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A PETITION OF RIGHT: ARCHER-SHEE v. THE KING

EDWIN R. KEEDY †

The Atlantic Monthly for last February contains an article by Alexander Woollcott on "The Archer-Shee Case".[1] A fuller account appears in Marjoribank's "Carson the Advocate", published in 1932. Certain phases of the case are also presented in Walker-Smith's "Lord Reading and His Cases", which appeared in 1934. The present writer attended the trial of this case and retains a vivid recollection of the proceedings. He has also made some study of the legal problem involved. These reasons seem to justify a further presentation of this remarkable case.

BEFORE THE TRIAL

On October 18, 1908, George Archer-Shee, a cadet of the age of 13 at the Royal Naval College, Osborne, was dismissed from the College[2] on the ground that he had stolen and cashed a post office

† A. B., 1899, Franklin and Marshall College; LL. B., 1906, Harvard University; LL. D., 1926, Franklin and Marshall College; Professor of Law, University of Pennsylvania; author of *The Decline of Traditionalism and Individualism* (1918) 65 U. OF PA. L. REV. 764; *The Third Degree and Legal Interrogation of Suspects* (1937) 85 U. OF PA. L. REV. 761, and other articles in legal periodicals.

1. Mr. Woollcott stated "that a complete private record on the entire case" had come into his possession and that he planned to put it in print within a year. This publication will be awaited with much interest.

2. In this country a midshipman (cadet) at the Naval Academy may be dismissed only by the Secretary of War with written approval of the President. If the Superintendent of the Academy believes that the continued presence of any midshipman at the Academy is contrary to the best interests of the service he must so report in writing to the Secretary of the Navy, setting forth in full the facts upon which his reasons for such belief are based. If the Secretary concurs in the conclusion of the report by the Superintendent he must cause a copy of the report to be served on the midshipman and must require him to show cause why he should not be dismissed from the Academy. If any issue of fact is raised by the midshipman's reply this must be determined by a board of inquiry, appointed by the Secretary. 34 STAT. 104 (1906), 34 U. S. C. A. § 1062 (1928). The witnesses appearing before the board of inquiry may be cross-examined by the midshipman or his counsel. REV. STAT. § 1624, art. 59 (1875), 34 U. S. C. A. § 1200, art. 59 (1928).

A cadet at the Military Academy is subject to military law, 41 STAT. 787 (1920), 10 U. S. C. A. § 1473 (b) (1928), and is entitled to a trial by court-martial at which he may be represented by counsel, either civil or military. 41 STAT. 790 (1920), 10 U. S. C. A. § 1488 (1928). A sentence of dismissal from the Academy requires confirmation by the President. 41 STAT. 796 (1920), 10 U. S. C. A. § 1519c (1928).

order for 5s. belonging to another cadet named Terence H. Back. The dismissal took the form of a letter from the Lords Commissioners of the Admiralty to the father of the boy, requesting him to withdraw his son from the College. On October 7th Back, who entered the College the same term as Archer-Shee and slept in the bed next to his, received a post office order for 5s., which he put in his chest adjoining his bed. The order was stolen from the chest and, after being indorsed "Terence H. Back", was cashed at the post office on the afternoon of the same day. Archer-Shee admittedly had gone to the post office that afternoon to purchase an order for 15s. 6d., and the postmistress, when questioned by Commander Cotton, an official of the College, stated positively that the cadet who purchased the order for 15s. 6d. cashed the one for 5s.

Commander Cotton sent for Archer-Shee, who when informed of the theft stoutly protested his innocence. When asked to write Cadet Back's name, he wrote "Terence H. Back". This writing and the post office order bearing the endorsement "Terence H. Back" were submitted to a handwriting expert, Mr. Gurrin, who reported that the name in each instance had been written by the same person. Eleven days after the theft the letter of dismissal was sent to the boy's father, who had not been previously informed of the charges against his son. He at once withdrew his son from the College.

Mr. Archer-Shee, being firmly convinced of his son's innocence, consulted Sir Edward Carson, who had previously served as Solicitor-General. Sir Edward, after thoroughly investigating the matter, endeavored to secure the consent of the Admiralty to a judicial inquiry, but was not successful. The Admiralty, however, authorized two independent departmental inquiries, one of them by the Judge Advocate of the Fleet, but refused to permit Archer-Shee to be represented by counsel. Sir Edward then determined to proceed by a petition of right.

It was early recognized in England that while an action could not be brought against the King, yet as the "fountain of justice and equity" he would entertain petitions from his subjects for the redress of their wrongs; and it was established during the reign of Edward I that the subject might bring a petition of right, which, if approved by the King, would be heard in his courts.[3] The King indicated his approval of the petition by writing on it, "Let right be done".[4] A petition of right, as distinguished from a petition of grace, asked "for something which the suppliant could claim as a right, if the claim were

3. 9 HOLDSWORTH, A HISTORY OF ENGLISH LAW (1926) 8.
4. The original wording was *"Soit droit fait als parties"*. CLODE, PETITION OF RIGHT (1887) 166.

made against any one but the King".[5] Originally a petition of right was employed only to recover some interest in land, and there was doubt whether it would lie to recover chattels,[6] but by the time of Henry VI it was settled that it would lie for the recovery of goods and chattels.[7] It was not until 1874 that it was decided that the petition would lie for breach of contract.[8] It would never lie for a tort, for the King can do no wrong.[9]

At the time the petition of right was filed in the Archer-Shee case the law was clear that those in the service of the Crown, whether military or civil, could be dismissed at will and were without remedy by petition of right or otherwise. It was decided in 1876[10] that an army officer could not maintain a petition of right for breach of his contract for the reason that "every officer in the army is subject to the will of the Crown, and can be removed and put on half-pay, or dealt with as the Crown, with a view to the public convenience, thinks best".[11] In *Grant v. Secretary of State for India*[12] it was held that the Crown has the absolute power to dismiss an officer in the Indian Army. In the leading case of *De Dohse v. The Queen,*[13] decided by the House of Lords in 1886, it was held that a petition of right would not lie on behalf of an army officer, as any contract made with him contained an implied condition that the Crown had the right to dismiss at pleasure. In *Mitchell v. The Queen,*[14] decided in 1890, the Court of Appeal held that a petition of right by an army officer was properly dismissed. Fry, L. J., stated the following: "I am clearly of opinion that no engagement between the Crown and any of its military or naval officers in respect of services either present, past, or future can be enforced in any court of law."[15] In *Dunn v. The Queen,*[16] the suppliant in a petition of right showed that he had been employed as a consular agent for a term of three years and had been dismissed

5. 9 HOLDSWORTH, *op. cit. supra* note 3, at 13-14.
6. *Id.* at 19, n. 7.
7. CLODE, *op. cit. supra* note 4, at 87.
8. Thomas v. The Queen, L. R. 10 Q. B. 31 (1874). The decision in this case was based on *dicta* in the Bankers' Case, 14 How. St. Tr. 1 (1690-1696-1700).
9. Feather v. The Queen, 6 B. & S. 257 (Q. B. 1865). On page 295, Cockburn, C. J., stated the following: "For the maxim that the King can do no wrong applies to personal as well as to political wrongs; and not only to wrongs done personally by the Sovereign, if such a thing can be supposed to be possible, but to injuries done by a subject by the authority of the Sovereign. For from the maxim that the King cannot do wrong it follows, as a necessary consequence, that the King cannot authorize a wrong."
10. *In re* Tufnell, 3 Ch. D. 164 (1876).
11. *Id.* at 177.
12. 2 C. P. D. 445 (1877).
13. Not officially reported. A statement of the case appears in 66 L. J. Q. B. (N. S.) 422 n. (1897).
14. Not officially reported. A statement of the case appears in (1896) 1 Q. B. D. 121 n.
15. *Id.* at 123.
16. (1896) 1 Q. B. D. 116.

before the expiration of that period. The Court of Appeal approved a judgment for the Crown, Lord Hershell saying: "So I think that there must be imported into the contract for the employment of the petitioner the term which is applicable to civil servants in general, namely, that the Crown may put an end to the employment at its pleasure." [17] *De Dohse v. The Queen* and *Dunn v. The Queen* were approved by the Privy Council in *Gould v. Stuart.*[18]

The petition of right was set for trial on July 13, 1910, before Mr. Justice Ridley and a jury. In the petition Mr. Martin Archer-Shee asked for damages for the alleged wrongful request by the Admiralty for the withdrawal of his son from the Royal Naval College at Osborne. By the answer it was contended that a petition of right did not lie, and that the Admiralty had a discretion in requesting the withdrawal of the plaintiff's son, and that they had acted in the exercise of such discretion. Sir Edward Carson, K. C., appeared for the suppliant and the Solicitor-General, Sir Rufus Isaacs, K. C., for the Crown.

The following report of the proceedings before Mr. Justice Ridley is taken from the London Times:

"The Solicitor-General took the preliminary point on demurrer that a petition of right would not lie.

"SIR EDWARD CARSON contended that this point ought to have been taken before the trial and decided at that stage in one way or the other. The plaintiff had gone to great expense in getting up the case on the facts, and he was surprised that the Crown should have taken this very unusual course.

"MR. JUSTICE RIDLEY.—The plaintiff might himself have applied to have the point argued first.

"SIR EDWARD CARSON.—Why should we? We want to have the facts tried here. They have even had evidence taken on commission.

"MR. JUSTICE RIDLEY held that the Crown was within its rights in setting up the demurrer at this stage, though in face of the expense incurred it might perhaps seem a hardship on the plaintiff. He thought the Crown had the right to have the demurrer tried before the question of fact.

"SIR EDWARD CARSON.—The Crown is shirking the issue of fact. It is a public scandal. The Crown can be high-handed out of Court, but not in Court.

"SIR RUFUS ISAACS, in support of the demurrer, contended that there was no contract between the suppliant and the Crown. As the

17. *Id.* at 119.

