The Winning Move

Raymund Allen

AS GRANT passed along the hall of the Bull Hotel in the assize town where circuit business called him, a young woman rose from the corner and came towards him with quick steps.

"I beg your pardon, but I think you are Mr. Grant." She spoke with an educated, distinct voice,, and her manner betrayed a struggle between shyness and a certain eager anxiety. Her face struck Grant at once as beautiful, and there was a troubled appeal in her eyes that caught his attention.

"Yes, my name is Grant. Can I do anything for you?"

"Mr. Marlin tells me that you are going to defend my brother at the assizes. He is our solicitor."

"Mr. Marlin is coming to see me this evening about your brother's case, but I don't even know your brother's name."

"Robert Smaley is my brother's name," she replied. "Mr. Marlin will be able to tell you everything about the case, but I want you to know from the first that my brother is innocent, absolutely innocent."

There was a ring of passionate sincerity in her voice, and her eyes were fixed on his face with a steadfast gaze as though to compel him to recognise that she was speaking truth.

"What is the nature of the charge against your brother, Miss Smaley?" asked Grant.

"Embezzling a sum of sixty-three pounds," she replied. A deep flush of indignant shame spread over her face, and he could see that she was struggling to keep back tears as she turned away after thanking him for listening.

GRANT had been waiting some minutes in his sitting room when Jimmy Marlin entered. He was an old school friend of Grant's, and his most faithful client among solicitors.

"I understand you are briefing me to defend one Robert Smaley for embezzlement?" Grant remarked. "His sister buttonholed me as I came into the hotel. I hope we are going to call her, for if she makes half as good an impression upon the jury, as she did upon me she ought to get her brother off."

"Yes, we shall have to call her. In fact, I fancy the verdict will very largely depend upon whether or not the jury accepts her evidence.

"She and her brother live together in a tiny little house, and they have no other people that I know of. They have always been considered thoroughly respectable, and she is devoted to him.

"The defendant Smaley is charged with embezzling sixty-three pounds odd of the moneys of the Radical Institute, of which he is assistant secretary and treasurer. Smaley gets a small salary, does all the clerical work, keeps the accounts, and collects the members' subscriptions, and hands them over periodically to a man called Johnston, who is the honorary secretary and treasurer. Then there is a caretaker, a German called Fritz Rosenau, who is what people call 'a bit of a character.' He is general handy man about the place, not a bad gymnastic instructor, can cook a bit, mark a game of billiards, and is intelligent and apparently well educated. Well, now, Johnston had made an appointment to meet Smaley at the institute on the 27th of June, last month, in the morning, to audit his accounts and take over from him the funds he held. Smaley had mentioned a day or two before that he had about sixty pounds in hand. Johnston and Smaley arrived in company at the institute, and were let in by Fritz Rosenau, who is the only person left on the premises at night. Smaley used to keep his papers and do his secretarial work at a roll top desk in what was called the games room, which, when not in use, was generally kept locked.

"On this particular morning Johnston and Smaley found the door of the games room unlocked, the lower half of one of the windows was open, there was an unfinished game of chess left standing on one of the tables, two chairs were drawn up to the tabled there were cigarette ends lying on the floor by each chair, the roll top desk was open, and the cash box gone. Fritz was sent for, and declared that he had not been into this room since Smaley had handed him the key after locking the door at a little after nine o'clock on the previous evening. Smaley agreed that he had locked the door at about that time, and had given the key to Fritz, but he was certain that when he had left the room all the windows were fastened, that all the chairs were arranged in tidy rows. against the walls, and that none of the chess boards or men were left about. He was equally certain that he had left the cash box on the roll-top desk."

"So far," Grant interjected, "it looks more like a case against Fritz Rosenau."

