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CRABTREE AND THE LAW
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To dilate upon Crabtree and the law required arduous research. At an early stage, I thought that I had struck gold. For I immediately traced an elusive but important, indeed indispensable influence in the formation of our poet, his mother! When I took, as I am wont to do, the third volume of *Atkinson's Chancery Reports* from the shelf, there at p. 680 in the year 1747 was the case of CRABTREE v. BRAMBLE.

Mary Crabtree took out letters of administration to a certain estate and claimed rightfully that it should be hers. But Mrs. Crabtree's petition was dismissed.

Thus it was that Mrs. Crabtree — surely still a lady *viripotens* of 30 or so — was robbed of her entitlement. How the comfortably circumstanced young lady from Sussex first made the acquaintance of Crabtree senior of Chipping Sodbury a future Orator may reveal to us. I can only assert the known facts. However, who can doubt the repinings in the modest home at Sodbury? And is it likely that her first born failed early to note how the Law deprived his mother, and thus acquired an early interest in that which snatched affluence from his home?

Even without this family vested interest, of course, it would have been improbable that Crabtree remained indifferent to the law.

And yet — and yet! After the fruitful discovery of Mrs. Crabtree, my first researches were barren.

Still, it was impossible that our poet should have been wholly outside the law. Who else could have penned the couplet so wholly in keeping with the didactic mission of Crabtree to which Scott adverted in his Oration for 1964?

Thoughts much too deep for tears subdue the Court,
When I Assumpsit bring and, God-like, waive a tort?

The company will immediately appreciate both that this magically epitomises the problem of the desirability of suing in contract rather than tort (or vice versa) which is still with us. A sound jurist no less than a peerless poet was needed to forge those lines, which appear anonymously in a farrago of 1830, *The Circuiteers*. Can any of this company fail to detect the easeful mastery of Joseph Crabtree?

In the absence of irrefutable sources, however, how can he have been a consummate jurist no less than a poet of the first rank? It was here that I recalled the axiom more than once propounded by no less substantial, celebrated and (in his own limited field) real a genius than our poet, viz Mr. Sherlock Holmes, in his conversations with Dr. Watson: 'When you have eliminated the impossible, whatever remains, however improbable, must be the truth.'

The apparent silence of the Law Reports *in re* Crabtree *qua* Crabtree was a minor problem. Our poet, alas, predeceased the semi-official Law Reports series which began in 1865. We must remember also our poet's love of anonymity or, alternatively, pseudonyms in giving the flowers of his genius to the world: why should he change his *modus operandi* in face of the law? No, there was little problem here!

But, to face our queries, so far as possible, in their due order, how and where did Crabtree get his law, if he was not a member of an Inn of Court? Several anxious days of reflection suddenly produced the answer that should at once have come trippingly on the tongue. Mr. Holmes's axiom made all blindingly clear. If he was not to be found in the Inns (with a capital — we know he could be found in lower case), he must have been a civilian, haunting Doctors' Commons, where the business was wills, wives and wrecks.

Accept that simple fact and the evidence all falls into place. Did not his first, childish interest in the law stem from his mother's unsuccessful venture in Chancery? The memory of the family misfortune would itself turn him against so-called Equity; yet the friend of Bentham, that scornful critic of judge-made law, would scarce select a career centred on Westminster Hall. The trespasses and trovers, surrejoinders and surrebutters, all conducted in a bedlam (for a market ran through the centre of the Hall) and with the head inconveniently dressed with horsehair for the occasion! Moreover, it was dangerous!

There was again the rapacity of the common-law bar! Oh, it is true that occasionally our poet was to look enviously at his brothers of the long robe; who can forget the plaintive poem, written in a fit of depression, which opens:

Would I were a Serjeant in the Common Pleas,
Entering demurrers, earning princely fees!?

But, *au fond*, the avarice of the common lawyers was alien to the selfless nature of one who would give his all (and did give his daughter) to a friend.