18. (1896) A. C. 575. The procedure for petitions of right was prescribed by 23 & 24 VICT. c. 34 (1860).

foundation of a petition of right was breach of contract, it followed that there could be no right to such a petition in the present case. The suggested contract was one between the suppliant and the Commissioners of the Admiralty, representing the King, to train the plaintiff's son as a cadet. He submitted that on becoming a naval cadet, the latter had entered into the service of the King, and was therefore liable to dismissal at pleasure. The Secretary of State had no power to bind the Crown to any other relationship—'Grant v. Secretary of State for India' (2 C. P. D., 445). The contract as set out in the petition showed that it was made with the Admiralty on behalf of the King and that it was subject to the regulations. The first regulation was that all naval cadets entered the Service under identical conditions, and were trained together until they attained the rank of lieutenant. The period of training was a period of probation, and at the request of the Admiralty parents were to withdraw their sons. Since 1881 naval cadets received no pay except when at sea. The regulations showed that a naval cadet occupied the rank of an officer, the lowest in the Service. The documents which had to be filled in by the suppliant spoke of entry 'into the Service'. The parents were not permitted to withdraw their sons at will. Naval cadets first served at the Naval College, then at Dartmouth, and then on board a ship. It was beyond all controversy that if the suppliant's son had entered the service of the King he could be dismissed at pleasure. He referred to 'Dunn v. Regina' (1896, 1 Q. B., 116) and 'Mitchell v. Regina' (6 *The Times* Law Reports, 332).

"SIR EDWARD CARSON, for the plaintiff, said that the only question was whether the petition disclosed any cause of action—that is, any contract. Of course, this was not a claim by a gentleman in his Majesty's Service, but by a gentleman who entered into a contract for the training of his son. It must be taken for the purposes of the demurrer that the boy was expelled under the terms of the agreement. There was nothing to prevent the Admiralty from entering into a contract with a subject. The contract would be to train the boy for four years, the parent undertaking certain payments, and also that his son should follow a naval career. What was the exact *status* of the boy was an entirely independent question. It would be impossible to contend that the Crown could not sue the plaintiff for failure to pay the amounts he had agreed to pay; surely there must be a reciprocal obligation, subject only to the Crown's immunity from liability to have an action against it, which the Sovereign had waived in the case when he endorsed the writ 'Let right be done'. 'Thomas v. Regina' (L. R. 10 Q. B., 44). The parent undertook to withdraw his son on the

request of the Admiralty if they thought he did not show aptitude for naval life or where his conduct was unsatisfactory. This was part of the contract. The charge against the boy here was that he had been guilty of larceny and forgery. It was contended for the Crown that the regulations were merely nothing, and that at any moment it could expel the naval cadet, because the latter had obtained a certain *status*. The plaintiff's position was better than that of the son, and he did not make the contract on behalf of the latter but on his own behalf.

"MR. JUSTICE RIDLEY.—The contract is made by the father because the son, as an infant, cannot.

"SIR EDWARD CARSON.—But he did not represent the cadet. The position was the same as that of a parent sending a boy to school. If the cadet refused to go on with a naval career the plaintiff could be sued. On the pleadings it must be taken that the dismissal was under the contract, and not in the exercise of the power of the Crown to dismiss at pleasure. Secondly, he contended that the cadet was not in the service of the Crown; he was simply taken on probation, and received no appointment. Could it be said that he came under the Naval Discipline Act, 1866? If he did, then he would have the right of being tried by Court-Martial, and the action of the Admiralty seemed extraordinary, and no opportunity was afforded of testing the truth of the charge against him. In 'Fitzgerald v. Northcote' (4 F. & F., 656) an action was brought against a schoolmaster by a father on behalf of his boy for false imprisonment. The plaintiff was a particular friend of his (the learned counsel) and was now an eminent man. It was held that there was a contract by the defendant to continue to educate the son as long as his conduct did not justify his expulsion. In 'Hutt v. Governor of Haileybury College' (4 *The Times* Law Reports, 623) it was held that schoolmasters had not an absolute discretion to expel boys, even though they might think they were acting for the benefit of the school. He asked his Lordship to allow the facts to be gone into, as that course would not prevent the Crown from raising any point of law. Any other course would be disastrous.

"SIR RUFUS ISAACS replied. He contended that it had been held in 'Grant v. Secretary of State for India' (*supra*) that no one, not even the Crown itself, could make a contract in derogation of the Royal prerogative.

"MR. JUSTICE RIDLEY said he was in favour of the Crown; but would it not be better to go into the facts, as there would no doubt be an appeal on the point of law?

"The SOLICITOR-GENERAL.—My Lord, I am entitled to your judgment.

"SIR EDWARD CARSON.—My Lord, I hope you will hear the facts. We have been persisting for two years under the most aggravating circumstances that ever occurred.

"MR. JUSTICE RIDLEY said he thought that the plaintiff's son was in the service of the Crown, and naval cadets were so treated all the way through. No fresh document was given them when they obtained a commission and took up duty on board ship. In one or two instances they were in terms so treated in the regulations. The words 'naval cadets enter the Service' were used. They were appointed, not elected. Their time as cadets was no doubt probation, but it was probation in the King's Service. It was difficult to distinguish this case from others relating to officers in the Service of his Majesty. Even if there was a contract it had been held in several cases that a condition was imported into it that the Crown should have the power of dismissal. This was no doubt an application of the principle to a state of circumstances to which it had not been applied before; but he was not prepared to say that it did not apply to the case of these cadets, it once being established that they were in the King's service. It seemed to him that the parent merely sued because he represented the son, the latter being an infant. He must therefore give judgment for the Crown.

"SIR EDWARD CARSON asked that only the costs of the demurrer and not those of the action should be allowed.

"The SOLICITOR-GENERAL assented to this.

"SIR EDWARD CARSON.—This is a case of the grossest oppression without remedy that I have known since I have been at the Bar.

"The SOLICITOR-GENERAL.—All I need say is that there have been various inquiries.

"SIR EDWARD CARSON.—Only a hole and corner inquiry in which the boy was not represented.

"The SOLICITOR-GENERAL.—That is not so. Mr. George Elliott, K.C., went down.

"SIR EDWARD CARSON.—That was our inquiry.

"The SOLICITOR-GENERAL.—Assisted by the Admiralty.

"SIR EDWARD CARSON.—It is a gross outrage by the Admiralty.

"MR. JUSTICE RIDLEY.—I do not think you should say that. I know nothing of the facts. I have merely decided the legal point." [19]

Sir Edward Carson immediately took an appeal from the judgment of Mr. Justice Ridley in sustaining the demurrer to the petition of right, and the appeal was heard by the Court of Appeal just six days later. Sir Edward's argument that the petition of right should lie because there was a contract between the suppliant and the Commis-

19. Times, July 13, 1910, p. 3.

sioners of the Admiralty representing the King was similar to that made in the hearing on the demurrer before Mr. Justice Ridley, but he added the following argument of fact:

"The charge against the boy was that he had stolen a postal order and forged the payee's name. That charge was totally devoid of any foundation whatever. It was admitted that the boy's conduct had been entirely satisfactory until the date of the letter. The trumping up of such a charge could not render his conduct unsatisfactory. It raised a serious question of fact which ought to be tried." [20]

The Solicitor-General argued that there was no legal contract, since "there was no power to make a contract which would derogate from the exercise of the prerogative of the Crown to dismiss at pleasure."

"The Court said they were of opinion that the trial of the action should take place before the question of the prerogative of the Crown was argued. They were further of opinion that the defense of the Crown did not put in issue the question of the prerogative, and they gave leave to the Crown to amend their pleadings so as to raise the question of the prerogative as a point of law. They gave the suppliant the costs of the abortive proceedings in the Court below and of this appeal.

"SIR EDWARD CARSON intimated that he would apply to the King's Bench Division to re-enter the case for trial immediately." [21]

THE TRIAL

First Day

The trial of the petition of right opened in the King's Bench Division on July 27th, just eight days after the hearing before the Court of Appeal and fourteen days after the proceedings before Mr. Justice Ridley. Presiding at the trial was Mr. Justice Phillimore, afterward Lord Phillimore, an able, stern, and, as will appear from the following report of the trial, a sometimes irascible judge. Chief counsel for the suppliant was Sir Edward Carson, a former Solicitor-General and later to become Attorney-General and then a Lord of Appeal. Sir Edward's juniors were Mr. Leslie Scott, K.C., afterwards Solicitor-General, and Mr. Eric Hoffgaard. The Crown was represented by the then Solicitor-General, Sir Rufus Isaacs, who later became Attorney-General and then, as Lord Reading, the Lord Chief Justice. Associated with Sir Rufus were Mr. Horace Avory, K.C., who later, as Mr. Justice Avory, won a reputation as a severe and forceful judge, and Mr. B. A. Cohen, later Sir Benjamin A. Cohen, K.C.

20. Times, July 19, 1910, p. 3.
21. *Ibid.* The proceedings before the Court of Appeal were never officially reported.

With Sir Edward Carson and Sir Rufus Isaacs opposed to each other, the trial was sure to become a "battle of the giants". These two counsel stood at the head of their profession and during their long careers were against each other in many important cases. Indeed, it came to be recognized that if either of the two was briefed on one side of a case, there was not much hope of success for the opposing side unless it secured the services of the other.

In addition to the spectacular array of counsel another interesting feature of the trial was the presence in the courtroom of about a dozen Osborne cadets. They were all in uniform and, being about the same age and size, they looked remarkably alike. This similarity in the appearance of the cadets became significant as the trial progressed.

In the petition of right, the suppliant, Martin Archer-Shee, claimed damages and further relief for unlawfully requiring him to withdraw his son, George Archer-Shee, from the Royal Naval College, Osborne, in breach of the contract by the Admiralty. By way of defense the Crown denied any breach of contract, contended that there was a discretion in the matter which had been duly exercised, that the suppliant's son had been guilty of misconduct, and also demurred to the petition of right, alleging that it did not lie.