''Johnston seems to have suspected both of them. He sent at once for the police detective, and with his permission Smaley telephoned for me to

come and watch the investigation on his behalf. I got there before the detective, and it occurred to me that I might possibly require your services later on, so, knowing your love of the minutiae of a case, I made a sketch plan of the games room, showing the position of all the furniture and everything I could think of, including the cigarette ends, and I jotted down on a diagram the position of the chess pieces. The room is on the ground floor, but the windows are barred. I ought to have mentioned, by the way, that the roll-top desk was set from nine to ten feet away from the open window When the detective came he made a search, but found nothing incriminating. Then he proposed to search Smaley's private house. Smaley seemed rather taken aback at the suggestion, but it would have looked suspicious for him to refuse, and he and I went with Johnston and the detective. In a cupboard in the sitting room there was a cash box precisely similar to the one in Smaley's possession at the institute, and inside it fifty pounds in gold in a bag and some odd shillings loose. There is the further circumstance that Smaley was hard up at the time, and the prosecution have a letter of his to his landlord asking for time for the payment of his rent. That is the case for the prosecution."

"And a nasty, awkward case to meet, too," Grant muttered. "But what has Smaley himself got to say?"

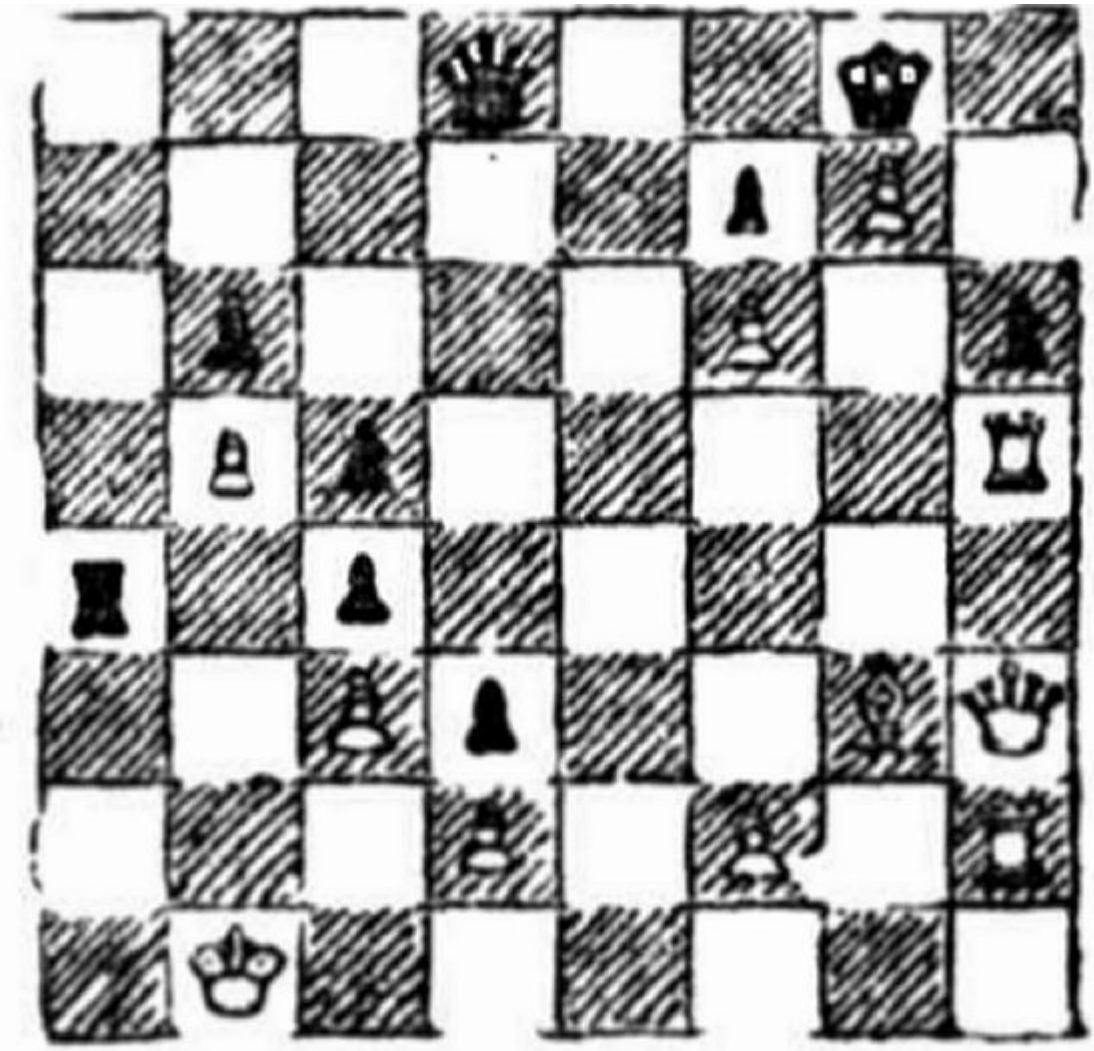
"He says that the cash box found at his house was one of two that he bought at the same time, one for his own use and one for the purposes of the institute. As to the fifty pounds, the account is this. Miss Smaley had been employed until lately as an assistant at the public library, and while there she had been persecuted by the persistent attentions of a man who, it seemed, had conceived a sort of crazy passion for her. She always refused to let him talk to her, and she doesn't even know his name, but shortly after she had given up the library a parcel containing fifty pounds in gold was left at the Smaleys' house. There was nothing inside to indicate from whom it came except a bit of card, on which were the printed words, *'From a devoted admirer*.' Miss Smaley will swear to all this part of the story, and she says that the money was put away in the cash box for safety until there should come an opportunity of returning it. Smaley's suggestion, made in answer to cross-examination in the police court, was that two members of the institute must have come in to play a game of chess between the time when he left and eleven o'clock, when the place

