

# Examples of Criminal Justice

## NOTABLE CROSS-EXAMINATIONS.

Collected and annotated by E. W. Fordham. New York: The Macmillan Co. 202 pp. \$2.50.

**DEFENDER'S TRIUMPH.** By Edgar Lustgarten. New York: Charles Scribner's Sons. 239 pp. \$2.75.

By RICHARD B. MORRIS

SO dreaded is the ordeal of cross-examination in the popular conception that most of us in anticipation of the prospect would, like Mr. Winkle after his encounter with Sergeant Buzfuz, rush with delirious haste to The George and Vulture and order something a good deal more potent than Seven-Up.

Despite the best intentions of the editor to the contrary, a reading of Mr. Fordham's compilation would serve to puncture a myth sedulously cultivated by trial practitioners and their publicists, especially since Wellman's classic account of the art of cross-examination. The fact is that trials seldom turn on a single dramatic moment of testimony. The impact of the openings and summations, the general impression made by the witnesses, the judge's rulings and his charge, and the incalculable prejudices of the jurors, all contribute to the verdict. Much of this cannot be conveyed by the cold printed record. Furthermore, this book bears out an impression gathered by the reviewer in the study of numerous trials that even the most brilliant cross-examiners accomplish their best results with palpable perjurers or mendacious morons. A Whistler or a Gilbert were more than a match for their inquisitors.

Every anthologist has a right to be rather arbitrary about his selections, but American attorneys may feel that in selecting merely one instance of a notable American cross-examination, the circus performance between Darrow and Bryan at the Scopes trial, as against nineteen British illustrations, Mr. Fordham has overlooked some very good copy. Perhaps our criminal bar has deteriorated but not quite that badly. The editor has also seen fit to include two selections which are not properly cross-examinations at all. The exchange between Charles I and the Parliamentary Court which tried

him is a running argument on legal issues rather than the verification of a previous examination on the facts. The excerpt illustrating the bullying tactics of Jeffreys involved the browbeating of a reluctant witness for the state while he was testifying on direct. Instead of these, the collection might have been enriched by the inclusion of the cross-examination by Attorney-General Sir Alexander James Cockburn in the William Palmer Case and Sir Rufus Isaac's masterly handling of the poisoner Frederick Henry Seddons, perhaps the two most exciting examples of the art in British trial history.

The editor has introduced his selections with rather dry, matter-of-fact notes, but occasionally a ray of humor manages to pierce the thicket.

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MR. LUSTGARTEN's book plays the spotlight on the defenders rather than the prisoners. Mr. Lustgarten, who gives us murder in the best tradition of Pearson and Routhead, has been most judicious in his emphasis, for the four defendants are not intrinsically interesting people. Two are women. One of them, Adelaide Bartlett, had to stand trial for murdering her spouse by administering chloroform; the other, Elvira Barney, was accused of killing her lover in a quarrel. The two males are definitely below par. Although Robert Wood, a white-collar worker, was very different in background from Tony Mancini, a convicted thief, they had one thing in common. Both were suspected of having killed harlots.

Against all four the cards were perilously stacked. In each case the accused by their dim-witted antics set up good prima facie cases against themselves. The suspicious and incriminating actions could have been reasonably construed as consciousness of guilt. But they were smart enough to pick counsel who managed to raise a reasonable doubt in the minds of the jurors. In each case the Scotch verdict of "not proven" might well have been more appropriate than "not guilty," and, as a matter of fact, such was the finding of the jury in one of the four cases.

The drab and sordid atmosphere of the crimes is redeemed for us by the brilliant barristers engaged in fighting for the lives of their clients. The author's pen portraits are superbly finished. Edward Clarke, a Victorian period piece, whose eloquence proved irresistible to juries; Marshall Hall, the passionate feudist, who became a



—Douglas Glass.

Edgar Lustgarten—"most judicious."

legend in his own lifetime; Patrick Hastings, the cool, self-contained sophisticated and master of the art of underplaying; and, lastly, the tenacious and persuasive Norman Birkett with his scorn of pyrotechnics—four great criminal barristers whose trial wizardry has seldom been matched in Anglo-American legal history.

The author's narration has pace and atmosphere; his tension is not contrived; his psychological insights have depth and persuasiveness. The reader will come to the end of this absorbing volume with a feeling of immense relief that he is not the Reverend Dyson facing the deft cross-examination of Clarke or the medical expert, Dr. Lynch, trapped on the stand by Birkett's cunning. And he should be thankful that he is not standing in the boots of any of the four defendants, for Mr. Lustgarten, despite his admiration for the skilful parrying and thrust which characterize the judicial duel, concedes that innocence is not enough. Had these four prisoners not been shielded by top-notch defenders there is every likelihood that all would have been convicted. But if an innocent person caught in the web of circumstantial evidence requires a million-dollar defense staff to get him off, something is seriously wrong with Anglo-American criminal justice.

Apart from their entertainment rating, these four cases demonstrate that the machinery of the law is not infallible, that a bullying judge or a hostile jury can make hash out of the best laid plans of the defense. With a kind of understatement rare in the literature of crime this book proves the need for drastic reforms in criminal trial procedure if the innocent are to be shielded and the guilty punished.

Richard B. Morris, professor of history at Columbia University, is preparing a volume on famous American trials.

## For the Empire

THE LIFE OF JOSEPH CHAMBERLAIN. Volume IV: 1901-1903. By Julian Amery. New York: The Macmillan Co. 533 pp. \$4.50.

