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TUTT AND MR. TUTT

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"I wonder, Mr. Tutt, if you would be willing to take a criminal case where there wouldn't be any prospect of a fee, simply to prevent a possible miscarriage of justice?"

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TUTT AND MR. TUTT

BY

ARTHUR TRAIN

FORMERLY ASSISTANT DISTRICT ATTORNEY
NEW YORK COUNTY

ILLUSTRATED

NEW YORK
CHARLES SCRIBNER'S SONS
1922

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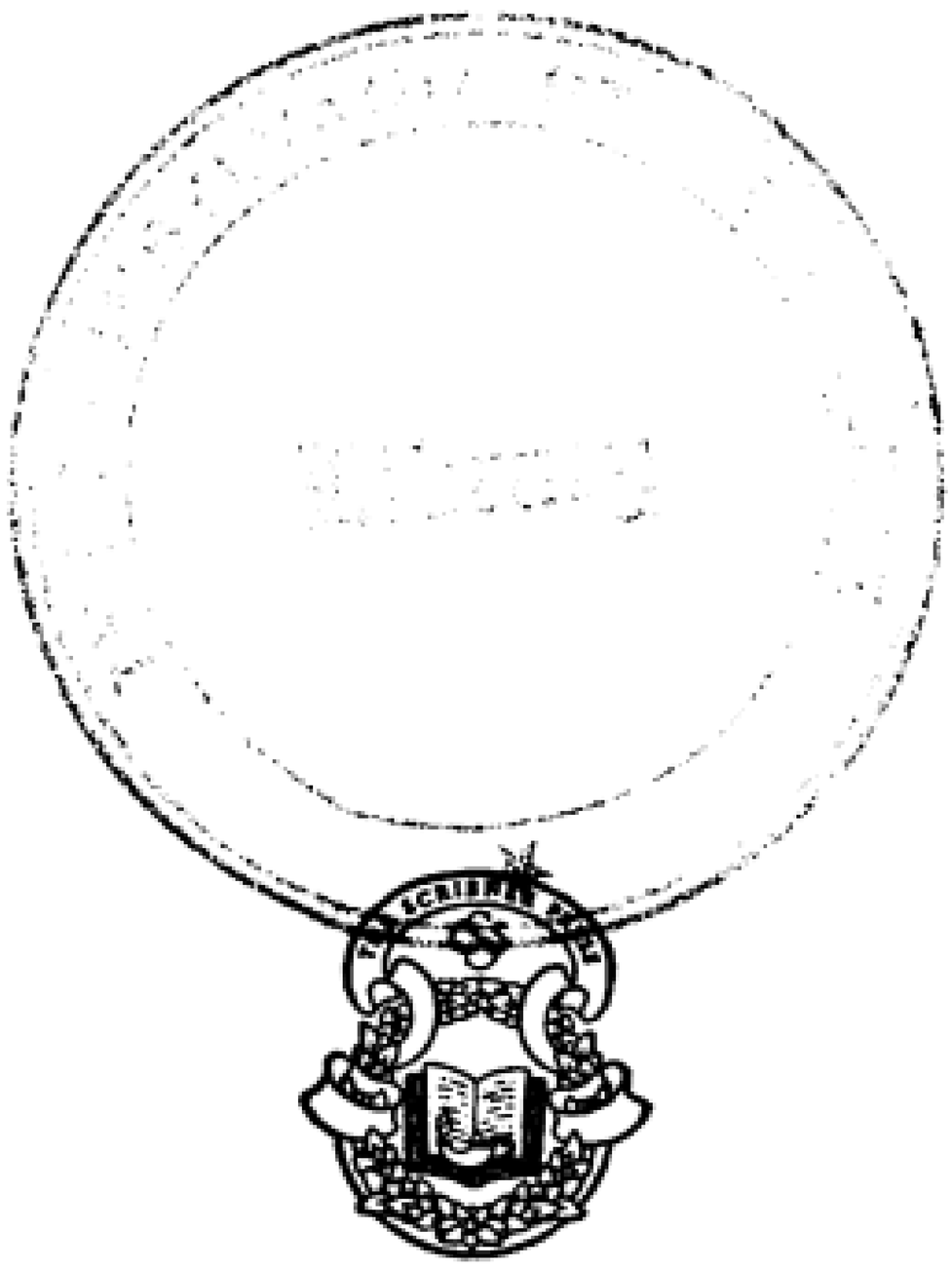

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ILLUSTRATIONS

"I wonder, Mr. Tutt, if you would be willing to take a criminal case where there wouldn't be any prospect of a fee, simply to prevent a possible miscarriage of justice" . . . . *Frontispiece*

FACING PAGE

"I have indeed! . . . That is, if it is what you call a case for a man to promise to marry a woman and then . . . refuse to do so" 126

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The Human Element

Although men flatter themselves with their great actions, they are not so often the result of great design as of chance.
—La Rochefoucauld.

"HE says he killed him, and that's all there is about it!" said Tutt to Mr. Tutt. "What are you going to do with a fellow like that?" The junior partner of the celebrated firm of Tutt & Tutt, attorneys and counselors at law, thrust his hands deep into the pockets of his yellow checked breeches and, balancing himself upon the heels of his patent-leather boots, gazed in a distressed, respectfully inquiring manner at his distinguished associate.

"Yes," he repeated plaintively. "He don't make any bones about it at all. 'Sure, I killed him!' says he. 'And I'd kill him again, the ——!' I prefer not to quote his exact language. I've just come from the Tombs and had quite a talk with Serafino in the counsel room, with a gum-chewing keeper

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sitting in the corner watching me for fear I'd slip his prisoner a saw file or a shotgun or a barrel of poison. I'm all in! These murder cases drive me to drink, Mr. Tutt. I don't mind grand larceny, forgery, assault or even manslaughter—but murder gets my goat! And when you have a crazy Italian for a client who says he's glad he did it and would like to do it again—please excuse me! It isn't law; it's suicide!"

He drew out a silk handkerchief ornamented with the colors of the Allies, and wiped his forehead despairingly.

"Oh," remarked Mr. Tutt with entire good nature. "He's glad he did it and he's quite willing to be hanged!"

"That's it in a nutshell!" replied Tutt.

The senior partner of Tutt & Tutt ran his bony fingers through the lank gray locks over his left eye and tilted ceilingward the stogy between his thin lips. Then he leaned back in his antique swivel chair, locked his hands behind his head, elevated his long legs luxuriously, and crossed his feet upon the fourth volume of the American and English Encyclopedia of Law, which lay open upon the desk at Champerty and Maintenance. Even in this inelegant and relaxed posture he somehow managed to maintain the air of picturesque dignity which always made his tall, ungainly figure

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noticeable in any courtroom. Indubitably Mr. Ephraim Tutt suggested a past generation, the suggestion being accentuated by a slight pedantry of diction a trifle out of character with the rushing age in which he saw fit to practise his time-honored profession. "Cheer up, Tutt," said he, pushing a box of stogies toward his partner with the toe of his congress boot. "Have a weed?"

Since in the office of Tutt & Tutt such an invitation, like those of royalty, was equivalent to a command, Tutt acquiesced.

"Thank you, Mr. Tutt," said Tutt, looking about vaguely for a match.

"That conscienceless brat of a Willie steals 'em all," growled Mr. Tutt. "Ring the bell."

Tutt obeyed. He was a short, brisk little man with a pronounced abdominal convexity, and he maintained toward his superior, though but a few years his junior, a mingled attitude of awe, admiration and affection such as a dickey bird might adopt toward a distinguished owl.

This attitude was shared by the entire office force. Inside the ground glass of the outer door Ephraim Tutt was king. To Tutt the opinion of Mr. Tutt upon any subject whatsoever was law, even if the courts might have held to the contrary. To Tutt he was the eternal fount of wisdom, culture and morality. Yet until Mr. Tutt finally eluci-

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dated his views Tutt did not hesitate to hold conditional if temporary opinions of his own. Briefly their relations were symbolized by the circumstance that while Tutt always addressed his senior partner as "Mr. Tutt," the latter accosted him simply as "Tutt." In a word there was only one Mr. Tutt in the firm of Tutt & Tutt.

But so far as that went there was only one Tutt. On the theory that a lily cannot be painted, the estate of one seemingly was as dignified as that of the other. At any rate there never was and never had been any confusion or ambiguity arising out of the matter since the day, twenty years before, when Tutt had visited Mr. Tutt's law office in search of employment. Mr. Tutt was just rising into fame as a police-court lawyer. Tutt had only recently been admitted to the bar, having abandoned his native city of Bangor, Maine, for the metropolis.

"And may I ask why you should come to me?" Mr. Tutt had demanded severely from behind the stogy, which even at that early date had been as much a part of his facial anatomy as his long ruminative nose. "Why the devil should you come to me? I am nobody, sir—nobody! In this great city certainly there are thousands far more qualified than I to further your professional and financial advancement."

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"Because," answered the inspired Tutt with modesty, "I feel that with you I should be associated with a good name."

