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**Can you “with safe conscience” say that these women are guilty?
Adelaide Bartlett, Florence Maybrick and the reparation
of judicial errors on the threshold of the twentieth century**

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ABSTRACT: This article examines two notable British trials which took place in the late Victorian period: the case of Adelaide Blanche Bartlett (1886) and the trial of Florence Elizabeth Maybrick (1889). Both Adelaide and Florence were accused of having committed the murder of their own husbands by administering poison. The comparison between these two *causes célèbres* focuses on the role performed by three main protagonists of the judicial scene: the defence counsel, the judge and the jury. The trial of Florence Maybrick opens the door to a further comparison between the English judiciary system and the rules enacted by other countries regarding the reparation of judicial errors and the methods of review in criminal cases. As we will see in the second part of the article, on the threshold of the twentieth century, the necessity for criminal appeal was the subject of a passionate debate between traditional rules and innovative reforms.

KEY WORDS: Victorian era, British trials, female poisoners, jurors and judges, judicial errors, court of criminal appeal.

1. *Introduction*

An essential milestone in the history of the English courts of justice is represented by the Judicature Acts passed in 1873 and 1875. As well known, the reform put an end to the separation between the courts of common law and those of equity by creating the Supreme Court of Judicature consisting in the High Court of Justice and the Court of Appeal¹. The following year, the Appellate Judicature Act regulated the role of the House of Lords as the highest court of appeal in the country². Despite this radical reform, some important issues – primarily the right of appeal against criminal convictions – would continue to be the subject of debate until the beginning of the twentieth century.

While these epochal changes were being discussed in Parliament, in everyday life dozens of jurors were called to decide upon the innocence or guilt of suspect individuals tried before the English courts of justice³. Actually, at the time, jury trials were on the decline due to several less than efficient traits, which had their roots in the previous century. The reforms and changes introduced between the eighteenth and the early nineteenth century – in particular the fundamental role demanded to the defence counsel and the development of the adversary model⁴ – had made the trial by jury cumbersome and time-consuming: as a result, the system was no longer able to cope with the new demands of justice in criminal cases. Alternative solutions were therefore assessed and implemented, with special reference to summary trials which were conducted by a judge without the presence of the jurors⁵.

¹ For an investigation into this sweeping reform: P. Polden, *Mingling the Waters. Personalities, Politics and the Making of the Supreme Court of Judicature*, in «Cambridge Law Journal», vol. 61, no. 3 (2002), p. 575-611.

² On this matter: L. Blom-Cooper - B. Dickson - G. Drewry (eds), *The Judicial House of Lords 1876-2009*, Oxford 2009.

³ Essential references on the English jury system from the Middle Ages to the modern period are T. A. Green, *Verdict According to Conscience. Perspectives on the English Criminal Trial Jury 1200-1800*, Chicago and London 1985; J. S. Cockburn - T. A. Green (eds), *Twelve Good Men and True. The Criminal Trial Jury in England, 1200-1800*, Princeton 1988; J. M. Beattie, *Crime and the Courts in England, 1660-1800*, Oxford 1986, p. 267-449. With particular attention to the English jury system in the late eighteenth century: J. H. Langbein, *The English Criminal Trial Jury on the Eve of the French Revolution*, in A. Padoa Schioppa (ed), *The Trial Jury in England, France, Germany 1700-1900*, Berlin 1987, p. 13-40. For an investigation into the nineteenth century: D. Bentley, *English Criminal Justice in the Nineteenth Century*, London - Rio Grande 1998, p. 89-97.

⁴ On this matter we need to refer to J. H. Langbein, *The Origins of Adversary Criminal Trial*, Oxford 2003.

⁵ See C. Hanly, *Summary Jurisdiction and the Decline of Criminal Jury Trial in Victorian England*, in

Although «the standard dispositive mechanism»⁶ was gradually losing its central importance, in this very period the most discussed and controversial cases became the subject of considerable attention from the public, who crowded into the courtrooms or read the developments of the proceeding in the newspapers⁷. The reports of these famous cases were published into two series of books, *Notable Scottish Trials* and *Notable English Trials* respectively, which finally merged into a unique series called *Notable British Trials*. Step by step, the reader could go through the whole proceeding, from the opening speech of the Attorney General to the deliberation of the verdict by the jurors and the subsequent sentence delivered by the judge in the event that the prisoner had been found guilty of the charge. The reports could be preceded by a preface in which the authors provided useful details to better frame the issue before the court, or give other information about the development of the story after the conclusion of the trial. This series includes famous cases destined to become *causes célèbres*, such as the Burke and Hare murders, committed in Edinburgh between 1827 and 1828⁸, and the trial of Franz Müller at the Old Bailey in 1864⁹.

In this broad and varied field of research, this article aims at examining two British trials which took place in the late nineteenth century: the case of Adelaide Blanche Bartlett – also known as the Pimlico Mystery – held at the Central Criminal Court in April 1886 and the trial of Florence Elizabeth Maybrick at the Liverpool Summer Assizes from 31 July to 7 August 1889¹⁰. Both these

«The Journal of Legal History», vol. 42, no. 3 (2021), p. 278-303.

⁶ Ivi, p. 278.

⁷ As written by Lindsay Farmer a few years ago, «no historian of the criminal law in the 19th century can fail to be struck by the sheer scale of popular interest and involvement in criminal justice throughout the period». L. Farmer, *With all the Impressiveness and Substantial Value of Truth'. Notable Trials and Criminal Justice, 1750-1930*, in «Law and Humanities», 1 (2007), p. 58.

⁸ The Burke and Hare murders (also known as the West Port murders) were a series of murders committed in the West Port of Edinburgh between 1827 and 1828. The trial took place before the High Court of Justiciary in Edinburgh in 1828: in the exchange for immunity, William Hare testified against William Burke, who was then found guilty and sentenced to death by hanging. W. Roughead, *Burke and Hare*, Edinburgh and London 1921.

⁹ Franz Müller was charged with the murder of Thomas Briggs on the North London Railway in July 1864. A few months later, Müller was found guilty of the charge and sentenced to death: the public execution took place on 14 November 1864 before a crowd of people. H. B. Irving, *Trial of Franz Muller*, Glasgow and Edinburgh 1911.

