

THE COURVOISIER CASE

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The "Accused" so admirably presented here in St. Louis last April by Mr. Sothern recalled at once the Courvoisier case. The warp and woof of both were strikingly alike. The lawyer's knowledge of his client's guilt, the defense and argument despite that knowledge. Stripped of its romantic aspects the play was seemingly born of the case. Yet Brioux may never have heard of Phillips. Certainly Mr. Sothern had never heard of the Courvoisier case, and was much interested when told of it. In the play the lawyer learns indirectly of his client's guilt of the crime charged—murder. He pleads her cause and secures her acquittal. He loves her and throws the weight of his character (as Phillips did not do) on to the scales (for he is believed by all to have never defended one he knew to be guilty) by asserting his confidence in her innocence. He attempts to justify his course in a specious plea to his grandfather. A stern, just lawyer of the very best type—one who believes and practices that nothing can justify a lawyer's deliberate misleading of court or jury. That he can not justify what his conscience must condemn. That no duty to a client demands deflection from the straight course of probity and integrity. That while the lawyer may not disclose what is learned from his client, to the latter's disadvantage, he must not use that knowledge to deceive others. Not even a jury, though his client's life or liberty be at stake. In other words: He can not lie to win.

So much by way of preamble. Those who want to know more of the "Accused" may brush up their French and read the play. Of Phillips and the case more than is told here may be learned by consulting the books listed in the footnote.

The case, as will be surmised, presented features of great interest. It was the subject of much discussion at the time, and since, because of its dramatic and ethical elements. In the drama Courvoisier was the tragic figure. He paid the deserved penalty of his crime. On the ethical side Phillips was for long a victim of the slander persisted in by a malicious newspaper. His reputation was ultimately cleared, happily while he still lived, and chiefly through the efforts of his friend, Dr. Samuel Warren, sometime the lawyer—always the literateur—best known as the author of "Ten Thousand a Year"—a story of special interest to lawyers.

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A sketch of Charles Phillips may well precede the story of the case. To all save those who delve in the literary or legal papers of a century ago, his is not even a name to be remembered. Yet in his day he was quite a notable figure—*sic transit*. Born in Sligo, Ireland, in 1787, at fifteen he entered Trinity College, then ending the first decade of its third century. He was graduated in 1806 and soon admitted to the Irish Bar, that still reflected the glory that was Dublin in the closing years of the eighteenth century. The period of the Irish Parliament and the Four Courts—of John Philpot Curran, Barry Yelverton, Charles Kendal Bushe (Chief Justice), John Fitzgibbon (Lord High Chancellor), Hussey Burgh, Temple Emmet, John Scott, and Peter Burrowes. The period of Grattan and Flood—the one great in his golden eloquence and deadly in his blighting sarcasm, the other powerful in his intellectual force, weakened by temperamental inconsistencies. All that, however, is another story. Already O'Connell had distinguished himself as one of the greatest of advocates, and was passing swiftly into the larger arena, to win the confidence and love of his people, the admiration and plaudits of the world. While the famous Four Courts no longer echoed to the eloquence of a Curran or a Plunket, there was still an ample field there, and in the courts throughout the country, for the display of talents, such as Phillips possessed. He also took a lively interest in public affairs and distinguished himself by his powerful advocacy of the Catholic cause, which ended in the Emancipation Act of 1829. Like Wolfe Tone and Robert Emmet, and other Protestant Irishmen before and after his day, Phillips knew no creed where justice and liberty were concerned. An able lawyer and acute reasoner, he was best known and is best remembered as an orator. Nature had been generous in those accidentals of appearance, eye, voice and manner, that agreeably arrest the attention. He possessed in unusual degree the power of persuasive speech. Often florid, at times dazzling, he seemed to woo verdicts from reluctant juries as an ardent lover favors from a coy mistress. Indeed, in one instance, a new trial was vainly sought because he had "fascinated" a jury into submission to his will. Yet one who reads carefully his speeches recognizes his power lay in combining logical analysis with brilliant verbiage. He reached and convinced the judgment, even while he aroused and excited the emotions. If he charmed by the flights of his imagination, he convinced by the powers of his reasoning, and the union of these makes the orator. He passed to the English Bar in 1812, and became a leader of the Old Bailey Bar, where his gifts as a speaker were doubtless

less effective, for English lawyers and public speakers, with rare exceptions, and English juries and audiences, rather shunned oratory as an evidence of vanity and weakness. Through the friendship of Lord Brougham he was, in 1842, Commissioner of Bankruptcy in Liverpool, and in 1846 Commissioner of the Insolvent Debtors Court in London, where he died in 1859. It was in 1840 that he was retained in the defense of Courvoisier, which brings us, or returns us, to our story.

