

## CHAPTER XXI.

### GRANT AS PRAYED.

Accordingly, Augusta was sworn, and Eustace observed that when she removed her veil to kiss the Book the sight of her sweet face produced no small effect upon the crowded court.

Then James began his examination in chief, and, following the lines which he had laid down in his opening speech, led her slowly, whilst allowing her to tell her own story as much as possible, to the time of the tattooing of the will on Kerguelen Land. All along, the history had evidently interested everybody in the court--not excepting the Judge--intensely; but now the excitement rose to boiling point.

"Well," said James, "tell his Lordship exactly how it came to pass that the will of Mr. Meeson was tattooed upon your shoulders."

In quiet but dramatic language Augusta accordingly narrated every detail, from the time when Meeson confided to her his remorse at having disinherited his nephew up to the execution of the will at her suggestion by the sailor upon her own shoulders.

"And now, Miss Smithers," said James, when she had done, "I am very sorry to have to do so; but I must ask you to exhibit the document to

the Court."

Poor Augusta coloured and her eyes filled with tears, as she slowly undid the dust-cloak which hid her shoulders (for, of course, she had come in low dress). The Judge, looking up sharply, observed her natural distress.

"If you prefer it, Miss Smithers," said his Lordship, courteously, "I will order the court to be cleared of every-one except those who are actually engaged in the case."

At these ominous words a shudder of disgust passed through the densely-packed ranks. It would indeed, they felt, after all their striving, be hard if they were deprived of the sight of the will; and they stared at her despairingly, to see what she would answer.

"I thank your Lordship," she said, with a little bow; "but there would still be so many left that I do not think that it would greatly matter. I hope that everybody will understand my position, and extend their consideration to me."

"Very well," said the Judge, and without further ado she took off the cloak, and the silk handkerchief beneath it, and stood before the court dressed in a low black dress.

"I am afraid that I must ask you to come up here," said his Lordship. Accordingly she walked round, mounted the bench, and then turned her

back to the Judge, in order that he might examine what was written on it. This he did very carefully with the aid of a magnifying glass, referring now and again to the photographic copy which Doctor Probate had filed in the Registry.

"Thank you," he said presently, "that will do. I am afraid that the learned counsel below will wish to have an opportunity of inspection."

So Augusta had to descend and slowly walk along the ranks, stopping before every learned leader to be carefully examined, while hundreds of eager eyes in the background were fixed upon her unfortunate neck. However, at last it came to an end.

"That will do, Miss Smithers," said the Judge, for whose consideration she felt deeply grateful; "you can put on your cloak again now." Accordingly she did so and re-entered the box.

"The document which you have just shown the Court, Miss Smithers," said James, "is the one which was executed upon you in Kerguelen Land on or about the 22nd day of December last year?"

"It is."

"It was, I understand, executed in the presence of the testator and the two attesting witnesses, all three being present together, and the signature of each being tattooed in the presence of the other?"

"It was."

"Was the testator, so far as you could judge, at the time of the dictation and execution of the will, of sound mind, memory, and understanding?"

"Most certainly he was."

"Did you, beyond the suggestions of which you have already given evidence, in any way unduly influence the testator's mind, so as to induce him to make this will?"

"I did not."

"And to those facts you swear?"

"I do."

Then he passed on to the history of the death of the two sailors who had attested the will, and to the account of Augusta's ultimate rescue, finally closing his examination-in-chief just as the clock struck four, whereon the Court adjourned till the following day.

As may be imagined, though things had gone fairly well so far, nobody concerned of our party passed an over-comfortable night. The strain was

too great to admit of it; and really they were all glad to find themselves in the court--which was, if possible, even more crowded on the following morning--filled with the hope that that day might see the matter decided one way or the other.

As soon as the Judge had come in, Augusta resumed her place in the witness-box, and the Attorney-General rose to cross-examine her.

"You told the Court, Miss Smithers, at the conclusion of your evidence, that you are now engaged to be married to Mr. Meeson, the plaintiff. Now, I am sorry to have to put a personal question to you, but I must ask you--Were you at the time of the tattooing of the will, in love with Mr. Meeson?"

This was a home-thrust, and poor Augusta coloured up beneath it; however, her native wit came to her aid.

"If you will define, Sir, what being in love is, I will do my best to answer your question," she said. Whereat the audience, including his Lordship, smiled.

The Attorney-General looked puzzled, as well he might; for there are some things which are beyond the learning of even an Attorney-General.

"Well," he said, "were you matrimonially inclined towards Mr. Meeson?"

"Surely, Mr. Attorney-General," said the Judge, "the one thing does not necessarily include the other?"

"I bow to your Lordship's experience," said Mr. Attorney, tartly.

"Perhaps I had better put my question in this way--Had you, at any time, any prospect of becoming engaged to Mr. Meeson?"

