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Voice (after a long pause): "'Tain't no use. We ain't bothrin' about who called the singer a mutton-head, but who called the mutton-head a singer."

The Dennistoun Case

The Most Famous Matrimonial Case Since Charles II's Time.

The Marriage Settlement

Had you formed a view with regard to money and settlement?—I had most decidedly.

What happened?—At the time I had hoped that the day would come. There were no means available by which I could in any way provide a settlement which would enable Colonel Dennistoun to have even a few pounds that he could look upon as his own, unless it were that I was able to sell a certain amount of pictures.

There was a covenant with the husband to pay £100,000 before March, 1924. Was there any concealment of the fact that the £100 000 was to be provided by you? — Not the slightest. I would have been glad to feel that he had the money, for I knew his sensitive, refined nature.

Rightly or wrongly, do you agree with the character which has been given to your husband by my learned friend?—It is wicked and abominable.

His Lordship.—The suggestions against his character are not correct. They are absolutely without one scrap of foundation. He was a simple soul, and that describes him absolutely.

Sir Edward Marshall-Hall — If there was a conflict of will between him and Mrs. Dennistoun?—He was a tool in Mrs. Dennistoun's hands, absolute putty. He had no will; he was a mere rag.

The witness said that at the time of their marriage the Colonel was very "seedy."

Counsel. — What has been his state of health during the whole of the period since then? — I have spent the whole of the time nursing him.

Has there ever been a point when you would have settled this action? —Never, for a single solitary moment.

Sir Ellis Hume-Williams.—I have no question to ask you, Lady Carnarvon.

The hearing was adjourned.

The Questions for the Jury

On Friday, his Lordship said:—The first question that I propose to leave to the jury is, "Was the alleged agreement made?"

The second question that I propose to leave is, "If 'yes,' what did it mean?"

In that connexion there is the case of Stollery v. Maskelyne (1898), which is reported only in The Times Law Reports (15 The Times L.R., 79), and confirmed in the House of Lords (16 The Times L.R., 97). There the jury put their own interpretation on the contract.

The next point is, "Was the alleged agreement too vague to be enforceable in law?" In re Vince (8 The Times L.R., 334; (1892) 2 Q. B. 478). If the Court is of opinion that the alleged agreement was so vague in its terms that the Court is unable to place an intelligible interpretation upon it, it will not enforce it.

The next question I propose to put is, "Was there any, and what, consideration for the alleged agreement?" That may or may not be a question wholly for the jury, but in connexion with that it will be necessary to consider the effect of the French code, and the effect of the evidence of the able members of the French Bar which was given here.

The fourth question will be, "Did the parties mutually intend that the words alleged by the plaintiff to be used by the defendant should constitute a legal and binding bargain between them?" That question is based upon the observations of the Court of Appeal in Balfour v. Balfour (35 The Times L.R., 476, 609; (1919) 2 K. B. 571).

The fifth question that I propose to put to the jury is, "Was the alleged agreement a collusive agreement, in the sense that it was part of an arrangement between the parties for a collusive divorce?" That will give rise to the meaning of the word "collusion" as employed in English Courts of Law. I hope that counsel will consider that point, because there has not as yet been a clear, full, and authoritative definition of the meaning of the word "collusion" as used in the matrimonial Courts in this country. But, as at present advised, I shall follow and apply the views expressed by Lord St. Hellier in the well-known case of Churchward v. Churchward (11 The Times L.R., 69; (1895) P., 7). There will be further questions on this question of collusion. The question as to the French law upon the matter; that will be for me. There may be questions as to the effect of collusion upon this alleged agreement in English law; and thereon will arise questions as to whether or not this alleged agreement, if collusive, was against French public policy, and therefore void, or was against English public policy, and therefore void. Of course, in connexion with English public policy, counsel will reflect upon section 30 of the Matrimonial Causes Act of 1847 and upon section 7 of the Matrimonial Causes Act of 1860, which provides for the intervention of the King's proctor in cases of collusion.

Question 6 which I propose to leave to the jury is:—"Had the conditions of the alleged agreement been fulfilled at the date when the writ was issued?" Upon that point, of course, the jury will have to consider the relationship between the moneys alleged to be the defendant's and the fact that those moneys passed from Lady Carnarvon. There will be several points of fact to consider in connexion with that. As I pointed out to the jury some days ago there are far more and far graver questions in this case than many people think.

