on the *Star* had displayed in a ‘box’ on the second page. That there might be no mistake regarding her husband’s identity she had brought along a mouldy photograph of a pair of lovers, tenderly embracing upon a papier mâché rockpile against a crayon outline of the Matterhorn, bearing [332]

the trade inscription ‘A. Lippschitz, Art Fotos, Atlantic City, N. J.’ It was Borofsky all right!

“That settled it, of course. Poor little Lucy’s castle had tumbled so suddenly and completely that she hardly knew whether to laugh or cry. Naturally she was upset about the Prince to whom she owed her first experience of romance, if such it could be called, as well as her liberation from her aunts. But already I could see that she had transferred her interest to O’Malley.

“I arranged to pay Mrs. Tannenbaum the one thousand dollars as soon as she produced her certificate of marriage [333] to Tannenbaum, impounded the photograph and sent her away happy. Then I suggested to Lucy that perhaps we had all better go back to the 86th Street house and relieve the old ladies’ anxiety. But rather to my surprise she stated vehemently that she had no intention of ever going back. She had had enough of them. Hereafter she proposed to lead her own life. It had never occurred to her that she had a way out, until the Prince had happened along. She had hardly even realized that the money her father had left her was hers. She might have gone on living there, just as she always had done, for the rest of her days except for her recent unfortunate experience—which perhaps, as it turned out, hadn’t proved so unfortunate at that.”

Mr. Tutt stopped and poured himself another glass of Burgundy.

“She married the reporter, of course,” put in Miss Sondheim.

“Yes, she married O’Malley,” assented Mr. Tutt. “That seemed a foregone conclusion, and she has lived a happy domestic existence ever since. They’ve got three fine children—all girls—named Martha, Doris and Annabelle after the aunts, who are going to leave them all their money.”

“Did you ever see Tannenbaum again?” asked Bonnie.

[334]

“Only once,” replied the Old Man. “I stumbled into him at a ball game. He looked flourishing—all dolled up in a yellow and black checked suit, moleskin waistcoat, spats, red tie and a gray derby. He seemed quite glad to see me. It appeared that he and Dr. Trench, who changed his name to Osterholtz for the purpose, had organized what he called an ‘orthopedic hospital.’ The doctor performed the miracles, and all Boto had to do was to sit in Peacock Alley down at the Waldorf and if he noticed anybody with a limp, to step up, tap him on the shoulder and say in a confidential and commiserating tone: ‘I see you’re a little lame. I was afflicted in the same way once myself. But I went to Dr. Osterholtz and was entirely cured in three weeks.’ They went fifty-fifty on the fees.”

“And the three old ladies?” queried Tutt.

“They’re still living on 86th Street the same as ever.”

“If you call it living,” commented Miss Wiggin. “Have you, by any chance, a copy of that marriage contract? If you have I’d love to see it.”

“Bring me that album, Willie,” directed the Old Man, pointing to a heavy book on the top of the escritoire. He turned over the dusty pages. “Here it is,” he said.

“Why not read it aloud?” suggested Minerva, and Mr. Tutt obligingly adjusted his spectacles.

[335]

### “NEW YORK CITY, U. S. A.

“Know All Men by These Presents that I, Prince Boto Borofsky, hereafter referred to as party of the first part, and Reverend Felix H. Trench, hereafter referred to as party of the second part, do hereby covenant and agree as followeth, to wit:

“The party of the first part will do just as the party of the second part directs until the purpose is

accomplished, and solemnly agrees that

(a) He will drink no whiskey, gin, or other hard liquor oftener than once a month and go over to Hoboken when he does it.

(b) Absolutely agrees to confine his attentions to whomsoever party of the second part selects.

(c) He will keep party of second part fully informed at all times of how things are going.

(d) If he becomes engaged to be married he will immediately pay the party of second part all he owes him and will furnish latter with approximate estimate of value of fiancée's estate.

(e) Upon marriage he will pay party of second part ten per cent (10%) of all money received or within his control, or as soon thereafter as he can get it, up to fifty thousand dollars (\$50,000).

“The party of the second part will introduce said party of the first part to such ladies as in his opinion [336] seem most worth while. He will also furnish party of first part with one dress suit to cost not more than ninety dollars (\$90), one opera coat, sixty dollars (\$60), one Gladstone bag, forty dollars (\$40), one crush hat, eight dollars (\$8), and will allow him five dollars (\$5) per week cash for incidentals, no accounting required.

“This contract is irrevocable.

“Witness our hands and seals this day, November 11, 1921.

[Signed] Prince Boto Borofsky  
Felix H. Trench—Educator.”

“It was clever of you to think of advertising for the Princess Borofsky,” said Tutt.

“O, that was just a hunch!” said Mr. Tutt.

## Transcriber's Notes

- Preserved the copyright notice from the printed edition even though the work is public domain in Canada (Arthur Train died in 1945).
- Silently translated several typos, and many missing or misplaced quotes.
- The name "Pierpont" was twice spelled "Pierrepont", and left unchanged.
- The name "Toothaker", variously spelled, always corrected to this form.
- Mixture of Phoenix/Phœnix and House/Hotel, and left unchanged.

[The end of *Old Man Tutt* by Arthur Cheney Train]