The following report of the trial is from the London Times:

"SIR EDWARD CARSON, in opening the suppliant's case, said that it was one of an unusual nature, because the King could not be sued in the ordinary way in his own Courts; but, where there had been an alleged breach of contract by the Crown, the King endorsed the writ 'Let right be done,' as was done in this case, and the action then proceeded in the ordinary way. In 1908 the suppliant entered into an agreement with the Admiralty, entering his son at the Royal Naval College, Osborne. This college was conducted by the Admiralty for the purpose of training boys for the Navy, and it was important to remember that the boys had to enter as mere children. The suppliant paid certain fees, and entered into certain engagements—for example, to withdraw the boy if unfitted for the Service. He also undertook to withdraw him if his conduct was unsatisfactory. The little boy, from his birth in 1895 until 1905, was brought up at home, and during that time he did not give his parents one moment's anxiety, nor was anything suggested against his character, so far as a character could be said to be formed at that early age. In 1905 he went to a preparatory school for a year, and then to Stonyhurst. There he obtained the highest character and confidence and affection of those brought into contact with him. In 1908, by examination, he entered the Royal Naval College, and in September he came home for his holidays, re-

turning at their termination. On October 18 the suppliant received the following letter from the Admiralty:—'Confidential. I am commanded by my Lords Commissioners of the Admiralty to inform you that they have received a letter from the commanding officer of the Royal Naval College at Osborne, reporting the theft of a postal order at the college on the 7th inst., which was afterwards cashed at the post office. Investigation of the circumstances of the case leaves no other conclusion possible than that the postal order was taken by your son, Cadet George Archer-Shee. My Lords deeply regret that they must therefore request you to withdraw your son from the college. I am, Sir, your obedient servant, C. J. THOMAS.' By this letter this little boy of 13 (said Sir Edward) was branded as a thief and a forger, labeled and ticketed as such for the rest of his life. In the investigation which had led to this disastrous result neither the father nor any friend of the boy was present to hear what was said. He (the learned counsel) protested against the boy being branded in this way as a thief and a forger. The little boy from that day up to the present moment, whether when called before his commander, or under the softer ordeal of the inquiry by his loving parents, had never faltered in the declaration that he was innocent. Two years had elapsed since then. They had pressed again and again for a judicial inquiry into the matter; not a departmental inquiry, but a judicial inquiry, but they had pressed in vain until they had brought this petition of right; and even that had been objected to until they got an order of the Courts. If the boy's character was to be cleared it would not, therefore, be by any action of the State, but by the verdict of 12 of his fellow-citizens, and that would be the only satisfactory ending of this case. The suppliant asked only for that which every street Arab obtained. Indeed, he did not ask for so much. The latter had the protection of a trained magistrate, of a grand jury presided over by a judge, of a common jury presided over by a judge, and finally of the Court of Criminal Appeal. But the Department having taken up a certain attitude would never go back; they had fought and were fighting to the bitter end. He would not trouble them about the technical defenses, but would put the boy before them on the plain issue—Was he a thief and a forger or not? After the receipt of the above letter the suppliant wrote saying he would never believe his boy was guilty. The Admiralty refused to let them see the letter from the commanding officer to the Admiralty referred to in the letter to the suppliant, on the ground that it would not be in the interests of the public service to do so; but they would see it no doubt in the course of the case. The suppliant went to Osborne and asked to see the evidence against the boy, but was answered, 'We

can give you no information, but refer you to the Lords of the Admiralty.' He (the learned counsel) supposed that a department had no heart, and did not understand a father's broken heart. He took the boy away. On October 20 Messrs. Lewis and Lewis, his solicitors, wrote to the Admiralty asking for inspection of the documents relating to the case, their letter receiving formal acknowledgment. After several letters pressing for a reply, on November 3 the Admiralty replied offering to show the postal order—which was for 5s. only—and stating that they had not acted solely on documentary evidence. Eventually, on November 4, the Admiralty sent a letter with a copy of certain documents and reports of witnesses, whose evidence they might hear later. The original report of Miss Tucker, the postmistress, had written in pencil on the margin 'but she could not identify him.' It was a strange thing to keep back this rather material fact from the Admiralty which was going to adjudicate on the case. It contained also the statement of Mr. Gurrin the handwriting expert. He would have an opportunity of asking Mr. Gurrin questions as to evidence given by him on other occasions.

"MR. JUSTICE PHILLIMORE.—That observation is unworthy of you, Sir Edward. Everybody knows Mr. Gurrin.

"SIR EDWARD CARSON.—I resent that observation, my Lord. I hope you will withdraw it.

"MR. JUSTICE PHILLIMORE.—I cannot, Sir Edward.

"SIR EDWARD CARSON.—Well, then, I don't mind it.

"SIR EDWARD CARSON, resuming, said he should try not to be upset in this case, and would try to do his duty. The suppliant proceeded to make inquiries on his own account. The boy's financial position was as follows at the time. He had £2 3s. in the school bank and £4 3s. 11d. in the Post Office Savings Bank. The boys had a shilling a week pocket-money. He appealed to their experience to say whether, whatever a boy might do under the stress of want, he would steal and forge when he had plenty of money. On October 7 the boy wanted to buy a model steam-engine for 15s. 6d., as the other boys knew. He applied for a "chit" to the lieutenant of the term entitling him to withdraw 16s. from the school bank, which he did, after one o'clock, and put it into his locker. Each boy had a locker in the reading-room and a chest in the dormitory. After changing into flannels he went to see the boys roller-skating, and there asked a boy named Scholes to go with him to the post office. The latter refused as he had to meet friends. The boy obtained from a petty officer leave to go to the post office, as it was out of bounds. Was this the way a thief would have acted, without any attempt at secrecy at all? He bought a 15s. 6d. order, and sent it in pay-

ment for the engine. So little did he know about postal orders that he signed his name as having himself received the money and asked several boys where to sign it. If these facts were believed he submitted it was the end of the case. It was not pretended that he paid for the 15s. 6d. order with the 5s. order, and there was no evidence that he afterwards either had or spent 5s. The order which had been stolen belonged to Cadet Back. The suppliant's son did not know that he was accused of stealing it until next morning when he was called in before Commander Cotton. No one was there on behalf of this boy of 13. It was a most unsatisfactory proceeding when a charge of theft was to be made. The Commander said, 'You were at the post office yesterday?' The boy answered, 'Yes.' 'And you cashed an order?' The boy replied, 'No, I bought one.' 'Are you sure you did not cash a postal order for 5s.?' 'Yes.' He was then told to write his name, and then Back's name. He did so, writing Terence H. Back. The Commander then made an extraordinary remark. 'It is funny you know Back's Christian name.' Why (said counsel), they slept next to each other, they entered the college together, their lockers were together, and they were class-fellows from morning to night. Why was it extraordinary? When once a suspicion got into the mind it was extraordinary what small things seemed to confirm that suspicion. The boy was then told he could 'carry on,' that is, go back to work. Later on he was sent for again and was told that his handwriting and that on the postal order were exactly the same. That was ridiculous—they were absolutely different. He was told that the postmistress said that the same boy who bought the 15s. 6d. order cashed the 5s. order. The boy answered, 'All I can say is it was not me.' One of the most lamentable features of the case was the way in which the lieutenant of the term, who was supposed to act on the boy's behalf, had performed his duty, though he had no doubt he was an honourable and upright man. He was not present at the time of the inquiries; he could not speak of anything he had done on the boy's behalf; he took no notes, and asked nobody any questions. He did say, however, that both he and everybody else were struck with the good demeanour of the boy throughout. Sir Edward Carson then dealt with the further inquiry before Mr. R. D. Acland, Judge-Advocate of the Fleet. They had asked to be represented, but the Admiralty had replied that the inquiry was not one in which 'representation on your side in the sense in which you use the word would be appropriate.' Why would it not be appropriate?

"Sir Edward complained that he had been censored by the learned Judge as to the meaning of what he had supposed he was saying.

"MR. JUSTICE PHILLIMORE.—You are censuring everybody, and I suppose it is my turn now.

"SIR EDWARD CARSON.—Now your lordship is censuring me again. Continuing, he said that finally on February 4 the Admiralty wrote saying they could not alter their decision; but the suppliant could not discover from them if they had acted on any fresh evidence. He suggested an independent inquiry by Sir Gorell Barnes (now Lord Gorell), Sir Edward Fry, Sir Robert Romer, or Lord Lindley, but the Admiralty had not assented. What effect all this had on the boy he did not know. It might be that, conscious of his innocence, he was facing the charge at his old school at Stonyhurst to which he had returned. The day had now come when the matter could be sifted and tried in open Court, and he need not remind them of the vital issue which depended on their verdict, whether or not the boy was to be cleared now in his childhood of this charge hanging around his neck. He would first call the father to speak to some necessary matters, and would then take the earliest opportunity of letting them see the boy and of hearing him cross-examined by the Solicitor-General. Whatever the result might be they would rest satisfied that they had had an investigation, for which they had waited for two years, by an absolutely independent tribunal.

"Mr. Martin Archer-Shee, the suppliant, said he had been chief agent of the Bank of England in Bristol, but had retired. He had had an interview at Osborne with Captain Christian, who told him again and again 'You must go for the Admiralty.' He saw his son, whose demeanour was most reassuring and admirable. He had never at any time had reason to suspect his honesty; his character was conspicuously open and straightforward; there was nothing secret about him. As agent for the bank he had occasion to examine handwritings, and of course he knew his son's handwriting. That on the 5s. order was certainly not in his son's handwriting.

"In cross-examination by the SOLICITOR-GENERAL, the witness said that whoever forged the signature on the postal order had used a feigned hand. He knew that Mr. Acland had had a signature written by his son.

