JUDICIAL MURDER: THE CASE OF LIEUTENANT WARK. JUDICIAL SCANDALS AND ERRORS, II

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649326419

Judicial Murder: The Case of Lieutenant Wark. Judicial Scandals and Errors, II by E. R. Grain

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

E. R. GRAIN

JUDICIAL MURDER: THE CASE OF LIEUTENANT WARK. JUDICIAL SCANDALS AND ERRORS, II

Trieste

JUDICIAL MURDER

The Case of Lieutenant Wark

BY

E. R. GRAIN, LL.D.

JUDICIAL SCANDALS AND ERRORS

II.

WATFORD, LONDON
THE UNIVERSITY PRESS, LIMITED
1900

THE UNIVERSITY PRESS

JUDICIAL MURDER.

THE CASE OF LIEUTENANT WARK.

THE land of Judge Jeffreys in matters judicial is in a peculiar position; the masses and the uninitiated are convinced that our law, if not the acme of perfection, is very near to this desirable condition, and that the administration of the law is in the best hands; that any improvements which might be required, in altering an antiquated system, are in due course effected by our legislators. Lawyers know better, but they have every reason to be silent, and the honest counsel agrees with Mephistopheles:—

> "I know what science this has come to be.
> All rights and laws are still transmitted
> Like an eternal sickness of the race,—
> From generation unto generation fitted,
> And shifted round from place to place.
> Reason becomes a sham, Beneficence a worry:
> Thou art a grandchild, therefore woe to thee!
> The right born with us, ours in verity,
> This to consider, there's, alas! no hurry."

We English are worse off in this respect than other nations because the hypocritical spirit permeating and poisoning every branch of life has also entered here. We continue to admire where contempt, or at least inquiry, should take the place of admiration. We have to contend with a rotten system and with the ingrained cant and hypocrisy of which judges less than other mortals have freed themselves.

The honesty of English judges consists mainly in their incorruptibility, their inaccessibility to bribes. The (in other civilised countries unheard of) power vested in a single judge, the imbecility of a common jury, and the prejudice of the justices constitute a real danger, and miscarriages of justice are more frequent in this country than in France or Germany. And the worst feature is that such miscarriages, whether brought about by malice and per-

jury or by judicial errors, are irreparable, as far as the criminal procedure is concerned. The power vested in the Home Secretary is sheer mockery, and we may take it as an indisputable fact that errors committed by judge and jury, no matter for what cause, are irreparable.

With astonishment mingled with contempt we have looked upon the case of Captain Dreyfus, and we have proudly asserted "that such things cannot happen in England."

I would rather affirm that worse cases happen in dear old England, and I see in the revision of the Dreyfus case a healthy sign, and a useful experience besides.

In England a convict has no means whatever to have his case re-opened, no attempt to rehabilitate an innocently condemned man has the remotest possibility of success. No Court of Criminal Appeal is in existence and no Court of Cassation. Judicial murder is absolutely final. And judicial scandals abound in consequence. But they are hushed up by mutual consent of the press, and even the worst cases are ignored. That is the reason, the sole reason, why we have no Dreyfus cases in England.

The public is ignorant of the intricacies of the law and of the law procedure, lawyers, and all those who are in the know, are silent, and so we are at a standstill, which is as dangerous as retrogression.

Open outrages like those committed by Judge Jeffreys are less pernicious than the system which sends innocent men to penal servitude and perdition.

A judicial system, bad at its root, but considered sound by the masses, approved by the people, is a national danger of the gravest sort, but the attempt to improve or to mend is hopeless as long as no voice is raised from those who know, or who ought to know, what is going on behind the scenes.

The advantages of the jury system, healthy in itself, are frustrated by the absurd power vested in a single judge, and by the constitution of the jury. The judge with the greatest ease transmits his prejudice to the jury, and in most cases makes use, honestly in his way, of his influence. Some ridiculous cases, showing this, happen now and then. A jury at the Old Bailey, misunderstanding the direction of the judge, returns a verdict of

"not guilty." The judge is indignant, and the willing jury returns with new directions to find the prisoner "guilty" according to his advice.

If amongst a servile jury one or two independent men should differ from the judge's opinion and advice, a very simple method remains open to the prosecution to obtain a conviction. The case is brought before another jury and before the same biassed judge until a conviction is obtained. This experiment can be repeated indefinitely and is always successful. It seems a kind of ambition of the judge to finally find a jury who is entirely of his opinion, and there is no difficulty in doing so.

