

Arthur Train



Old Man Tutt

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“New York City, U. S. A. Nov. 11, 1921.

OLD MAN TUTT

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JEFFERSON WAS RIGHT

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Ephraim Tutt, his brief case on his knees, sat inside the rail, waiting for the prisoners' pleas to be taken before arguing a motion. He had watched that tragic procession a thousand times without ever losing interest in its melodrama.

Who were these men that, one after another, were led to the bar and answered "Guilty" or "Not Guilty"? What had they done? What was their past, and their future? How could the crude machinery of so-called justice properly evaluate the moral obliquity of their offenses? The mitigating circumstances?

The types in the courtroom always differed. The woman on the front bench, for instance, holding a baby—what was hidden behind the mask of her honest Irish face? And that near-by row of ragged urchins, all about the same age—what were they doing there?

The door leading to the prison pen opened and a big hulking man, his hair awry and his collarless shirt unbuttoned at the neck, stumbled in, shackled to a keeper, and clumped to the bar. One of the [2] boys leaned over and slapped him good-naturedly on the shoulder as he passed, while the woman with the baby reached out and patted his arm. The prisoner turned and gave her a grim smile that tried hard to be encouraging.

"Vance Halloran, you are indicted for murder in the first degree. How do you plead? 'Guilty' or 'Not guilty'?"

Halloran stared uncertainly at the clerk, then mumbled something to old Captain Gallagher, the court officer, beside him.

“He says he hasn’t any money to hire a lawyer. Wants the court to assign him one.”

Assistant District Attorney O’Brion, popularly known as the Bulldog, glancing up from his papers, caught sight of Mr. Tutt. The chance of a lifetime to hand the old boy a ripe juicy melon! Halloran was as good as in the chair already! Pity he wasn’t some one more important than a mere newspaper-truck driver!

Stepping to the bench, the prosecutor whispered to the presiding judge, who coincidentally raised his eyes to the group of waiting attorneys.

“H’m! Let me see!... I’ll assign Mr. Tutt to the defense in this case,” he announced finally.

O’Brion couldn’t help grinning.

The old lawyer, thus unexpectedly yanked back from his philosophical speculations, arose.

“If the Court please,” he said, “while I much [3] appreciate the compliment paid me by Your Honor, I beg to state that my health and professional engagements are such that I must ask you to excuse me.”

“I wish I was half as tough,” muttered O’Brion out of the corner of his mouth. “He’ll live to be a hundred.”

“This is a very serious case,” replied the judge. “Its defense will demand ability and experience. I know of no one better qualified than yourself to undertake it.”

Mr. Tutt realized that he was licked before he started.

Twice before in recent years he had thrashed O'Brion in seemingly hopeless cases, and now the Bulldog intended to get even with him. Well, no use kicking against the pricks.

"I bow to Your Honor's decision."

Mr. Tutt stepped across to where the prisoner stood bewilderedly at the rail. He certainly was a tough-looking customer!

"If the Court please, under the circumstances, I request that the pleading in this case be adjourned for one week, so that I may have proper opportunity to confer with my client."

"I object to any delay," interposed O'Brion. "I ask that the defendant be compelled to plead and that the date of the trial be set here and now."

"He ain't got a chance!" Captain Gallagher informed the lawyer. "Shot a feller right on Centre Street in broad daylight. They found the gun and everything. Better plead him to murder in the second, if you can get O'Brion to take it."

"If the case is as serious as Your Honor indicates, I should have ample time in which to prepare my defense," answered Mr. Tutt.

"The facts are perfectly simple," insisted the prosecutor. "There isn't any defense."

"You may have until day after tomorrow in which to plead," ruled the judge. "That should be long enough to review the evidence and decide upon your course."

"I serve notice on the defense that I shall move for an immediate trial and a special jury," warned O'Brion. "Take him back to the Tombs. Next case!"

Halloran was led away and Mr. Tutt, forgetful of his motion, walked out of the courtroom. Pausing to light a stogie in the rotunda, he was overtaken by the woman with the baby and the covey of little boys.

"I'm Mrs. Halloran, sir," she said, laying her hand on his arm. "Thank God, he's got a good lawyer to defend him!"

"I'll do my best! Tell me about the case."