The seventh question will be: "If the jury think that the alleged agreement was made, and if all the other defences fail, then what is the measure of damages?" Upon that, to my mind, no more difficult question was ever before a Judge and a jury, for if reflection be given to the character of the alleged eness, then the question of damages is one of considerable difficulty.

The Money Claims

The next question (No. 8) that I propose to ask—and I turn now to the less important part of the case, the money claimed, and I take first of all paragraph 2 of the statement of claim, whereby the plaintiff claims £616 as having been paid by her to the use of the defendant in 1913—is: "Did the plaintiff make payment of £616, or any less sum, on behalf of the defendant, in this sense, that she was making those payments as loans to him and not as gifts?" If the jury think that those payments were gifts, no further question arises on this head, but if the jury think that the £616, or any part thereof, was an advance then prima facie the claim of the plaintiff to those moneys is barred by the Statute of Limitations because six years have elapsed. Then, if the plaintiff were to succeed, she must show that there has been a payment on account, and she so alleges in her very ably drawn statement of claim. Thus, the plaintiff has to satisfy the jury that the defendant made a payment of £100—and the defendant has admitted that he paid that sum—on account of this debt of 1913. If the payment was not a payment on account, but a mere gift irrespective of the alleged debt, then it did not operate to revive the debt which was otherwise extinguished by the Statute of Limitations. That question, I think, should be a supplemental question, 8a.

A further subordinate question that may arise under 8 is: "What was the effect of the bill of sale? whether it was genuine or not", because the defendant says that the real point of the payment of £616 by the plaintiff was that he had given her a large quantity of valuable furniture.

Passing from the subordinate questions of No. 8, the next question is under paragraph 1 of the statement of claim. This relates to alleged payments by the plaintiff in 1920-21. The question is: "Did the plaintiff lend the defendant £336 in those years, or any and what part thereof?" I lay emphasis on the word "lend" in contradiction to the word "give". And I must also remind the jury that, apart from the main defence that the defendant has raised on the £616 and the £336, there are also minor points as to the actual payments made.

The tenth question arising in under paragraph 5 of the statement of claim. The plaintiff alleges that between 1919 and 1920 she paid £136 on behalf of the defendant, and the question for the jury is: "Did she pay that, or any other sum, on the defendant's behalf?" the point again being whether the payments were loans or gifts.

That concludes—and the jury may think that they are enough questions—the main questions, except that, on the record, there is a counterclaim in respect of furniture. I do not propose at the present moment to indicate my notes upon that matter, but I hope that counsel for the plaintiff and for the defendant will consider ere the close of this case the points that arise upon that counter-claim. If it still stands, there must be a clear formulation of points at issue between the parties. The questions I have indicated, however, will cover the points in issue between them.

Mr. Birkett said that he agreed with the questions.

Sir Ellis Hume-Williams said that there was one other question, and that was the interest on the £1,000.

His Lordship said that that was a question of law for him, after the jury had found as to the facts.

Sir Ellis Hume-Williams said that the amount of interest was not disputed.

His Lordship said that in connexion with the questions he had indicated there would be other and grave considerations upon further aspects of the case. There would be the question of the relationships between the plaintiff and the defendant and Sir John Cowans, as bearing upon the questions generally.

Mr. Birkett said that, owing to unexpected illness his leader, Sir Edward Marshall-Hall, could not be present to address the jury as he had wished to do. His illness incapacitated him entirely. In those circumstances he hoped the jury would grant him some indulgence.

Sir Ellis Hume-Williams said that they all regretted Sir Edward Marshall-Hall's illness.

Mr. Birkett proceeded to address the jury and the court adjourned.

Sir Hume-Williams on Monday addressed the jury on behalf of Mrs. Dennistoun. In dealing with the evidence, he said that his friend had had the great advantage of shorthand notes of the proceedings, which were quite beyond the means of Mrs. Dennistoun, but he was going to read from The Times report of the case, which he had found extraordinarily accurate.

His Lordship agreed that the case had been admirably reported in The Times.

(To be Continued)

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