"George Archer-Shee, the suppliant's son, was examined by SIR EDWARD CARSON. He said that a boy named Terence H. Back joined the Naval College during the same term as he did. He was in the bed next to Back, and his locker was next to his. Each boy had a sea-chest, and in it was a till with a separate lock. The lockers had no locks. The witness then gave evidence in support of counsel's opening statement. The boys worked for half an hour before breakfast at a quarter

to 8. Divisions were at 9, when they were inspected. This lasted until 10. From 11 to 1 was school with a quarter of an hour's break. Dinner was at 1:10 and lasted for half an hour. On Wednesday they were free until after tea, which was at 7, when came preparation. After dinner came medical inspection. Dealing with his visit to the post office, he said the postmistress was in a room when he went in; a telegraph boy was sitting on a chair. After half a minute the postmistress came forward and he asked for a 15s. 6d. order and a penny stamp, handing her 16s. She gave him the order and the stamp and handed him 3½d. change. He thought that all postal orders cost 1d. and asked why she had not given him ½d. more. She answered that the order cost 1½d. He did not cash a 5s. order, and the signature on the 5s. order was not his. When he returned he saw Back and another. Back said, 'Isn't it rot? I have had my postal order stolen and this is how I found my writing desk.' Up to that time he did not know Back had a postal order. The witness then gave the details set out above of the interviews with Commander Cotton. He heard nothing more about it until his father came down, eleven days later. On that day he went before Captain Christian, who told him that the Admiralty had come to the conclusion that he was guilty and that he must leave. The captain said he was sorry, and was not so sure he wrote the name on the order, but was sure he cashed it. The witness said, 'Well, all I can say is, I did neither.' The captain said he was sorry, and that he must go and pack. He was taken away the same day. He had noticed a day or two after the theft that the lock of his till had been broken.

"SIR EDWARD CARSON.—Is there any truth in the charge made against you?

"The witness.—No, certainly not.

"In cross-examination by the SOLICITOR-GENERAL, he said he was happy at college and was friendly with the cadets. He had received postal orders at the college and had cashed them. He did not sit at the same table as Back at meals. There was a rule that the boys must not go into the reading-room between 2 and 3. He thought there was also a rule that money was not to be kept in the lockers, but was to be kept in the tills in the chests. All the three servants had a master-key to the chests. There was no mistaking a cadet in uniform. When he changed into flannels he only changed his trousers. He saw no other cadet while going to or returning from the post office and would take three or four minutes to get there from the college. When he drew the 16s. he first put it in his locker in the reading room and then went and changed. They had no pockets in their trousers and he was not

accustomed to put money in the inner coat pockets, there being none outside the coat. He did not remember asking leave to go into the reading-room. There was a canteen in the college and he used to buy things there; he would go to the till and get money and take it straight to the canteen. He had never written Back's name for practice. Commander Cotton had asked him how he knew Back's Christian name. He did not recollect telling him that he and Back had been practicing writing each other's signatures in the reading-room two or three days before. He had absolutely no recollection of ever saying that, nor did he recollect having written Back's signature, and he did not see any reason why he should have done so.

"The cross-examination had not concluded when the Court adjourned, the Judge remarking that he was afraid the Court would have to sit later tomorrow and succeeding days." [22]

Second Day

"The cross-examination of George Archer-Shee, the suppliant's son, by the SOLICITOR-GENERAL was resumed.

"The witness said he had made a mistake as to the pockets in the uniform coat; there was one outside. There was a pocket in the trousers into which he could have put money. Had he put the money he withdrew into one of these pockets, there would have been no necessity to go into the reading-room to put it in the locker. He did not remember why he had done so. It was not unusual for cadets to put money in their lockers. He had said nothing about putting this money in the locker until the inquiry before Mr. Acland in January, 1909. He put the money there about 2 o'clock in the day, but could not say whether it was before 'Advance' had sounded. He had not realized at the first interviews what charge was being made against him. He could not say if anybody was present when he put the money in the locker, which was next to the door. At that time there would probably be others present; when he went to get it again there would probably be no one there. Scholes was a particular friend of his, but he could not remember having been for any particular walk with him. He was not sure whether he told the officials at Osborne that he had twice asked Scholes to accompany him to the post office, but he had told his solicitors and Mr. Acland. He could not recollect whether Commander Cotton had asked him to give the name of every cadet he had spoken to. He thought he did say at first that he went to the post office between 3 and 4 o'clock, but he corrected himself at the time.

"The SOLICITOR-GENERAL.—I suggest that it was not until Messrs. Lewis and Lewis came upon the scene that you altered the

22. Times, July 27, 1910, p. 3.

time to half past two?—I cannot recollect when I altered it. He never said to Captain Christian that he knew on the morning of October 7 that Back had received a postal order. He did not know it until Back told him he had lost it. If he had told the Captain that he knew on Wednesday, he had misunderstood the question. He was absent from the College about 10 or 12 minutes when he went to the post office. He did not remember having any money in his pocket except the 16s. As far as he remembered, when he found his till broken open nothing was missing; he had reported the incident. When before Mr. Acland he had written out a sentence, 'Terence Back,' followed by the words 'Working the Territorial Force would make Mr. Brown's back ache.'

"The SOLICITOR-GENERAL.—The object of the sentence was to get certain letters written without drawing attention to them.

"In re-examination by SIR EDWARD CARSON the witness said that if he had received a postal-order at Osborne he had taken it to the gunner or someone who had cashed it for him, and he did the same at Stonyhurst. He had seen Back's signature in his exercise books. The signature on the postal order was decidedly unlike it.

"MR. JUSTICE PHILLIMORE.—I understand that the suggestion is that it was strange that the boy should before Commander Cotton have written Terence H. Back, Back's signature, instead of Terence, or T., or T. H. Back. It is not suggested that he practiced the signature with a view of imitating it.

"SIR EDWARD CARSON.—I certainly so understood it, and I think the jury did.

"Resuming, the witness said that boys frequently ran into the reading-room between 2 and 3 in breach of the rules. He had put the money in the locker because he intended to spend it immediately. The reading-room, in which the locker was, was opposite the dormitory. There were a large number of windows in the reading-room and one could see into it from the outside. In answer to the learned Judge, he said he drew 2s. out of the bank on October 14 and 10s. the week before. The cadets, in drawing more than 2s., had to give a reason for so doing. He did not want anything at the time except the engine. The cadets sometimes borrowed money of each other.

"MR. JUSTICE PHILLIMORE said that if there was any more laughter in Court he would have it cleared; he would be glad of an excuse to do so, as it was inconveniently crowded.

"Patrick Henry Scholes said he was 15 years of age, and had been at Osborne, but was now at Dartmouth. He remembered Cadet Archer-Shee asking him to go to the post office as he was going to get a postal order; this was about a quarter past two. He refused, as he

was expecting friends about 2:30. He knew Archer-Shee was going to buy the engine, and the latter told him he was going to fetch the money, and he saw him go in the direction of the building. He did not remember whether he asked him to go a second time.

"In cross-examination he said he remembered the time as he kept looking at the clock to see when his friends would arrive. He had never said that Archer-Shee said he was going to cash an order.

"SIR EDWARD CARSON.—Was any suggestion ever made to you until yesterday that you had said 'cash' and not 'get'?—No.

"SIR EDWARD CARSON.—Was it made to you yesterday by the Treasury Solicitor?—Yes.

"The SOLICITOR-GENERAL.—The inquiry was made to settle a doubt in my mind.

"SIR EDWARD CARSON.—I do not suggest anything improper on the part of the Treasury Solicitor.

"J. G. Arbuthnot, examined by Mr. Scott, said he was at Osborne with Archer-Shee. He got leave on October 7 to go to the post office to cash an order and get one for himself and another for a friend. He got leave immediately after dinner. The order to be cashed was for 10s., his own was for 2s 6d., and that for his friend, Barton, 12s. 3d., and Barton gave him the money. He was in white flannel shorts and uniform coat and cap. A telegraph boy was inside. He first cashed the 10s. order, then with the money he bought the 2s. 6d. order and then got Barton's order. There was an interval after the cashing of the order, when the postmistress went to another room to telegraph and telephone for about a quarter of an hour. There was some delay again later. As he came out he met one of the cadets' servants in uniform going in. He did not know him by name or by sight.

"In cross-examination he said that a cadets' servant could not be mistaken for a cadet. He did not remember having signed his order wrongly and having his attention drawn to it by the postmistress. When Barton gave him the money he put it in his pocket; he had seen other cadets put money in their pockets, the outside breast pocket. He did not meet Archer-Shee; there were three ways to the post office.

"In re-examination he said his reading-room was not near his dormitory.

"Frederick Charles Langley said he was a telegraph boy at the Osborne office on October 7. He was on duty from 9 to 1 and 2 to 4 and 5:30 to 8. He remembered a cadet coming in about 10 past 2, and remaining there over 5 minutes. A second cadet came in a few minutes after the first one left. The second one left at half-past 2.

"The SOLICITOR-GENERAL (cross-examining).—How do you know that?—I glanced at the clock. I was reading.

"How long after October 7 did you make this statement?—Some weeks. Someone came to see me and asked questions about it. I do not know where he came from.

"What did he ask you?—How many cadets came in that day, or anybody else, and the times.

"You paid no particular attention to these cadets?—No. I often saw cadets coming in. He could not say how many cadets came in the day before or the day after.

"What work are you doing now?—Nothing.

"Do you remember the day of the week it was?—Wednesday. At one time he had thought it was on a Tuesday; he did not remember saying that the first cadet came in just after 3.

"In re-examination he said he was first asked questions about this on November 19, 1908. He was in the office when the postmistress was rung up on the same evening, and then knew there was trouble about a postal order.

"SIR EDWARD CARSON proposed to read a statement made by the witness at the time, but his Lordship upheld the Solicitor-General's objection to this being done.

"In answer to the learned Judge the witness said that the first cadet was the longer time in the office.

"Major Martin Archer-Shee, half-brother of George Archer-Shee, said he was originally in the Navy, and served in the South African War.

"SIR EDWARD CARSON.—You have now the misfortune to be a member of Parliament?—Yes.

"You have associated closely with your half-brother?—Yes, and I have found him honourable and truthful. He corresponded with his brother and was convinced that the signature on the postal order was not his.

"Father Davis said he was a prefect of studies at Stonyhurst. He was in close touch with Archer-Shee in 1907. He was always straightforward, honourable, and truthful in every dealing.

"MR. SCOTT.—It is suggested that the signature on the postal order was written by Archer-Shee in a disguised hand?—It is so disguised that I don't recognize it.

"Mr. Gordon Gorman, master of the navy class at Stonyhurst, said he found Archer-Shee one of his most interesting pupils; truthful, candid, and honest in the highest degree.

"Mr. F. D. C. Strettell, sub-agent of the Bank of England at Bristol, said he had known Archer-Shee for 14 years. He thought he was the most open, frank, and straightforward boy he had ever known.