Francis Benjamin (Jean) Courvoisier, a Swiss, was the valet of Lord William Russell (a Bedford), aged 73, who lived at No. 14 Norfolk street, Park Lane, London, quite alone, save for his servants, the valet, the cook, Sarah Manser, and a house servant, Nellie Hannelly. Courvoisier, who had been in Lord Russell's service about five weeks, had been the valet of Mr. Fector, M. P. for Dover, and had borne a good character. His uncle served as butler in the household of Sir George Beaumont, who so commiserated an unfortunate foreigner, he believed possibly guiltless and practically friendless, that he furnished funds for his defense. Lord Russell was found, in the early morning of Wednesday, May 6, 1840, dead in his bed, the head almost severed from the body. He had come in the evening before, retired at his usual hour, and the crime was discovered when the cook, on rising, thought she saw evidences of burglary and went to her master's room. Courvoisier, on being called by the cook, acted like one quite innocent. He sent a passerby for Lord Russell's son, calmly answered the questions of the police officers touching the evidences of a breaking in, and saw them go through his room and carefully search his personal belongings without showing any alarm or personal concern. Some money and trinkets that belonged to Lord Russell were found in hidden places but nothing that then tended to inculcate Courvoisier. On May 8, rewards, totaling four hundred and fifty pounds, were offered by the family and the government. On a second search of his effects by the police, made May 14 and after his arrest, they found in his trunk, which had been examined with seeming care in the first instance, two handkerchiefs and a shirt slightly spotted with blood. An effort was made by one of the police (later reprimanded sharply therefor by the court) to verbally extort some admission from Courvoisier, but without result. Inspector Tedman, who found one of these spotted articles, was a very fair witness, but there was room for suspicion that someone had placed these articles where they were found between the first and second search. Indeed, the Crown counsel dwelt very lightly on this evidence which, if true, was most significant. One officer, Baldwin, who testified as to the

condition in which he found the house on the fateful morning, and who said he had never heard of the reward, though it was posted at the police stations, was discredited by Chief Justice Tindal in his charge to the jury. Courvoisier had been heard to complain of his wages and that Lord Russell was peevish, and to say that he was not well off, and that if he had his master's money he would not stay long in England. Other suspicious circumstances developed, no one of which had vital significance, but taken together, and coupled with the fact that the marks on the doors showed no entrance had been effected from the outside, led to the conclusion that some one of the household (there was some suspicion of the cook) had committed the peculiarly brutal assault that ended Lord Russell's life. No explanation anywhere appears in the stories of the crime of the finding of the implement used, nor of how it was possible for Courvoisier, or any one, to have so gashed the neck of the sleeping man without being splattered freely with his blood. At the inquest, held the day following the crime, where the three servants testified, and allayed any suspicion as to themselves, Inspector Tedman said he found no blood about the servants or elsewhere in the house. The full confession made on June 22, by Courvoisier, is said to have gone into the details of the horrid act, but it has never been printed so far as this chronicler is aware.

Courvoisier was arrested on Sunday, May 10, and taken to Bow street. He preserved a confident demeanor, and in a further preliminary hearing his then counsel, a Mr. Flower, said his client was anxious for the fullest possible inquiry. He was committed to Newgate. His later counsel (apparently retained through the generous kindness of Sir George Beaumont) were Mr. Charles Phillips and Mr. William Clarkson. The Crown was represented by Mr. Adolphus, Mr. Bodkin and Mr. Chambers. Mr. Adolphus, a distinguished member of the London Bar, had been specially retained (as likely were the others) by the Bedford family. (A practice of substituting private prosecutors for government officials that has not been free from criticism in this country as well as in England.)