"They say he shot Mike Kelly, but I'm sure he didn't. He ain't that kind. He works nights drivin' a delivery truck for the *Star*. Kelly drove for the [5] *Express*. They had some sort of a row once, but it was nothing—Kelly quarreled with everybody. The other afternoon my husband went out for a walk. On his way home he heard a shot just beside him, and a man comin' in the opposite direction dropped to the sidewalk. It was Kelly!" She shuddered. "Vance didn't come back, and it wasn't until next day that I found out he was in the Tombs, charged with murder. But he didn't do it!"

"'Course he didn't do it! He's a swell guy!" interrupted one of the boys, stepping forward. "Me and these other fellers buy our papers off him. We're the Halloran Club. I'm president. My name's Iky Morris. We know all about Vance. This Kelly was a bum. Vance never shot him. He wouldn't kill a dog."

"So you're the Halloran Club?" smiled the old man. "What does the club do?"

"It's a social organization. Vance takes us for walks on Sunday afternoons and sometimes on picnics in summer."

"He got it up before he was married," explained Mrs. Halloran.

"If there's anything we can do to help, just call on us."

Mr. Tutt patted the boy's head.

"I certainly will, Mr. President! He needs every friend he's got. I'm glad he has such a lot of good ones!"

"Tell me the truth, Vance," said the old lawyer, as he sat opposite his unprepossessing client in the counsel room of the Tombs. "It's your only chance. Did you shoot Michael Kelly?"

Halloran tried to avoid the old man's glance. His chin shook. He was obviously gutted by fear.

"I swear to God, I didn't!" he stammered. "I hadn't seen him for weeks, so help me! I'd just gone out for a walk. I had to be home early, because it was our wedding anniversary and we was goin' to have a bit of a celebration. All of a sudden I heard a shot at me elbow. Then I saw people runnin' and Kelly lyin' on the sidewalk. There's an alley there and, naturally, I sort of dodged back into it. Next thing the cops had me. One of them found a gun. He asked was it mine; I said no. It wasn't either! I swear I didn't have no gun! Then they took me to headquarters, and from there to here. Some guy must have shot him from the alley and made a get-away. That's the truth—if anyone will believe it!"

"Was the gun yours?"

"I told you it wasn't!"

"Do you own one?"

Halloran hesitated. "No-o. Not now. Last year, with all them gangsters around, I did get a permit from Judge Fitzpatrick to carry one."

"What became of it?"

"I toted it awhile, but it was too heavy and I left it in the flat. One night we came home late and found the door

unlatched. A sneak thief had cleaned out the place and taken Nora's pocketbook, with six dollars in it, and a bracelet. Next day I missed the gun. It's a tough break all right!"

Mr. Tutt's eyes probed Halloran's. "Did you tell your wife you had a revolver?"

"I didn't want to frighten her."

"So you didn't mention the loss of it either?"

Halloran shook his head.

"Looks bad for me, don't it, counselor?"

Mr. Tutt regarded him thoughtfully.

"If you didn't shoot Mike Kelly, you're in the toughest jam I've ever heard of," he said.

Ten minutes later, Mr. Tutt entered O'Brion's office. "Good afternoon," he said, politely removing his stovepipe hat. "I've come to talk to you about the Halloran case."

"Then you're wasting your time! This bird has got to go to the bat, prontissimo!"

"But why the hurry? A little delay might be advantageous, even to the prosecution. You might prove that the defendant owned the pistol."

"He could have used it even if he didn't own it," retorted the assistant district attorney.

"True, but it would vastly strengthen your case to show that he did. On the other hand, it would seem only fair to give us a chance to prove that he didn't."

O'Brion leaned back.

"This fellow is guilty as hell," he declared. "You know it, I know it, everyone knows it. The electrodes are on him already. There's no sense fooling around about the pistol."

"But, Mr. O'Brion," protested the old man, "this is a case of circumstantial evidence. Facts apparently inconsequential may prove to have great significance. Do give me reasonable time. You have no excuse for railroading this defendant."

"There's the most excellent excuse that for the protection of society all murderers ought to be convicted as soon as possible."

"Not to mention the additional—and less worthy—one that you want to even up the score between us," commented Mr. Tutt bitterly. "I know that you suggested my assignment to this case. And I know the reason why."

The prosecutor grinned. "You do me a grave injustice." He scrunched out his cigarette. "No! Forget it. The sooner he goes to the chair the better."

"But aren't you willing to give me a chance for this man's life? Think of what it means to his wife and child."

"Don't appeal to my better nature, because I haven't any," replied O'Brion sarcastically.