¹⁰ These crimes inspired many American and English writers. On the Pimlico case see: Y. Bridges, *Poison and Adelaide Bartlett: the Pimlico poisoning case*, London 1970 and K. Clarke, *The Pimlico murder: the strange case of Adelaide Bartlett*, London 1990. On the Maybrick case: B. Ryan, *The Poisoned Life of Mrs Maybrick*, Harmondsworth 1989; J. Emsley, *The Elements of Murder: A History of Poison*, Oxford 2006; V. Blake, *Mrs Maybrick*, Kew 2008; C. Jones, *The Maybrick A to Z*, Birkenhead 2008; K. Colquhoun, *Did she kill him? A Victorian tale of deception, adultery and*

women were charged with the wilful murder of their husbands; in both cases the allegedly cause of death was a poisonous substance: liquid chloroform in the former, arsenic in the latter¹¹.

These trials will be investigated by different perspectives. First of all, we need to consider the gender approach¹²: as we will see, the behaviour of the women towards their own husbands assumed decisive importance during the trials, albeit in quite opposite directions. Their conduct as wives, in fact, was the subject of careful consideration and had relevant repercussions on the final deliberation issued by the jurors in favour or against the women. At that time, the female condition in English society had slightly improved compared to early nineteenth century¹³. A clear demonstration of the new sensitivity is given by the Divorce Act of 1857: although gender equality was far to come, the law represented a step forward in women's rights¹⁴. Under the Divorce Act, the only way to get a divorce was adultery, which operated differently for men and women¹⁵. The differential treatment was based on the idea that the act of infidelity perpetrated by the woman could raise questions about the legitimacy of offspring¹⁶. In the social perception, the adultery committed by the husband

arsenic, London 2014. On both cases see also M. S. Hartman, *Victorian Murderesses. A True History of Thirteen Respectable French and English Women Accused of Unspeakable Crimes*, II ed., New York 2014, p. 174-254.

¹¹ The use of poison in English criminal cases between 1750 and 1914 has been studied by K. Watson, *Poisoned Lives. English Poisoners and their Victims*, London 2004.

¹² The relation between women and crime from the Middle Ages to contemporary era has been the subject of an increasing attention in the last few years. The most recent publications on this matter include: A. Schmidt, *Prosecuting Women. A Comparative Perspective on Crime and Gender Before the Dutch Criminal Courts, c. 1600-1810*, Leiden 2020; M. van der Heijden - M. Pluskota - S. Muurling (eds), *Women's Criminality in Europe 1600-1914*, Cambridge 2020; V. M. Nagy, *Homicide in Victoria: Female Perpetrators of Murder and Manslaughter, 1860 to 1920*, in «The Journal of Interdisciplinary History», vol. 51, no. 3 (2020), pp 405-428; E. Farrell, *Women, Crime and Punishment in Ireland: Life in the Nineteenth-Century Convict Prison*, Cambridge 2020; S. Muurling, *Everyday Crime, Criminal Justice and Gender in Early Modern Bologna*, Leiden 2021; P. Hepner - M. Valdher (eds), *La femme devant ses juges de la fin du Moyen Âge au XXe siècle*, Arras 2021.

¹³ For an investigation on this topic see K. Gleadle, *British Women in the Nineteenth Century*, Basingstoke 2001.

¹⁴ An essential reference on this matter is D. Freda, *In Parlamento come in tribunale: il divorzio per via parlamentare nell'Inghilterra del Settecento*, in «Historia et Ius», 10 (2016), paper 6.

¹⁵ Ivi, p. 21.

¹⁶ *Disparitas adulterii* was a common feature in nineteenth century society. Outside England, the main reference was the Napoleonic Civil Code in which the unequal treatment in the regulation of adultery was explicitly established (see art. 229 and 230). For further details: S. Solimano, *Amori in causa. Strategie matrimoniali nel Regno d'Italia Napoleonico (1806-1814)*, Torino

was generally viewed «with toleration», whereas the infidelity of the woman was considered a «dreadful injury» to the marriage. As we are going to see by analysing the case of Florence Elizabeth Maybrick, in the event that the husband had died under questionable circumstances such a «dreadful injury» could turn the woman into the prime suspect of the alleged murder.

Secondly, we will examine the judicial dimension of the cases, with special reference to two essential moments of the proceeding: the closing speech for the defence and the judge's charge. These moments indeed could influence – as they actually did – the verdict issued by the jurors, who were required to decide upon the guilt or innocence of the prisoners¹⁷. This field of investigation is closely related to the previous one, since the role of women in matrimonial life was the subject of reflection in both the lawyers' and the judges' perspective.

Both trials attracted a growing attention by the press and the criminal justice system, especially the case of Florence Elizabeth Maybrick that many authors considered an incredible miscarriage of justice. The Maybrick affair provided the opportunity to open a debate on the reparation of judicial errors and the necessity for the institution of a court of criminal appeal. Such an issue will be analysed in the final part of the article by adopting a strictly comparative perspective. We will examine the rules enacted by other countries in comparison with the English system in order to understand whether they admitted methods of review in criminal cases and – if so – under which conditions. In the late nineteenth and early twentieth century this topic was the subject of an important discussion ranging from the United States to the «gallant little Norway». A number of authors engaged in writing treatises on this issue, with the awareness that judicial errors were far from rare in everyday practice. This debate will lead us from Italy to France and from France back to England, where Mrs. Maybrick was serving her sentence in prison. Her captivity ended a few years before the enactment of the Criminal Appeal Act of 1907 which represents the final point of the research¹⁸.

2017, p. 107-114. A comparative perspective on this topic has been proposed by U. Gerhard, *Droit civil et genre en Europe au XIX^e siècle*, in «Clio. Femmes, Genre, Histoire», 43 (2016), p. 250-273.

¹⁷ The role exercised by the defence counsel inevitably influenced the relation between the judge and the jury. On this perspective: J. H. Langbein, *The Criminal Trial Before the Lawyers*, in «The University of Chicago Law Review», vol. 45, no. 2 (1978), p. 263-316. The advocacy style before juries in the British context has been recently investigated by A. Watson, *Speaking in Court. Developments in Court Advocacy from the 17th to the 21st Century*, Cham 2019, p. 71-123. The relation between forensic style and jury trials in the long nineteenth century has been studied also by S. Stern, *Forensic oratory and the jury trial in nineteenth-century America*, in «Comparative Legal History», vol. 3, no. 2 (2015), p. 293-306.