The trial began Thursday, June 18, in the Central Criminal Court, better known as the Old Bailey. Chief Justice (Baron) Tindal was the trial Judge and with him sat Right Honorable Baron Parke, who, however, took no active part in the trial. The court room was thronged with people of rank and fashion, taking on, as one writer put it, the appearance of a gala night at the opera. Public interest was very great, opinion divided, and seemingly considerable doubt existed as

to the guilt of the accused. Mr. Adolphus opened with a speech that smacked strongly of unfairness, in an attempt to prejudice the defendant with the jury because he was a foreigner. Courvoisier had expressly waived his right to be tried by a jury composed equally of Englishmen and of foreigners. Thirty-five witnesses in all were examined. The testimony in substance is to be found in books of Townsend and Warren cited in the footnote.

On Friday, the second day of the trial, Mrs. Charlotte Picalaine, wife of a Frenchman who kept L'Hotel de Dieppe, Leicester Place, Leicester Square (seemingly then, as it was a half century later, a neighborhood of doubtful repute), identified Courvoisier in the prison yard in these circumstances: He had worked for her, and on a Sunday not long before the date of the crime he had called and left a package with her for safe-keeping; she had thought nothing of it until by chance she read of the trial, on the day it began, in a French newspaper, and then first learned of the murder. She consulted an attorney, Mr. Cumming, who opened the package and finding silver tableware marked with the Russell crest arranged at once to see the Crown prosecutors, and they in turn arranged for her to see Courvoisier, with other prisoners, in the prison yard on the morning of June 19, and she at once identified him as the man she knew and who had left the package in her care.

Courvoisier saw her when she was inspecting the prisoners, and when he met his counsel in the court room, before court convened, he asked for a private talk and told them he was guilty. Both counsel had been firm in their belief in his innocence. Phillips, aghast, said, "Well, of course, you will plead guilty," but Courvoisier calmly replied, "No, sir; I expect you to defend me to the utmost." Phillips would have abandoned the case but Clarkson protested and urged that he at least first speak to the Judge. Thereupon Phillips laid the situation before Mr. Baron Parke, who, understanding the client's insistence that his counsel proceed, told Phillips he was bound to go on, and to use all fair arguments on the evidence. Chief Justice Tindal knew nothing of this until after the trial was concluded.

The Crown's case was thereupon continued, Mr. Phillips complaining bitterly when the French woman was offered as a witness, that he had not been given time to investigate her character. The testimony for the defense seems to have been very brief, and the case was given to the jury on Saturday after a lengthy charge consuming three and a half hours. The Chief Justice charged fairly, and without comment on the facts, though his lengthy review of the evidence

seemed to indicate he believed a real doubt existed as to the defendant's guilt. However, on the coming in of a verdict of guilty in an hour and a half, he promptly sentenced the defendant to death, saying the evidence of his guilt was convincing. (Mayhap Mr. Baron Parke had meantime told him of the incident narrated above. It was likely hard enough to keep it to himself until after the charge.) Strong efforts were made by petition to the Home Office to have the sentence stayed and his life spared, but they failed and on July 6 Courvoisier paid the penalty of his crime on the scaffold, with the usual disgraceful scenes that attended public executions at that time. An attempt followed in Parliament to prevent public executions but it failed. (Curiously enough, Mr. Townsend, in his work on State Trials, justified that failure and deprecated private executions.) A sketch of his appearance and demeanor on the Sunday preceding his execution and while at the Prison Chapel services may be found in Warren's *Miscellanies*, p. 295.

Phillips' position was peculiarly difficult and, so far as this writer's information goes, unique. Lawyers have doubtless learned of a client's guilt, when too late to decently and properly abandon his cause. To learn that from his own lips at almost the close of the trial certainly created an extraordinary situation. Mr. Baron Parke's advice was unquestionably sound, and perhaps would not have been needed had not Phillips been stunned by the confession. Happily, his colleague was less affected, and hence more alive to the duty of counsel than to the natural indignation and horror of the individual. Phillips' address to the jury was one of great force and moving eloquence. Extremely eloquent, Sergeant Ballantine, who heard it, says in his "Experiences." Marshalling the evidence, and pointing out its weaknesses and defects, and exhorting consideration and pity by the jury for this stranger in a strange land, who stood charged with so frightful a crime against one of their own people. It can be easily seen how great was the fair opportunity, handicapped though the speaker was by a knowledge of his client's guilt. He had the undoubted right to say to the jury that unless the Crown had proved to their satisfaction by creditable and competent testimony that the defendant had committed the crime, he must stand acquit. For deprivation of life or liberty under the guise of the forms of law, but in disregard of its substance, is more menacing to those rights than if accomplished by an individual in disregard of the law. No honest advocate ever had a more difficult task—one well calculated to weight his brain and clog his tongue. To speak, as he must, for his client; to analyze the evidence; to discuss its weight and