"I'm glad you appreciate the fact." Mr. Tutt's lips quivered. "All right! Go ahead. There are more ways than one to fight a case—as you may learn, to your surprise. Good day, sir."

The old lawyer clapped on his hat, turned and walked out.

"Jumping Jehoshaphat!" he muttered as he paused outside to light a stogie. "If I do find a way to defend this case, I'll be more surprised than he is!"

That O'Brion was sincere in his belief in Halloran's guilt Mr. Tutt did not for an instant doubt. The difficulty was that

he was so firmly convinced of it that he would have regarded any counter opinion on the part of a jury as a gross miscarriage of justice. He was one of those now fortunately rare prosecutors who allow their prejudices to overcome their scruples. He not only disliked but distrusted Mr. Tutt, who felt the same way, even more strongly, about him. The old lawyer did not object to a hard fight; some of his best friends had been on the district attorney's staff. If an honest prosecutor occasionally overstepped the mark, he was ready to forgive him. But Mr. Tutt knew that once the legal steam roller had started, it would crush Halloran flat. And in this instance, in spite of his most urgent appeals for delay, it did start with the ordering of a special jury and the trial being set within the fortnight.

"Fat chance we've got!" growled Bonnie Doon, as he and the old man bucked the crowd at the door of the courtroom on the day of the trial.... "What's the row here, Captain Gallagher?"

"All these boys are afther tryin' to get in. I tell 'em they're too young. 'Tis agin the rules!"

Mr. Tutt pushed forward.

"Let me look at 'em!... Hello, lky!... They're Okay, Gallagher—friends of mine."

"All right, if you say so, sor."

He opened the door and the Halloran Club surged through in full force.

O'Brion, lounging inside the rail, instantly spied them.

"What are all those boys doing in here?" he demanded.
"Put 'em out."

"I should greatly appreciate your allowing them to remain," pleaded Mr. Tutt. "They're friends of the defendant."

"This isn't a ball game," returned the prosecutor.... "Throw 'em out, Gallagher."

While the officer obediently herded the Halloran Club into the corridor, Mr. Tutt muttered an order to Bonnie Doon; then, as his henchman hurried out, he made his way inside the enclosure and took his seat at the counsel table. Shortly thereafter there was another uproar outside; the door opened and the Halloran Club filed in again. O'Brion jumped up.

"I told you to keep those boys out! I intend to have my orders obeyed!"

Gallagher exhibited a bundle of paper slips.

"They've all got subpoenas, chief."

"Subpoenas!"

"Character witnesses for the defendant," explained the old lawyer.

"Ptah!" grunted O'Brion, realizing that he had been outmaneuvered at the starting line.

"Sit down, boys," beamed Mr. Tutt.... "Officer, will you please put these witnesses on those two front benches, where they will be easily accessible?"

Almost at once thereafter, Halloran himself was brought in; Judge Babson, gray-haired and benign, entered in his silken robes and took his place on the dais, and the case was called.

"Impanel a jury," directed His Honor.... "Mr. Tutt, if you desire to examine any jurymen upon the *voir dire*, you must

do so before he is sworn.”

The trial was on.



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The talesmen had been drawn from what Tutt & Tutt sardonically referred to as The Standing Army of the Gibbet—that is to say, from a panel composed entirely of experienced and substantial citizens, wise to all the tricks practiced at the criminal [12] bar since the days of Howe & Hummel down through those of Big Bill Fallon; a proper jury, who respected the sworn officers of the law, detested crime, distrusted all defense attorneys, and would do their duty as they saw it, irrespective of the consequences; a jury who, if necessary, would convict their own mothers; a jury, in short, to make any prosecutor’s heart sing for joy.

Mr. Tutt’s heart sank as he looked at them. Yet he must sow the seed of doubt—of reasonable doubt—in the jury’s minds before the conclusion of the testimony, or Vance Halloran, guilty or not guilty, would die.

He studied them shrewdly from under his shaggy eyebrows. A hard-boiled bunch, those importers, civil engineers, bankers, accountants, manufacturers and retired merchants. That Prussian-necked foreman, with his veined red face and waxed mustaches, was ready to convict already! The only countenance in which he could read a trace of sympathy was that of No. 7, a good-natured-looking man with a close-cropped mustache—“T. Jefferson Lee, landscape gardener.”