¹⁸ H. Cohen, *The Criminal Appeal Act 1907 and the rules, forms and rates and scales of payment*

2. *The trial of Adelaide Blanche Bartlett*

In 1886 Edward Beal, barrister of law in the Middle Temple, published a complete and revised report of the trial of Adelaide Bartlett held at the Central Criminal Court from 12 to 17 April 1886. Mr. Beal performed this task at the request of the defence counsel of the woman, Sir Edward Clarke, who believed that the volume would be found useful «to all students of the administration of the law»¹⁹. The trial indeed involved a number of interesting profiles, especially in the study of medical jurisprudence, but, above all, it may be considered as a paradigmatic example of advocacy stile²⁰.

The report begins with the transcription of the opening speech by the Attorney General, Sir Charles Russell²¹. Russell firstly provided the jury with some information about the prisoner at the bar, Adelaide Blanche de la Tremoille, who was born in France, at Orléans, in December 1855. Early in 1875 Adelaide met Thomas Edwin Bartlett, who would soon become her husband. After the marriage, which occurred in April 1875 at the parish church of Croydon, Adelaide was sent to school first at Stoke Newington and then in Belgium, thus in the early beginning of their married life the spouses lived together only during her vacations. In 1881 Adelaide gave birth to a stillborn child: the pain was so violent and intense that the woman decided she would never want to have any more children. Four years later, in October 1885, Adelaide and Edwin moved into an apartment at Claverton Street in the southern area of Pimlico, in the city of Westminster, where the facts under investigation would take place²².

The apartment at Claverton Street was frequented by a young man, George Dyson, who was a Minister in the Wesleyan chapel in the neighbourhood of Wimbledon. Dyson met Adelaide and her husband in early 1885: as the months passed, their acquaintance became an intimate friendship to the point that

thereunder with notes, London 1908. See also A. C. Forster Boulton, *Criminal appeals under the Criminal Appeal Act of 1907 with rules of court and forms*, London 1908 and F. J. Wrottesley, *The law and practice of criminal appeals including appeals from justices to sessions ... under the Criminal Appeal Act, 1907*, London 1910.

¹⁹ *The trial of Adelaide Bartlett for Murder held at the Central Criminal Court from Monday, April 12, to Saturday, April 17, 1886. Complete and revised report edited by Edward Beal*, London 1886, Preface.

²⁰ E. Lustgarten, *Defender's Triumph*, London and New York 1951, p. 9-80. A brief presentation of the case was proposed at the last British Crime Historians Symposium: C. Passarella, *What happens when the prosecution fails to prove the case? The Pimlico mystery (1886) and the Ardlamont murder (1893)*, British Crime Historians Symposium, 2-3 September 2021.

²¹ For biographical details on this figure: R. B. O' Brien, *The Life of Lord Russell of Killowen*, London 1909.

²² *The trial of Adelaide Bartlett*, cit., p. 3.

Edwin named Dyson as executor of his will²³. In December, Mr. Bartlett fell seriously ill in the form of nervous depression, sleeplessness and other symptoms of the same nature. He remained in a bad state of health for about ten days; on Christmas Eve, however, he was upon a fair way of recovery. The Attorney General focused the jurors' attention on the date of 27 December when «one important thing took place». On that day, in fact, Adelaide asked Dyson to procure for her a considerable quantity of chloroform, which was delivered to her two days later. On 31 December Edwin seemed to be mostly recovered: he took his dinner «with a healthy appetite» and gave orders for his breakfast on New Year's Day. Thereafter, he fell asleep in the drawing room. As stated by the woman, the next morning Edwin's feet were found to be unusually cold: to her horror, Adelaide realized that her husband was dead.

The post mortem examination performed the following day revealed that the cause of death was the ingestion of chloroform: as a consequence, Adelaide was charged with the wilful murder of her husband²⁴. At first, Dyson too was arrested and charged as an accessory before the fact, but at the trial the prosecution decided not to offer evidence against him, thus the reverend was acquitted. Hence, the role of the Wesleyan Minister changed: from being an accomplice, he became a witness for the Crown²⁵. Beside the reverend – who admitted to having bought a quantity of chloroform at the woman's request – the prosecution examined a number of scientific experts in order to prove the theory of murder. According to the Attorney General, Adelaide achieved her criminal intent through a double operation: the woman would have first chloroformed her husband, until he was insensible, and then poured liquid chloroform into his throat, thus ultimately causing his death²⁶.

²³ As explained by the Attorney General, the deceased person wrote two wills. In the former it seems that Edwin only benefited Adelaide if she did not marry again. Such a condition was not included in the second and last will. Ivi, p. 4.

²⁴ In the Victorian period other women were charged with the murder of their own husbands or lovers. We can remember two Scottish trials which took place in the mid nineteenth century: the case of Christina Gilmour, who was put on trial before the High Court of Justiciary in Edinburgh for having administered arsenic poison to her husband, John Gilmour, and the story of Madeline Smith, charged with the wilful murder of her lover, Pierre Emile L'Angelier. In both cases, the evidence given at the trial was defective, thus the jurors finally returned a verdict of not proven. For further details on this topic: C. Passarella, *From Scotland to Italy and Back: Enrico Ferri, the Verdict of Not Proven and its Consequences on the Accused*, in «Forum Historiae Iuris», 16. November 2020, online at <https://forhistiur.net/2020-11-passarella/abstract/?l=en> (accessed 28 December 2021).

²⁵ *The trial of Adelaide Bartlett*, cit., p. 63-108.

²⁶ The discovery of anaesthesia into the Victorian society has been studied by S. J. Snow, *Blessed Days of Anaesthesia. How Anaesthetics Changed the World*, Oxford 2009.