By contrast with the rude, greedy and perilous life of the *habitués* of Westminster Hall, the advocates of Doctors' Commons qualified themselves by taking the degree of D.C.L., which was even easier to obtain then than it is now, at Oxford (or LL.D. at Cambridge). They were thus educated in Roman Law and its later developments, Roman Law, the perfect jurisprudence whose devotees can unerringly detect the flaws of lesser systems! A discipline, moreover, which required a mastery of the classics, and Crabtree's life-long devotion to the classics is attested by Jones in 1957. The aspirant to advocacy then procured a *fiat* of the Archbishop of Canterbury to the Dean of Arches directing him to admit the candidate as an advocate at a session of his Court: thereafter, the new advocate had to observe a 'year of silence', attending the various civilian courts, before being able himself to practise. We shall see that, in fact, Crabtree never became an advocate, though he did enter the lower branch of the civilian profession as a proctor; but he did in effect observe his year of silence. And, though he could not speak, he could write, and who could make better literary use of his mute observance of the faults of England's system?

There is, indeed, proof. *The Harvard Law Review* for 1957 contains a poem (over the obvious pseudonym, Felix) smuggled across the Atlantic to be lost in the archives of that great dross heap, the Harvard Law Library, until its chance discovery led to its publication. The bold metre and free expression testify to Crabtree's *saeva indignatio* with the hazards of the British mercantile marine, which he silently observed unfolding in his first year in the Commons (Doctors', of course). It is a long poem of which I cite only an extract:

When overloaded ships were wrecked,
The owners bore the onus;
But nonetheless they would collect
A rich insurance bonus,
As lawyers used what means availed
To hide in legal tosh
The fact that, when the vessel sailed,
Its scuppers were awash.

That poem, gentlemen, unquestionably came into the hands of Samuel Plimsoll, which explains its American publication. Plimsoll, entering Parliament in 1868, procured the passing of the Act to Amend the Merchant Shipping Acts 1876. But the source of his provision, I submit, is manifest in the biting second stanza of the extract. Seeking personal glory, Plimsoll suppressed the English copy of the poem and took to himself the credit that was another's. But you and I, gentlemen, I know, will ever hereafter speak of the Crabtree line!

But the most conclusive evidence of Crabtree's true profession — unblushingly autobiographical and evincing his distaste for practitioners of the common law and equity — is a poem that I have long known and, in my previous ignorance, accepted as anonymous in a legal miscellany of 1830. Initiated into Crabtree studies, I now see, as you will recognise, that the masterly economy of line and translucent, artful simplicity proclaim our poet:

A lusty old grave and greyheaded sire
Stole to a wench to quench his lust's desire.
She asked him what profession might he be:
I am a civil lawyer, girl, quoth he.
A civil lawyer, sir? You make me muse:
Your talk is broad for civil men to use.
If civil lawyers be such bawdy men,
Oh what, I pray, be other lawyers then?

Granted all this, you may still say, we wish to know how Joseph Crabtree fitted himself for Doctors' Commons.

The foundation was in truth already laid in the Oxford period of which we know, through his friendship with William Scott (later Lord Stowell and Judge of the Admiralty Court) and the latter's younger brother John (later Lord Chancellor as Lord Eldon). William Scott, some 9 years older than Crabtree, was already a Fellow of University College when Joseph entered Queen's, a classical scholar, deputy to the Professor of Civil Law and still to be Camden Reader in Ancient History. John Scott, born late in 1751, went up to University in 1767, graduated in 1771 and eloped with Bessy Surtees in 1772.

That Crabtree should have gone for instruction to the brilliant young Fellow of University, when his own tutor, Jefferson of Queen's, was so incompetent, need occasion no surprise. And William Scott urged him also to attend the lectures on English law of Professor Blackstone, the new (indeed first) Vinerian Professor. It was, however, through the younger brother John, still, like Crabtree, *in statu pupillary*, that there was forged between them the familiar and intimate friendship that was to last throughout their lives.

In the aristocratic Oxford of those times, the son of the shoemaker of Chipping Sodbury would feel a natural bond with the sons of a Newcastle coal-fitter and publican. It is of course possible that also Cuckoo Crabtree's poet's insight already told him that the elder Scott would become 'Cranky Will' before his death and the younger 'Baggs' Eldon. But, besides their lowly origins, they shared a common and fervent devotion to Bacchus. The pretext for Crabtree's premature departure from Oxford we know. Could there have been two more congenial spirits with whom our poet might associate? I take it then that the seed of Crabtree's legal learning was sown and — metaphorically — watered during his undergraduate days, under the influence of the Scott brothers.

