

JUDGMENTS IN VACATION

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Judgments in Vacation by Edward Abbott Parry

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EDWARD ABBOTT PARRY

**JUDGMENTS
IN VACATION**

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JUDGMENTS IN VACATION



BY

HIS HONOUR JUDGE

EDWARD ABBOTT PARRY

*Author of "Dorothy Osborne's Letters," "Life of Macklin,"
"The Scarlet Herring," "Katawampus: Its Treatment and Cure,"
"Butterscotia," etc.*

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TO THE RIGHT HONOURABLE LORD ALVERSTONE
LORD CHIEF JUSTICE OF ENGLAND

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DEDICATED IN AFFECTION AND RESPECT

BY
THE AUTHOR

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PREFACE.

To a sane world one must offer some few words of excuse for writing judgments in vacation. One has heard of the emancipated slave who invested his savings in purchasing a share in another slave and of the historical bus-driver who made use of his annual holiday to drive a bus for a sick friend. And so it is with smaller men. One gets so used to giving judgments upon matters, the essence and properties of which one really knows very little about, that the habit remains after the sittings are over into the vacation. And on that rainy day, when golf and the more important pursuits of life are impossible, one finds oneself alone with pen, ink and paper, and thoughts that voluntarily move towards written judgments. And there is this excuse, that a Judge of a County Court can offer which would not be possible to his ermined brother—or should it be cousin, a poor relation had best be careful in claiming relationship—of the High Court. If we have any lurking desire to write our judgments, we shall not find leisure or opportunity to write them in term time. There is such a vast number of cases to try that judgments must be given forthwith, relying on authority perhaps rather than

accuracy for the kindly manner of their reception. Well do I remember a great Judge giving a parting word of advice to a friend of mine on the Northern Circuit who preceded me to the County Court Bench: "Better be strong and wrong than weak and right." The wisdom of the world is on the side of this epigram, and demands that all judgments of real importance should be given forthwith and spoken rather than written. Thus that most influential arbitrator in the larger affairs of Englishmen, the umpire in the cricket field, is never allowed to write his judgments.

It must be a pleasant thing to listen for many days to the learned arguments of the ablest minds at the bar, noting down here and there an added thought of your own which is to find a place in the ultimate judgment which some days hence you will write at leisure in your study surrounded by the reports and text books necessary to give weight to your written word. A poor Judge of the County Court can have no such refinement of pleasure. Does Bill's cat trespass in Thomas's pigeon loft, at Lambeth or Salford?—the twenty-five shilling claim is argued in unison, certainly without harmony, until a skilful adjudication is planted right between the disputants in a breathless pause in their contest, and they are whirled out of Court speechless and astonished at the result to revive the wordy argument in the street or to join their voices in maledictions of the law and all her servants. How far otherwise in the

High Court? Should some millionaire's malkin, some prize Angora of Park Lane, slay the champion homer of a pigeon-flying Marquis—what a summoning to the fray of Astburys and Carsons. How thoughtfully through the long days of the hearing would learned counsel "watch" on behalf of the London County Council. What ancient law concerning pigeons and cats would be disinterred by hard-working juniors and submissively quoted to the Bench by their leaders as matter "which I am sure your Lordship remembers." And then how interesting to write down the final just word of the Law of England on cats and pigeons, and to read it amid a reverent hush of learned approval, and finally to bring down the curtain on the comedy, justifying the hours and treasure that had been expended to obtain the judgment you had written, with some such tag of learning as :

"Deliberare utilia mora utilissima est."

I am by no means suggesting that these delays of the law would be useful in inferior Courts, or that Judges of the County Court have the wit and ability to write judgments in term time of value to the world. Inferior as they necessarily are in equipment of learning and worldly emolument to the Judges of the High Court, they can only take a humble pleasure in believing that they administer justice at least as indifferently.

But if you are driven to writing judgments in vacation, there is this to be said for it, that you can choose your own subject upon which you will

deliver your words of wisdom, you are not forced to listen to arguments pro and con before retiring to the study with the text books, and you are bound by no precedents governing your thoughts and driving your ideas along some mistaken lane that you know in your own heart leads to No Man's Land. Nor are you tied down to the narrow, courtly and somewhat pompous language in which it is the custom of the judiciary to publish their wisdom.

There is this further to be said about judgments written in vacation. No one is bound to listen to them, no shorthand writer has to strain his ear to take them down, no editor of the Law Reports has to disobey his conscience to include them in the authorised version of the law; and, best of all, no Court of Appeal can either reverse them or lessen their authority by approving them. Indeed, it is only in one attribute that judgments in vacation seem to me scarcely as satisfactory as judgments delivered in term time. With the latter costs follow the event.

Many of these papers have appeared in print before. The oldest of them, Dorothy Osborne, appeared in the *English Illustrated Magazine* as long ago as April 1886, and I have reprinted it in the belief that many of Dorothy's servants may like to read the little essay that led to my receiving from Mrs. Longe her copies of the original letters and her notes upon them, whereby the full edition was at length published. The quotations in it were