That had settled the matter. They bore no relationship to one another, but they were the only Tutts in the city and there seemed to be a certain propriety in their hanging together. Neither had regretted it for a moment, and as the years passed they became indispensable to each other. They were the necessary component parts of a harmonious legal whole. Mr. Tutt was the brains and the voice, while Tutt was the eyes and legs of a combination that at intervals—rare ones, it must be confessed—made the law tremble, sometimes in fear and more often with joy.

At first, speaking figuratively, Tutt merely carried Mr. Tutt's bag—rode on his coat tails, as it were; but as time went on his activity, ingenuity and industry made him indispensable and led to a junior partnership. Tutt prepared the cases for Mr. Tutt to try. Both were well versed in the law if they were not profound lawyers, but as the origin of the firm was humble, their practise was of a miscellaneous character.

"Never turn down a case," was Tutt's motto.

"Our duty as sworn officers of the judicial branch of the Government renders it incumbent upon us to perform whatever services our clients'

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exigencies demand," was Mr. Tutt's way of putting it.

In the end it amounted to exactly the same thing. As a result, in addition to their own clientele, other members of the bar who found themselves encumbered with matters which for one reason or another they preferred not to handle formed the habit of turning them over to Tutt & Tutt. A never-ending stream of peculiar cases flowed through the office, each leaving behind it some residuum of golden dust, however small. The stately or, as an unkind observer might have put it, the ramshackly form of the senior partner was a constant figure in all the courts, from that of the coroner on the one hand to the appellate tribunals upon the other. It was immaterial to him what the case was about—whether it dealt with the "next eventual estate" or the damages for a dog bite—so long as he was paid and Tutt prepared it. Hence Tutt & Tutt prospered. And as the law, like any other profession, requires jacks-of-all-trades, the firm acquired a certain peculiar professional standing of its own, and enjoyed the good will of the bar as a whole.

They had the reputation of being sound lawyers if not overafflicted with a sense of professional dignity, whose word was better than their bond, yet who, faithful to their clients' interests knew

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no mercy and gave no quarter. They took and pressed cases which other lawyers dared not touch lest they should be defiled—and nobody seemed to think any the less of them for so doing. They raised points that made the refinements of the ancient schoolmen seem blunt in comparison. No respecters of persons, they harried the rich and taunted the powerful, and would have as soon jailed a bishop or a judge as a pickpocket if he deserved it. Between them they knew more kinds of law than most of their professional brethren, and as Mr. Tutt was a bookworm and a seeker after legal and other lore their dusty old library was full of hidden treasures, which on frequent occasions were unearthed to entertain the jury or delight the bench. They were loyal friends, fearsome enemies, high chargers, and maintained their unique position in spite of the fact that at one time or another they had run close to the shadowy line which divides the ethical from that which is not. Yet Mr. Tutt had brought disbarment proceedings against many lawyers in his time and—what is more—had them disbarred.

"Leave old Tutt alone," was held sage advice, and when other lawyers desired to entertain the judiciary they were apt to invite Mr. Tutt to be of the party. And Tutt gloried in the glories of Mr. Tutt.

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"That's it!" repeated Tutt as he lit his stogy, which flared up like a burning bush, the cub of a Willie having foraged successfully in the outer office for a match. "He's willing to be hanged or damned or anything else just for the sake of putting a bullet through the other fellow!"

"What was the name of the unfortunate deceased?"

"Tomasso Crocedoro—a barber."

"That is almost a defense in itself," mused Mr. Tutt. "Anyhow, if I've got to defend Angelo for shooting Tomasso you might as well give me a short scenario of the melodrama. By the way, are we retained or assigned by the court?"

"Assigned," chirped Tutt.

"So that all we'll get out of it is about enough to keep me in stogies for a couple of months!"

"And—if he's convicted, as of course he will be—a good chance of losing our reputation as successful trial counsel. Why not beg off?"

"Let me hear the story first," answered Mr. Tutt. "Angelo sounds like a good sport. I have a mild affection for him already."

He reached into the lower compartment of his desk and lifted out a tumbler and a bottle of malt extract, which he placed carefully at his elbow. Then he leaned back again expectantly.

"It is a simple and naive story," began Tutt,

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seating himself in the chair reserved for paying clients—that is to say, one which did not have the two front legs sawed off an inch or so in order to make lingering uncomfortable. "A plain, unvarnished tale. Our client is one who makes an honest living by blacking shoes near the entrance to the Brooklyn Bridge. He is one of several hundred original Tonys who conduct shoe-shining emporiums."

"Emporia," corrected his partner, pouring out a tumbler of malt extract.

"He formed an attachment for a certain young lady," went on Tutt, undisturbed, "who had previously had some sort of love affair with Crocedoro, as a result of which her social standing had become slightly impaired. In a word Tomasso jilted her. Angelo saw, pitied and loved her, took her for better or for worse, and married her."

"For which," interjected Mr. Tutt, "he is entitled to everyone's respect."

"Quite so!" agreed Tutt. "Now Tomasso, though not willing to marry the girl himself, seems to have resented the idea of having anyone else do so, and accordingly seized every opportunity which presented itself to twit Angelo about the matter."

"Dog in the manger, so to speak," nodded Mr. Tutt.

"He not only jeered at Angelo for marrying

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Rosalina but he began to hang about his discarded mistress again and scoff at her choice of a husband. But Rosalina gave him the cold shoulder, with the result that he became more and more insulting to Angelo. Finally one day our client made up his mind not to stand it any longer, secured a revolver, sought out Tomasso in his barber shop and put a bullet through his head. Now however much you may sympathize with Angelo as a man and a husband, there isn't the slightest doubt that he killed Tomasso with every kind of deliberation and premeditation."

"If the case is as you say," replied Mr. Tutt, replacing the bottle and tumbler within the lower drawer and flicking a stogy ash from his waistcoat, "the honorable justice who handed it to us is no friend of ours."

"He isn't," assented his partner. "It was Babson, and he hates Italians. Moreover, he stated in open court that he proposed to try the case himself next Monday and that we must be ready without fail."

"So Babson did that to us!" growled Mr. Tutt. "Just like him. He'll pack the jury and charge our innocent Angelo into the middle of hades."

"And O'Brien is the assistant district attorney in charge of the prosecution," mildly added Tutt. "But what can we do? We're assigned, we've got a guilty client, and we've got to defend him."

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"Have you set Bonnie Doon looking up witnesses?" asked Mr. Tutt. "I thought I saw him outside during the forenoon."

"Yes," replied Tutt. "But Bonnie says it's the toughest case he ever had to handle in which to find any witnesses for the defense. There aren't any. Besides, the girl bought the gun and gave it to Angelo the same day."

'How do you know that?" demanded Mr. Tutt, frowning.

"Because she told me so herself," said Tutt. "She's outside if you want to see her."

"I might as well give her what you call 'the once over,'" replied the senior partner.

Tutt retired and presently returned half leading, half pushing a shrinking young Italian woman, shabbily dressed but with the features of one of Raphael's madonnas. She wore no hat and her hands and finger nails were far from clean, but from the folds of her black shawl her neck rose like a column of slightly discolored Carrara marble, upon which her head with its coils of heavy hair was poised with the grace of a sulky empress.

"Come in, my child, and sit down," said Mr. Tutt kindly. "No, not in that one; in that one." He indicated the chair previously occupied by his junior. "You can leave us, Tutt. I want to talk to this young lady alone."

The girl sat sullenly with averted face, showing

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in her attitude her instinctive feeling that all officers of the law, no matter upon which side they were supposed to be, were one and all engaged in a mysterious conspiracy of which she and her unfortunate Angelo were the victims. A few words from the old lawyer and she began to feel more confidence, however. No one, in fact, could help but realize at first glance Mr. Tutt's warmth of heart. The lines of his sunken cheeks if left to themselves automatically tended to draw together into a whimsical smile, and it required a positive act of will upon his part to adopt the stern and relentless look with which he was wont to glower down upon some unfortunate witness in cross-examination.

Inside Mr. Tutt was a benign and rather mellow old fellow, with a dry sense of humor and a very keen knowledge of his fellow men. He made a good deal of money, but not having any wife or child upon which to lavish it he spent it all either on books or surreptitiously in quixotic gifts to friends or strangers whom he either secretly admired or whom he believed to be in need of money. There were vague traditions in the office of presents of bizarre and quite impossible clothes made to office boys and stenographers; of ex-convicts reoutfitted and sent rejoicing to foreign parts; of tramps gorged to repletion and then pumped dry of their

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adventures in Mr. Tutt's comfortable, dingy old library; of a fur coat suddenly clapped upon the rounded shoulders of old Scraggs, the antiquated scrivener in the accountant's cage in the outer office, whose alcoholic career, his employer alleged, was marked by a trail of empty rum kegs, each one flying the white flag of surrender.

And yet old Ephraim Tutt could on occasion be cold as chiseled steel, and as hard. Any appeal from a child, a woman or an outcast always met with his ready response; but for the rich, successful, and those in power he seemed to entertain a deep and enduring grudge. He would burn the midnight oil with equal zest to block a crooked deal on the part of a wealthy corporation or to devise a means to extricate some no less crooked rascal from the clutches of the law, provided that the rascal seemed the victim of hard luck, inheritance or environment. His weather-beaten conscience was as elastic as his heart. Indeed when under the expansive influence of a sufficient quantity of malt extract or ancient brandy from the cellaret on his library desk he had sometimes been heard to enunciate the theory that there was very little difference between the people in jail and those who were not.