It is, indeed, indirectly through them, also, that Crabtree resolved in time to enter the law. I have already mentioned that in 1772 John Scott eloped with Bessy Surtees: he was, of course, short of money for the exploit, and Crabtree, with his innate readiness to aid a friend, gave him nearly all he had. In consequence, when himself sent down the following year, Joseph needed to borrow for his own survival. And here I would modestly presume to believe that I can clarify the mystery of the origin of the coolness between Jenner and Crabtree which exercised Professor Jones. It was from Jenner that, relying on their youthful friendship at Chipping Soddors, Crabtree sought the loan of £100. Jenner made the advance but insisted on security, and Crabtree gave him a promissory note payable on demand for the sum. With the £100, Crabtree made his way to Cambridge, where he eked out a modest existence as described by Brown in 1955. Jenner himself, subsequently finding himself in financial difficulties, in turn endorsed the note to one David on receipt of an advance. In 1780, David, having detected Crabtree under the pseudonym of M'Greggor, pressed him for payment.

We shall see that it was our poet's lot, almost uniformly, to be unsuccessful in his own encounters with the law. Against David, relying on the little law he had acquired at Oxford, Crabtree tried to claim that the note, issued seven years earlier, was statute-barred. Judgment went against him, the King's Bench holding that a note payable on demand never becomes overdue. He could not pay, of course, and was consequently committed as a debtor to the Fleet, where he remained until rescued by Uncle Oliver in 1783 and packed off to France.

Not that his time in the Fleet was profitless. Crabtree would have heard his barrister friend's stories of Sjt. Davey, now a leading member of the Bar, who had turned to the law while he languished in the debtor's prison after the failure of his grocery business in Exeter. The principle could be followed. He would take up the law! The objections to the common law and equity have already been recounted, but the *Corpus Iuris Civilis* (in Latin!) occupies little space even in a cell. And we may be confident that Crabtree fully utilised his time inside, while the subsequent exile in France, and especially at Orléans, seat of a mighty legal tradition, would give him access to the great civilian literature of the continent, from Jacques De Révigny forwards (and backwards).

That he was not overwhelmed by incarceration is, I think, evidenced by the fact that, between books of the Digest, his Muse still inspired him to deathless poetry. I can mention only one masterpiece which — quite apart from its intrinsic beauty and pathos — was to have an historic impact upon both the penal system and sanitation. I am indebted to my guest tonight for salvaging a defective scrap which, in its restored form, reads:

Prisoner's morning, Debtor's day
Here confined Fleet away;
Inconvenience in lieu
Of the comfort once we knew.

The third line led to an immediate inquiry into the conditions of prisons. And Crabtree had given England the blessed euphemisms of 'convenience' and, in its corrupt form, 'loo'.

Returning to Britain in 1802, Crabtree found William Scott a knight and Judge in Admiralty while John, now Lord Eldon, was Chancellor. Of course at their first dinner together, he explained his resolve and, of course, they approved and were eager to help. The trouble was, how? Crabtree had not taken a degree before leaving Oxford, and even that university required some preliminaries to a Doctorate. It was undoubtedly his old tutor Sir William who provided the solution. If Joseph could not become an Advocate, why not a proctor? Not till 1813 was Parliament to take steps to regulate that junior but respectable branch of the civilian profession. The usual requirements of articles could be dispensed with by the Judge (and that was Sir William Scott), and the Lord Chancellor would see that the Archbishop gave his *fiat*. This last would present no difficulty: the nephew of a Methodist teetotaler, the compliant chorister of Chipping Sodbury, was no less a buttress of the Established Church than was his noble friend, so styled because, though a doughty supporter of the Church, he was never seen inside it.

Of Crabtree's civilian lore, they were satisfied; but, to give him some acquaintance with the practice of the courts, they procured his association for a year, as a supernumerary proctor, with an established respectable proctor, Mr. Shenlow, and by 1805 Joseph Crabtree poet was also Joseph Crabtree proctor.

And so Crabtree made his entry into that court so different from the death-trap of Westminster Hall. His wide-ranging interests could find full scope in the wide range of business: from the misconduct of the clergy to collisions at sea; from criminal conversation (adultery) to the probate of wills. Here was indeed a spiritual haven for our poet, wherein his public spirit and critical attitude to the common law could express themselves in matchless verse. Some selections I have already ventured to cite; and no Crabtree enthusiast can fail to note the ease and freedom of the hero's legal verse compared with the more purely literary *Ode to Claret*, for example, or *Ars Salutandi*; nowhere do we find a parallel to the diapason of 'Great unaffected vampires and the moon': in legal poetry, Crabtree was wholly himself.