“There’s only one way to try this case, Bonnie,” whispered Mr. Tutt. “I’ve got to turn this courtroom into a monkey house. If I can get Babson’s goat and make O’Brion mad enough, I’ll have a fighting chance; otherwise not! Leave me absolutely alone. I’ve got to be a feeble old man struggling for justice against the irresistible forces of the law.”

“I get you, boss,” replied his henchman. “I’ll be sitting back there with the boys if you want me.”

Judge Babson tapped with his gavel, and O’Brion arose to make his opening speech. The jury, giving him their strict attention, were manifestly impressed. Brick by brick, the prosecution built up the wall of evidence that was to entomb the defendant. His witnesses more than substantiated his statement of what he intended to prove. Five testified that, from across the street they had heard a report and seen a flash at Halloran’s right side; three more swore to a quarrel between him and Kelly a month before the shooting; Judge Fitzpatrick that he had issued a pistol permit to Halloran; and two police officers that they had arrested him in his tracks and found a revolver about fifty feet down the alley, where he might easily have thrown it.

“I offer the gun in evidence,” said O’Brion, holding it up for the inspection of the jury.

“I object to its admission,” countered Mr. Tutt firmly, “without evidence that it belonged to my client.”

“That is a matter for the defense. You are free to prove that it is not Halloran’s gun, if you can do so.”

“Why not be fair for once, Mr. O’Brion?” the old man twitted him. “You know perfectly well that we have no

resources to conduct an adequate investigation, whereas you have the entire detective force at your disposal. If this gun belongs to my client, it would seem up to you to prove it. I further object that the defendant has not been given time in which to prepare for trial. It would take us weeks, perhaps months, to trace the purchase of that pistol. This homicide was committed less than a fortnight ago. The indictment was returned the next day. The defendant was forced to plead 'Not guilty' forty-eight hours later. And here he is on trial! It is an exhibition of the most unseemly and unjust haste. I protest."

Judge Babson tapped with his gavel.

"That will do! I shall admit the pistol in evidence. Mark it 'People's Exhibit A.' Either side may argue as it sees fit upon the lack of evidence as to ownership."

"And I except," answered Mr. Tutt.

"The People rest," announced O'Brion, glad at last to be through with his side of the case, for Mr. Tutt had been at him like a gadfly from the start.

"By cripes!" muttered Captain Gallagher. "If the old boy beats this, he'll be a wonder!"

"Proceed with the defense."

Mr. Tutt arose.

"Vance, take the stand."

Halloran, realizing the odds against him, sat there, sullen and defiant, after taking the oath—a hopeless figure.

"You are the defendant in this action?"

"Sure I am."

"Did you kill Michael Kelly?"

"I did not!"

“Did you have any motive to kill him?”

“No.”

“Where were you going when you heard this shot beside you?”

“I was on me way home to supper. It was the first anniversary of our wedding and——”

“One moment! I move the last part of the answer be stricken out!” interposed O’Brion. “It is irrelevant and immaterial.”

“Strike it out!” directed Babson, on the theory that the answer was technically unresponsive, although O’Brion had carelessly failed to base his objection on that ground.

It was the chance for which Mr. Tutt had been waiting, and he took it.

“Can it be irrelevant or immaterial that the defendant was on his way to celebrate his wedding anniversary when the alleged murder was committed?” he demanded, in a tone of indignation. “Would not any reasonable human being question whether the defendant would select that particular moment to commit a murder? I ask that, in fairness to the defendant, he be allowed to answer my question.”

“I have ruled upon the objection. You may have an exception,” replied Babson, doing the best he could.

Mr. Tutt fingered a piece of paper.

“I offer in evidence the certificate of marriage of Vance Halloran and Nora O’Conner, dated April 21, 1936.”

O’Brion sprang to his feet.

“Object!”

“Excluded!”

“Exception!”

Tit-tat-Tutt! It was beginning to get messy. O’Brion had stated no ground of objection, and Babson, who was easily confused, supposed vaguely that he was adhering to a ruling he had, in fact, never made.

The jury were puzzled. They could not know either that O’Brion, realizing the point to be the only dangerous feature of the defense, had determined that the evidence must be kept out, even at the risk of a reversal in the higher courts, or that the dignified Babson was in reality a dunderhead.

Mr. Tutt waved the certificate threateningly at the judge.

“I cannot believe that Your Honor, after proper consideration, will exclude so vital a bit of testimony. I——”

His Honor flushed uncomfortably.

“I shall not change my ruling! I do not care to hear further argument.”