I was present at the Old Bailey some years ago when in a libel case the Recorder in his summing-up showed the greatest bias against the accused, but the jury disagreed. Prosecutor's counsel, seeing his chance in the Recorder's prejudice against the accused, at once proposed to try the case with another jury. Counsel for the defence protested against the Recorder hearing the case again, and proposed that it should go before another judge. In vain, the Recorder decided to try the case again with another jury, and this time, bent upon having his view of the libel adopted by the new jury, summed-up with the greatest vigour against the accused with the desired result. This practice is simply scandalous, yet of everyday occurrence and perfectly legal. The sources of error and blunder are more frequent in England than elsewhere, for manifold reasons, which I will touch in another article dealing with this particular subject, and this should be an additional reason to provide for means to repair a great wrong.

The reason why in England comparatively few erroneous convictions come to light, is, as Mr. Th. Stanley and the late J. F. Stephen* rightly pointed out, that we have no efficient machinery for bringing them to light.

The prisoner, taken by surprise by false evidence at the trial, is convicted without having any opportunity of rebutting such evidence, he is hurried off to prison and deprived of the possibility of getting inquiries made into those false statements. His friends and relatives cannot even communicate with the inno-

* J. F. Stephen, The History of the Criminal Law, v. Thos. Stanley, Miscarriages of Justice, *Free Review*, Vol. VI., p. 264.

cently convicted, and, besides the farcical application to the Home Secretary, there exist no means whatever to right a grievous wrong.

A man convicted like Captain Dreyfus in this country would, without the possibility of a redress, have remained in prison, and a Dreyfus Scandal would have been an impossibility in England, not because the wrongful conviction was impossible, but because his friends would have had no means to obtain a revision of the wrongful conviction, and because English newspapers under no circumstances whatever take the part of a convict, or insert the appeal of his friends. With a conviction a criminal case is closed for the English press, and there lies the reason why we never hear of Dreyfus cases. Justice Stephen, in this respect, pointedly says *(loc. cit.)*:—

"No provision whatever is made for questioning the decision of a jury on matters of fact. However unsatisfactory a verdict may be—whatever facts may be discovered after the trial, which, if known at the trial, would have altered the result—no means are at present provided by law by which a verdict can be reversed. All that can be done in such a case is to apply to the Queen through the Secretary of State for the Home Department for a pardon for the person wrongly convicted.

"This is one of the greatest defects in our criminal procedure. To pardon a man on the ground of his innocence is itself, to say the least, an exceedingly clumsy mode of procedure; but not to insist upon this it cannot be denied that the system places everyone concerned, and especially the Home Secretary and the judge who tried the case (and who in practice is always consulted), in a position at once painful and radically wrong, because they are called upon to exercise what are really the highest judicial functions without any of the conditions essential to the due discharge of these functions. They cannot take evidence; they cannot hear arguments; they act in the dark, and cannot explain the reasons of the decision at which they arrive."

"The evil is notorious," Justice Stephen concludes, "but it is difficult to find a satisfactory remedy."

In all the continental countries this remedy has been found in a Court of Appeal or of Cassation, and in most civilised States a case can be retried even after the accused has undergone his punishment, if new facts can be brought forward.

In England, where the verdict is absolutely final, and where the whole conduct of a case is placed into the hands of one man, the duty of impartiality becomes more imperative than in countries where at least three and generally five judges divide the responsi-

bility. But English judges at the Old Bailey or at the Assize seem unconscious of this tremendous responsibility. They are all honest and sincere according to their own light, but there is seldom a judge to be found who would abstain from abusing his power, in summing-up, of winning over the jury to his own view of the case, which very often is that of unmitigated prejudice. In common cases of theft, larceny, murder this prejudice naturally is not so evident, as in imaginary crimes, such as blasphemy, libel, and offences against so-called morals.

We know that in actions under the blasphemy laws, which happily are now a thing of the past, the religious conviction of the judge was the only question of importance in the decision of the jury, and the reason why blasphemy proceedings have been abandoned lately is that these religious convictions of judges have been shaken, and the prosecutor, not being able to bring the case before a judge of his own choice, runs the risk of a fiasco and ignominious defeat. Even the jury, composed as it may be of Unitarians, Nonconformists, and Atheists, is not quite reliable, and on the bench Agnostics like Lord Coleridge and Sir J. F. Stephen are not an exception.

Thus Atheism is no longer a crime, but offences against the sixth commandment, which neither in this country nor in any other are punishable by law, are converted into crimes and punished as such with an unheard-of severity. And here the prejudice or partiality of the presiding judge is more dangerous than in any other cases because he can play on the hypocritical side of the jury, which in social life plays such an important part in this country.

We all know that of all nations in the world the English is the most immoral, and appears as the most moral. There is no more debauchery in any city of Europe than in London, no more adultery in any country than in Great Britain, in one day more perjury is committed in the law courts than in the whole of France in a year, and yet we wish to appear as the most moral people on the globe. To maintain this sham, hypocrisy is a *sine qua non*, and the keeping up of appearances is essential. And the, perhaps unconscious, feeling that it is necessary to appear a model of morality while indulging secretly in all sorts of vices, has taken