"None whatever."

"Did you submit to this tattooing, which must have been painful, with a view of becoming engaged to the plaintiff?"

"Certainly not. I may point out," she added, with hesitation, "that such a disfigurement is not likely to add to anybody's attractions."

"Please answer my questions, Miss Smithers, and do not comment on them. How did you come, then, to submit yourself to such a disagreeable operation?"

"I submitted to it because I thought it right to do so, there being no other apparent means at hand of attaining the late Mr. Meeson's end. Also"--and she paused.

"Also what?"

"Also I had a regard for Mr. Eustace Meeson, and I knew that he had lost

his inheritance through a quarrel about myself."

"Ah! now we are coming to it. Then you were tattooed out of regard for the plaintiff, and not purely in the interests of justice?"

"Yes; I suppose so."

"Well, Mr. Attorney," interposed the Judge, "and what if she was?"

"My object, my Lord, was to show that this young lady was not the purely impassive medium in this matter that my learned friend, Mr. Short, would lead the Court to believe. She was acting from motive."

"Most people do," said the Judge drily. "But it does not follow that the motive was an improper one."

Then the learned gentleman continued his cross-examination, directing all the ingenuity of his practised mind to trying to prove by Augusta's admissions, first, that the testator was acting under the undue influence of herself; and secondly, that when the will was executed he was non compos mentis. To this end he dwelt at great length on every detail of the events between the tattooing of the will and the death of the testator on the following day, making as much as was possible out of the fact that he died in a fit of mania. But do what he would, he could not shake her evidence upon any material point, and when at last he sat down James Short felt that his case had not received any serious blow.

Then a few more questions having been asked in cross-examination by various other counsel, James rose to re-examine, and, with the object of rebutting the presumption of the testator's mental unsoundness, made Augusta repeat all the details of the confession that the late publisher had made to her as regards his methods of trading. It was beautiful to see the fury and horror portrayed upon the countenance of the choleric Mr. Addison and the cadaverous Mr. Roscoe, when they saw the most cherished secrets of the customs of the trade, as practised at Meeson's, thus paraded in the open light of day, while a dozen swift-pencilled reporters took every detail down.

Then at last Augusta was told to stand down, which she did thankfully enough, and Mrs. Thomas, the wife of Captain Thomas, was called. She proved the finding of Augusta on the island, and that she had seen the hat of one of the sailors, and the rum-cask two-thirds empty, and also produced the shell out of which the men had drunk the rum (which shell the Judge had called Augusta to identify). What was most important, however, was that she gave the most distinct evidence that she had herself seen the late Mr. Meeson interred, and identified the body as that of the late publisher by picking out his photograph from among a bundle of a dozen that were handed to her. Also she swore that when Augusta came aboard the whaler the tattoo marks on her back were not healed.

No cross-examination of the witness worth the name having been attempted,



James called a clerk from the office of the late owners of the R.M.S. Kangaroo, who produced the roll of the ship, on which the names of the two sailors, Johnnie Butt and Bill Jones, duly appeared.

This closed the plaintiff's case, and the Attorney-General at once proceeded to call his witnesses, reserving his remarks till the conclusion of the evidence. He had only two witnesses, Mr. Todd, the lawyer who drew and attested the will of Nov. 10, and his clerk, who also attested it, and their examination did not take long. In cross-examination, however, both these witnesses admitted that the testator was in a great state of passion when he executed the will, and gave details of the lively scene that then occurred.

Then the Attorney-General rose to address the Court for the defendants. He said there were two questions before the Court, reserving, for the present, the question as to the admissibility of the evidence of Augusta Smithers; and those were--first, did the tattoo marks upon the lady's neck constitute a will at all? and secondly, supposing that they did, was it proved to the satisfaction of the Court that these undated marks were duly executed by a sane and uninfluenced man, in the presence of the witnesses, as required by the statute. He maintained, in the first place, that these marks were no will within the meaning of the statute; but, feeling that he was not on very sound ground on this point, quickly passed on to the other aspects of the case. With much force and ability he dwelt upon the strangeness of the whole story, and how it rested solely upon the evidence of one witness, Augusta Smithers. It was only if

the Court accepted her evidence as it stood that it could come to the conclusion that the will was executed at all, or, indeed, that the two attesting witnesses were on the island at all. Considering the relations which existed between this witness and the plaintiff, was the Court prepared to accept her evidence in this unreserved way? Was it prepared to decide that this will, in favour of a man with whom the testator had violently quarrelled, and had disinherited in consequence of that quarrel, was not, if indeed it was executed at all, extorted by this lady from a weak and dying, and possibly a deranged, man? and with this question the learned gentleman sat down.