He would work weeks without compensation to argue the case of some guilty rogue before the

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Court of Appeals, in order, as he said, to "settle the law," when his only real object was to get the miserable fellow out of jail and send him back to his wife and children. He went through life with a twinkling eye and a quizzical smile, and when he did wrong he did it—if such a thing is possible—in a way to make people better. He was a dangerous adversary and judges were afraid of him, not because he ever tricked or deceived them but because of the audacity and novelty of his arguments, which left them speechless. He had the assurance that usually comes with age and with a lifelong knowledge of human nature, yet apparently he had always been possessed of it.

Once a judge having assigned him to look out for the interests of a lawyerless prisoner suggested that he take his new client into the adjoining jury room and give him the best advice he could. Mr. Tutt was gone so long that the judge became weary, and to find out what had become of him sent an officer, who found the lawyer reading a newspaper beside an open window, but no sign of the prisoner. In great excitement the officer reported the situation to the judge, who ordered Mr. Tutt to the bar.

"What has become of the prisoner?" demanded His Honor.

"I do not know," replied the lawyer calmly. "The window was open and I suspect that he used it as a means of exit."

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"Are you not aware that you are a party to an escape—a crime?" hotly challenged the judge.

"I most respectfully deny the charge," returned Mr. Tutt.

"I told you to take the prisoner into that room and give him the best advice you could."

"I did!" interjected the lawyer.

"Ah!" exclaimed the judge. "You admit it! What advice did you give him?"

"The law does not permit me to state that," answered Mr. Tutt in his most dignified tones. "That is a privileged communication from the inviolate obligation to preserve which only my client can release me—I cannot betray a sacred trust. Yet I might quote Cervantes and remind Your Honor that 'Fortune leaves always some door open to come at a remedy!' "

Now as he gazed at the tear-stained cheeks of the girl-wife whose husband had committed murder in defense of her self-respect, he vowed that so far as he was able he would fight to save him. The more desperate the case the more desperate her need of him—the greater the duty and the greater his honor if successful.

"Believe that I am your friend, my dear!" he assured her. "You and I must work together to set Angelo free."

"It's no use," she returned less defiantly. "He done it. He won't deny it."

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"But he is entitled to his defense," urged Mr. Tutt quietly.

"He won't make no defense."

"We must make one for him."

"There ain't none. He just went and killed him."

Mr. Tutt shrugged his shoulders.

"There is always a defense," he answered with conviction. "Anyhow we can't let him be convicted without making an effort. Will they be able to prove where he got the pistol?"

"He didn't get the pistol," retorted the girl with a glint in her black eyes. "I got it. I'd ha' shot him myself if he hadn't. I said I was goin' to, but he wouldn't let me."

"Dear, dear!" sighed Mr. Tutt. "What a case! Both of you trying to see which could get hanged first!"

The inevitable day of Angelo's trial came. Upon the bench the Honorable Mr. Justice Babson glowered down upon the cowering defendant flanked by his distinguished counsel, Tutt & Tutt, and upon the two hundred good and true talesmen who, "all other business laid aside," had been dragged from the comfort of their homes and the important affairs of their various livelihoods to pass upon the merits of the issue duly joined

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between The People of the State of New York and Angelo Serafino, charged with murder.

One by one as his name was called each took his seat in the witness chair upon the *voir dire* and perjured himself like a gentleman in order to escape from service, shyly confessing to an ineradicable prejudice against the entire Italian race and this defendant in particular, and to an antipathy against capital punishment which, so each unhesitatingly averred, would render him utterly incapable of satisfactorily performing his functions if selected as a juryman. Hardly one, however, but was routed by the Machiavellian Babson. Hardly one, however ingenious his excuse—whether about to be married or immediately become a father, whether engaged in a business deal involving millions which required his instant and personal attention, whether in the last stages of illness or obligated to be present at the bedside of a dying wife—but was browbeaten into helplessness and ordered back to take his place amidst the waiting throng of recalcitrant citizens so disinclined to do their part in elevating that system of trial by jury the failure of which at other times they so loudly condemned.

This trifling preliminary having been concluded, the few jurymen who had managed to wriggle through the judicial sieve were allowed to with-

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'draw, the balance of the calendar was adjourned, those spectators who were standing up were or-'dered to sit down and those already sitting down were ordered to sit somewhere else, the prisoners in the rear of the room were sent back to the Tombs to await their fate upon some later day, the reporters gathered rapaciously about the table just behind the defendant, a corpulent Ganymede in the person of an aged court officer bore tremblingly an opaque glass of yellow drinking water to the bench, O'Brien the prosecutor blew his nose with a fanflare of trumpets, Mr. Tutt smiled an ingratiating smile which seemed to clasp the whole world to his bosom—and the real battle commenced; a game in which every card in the pack had been stacked against the prisoner by an unscrupulous pair of officials whose only aim was to maintain their record of convictions of "murder in the first" and who laid their plans with ingenuity and carried them out with skill and enthusiasm to habitual success.

They were a grand little pair of convictors, were Babson and O'Brien, and woe unto that man who was brought before them. It was even alleged by the impious that when Babson was in doubt what to do or what O'Brien wanted him to do the latter communicated the information to his conspirator upon the bench by a system of precon-

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certed signals. But indeed no such system was necessary, for the judge's part in the drama was merely to sustain his colleague's objections and overrule those of his opponent, after which he himself delivered the *coup de grace* with unerring insight and accuracy. When Babson got through charging a jury the latter had always in fact been instructed in brutal and sneering tones to convict the defendant or forever after to regard themselves as disloyal citizens, oath violators and outcasts; though the stenographic record of his remarks would have led the reader thereof to suppose that this same judge was a conscientious, tenderhearted, merciful lover of humanity, whose sensitive soul quivered at the mere thought of a prison cell, and who meticulously sought to surround the defendant with every protection the law could interpose against the imputation of guilt.

He was, as Tutt put it, "a dangerous old cuss." O'Brien was even worse. He was a bull-necked, bullet-headed, pugnosed young ruffian with beery eyes, who had an insatiable ambition and a still greater conceit, but who had devised a blundering, innocent, helpless way of conducting himself before a jury that deceived them into believing that his inexperience required their help and his disinterestedness their loyal support. Both of them were apparently fair-minded, honest public servants;

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both in reality were subtly disingenuous to a degree beyond ordinary comprehension, for years of practise had made them sensitive to every whimsy of emotion and taught them how to play upon the psychology of the jury as the careless zephyr softly draws its melody from the æolian harp. In a word they were a precious pair of crooks, who for their own petty selfish ends played fast and loose with liberty, life and death.

Both of them hated Mr. Tutt, who had more than once made them ridiculous before the jury and shown them up before the Court of Appeals, and the old lawyer recognized well the fact that these two legal wolves were in revenge planning to tear him and his helpless client to pieces, having first deliberately selected him as a victim and assigned him to officiate at a ceremony which, however just so far as its consummation might be concerned, was nothing less in its conduct than judicial murder. Now they were laughing at him in their sleeves, for Mr. Tutt enjoyed the reputation of never having defended a client who had been convicted of murder, and that spotless reputation was about to be annihilated forever.

Though the defense had thirty peremptory challenges Mr. Tutt well knew that Babson would sustain the prosecutor's objections for bias until the jury box would contain the twelve automata

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personally selected by O'Brien in advance from what Tutt called "the army of the gibbet." Yet the old war horse outwardly maintained a calm and genial exterior, betraying none of the apprehension which in fact existed beneath his mask of professional composure. The court officer rapped sharply for silence.

"Are you quite ready to proceed with the case?" inquired the judge with a courtesy in which was ill concealed a leer of triumph.

"Yes, Your Honor," responded Mr. Tutt in velvet tones.

"Call the first talesman!"

The fight was on, the professional duel between traditional enemies, in which the stake—a human life—was in truth the thing of least concern, had begun. Yet no casual observer would have suspected the actual significance of what was going on or the part that envy, malice, uncharitableness, greed, selfishness and ambition were playing in it. He would have seen merely a partially filled courtroom flooded with sunshine from high windows, an attentive and dignified judge in a black silk robe sitting upon a dais below which a white-haired clerk drew little slips of paper from a wheel and summoned jurymen to a service which outwardly bore no suggestion of a tragedy.

He would have seen a somewhat unpreposses-

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ing assistant district attorney lounging in front of the jury box, taking apparently no great interest in the proceedings, and a worried-looking young Italian sitting at the prisoner's table between a rubicund little man with a round red face and a tall, grave, longish-haired lawyer with a frame not unlike that of Abraham Lincoln, over whose wrinkled face played from time to time the suggestion of a smile. Behind a balustrade were the reporters, scribbling on rough sheets of yellow paper. Then came rows of benches, upon the first of which, as near the jury box as possible, sat Rosalina in a new bombazine dress and wearing a large imitation gold cross furnished for the occasion out of the legal property room of Tutt & Tutt. Occasionally she sobbed softly. The bulk of the spectators consisted of rejected talesmen, witnesses, law clerks, professional court loafers and women seeking emotional sensations which they had not the courage or the means to satisfy otherwise. The courtroom was comparatively quiet, the silence broken only by the droning voice of the clerk and the lazy interplay of question and answer between talesman and lawyer.

Yet beneath the humdrum, casual, almost indifferent manner in which the proceedings seemed to be conducted each side was watching every move made by the other with the tension of a tiger ready

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to spring upon its prey. Babson and O'Brien were engaged in forcing upon the defense a jury composed entirely of case-hardened convictors, while Tutt & Tutt were fighting desperately to secure one so heterogeneous in character that they could hope for a disagreement.

By recess thirty-seven talesmen had been examined without a foreman having been selected, and Mr. Tutt had exhausted twenty-nine of his thirty challenges, as against three for the prosecution. The court reconvened and a new talesman was called, resembling in appearance a professional hangman who for relaxation leaned toward the execution of Italians. Mr. Tutt examined him for bias and every known form of incompetency, but in vain—then challenged peremptorily. Thirty challenges! He looked on Tutt with slightly raised eyebrows.

"Patrick Henry Walsh—to the witness chair, please, Mr. Walsh!" called the clerk, drawing another slip from the box.

Mr. Walsh rose and came forward heavily, while Tutt & Tutt trembled. He was the one man they were afraid of—an old-timer celebrated as a bulwark of the prosecution, who could always be safely counted upon to uphold the arms of the law, who regarded with reverence all officials connected with the administration of justice, and from

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whose composition all human emotions had been carefully excluded by the Creator. He was a square-jawed, severe, heavily built person, with a long relentless upper lip, cheeks ruddy from the open air; engaged in the contracting business; and he had a brogue that would have charmed a mavis off a tree. Mr. Tutt looked hopelessly at Tutt.

Babson and O'Brien had won.

Once more Mr. Tutt struggled against his fate. Was Mr. Walsh sure he had no prejudices against Italians or foreigners generally? Quite. Did he know anyone connected with the case? No. Had he any objection to the infliction of capital punishment? None whatever. The defense had exhausted all its challenges. Mr. Tutt turned to the prospective foreman with an endearing smile.

"Mr. Walsh," said he in caressing tones, "you are precisely the type of man in whom I feel the utmost confidence in submitting the fate of my client. I believe that you will make an ideal foreman. I hardly need to ask you whether you will accord the defendant the benefit of every reasonable doubt, and if you have such a doubt will acquit him."

Mr. Walsh gazed suspiciously at Mr. Tutt.

"Sure," he responded dryly, 'Oi'll give him the benefit o' the doubt, but if Oi think he's guilty Oi'll convict him."

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Mr. Tutt shivered.

"Of course! Of course! That would be your duty! You are entirely satisfactory, Mr. Walsh!"

"Mr. Walsh is more than satisfactory to the prosecution!" intoned O'Brien.

"Be sworn, Mr. Walsh," directed the clerk; and the filling of the jury box in the memorable case of People versus Serafino was begun.

"That chap doesn't like us," whispered Mr. Tutt to Tutt. "I laid it on a bit too thick."

In fact, Mr. Walsh had already entered upon friendly relations with Mr. O'Brien, and as the latter helped him arrange a place for his hat and coat the foreman cast a look tinged with malevolence at the defendant and his counsel, as if to say "You can't fool me. I know the kind of tricks you fellows are all up to."

O'Brien could not repress a grin. The clerk drew forth another name.

"Mr. Tompkins—will you take the chair?"

Swiftly the jury was impaneled. O'Brien challenged everybody who did not suit his fancy, while Tutt & Tutt sat helpless.

Ten minutes and the clerk called the roll, beginning with Mr. Walsh, and they were solemnly sworn a true verdict to find, and settled themselves to the task.

The mills of the gods had begun to grind, and

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Tutt and Mr. Tutt

Angelo was being dragged to his fate as inexorably and as surely, with about as much chance of escape, as a log that is being drawn slowly toward a buzz saw.

"You may open the case, Mr. O'Brien," announced Judge Babson, leaning back and wiping his glasses.

Then surreptitiously he began to read his mail as his fellow conspirator undertook to tell the jury what it was all about. One by one the witnesses were called—the coroner's physician, the policeman who had arrested Angelo outside the barber shop with the smoking pistol in his hand, the assistant barber who had seen the shooting, the customer who was being shaved. Each drove a spike into poor Angelo's legal coffin. Mr. Tutt could not shake them. This evidence was plain. He had come into the shop, accused Crocedoro of making his wife's life unbearable and—shot him.

Yet Mr. Tutt did not lose any of his equanimity. With the tips of his long fingers held lightly together in front of him, and swaying slightly backward and forward upon the balls of his feet, he smiled benignly down upon the customer and the barber's assistant as if these witnesses were merely unfortunate in not being able to disclose to the jury all the facts. His manner indicated that a mysteri-

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ous and untold tragedy lay behind what they had heard, a tragedy pregnant with primordial vital passions, involving the most sacred of human relationships, which when known would rouse the spirit of chivalry of the entire panel.

On cross-examination the barber testified that Angelo had said: "You maka small of my wife long enough!"

"Ah!" murmured Mr. Tutt, waving an arm in the direction of Rosalina. Did the witness recognize the defendant's young wife? The jury showed interest and examined the sobbing Rosalina with approval. Yes, the witness recognized her. Did the witness know to what incident or incidents the defendant had referred by his remark—what the deceased Crocedoro had done to Rosalina—if anything? No, the witness did not. Mr. Tutt looked significantly at the row of faces in the jury box.

Then leaning forward he asked significantly: "Did you see Crocedoro threaten the defendant with his razor?"

"I object!" shouted O'Brien, springing to his feet. "The question is improper. There is no suggestion that Crocedoro did anything. The defendant can testify to that if he wants to!"

"Oh, let him answer!" drawled the judge.

"No——" began the witness.

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"Ah!" cried Mr. Tutt. "You did not see Crocedoro threaten the defendant with his razor! That will do!"

But forewarned by this trifling experience, Mr. O'Brien induced the customer, the next witness, to swear that Crocedoro had not in fact made any move whatever with his razor toward Angelo, who had deliberately raised his pistol and shot him.

Mr. Tutt rose to the cross-examination with the same urbanity as before. Where was the witness standing? The witness said he wasn't standing. Well, where was he sitting, then? In the chair.

"Ah!" exclaimed Mr. Tutt triumphantly. "Then you had your back to the shooting!"

In a moment O'Brien had the witness practically rescued by the explanation that he had seen the whole thing in the glass in front of him. The firm of Tutt & Tutt uttered in chorus a groan of outraged incredulity. Several jurymen were seen to wrinkle their foreheads in meditation. Mr. Tutt had sown a tiny—infinitesimally tiny, to be sure—seed of doubt, not as to the killing at all but as to the complete veracity of the witness.

And then O'Brien made his coup.

"Rosalina Serafino—take the witness stand!" he ordered.

He would get from her own lips the admission that she bought the pistol and gave it to Angelo!

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But with an outburst of indignation that would have done credit to the elder Booth Mr. Tutt was immediately on his feet protesting against the outrage, the barbarity, the heartlessness, the illegality of making a wife testify against her husband! His eyes flashed, his disordered locks waved in picturesque synchronization with his impassioned gestures. Rosalina, her beautiful golden cross rising and falling hysterically upon her bosom, took her seat in the witness chair like a frightened, furtive creature of the woods, gazed for one brief instant upon the twelve men in the jury box with those great black eyes of hers, and then with burning cheeks buried her face in her handkerchief.

"I protest against this piece of cruelty!" cried Mr. Tutt in a voice vibrating with indignation. "This is worthy of the Inquisition. Will not even the cross upon her breast protect her from being compelled to reveal those secrets that are sacred to wife and motherhood? Can the law thus indirectly tear the seal of confidence from the Confessional? Mr. O'Brien, you go too far! There are some things that even you—brilliant as you are—may not trifle with."

A juryman nodded. The eleven others, being more intelligent, failed to understand what he was talking about.

"Mr. Tutt's objection is sound—if he wishes to

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press it," remarked the judge satirically. "You may step down, madam. The law will not compel a wife to testify against her husband. Have you any more witnesses, Mister District Attorney?"

"The People rest," said Mr. O'Brien. "The case is with the defense."

Mr. Tutt rose with solemnity.

"The court will, I suppose, grant me a moment or two to confer with my client?" he inquired. Babson bowed and the jury saw the lawyer lean across the defendant and engage his partner in what seemed to be a weighty deliberation.

"I killa him! I say so!" muttered Angelo feebly to Mr. Tutt.

"Shut up, you fool!" hissed Tutt, grabbing him by the leg. "Keep still or I'll wring your neck."

"If I could reach that old crook up on the bench I would twist his nose," remarked Mr. Tutt to Tutt with an air of consulting him about the Year Books. "And as for that criminal O'Brien, I'll get him yet!"