force; to criticise the demeanor and testimony of witnesses; to preserve at all times an air of that confidence which the knowledge of guilt had destroyed; not to betray his client's secret by look or word to the jury; to be overwhelmed by the confession so recently made, and yet compelled in discharge of his solemn and painful duty to observe an outward appearance of composure and confidence. What a task, what a burden! It is not too much to say that, happily, seldom, if ever, has a lawyer had to confront so difficult and distressing a situation.

That he met it fairly and well and honorably seems to have been the opinion of all who heard him, confirmed years later by the distinguished Judges who sat on the Bench at the trial. Mr. Baron Parke was quoted by Lord Denham to Mr. Warren as having said that he followed Mr. Phillips' address with special care, knowing as he did what had occurred, and that it was perfectly unexceptionable.

The London papers, with the exception only of the *Examiner*, fairly reported the evidence and the speech of Mr. Phillips. That paper charged him, in effect, with insinuating that the cook, Mrs. Manser (who later became insane), had committed the crime; with making foul and false charges against the police; with having made solemn appeal to God of his client's innocence, and asserting his own belief therein. The reports in the London *Times* of the trial negated these charges but they were persisted in by the *Examiner* at intervals during a period of years, undoubtedly causing Phillips grievous suffering, and almost certainly injuring him in his profession. It was not until 1849 that his friend, Dr. Samuel Warren, took the matter up and in an open letter to Phillips, which the latter answered at length, and, despite further attacks then made by the *Examiner*, the injustice done Phillips was made apparent, and all public discussion came to an end. We would like to say that the subject matter in controversy was completely ended and forgotten, but that can seldom, if ever, be safely said where the poisonous breath of slander has been exhaled. In any event, Mr. Warren stated that after his review of the case in March, 1850, published in 11 *Law Review* 376, the charge was never reasserted.

The case and the ethical question involved have been the source of considerable discussion and much literature legal and otherwise. The reader may draw his own moral, but a few thoughts may be permitted to be expressed here. No lawyer is bound to take a case where he knows his client has been guilty of the crime charged. Generally speaking, no lawyer should take such a case, if only for the reason that his conscience will restrict his effective conduct of the cause. Other reasons could be given. If he becomes aware of his client's guilt in

the course of preparation of the case, he had better abandon it. Certainly if, for sufficient impelling reasons, he goes on he can neither make, nor connive at making, a claim or defense that he has reasonable cause to believe is false or is supported by false testimony. If, in defending a client, his guilt is first made known during the trial as here, a highly improbable happening, then he may do as Phillips did. For more specific advice in such case see the English rule laid down in Costigan's Cases on Legal Ethics.¹

While the fifth of the Canons of Professional Ethics adopted by the American Bar Association,² and also by the Missouri and St. Louis Bar Associations, says a lawyer has the right to defend a person accused of crime regardless of his personal opinion of the guilt of the accused, a good general rule of conduct would be to refuse to exercise that right. An honest lawyer could not go into such a case *con amore*. He could not give his client's cause that ardent, sincere, advocacy, that confidence in the righteousness of a cause alone can inspire—the kind of advocacy always desirable and it would seem doubly so where life or liberty are at stake.

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A very fine, brief, summary of the times and oratory of Curran, Grattan, Flood, et al, will be found in "The Irish Orators" by Claude G. Bowers (1916), author of Party Battles of the Jackson Period, and Jefferson and Hamilton.

¹ p. 339.

² "It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of his life or liberty, but by due process of law. The primary duty of a lawyer engaged in public prosecutions is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible."