

Spring 1930

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Recommended Citation

Francis Fisher Kane, *The Life of an English Criminal Lawyer*, 21 *Am. Inst. Crim. L. & Criminology* 5 (1930-1931)

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THE LIFE OF AN ENGLISH CRIMINAL LAWYER

FRANCIS FISHER KANE¹

No one can read the delightfully interesting book on the life of Sir Edward Marshall Hall² without being continually impressed by the wide difference in social standing between the barrister accustomed to trying cases in the English criminal courts and the criminal lawyer in the United States. The Englishman may go daily into the criminal courts, and take the most unsavory of briefs; he may represent defendants for whom the public has not a particle of sympathy, defendants against whom a violent public sentiment exists, and yet, if he be an able and honorable man, he may do all this without the slightest loss of social prestige. He may live and die an honored member of the Bar, with the respect of the bench, and indeed of the entire community. The division of the profession into barristers and solicitors no doubt helps to make this possible, for it separates the barrister from his clients and keeps him from coming into contact with them except as may be necessary in the preparation of cases for trial. Doubtless also the fact that briefs for the crown may at any time go to barristers practicing for the defense has its effect in the maintenance of higher ethical standards, but the most potent factor of all is the greater authority wielded by the bench. The barrister must play the game according to the rules. He must walk in the straight and narrow path or take the consequences, and the consequences may be a reprimand from the court that will in the end cause him a serious loss of income, for solicitors will not give briefs to a barrister out of favor with the judges.

Marshall Hall, as he was familiarly known—he was not knighted until 1917—was born in 1858, the son of a Brighton physician. He was sent to Rugby by his father but stayed there only a couple of years. Though he took a mathematical prize, he was principally distinguished for his skill at cricket. A row with his house-master led to his being placed in a London tea-house, and there followed a spell of drudgery relieved by cricket matches in the country. After a year or more his father relented and entered him at St. John's College, Cambridge, but again his education was interrupted. He traveled

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²For the Defense: The Life of Sir Edward Marshall Hall, by *Edward Marjoribanks, M.P.* With an introduction by the Rt. Honourable The Earl of Birkenhead, G.C.S.I., P.C., D.L. New York: The Macmillan Company, 1929.

on the continent, and spent a year or more in Paris leading the life of a young *flâneur* at the expense of his indulgent parent. Then he went to Australia where he was entertained by friends, went on shooting parties, and played more cricket. Finally he returned to Cambridge, where he took a pass degree. He was finally called to the bar from the Inner Temple in 1883. Thus he had seen more of the world than most young barristers, although his book education was not all that it might have been. In person he was tall, standing six feet three inches. He had "beauty of the most virile type," a face with clean-cut features, eyes full of feeling, a most winning smile. Though he had all the gifts of a great advocate, being "histrionic, crafty, courageous, eloquent, quick-minded, charming, great-hearted," he was hot-tempered and indiscreet. In the service of his client he cast all fear aside, and his devotion to his client occasionally ran away with him. He had a strong sense of the dramatic and would sometimes lend himself to it a little consciously, but he had nothing in him of the cold, calculating mind. Like many orators he was vain, but he was warm-hearted. He was indeed "very hot-tempered and very warm-hearted." Not learned in the law, he made no secret of his weakness. "You must take this point," he would whisper loudly in court to his junior, after he became King's Counsel; "there is some law in it." Though "his best friend would have admitted his vanity," he "was not a conceited man, and was the first to acknowledge a superior. Of all leading counsel his name was most frequently in the newspapers, and most rarely in the official law reports. He adored animals, yet was as fond of shooting as any man in England. In spite of his unrivalled experience in mankind's wickedness and weakness, and the most grievous tragedy in his own life, he was as naive as a child." This is shown by the letters to his second wife and daughter, several of which are printed by the author. To his daughter he addressed a tender little letter when she was barely more than a month old. Among his intimate associates were Lord Justice Avery, before and after his elevation to the bench, Lord Reading, Sir John Simon, and Sir Frederick Webster, afterwards Lord Alverstone. A conservative in politics, Hall for a time represented Southport in the Commons, but did not make a success of his maiden speech, and took but little interest in parliamentary work, going to the House only occasionally to vote on a division. Indeed he seems to have paid but little attention to the interests of his constituency. His love of advocacy and his rare gifts as an advocate kept him before the courts. Although he came within an ace of getting a law office, he never held a government position.

The tragedy of his life came early in manhood. When first at Cambridge he had fallen in love with a young girl who did not return his affections, and it was largely on her account that he left the university. On his return to England some years later, they came upon each other at a ball, and at the end of a dance she told him she might give him a different answer, if he repeated the question he made her before he went away. He did repeat the question, and she became his wife. He was only twenty-four and very much in love, but on the day of his wedding "all his joy was taken away." While still in the carriage going from the church, his bride told him that she had never cared for him, and that she could not care for him as he cared for her. There was a miserable honeymoon in Paris, during which the wayward girl was treated by him with infinite tenderness. She had attacks of nervousness and depression; nothing would satisfy her. He was loving and tender, but it was of no use. He bought "little ornaments for Ethel"; he himself loved pretty things. He was a connoisseur of gems and had a keen eye for their beauty. Once when his wife left him, he wandered for hours in the Paris streets seeking for her.

When the young couple returned to London, they set up house-keeping, Hall taking chambers in the Inner Temple and starting on the laborious, uphill climb of a young barrister. It was slow work; his means were meager, his father could contribute but little to their expenses. His wife became more and more unhappy. She did not sympathize with her husband's struggles, and after some six years of marital unhappiness she left him for an army officer. The end came soon afterwards. Knowing that she was going to have a child, she consulted a disreputable foreigner, who claimed to have the right to practice medicine. He performed an operation, and she died either from the effects of it or from poison that the wretch administered. Hall was in Paris when the news reached him. He immediately returned to London, but fortunately a meeting between him and his wife's lover was prevented, or, as his biographer says, "the tragedy might have been worse than it was." He sat in his chambers grief-stricken and unapproachable, saying he "must get away somewhere, or he would lose his reason." By degrees his grief abated and he got back to work. After a while briefs came to him, and with them success, for not only had he great talents, but he had industry as well. His favorite text was "Whatsoever thy hand findeth to do, do it with thy might." Fame came to him and a large practice.

The story of a lawyer's life can be little more than the story of his cases. But the cases in which Marshall Hall played a part all had a human interest. And what a wonderful series of cases it was! They were of all sorts—cases involving domestic relations, libel cases against newspapers, damage suits, and cases involving all sorts of crime from murder down to the lesser misdemeanors punished by the law. With an infinite amount of labor, the author has examined the records and culled from them the facts needed to make the narrative interesting. Nothing is omitted that is essential to the understanding of each case, and while the author writes with the precision of a lawyer, he tells his story in plain, simple English that all can understand. After the striving for effect that is characteristic of so much of present day biography, it is refreshing to read a book in which the story of a man's life is told in a simple and direct manner—a book in which the author depends for his success on the interest which the facts themselves will evoke, rather than on his method of presenting them. Mr. Majoribanks does not indulge in parallels and contrasts, he is not continually setting off one fact or one person against another. He limits himself to the facts Marshall Hall's life, and tells us what Marshall Hall did and said. The result is a book of great intrinsic value, with a wide public appeal. It has, it is needless to say, met with a cordial reception from the legal profession.

After he had taken the silk, Marshall Hall met with a most serious setback. It came as the result of heedlessness, resulting in a judicial reprimand. He had been retained for the plaintiff in a libel case against the "Daily Mail," one of Harmsworth's papers. Under the heading "Green Room Gossip" the newspaper had stated that "Miss Rosie Boote, whose name is frequently before the public now, is the daughter of Hetty Chattell, the principal 'boy' in the Hippodrome pantomime." Miss Chattell, a popular actress of the day, was only twenty-eight, and she naturally objected to being thought the mother of another actress. And of course she objected to the implication that she, an unmarried woman, had a child. The paper printed an apology, but did not state that Miss Chattell was only twenty-eight. Marshall took the brief and obtained a verdict of £2,500 for his client. It was an extraordinary victory, for though the case undoubtedly carried some damages, £2,500 was a tremendously large sum in any view of the facts, and the verdict was set aside by the Court of Appeals. But for Marshall Hall there was something worse in the case than the mere losing of a verdict. The solicitors for the newspapers had asked for three weeks' delay for preparation, and Hall in addressing the jury had

claimed that the solicitors had asked for the delay in order to secure evidence that would injuriously affect his client's reputation. There was, however, nothing to prove that the three weeks' delay had been so used by the solicitors. Not only was no evidence of bad reputation introduced, there was not the slightest proof that the solicitors had tried to obtain such evidence. Marshall Hall had thus made the statement without having at hand the testimony with which to back it up, and the statement had undoubtedly influenced the jury. So indeed the Court of Appeals decided, and in doing so they administered a stinging rebuke. They said that his statement about the solicitors had been "outrageous"—it had been made in a shameful attempt to inflame the passions of the jury. It happened that he had recently in other cases attacked the press, and now this reversal in the Court of Appeals, and the reprimand that accompanied it, was devoured as a tid-bit by the press. It was a serious matter. He lost the favor of solicitors, and his fees fell to one-half what they had been in the previous twelvemonth. It took him years of hard uphill work to retrieve his position at the bar. It may be that there have been instances in America where a criminal lawyer has lost some business through a rebuke from the court, but when was it ever heard that a man lost one-half his practice from merely arguing an inference not actually supported by the evidence? In our mass production of criminal justice such things generally pass unnoticed.

In the case against George Joseph Smith, a case that we shall speak of later, a question arose as to the propriety of counsel being paid out of monies which the defendant might receive from a newspaper for telling the story of his life. As Smith was in prison, the Home Office had to pass upon the agreement which it was proposed that the defendant should sign in order that the fees might be paid. The matter came before Sir John Simon, who, as we have said, was a close friend of Hall's, and who recently had been Attorney General. He turned down the proposed arrangement, and Hall, who had already accepted the brief, was much aggrieved by the position taken by his friend. He wrote Sir John a personal letter, but the Secretary did not change his mind, and the result was that Marshall Hall received only the nominal compensation provided by the Poor Prisoners' Defence Act, as Smith had no money in hand for counsel fees. He had invested in annuities what he had got from the unfortunate women he had murdered. Once again one notes the high standards maintained in England in criminal law practice.

Many were the tilts that Hall had with the court. Devoted to

the interests of his client, and having no sense of fear, he often did not realize how far he had gone in irritating the particular judge. Once, before Mr. Justice (afterwards Lord Justice) Matthew, he became truculent and was told to sit down. He did not obey, but slowly turned round and carefully surveyed the public sitting at the back of the court. "Sit down," repeated the judge. Marshall did not obey, and again the judge, now thoroughly infuriated, shouted the same words. "Oh, your lordship is addressing *me*?" replied Marshall, imperturbably. "I thought you were addressing a lady at the back of the court. Certainly, my lord, if your lordship would prefer to address me sitting down, I will do so." Curiously enough, as the author comments, Hall in his later days was afflicted with a physical trouble that made standing exceedingly painful, and the judges, knowing this, gave him special leave to address them sitting.

It was with Lord Justice Matthew that Sir Frank Lockwood afterwards undertook to put matters right, the Judge and Hall having been on ill terms for several years. The two barristers cracked the judge to his club one evening, after the courts had risen. It was arranged that Lockwood should go in for a minute or two and explain what Marshall wanted, while the latter should wait outside till Lockwood came to call him in. "I had only to wait two minutes," Marshall used to say, in the charmingly aggrieved and naive tone which he often adopted when telling a story against himself. 'In less than that time, Lockwood came tripping down the club steps, calling out to me long before he reached me, "It's no use, Marshall; the judge says he hates you".'

Instance after instance might be quoted of Hall's wit. In a case against a man named Rose, a member of a High Church Brotherhood living in a monastery on the Isle of Dogs, one of the brothers was testifying as to the communism of his Order, when Marshall asked him:

"Do you suggest no brother has any individual right to property at all?" . . . "Not if he is fully professed." . . . "Not even a pen?" . . . "That may be so." . . . "Is your pocket handkerchief your own?" "No." "I only wanted to know how far the doctrine went."

When he was defending Bottomley's paper, "The Sun," for violating the Lottery Act in conducting the so-called "Lucky Spot" prize competitions, the Lord Mayor asked Hall what in fact was a lottery in law, if the competition advertised in the paper was not one. "Marriage," said Marshall readily, "is a lottery, and a very bad lottery,

sometimes; and so, too, is the purchase of a ham or cheese; but none of these are lotteries in law." "Mr. Marshall Hall," said the Lord Mayor, "you ignore the skill of the purchaser in these instances." The publisher of the "Sun" escaped with a fine of twenty-five pounds and a good advertisement.

With the exception of the famous Dr. Crippen, Marshall Hall seems to have represented the defendants in all the better known murder cases of his day. The stories of these cases and the part Hall played in them form perhaps the greater portion of the book, and the stories are all of an absorbing interest. They are records of cases that turned on circumstantial evidence, cases that turned on the question of insanity, and cases where the defence was self-defence or accident. In the Camden Town case a young artist named Robert Wood, whose work had been favorably noticed by Rosetti, was accused of murdering a poor young woman of the streets. So many men had been with her before her death that the problem was to determine which of them had killed her. Wood, although weak enough in morals, was really an amiable young man. He showed extraordinary courage at the trial, and made sketches of the lawyers, the judges, and indeed anyone else whom his pencil fancied. He was innocent of the murder, but knowing that suspicion would light on him he concocted a false alibi. It brought him close to the gallows, and had it not been for Marshall Hall's extraordinary ability in analyzing such evidence, he would undoubtedly have been convicted. The case is a striking example of how an innocent man, wrongly accused, may through fear seek to cover up the truth and even commit perjury.

In cases where the charge was poisoning Hall brought to bear upon his work a knowledge of medicine which he had inherited from his father. He cross-examined successfully the best experts of his time. Witness the case against the Seddons, a husband and wife accused of giving arsenic to a lady lodger. Seddon was convicted and well deserved his fate, but his wife was acquitted, as was also the defendant Greenwood in another poison case. In that against Seddon, Hall severely criticized the police for the way in which they had questioned little Maggie Seddon, the daughter of the accused, trying to entrap her in her testimony. He commented "on the un-English and inquisitorial method" in which the police had approached the poor girl at the outset of their investigation. One wonders what he would have said of "the third degree" as now practiced in America.

Perhaps the most telling, certainly the most horrible story in the book is that of the case of George Joseph Smith, "lady-killer by pro-

fession." In May, 1912, a man who called himself Henry Williams, a dealer in antiques, took a house for himself and his wife at 80 High Street, Herne Bay. The wife had had a little fortune of £2,500, and her husband arranged matters so that he might inherit it. The house had no bath, but the husband was able to buy one from an ironmonger and it was installed in the home. The wife was out of health and consulted a doctor; she thought that she had fits. On a Friday night in July, 1912, her husband went out, he said, to buy some fish for his wife. He came back, went upstairs, and on the following morning notified the doctor that she had died in her bath. There were no signs of violence upon her, and the coroner, on the following Monday, found the cause one of "accidental death." The death attracted little or no attention in the press, but in December, 1914, two years after it had occurred and passed unnoticed, a seemingly distracted husband, known as John Lloyd, declared to his landlady that he had found his bride of one day dead in her bath. He ran for a policeman and a doctor. The tragedy appeared to have happened the night before, when, as the husband said, he had been out buying some tomatoes. After the bath had been prepared—they were living in a lodging house—there had been sounds of splashing and slapping from the bathroom; then there had been a sigh. Soon afterwards the landlady had heard the strains of "Nearer my God to Thee" which someone was playing on the organ in the sitting-room. The police followed up this second case, as it attracted much attention in the papers, and it was found that during the previous month of December, the distressed husband had been living with another woman, whom he had married in the previous September. He had insured her life in favor of himself. She also had been sick. She had visited a doctor, and she had died upon a Friday night. Her husband had knocked at the outside door of the house, he having been out to buy some eggs for his wife's supper. He had gone upstairs, and found his wife dead in her bath. And there were no marks upon her body. The coroner had sat upon this case also on the following Monday, and decided that the death was accidental. The man was no other than the defendant Smith.