“But I have a right to be heard!” challenged Mr. Tutt. “I am responsible for the life of this defendant! I insist——”

Bang! went the gavel. “Sit down, sir!”

The old lawyer genuflected slightly, then bobbed up again.

“I rise to make an objection!”

“Your objection is overruled! Sit down!”

“I desire to state the grounds of my objection.”

“I do not care to hear them,” snapped Babson, making his first tactical slip. “I shall not give you the opportunity to make speeches out of order, for their effect upon the jury.”

Mr. Tutt drew himself up to his full height.

“I object to Your Honor’s remarks as prejudicial and uncalled for!” he thundered.

“Sit down, sir!”

“I also object to your Honor’s tone and manner as hostile and showing obvious bias. This isn’t a Nazi court!”

Bang! Bang! “Sit down! Unless you wish to be committed for contempt!”

Mr. Tutt looked toward the jury and shrugged hopelessly. No. 7 had slightly raised his eyebrows.

“I have no desire to be committed for contempt, but whatever course Your Honor sees fit to pursue, I must protect my client. I except to Your Honor’s ruling and to Your Honor’s threats!”

He sat down, leaving poor Babson in a dither of rage. A judge had to protect the dignity of his own court, didn’t he? He couldn’t let himself be insulted, could he?

From his seat upon the dais, he looked appealingly at the prosecutor, but O’Brion, blaming Babson for having lost his self-control, promptly lost his own. The judge should have put old Tutt in his place once and for all! The jury must be shown that this was no tea party, but a murder trial!

This he proceeded to do in his cross-examination of the defendant. Halloran was, at best, not quick-witted, and now, before he could get out his full answers, O’Brion worried, tore and twisted them into seeming contradictions. The effect was as if Carnera had been bound to a post, with Bomber Louis left free to slug him in the face as he would. And after O’Brion had got through with his bear-baiting, Babson, who had once himself been a prosecutor, could not refrain from taking a hand and showing by his questions that he regarded Halloran’s explanation of the loss of his revolver as fantastic.

Indeed, when the defendant climbed down and stumbled back to his seat, Mr. Tutt's worst fears had been realized. True or not, no jury would ever believe his story!

"Nora, please take the stand."

Hugging her baby, Mrs. Halloran came timidly forward. O'Brion, flushed with victory, proceeded to put his foot in it. "Sob stuff!" he croaked, for the benefit of the jury.

Mr. Tutt saw an expression of disapproval flit across the face of No. 7 and took courage.

"You are the wife of the defendant?"

"Yes, sir."

"Tell us, Nora, the date upon which you were married to Vance Halloran."

O'Brion, still gambling on the overwhelming proof of guilt to swamp technical errors, leaped up. Babson, now wholly lost, simply followed his lead.

"Object!"

"Sustained."

"Does Your Honor deny to this woman the right to show that her child was born in lawful wedlock!"

"That is not an issue in this case," sneered O'Brion. "It is immaterial whose this child is, or whether it was borrowed for the occasion!"

Mr. Tutt turned furiously on the prosecutor.

"Such remarks are unconscionable and highly prejudicial to the defendant! I ask the court to declare a mistrial."

"Motion denied," retorted Babson, still smarting under the lash of Mr. Tutt's reference to a Nazi court of justice.

"I take an exception," said Mr. Tutt.... "That is all, Nora!"

"Wait a moment!" ordered O'Brion. "You say your flat was burglarized and that six dollars and a bracelet were taken?"

"Yes, sir."

"Did you tell your husband about it?"

"Naturally."

"Did he in turn, tell you that his gun had been stolen?"

The witness lowered her eyes.

"No."

O'Brion exultantly faced the jury.

"That is all!"

Mr. Tutt shivered in spite of himself. As far as the facts went, she had done more harm than good. What a case! He had no other witnesses, save those as to character! Impressively as he could he called Father O'Conner, the parish priest; Murphy, the boss truckman of the *Star*; Schwartz, the butcher; Lefkowitz, the tailor; Tibberman, the undertaker; and Donovan, a retired policeman—all of whom swore that Vance Halloran's reputation for honesty and truthfulness, peace and quiet, was good. O'Brion did not so much as glance at them, indicating by his manner that anyone—even a murderer—could obtain character witnesses for the asking.

"The defense rests."

"The People rest."

"Go to the jury!"

Mr. Tutt, with shoulders hunched, walked slowly to the front of the box.