would ordinarily be closed, and that one or both must have committed the theft."

"The suggestion of the prosecution," Grant observed, "will, of course, be that Smaley himself disarranged the furniture and set out the chess and so-on in order to have a plausible theory all ready in case he should be accused.

"Yes, that was put to him point blank in the police court. When Marlin had gone Grant took up the brief and read it carefully through. The vision of Miss Smaley's earnest, tearful eyes had pricked his conscience to a more than usually acute appreciation of counsel's obligation towards the prisoner he defends. He filled two pipes, and, with Marlin's sketch plan of the games room in front of him, settled down to think out the possibilities of the case.

Grant was himself a keen chess player, and it occurred to him that the actual position of the pieces, as recorded by Marlin, might possibly throw some light upon the matter. The chance was rather slender, but made it just worth while to get out the little folding chess board that was his inseparable travelling companion. He had the rather bad habit, not uncommon among chess players, of talking to himself while studying a position, and an unseen auditor, had there been one, might have overheard something like the following soliloquy, punctuated by reflective puffs of smoke from his pipe:



"White is a rook and bishop up, and has an overwhelming attack. Black ought to have resigned at this point, whether he did or not. If it is White's move he simply takes the pawn, and Black can only delay mate for a move or two by some useless checks. Hold on, though; wait a bit. If White takes the pawn Black escapes with a stalemate— by a stalemate or else perpetual check, which comes to the same. Well, then, White mustn't take the pawn. He is two clear pieces ahead, and needn't be in any hurry."

He had become interested in the position for its own sake, and for the moment almost forgot that it formed part of the brief for the defence of a man charged with a serious crime. It looked as though White must be able to win without any difficulty, but whatever move he tried seemed always to lead to that baffling alternative of stalemate. Or, perpetual check. He tried one move after another, only to find himself led always to the same

futile drawn game. Suddenly he sprang from his chair and paced about the room in the excitement of a sudden illumination.

"That might just be us! Thank God for a judge who plays chess and has a logical mind! Only, does the position give me the foundation for the argument?"