But, by 1832, Crabtree was weary of practice. Already given for three years to wandering in the Zoo in melancholy solitude, Joseph decided now to quit practice, quit London and retire to the country, not to his native Somerset but to Devon, where, having purchased a little property near Ashburton, he also invested the bulk of the remainder of his modest savings in the tin-mining industry. Which brought him once again unsuccessfully into conflict with the common law that he had ever shunned. He was sued by a neighbour for trespass by digging a trench through to a watercourse and lost the case. Crabtree became almost penniless again and would henceforth have to rely upon the marketing of produce from his smallholding.

Further disillusioned with the law of England, his own practice behind him, Crabtree penned his final verses — *The Lawyer's Farewell to his Muse*. Unfeeling pseudo-scholars of the past have attributed this poem to Sir William Blackstone:

There in a winding, close retreat,
Is Justice doom'd to fix her seat;
There, fenced by bulwarks of the law,
She keeps the wondering world in awe:
And there, from vulgar sight retired,
Like eastern queens is much admired.
Oh, let me pierce the secret shade
Where dwells the venerable maid!
In that pure spring the bottom view,
Clear, deep and regularly true.

It may be a very suitable debating point whether the lawyer takes leave of his Muse or whether she has already departed; but, gentlemen, we can surely see here Joseph Crabtree's bitter complaint against the way that English law keeps Justice imprisoned and will not let her out among those whom she should govern. And the imagery is unquestionably his. For Crabtree, as we know, was a man of passion no less than parts.

It is this that brings me to my proviso. Our concern hitherto has been the poet's public life. But he had also his private life. There can be no doubt that, as he grew older, the members of the opposite sex that aroused his interest grew younger. Had the Offences against the Person Act of 1861 been already in existence, he must have committed a dozen offences a day. Still, in London, these matters could be arranged without difficulty or detection. Retirement to remote Devon did not quench his ardour, and this led to his last encounter with the English common law.

Lacking the sophisticated company of the capital, he had perforce to seek solace in the untutored earthy enthusiasm of the country maids. Reared in rustic simplicity, seeing daily the processes of animal reproduction, duly respectful of the educated if elderly gentleman whose courteous addresses and seemingly inexhaustible store of sixpences were in pointed contrast with the aggressive directness of the Devon hinds, they usually accepted his advances. But one young woman, doubtless through *ex post facto* panic (it was the year of the Bastard Children Act, 1839; the statute was repealed by the Custody of Infants Act 1873), laid a complaint which brought Crabtree *sub nom.* Crabb before the Devon Assizes at Exeter on a charge of rape. The prosecutrix gave her evidence succinctly: she had occasion to enter the prisoner's garden and he had come out of his house and committed the offence alleged. In those days, prisoners were undefended, the theory being that the judge was prisoner's counsel. On the enquiry of Maule, J., Crabtree indicated that he did have questions to put to the girl and, through the judge, conducted the following cross-examination (which shows how skilled a common lawyer he could have been): 'Had you been in my garden before?', 'Yes.'; 'Did you take my beansticks?', 'Yes.'; 'Did I tell you what I would do if you came and took my beansticks again?', 'Yes.'; 'Did you come into my garden again?', 'Yes.'; 'Did you take some beansticks?', 'Yes.'; 'Did I do what I said I would do?', 'Yes.'; 'No more questions, My Lord.' Without leaving the box, the jury of yeomen returned a verdict of not guilty. Thereon the judge delivered himself of a homily which has passed into legal history:

Prisoner at the bar, the jury has seen fit to acquit you of this grave charge. It is thus my duty to discharge you, and discharge you I shall. But, before so doing, I must solemnly warn you with all the seriousness that I command that, if you persist in uttering threats of this character to young women like the prosecutrix, you will not have a beanstick left.

Crabtree's heart was both light and full. At last, even if possibly undeservingly, he had beaten the common law! He stepped, gentlemen, out of the dock into legal oblivion, but into literary history!