"Mr. Foreman and gentlemen of the jury," he began quietly enough, "the New York Code of Criminal Procedure

was enacted for the purpose of insuring to every defendant accused of crime a fair and impartial trial under the established rules of evidence—a right asserted by the signers of our Declaration of Independence and guaranteed to us under the Constitution of the United States. The personal safety of each and every one of you depends upon the preservation of the inviolability of due legal process, uninfluenced by any sort of pressure, official or unofficial ____”

“One moment! I object!” interrupted O’Brion. “This harangue has nothing to do with the case!”

Babson took the hint. He had a feeling that things were not going just right and that, somehow or other, the old man was putting something over on him. The jury must not get the idea that Mr. Tutt was running the show.

“Confine yourself to the evidence, counselor.”

“Does Your Honor mean to suggest that I may not comment upon the constitutional guaranties under which this and every other defendant must be legally tried?”

“I merely said to confine yourself to the evidence.”

“I surely have the right to explain the rights for which our forefathers fought and died.”

“I will take care of all that!”

“I conceive it my duty to take care of it myself.”

Judge Babson drew in his lips.

“Proceed, counselor.”

Mr. Tutt turned again to the jury.

“Gentlemen, you are the sole judges of the evidence. While His Honor may comment upon the testimony, even he

cannot substitute himself for you in determining what that testimony may or may not establish.”

Babson was narrowing his eyes.

“Much more, then, is it beyond the right of the district attorney to attempt to sway your judgment by innuendo, unfair emphasis, false construction or by official pressure.”

Bang! went the gavel. “That will be enough. It is within my judicial discretion to limit the speeches of counsel. Get off generalities. Come down to business.”

“Very good, Your Honor.... Then, gentlemen, if I am to come down to my business, let me but point out to you that the much-heralded fact that this defendant was indicted and brought to trial in the record time of fourteen days is not evidence of his guilt, nor the obvious intention of Mr. O’Brion to exclude every fact favorable to our side of the case and to attempt, by securing a conviction at any cost, to advance his own political fortunes.”

“I object!” bawled O’Brion.

“The galled jade will wince!” Mr. Tutt taunted him.

“Stop!” exclaimed the miserable Babson. “I will permit no more of this! The jury will pay no attention to statements of counsel.”

“If the court will not allow me to sum up my case in my own way——”

“You may, but within proper bounds!”

Mr. Tutt’s face froze.

“I cannot tell what Your Honor may regard as proper bounds,” he answered sternly. “Under the circumstances, I refuse to sum up this case, let the consequences be what they will!”

He sat down and bowed his face in his hands. Jury, spectators, court officers held their breath. Nothing like this had ever occurred in their experience.

Babson, not knowing what to do, decided to do nothing. Swallowing his wrath, he said: "Were this not a crucial moment in an important trial, I would deal with this incident in summary fashion. As it is, I shall not do anything which might prejudice the defendant's interests. If his counsel does not see fit to go on—whatever his reasons may be—you may proceed with your summation, Mr. District Attorney."

Caught off guard by being thus thrown unexpectedly into action, O'Brien hesitated as to what course to pursue. Curse the old shyster! He'd thrown a nut into the whole legal machinery; had managed to put both Babson and himself in the wrong! Should he try to laugh him out of court, explain that the old fellow's outbursts of indignation were all put on—the last attempt of a desperate man to confuse the issue? If he did, the jury might get the impression that he was trying to justify himself. Probably that was just what old Tutt hoped for. No, he had a perfect case, and neither Babson nor he had anything to apologize for in the way it had been conducted. He must not let Mr. Tutt's red herring lure him off Halloran's trail. He had no time for finesse. He'd simply give Halloran the works.

He did it in masterly style. With jaw outthrust and arms flailing the air, he delivered a spread-eagle oration that held the jury spellbound, tore the defense to tatters, excoriated Mr. Tutt and finally pictured the weeping widow and bereaved children of the deceased and demanded

vengeance upon the murderer. The blood of Michael Kelly “called to them from the ground! Whoso sheddeth man’s blood, by man shall his blood be shed!” and all the rest of it, and then some more, until, as old Gallagher remarked, the walls of the courtroom were “plastered with blood and guts.”

