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# Mr. Justice Swift Watched Drama From The Bench.

Arbiters of life and death and the liberty of their fellow citizens, there is always something a little awe-inspiring about the men whom we set up in judgment upon us. And in Mr. E. S. Fay's "Life of Mr. Justice Swift" (London: Metheun & Co.) that touch of divinity is admirably illustrated. This biography, full of dramatic stories from real life, is exciting and enthralling.

Few men could wish a finer tribute than that passed upon Mr. Justice Swift by his old colleague Viscount Sankey, Lord High Chancellor of Great Britain, 1929-35. In a foreword to this book Viscount Sankey says:

"There have been in our time judges with more profound knowledge of cases and statute law. with subtler intellect, and a greater gift of laying down lasting principles of Jurisprudence, but nowhere has there been found one with a more burning desire to do justice, with more common sense, or with greater human understanding than Rigby Swift, whose passing was regretted by his colleagues. by both branches of the profession, and by those who had seen or heard him administering justice."

What man could desire n finer epitaph?

Born in Liverpool in 1874 of a legal family. Justice Swift's career was determined from the cradle. At the age of 50. ills father gave up a successful solicitor's practice to appear at the Bar, and his son followed him.

Called to the Bar when he was only 21, Rigby Swift did not have to wait long for success. Nine years later he was making more than £3000 a year, and by the time he (in 1916) became an M.P. his income had touched the £10,000 mark.

Yet success did not spoil him. His warm humanity never let him become a cog in the legal machine. After his elevation to the Bench he was always zealous to see that the rights of the accused persons who came before him were not infringed. On more than one occasion, he ran foul of local justices who adhered too strictly to the letter of the law, and his outspoken comments on the stupidity and harshness of the English Di-

vorce Laws anticipated many of the reforms brought about by Mr. A. P. Herbert and others.

Common sense was Rigby Swift's outstanding characteristic. No one was quicker or more able than he to tear away irrelevancies and get down to essentials. His summing-ups were models, taking the jury to the grim central fact round which the trial revolved with a concise interest-holding brevity that a novelist would envy.

He was fully aware of the importance of gripping attention at the outset by a vivid opening. In the Oxford Murder Case, for example, he began:

"Members of the Jury, about half-past seven on the evening of the 3rd August of this year, Mrs. Annie Louisa Kempson was found dead in her house, 'The Boundary.' St. Clement's Street, Oxford. Her body was then lying in the dining-room covered with a rug and some cushions. The circumstances under which she was found appeared to show that she had been brutally murdered."

Nothing could be more dramatic than this straight-forward statement unless it was the summing-up against the accused man, Seymour. It took the jury only 40 minutes to find him guilty of an atrocious crime for which he was duly executed.

Among the famous trials over which Swift presided, those of Col. Rutherford—on which the author throws new light—Mrs. Bamberger, the Brixton taxi murder and the Charing Cross trunk murder and that of Mme. Fahmy for the killing of her husband are the most notorious. Although they have all been described at length by many writers they were only incidents in Swift's career as a criminal judge.

In law circles his name will live for ever as the judge who was responsible for what has become known as the Woolmington misdirection.

The Woolmington case made legal history. It cleaved English law of a 200-year-old heresy and "carried the name of a Somersetshire farm laborer out wherever the common law is administered, and was to lead to an event unprecedented in the legal history of England—the freeing by the House of Lords of a man convicted of murder and sentenced to death."

The case is so extraordinary that it is worth recounting in detail.

In December, 1935, 21-year-old Reginald Woolmington, shot his 18-year-old wife, who had left him, in the kitchen of her mother's house. About the facts of the case there was no dispute, but at the trial the accused man pleaded that the

shooting was accidental. In his address to the fury, Swift stated the then accepted view of the law as follows:

"If once you find that a person has been guilty of killing another, it is for the person who has been guilty of the killing to satisfy you that the crime is something less than the murder with which he is charged. The Crown has got to satisfy you that this woman died at the prisoner's hands. They must satisfy you of that beyond any reasonable doubt.

"If they satisfy you of that, then he has to show that there are circumstances to be found in the evidence which has been given from the witness-box in this case, which alleviate his crime so that it is only manslaughter, or which excuse the homicide altogether by showing that it was a pure accident."

The jury, after a retirement or an hour and 40 minutes, found Woolmington guilty of murder, with a strong recommendation to mercy on account or his youth. He was sentenced to death.

But Woolmington's counsel, Mr. Casswell, was not satisfied. While the jury was deliberating he was thinking about Swift's direction. "Was it right to say that the burden of proving innocence lay upon the prisoner? There were the words in Foster's Crown Law. and there they were reported in the law-books as having been used by judges before. But how did they square with the principle deep-rooted in our law that a man is innocent until the Crown has proved him guilty?"

He decided to appeal on the grounds that Swift's instruction to the jury amounted to a misdirection.

He argued that the instruction was wrong in law as the onus of proof lay upon the prosecution. The Court of Criminal Appeal dismissed his application but Mr. Casswell succeeded in bringing it before the House of Lords.

Mr. Fay gives a dramatic picture of the course of the appeal before that august tribunal. "For all that day and for the greater part of the next counsel argued, tracing the law of murder from pre-Conquest times through the works of commentators and text-writers and the decisions of Judges down to the present day. There is no hurry: the emotional atmosphere of the Assize Court had vanished quite; and the proceedings seemed—as indeed they largely were—to be a pleasant intellectual exercise, a piece of academic historical research.

"But there was one man present whose feelings can hardly have been soothed by the placid flow of well-knit argument. Reginald Woolmington was there, in the custody of a warder, watching, while five gentlemen in ordinary morning clothes—

much less impressive they must have seemed than the robed, bewigged judge who had tried him so far away in Bristol—decided a great principle of English law which, quite accidentally it seemed, was going to determine his fate . . . .

"Lord Sankey sympathised with the prisoner's feelings, for when at the close of the second day he said that their Lordships would deliver judgment later, he announced also what their decision was."

"The decision was that the conviction would be quashed, and Woolmington might go. He walked out of the Palace of Westminster a free man."

Another interesting and little-known case tried before Swift concerned, of all things in the 20th century, Black Magic, when that eccentric personality, Aleister Crowley, described by friends "as the greatest living poet, and by his enemies as the worst man in the world," sued Miss Nina Hamnett and her publishers for an alleged libel in her book "Laughing Torso."

Miss Hamnett had stated that "Crowley had a temple in Cefalu, in Sicily. He was supposed to practise Black Magic there, and one day a baby was said to have disappeared mysteriously. There was also a goat there. This all pointed to Black Magic, so people said, and the inhabitants of the village were frightened of him."

Crowley did not mind being described as a magician. But he asserted that the magic he practised was White, not Black. Invited to try some of the former in court, he declined to do so. He lost his case when some of the poems of "the greatest living poet" were read in court. Of them Swift said that he had "never heard such dreadful, horrible, blasphemous, abominable stuff." And the Jury agreed with him.

Mr. Fay's portrait of Swift is remarkable for its truthfulness. Unlike many biographers he does not gloss over his subject's failings. Swift was a very human Judge. When his feelings were engaged lie never failed to express them.

In his later years he did not welcome opposition, but he held one saving grace—he never played to the gallery and was refreshingly free from those judicial witticisms which so often win sycophantic applause.

What wit he had was sardonic. as when, in answer to a counsel's apology that "to err is human," he retorted, "But who am I to forgive?"