"Mr. Lievesey, a master at Osborne, said he was tutor to the boy and gave evidence to the same effect.

"Father Bodkin, Principal at Stonyhurst College, spoke as to the practice at Stonyhurst with regard to the cashing of postal orders. Archer-Shee was a conspicuously straightforward boy. He had received him back when he left Osborne.

"SIR EDWARD CARSON said he understood it was admitted that the postal order for the engine had been sent and received.

"The case for the suppliant closed at the adjournment."

"The SOLICITOR-GENERAL submitted formally that there was no case, but said he did not propose to argue it then. In addressing the jury he said that the first issue was whether or not the suppliant's son took the order, and as to this Miss Tucker, the postmistress, was the most important witness. He would not tell them her evidence in detail, as she would give it herself. She was called to give evidence on the morning following the theft, and her statement was, and it was the crucial fact, that the boy who bought the 15s. 6d. order was the boy who cashed the stolen order. If they believed that, the suppliant's son was necessarily guilty. He would not speculate on the motive actuating the boy's mind; he would have an opportunity of addressing them again. Cadet Back would tell them that the postal order was the subject of conversation at table, and that he had laid it on the reading-room table, where it could be seen by everybody. When questioned in the first place the boy Archer-Shee said he went to the post office between 3 and 4 o'clock. This was of importance in determining on which side the truth laid. Miss Tucker remarked that the first cadet was delayed while she sent off telegrams, and that she had to point out that he had wrongly signed the postal order. Arbuthnot spoke to seeing a cadets' servant coming in, and had picked out two as being like the one he saw. These would be called. Times could be fixed by reference to the telegrams sent off. According to this something like an hour elapsed before the second cadet came in who bought the 15s. 6d. order. Miss Tucker recollected that there was a dispute as to the change. Chief Petty Officer Paul would tell them when Archer-Shee asked for leave, that he was away 10 minutes, that the petty officer then went to the reading-room, and that then Cadet Back reported the loss. Sir Edward Carson had made a severe attack on the Admiralty. He was there to justify their action, for questions of great importance were involved. The Admiralty had a discretion; but he would assume

it was necessary for them to establish that they had a reasonable belief in the charge made. The other consideration was of vital importance; it was that they honestly believed in the boy's guilt, and honestly thought he ought no longer to associate with the other cadets. He would show that the officers concerned were acting in strict accordance with their duty on the conclusion which they had taken. It was not suggested that either they or the Admiralty were actuated by any ulterior motive, or malice, or spite; and he was most anxious that that should be made clear. The question was, had they reasonable grounds for their belief? for if he was guilty it was plain he could not continue with the other cadets. The officers were bound to act on their honest belief. When the loss was reported the postmistress was rung up the same day; Commander Cotton the very next day made inquiries and saw Archer-Shee and the postmistress. He was bound to report the matter to the captain. He impressed on the boy's mind that he should try and recall every event that had happened on the previous day. Captain Christian also heard the postmistress. Archer-Shee was asked as to his signature of Back's name, and he replied that he and Back had been practicing writing each other's signatures. The point of this was that that was an explanation which was untrue, for Back was sent for on the same day, and he denied that they had done this. Consequently the case was reported to the Admiralty. They submitted the postal order to an expert, at any rate the most accredited among them. Handwriting experts, like others, no doubt made mistakes, and this might be suggested against Mr. Gurrin; but he must point out that this was the only means of testing handwriting. Even the suppliant had had to rely on it. Mr. Gurrin reported that the handwriting on the postal order was by the same hand as that of Archer-Shee. On that the Admiralty took the course which had led to this case. His family had, very naturally and properly, endeavored to rehabilitate the boy's character. The solicitors had taken to Osborne a barrister of great criminal experience, Mr. George Elliott, K.C., and he was allowed to examine witnesses, the only limitation being that this should be in the presence of Captain Christian, who did not object to a single question which was put. The family asked for an independent legal inquiry. This part of the case surprised him. If anyone wanted to find a more experienced, high-minded, and capable person to conduct such an inquiry, they could not find a better than Mr. Acland, the Judge-Advocate of the Fleet, a King's counsel, accustomed to practice with and against himself and Sir Edward Carson, and the Recorder of Oxford, accustomed to try prisoners and cases of this character. He would be called before them. It was true it was not a trial—in the view of the Admiralty

such proceeding was not open to those who were accepted into the Navy. Mr. Acland held the inquiry, and reported to the Admiralty. He had dwelt at some length on this matter as he wished to answer the case of oppression which had been set up. There might be some difference of opinion on the question of the right to a legal inquiry. What they would have to determine was whether the boy or the postmistress were telling the truth. He would have the opportunity later of dealing with the case more fully.

"Miss Tucker, examined by MR. AVORY, said she had been at the Osborne post office for six years, and knew all the uniforms of those belonging to the college. On October 7 her hours were 7 to 9, 1:30 to 5, and 6 to 8:15. From 1:30 to 5 she would be alone. She kept a book indicating the postal orders issued by her. Between 1:30 and 5 she issued the following orders:—One for 2s. 6d., one of 3s., two of 5s., one of 12s., and one of 15s. 6d. The 2s. 6d. and the 12s. were issued together, but she could not say in what order the others came. Another book showed the total amount paid in exchange for postal orders. This amounted to 15s. in two orders. She saw two naval cadets only in the course of that afternoon. The first cadet cashed an order for 10s., and bought one for 12s. and another for 2s. 6d. This was about 7 minutes past 2. She remembered as to the 10s. order that it was not made payable to the same Christian name as that of the signature. She remembered the name, Arbuthnot. He was kept rather a long time, as she was sending telegrams. She fixed the time of Arbuthnot's visit by the times of those telegrams. The other cadet came in about an hour later. He gave her a 5s. postal order to cash. She saw that it had 'Royal Naval College' erased. She said to the cadet, 'This ought not to have been erased.' He said, 'It was so when I got it.' She gave him two half-crowns. As she put the cashed order into the drawer the cadet asked her for a 15s. 6d. postal order and one penny stamp, and gave her half a sovereign and three florins. She gave him the order and the stamp and 3½d. change. He said something, she could not say what, and she looked to see if he had given her one of the half-crowns by mistake, but she found the 16s. still lying on the counter.

"MR. AVORY.—Are you sure that it was the same cadet who cashed the 5s. order as bought the 15s. 6d. one?—Perfectly.

"Petty-officer Paul rang her up that evening and called her attention to this 5s. order, and he came to see her later. She saw Commander Cotton next morning, having the 5s. order with her. She then made the same statement as she had made today. She signed a document which contained a correct reproduction of what she had said.

7 cadets were paraded before her, and she could not identify any of them. She did not remember any cadets' servant coming into the office that afternoon." [23]

In view of the witness' positive testimony that the cadet who cashed the 5s. order bought the one for 15s. 6d., the outcome of the trial was seen to depend upon whether Sir Edward in his cross-examination could destroy or weaken the effect of this testimony. It was perfectly clear to everyone in the courtroom that the postmistress was honestly and firmly convinced of the truth of her testimony and that any attempt on the part of counsel to discredit her would react unfavorably with the jury. As Sir Edward rose to cross-examine the scene was dramatic. The postmistress was a small, elderly woman with old-fashioned ringlets showing under her little bonnet. She looked the embodiment of honesty and rectitude. Sir Edward was tall and dark, with a high forehead, large nose, and forceful chin. As he stood over the witness in his gown and wig, he looked like a great bird of prey. The witness was tense and clearly prepared to defend her statements.

When Sir Edward started to cross-examine the witness his voice was surprisingly soft and gentle. He first asked simple, unimportant questions, such as how long she had held her position, what were her hours, what were her duties. As there was nothing controversial about these questions, the witness gradually relaxed and became more at ease. Sir Edward then, with no change of voice or expression, progressed to more important matters. In answer to a question the witness stated that she had told Commander Cotton that she could not identify the boy, that the voice of the cadet in the office was gruffer than any of those she was given the opportunity of hearing. She was then questioned regarding the records kept by her, after which she stated that "there was nothing in the books to show the order in which the postal orders were dealt with, nor the times." She then said that "upon the question whether the same person cashed the 5s. order as bought the 15s. 6d. one they must rely on her memory." After this the questions and answers were as follows:

"SIR EDWARD CARSON.—Are all these cadets very much alike?—Yes.[24] All smart, good-looking little boys about the same age?—Yes.

"When Paul came he asked her if a cadet had cashed the 5s. order.

23. Times, July 28, 1910, pp. 2 and 3.

24. It will be recalled that a number of cadets in uniform were present in the courtroom. It had been apparent to the jurors for some time that they looked very much alike.

"SIR EDWARD CARSON.—He first suggested it was a cadet?—Yes. He may have said that a boy had signed it who had no right to it. She was not sure if he said that he had only given leave to two cadets. He did say such people were not wanted in the Navy.

"SIR EDWARD CARSON.—Was he in a very excited condition?—I thought so; but I had never seen him before. I have said he was almost raving.

"You knew that a charge of theft was being made?—No; I thought Paul was making a mistake.

"Did you say a word to anyone that evening about it being the same boy who bought the 15s. 6d. order who had cashed the 5s. order?—I did not say it to Paul. I will not swear I said it to Miss Barlow.

"Did you ever say it was a cadet who cashed the order before you saw Commander Cotton?—If I said I had not to Mr. Elliott it must be correct. The order was not signed in the office.

"You said nothing about the dispute with the second cadet as to the change to Mr. Elliott?—Perhaps I was not asked.

"Can you remember anyone else having a transaction or conversation with you that day?—No.

"Do you remember the appearance of any one?—No. I cannot remember if any cadets' servants came.

"Were you never asked about cadets' servants by the commander, or Paul, or the captain?—No. I do not remember being asked as to anybody else.

"So you paid no attention to anybody else that day?—No.

"No one attempted to test your memory on that point?—No.