He sat down again, and with his hands to his head concentrated all his mind on the chess board. The more difficult it was to find a move that would win the game for White, the more certain he felt that such a move was there, and the more determined he grew to find it. It was twenty, minutes past two when at last 'he threw himself back in his chair with a cry of triumph.

"Very neat, very subtle," he said aloud, as he stood on the hearthrug stretching his cramped limbs. "The rottenest-looking move on the board, but the only one to win, and leading up to three distinct sacrifices of the queen. Properly handled, it ought to win for Smaley, too, and his sister with the fine eyes."

"That is the case for the Crown, my lord," and Meggitt-Hartley sat down.

"I call the prisoner," Grant said, and a warder opened the door of the dock for Smaley to pass out to the witness box. He did not make an impressive witness. He fidgeted with his hands, pulled nervously at his moustache, and had to be told more than once to keep his voice up, so that the jury might hear what he was saying. He looked still more uncomfortable when Meggitt-Hartley began to cross-examine in a loud and aggressive voice.

"Now, I am not going to beat about the bush. I am going to put it to you quite straight. Wasn't it you who disarranged the furniture of the games room and set out the chess board and the rest, and didn't you do it for the express purpose of making it appear as though someone else had been in that room after you left? You won't accept that? Very good. Now, will you kindly tell my lord and the jury who you suggest did do all this?"

"I suggest that most probably two members of the institute came in to play chess, and that one of them committed the crime which you are trying to fasten upon me."

Grant smiled as he hastily took down the last. answer in 'his note book before he rose to re-examine. He did this very shortly, and then called Dorothea Smaley.

Her hand trembled as she took the book to be sworn, but she answered every question without the least hesitation or fencing, and if there was a slight quaver in her voice, it only enhanced the effect of perfect frankness. The cross-examination. was superficial and almost apologetic in tone.. Meggitt-Hartley knew his business better than to attempt to bully a dignified and beautiful woman when half the jury were leaning forward in their seats to observe her more closely.

The judge glanced up at the clock.

"Have you many more witnesses, Mr. Grant? I should like to finish this case to-day, if possible: but if not I propose to rise shortly after 5 o'clock."

"I have only two more witnesses, both very short, my lord. James Marlin!

"Were you in the games room of the Radical Institute about nine-twenty on the morning of 27th June last?"

"Yes."

"Was there a chess board on one of the tables, with chessmen standing upon it?"

"Yes."

"Did you make a note at the time of the position of the chessmen on the board?"

"Yes." Grant passed up to the witness a pencil diagram. "Is that the note. you made?"

"Yes."

"I put that in, my lord."

Meggitt-Hartley had been too much puzzled to know what Grant could be driving at to think of objecting to the leading form. of his questions, and the judge, looking inquiringly at Grant, addressed him in a tone of silken suavity.

"I am sure, Mr. Grant, you would not have called this evidence unless you had some entirely adequate purpose to subserve in so doing, but I confess for the moment I am greatly puzzled to divine what possible bearing it can have upon the case."

"I think, my lord, the next witness will make the matter quite clear to your lordship. Mr. Whiterill!

"I think it may assist your lordship," he continued, as the witness went into the box, "if I may be allowed to hand up this chess board on which the

pieces are arranged according to the diagram produced by the last witness."

There was a moment of quite dramatic suspense as Grant rose to examine his witness. "Is your name James Whiterill? Are you the chess champion of England, and have. you won prizes in a large number of international tournaments?"

"I am sure," the judge interposed, "that we shall all accept Mr. Whiterill's name as a sufficient guarantee of authority upon the particular branch of knowledge in which he has attained to such eminence."

"Now, Mr. Whiterill, speaking as one of the greatest living authorities upon the game of chess, will you tell us whether or not in your opinion the position set up on that board could have been arrived at in the course of an actually played game of chess?"

"No, it certainly could not."

"Can you tell us how it is that you can say that so confidently?"