With great dignity Mr. Tutt then rose and again addressed the court:

"We have decided under all the circumstances of this most extraordinary case, Your Honor, not to put in any defense. I shall not call the defendant—"

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"I killa him——" began Angelo, breaking loose from Tutt and struggling to his feet. It was a horrible movement. But Tutt clapped his hand over Angelo's mouth and forced him back into his seat.

"The defense rests," said Mr. Tutt, ignoring the interruption. "So far as we are concerned the case is closed."

"Both sides rest!" snapped Babson. "How long do you want to sum up?"

Mr. Tutt looked at the clock, which pointed to three. The regular hour of adjournment was at four. Delay was everything in a case like this. A juryman might die suddenly overnight or fall grievously ill; or some legal accident might occur which would necessitate declaring a mistrial. There is always hope in a criminal case so long as the verdict has not actually been returned and the jury polled and discharged. If possible he must drag his summing up over until the following day. Something might happen.

"About two hours, Your Honor," he replied.

The jury stirred impatiently. It was clear that they regarded a two-hour speech from him under the circumstances as an imposition. But Babson wished to preserve the fiction of impartiality.

"Very well," said he. "You may sum up until four-thirty, and have half an hour more to-morrow.

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morning. See that the doors are closed, Captain Phelan. We do not want any interruption while the summations are going on."

"All out that's goin' out! Everybody out that's got no business with the court!" bellowed Captain Phelan.

Mr. Tutt with an ominous heightening of the pulse realized that the real ordeal was at last at hand, for the closing of the case had wrought in the old lawyer an instant metamorphosis. With the words "The defense rests" every suggestion of the mountebank, the actor or the shyster had vanished. The awful responsibility under which he labored; the overwhelming and damning evidence against his client; the terrible consequences of the least mistake that he might make; the fact that only the sword of his ability, and his alone, stood between Angelo and a hideous death by fire in the electric chair—sobered and chastened him. Had he been a praying man in that moment he would have prayed—but he was not.

For his client was foredoomed—foredoomed not only by justice but also by trickery and guile—and was being driven slowly but surely towards the judicial shambles. For what had he succeeded in adducing in his behalf? Nothing but the purely apocryphal speculation that the dead barber might have threatened Angelo with his razor and that

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the witnesses might possibly have drawn somewhat upon their imaginations in giving the details of their testimony. A sorry defense! Indeed, no defense at all. All the sorrier in that he had not even been able to get before the jury the purely sentimental excuses for the homicide, for he could only do this by calling Rosalina to the stand, which would have enabled the prosecution to cross-examine her in regard to the purchase of the pistol and the delivery of it to her husband—the strongest evidence of premeditation. Yet he must find some argument, some plea, some thread of reason upon which the jury might hang a disagreement or a verdict in a lesser degree.

With a shuffling of feet the last of the crowd pushed through the big oak doors and they were closed and locked. An officer brought a corroded tumbler of brackish water and placed it in front of Mr. Tutt. The judge leaned forward with malicious courtesy. The jury settled themselves and turned toward the lawyer attentively yet defiantly, hardening their hearts already against his expected appeals to sentiment. O'Brien, ostentatiously producing a cigarette, lounged out through the side door leading to the jury room and prison cells. The clerk began copying his records. The clock ticked loudly.

And Mr. Tutt rose and began going through the

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empty formality of attempting to discuss the evidence in such a way as to excuse or palliate Angelo's crime. For Angelo's guilt of murder in the first degree was so plain that it had never for one moment been in the slightest doubt. Whatever might be said for his act from the point of view of human emotion only made his motive and responsibility under the statues all the clearer. There was not even the unwritten law to appeal to. Yet there was fundamentally a genuine defense, a defense that could not be urged even by innuendo: the defense that no accused ought to be convicted upon any evidence whatever, no matter how conclusive, in a trial conducted with essential though wholly concealed unfairness.

Such was the case of Angelo. No one could demonstrate it, no one could with safety even hint at it; any charge that the court was anything but impartial would prove a boomerang to the defense; and yet the facts remained that the whole proceeding from start to finish had been conducted unfairly and with illegality, that the jury had been duped and deceived, and that the pretense that the guilty Angelo had been given an impartial trial was a farce. Every word of the court had been an accusation, a sneer, an acceptance of the defendant's guilt as a matter of course, an abuse far more subversive of our theory of government than the mere

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acquittal of a single criminal, for it struck at the very foundations of that liberty which the fathers had sought the shores of the unknown continent to gain.

Unmistakably the proceedings had been conducted throughout upon the theory that the defendant must prove his innocence and that presumably he was a guilty man; and this as well as his own impression that the evidence was conclusive the judge had subtly conveyed to the jury in his tone of speaking, his ironical manner and his facial expression. Guilty or not Angelo was being railroaded. That was the real defense—the defense that could never be established even in any higher court, except perhaps in the highest court of all, which is not of earth.

And so Mr. Tutt, boiling with suppressed indignation, weighed down with the sense of his responsibilty, fully realizing his inability to say anything based on the evidence in behalf of his client, feeling twenty years older than he had during the verbal duel of the actual cross-examination, rose with a genial smile upon his puckered old face and with a careless air almost of gaiety, which seemed to indicate the utmost confidence and determination, and with a graceful compliment to his arch enemy upon the bench and the yellow dog who had hunted with him, assured the jury that the defendant had

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had the fairest of fair trials and that he, Mr. Tutt, would now proceed to demonstrate to their satisfaction his client's entire innocence; nay, would show them that he was a man not only guiltless of any wrong-doing but worthy of their hearty commendation.

With jokes not too unseemly for the occasion he overcame their preliminary distrust and put them in a good humor. He gave a historical dissertation upon the law governing homicide, on the constitutional rights of American citizens, on the laws of naturalization, marriage, and the domestic relations; waxed eloquent over Italy and the Italian character, mentioned Cavour, Garibaldi and Mazzini in a way to imply that Angelo was their lineal descendant; and quoted from D'Annunzio back to Horace, Cicero and Plautus.

"Bunk! Nothing but bunk!" muttered Tutt, studying the twelve faces before him. "And they all know it!"

But Mr. Tutt was nothing if not interesting. These prosaic citizens of New York County, these saloon and hotel keepers, these contractors, insurance agents and salesmen were learning something of history, of philosophy, of art and beauty. They liked it. They felt they were hearing something worth while, as indeed they were, and they forgot all about Angelo and the unfortunate Crocedoro in

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their admiration for Mr. Tutt, who had lifted them out of the dingy sordid courtroom into the sunlight of the Golden Age. And as he led them through Greek and Roman literature, through the early English poets, through Shakespeare and the King James version, down to John Galsworthy and Rupert Brooke, he brought something that was noble, fine and sweet into their grubby materialistic lives; and at the same time the hand of the clock crept steadily on until he and it reached Château-Thierry and half past four together.

"Bang!" went Babson's gavel just as Mr. Tutt was leading Mr. Walsh, Mr. Tompkins and the others through the winding paths of the Argonne forests with tin helmets on their heads in the struggle for liberty.

"You may conclude your address in the morning, Mr. Tutt," said the judge with supreme unction. "Adjourn court!"

Gray depression weighed down Mr. Tutt's soul as he trudged homeward. He had made a good speech, but it had had absolutely nothing to do with the case, which the jury would perceive as soon as they thought it over. It was a confession of defeat. Angelo would be convicted of murder in the first degree and electrocuted, Rosalina would be a widow, and somehow he would be in a meas-

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ure responsible for it. The tragedy of human life appalled him. He felt very old, as old as the dead-and-gone authors from whom he had quoted with such remarkable facility. He belonged with them; he was too old to practise his profession.

"Law, Mis' Tutt," expostulated Miranda, his ancient negro handmaiden, as he pushed away the chop and mashed potato, and even his glass of claret, untasted, in his old-fashioned dining room on West Twenty-third Street, "you ain't got no appetite at all! You's sick, Mis' Tutt."

"No, no, Miranda!" he replied weakly. "I'm just getting old."

"You's mighty spry for an old man yit," she protested. "You kin make dem lawyer men hop mighty high when you tries. Heh, heh! I reckon dey ain't got nuffin' on my Mistah Tutt!"

Upstairs in his library Mr. Tutt strode up and down before the empty grate, smoking stogy after stogy, trying to collect his thoughts and devise something to say upon the morrow, but all his ideas had flown. There wasn't anything to say. Yet he swore Angelo should not be offered up as a victim upon the altar of unscrupulous ambition. The hours passed and the old banjo clock above the mantel wheezed eleven, twelve; then one, two. Still he paced up and down, up and down in a sort of trance. The air of the library, blue with the

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smoke of countless stogies, stifled and suffocated him. Moreover he discovered that he was hungry. He descended to the pantry and salvaged a piece of pie, then unchained the front door and stepped forth into the soft October night.

A full moon hung over the deserted streets of the sleeping city. In divers places, widely scattered, the twelve good and true men were snoring snugly in bed. To-morrow they would send Angelo to his death without a quiver. He shuddered, striding on, he knew not whither, into the night. His brain no longer worked. He had become a peripatetic automaton self-dedicated to nocturnal perambulation.