"At the conclusion of the witness's evidence the Court adjourned at 5 o'clock." [25]

So conclusive was Sir Edward's cross-examination that it seemed it must be the end of the case. The Solicitor-General, in his address to the jury, had relied on the single issue that the cadet who bought the order for 15s. 6d. cashed the one for 5s. The only testimony that this was so was that of the postmistress, and the cross-examination left little, if any, support for her opinion on this point. There remained, of course, the handwriting expert, Mr. Gurrin, who had expressed the positive opinion that the indorsement "Terence H. Back" on the order was written by the same person who wrote the name "Terence H. Back" for Commander Cotton. This, it will be recalled, was Cadet Archer-Shee. Sir Edward Carson at an early stage of the case had indicated that he was looking forward with some degree of satisfaction to the cross-examination of Mr. Gurrin. It seemed clearly indicated that Mr. Gurrin would be called as a witness the next day.

25. Times, July 28, 1910, p. 3.

Third Day

"MR. JUSTICE PHILLIMORE said that if the evidence could be finished that day, and counsel would only take a couple of hours between them for speeches on the following day, he might be able to finish the case and also the other work he must finish before the Vacation.

"SIR EDWARD CARSON said he might have to ask for an adjournment, as he was very unwell owing to the heat of the Court yesterday, and the work he had to do after the Court rose. Perhaps, however, he might get better as the case proceeded.

"MR. JUSTICE PHILLIMORE said he must be more strict with regard to the crowding of the passages of the Court, which contributed to the heating of the Court. They must be kept clear.

"Cadet Back, now at Dartmouth, examined by MR. AVORY, said he occupied the bed next to Archer-Shee in Benbow dormitory. His term had three tables in the mess-room, but he did not think Archer-Shee was at the same table as he. He received a letter at breakfast containing the postal order for 5s. He very likely mentioned it to the other cadets. He put it on the table in the reading-room while he wrote a letter of thanks, and then put it in his writing case. (The witness produced the case.) He then put the case in his locker. In the afternoon he went 'pulling' in a race, returning at 3:30 or 3:45, and going straight to the locker in his reading-room to get the order to cash it at the canteen. He found it had gone. He then changed. He first spoke of the loss to Cadet-Captain Butt.

"MR. JUSTICE PHILLIMORE.—He is a grandson, I believe, of the great Chief Justice Bovill.

"Continuing the witness said he next mentioned it to Lieutenant Burrows. As he went to the dormitory he met Archer-Shee coming in, and told him he had lost the order. He thought he reported it to Chief Petty Officer Paul, who asked him about it. He usually signed his name T. H. Back if writing to strangers, and Terence H. Back if writing to people he knew. It was not true that he and Archer-Shee had practiced each other's signatures. There was an officers *versus* masters hockey match on the afternoon of October 7, and he went to see it.

"In cross-examination by SIR EDWARD CARSON the witness said the words 'Royal Naval College' on the postal order would not be offensive to a cadet, and there was no reason why a cadet should strike them out. There were about 60 cadets of his term present at breakfast, and he did not show the order to Archer-Shee. Cadets' servants were present at breakfast. About a dozen cadets were in the reading-room, perhaps more, and he did not show the order to Archer-Shee there,

but he, with others, was near the table. As far as he knew he did not see him put it into his locker. The servants had access to the reading-room, but only one went there. During 'divisions' the reading-room would be empty. It was against the rules to put money in the lockers, but the cadets frequently broke that rule. He went to row at about 1:50, arriving about 1:55, and he rowed in one of the last heats about 3:20, but he had not taken any note as to the time.

"SIR EDWARD CARSON.—Was it Chief Petty Officer Paul who brought in Archer-Shee's name?—I think it was. He was excited, but not raving.

"Was he casting suspicion on Archer-Shee?—I do not think so.

"Had you seen Archer-Shee sign his name, and had he seen you sign yours?—Yes.

"You knew his name was George, and he knew that yours was Terence?—Yes.

"Were there complaints of loss of money after Archer-Shee left?—I don't remember any.

"When did you know that Archer-Shee had been to the post office?—Chief Petty Officer Paul told me.

"In re-examination he said Hopgood was the servant who cleaned the reading-room; his personal servant was Pritchard, and Archer-Shee's was Mason.

"Chief Petty Officer J. H. Paul, examined by the SOLICITOR-GENERAL, said he was a naval pensioner. Archer-Shee was in his term. The complaint of the loss of the order was made to him about 6 o'clock. He remembered Archer-Shee asking for leave to go to the post office, while he was on duty at the flagstaff. It must have been 3 o'clock or after because another cadet, Arbuthnot, had been there previously and reported himself as having returned. This was about 2:30 or after. Archer-Shee applied not less than half an hour later. He remembered him reporting himself as having returned; it was before 4 o'clock, as he left at that time. To his knowledge Arbuthnot and Archer-Shee were the only cadets who had leave to go to the post office on that day. He first heard of the loss from Cadet-Captain Butt, and he then sent for Cadet Back. After seeing Back he rang up the post office. He asked if a postal order had been cashed payable to Mr. Back. The answer was 'Wait and I'll see.' (Laughter.) Then the answer came, 'Yes, why, is there anything the matter?' He replied, 'Nothing much. Who was it cashed by?' The answer was, 'A cadet.' He asked how many cadets had been there, and he was told two; he then asked who cashed it, the first or the second, and was told that the second one had cashed it. He reported the matter to Cadet-Gunner

Gordon. He went to see the postmistress, and asked to see the order, but she said she could not give it to him. He probably had some conversation about the matter with her.

"In cross-examination by SIR EDWARD CARSON, the witness said he was quite certain the postmistress told him a cadet had cashed the order before he went to the post office. The postmistress was inaccurate in saying she had first spoken about a cadet the next day before Commander Cotton, and that she had not mentioned it to him (the witness). He did not ask the postmistress when he went to see her if a cadet had cashed the order; he knew it already. He would not like to say that she was telling an untruth.

"MR. JUSTICE PHILLIMORE (to Sir Edward Carson).—I think you are going to the very verge of what you may ask. Judges have again and again said that to ask a witness 'If A says so and so, is he telling a lie?' is most unwise.

"SIR EDWARD CARSON.—Your Lordship seriously rules that I cannot do so?

"MR. JUSTICE PHILLIMORE.—No, I do not do so.

"The witness said he could not say if Miss Barlow heard the conversation. He was not excited. Cadet Back was mistaken in saying he had mentioned Archer-Shee's name to him.

"SIR EDWARD CARSON.—Have you formed a very strong opinion about Archer-Shee?—Nothing whatever.

"Did you suggest that he had broken in to his own chest?—No.

"SIR EDWARD CARSON read notes of answers given by the witness to Mr. Elliott—It was not true that he had said, 'I can only think he broke into the chest himself.'

"Continuing, he said it might have been 2:20 when Arbuthnot reported himself. He had no means of fixing the time. It might be a minute or two to 3 or a minute or two after, or half-past 3 when Archer-Shee came.

"In re-examination, he said he had no feeling against Cadet Archer-Shee.

"The SOLICITOR-GENERAL.—What first suggested it to your mind that Archer-Shee had cashed the order?—When the postmistress said it was the second cadet.

"Mr. Russell Gordon said he was a gunner on the Cornwall, and had been cadet gunner at Osborne. He gave leave to Arbuthnot before 2 o'clock. Chief Petty Officer Paul reported the theft to him, and he ordered him to go to the post office. He did that rather than that he should use the telephone.

"In cross-examination, he said that Archer-Shee was quite the average cadet. He would not like to say that he was favourably im-

pressed by the boy's demeanour at the inquiry before Commander Cotton. He was very self-possessed.

"SIR EDWARD CARSON.—Why were you not favourably impressed?—It was my experience.

"MR. JUSTICE PHILLIMORE.—There was an undefinable something which, according to your experience, did not favourably impress you?—Yes. I cannot say I was unfavourably impressed.

"The cross-examination when the witness's evidence was taken on commission was read by MR. SCOTT. There had been losses under suspicious circumstances before this affair, and there were some half-dozen similar losses after Archer-Shee left. He had no reason whatever to suspect any of the cadets' servants. Great care was taken in their selection.

"Mr. R. D. Acland, K.C., examined by the SOLICITOR-GENERAL, said he was Recorder of the City of Oxford and Judge-Advocate of the Fleet. His duties were entirely those of a Judge, and he had also to advise the Admiralty on legal questions of naval discipline. He was not counsel to the Admiralty. He had held an inquiry at Osborne before he saw Cadet Archer-Shee in London.

"SIR EDWARD CARSON objected to evidence of anything that was done at any inquiry at which the boy was not represented. They had asked that he should be represented, and had been refused.

"MR. JUSTICE PHILLIMORE.—Mr. Acland may show that he went there unassisted by either side.

"The witness said he was sent down to form an independent opinion. He examined various witnesses in the presence of Mr. Cecil Owen, a solicitor to the Treasury, and Captain Christian. The witness proceeded to give details of what he had done.

"SIR EDWARD CARSON objected. All this was done behind their backs.

"MR. JUSTICE PHILLIMORE.—Once for all I may say that I do not take the view that this was done any more behind your back than behind that of the Crown.

"SIR EDWARD CARSON.—But that is nothing to me. The Crown is not being tried. But I will put it in anyway your Lordship likes, to raise my point, and say, in our absence.

"The objection was overruled on the ground that the evidence was directed to the point raised by the suppliant that there had been no inquiry.

"The witness detailed the proceedings before him in London. He had reported to the Admiralty.

"SIR EDWARD CARSON (cross-examining).—When you try a prisoner as Recorder you hear both sides?—Yes.

"Lieutenant Burrows, examined by MR. COHEN, said he was lieutenant of the Drake term. At the inquiry at Osborne Archer-Shee said he knew Back had had an order, but later on he corrected that. He had called all the boys in the dormitory together and caused them to write out certain sentences. He had first told them it was for the purpose of showing them to Mr. Acland, to whom he had handed them.

"MR. JUSTICE PHILLIMORE offered to let the suppliant have these documents for the purpose of submitting them to an expert, but SIR EDWARD CARSON said he did not see that they had anything to do with the case and refused.

"In cross-examination, the witness said that Archer-Shee had stood as high in his opinion as any other cadet. His demeanour throughout the inquiry was a great point in his favour.