Among the witnesses for the Crown, the testimony of Sir Thomas Stevenson deserves special attention. Stevenson was professor of medical jurisprudence as well as scientific analyst employed by the Home Office: his authority in the field of forensic medicine was required in many cases of poisoning occurring in the late Victorian period, including – as we will see – the Maybrick case²⁷. Stevenson was examined first by Russell and then by Clarke: questioned by the defence counsel, the doctor admitted that, according to his personal experience and knowledge, he was not aware of any recorded case of murder committed by administering liquid chloroform. Clarke asked the witness for further details regarding the hypothetical administration of the liquid, to understand if it would have left any traces after death. Stevenson noted that, if the patient was in a state of insensibility, the liquid chloroform would probably have left some traces into the windpipe of the deceased. As the jury already knew, no such traces had been found by the scientific experts²⁸. This answer was enough to cast a shadow of doubt on the jurors, who wanted to go to the bottom of the matter. The foreman therefore asked the doctor for more clarification on this regard: in response, Dr. Stevenson specified that he would expect to find traces of inflammation at the back of the throat unless the person was in a condition to swallow the liquid quickly, because in such a case the swallowing «would be effected almost momentarily». Such an explanation seriously undermined the theory supported by the prosecution²⁹.

When the presentation of the evidence was concluded, Sir Clarke took the floor for his closing speech³⁰. With perfect oratory skills, the defender

²⁷ As noted by the defence of the woman, Stevenson had edited *The Principles and Practice of Medical Jurisprudence by Alfred Swaine Taylor* «who is well known as one of the greatest authorities in that branch of medical science». *The trial of Adelaide Bartlett*, cit., p. 209. For biographical details on Dr. Stevenson: R. O. Myers, *Sir Thomas Stevenson (1838-1908)*, in «Medicine, Science and the Law», vol. 2, no. 2 (1962), p. 165-168. For an investigation into the medico-legal practice in the late modern period: K. D. Watson, *Medical and Chemical Expertise in English Trials for Criminal Poisoning, 1750-1914*, in «Medical History», 50 (2006), p. 373-90. By the same author: *Medicine and Justice. Medico – Legal Practice in England and Wales, 1700-1914*, London 2020.

²⁸ *The trial of Adelaide Bartlett*, cit., p. 221.

²⁹ The jurors called to decide upon the innocence or guilt of Adelaide interacted with both the witnesses and the judge. This active participation was not the general rule in jury trials: in the long nineteenth century, indeed, most of the jurors sat silently in the jury box without any interaction with the bench. In this regard see J. Langbein, *The Criminal Trial Before the Lawyers*, cit., p. 273. The nature of jurors' participation during the nineteenth century has been studied by N. Howlin, *Passive Observers or Active Participants? Jurors in Civil and Criminal Trials*, in «Journal of Legal History», vol. 35, no. 2 (2014), p. 143-171.

³⁰ Edward Clarke was one of the leaders of the bar in the second half of the nineteenth century. For an investigation into his advocacy style see A. Watson, *Speaking in Court*, cit., p.

immediately pointed out how unreasonable was the idea suggested by the prosecution. The Attorney General asked the jurors to imagine how a woman «who for years had lived in friendship and affection with her husband» on New Year's Eve «suddenly transformed into a murderess» committing a crime by a double operation «which would have been delicate and difficult to the highest trained doctor that this country has in it». In such a case, in fact, the cause of death had not been the inhalation of chloroform, but the administration of liquid chloroform poured down the throat of the alleged victim: that being the case, Adelaide would have committed an offence «absolutely unknown in the history of medical jurisprudence»³¹.

According to the prosecution, an unexperienced woman, alone and without any assistance, would have administered liquid chloroform to a sleeping man without leaving neither traces nor appearances discoverable during the post-mortem examination, a post-mortem examination, moreover, which had been urgently requested by the woman herself³². For his part, Clarke believed that Mr. Bartlett had autonomously and deliberately ingested the substance with the clear intention of taking his own life. Overwhelmed by stress, illness, insomnia, depression, and last but not least hallucinations, the man would have decided to commit suicide by ingesting a fatal dose of chloroform. For this purpose, as soon as his wife left the room, Mr. Bartlett had poured the liquid into a glass and swallowed it up all in one gulp: this is the reason why the doctors had not found traces of the substance into the windpipe³³. The chloroform then had taken his effects without Adelaide noticing³⁴. The defender had no doubts: this theory was much more logical and rational than the one supported by the prosecution.

Before concluding, Sir Clarke reminded the great responsibility entrusted to the jurors who had been suddenly diverted from their ordinary business and pleasures to decide upon issues of life and death: the lawyer believed he had

103-123.

³¹ *The trial of Adelaide Bartlett*, cit., p. 235-36.

³² As explained by the defence counsel, «it was not Mrs. Bartlett's fault that her husband's body was not examined within a very few hours of his death». Adelaide indeed had pressed for an immediate autopsy, but that afternoon the doctor was engaged, thus it was only by accident that «the post-mortem examination was postponed until the next day». *Ivi*, p. 240.

³³ «If he swallowed it in this way, and swallowed it up quickly, there would not be, as there were not, appearances of long exposure of the softer substances of the mouth and throat to the chloroform». *Ivi*, p. 266

³⁴ As soon as the man reassumed his recumbent position, the chloroform passed down his throat and reached the stomach. In a few minutes, Mr. Bartlett probably passed into a state of coma; finally, the coma deepened into insensibility and insensibility passed into death. *Ibid.*

demolished the suspicions against the prisoner at the bar and was therefore fully confident that the jury would finally issue a verdict of not guilty³⁵.

3. *The judge and the jury*

After the closing speech for the defence, the trial was almost over. Thereupon it was up to the judge – the Honourable Mr. Justice Wills – to summarise the trial and put the jury «in a sufficient position to safely determine the innocence or guilt of the accused»³⁶. The summing up was undoubtedly an extremely delicate and equally difficult task, which was susceptible to different interpretations depending on the feeling and sensitivity of the judge³⁷. As a general rule, in the exercise of his duty, the judge would state briefly the substance of the offence and direct the attention of the jury to the core elements of the case, with special reference to the witnesses' testimonies and the mode of delivering them³⁸. Before concluding, he would remind the jurors that if they entertained any reasonable doubt on the guilt of the accused, they were bound to give the prisoner the benefit of that doubt³⁹. The judge's duty therefore was simply to assist the jury in coming to a true conclusion based on the evidence given in the trial: the final decision rested with the jurors who were «the sole judges of the facts of the case»⁴⁰.