With his pockets bulging with stogies and one glowing like a headlight in advance of him he wandered in a sort of coma up Tenth Avenue, crossed to the Riverside Drive, mounted Morningside Heights, descended again through the rustling alleys of Central Park, and found himself at Fifth Avenue and Fifty-ninth Street just as the dawn was paling the electric lamps to a sickly yellow and the trees were casting strange unwonted shadows in the wrong direction. He was utterly exhausted. He looked eagerly for some place to sit down, but the doors of the hotels were dark and tightly closed and it was too cold to remain without moving in the open air.

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Down Fifth Avenue he trudged, intending to go home and snatch a few hours' sleep before court should open, but each block seemed miles in length. Presently he approached the cathedral, whose twin spires were tinted with reddish gold. The sky had become a bright blue. Suddenly all the street lamps went out. He told himself that he had never realized before the beauty of those two towers reaching up toward eternity, typifying man's aspiration for the spiritual. He remembered having heard that a cathedral was never closed, and looking toward the door he perceived that it was open. With utmost difficulty he climbed the steps and entered its dark shadows. A faint light emanated from the tops of the stained-glass windows. Down below a candle burned on either side of the altar while a flickering gleam shone from the red cup in the sanctuary lamp. Worn out, drugged for lack of sleep, faint for want of food, old Mr. Tutt sank down upon one of the rear seats by the door, and resting his head upon his arms on the back of the bench in front of him fell fast asleep.

He dreamed of a legal heaven, of a great wooden throne upon which sat Babson in a black robe and below him twelve red-faced angels in a double row with harps in their hands, chanting: "Guilty! Guilty! Guilty!" An organ was play-

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ing somewhere, and there was a great noise of footsteps. Then a bell twinkled and he raised his head and saw that the chancel was full of lights and white-robed priests. It was broad daylight. Horrified he looked at his watch, to find that it was ten minutes after ten. His joints creaked as he pulled himself to his feet and his eyes were half closed as he staggered down the steps and hailed a taxi.

"Criminal Courts Building—side door. And drive like hell!" he muttered to the driver.

He reached it just as Judge Babson and his attendant were coming into the courtroom and the crowd were making obeisance. Everybody else was in his proper place.

"You may proceed, Mr. Tutt," said the judge after the roll of the jury had been called.

But Mr. Tutt was in a daze, in no condition to think or speak. There was a curious rustling in his ears and his sight was somewhat blurred. The atmosphere of the courtroom seemed to him cold and hostile; the jury sat with averted faces. He rose feebly and cleared his throat.

"Gentlemen of the jury," he began, "I—I think I covered everything I had to say yesterday afternoon. I can only beseech you to realize the full extent of your great responsibility and remind you

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that if you entertain a reasonable doubt upon the evidence you are sworn to give the benefit of it to the defendant."

He sank back in his chair and covered his eyes with his hands, while a murmur ran along the benches of the courtroom. The old man had collapsed—tough luck—the defendant was cooked! Swiftly O'Brien leaped to his feet. There had been no defense. The case was as plain as a pikestaff. There was only one thing for the jury to do—return a verdict of murder in the first. It would not be pleasant, but that made no difference! He read them the statute, applied it to the facts, and shook his fist in their faces. They must convict—and convict of only one thing—and nothing else—murder in the first degree. They gazed at him like silly sheep, nodding their heads, doing everything but bleat.

Then Babson cleared his decks and rising in dignity expounded the law to the sheep in a rich mellow voice, in which he impressed upon them the necessity of preserving the integrity of the jury system and the sanctity of human life. He pronounced an obituary of great beauty upon the deceased barber—who could not, as he pointed out, speak for himself, owing to the fact that he was in his grave. He venomously excoriated the defendant, who had deliberately planned to kill an

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unarmed man peacefully conducting himself in his place of business, and expressed the utmost confidence that he could rely upon the jury, whose character he well knew, to perform their full duty no matter how disagreeable that duty might be. The sheep nodded.

"You may retire, gentlemen."

Babson looked down at Mr. Tutt with a significant gleam in his eye. He had driven in the knife to the hilt and twisted it round and round. Angelo had almost as much chance as the proverbial celluloid cat. Mr. Tutt felt actually sick. He did not look at the jury as they went out. They would not be long—and he could hardly face the thought of their return. Never in his long experience had he found himself in such a desperate situation. Heretofore there had always been some argument, some construction of the facts upon which he could make an appeal, however fallacious or illogical.

He leaned back and closed his eyes. The judge was chatting with O'Brien, the court officers were betting with the reporters as to the length of time in which it would take the twelve to agree upon a verdict of murder in the first. The funeral rites were all concluded except for the final commitment of the corpse to mother earth.

And then without warning Angelo suddenly rose and addressed the court in a defiant shriek.

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"I killa that man!" he cried wildly. "He maka small of my wife! He no good! He bad egg! I killa him once—I killa him again!"

"So!" exclaimed Babson with biting sarcasm. "You want to make a confession? You hope for mercy, do you? Well, Mr. Tutt, what do you wish to do under the circumstances? Shall I recall the jury and reopen the case by consent?"

Mr. Tutt rose trembling to his feet.

"The case is closed, Your Honor," he replied. "I will consent to a mistrial and offer a plea of guilty of manslaughter. I cannot agree to reopen the case. I cannot let the defendant go upon the stand."

The spectators and reporters were pressing forward to the bar, anxious lest they should lose a single word of the colloquy. Angelo remained standing, looking eagerly at O'Brien, who returned his gaze with a grin like that of a hyena.

"I killa him!" Angelo repeated. "You killa me if you want."

"Sit down!" thundered the judge. "Enough of this! The law does not permit me to accept a plea to murder in the first degree, and my conscience and my sense of duty to the public will permit me to accept no other. I will go to my chambers to await the verdict of the jury. Take the prisoner downstairs to the prison pen."

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The Human Element

He swept from the bench in his silken robes. Angelo was led away. The crowd in the courtroom slowly dispersed. Mr. Tutt, escorted by Tutt, went out in the corridor to smoke.

"Ye got a raw deal, counselor," remarked Captain Phelan, amiably accepting a stogy. "Nothing but an act of Providence c'd save that Eyetalian from the chair. An' him guilty at that!"

An hour passed; then another. At half after four a rumor flew along the corridors that the jury in the Serafino case had reached a verdict and were coming in. A messenger scurried to the judge's chambers. Phelan descended the iron stairs to bring up the prisoner, while Tutt to prevent a scene invented an excuse by which he lured Rosalina to the first floor of the building. The crowd suddenly reassembled out of nowhere and poured into the courtroom. The reporters gathered expectantly round their table. The judge entered, his robes gathered in one hand.

"Bring in the jury," he said sharply. "Arraign the prisoner at the bar."

Mr. Tutt took his place beside his client at the railing, while the jury, carrying their coats and hats, filed slowly in. Their faces were set and relentless. They looked neither to the right nor to the left. O'Brien sauntered over and seated himself nonchalantly with his back to the court,

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studying their faces. Yes, he told himself, they were a regular set of hangmen—he couldn't have picked a tougher bunch if he'd had his choice of the whole panel.

The clerk called the roll, and Messrs. Walsh, Tompkins, *et al.*, stated that they were all present.

"Gentlemen of the jury, have you agreed upon a verdict?" inquired the clerk.

"We have!" replied Mr. Walsh sternly.

"How say you? Do you find the defendant guilty or not guilty?"

Mr. Tutt gripped the balustrade in front of him with one hand and put his other arm round Angelo. He felt that now in truth murder was being done.

"We find the defendant not guilty," said Mr. Walsh defiantly.

There was a momentary silence of incredulity. Then Babson and O'Brien shouted simultaneously: "What!"

"We find the defendant not guilty," repeated Mr. Walsh stubbornly.

"I demand that the jury be polled!" cried the crestfallen O'Brien, his face crimson.

And then the twelve reiterated severally that that was their verdict and that they hearkened unto it as it stood recorded and that they were entirely satisfied with it.

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"You are discharged!" said Babson in icy tones. "Strike the names of these men from the list of jurors—as incompetent. Haven't you any other charge on which you can try this defendant?"

"No, Your Honor," answered O'Brien grimly. "He didn't take the stand, so we can't try him for perjury; and there isn't any other indictment against him."

Judge Babson turned ferociously upon Mr. Tutt:

"This acquittal is a blot upon the administration of criminal justice; a disgrace to the city! It is an unconscionable verdict; a reflection upon the intelligence of the jury! The defendant is discharged. This court is adjourned."

The crowd surged round Angelo and bore him away, bewildered. The judge and prosecutor hurried from the room. Alone Mr. Tutt stood at the bar, trying to grasp the full meaning of what had occurred.

He no longer felt tired; he experienced an exultation such as he had never known before. Some miracle had happened! What was it?

Unexpectedly the lawyer felt a rough warm hand clasped over his own upon the rail and heard the voice of Mr. Walsh with its rich brogue saying: "At first we couldn't see that there was much to be said for your side of the case, Mr. Tutt; but

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when Oi stepped into the cathedral on me way down to court this morning and spied you prayin' there for guidance I knew you wouldn't be defendin' him unless he was innocent, and so we decided to give him the benefit of the doubt."