It was for the first of these three murders that Smith was tried, with Marshall Hall as counsel, and a very interesting question arose as to whether the deaths of the two other women could be given in evidence. Here was a proposed extension of the well known rule that permits evidence to be given of other similar acts where the question is as to the intent or "state of mind" of the defendant. Marshall Hall argued that in the case at the bar the government had only proved

a death—it had not proved a killing, for, standing alone, the evidence of the one death was only that a woman had died in some way in a bath tub. There being no bruises on her body, and there having been no one present, there was no evidence to show that the woman had been drowned by the defendant. Hall therefore contended that it could be only by an extension of the existing law that the evidence of the two other deaths could be admitted. The court, however, did admit the evidence, and, as a result, the defendant was convicted. There could have been no other conclusion reached by reasonable men, and if it was by an extension of the law of evidence that proof of the other two deaths was permitted, such an extension of the law was wholly reasonable. As the author well says, the evidence was admitted “on the principle of induction, which is as vital to inference as deduction.” Mr. Bodkin, the barrister for the crown, in his summing-up before the jury, put the argument as follows: “In each case you get the simulated marriage. In each case all the ready money the woman had is realized. In each case the woman made a will in the prisoner’s favor. In each case the property could only be got at through the woman’s death. In each case there were, we submit, unnecessary visits to a doctor. In each case letters were written the night before the death in which the prisoner’s kindness as a husband is extolled. In each case there were inquiries about a bathroom. In each the prisoner is the first to discover the death. In each case the prisoner is the person in immediate association with each woman before her death. In each case the bath-room doors are either unfastenable or unfastened. In each case he pretends to do something which shall take him away from the scene where the particular tragedy has been enacted. In each case there is the immediate disappearance of the prisoner.” “Mr. Bodkin might have added,” says the author, “that in each case the bride died either on a Friday night or a Saturday morning, so that an inquest could be held over the week-end before her relations could arrive.”

The author thus describes the testimony given at the trial:

“For six days witnesses were called to narrate the miserable tragedies of these three confiding and simple ladies. Theirs were humble lives, which would normally have been spent in quiet, ineventful surroundings. That seemed to make their tragedies the more poignant. For these women asked so little of life; until Smith came along they did not even claim love. Some strange fascination in him called them from their quiet homes and employment. They learnt what love was; they became adventurous and passionate, and paid for it with their lives. The witnesses’ stories were made more graphic by the production of the three very baths in which

the poor women had died, and many of them, from great emotional stress, found it difficult to give their evidence. The near and dear ones of each of them had to go into the box to say what they knew, as well as the poor, respectable landladies, none of whom 'ever expected such a thing to happen in my house'."

It is impossible in the limits of this review to speak of the other important murder cases in which Marshall Hall represented the defence. Skillful indeed he was in defending the accused where insanity was the plea, and equally skillful was he where, as in the Lawrence and Fahmy cases, the evidence, while it showed that the defendant might have wished the death of the deceased, nevertheless showed that the actual killing had been done in self-defence or by accident. "Provocation, self-defence, and accident," as the author says, "are very different matters; they do not go well together in harness, and only the last two of them can secure an acquittal."

"Madame Fahmy had, on the face of it, killed with a lethal weapon an unarmed and defenceless man. Long provocation such as she had endured may come dangerously near to proving, not self-defence, but motive; not accident, but revenge. The manner in which Marshall Hall, by exposing the long story of her frightful provocation, showed why she had come to seize the pistol in self-defence, and how, owing at once to her ignorance of mechanism and her mortal terror at the moment, the pistol, which she thought harmless, was fired by accident, is beyond all praise. The three lines of defence, inconsistent as they seemed at first, could only stand with each other, and together they had the unmistakable ring of the truth."

The rule of the English bar is that the barrister must take a criminal brief offered him provided he practices in the court where the man is to be tried, and provided that a proper fee is offered. One often wonders, as one reads the book, what would have happened to the prisoners successfully defended by Marshall Hall, if they had not had the services of so able an advocate. And one cannot help asking oneself how many defendants charged with less serious crimes than murder, suffered unjustly during all those years in England because of not having had the necessary money with which to pay counsel fees. It is interesting to note that Marshall Hall himself did not think that the Poor Prisoners' Defense Act met the situation, with its pitifully small allowances for assigned counsel. He often said that the poor man would not get his rights until a Public Defender was appointed.