³⁵ Clarke was absolutely conscious of his role. Thirty years later, remembering the last day of the proceeding, he wrote: «I sat for five hours listening to Sir Charles Russell and Mr Justice Wills, recognising the strength of the one and the scrupulous fairness of the other, yet quite unable to free my mind from the apprehension that the life of Adelaide Bartlett might be in the greater peril through some defect of mine». E. Clarke, *The Story of My Life*, London 1918, p. 252.

³⁶ G. Coonan - B. Foley, *The Judge's Charge in Criminal Trials*, Dublin 2008, p. 14.

³⁷ Some judges refrained from expressing their opinion on the case, while others believed it was their right to tell the jury what they thought about the facts under consideration. As noted by Bentley, in nineteenth century England «the judge would often have no scruples about advising the jury to convict». D. Bentley, *English Criminal Justice*, cit., p. 275.

³⁸ T. A. Purcell, *A Summary of the General Principles of Pleading and Evidence in Criminal Cases in Ireland with the Rules of Practice Incident Thereto*, Dublin 1849, p. 203-204.

³⁹ The relation between the verdict issued by the jurors and the principle of reasonable doubt has been studied by F. Picinali, *The threshold lies in the method: instructing jurors about reasoning beyond reasonable doubt*, in «The International Journal of Evidence and Proof», vol. 19, no. 3 (2015), p. 139-153. Two essential references on this topic are B. Shapiro, *Beyond reasonable doubt' and 'probable cause'. Historical Perspectives on the Anglo-American Law of Evidence*, Berkeley – Los Angeles – London 1991 and J. Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial*, New Haven and London 2008.

⁴⁰ The quote is taken from the *Report of the Third Trial of Peter Barrett for Shooting at with Intent to*

Mr Justice Wills was perfectly aware of the seriousness of this task. He stated it openly to the jurors: «[m]y responsibility is great from any point of view, and I feel it the more because it is, in my opinion, no part of a judge's duty to make his summing up a wholly colourless thing. It is not my theory of judicial responsibility, and not one on which I propose to act in this case»⁴¹. The judge, therefore, did not want to make a dull and wan speech, which would be of no help to the jurors, but rather offer a key to understanding both the facts and the evidence given in the trial, without ever imposing his personal opinion on the matter. The magistrate should provide the jury with the tools it needed to evaluate the case and develop an independent judgment, which could differ – just as well as conform to – from the judge's point of view. In this regard, Mr Justice Wills wished to avoid any possible misunderstanding: «[t]he last thing that would ever occur to my mind – he said – would be to feel a sense of embarrassment or annoyance, or a shadow of regret, if you were able to take a different view of facts from those which present themselves to my mind»⁴². On these premises, the judge set about to present a summing up of exemplary fairness and professionalism.

Mr. Justice Wills called the jurors' attention to both the elements against and in favour of the prisoner. He noticed that the theory of murder supported by the prosecution had some weak points. First of all, Adelaide acted as a perfectly affectionate wife during her husband's illness: she performed the most disagreeable duties and did everything with patience and devotion. There was no evidence to suggest that she was acting a part⁴³. Secondly, there were great difficulties in reconstructing the events which had taken place on the night of New Year's Eve. The judge noted that no living person had ever experienced the administration of chloroform to produce anaesthesia during sleep. Even if this difficulty could be successfully overcome, another question immediately arose: according to the prosecution, in fact, an additional dose of chloroform had been administered to the man while he was lying down, but administering liquid chloroform to a person in that state was an operation open to so many chances of failure «that no skilled man would venture upon it unless he were a madman». However, we must consider that the «fools rush in where angels fear to tread», thus a person unaware of these difficulties could possibly have engaged into the operation and achieved the desired result. Certainly, this would have been a

Murder Captain Thomas Eyre Lambert on Sunday, the 11th July 1869, held in Court of Queen's Bench Dublin Before the Right Honorable Justice Fitzgerald on the 23rd, 24th and 25th Days of June 1870, Dublin 1870, p. 184.

⁴¹ *The trial of Adelaide Bartlett*, cit., p. 296.

⁴² Ivi, p. 311.

⁴³ Ivi, p. 298.

«cruel fortune» for the victim, since all the conditions were against this outcome⁴⁴. Finally, the judge reminded the jurors that, after her husband's death, Adelaide had been anxious to procure a post-mortem examination of the body. No guilty person would have pressed for an immediate autopsy, thus increasing the chances of detection: this was therefore another element in favour of the woman⁴⁵.

Nonetheless, even the theory of suicide supported by the defence counsel did not seem fully persuasive to the judge. It is true that the man presented the symptoms of a nervous breakdown, but when the fact took place, the illness seemed to have already run its course and – as the judge pointed out – it was scarcely possible that Edwin could have supposed any danger to his life to have appeared in the last few days. Furthermore, the evening before he died, Mr. Bartlett ordered his breakfast for the next morning: this did not look like «the thought of a man to whom early death was present»⁴⁶. According to the judge, there could be a more reasonable explanation than that of suicide suggested by the defender. Looking for a way to get sleep, the man might have decided to ingest liquid chloroform: in the dark of the night, it is possible that he had poured into the glass more liquid than he intended, thus unintentionally causing his own death⁴⁷. It was nothing more than speculation: it was up to the jurors to decide which explanation seemed «the more rational and the more consistent with probability»⁴⁸.

Before concluding, the judge reminded the jurors the strong elements in favour of the woman, such as her conduct during the illness of her husband and the difficulties involved in the theory of murder: on these aspects – he was sure – the jurors would have agreed with him⁴⁹. That said, he could not go any further, because his duty was simply to assist the jury in performing their

⁴⁴ «And therefore it must be by a lucky concatenation of circumstances, all contributing to one end, that this thing must be done if it is to be done at all, and that is one of the great difficulties – and a very formidable one – in the way of the theory of murder». Ivi, p. 301.

⁴⁵ Ivi, p. 306.

⁴⁶ Ivi, p. 298.

⁴⁷ «I make this suggestion [...] because it will be my bounden duty to point out by-and-by how almost absolutely absurd to me seems the notion of suicide under the circumstances suggested in the defence of the learned Counsel». Ivi, p. 302.