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Mock Hen and Mock Turtle

"Oh, East is East and West is West, and never the twain shall meet."

—Ballad of East and West.

"But the law of the jungle is jungle law only, and the law of of the pack is only for the pack."

—Other Sayings of Shere Khan.

A HALF turn from the clattering hubbub of Chatham Square and you are in Chinatown, slipping, within ten feet, through an invisible wall, from the glitter of the gin palace and the pawnshop to the sinister shadows of irregular streets and blind alleys, where yellow men pad swiftly along greasy asphalt beneath windows glinting with ivory, bronze and lacquer; through which float the scents of aloes and of incense and all the subtle suggestion of the East.

No one better than the Chink himself realizes the commercial value of the taboo, the bizarre and

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the unclean. Nightly the rubber-neck car swinging gayly with lanterns stops before the imitation joss house, the spurious opium joint and tortuous passage to the fake fan-tan and faro game, with a farewell call at Hong Joy Fah's Oriental restaurant and the well-stocked novelty store of Wing, Hen & Co. The visitors see what they expect to see, for the Chinaman always gives his public exactly what it wants.

But a dollar does not show you Chinatown. To some the ivories will always be but crudely carven bone, the jades the potter's sham, the musk and aloes the product of a soap factory, the joss but a cigar-store Indian, and the Oriental dainties of Hong Fah the scrappings of a Yankee grocery store. Yet behind the shoddy tinsel of Doyers and Pell Streets, as behind Alice's looking-glass, there is another Chinatown—a strange, inhuman, Oriental world, not necessarily of trapdoors and stifled screams, but one moved by influences undreamed of in our banal philosophies. Hearken then to the story of the avenging of Wah Sing.

'Tis a tale was undoubtedly true
In the reign of the Emperor Hwang.

In the murky cellar of a Pell Street tenement seventeen Chinamen sat cross-legged in a circle round an octagonal teakwood table. To an Occidental they would have appeared to differ in no

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detail except that of a varying degree of fatness. An oil lamp flickered before a joss near by, and the place reeked with the odor of starch, sweat, tobacco, rice whisky and the incense that rose ceilingward in thin, shaking columns from two bowls of Tibetan soapstone. An obese Chinaman with a walnutlike countenance in which cunning and melancholy were equally commingled was speaking monotonously through long, rat-tailed mustaches, while the others listened with impassive decorum. It was a special meeting of the Hip Leong Tong, held in their private clubrooms at the Great Shanghai Tea Company, and conducted according to rule.

"Therefore," said Wong Get, "as a matter of honor it is necessary that our brother be avenged and that no chances be taken. A much too long time has already elapsed. I have written the letter and will read it."

He fumbled in his sleeve and drew forth a roll of brown paper covered with heavy Chinese characters, unwinding it from a strip of bamboo.

To the Honorable Members of the On Gee Tong:

Whereas it has pleased you to take the life of our beloved friend and relative Wah Sing, it is with greatest courtesy and the utmost regret that we inform you that it is necessary for us likewise to remove one of your esteemed society, and that we shall proceed thereto without delay.

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Due warning being thus honorably given I subscribe myself with profound appreciation,

For the Hip Leong Tong,
WONG GET.

He ceased reading and there was a perfunctory grunt of approval from round the circle. Then he turned to the official soothsayer and directed him to ascertain whether the time were propitious. The latter tossed into the air a handful of painted ivory sticks, carefully studied their arrangement when fallen, and nodded gravely.

"The omens are favorable, O honorable one!"

"Then there is nothing left but the choice of our representatives," continued Wong Get. "Pass the fateful box, O Fong Hen."

Fong Hen, a slender young Chinaman, the official slipper, or messenger, of the society, rose and, lifting a lacquered gold box from the table, passed it solemnly to each member.

"This time there will be four," said Wong Get.

Each in turn averted his eyes and removed from the box a small sliver of ivory. At the conclusion of the ceremony the four who had drawn red tokens rose. Wong Get addressed them.

"Mock Hen, Mock Ding, Long Get, Sui Sing—to you it is confided to avenge the murder of our brother Wah Sing. Fail not in your purpose!"

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'And the four answered unemotionally: "Those to whom it is confided will not fail."

Then pivoting silently upon their heels they passed out of the cellar.

Wong Get glanced round the table.

"If there is no further business the society will disperse after the customary refreshment."

Fong Hen placed thirteen tiny glasses upon the table and filled them with rice whisky scented with aniseed and a dash of powdered ginger. At a signal from Wong Get the thirteen Chinamen lifted the glasses and drank.

"The meeting is adjourned," said he.

Eighty years before, in a Cantonese rabbit warren, two yellow men had fought over a white woman, and one had killed the other. They had belonged to different societies, or tongs. The associates of the murdered man had avenged his death by slitting the throat of one of the members of the other organization, and these in turn had retaliated, thus establishing a vendetta which became part and parcel of the lives of certain families, as naturally and unavoidably as birth, love and death. As regularly as the solstice they alternated in picking each other off. Branches of the Hip Leong and On Gee tongs sprang up in San Francisco and New York—and the feud was transferred with

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them to Chatham Square, a feud imposing a sacred obligation rooted in blood, honor and religion upon every member, who rather than fail to carry it out would have knotted a yellow silken cord under his left ear and swung himself gently off a table into eternal sleep.

Young Mock Hen, one of the four avengers, had created a distinct place for himself in China-town by making a careful study of New York psychology. He was a good-looking Chink, smooth-faced, tall and supple; he knew very well how to capitalize his attractiveness. By day he attended Columbia University as a special student in applied electricity, keeping a convenient eye meanwhile on three coolies whom he employed to run The College Laundry on Morningside Heights. By night he vicariously operated a chop-suey palace on Seventh Avenue, where congregated the worst elements of the Tenderloin. But his heart was in the gambling den which he maintained in Doyers Street, and where anyone who knew the knock could have a shell of hop for the asking, once Mock had given him the once-over through the little sliding panel.

Mock was a Christian Chinaman. That is to say, purely for business reasons—for what he got out of it and the standing that it gave him—he attended the Rising Star Mission and also fre-

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quented Hudson House, the social settlement where Miss Fanny Duryea taught him to play ping-pong and other exciting parlor games, and read to him from books adapted to an American child of ten. He was a great favorite at both places, for he was sweet-tempered and wore an expression of heaven-born innocence. He had even been to church with Miss Duryea, temporarily absenting himself for that purpose of a Sunday morning from the steam-heated flat where—unknown to her, of course—he lived with his white wife, Emma Pratt, a lady of highly miscellaneous antecedents.

Except when engaged in transacting legal or other business with the municipal, sociologic or religious world—at which times his vocabulary consisted only of the most rudimentary pidgin—Mock spoke a fluent and even vernacular English learned at night school. Incidentally he was the head of the syndicate which controlled and dispensed the loo, faro, fan-tan and other gambling privileges of Chinatown.

Detective Mooney, of the Second, detailed to make good District Attorney Peckham's boast that there had never been so little trouble with the foreign element since the administration—of which he was an ornament—came into office, saw Quong Lee emerge from his doorway in Doyers Street

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just before four o'clock the following Thursday and slip silently along under the shadow of the eaves toward Ah Fong's grocery—and instantly sensed something peculiar in the Chink's walk.

"Hello, Quong!" he called, interposing himself. "Where you goin'?"

Quong paused with a deprecating gesture of widely spread open palms.

" 'Lo yourself!" replied blandly. "Me go buy li'l' glocery."

Mooney ran his hands over the rotund body, frisking him for a possible forty-four.

"For the love of Mike!" he exclaimed, tearing open Quong's blouse. "What sort of an undershirt is that?"

Quong grinned broadly as the detective lifted the suit of double-chain mail which swayed heavily under his blue blouse from his shoulders to his knees.

"So-ho!" continued the plain-clothes man. "Trouble brewin', eh?"

He knew already that something was doing in the tongs from his lobby-gow, Wing Foo.

"Must weigh eighty pounds!" he whistled. "I'd like to see the pill that would go through that!" It was, in fact, a medieval corselet of finest steel mesh, capable of turning an elephant bullet.

"Go'long!" ordered Mooney finally. "I guess you're safe!"