He even, in his enthusiasm, bettered his usual peroration: “You have sworn a true deliverance to make. You have no choice. The only honest deliverance in this case will be a verdict of murder in the first degree. As the representative of the People, I demand it. If you fail to return it, you will have violated your oaths, betrayed the confidence of your fellow citizens, stamped yourselves as either craven or corrupt and made yourselves a laughingstock in the community.”

Mr. O’Brion sank back into his chair. Instantly, Mr. Tutt’s tall form shot up.

“I object to the remarks of the district attorney as highly prejudicial to the rights of the defendant. So far from it being obligatory on this jury to return a verdict of guilty merely because he orders them to do so, it will be their duty to weigh the evidence conscientiously and, if they have a reasonable doubt of the defendant’s guilt, to acquit him. In so doing, they will be fulfilling the obligation of their oaths and vindicating the confidence of their fellow citizens. Such a verdict will not stamp them as cowards or bribe takers, but as honorable, fair-minded men. I ask Your Honor so to instruct the jury.”

Judge Babson did not disregard O’Brion’s gesture of protest. It would not do to let the jury gain the impression

that the prosecutor's summation had exceeded the bounds of propriety.

"Mr. Tutt," he replied severely, "your objection to the district attorney's remarks is uncalled for. He has a perfect right—nay, it is his duty!—to present the People's side of this case to the jury and ask them to accept his interpretations of the evidence—namely, that the defendant has been guilty of deliberate premeditated murder—just as it is yours to try to persuade them that he has not. I will now charge the jury."

"Are there any requests?" he asked, when the charge was concluded.

Mr. Tutt leaned toward Bonnie Doon.

"All set?" he asked behind his hand.

"Okay, chief!"

"All right then. Go to it. It's a desperate chance, but we've nothing else."

As Bonnie slipped out of the court-room, the old lawyer arose. Looking straight at No. 7, he said: "I ask Your Honor to charge that if, in the jury's opinion, the defendant has not received a fair trial, it is their duty to acquit him."

There was no sound save the ticking of the clock upon the rear wall. The veins in Babson's forehead swelled and his neck reddened.

"I decline so to charge. I am the sole judge as to whether or not the defendant has had a fair trial. Your request is a reflection upon the Court."

Mr. Tutt gazed at the unfortunate Babson as if he were a worm.

“I except to the refusal to charge as requested. I ask Your Honor to charge the jury that it is more important to preserve the integrity of the administration of criminal justice than that a particular defendant be convicted or acquitted.”

The muscles of Babson’s jaws twitched. “I decline to charge in the language requested. It is no part of my duty to instruct the jury in metaphysical generalities.”

Then Mr. Tutt, his eyes lifted to the Goddess of Justice above the dais, cried: “I ask Your Honor to charge further, in the language of the Declaration of Independence, that ‘all men ... are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it.’ That—in the words of Thomas Jefferson—‘rebellion to tyrants is obedience to God.’”

Smash! went Babson’s gavel. “Sit down! The jury will entirely disregard this stump speech of counsel!”

Mr. Tutt did not sit down. On the contrary, he raised his voice: “I accuse this court of bias, intimidation and unjudicial conduct. I charge the district attorney with prejudicial and unfair methods. In a word, I allege that my client is being railroaded to the electric chair.”

“Sit down, sir!” shouted Babson. “Or I shall declare you in contempt of this court!”

"I have nothing but contempt for this court!" coolly replied Mr. Tutt.

"In that case, I shall order the sheriff to place you under arrest and to remove you from the courtroom."

O'Brion shook his head warningly toward the bench. That would be going too far.

"Or rather, under the circumstances," temporized Babson, "I order you to appear before me tomorrow morning to show cause why you should not be fined five hundred dollars for contempt."

"I shall appear, Your Honor," answered the Old Man resolutely. "And if this defendant be convicted of murder, may his blood be upon your head."

Mastering his fury, Babson turned to the men in the box: "The jury will retire!"



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"Gee, Mr. Tutt!" quoth Officer Gallagher, following the lawyer into the corridor. "You sure had your nerve wid you! I bet no one iver talked like that before to the ould he-devil!"

Mr. Tutt's trembling lips drew into a wry smile. "And perhaps no one ever will again, Pat! You recall Foch's famous dispatch to Joffre at the Battle of the Marne? 'My right has been rolled up; my left has been driven back; my center has been smashed; I have ordered an advance from all directions.'"

"You did that, all right!" quoth the officer. "'Twas like the advice the ould criminal lawyer was afther givin' to the young feller goin' to court for the first time: 'If ye've got a