"Because the position is clearly an elaborately constructed chess puzzle. There is only one first move by which White can win, and afterwards White must sacrifice the queen in three different ways, according to the moves played by Black. The position is undoubtedly artificial, and could not have occurred in actual play."

The judge interposed again. "I should like you to show me the moves on the chess board, Mr. Whiterill."

He rose, and stood beside the witness box, with the chess board on the ledge. After a low-voiced colloquy with the great chess player, he resumed his seat upon the bench.

"I quite understand the technical aspect of this evidence now, Mr. Grant; and I think I can anticipate the point you propose to make upon it with the jury."

When Grant rose to address the jury in behalf of the defendant he saw that the jury had settled down to serious attention."

"The theory of the prosecution is this, that the chessboard and the two chairs drawn up to the table and the cigarette ends on the floor were all part of an elaborately arranged sham on the part of the prisoner, designed to divert suspicion .from himself and make it possible for him to take this money with impunity. Now I say that that theory of the prosecution breaks down utterly, and I will tell you why— because the prisoner never did set up those chessmen on that board. I say that Smaley cannot be the person

who arranged those pieces, because his own theory of how they came there is clearly founded on a mistake. I daresay some of you gentlemen are chess players and can see it for yourselves, but, at any rate, we have got it now upon the authority of Mr. Whiterill, the chess champion of England, that the position of the pieces on that chess board is an elaborately constructed puzzle, and quite certainly is not part of a game actually played by two real players. Now, what is the suggestion of Smaley? Just let me read you one of his answers to my learned friend:— 'I suggest that most probably two members of the institute came in to play chess; and that one of them committed the crime which you are trying to fasten upon me.'

"That suggestion of the prisoner is founded on what we now know to be an entirely erroneous assumption. If the theory of the prosecution were true, Smaley must have deliberately dug a pitfall in front of his own feet and then walked into it with his eyes wide open. I ask you to follow. this rather closely, gentlemen, because I think you must see (and I venture to think that his lordship will tell you) that it does really knock the bottom out of the case for the prosecution. According to the theory of the prosecution, the whole point of Smaley's plot from the outset was that in case he should be accused he should be able to say, 'This crime must have been committed by one or other of two people who had been playing chess. Here are their two' chairs and their cigarette ends, and here's their game as they left it.' And that being the defence which, according to the prosecution, he must, so to speak, have had up his sleeve the whole time, he sets up, not a game of chess, but an elaborate problem. Either he would have set up a chess problem and suggested that someone had been in that games room studying a problem, or he would have set up a game and suggested that there had been two players; but to set up a problem in order td support the idea that a game had been played would be an act of gratuitous folly, an act simply inconceivable on the part of a. man who had the ingenuity to devise such a plot as the one the prosecution attribute to my client. No, gentlemen, I suggest to you that the prosecution have found a mare's nest, that the prisoner never invented any plot at all, that the hand that stole the cash box was the same hand that set up the chessmen, and that, whoever's hand that may have been, it was not that of the prisoner."

Grant passed on to a review of the other facts, and then worked up through the subject of the fifty pounds and the sister's evidence towards a peroration. As he turned his head for an instant towards the part of the court where Miss Smaley was sitting he saw her fine face, pale and set with suspense, following intently his speech to the jury, with her lustrous, troubled eyes fixed upon his face. He turned round again to the jury with a throb of excitement and let himself go. For some palpitating minutes he held his whole audience in the grip of real oratory, and then sank back in his seat with a flushed face. It needed a sharp tug at this gown to call his attention to a little note that had been tossed up to him from the reporters' table; a moment later he was on his feet again.

"My lord, I have this moment received a communication which I think I ought at once to pass on to your lordship."

The little scrap of paper was handed up to the judge, who turned towards the reporters' table when he had read it.

"I should like the gentleman who wrote this note to step forward. Come into the witness box, sir.