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He turned back in the direction of Chatham Square, while Quong resumed his tortoiselike perambulation toward Ah Fong's. Pell and Doyers Streets were deserted save for an Italian woman carrying a baby, and were pervaded by an unnatural and suspicious silence. Most of the shutters on the lower windows were down. Ah Fong's subsequent story of what happened was simple, and briefly to the effect that Quong, having entered his shop and priced various litchi nuts and pickled starfruit, had purchased some powdered lizard and, with the package in his left hand, had opened the door to go out. As he stood there with his right hand upon the knob and facing the afternoon sun four shadows fell aslant the window and a man whom he positively identified as Sui Sing emptied a bag of powder—afterward proved to be red pepper—upon Quong's face; then another, Long Get, made a thrust at him with a knife, the effect of which he did not observe, as almost at the same instant Mock Hen felled him with a blow upon the head with an iron bar, while a fourth, Mock Ding, fired four shots at his crumpling body with a revolver, one of which glanced off and fractured a very costly Chien Lung vase and ruined four boxes of mandarin-blossom tea. In his excitement he ducked behind the counter, and when sufficiently revived he crawled forth to find what had once been Quong lying across the threshold, the mur-

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derers gone, and the Italian woman prostrate and shrieking with a hip splintered by a stray bullet. On the sidewalk outside the window lay the remnants of the bag of pepper, a knife broken short off at the handle, a heavy bar of soft iron slightly bent, and a partially emptied forty-four-caliber revolver. Quong's suit of mail had effectually protected him from the knife thrust and the revolver shots, but his skull was crushed beyond repair. Thus was the murder of Wah Sing avenged in due and proper form.

Detective Mooney, distant not more than two hundred feet, rushed back to the corner at the sound of the first shot—just in time to catch a side glimpse of Mock Hen as he raced across Pell Street and disappeared into the cellar of the Great Shanghai Tea Company. The Italian woman was filling the air with her outcries, but the detective did not pause in his hurtling pursuit. He was too late, however. The cellar door withstood all his efforts to break it open.

Bull Neck Burke, the wrestler, who tied Zabisko once on the stage of the old Grand Opera House in 1913, had been promenading with Mollie Malone, of the Champagne Girls and Gay Burlesquers Company. Both heard the fusillade and saw Mock—a streak of flying blue—pass within a few feet of them.

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"God!" ejaculated Mollie. "Sure as shootin', that's Mock Hen—and he's murdered somebody!"

"It's Mock all right!" agreed Bull Neck. "That puts us in as witnesses or strike me!" And he looked at his watch—four one.

"Here, Burke, put your shoulder to this!" shouted Mooney from the cellar steps. "Now then!"

The two of them threw their combined weight against it, the lock flew open and they fell forward into the darkness. Three doors leading in different directions met the glare of Mooney's match. But the fugitive had a start of at least four minutes, which was three and a half more than he required.

Mock Hen took the left-hand of the three doors and crept along a passage opening into an empty opium parlor back of the Hip Leong clubroom.

Diving beneath one of the bunks he inserted his body between the lower planking at the back and the cellar wall, wormed his way some twelve feet, raised a trap and emerged into a tunnel by means of which and others he eventually reached the end of the block and the rooms of his friend Hong Sue.

Here he changed from the Oriental costume according to Chinese etiquette necessary to the homicide, into a nobby suit of American clothes, put on a false mustache, and walked boldly down

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Park Row, while just behind him Doyers and Pell Streets swarmed with bluecoats and excited citizenry.

Hudson House, the social settlement presided over by Miss Fanny and affected for business reasons by Mock Hen, was a mile and a half away. But Mock took his time. Twenty-five full minutes elapsed before he leisurely climbed the steps and slipped into the big reading room. There was no one there and Mock deftly turned back the hand of the automatic clock over the platform to three-fifty-five. Then he began to whistle. Presently Miss Fanny entered from the rear room, her face lighting with pleasure at the sight of her pet convert.

"Good afternoon, Mock Hen! You are early to-day.

Mock took her hand and stroked it affectionately.

"I go Fulton Mark' buy li'l' terrapin. Stop in on way to see dear Miss Fan'."

They stood thus for a moment, and while they did so the clock struck four.

"I go now!' said Mock suddenly. "Four o'clock already."

"It's early," answered Miss Fanny. "Won't you stay a little while?"

"I go now," he repeated with resolution. "Good-by, li'l' teacher!"

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She watched until his lithe figure passed through the door, and presently returned to the back room. Mock waited outside until she had disappeared. Then he changed back the clock.

"We've got you, you blarsted heathen!" cried Mooney hoarsely as he and two others from the Central Office threw themselves upon Mock Hen on the landing outside the door of his flat. "Look out, Murtha. Pipe that thing under his arm!"

"It's a bloody turtle!" gasped Murtha, shuddering.

"What's the matter, boys?" inquired Mock. "Leggo my arm, can't yer? What'd yer want, anyway?"

"We want you, you yellow skunk!" retorted Mooney. "Open that door! Lively now!"

"Sure!" answered Mock amiably. "Come on in! What's bitin' yer?"

He unlocked the door and threw it open.

"Take a chair," he invited them. "Have a cigar? You there, Emma?"

Emma Pratt, clad in a wrapper and lying on the big double brass bedstead in the rear room, raised herself on one elbow.

"Yep!" she called through the passage. "Got the bird?"

Mock looked at Murtha, who was carrying the terrapin.

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"Sure!" he called back. "Sit down, boys. What'd yer want? Can't yer tell a feller?"

"We want you for croaking Quong Lee!" snapped Mooney. "Where have you been?"

"Fulton Market—and Hudson House. I left here quarter of four. I haven't seen Quong Lee. Where was he killed?"

Mooney laughed sardonically.

"That'll do for you, Mock! Your alibi ain't worth a damn this time. I saw you myself.'

"You saw someone else," Mock assured him politely. "I haven't been in Chinatown."

"Say, what yer doin' wit' my Chink?" demanded Emma, appearing in the doorway. "He was sittin' here wit' me all the afternoon, until about just before four I sent him over to Fulton Market to buy a bird. Who's been croaked, eh?"

"Aw, cut it out, Emma!" replied Mooney. "That old stuff won't go here. Your Chink's goin' to the chair. Murtha, look through the place while we put Mock in the wagon. Hell!" he added under his breath. "Won't this make Peckham sick!"

Mr. Ephraim Tutt just finished his morning mail when he was informed that Mr. Wong Get desired an interview. Though the old lawyer did not formally represent the Hip Leong Tong he was frequently retained by its individual members,

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who held him in high esteem, for they had always found him loyal to their interests and as much a stickler for honor as themselves. Moreover, between him and Wong Get there existed a curious sympathy as if in some previous state of existence Wong Get might have been Mr. Tutt, and Mr. Tutt Wong Get. Perhaps, however, it was merely because both were rather weary, sad and worldly wise.

Wong Get did not come alone. He was accompanied by two other Hip Leongs, the three forming the law committee appointed to retain the best available counsel to defend Mock Hen. In his expansive frock coat and bowler hat Wong might easily have excited mirth had it not been for the extreme dignity of his demeanor. They were there, he stated, to request Mr. Tutt to protect the interests of Mock Hen, and they were prepared to pay a cash retainer and sign a written contract binding themselves to a balance—so much if Mock should be convicted; so much if acquitted; so much if he should die in the course of the trial without having been either convicted or acquitted. It was, said Wong Get gently, a matter of grave importance and they would be glad to give Mr. Tutt time to think it over and decide upon his terms. Suppose, then, that they should return at noon? With this understanding, accordingly, they departed.

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Tutt and Mr. Tutt

"There's no point in skinning a Chink just because he is a Chink," said the junior Tutt when his partner had explained the situation to him. "But it isn't the highest-class practise and they ought to pay well."

"What do you call well?" inquired Mr. Tutt.

"Oh, a thousand dollars down, a couple more if he's convicted, and five altogether if he's acquitted."

"Do you think they can raise that amount of money?"

"I think so," answered Tutt. "It might be a good deal for an individual Chink to cough up on his own account, but this is a coöperative affair. Mock Hen didn't kill Quong Lee to get anything out of it for himself, but to save the face of his society."

"He didn't kill him at all!" declared Mr. Tutt, hardly moving a muscle of his face.

"Well, you know what I mean!" said Tutt.

"He wasn't there," insisted Mr. Tutt. "He was way over in Fulton Market buying a terrapin."

"That is what, if I were district attorney, I should call a Mock Hen with a mockturtle defense!" grunted Tutt.

Mr. Tutt chuckled.

"I shall have to get that off myself at the beginning of the case, or it might convict him," he

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remarked. "But he wasn't there—unless the jury find that he was."

"In which case he will—or shall—have been there—whatever the verb is," agreed Tutt. "Anyhow they'll tax every laundry and chop-suey palace from the Bronx to the Battery to pay us."

"I'd hate to take our fee in bird's-nest soup, shark's fin, bamboo-shoots salad and ya ko main," mused Mr. Tutt.

"Or in ivory chopsticks, oolong tea, imitation jade, litchi nuts and preserved leeches!" groaned Tutt. "Be sure and get the thousand down; it may be all the cash we'll ever see!"

Promptly at twelve the law committe of the Hip Leong Tong returned to the office of Tutt & Tutt. With them came a venerable Chinaman in native costume, his wrinkled face as inscrutable as that of a snapping turtle. The others took chairs, but this high dignitary preferred to sit upon his heels on the floor, creating something of the impression of an ancient slant-eyed Buddha.

Wong Get translated for his benefit the arrangement proposed by Mr. Tutt, after which there was a long pause while His Eminence remained immovable, without even the flicker of an eyelid. Then he delivered himself in an interminable series of gargles and gurgles, supplemented by a few cough-like hisses, while Wong Get translated with rapid

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