He was followed briefly by the Solicitor-General and Mr. Fiddlestick; but though they talked fluently enough, addressing themselves to various minor points, they had nothing fresh of interest to adduce, and finishing at half-past three, James rose to reply on the whole case on behalf of the plaintiff.

There was a moment's pause while he was arranging his notes, and then, just as he was about to begin, the Judge said quietly, "Thank you, Mr. Short, I do not think that I need trouble you," and James sat down with a gasp, for he knew that the cause was won.

Then his Lordship began, and, after giving a masterly summary of the whole case, concluded as follows:--"Such are the details of the most remarkable probate cause that I ever remember to have had brought to my notice, either during my career at the Bar or on the Bench. It will be

obvious, as the learned Attorney-General has said, that the whole case really lies between two points. Is the document on the back of Augusta Smithers a sufficient will to carry the property? and, if so, is the unsupported story of that lady as to the execution of the document to be believed? Now, what does the law understand by the term 'Will'? Surely it understands some writing that expresses the wish or will of a person as to the disposition of his property after his decease? This writing must be executed with certain formalities; but if it is so executed by a person not labouring under any mental or other disability it is indefeasible, except by the subsequent execution of a fresh testamentary document, or by its destruction or attempted destruction, animo revocandi, or by marriage. Subject to these formalities required by the law, the form of the document--provided that its meaning is clear--is immaterial. Now, do the tattoo marks on the back of this lady constitute such a document, and do they convey the true last will or wish of the testator? That is the first point that I have to decide, and I decide it in the affirmative. It is true that it is not usual for testamentary documents to be tattooed upon the skin of a human being; but, because it is not usual, it does not follow that a tattooed document is not a valid one. The ninth section of the Statute of 1 Vic., cap. 26, specifies that no will shall be valid unless it shall be in writing; but cannot this tattooing be considered as writing within the meaning of the Act? I am clearly of opinion that it can, if only on the ground that the material used was ink--a natural ink, it is true, that of the cuttle-fish, but still ink; for I may remark that the natural product of the cuttle-fish was at one time largely used in this country for that very purpose.

Further, in reference to this part of the case, it must be borne in mind that the testator was no eccentric being, who from whim or perversity chose this extraordinary method of signifying his wishes as to the disposal of his property. He was a man placed in about as terrible a position as it is possible to conceive. He was, if we are to believe the story of Miss Smithers, most sincerely anxious to revoke a disposition of his property which he now, standing face to face with the greatest issue of this life, recognised to be unjust, and which was certainly contrary to the promptings of nature as experienced by most men. And yet in this terrible strait in which he found himself, and notwithstanding the earnest desire which grew more intense as his vital forces ebbed, he could find absolutely no means of carrying out his wish. At length, however, this plan of tattooing his will upon the living flesh on a younger and stronger person is presented to him, and he eagerly avails himself of it; and the tattooing is duly carried out in his presence and at his desire, and as duly signed and witnessed. Can it be seriously argued that a document so executed does not fulfil the bare requirements of the law? I think that it cannot, and am of opinion that such a document is as much a valid will as though it had been engrossed upon the skin of a sheep, and duly signed and witnessed in the Temple.

"And now I will come to the second point. Is the evidence of Miss Smithers to be believed? First, let us see where it is corroborated. It is clear, from the testimony of Lady Holmhurst, that when on board the ill-fated Kangaroo, Miss Smithers had no tattoo marks upon her shoulders. It is equally clear from the unshaken testimony of Mrs.

Thomas, that when she was rescued by the American whaler, her back was marked with tattooing, then in the healing stage--with tattooing which could not possibly have been inflicted by herself or by the child, who was her sole living companion. It is also proved that there was seen upon the island by Mrs. Thomas the dead body of a man, which she was informed was that of Mr. Meeson, and which she here in court identified by means of a photograph. Also, this same witness produced a shell which she picked up in one of the huts, said to be the shell used by the sailors to drink the rum that led to their destruction; and she swore that she saw a sailor's hat lying on the shore. Now, all this is corroborative evidence, and of a sort not to be despised. Indeed, as to one point, that of the approximate date of the execution of the tattooing, it is to my mind final. Still, there does remain an enormous amount that must be accepted or not, according as to whether or no credence can be placed in the unsupported testimony of Miss Smithers, for we cannot call on a child so young as the present Lord Holmhurst, to bear witness in a Court of Justice. If Miss Smithers, for instance, is not speaking the truth when she declares that the signature of the testator was tattooed upon her under his immediate direction, or that it was tattooed in the presence of the two sailors, Butt and Jones, whose signatures were also tattooed in the presence of the testator and of each other--no will at all was executed, and the plaintiff's case collapses, utterly, since, from the very nature of the facts, evidence as to handwriting would, of course, be useless. Now, I approach the decision of this point after anxious thought and some hesitation. It is not a light thing to set aside a formally executed document such as the will of Nov. 10, upon which the