"William Pritchard, a pensioner in the Marines, said he was a cadets' servant at Osborne. In October, 1908, he was servant in Mr. Archer-Shee's dormitory, Benbow, and was personal servant to Mr. Back. The first he heard of the loss of the postal order was when it was put before him at the inquiry after Mr. Archer-Shee had left. To his knowledge he did not go to the post office on October 7. He knew Cadet Startin, and had bought an order at the post office for him about a month before.

"In cross-examination by MR. SCOTT, the witness was shown a postal order for 2s. 6d., issued from Osborne on October 7. He had bought a postal order for 2s. 6d. for Mr. Startin about that time.

"In re-examination, he said he had never cashed an order at the post office. He did not cash the 5s. order.

"Alfred Mason, a cadets' servant in Benbow dormitory in October, 1908, was personal servant to Mr. Archer-Shee; he never heard anything about the theft, and did not know it was the reason for Mr. Archer-Shee's leaving. He had heard nothing of his till having been broken open. He knew nothing of the 5s. order.

"William Henry Hopgood, a cadets' servant in Benbow dormitory, said he cleaned the reading-room. He would put anything in a locker that the cadet-gunner found lying about, and he would close open lockers. He had never seen the postal order before the inquiry by Mr. Elliott. He had no occasion to go to the post office on October 7, and was sure he did not go. His mind was not directed to this until November 18.

"Henry King, in October, 1908, employed as bootman in the College, and still there, said he did not hear of the theft until after

Mr. Archer-Shee had gone. He did not take the order, and was not at the post office on that day.

"In cross-examination, Gunner Gordon, recalled, said that Hopgood had told him that he had gone to the post office on October 7 to purchase postal orders. There would be no physical difficulty to prevent anyone going into any of the dormitories.

"Commander Cotton, H.M.S. Terrible, examined by the SOLICITOR-GENERAL, said he was formerly in command at Osborne. He was informed of the loss of the order and that it had been cashed by a cadet, and that two had obtained leave to go to the post office. The witness then detailed the steps he had taken in the inquiry. Cadet Archer-Shee had told him that he had been to the post office at 3 o'clock, he thought he said, and that he had then gone to see the hockey match. He said he had seen no one from the College going to, returning from, or at the post office. He then showed him the 5s. order, and he said he had not cashed it. He then asked him to sign his signature, which he did, and then Back's. He signed T. H. Back and then Terence H. Back. The witness asked how he came to know his signature, and he replied that he and Back had been practicing writing each other's signatures a day or so before. Arbuthnot had told him he had seen a man coming out of the post office, a 'squint-eyed chap dressed like a cadets' servant.' The witness then sent for Back, who said he and Archer-Shee had not been practicing each other's signatures a day or two before.

"In reply to an objection by SIR EDWARD CARSON, the learned JUDGE said that they were practically trying two cases—an indictment for felony and an action for malicious prosecution—and this evidence was relevant to the second case.

"Continuing, the witness said that the postmistress had said she thought she might identify the cadet who cashed the order by his voice, because it was a 'soft voice.' He saw all the cadets' servants, but had only asked them where they were the day before. It was the practice at Osborne, when there was a serious inquiry, to keep it as quiet as possible and let as few know of it as possible. He had said to Archer-Shee that things looked black against him, and asked him if he was sure that he had not taken the order. He replied, 'I swear by Almighty God I am innocent.' He remembered that, because on a similar occasion a cadet had used the same expression.

"MR. JUSTICE PHILLIMORE.—You ought not to have said that.

"The witness said he had made a report to Captain Christian.

"SIR EDWARD CARSON asked to see that report.

"The SOLICITOR-GENERAL said it was a privileged document. He would not argue the point, but could not waive the privilege.

"MR. JUSTICE PHILLIMORE held it was admissible, because the respondents had raised the plea to which it was relevant.

"The report was then read.

"A discussion arose at the conclusion of the witness's evidence in chief as to days on which the case was to be taken again.

"SIR EDWARD CARSON said he did not suppose the SOLICITOR-GENERAL would claim the privilege of the Crown to have the last word with the jury. He had never known it claimed in a civil case, and he was a law officer for six years.

"MR. JUSTICE PHILLIMORE said he was sorry to say his experience was longer than that; he had known it so claimed, and gave instances.

"SIR EDWARD CARSON.—They are getting out of date.

"It was arranged that the SOLICITOR-GENERAL should have the last word, and that the Court should sit tomorrow and then on Monday, as the learned Judge had judicial business which prevented him taking the case on Saturday.

"The Court adjourned at 4:15 at SIR EDWARD CARSON'S request." [26]

Fourth Day

"It was arranged that the cross-examination of Commander Cotton should be postponed.

"Captain Christian, R.N., who said he was in 1908 the Captain at Osborne, examined by MR. AVORY, detailed the inquiries made by him at Osborne at the time. He had formed his opinion entirely apart from the question of handwriting.

"The SOLICITOR-GENERAL, at the conclusion of the examination of this witness, addressing the learned Judge, said that as to the issues of fact the Court and the jury would not be further troubled. He said now, on behalf of the Admiralty, as a result of the investigation which had taken place, that he accepted the declaration of Cadet George Archer-Shee that he did not write the name on the postal order, that he did not take it, and that he did not cash it; and that consequently he was innocent of the charge which had been brought against him. He made that statement without any reservation of any description, intending it to be a complete acceptance of the boy's statements. The other issues of fact which were before the Court for decision, arising out of the pleas set up by the Admiralty, raised questions of great public interest as to the discipline and administration of the College. His learned friend, Sir Edward Carson, with regard to these questions of fact, accepted the statements of the

26. Times, July 29, 1910, pp. 3 and 4.

Admiralty as to their action, and agreed that those responsible for all that had happened were acting under a reasonable and *bona fide* belief in the truth of the statements which had been made to them. This disposed of the issues of fact raised by paragraphs 5, 6, and 7 of the petition of right and the respondents' pleas. In justice to the post-mistress, Miss Tucker, upon whose evidence so much reliance had been placed, it was right to say that it had never been suggested that there was any want of *bona fides* on her part, and indeed the cross-examination of Sir Edward Carson had only been directed to show that she had been mistaken.

"SIR EDWARD CARSON said that the complete vindication of his son, George Archer-Shee, was the object of the suppliant in bringing this action. That object had been entirely achieved. That was the first issue of fact. With regard to the other two issues, he agreed that those responsible acted *bona fide,* and under a reasonable belief in the statements put before them. He also agreed with the Solicitor-General's observations as to Miss Tucker. He regretted that the whole action could not be disposed of, but he supposed that the points of law would have to stand over.

"MR. JUSTICE PHILLIMORE.—I shall not deal with anything more this side of the Long Vacation. (To the jury).—I am glad that we are all relieved from dealing with this difficult task, and that you will not have to sit on Bank Holiday. You are discharged.

"It was agreed that a juror should be withdrawn, no formal verdict being taken.

"At the conclusion of the case several members of the jury, together with members of the Bar and others, shook hands with the suppliant. His son was not present in Court." [27]

AFTER THE TRIAL

Immmediately following the end of the trial, the case became the subject of debate in the House of Commons, and severe criticism was voiced of the Admiralty's conduct throughout the whole proceeding. Thus Mr. W. Peel spoke as follows: "In the first place, they (the Admiralty) have put every obstacle in the way of the parents investigating it. They held an inquiry which was no inquiry at all. There was no proper evidence taken whatever, and they used all the resources of the Crown in every way to prevent this investigation taking place before the law courts. They used the Attorney-General and the Solicitor-General to take every technical plea to prevent the facts coming out before the public. When they have done that, what happens? The case

27. Times, July 30, 1910, p. 3.

at last, through the action of the Court of Appeal, goes to trial, and even when the facts are coming out at the trial they do not let the case be tried out. They do not dare to take the opinion of the jury and they were perfectly right, for I am confident of this, that the jury would have expressed itself extremely strongly on the case." [28]

The First Lord of the Admiralty (Mr. McKenna) in reply pointed out that while it had been established at the trial that Archer-Shee was innocent, it was also established that "the Admiralty authorities had acted with good faith and in a reasonable belief." With regard to the point of law he said: "A question has been raised which is of greater importance—that is, the pleading of the demurrer. My hon. and learned Friend the Solicitor-General (Sir Rufus Isaacs) is here. He will be able to answer this point, but I would remind the hon. Gentleman who raised the question that it does frequently happen that private rights have to be sacrificed for the public good, and I should not be justified in disclaiming on the part of the Admiralty all right of demurrer merely because there are circumstances in the use of the right of demurrer which operate hardly upon particular individuals. If we were not justified in using this legal plea, then the law ought to take it away from the Crown. It is not reasonable to suppose that Parliament when it left this right to the Crown at the same time contended that its use by the Crown was wholly unjustifiable upon every occasion when they exercised it." [29]

The Solicitor-General (Sir Rufus Isaacs) stated that he argued the demurrer because "he found it on the record." He added the following: "I argued the point because it appeared to me that if there was a demurrer it was my duty as a Law Officer of the Crown at the earliest moment to ask the court to determine whether or not such an action could be heard in the courts. I do not think there is any precedent, I know of none, and none has been quoted to me. Therefore, as a matter of public interest and also as a question of public policy, it was highly desirable that the court should pronounce upon it. Difficulties arose in the Court of Appeal as to whether certain documents could be inspected and also whether all the material was before the Court upon which the Court of Appeal felt justified in pronouncing a final decision of the matter. The Court expressed the view that it would be better to have the facts tried, and when it expressed that view, without arguing the case, I assented to it; and thereupon the case was sent back without the Court of Appeal pronouncing upon the demurrer—that is, without determining whether the judge who de-

28. 19 H. C. DEB. (5th ser. 1910) 2611.
29. *Id.* at 2612.

cided that no such action could be brought was right or wrong—and there the matter remains at the present moment." [30]

Mr. T. M. Healy, speaking in defense of the Admiralty, stated the following: "I venture to say that if the Solicitor-General had not had the good sense to take the course he has done, and if he had not been supported by the moderation of the First Lord of the Admiralty, that this young man might have gone for ever without justice. Supposing the Crown had pushed their point up to the House of Lords, is there any doubt whatever but that it would have been held that this young man had no means of getting redress?" [31]

Although the trial of the case was only on the facts and the decision on the point of law as to whether or not the petition of right would lie was postponed, this point was never subsequently raised or decided. Notwithstanding the fact that the suppliant secured redress by a petition of right in the Archer-Shee Case, subsequent decisions reaffirm the proposition that no relief will be granted to one who has been dismissed from either the civil or military service of the Crown. In *Hales v. The King,*[32] a clerk in the Admiralty brought a petition of right based upon his dismissal from service. The Court of Appeal held that a demurrer to the petition was properly sustained and cited *De Dohse v. The Queen* and *Dunn v. The Queen.* In *Leaman v. The King,*[33] it was held that a petition of right by a private soldier for breach of his contract of enlistment would not lie. The Court based its decision on *De Dohse v. The Queen, Mitchell v. The Queen,* and *Dunn v. The Queen.* The general proposition was also affirmed in *Denning v. The Secretary of State for India* [34] and *Kynaston v. Attorney-General.*[35]

In none of the cases cited above did the Court follow the action of the Court of Appeal in the Archer-Shee Case of postponing a ruling on the question of law and permitting a trial of the facts. In none of the cases is there any reference to the Archer-Shee Case, which stands alone in the history of petitions of right. An explanation may be found in the fact, that, unlike the other cases of petitions of right previously referred to, the suppliant, in this case, while asking for damages for breach of contract, was primarily seeking vindication of his son's honor.

