

IN some ways the strangest case ever decided is *Everet v. Williams*,¹ or the Highwayman's Case. For long it was uncertain whether it was fact or fiction. In 1797 Lord Kenyon C.J. treated it as genuine, in an engaging action brought by a publican against two unsuccessful parliamentary candidates for the cost of treating and entertaining voters in their interests.² In 1875, however, Bacon V.-C. called it "legendary,"³ though four years later Jessel M.R. referred to it as a "well-known case."⁴ Sir Frederick Pollock was one of the doubters, and suggested that "it took rise from some otherwise forgotten jest or hoax in an equity draftsman's chambers."⁵ Whatever its status, its memory was preserved by Pothier,⁶ and made generally available for the profession by Lindley.⁷ Not until 1893 was the veracity of the legend established through the assistance of Mr. Hubert Hall of the Public Record Office.⁸

The proceedings were brought by Bill in the Equity side of the Exchequer. The Bill stated that the plaintiff was "skilled in dealing in several sorts of commodities," such as plate, rings, watches, etc.; that the defendant applied to him to become a partner; that they entered into an oral partnership, and it was agreed that they should equally provide all sorts of necessities, such as horses, saddles, bridles, and equally bear all expenses on the roads and at inns, taverns, alehouses, markets, and fairs; that the plaintiff and the defendant "proceeded jointly in the said dealings with good

¹ (1725) 9 L.Q.R. 197; *Lindley on Partnership* (11th ed. 1950) p. 123, n. (d).

² *Ridler v. Moore* (1797) Clifford's Report of Southwark Election Cases (1802) 371 at 372.

³ *Ashhurst v. Mason* (1875) L.R. 20 Eq. 225 at 230.

⁴ *Sykes v. Beadon* (1879) 11 Ch.D. 170 at 195.

⁵ (1893) 9 L.Q.R. 106.

⁶ *Law of Obligations* (trans. by Evans) Vol. 2 (1806) p. 3.

⁷ *Partnership*: see e.g., 2nd ed. 1867, Vol. 1, p. 180; 11th ed. 1950 p. 123, n. (d).

⁸ See (1893) 9 L.Q.R. 197. It was judicially cited in *Burrows v. Rhodes* [1899]

1 Q.B. 816 at 826, a case arising out of the Jameson Raid.

success on Hounslow Heath, where they dealt with a gentleman for a gold watch"; and afterwards the defendant told the plaintiff that Finchley, in the county of Middlesex, "was a good and convenient place to deal in, and that commodities were very plenty at Finchley aforesaid," and that if they were to deal there "it would be almost all gain to them"; that they went accordingly, and "dealt with several gentlemen for divers watches, rings, swords, canes, hats, cloaks, horses, bridles, saddles, and other things to the value of £200 and upwards"; that about a month afterwards the defendant informed the plaintiff that there was a gentleman at Blackheath, who had a good horse, saddle, bridle, watch, sword, cane, and other things to dispose of which he believed "might be had for little or no money, in case they could prevail on the said gentleman to part with the said things"; that they accordingly went and met with the said gentleman, and "after some small discourse with the said gentleman" they dealt for the said things "at a very cheap rate"; that the plaintiff and the defendant continued their joint dealings together until Michaelmas, and dealt together at several places, viz., at Bagshot, Salisbury, Hampstead, and elsewhere to the amount of £2,000 and upwards; and that the defendant would not come to a fair account with the plaintiff touching and concerning the said partnership. The Bill, which concluded with a prayer for discovery, an account, and general relief, purported to be signed at the foot by one Jonathan Collins, of counsel.⁹

The sad consequences of bringing the Bill were that the court held it to be scandalous and impertinent. The plaintiff's solicitors were attached for contempt and each fined £50, and counsel who had signed the Bill was ordered to pay the costs as taxed by the Deputy, who was "not to consider the scandal in the taxation." Matters did not rest there, for the defendant was executed at Maidstone in 1727, the plaintiff at Tyburn in 1730, and in 1735 one of the

⁹ The passages above combine the versions in Lindley (*supra*) and 9 L.Q.R. 197.

plaintiff's solicitors was convicted of robbery and transported.¹⁰

There is some echo here of a cautionary tale recounted by Holt C.J. some twenty years earlier. It was of a case which had occurred "very lately," where "a fellow brought an action for saying of him, '*He is a highway-man*'; and it appearing upon evidence that he was so, he was taken in Court; committed to Newgate; convicted at the next sessions; and hanged. So that people ought to advise well before they bring such actions."¹¹ And, the report adds, "Darnell remembered the like fate which befel a client of his."¹² Holt C.J. prefaced this story by an account of *Pigot's Case*,¹³ where a man "indicted his step-mother for poisoning her husband his father; and she being acquitted brought an action against him for a malicious prosecution, and recovered damages; and he, to requite her kindness, brought an appeal of murder against her, whereon she was tried and convicted at the King's Bench Bar, and carried down and burnt in Berkshire, where the crime was committed."¹⁴ Not even the warning of such cases sufficed to deter a sheriff's bailiff in 1760 from suing in Stepney Court for a bribe of six and a half guineas which he had been promised for granting bail. He obtained judgment for £4 19 0 ("the jurisdiction of that Court not extending to £5"), but not surprisingly the King's Bench reversed the judgment "with much indignation," saying that if complaint had been made, the court would have punished the bailiff.¹⁵

Perhaps the defence offered in a case referred to by Manwood J. in 1577 almost equals the "impertinence" in *Everet v. Williams*. This was a case where one of the servants of Hales J. had been robbed at "Gadds Hill, within

¹⁰ (1893) 9 L.Q.R. 199.

¹¹ *Johnson v. Browning* (1704) 6 Mod. 216 at 217.

¹² *Ibid.*

¹³ The reference to this given at 6 Mod. 217, n. (a) is to Cro.Car. 383; but there is no such case there. The reference, it seems, should have been to *Pigot v. Pigot* (1639) Cro. Car. 531.

¹⁴ *Johnson v. Browning*, *supra*, as reported in Holt K.B. 3 at 4.

¹⁵ *Smith v. Stotesbury* (1760) 1 Wm. Bl. 204 at 205; more fully reported at 2 Burr. 924, *sub nom.* *Stotesbury v. Smith*.