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Murder Piracy and Treason: A Selection of Notable English Trials, by Raymond Postgate

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NOTICES

(These Notices are preliminary; they do not preclude *Reviews* later.)

Murder, Piracy and Treason; A Selection of Notable English Trials, by Raymond Postgate. Houghton, Mifflin Co.: London. Pages 254. 1927. Price \$2.50.

Perhaps this little book is an appropriate companion to the detective stories in the magazines and the "thrillers" that are constantly produced at the cinema houses. It would seem that life is hard enough without too much emphasis on horror and crime. These matters however have a fascination for the public and they must be considered by lawyers in their work for the improvement of the administration of justice. It may be said at once that this book contains more than trials involving murder, piracy and treason. For instance, it contains a very interesting description of a trial by combat which was held in 1380 in the presence of the young King Richard II. There is also a description of a trial of a dead man for heresy together with an account of trials for witchcraft and cases that involved the punishing of the jury when it refused to find the verdict that complied with the wishes of the judge and the Crown officers. These accounts are highly readable and informative as a matter of legal procedure. Nearly all of the cases illustrate how extremely limited were the functions of the jury under the early English law as compared with the jury's powers in this country under present practice. It is interesting to note how the judges harassed and browbeat the jury in the early trials and how certain lawyers stood up manfully to criticize those judges in open court. Those judges were the personal appointees of the King and hence it was considered that to criticize them might be *lese majeste*. When we remember further that they had far greater powers than any judges have now, it is the more surprising to note this independence of counsel and the absence of any punishment for contempt of court.

The account of trials for witchcraft is particularly interesting. Although some of the evidence that was admitted would now be considered highly prejudiced, it seems that the amount of carefully weighed evidence in support of witchcraft was very great. Moreover there was thought to be ample authority in the Bible for witchcraft and the common law at that time recognized witchcraft and provided for its punishment. It seems that

the profession of the law asserted the actuality of witchcraft and this opinion was supported by popular belief. The remarkable thing, however, is that it was the common sense of the layman that made the first inroads upon punishment for witchcraft, rather than the boasted logic and learning of the legal profession. Perhaps a parallel instance of professional error is found in the judicial use of torture. (See *The Judicial Use of Torture*, by A. Lawrence Lowell, 11 Harv. Law. Rev. 230, 290.) This refinement of base and revolting cruelty was insisted upon by the legal profession in a conscientious spirit with ample rules to utilize its supposedly expert value in legal proceedings. Thus it was retained on the continent in courts of law through the professional tradition of the lawyers at a time when it was generally disapproved by enlightened laymen.

It is well known to candid men that while the learned professions are adapted to many special services they nevertheless are in danger of harboring extraordinary errors unless they forsake their isolated point of view and use the knowledge that has been obtained in other fields. Thus Sir William Erle has emphasized the serious offenses which the law has committed in the conscientious application of its traditional methods. Dr. Oliver Wendell Holmes and Dr. Richard C. Cabot have pointed out like errors in the medical profession. It seems, however, that particular instances of serious errors by professional men and recognition of these errors by some of the most eminent of these men is not enough to work their elimination. Perhaps our only hope lies in a consecrated and humble attitude on behalf of all the members of the learned professions in the exercise of their callings.

It is easy for us to see and condemn errors in our profession that have occurred in the distant past because we now have sufficient orientation to consider them without prejudice. Perhaps it is not so easy for us to see the abominations that obtain in the practice of the law today.

“Oh wad some power the giftie gie us
To see oursel's as others see us!
It wad frae monie a blunder free us,
And foolish notion.”