By WALTER P. HALL

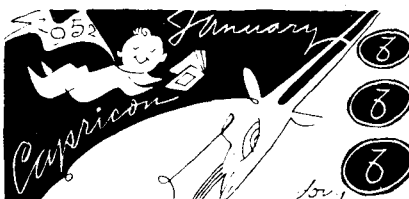
OFFICIAL biographies of famous Victorians are proverbially of great length, and this slowly progressing life of Joseph Chamberlain promises to be the longest of all. True, when completed it will have but five volumes as opposed to six for Monypenny and Buckle's Disraeli; but in actual wordage Mr. Garvin and Mr. Amery will walk off with the blue ribbon.

The first three volumes of this biography were completed by J. L. Garvin between 1915 and 1934, carrying Chamberlain's career to 1900. Owing to his editorship of the *London Observer* Mr. Garvin resigned the commission given him by the Chamberlain trustees who entrusted it to the present author.

Volume IV is concerned with Chamberlain's career during the narrow compass of three years, 1901-1903; and in it Mr. Amery traces his hero's activities through the settlement of the Boer War, the abortive proposals for an alliance with Germany, the colonial conference of 1902, and the background of Chamberlain's last fight, that for imperial preference and a protective tariff.

Mr. Amery is to be congratulated on the fulness of his treatment, his sense of perspective, and his relative impartiality. That he is somewhat over-kind in his judgments is to be expected, but that does not mar the excellence of this book since it is amply documented with exhaustive quotations from Chamberlain's letters and speeches, and an intelligent reader may draw his own conclusions.

Joe Chamberlain was a hard-bitten, free-spoken man. As one of his contemporaries put it, "he moves with the force of a steam puncher, punching rivets." Devoid of subtlety, an indomitable fighter, he continued in the twentieth century to run true to type, the man of business in politics. As Mr. Amery states, "it was not for nothing that, in an age where every successful brewer bought an estate and passed as a country gentleman, Chamberlain



still preferred to make his home in a Birmingham suburb."

The book opens with the Boer War still to be won. Until it was concluded, according to our author, "Chamberlain was courteous, kindly, and immovable." The middle adjective is questionable. Surely a kindly man would have resented the mobbing of Lloyd George in Birmingham. Not so Chamberlain. Again, the war might have ended a year earlier had Chamberlain approved an amnesty for the Cape rebels which Kitchener favored.

This is not to imply that Chamberlain was vicious or cruel. At times his South African policy was more lenient than that of Britain's proconsul, Milner, who urged suspending the constitution of the Cape Colony, an act of un wisdom to which Chamberlain would not agree. The latter lacked neither intelligence nor courage. It took courage to tour South Africa immediately after the war, and his long journey there did help to allay the bitterness that followed in the wake of conflict. But to write as Mr. Amery does that "within a fortnight Chamberlain had transformed the whole political climate of South Africa" is an exaggeration. How could it have been otherwise when with 800 guests invited to a garden party only 200 attended?

As colonial secretary Chamberlain had a full-time job. He worked hard to revive trade with the West Indies, "the Empire's darkest slums"; he fathered a school for the study of tropical diseases; and he collaborated with Herzl in trying to find a home for Zionists in British Africa. But he was never content to be simply colonial secretary. Interested in education, he founded the University of Birmingham, raised large sums for its endowment, a university, by the way, with a school of brewing attached. He also acted frequently as though he rather than Lord Salisbury headed the foreign office.

Quite as significant as Chamberlain's break with Gladstone over Irish home rule in 1886 and his determination to annex the two Boer republics was his campaign for imperial preferences and a protective tariff.

Dear to Chamberlain's heart was the Empire and above all else he was eager to strengthen the bonds between Britain and her self-governing colonies and dominions. To accomplish this,

closer trade relations were essential and that meant preferential tariffs. At the colonial conference of 1902 Chamberlain urged their adoption, and in so doing challenged the free trade tradition which by the twentieth century had become a sacred cow to the majority of his countrymen.

Meanwhile Lord Salisbury resigned, Balfour becoming Prime Minister. It was inevitable that he and Chamberlain could not work in harmony, and in his concluding volume Mr. Amery will describe their quarrel and conclude this definitive biography.

## English Past Notes

REUTERS: *The Story of a Century of News-Gathering*. By Graham Storey. Crown Publishers. \$4. In 1850 Paul Julius Reuter, who operated a pigeon post service between Cologne and Brussels, found his business threatened by the new electric telegraph. He moved to London and the following year opened a news agency that "put a girdle round about the earth." The revolution wrought by telecommunication in the last hundred years has not yet received due recognition from the historians. Any book that helps to explain more fully how cable and wireless services developed, and how political, economic, and military events were affected by the news so swiftly gathered and dispatched, should be welcome. Mr. Storey was given free access to all records preserved at Reuters, and he pays generous tribute to the enterprise, integrity, and business acumen of the men who made it the greatest news-collecting agency in the world before the First World War.

Details on the outstanding news scoops of the era 1851-1951 fill many pages. But the major emphasis is directed to the problems of organization, finance, and policy-making, to the competition offered by Havas, Wolff, and other rivals, and to the altered world conditions that led to the establishment of the "New Reuters" after 1941. This entertaining account lacks footnotes and bibliography, but it is written in a lively journalistic style and enlivened with a dozen illustrations.

THE PETERBOROUGH CHRONICLE. *Translated with an introduction by Harry A. Rositzke*. Columbia University Press. \$3.50. Mr. Rositzke undertook to prepare this complete annotated translation of one of the four surviving chronicles of English medieval history because none is available as a unit in a modern English rendering. "The Peterborough Chron-

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