defendants rely, and to entirely alter the devolution of a vast amount of property upon the unsupported testimony of a single witness. It seems to me, however, that there are two tests which the Court can more or less set up as standards, wherewith to measure the truth of the matter. The first of these is the accepted probability of the action of an individual under any given set of circumstances, as drawn from our common knowledge of human nature; and the second, the behaviour and tone of the witness, both in the box and in the course of circumstances that led to her appearance there. I will take the last of those two first, and I may as well state, without further delay, that I am convinced of the truth of the story told by Miss Smithers. It would to my mind be impossible for any man, whose intelligence had been trained by years of experience in this and other courts, and whose daily duty it is to discriminate as to the credibility of testimony, to disbelieve the history so circumstantially detailed in the box by Miss Smithers (Sensation). I watched her demeanour both under examination and cross-examination very closely indeed, and I am convinced that she was telling the absolute truth so far as she knew it.

"And now to come to the second point. It has been suggested, as throwing doubt upon Miss Smithers' story, that the existence of an engagement to marry, between her and the plaintiff, may have prompted her to concoct a monstrous fraud for his benefit; and this is suggested although at the time of the execution of the tattooing no such engagement did, as a matter of fact, exist, or was within measurable distance of the parties. It did not exist, said the Attorney-General; but the disposing mind

existed: in other words, that she was then 'in love'--if, notwithstanding Mr. Attorney's difficulty in defining it, I may use the term with the plaintiff. This may or may not have been the case. There are some things which it is quite beyond the power of any Judge or Jury to decide, and one of them certainly is--at what exact period of her acquaintance with a future husband a young lady's regard turns into a warmer feeling? But supposing that the Attorney-General is right, and that although she at that moment clearly had no prospect of marrying him, since she had left England to seek her fortune at the Antipodes, the plaintiff was looked upon by this lady with that kind of regard which is supposed to precede the matrimonial contract, the circumstance, in my mind, tells rather in his favour than against him. For in passing I may remark that this young lady has done a thing which is, in its way, little short of heroic; the more so because it has a ludicrous side. She has submitted to an operation which must not only have been painful, but which is and always will be a blot upon her beauty. I am inclined to agree with the Attorney-General when he says that she did not make the sacrifice without a motive, which may have sprung from a keen sense of justice, and of gratitude to the plaintiff for his interference on her behalf, or from a warmer feeling. In either case there is nothing discreditable about it--rather the reverse, in fact; and, taken by itself, there is certainly nothing here to cause me to disbelieve the evidence of Miss Smithers.

"One question only seems to me to remain. Is there anything to show that the testator was not, at the time of the execution of the will, of a sound and disposing mind? and is there anything in his conduct or history

to render the hypothesis of his having executed his will so improbable that the Court should take the improbability into account? As to the first point, I can find nothing. Miss Smithers expressly swore that it was not the case; nor was her statement shaken by a very searching cross-examination. She admitted, indeed, that shortly before death he wandered in his mind, and thought that he was surrounded by the shades of authors waiting to be revenged upon him. But it is no uncommon thing for the mind thus to fail at the last, and it is not extraordinary that this dying man should conjure before his brain the shapes of those with some of whom he appears to have dealt harshly during his life. Nor do I consider it in any way impossible that when he felt his end approaching he should have wished to reverse the sentence of his anger, and restore his nephew, whose only offence had been a somewhat indiscreet use of the language of truth, the inheritance to vast wealth of which he had deprived him. Such a course strikes me as being a most natural and proper one, and perfectly in accordance with the first principles of human nature. The whole tale is undoubtedly of a wild and romantic order, and once again illustrates the saying that 'truth is stranger than fiction.' But I have no choice but to accept the fact that the deceased did, by means of tattooing, carried out by his order, legally execute his true last will in favour of his next-of-kin, Eustace H. Meeson, upon the shoulders of Augusta Smithers, on or about the 22nd day of December, 1885. This being so, I pronounce for the will propounded by the plaintiff, and there will be a grant as prayed."

"With costs, my Lord?" asked James, rising.



"No, I am not inclined to go that length. This litigation has arisen through the testator's own act, and the estate must bear the burden."

"If your Lordship pleases," said James, and sat down.

"Mr. Short," said the Judge, clearing his throat, "I do not often speak in such a sense, but I do feel called upon to compliment you upon the way in which you have, single-handed, conducted this case--in some ways one of the strangest and most important that has ever come before me--having for your opponents so formidable an array of learned gentlemen. The performance would have been creditable to anybody of greater experience and longer years; as it is, I believe it to be unprecedented."

James turned colour, bowed, and sat down, knowing that he was a made man, and that it would be his own fault if his future career at the Bar was not now one of almost unexampled prosperity.