"Mr. Grant, I shall call this witness myself, and I shall allow the learned counsel on both sides to cross-examine if necessary."

An alert-eyed little man stepped briskly into the box. He was a reporter on the *Daily Despatch*, the leading local newspaper, and he produced a proof of the chess column that was to appear on the following Saturday.

At the top of the column was printed a chess diagram, showing the identical position that had been produced by Marlin. It was headed "End Game by Vaterland," and underneath, "White to play and win."

"Can you tell us the real name of the contributor who writes under this pseudonym?" the judge asked.

"No, my lord, but I could find out by sending to the office."

"Please get the information as quickly as possible. And now let the witness Rosenau come back into the box."

But the witness was not in court. His name was passed from constable to constable till the corridors outside reverberated with shouts of "Fritz Rosenau."

"Mr lord," reported the superintendent of police, "I am informed that the witness was seen to leave the court in a great hurry about an hour ago. The police have telephoned to the Radical Institute, but he has not returned there."

The judge turned to the jury.

"I am afraid, gentlemen, this case will have to be adjourned until to-morrow, in order that further inquiries may be made and the attendance of Fritz Rosenau obtained if possible. Of course, gentlemen, if you should have already concluded upon the evidence that you have heard that it would not be safe to convict the prisoner, it would be competent for you to say now that the prisoner is not guilty. It is a matter entirely for you."

There was a short consultation among the jurors, and then the foreman, with a face singularly devoid of intelligence, rose and said, "My lord, we are all agreed that the guilty party is the German, Rosenau."

The judge smiled a little sarcastic, smile.

"I am afraid, gentlemen, it is hardly within your province to return a verdict against a person who so far has not even been charged with any offence. Your verdict, however, as regards the prisoner whom you, have got in charge amounts to one of 'Not guilty.' The prisoner may be discharged."

The buzz of approval that rose in court was broken by a cry of relief going off into hysterical laughter, as Miss Smaley slid from her seat and fell with a thud to the floor in a dead faint.

IT WAS at the next assizes, about four months later, that Grant again found himself sitting in the same court, when a warder leant over the edge of the dock to touch his shoulder and hand him a little envelope. From its weight and metallic clink Grant recognised at once the guinea of a "docker" who desired his services for the defence.

He looked at the name on the envelope, "R. v. Fritz Rosenau."

"Good lord," he ejaculated, and then made his way to one of the cells below. Here he had his interview with the prisoner, while a constable stood motionless but watchful, outside the open door.

"I understand you want me to defend you?"

"Yes, I want you to defend me." the man replied, with a guttural German accent. "I asked for you because I knew from the last trial that you play chess, and would understand how I came to do it."

"How you came to do it?" Grant exclaimed. "Do you mean that you are going to plead guilty and want me to say something for you in mitigation of sentence?"

"Ach, no! I am not guilty. I mean how I came to set up the chessboard."

"Well, if you have a defence you had better tell me as shortly as you can what it is."

"I will tell you how it happened. I have known the chess all my life. I care not so much to play with another; I like better to make problems. One day I think I send a problem to the paper here, the *Weekly Despatch*, and I put it in the post. That night I lie in my bed in the dark, and I see the chess pieces move in my head. Suddenly I think I see that I have made a mistake. that my problem is all wrong. I cannot sleep. At last I can bear it no more. At three o'clock in the morning I get up and go to the games room to look at it on a board. The room is close, stuffy. I open the window. I stare long time at the board. I smoke cigarettes."

"Why were there two chairs drawn up to the table?" Grant asked, sharply.