When the case was under discussion in the House of Commons, immediately after the conclusion of the trial, the first speaker, Sir

30. *Id.* at 2616.
31. *Id.* at 2617.
32. 34 T. L. R. 589 (1918).
33. [1920] 3 K. B. 663.
34. 37 T. L. R. 138 (1920).
35. 49 T. L. R. 300 (1933).

Henry Craik said "I am quite sure the Admiralty will do all in their power to redress the very terrible and almost irreparable wrong done to the boy on such a wrong being brought to their knowledge." [36]

The First Lord of the Admiralty (Mr. McKenna) said "We are most glad of the vindication of the character of the boy",[37] but he said nothing about reparation. Nearly a year later (March 16, 1911) during a session of the House, Mr. Cave asked the First Lord of the Admiralty "whether any, and what, steps have been or will be taken by the Government to redress, so far as it is now possible, the wrong done to this young man and the pain and loss caused to his family by this unfounded accusation." [38] The First Lord of the Admiralty replied that the Admiralty had offered to pay the suppliant's costs, but that this offer had been declined, the suppliant demanding compensation of £10,000 in addition to the payment of all costs.[39] The First Lord added that his "own present opinion is that it will be held that it is not a case for compensation." [40] Several weeks later (April 6th) "for the purpose of calling attention to the Archer-Shee Case" Mr. Cave moved that the salary of the First Lord of the Admiralty be reduced by £100.[41] After an acrimonious debate the First Lord made "a most unqualified expression of regret for the pain and suffering to which both father and son have been subjected." [42] He also referred the question of compensation and costs to a committee consisting of Lord Mersey, Sir Edward Carson and Sir Rufus Isaacs (now Attorney-General).[43] In accordance with the report of this Committee the Treasury paid to Mr. Martin-Archer-Shee the sum of £7120 to cover the damages and costs.[43a]

It will be recalled that one of the notable features of the trial was the fact that the handwriting expert, Mr. Gurrin, on whose opinion the Admiralty had strongly relied in taking action against Archer-Shee, was not called as a witness. This was possibly due to the fact that it was considered unwise to subject him to cross-examination by Sir Edward Carson. At any rate, Sir Edward took occasion, on the day the trial ended, to express his views regarding testimony by handwriting experts in the following letter to the Editor of the Times:

"Sir,—In the brief discussion in the House of Commons last evening on 'The Cadet Case', Mr. McKenna is reported to have said, 'He hoped it would not be understood for a moment that in their

36. 19 H. C. DEB. (5th ser. 1910) 2608.
37. *Id.* at 2612.
38. 22 H. C. DEB. (5th ser. 1911) 2454.
39. *Ibid.*
40. *Id.* at 2455.
41. 23 H. C. DEB. (5th ser. 1911) 2440.
42. *Id.* at 2477.
43. *Id.* at 2482.
43a. Letter of Martin Archer-Shee to The Times, Aug. 1, 1911, p. 8.

(i. e., the Admiralty's) opinion Mr. Gurrin, who was well known as a skilled expert, had in the least suffered in reputation, because in many cases experts failed.' I certainly had hoped that the result of this case would help to put an end to the idea that any reliance whatever can be placed upon the opinion of so-called experts in handwriting. My own experience is that, however honest the so-called expert may be, no class of evidence is more likely to lead to a miscarriage of justice. I remember the late Lord Russell of Killowen once saying he entirely agreed with me when I declined to cross-examine an 'expert' on the ground that I knew of no way by which his opinion could be tested. I think it was Baron Fitzgerald, a great Judge, who said that the only 'experts' of handwriting were the 12 jurors who had to try the case. A leading Irish counsel of days gone by is reported to have once commenced his cross-examination of an 'expert' in handwriting by asking what seemed to be an immaterial question—'Where's the dog?' And when the witness asked, 'What dog?' the counsel said 'The dog which the Judge at the last assizes said he would not hang upon your evidence.' From an experience of 33 years I earnestly hope that this class of evidence may entirely drop out of use in our Courts as being fraught with the most dangerous probabilities. At the recent trial I was severely censured by the learned Judge for saying I would have some questions to ask Mr. Gurrin on his report. I shall remain under that censure with even greater equanimity than before if the result of this case were to do something to for ever discredit this class of evidence.
July 30.

Yours faithfully,
Edward Carson" [44]

Several days later Mr. Birch, a handwriting expert, replied as follows to Sir Edward's letter:

"To the Editor of the Times.

"Sir,—I have read in another newspaper an extract from *The Times* of a communication by Sir Edward Carson, K. C., reflecting adversely on the reliance that can be placed on experts in handwriting.

"May I be allowed, as the expert in handwriting of the longest standing—upwards of 40 years—to say it is highly probable that Sir Edward during his past forensic career must have often advised the legal representatives of his clients to obtain expert evidence of this nature, and that he will continue to do so when necessity arises, say, for example, in cases of a forged telegram, an anonymous libel, a blackmailing letter, a disputed signature, &c.? Experts in handwriting, like other people, do not claim to be infallible. Their usefulness consists

44. The Times, Aug. 1, 1910, p. 3.

in being able, from long experience, to point out similarities between admitted and disputed writings which would be passed over unnoticed by the inexperienced. Here their duties should begin and end; their opinion should neither be sought nor received; their observation of facts should command the most profound attention. In my opinion the expert should furnish counsel with interrogatories to be put to witnesses, or he might assist the Judge as an *amicus curiae,* but not be expected to give oral testimony. To read an expert's report without calling him to enable cross-examination to be made by the adversary appears to me, in my ignorance, to be a new departure. Notwithstanding the stated views of the late Lord Russell, that Judge, when counsel, did avail himself of my services occasionally as an expert in handwriting. It is, of course, unfortunate that the result of the recent case to which Sir Edward refers is at variance with the opinion of the one expert whom he mentions; and, on the lines of *ab uno disce omnes,* we are told that this result is 'to do something to discredit for ever this class of evidence'. For my part I think it is unlikely to do so, for the expert very often gives advice to a client which saves him from embarking on a hopeless case likely to prove expensive and disastrous.

"I am, Sir, yours truly,

Aug. 2.

W. De Gray Birch, LL.D." [45]

The following editorial in the Law Journal added to the discussion:

"THE EVIDENCE OF HANDWRITING EXPERTS

"In connection with the Osborne cadet case, the result of which is another instance of the supreme importance of the actions of public departments being subject, on proper occasions, to review by the Courts, Sir Edward Carson has made a powerful attack upon the testimony of experts in handwriting, going the length of suggesting that it should never be admitted. It is easy, of course, to ridicule the pretensions and achievements of some of these witnesses, and Sir Edward Carson is not the only distinguished member of the Bar who has revelled in the task. Here, for instance, is Lord Brampton's account, in his 'Reminiscences', of an encounter he once had with Mr. Nethercliffe, the most famous of all the experts in handwriting of his time:—

" 'When I rose to cross-examine I handed to the expert six slips of paper, each of which was written in a different kind of handwriting. Nethercliffe took out his large pair of spectacles, magnifiers, which he

45. The Times, Aug. 5, 1910, p. 6.

always carried. Then he began to polish them with a great deal of care, saying, as he performed the operation: "I see, Mr. Hawkins, what you are going to try to do. You want to put me in a hole." "I do, Mr. Nethercliffe, and if you are ready for the hole, tell me, were these six pieces of paper written by one hand about the same time?" He examined them carefully, and after a considerable time answered, "No. They were written at different times and by different hands." "By different persons, do you say?" "Yes, certainly." "Now, Mr. Nethercliffe, you are in the hole! I wrote them myself this morning at this desk." '

"To challenge the infallibility of the evidence of experts in handwriting is one thing; to propose, as Sir Edward Carson does, to exclude it altogether is quite another. There are forgery and other cases in which the trained observation of the expert may be of assistance to the judge and jury, and there would be little wisdom in making it a hard-and-fast rule that their evidence shall not be admissible. What is required is a change in the status of these witnesses. Their statements should be regarded as advice rather than as evidence, and no judge or jury should accept their statements without exercising an independent opinion. This is already the practice of nearly all our judges and magistrates, but there have been occasions in recent years on which the practice has not been followed so closely as it might have been." [46]

An ironical feature of young Archer-Shee's long delayed vindication was the fact that, when it came, he was too old to be reinstated in the Naval College. His career ended in the other branch of the service. The writer clearly remembers seeing, during the early fall of 1914, on the center page of an illustrated weekly the photograph of Lieutenant George Archer-Shee in military uniform, with the accompanying statement that he had been killed in action in France. He was then nineteen years old.

46. 45 L. J. 516 (1910). The testimony of handwriting experts was also criticized in The Spectator, Aug. 6, 1910, pp. 195, 196.