"*Ach, ja* ! that is quite simple. I sit down at one side of the table. I find the light not good. I am in my own shadow. I change to the other side of the table, and I take a fresh chair because it is less trouble than to carry the other one round. I finish my cigarettes, but I must smoke. I go to my bedroom to get some more. I am away three, five minutes. When I come back the *verdammte* cash box is gone. I had seen it when I went into the room, but only with half my mind. I was too excited about my problem. I rush to a window to look down the street. It is daylight, but there is nobody there. I go all over the building. There is nobody there. Then I think, 'Fritz, you are only a fool, but the police will say you are a thief, and you will go to prison.' Then I wonder who can have taken the box, and how he can have got in. Then I say to myself, 'It is that Smaley; he have some way of getting in that I know not, and he think to put the blame on me, the common dog, but how can I prove it?' Then I think I had better leave the room just as it is, and the police will think there has been someone else, I never think that anyone will pay any attention to the position of the pieces; it never entered my mind. I will just tell the police I was never in the room at all. I just close the door again, and I go back to bed. And the problem was all right after all," he concluded.

"I am afraid it will be very much against you that you didn't tell the truth about' being the in the room that night, and you ran away, you know. Why did you do that?"

"I ran away when I found Mr. Marlin had copied down my problem, and I knew it would come out in the *Weekly Despatch*."

"Well, I will get you off if I can, but I must got back to court now."

As Grant went up the steps from the cells a sudden inspiration flashed upon his

"By Jove, what, a dullard I am Sherlock Holmes would have got there in five minutes. Sherlock Holmes ! I don't believe Watson himself could have missed it. However, better four months late than never."

He hurried back into court, and at the first convenient pause, rose to make an application.

"Will your lordship allow me to mention the case of Fritz Rosenau? It is-number ten in your lordship's calendar. I have just been instructed for the prisoner, and I think it is important in his interest that the police should make certain inquiries. My application is that the case should not be taken to-day."

"Very well, Mr. Grant, I will take it first to-morrow morning, subject to any part heard case."'

THE NEXT morning Grant was in court, with Meggitt-Hartley, who was again for the prosecution, sitting next to him.

"I think we have got hold of the right man this time," Meggittt-Hartley remarked.

"The odd thing is that you are prosecuting the wrong man again,'' Grant replied. "I'll-bet you my docker's guinea to a threepenny bit you don't get a conviction."

"Then you must have faked up an even bigger surprise than you did at Smaley's trial."

"I have," Grant answered. "You wait."

Meggitt-Hartley began to think that Grant had been merely "rotting" him as witness after witness left the box without any cross-examination from Grant, and when the prisoner gave his account he felt certain the jury did not believe a word of his defence.

"Mary Sullivan!"

A little wizened Irish woman, dressed in black, went into the box in obedience to Grant's call. She looked a depressing, scared little figure, but she gave her evidence with the volubility and the accent of her race. She lived at 97 Potter-street, and was the widow of Timothy Sullivan, who had died only a few weeks before.

"Will you look at that cash box, Mrs. Sullivan?" Grant said, as, at a sign from him, a constable placed, one on the ledge of the witness box.

"Had that cash box been in your husband's possession for some time before his death?"

"Yes, me lord."

"Did your husband ever tell you how he came into possession of that cash box?"

"I object, my lord," Meggitt-Hartley cried, before the witness could answer. "How can a statement by this good lady's husband be evidence?"

"What do you say to that, Mr. Grant?" the judge asked. "Isn't it mere hearsay, and, therefore, inadmissible?"

"The statement of the deceased husband, my lord, may tend to show that he had no title to property which was in his possession, and, if so, that would be a declaration against interest, and the declarant having deceased, the statement would be admissible on the authority of Higham v. Ridgway."

The judge considered for a few moments.

"Yes, Mr. Grant, I think you are entitled to get the answer of the witness, but it will depend upon the tenor of that answer whether or not it is admissible, and I may have to tell the jury to disregard it."

"If your lordship pleases. Now, Mrs. Sullivan, will you tell my lord and the jury what your husband told you as to the manner in which he became possessed of that cash box? "

"Me lorrd, me husband was a lamplighter, and he stole it out of the institute with a long pole that he used to put the light wid the money."