⁴⁸ *Ibid.*

⁴⁹ «Upon some points I am sure we shall be agreed – upon all those which I have pointed out as making in this woman's favour – such, for instance, as her own conduct and the difficulty of the operation involved in the theory of murder. Strong they are, undoubtedly. Upon all these, I am sure you agree with me in what I have said». Ivi, p. 311.

burdensome task: the jurors alone were competent to determine upon the guilt or innocence of the prisoner at the bar.

When the summing up was ended, the jurors retired to deliberate. Shortly thereafter, they returned into the courtroom to ask two questions on matters of fact: Mr Justice Wills made the requested statements in public and the jury retired once again. An hour later they came back with a unanimous decision. The clerk asked them: «Do you find the prisoner, Adelaide Bartlett, guilty or not guilty?». The answer given by the foreman was as follows: «we have well considered the evidence and, although we think grave suspicion is attached to the prisoner, we do not think there is sufficient evidence to show how or by whom the chloroform was administered»⁵⁰. Adelaide therefore was found not guilty from the charge.

While the newspapers reported the final moments of the trial and commented on the acquittal of the woman⁵¹, Edward Clarke enjoyed his triumph⁵². For his part, Charles Russell had failed to prove the case beyond any reasonable doubt: a suspicion, however serious or grave it might be, did not suffice to convict the prisoner. Three years later, Russell would find himself on the other side of the barricade: in 1889, indeed, he took up the defence of Florence Elizabeth Maybrick who, just like Adelaide, was charged with the murder of her husband⁵³. As we will see, her trial would have had a very different ending.

4. *The case of Florence Elizabeth Maybrick*

The trial of Mrs. Maybrick took place at the Liverpool Summer Assizes from 31 July to 7 August 1889. Between the late nineteenth and early twentieth century, the story gave rise to a heated debate, which crossed the national boundaries and reached an international scope⁵⁴. In 1912, Henry Brodrigg Irving

⁵⁰ Ivi, p. 312.

⁵¹ The Aberdeen Press and Journal focused the attention on the instructions given to the jurors by the judge who had expressed «opinions highly favourable to the prisoner». *Aberdeen Press and Journal*, 19 April 1886. The Freeman's Journal wrote: «as the result of the trial became known the hundreds of persons outside the courthouse cheered vigorously». *Freeman's Journal*, 19 April 1886. According to the Morning Post, the acquittal of Mrs. Bartlett «closes one of the strangest ... cases that have in modern times come before a British jury». *Morning Post*, 19 April 1886.

⁵² In his biography, in the chapter dedicated to the Bartlett case, Clarke wrote: «[t]he results of a conspicuous success such as this do not show themselves in professional advancement only». His name indeed «had become more widely known than ever before». E. Clarke, *The Story of My Life*, cit., p. 253.

⁵³ R. B. O'Brien, *The Life of Lord Russell*, cit., p. 260-273.

⁵⁴ The notoriety of the case persisted in the following decades: in 1946 George Orwell

published a full and complete report of the case, which was then officially included in the *Notable British Trials Series*⁵⁵. In the introduction of the volume, Irving looked back on the most important moments of the story without taking a position in favour or against the woman, so that the reader could form his personal opinion on the matter without bias or prejudice⁵⁶.

The Maybrick case and the Pimlico mystery have a great number of affinities and similarities. Like Adelaide, also Florence was charged with the wilful murder of her husband by administering a poisonous substance. In both trials, medical jurisprudence and experts' witnesses had considerable importance: in one and in the other case, eminent doctors were examined by the prosecution and cross-examined by the defence in order to understand the methods of administering the poison. In both trials the jurors were asked to consider also the moral question, that is the attitude of the accused women during their married life and in the few days preceding the tragic events. In the Maybrick case, the judge put great emphasis on such moral question, as we will see by analysing his summing up, which constituted the most controversial moment of the whole proceeding.

Florence Elizabeth Chandler, daughter of an Alabama banker, and James Maybrick, a Liverpool cotton merchant, married in America in 1881. Three years later the spouses settled in Liverpool, at Battlecrease House, where they lived with four servants and two children, a boy and a girl. It was well known that, both before and after the marriage, Mr. Maybrick used to take drugs – among them strychnine and arsenic – as nerve tonics: in appearance, however, the man seemed in good health⁵⁷. The years passed smoothly until March 1889, when Florence went to London to meet her lover, a man named Brierley. As pointed out by the Attorney General in his opening speech, for two days and two nights Florence and Brierley «lived there together as man and wife»⁵⁸. A few days later, the woman left London and returned to Battlecrease House. At

classified Mrs. Maybrick among the murderers «whose reputation has stood the test of time». G. Orwell, *Decline of the English Murder and Other Essays*, Harmondsworth 1965, p. 9.

⁵⁵ *Trial of Mrs Maybrick edited by H. B. Irving*, Toronto 1912.

⁵⁶ For an overview on the case: E. Lustgarten, *Verdict in dispute*, London and New York 1949, p. 9-42.

⁵⁷ *Trial of Mrs Maybrick*, cit., p. XIII-XIV.

⁵⁸ On 22 March Florence was «at breakfast with a Liverpool gentleman, a cotton broker, living in Huskisson Street here, whose name cannot possibly be kept out of the case, a gentleman named Brierley. She was found with him on Friday, the 22nd, and on Saturday, the 23rd. They lived there together as man and wife, slept together and went out together». Ivi, p. 7.

home, Florence had a violent quarrel with her husband: the risk of separation was very high, but finally the spouses were reconciled.

At the end of April, Mrs. Maybrick bought dozens of flypapers from a chemist in the neighbourhood of Aigburth. Afterwards, two servants saw the woman intent on soaking the flypapers in a basin full of water: at the trial, Florence said her object was to extract the arsenic for cosmetic purposes⁵⁹. In those same days, her husband had an attack of vomiting which he attributed to an overdose of strychnine contained in some medicines prescribed for him by the doctor. Suspicions fell upon the woman in early May, when Florence gave to the nurse a letter addressed to Mr. Brierley to be sent to a Liverpool address. Instead of sending it, the nurse opened the letter and read its contents: «Since my return I have been nursing Maybrick night and day. He is sick unto death. The doctors held a consultation yesterday, and now all depends on how long his strength will hold out»⁶⁰. The woman's statements were suspicious, because, at that time, her husband did not seem to be on the verge of death. Shortly thereafter, another suspicious episode occurred. During her husband's illness, Florence herself took care of his medicines and food. One night a servant saw Mrs. Maybrick tamper with a bottle of meat-juice: the bottle was given to the doctors who examined its contents and found half a grain of arsenic in it. A few hours later the patient was dead.

The autopsy – performed on 13 May 1889 – revealed that the death was due «to inflammation of the stomach and bowels set up by some irritant poison». On May 18 the magistrate opened an investigation: the investigating authority had been looking for evidence against Florence, who was arrested and taken to Walton jail⁶¹. In late May, the doctors attending on the patient performed more exams which led to the discovery of arsenic in some organs of James' body. In early June, the coroner's jury returned a verdict of wilful murder against Mrs. Maybrick, who was then committed to be tried at the next Assizes.

The trial began on 31 July at the Liverpool Summer Assizes, in the very place where the spouses lived and where the alleged crime had been committed.

⁵⁹ The same explanation was given by another famous prisoner, Madeline Smith (see note no. 24) before the High Court of Justiciary in Edinburgh in 1857. Like Florence, Madeline said she used arsenic as a cosmetic: she diluted the poison with water and applied it in her face, neck and arms. *A complete report of the trial of Miss Madeline Smith for the alleged poisoning of Pierre Emile L'Angelier*, Edinburgh 1857, p. 48. The use of arsenic was far from uncommon in the Victorian period: the nineteenth century indeed has been defined as «the golden age of arsenic murders». J. Emsley, *The Elements of Murder*, cit., p. 151. For further details: J. C. Whorton, *The Arsenic Century: How Victorian Britain was Poisoned at Home, Work & Play*, Oxford 2010 and I. Burney, *Poison, Detection and the Victorian Imagination*, Manchester-New York 2012.

⁶⁰ *Trial of Mrs Maybrick*, cit., p. XVIII.

⁶¹ Ivi, p. XX-XXI.

Considering the rumours and the speculations circulating in the community, a change of venue would have been possible – and perhaps desirable – in order to ensure a fair and impartial judgment⁶², but the defence of the woman dismissed this possibility and decided to face the trial in Liverpool⁶³. The prosecution was entrusted to Mr. John Addison, whereas the defence was conducted by Sir Charles Russell, who had gained a long experience in poisoning cases during his career, albeit on the other side of the fence as we have seen⁶⁴.

Mr. Addison called to the stand a number of witnesses, including Michael Maybrick, brother of the alleged victim, and Alice Yapp, the nurse who had found the letter addressed to Mr. Brierley. The most important witness was Dr. Thomas Stevenson who, as we have seen, was also examined in the trial against Adelaide Bartlett. Dr. Stevenson had no doubt: Mr. Maybrick had died from the effects of arsenic. During his illness, indeed, the man had suffered from pain in the throat extending down into the stomach, nausea, vomiting, and diarrhoea, which are usual symptoms of arsenic poisoning⁶⁵. According to the prosecution, the arsenic had been administered by Florence, as evidenced by two main occurrences: the episode of the flypapers and the incident with the meat-juice.

Sir. Charles Russell, by contrast, strongly believed that Mr. Maybrick had died from natural causes. Nevertheless, before investigating the medical aspects of the case, the defence counsel focused the jurors' attention on the moral offense committed by Florence during her visit to London. The act of infidelity was undeniable: in London the prisoner at the bar had undoubtedly perpetrated a grave moral error, which however had nothing to do with the death of her

⁶² About territorial jurisdiction and change of venue see G. Williams, *Venue and the Ambit of Criminal Law*, in «Law Quarterly Review», 81 (1965), p. 276-88, 395-421, 518-38.

⁶³ At the beginning of his closing speech, Russell said: «This lady has elected to take her trial in Liverpool before a Liverpool jury, in the community with which her husband lived, in which he was known, and in which upon a bare recital of the supposed facts of this case it was inevitable that to ill-informed and to imperfectly-informed minds great and serious prejudice must have been caused [...] if she had desired to shrink from meeting a jury drawn from this community, she would not have had interposed in the way of those who represent the Crown any difficult in the way of effecting a change of venue. She comes before you asking from you nothing but that you will willingly grant a careful, an attentive, and a sympathetic hearing in her case». *Trial of Mrs Maybrick*, cit., p. 229-230.

⁶⁴ Besides the case of Adelaide Bartlett, Russell had led the prosecution of Mary Ann Cotton, who was the first female serial killer in the U.K. At the end of the trial – held at Durham Crown Court in March 1873 – the prisoner was found guilty and sentenced to death. The execution took place in Durham jail on 24 March 1873. For further details on this case see D. Wilson, *Mary Ann Cotton: Britain's First Female Serial Killer*, Sherfield on Loddon, 2013.

⁶⁵ *Trial of Mrs Maybrick*, cit., p. 159-160.

husband occurred a few weeks later. Moral guilt must be kept separate from the criminal guilt involved in the case: without this act of infidelity, indeed, there would have been no motive for murder, thus no suspicion against the woman⁶⁶.

Thereupon, Russell moved to analyse the first question raised by the facts of the case, that is the cause of death. As we have seen, the prosecution believed that Mr. Maybrick had died due to arsenic effects, inasmuch as the symptoms were attributable to this irritant poison. The main element in this regard was Stevenson's testimony, but it was just this testimony to open the door to the defence strategy. Crossed-examined by Russell, in fact, Stevenson specified that there were no distinctive symptoms of arsenical poisoning: «the diagnostic thing is finding the arsenic»⁶⁷. The defence counsel reminded the jurors that arsenic had been found in the liver and in the intestines of the deceased, whereas no traces of poison had been found in other organs: nothing in the stomach, nor in the bile or in the spleen, not even in the lungs or in the heart⁶⁸. According to Russell, the symptoms pointed in another direction, that is gastro-enteritis. It was important to keep in mind that Mr. Maybrick had been used to take drugs and medicines, which in the long term may have caused a serious derangement of his stomach.

Anyway, even assuming that arsenic was the cause of death, there would be another question to consider: was the poison administered by the prisoner at the bar with intent to murder her husband? The only mean of obtaining arsenic ascribed to her was the possession of flypapers, but the contrivance of soaking them in order to extract the arsenic was illogical and ridiculous, since poison was easily accessible at Battlecrease house, without considering that a woman capable of killing her husband would have tried to cover up the traces of her crime. The truth was that against Mrs. Maybrick there were only suspicions and conjectures, but the innocence or guilt of a person «is not a question of

⁶⁶ As Russell pointed out, the infidelity of men and women were perceived in a very different light: «[i]n a man such faults are too often regarded with toleration, and they bring him often but few penal consequences. But in the case of a wife, in the case of a woman, it is with her sex the unforgivable sin [...] She is regarded as a leper, deprived of the sympathy and encouragement and affection, and advice and consideration of friends and sympathetic hands». Ivi, p. 234.

⁶⁷ Ivi, p. 170.

⁶⁸ «[I]t is important to bear in mind as regard other portions of the body – the stomach and the contents of the stomach, the spleen, the bile, the fluid from the mouth, the heart, and the lungs, and a portion of the bone which was tested – there was no arsenic found. [...] The question I have therefore to ask you in this connection in the case, touching the cause of death, can you say that you are satisfied, as reasonable men, beyond reasonable doubt, that this was a case of arsenical poisoning at all? If you are not, there is an end of this matter [...]». Ivi, p. 245-246.

probability ... it is a question of clear and unequivocal proof»⁶⁹. Russell then concluded his closing speech by asking the jurors the following question: «in the perplexities, in the doubts, in the mystery, in the difficulties which surround this case ... can you, can any one of you, with satisfied judgment and with safe conscience, say that this woman is guilty?»⁷⁰.

At this point, we can make a comparison between the Pimlico mystery and the Maybrick case based on the arguments used by the lawyers in their speeches. As we have seen, both Adelaide and Florence were in possession of the poison which had allegedly provoked the death of their husbands. The poison investigation was reasonably and carefully examined by both the defenders. On his part, Clarke pointed out the absence of chloroform remains into the windpipe of the deceased, while Russell focused the attention of the jurors on the findings of the tests performed on many organs of the alleged victim, which showed no traces of arsenic. In both defensive strategies, therefore, medical issues played an essential role in order to undermine the accusation of murder supported by the prosecution. Nevertheless, as we are going to see, the trials had quite opposite outcomes: maybe the explanation lies on the instructions given by the judge before the jurors retired to issue their verdict.

5. «*A most highly important moral question*»

The trial against Florence Maybrick took place before Sir James Fitzjames Stephen who could boast a long and prestigious career first as a lawyer and then as a judge⁷¹. Stephen was also a distinguished legal writer: in 1863 he had published *A General View of the Criminal Law of England*, which was followed twenty years later by the best known *A History of the Criminal Law of England in three volumes*⁷². Mr. Justice Stephen therefore was admirably qualified to preside over a trial characterized by a number of critical profiles.

⁶⁹ Ivi, p. 248.

⁷⁰ «If your duty compels you to do it, you will do it, you must do it; but you cannot, you will not, you must not, unless the whole burthen and facts and weight of the case fairly and fully considered with honest and impartial minds, drive you, drive you irresistibly, to that conclusion». Ivi, p. 256.

⁷¹ For further details see the biography edited by Stephen's brother the year following his death: L. Stephen, *The Life of Sir James Fitzjames Stephen. A Judge of the High Court of Justice*, London 1895. See also L. Radzinowicz, *Sir James Fitzjames Stephen, 1829-1894, and his contribution to the development of criminal law*, London 1957.

⁷² J. F. Stephen, *A History of the Criminal Law of England*, London 1883.

When the presentation of the evidence and the speeches of the parties were concluded, the judge proceeded to charge the jury. His summing up was exceptionally long: it began on Tuesday morning, at ten o'clock, and ended on Wednesday in the early afternoon when the jury retired to deliberate. On the first day Mr. Justice Stephen focused the jurors' attention on the facts of the case and took into careful consideration both the medical and chemical issues involved in the alleged murder. He went over all the witnesses' testimonies with particular reference to the statements given by the experts about the supposed cause of death and the effects of the poison on the body of the deceased. With respect to this part of the charge, in his published report, H. B. Irving later noted a number of errors in the indication of the dates and in the names of the witnesses⁷³. Such inaccuracies risked compromising the purpose of the summing up, which was to assist the jury in coming to a true conclusion based on the evidence given in the trial⁷⁴. On the whole, however, the first part of the résumé was not unfavourable to the prisoner, no less because the conflict of medical testimonies did not allow to achieve definitive results.

The tone however changed in the concluding remarks, when Mr Justice Stephen exhorted the jurors to consider «a most highly important moral question»⁷⁵. As pointed out by the judge, Mrs. Maybrick was accused of having deliberately administering poison to a sick man «upon whom she has already inflicted a dreadful injury, an injury fatal to married life». The love intrigue between Florence and Mr. Brierley, indeed, gave rise to the horrible thought that the woman could have plotted the death of her husband «in order that she might be left at liberty to follow her own degrading vices». On one hand, the jurors must not convict the woman unless they were sure that she had committed the crime; on the other hand, they must recollect that, while the life of her husband was trembling in the balance, Florence wrote loving words to the man «with whom she had behaved so disgracefully». In the end, therefore, the moral

⁷³ «At times the Judge seems almost over-weighted by the gravity and difficulties of the case. His grasp of the case is by no means sure, and there are errors in dates and facts and in the recapitulation of the evidence that would hardly have been expected in a Judge of Sir James Stephen's experience». *Trial of Mrs Maybrick*, cit., p. XXXII.

⁷⁴ According to Edgar Lustgarten, the judge «failed to clarify the issues, to state accurately the facts, and to group the evidence in appropriate perspective. Thus, at the end of a momentous and complicated case, the jury received no adequate direction». E. Lustgarten, *Verdict in dispute*, cit., p. 40.

⁷⁵ What is meant by moral question? The answer was given by the judge himself: «by that term moral question, I do not mean questions of what is right or wrong in a moral point of view, but questions into which human nature enters, and on which you must rely on your knowledge of human nature in determining on the resolution you arrive at». *Trial of Mrs Maybrick*, cit., p. 351.

question had become almost more important than medical and chemical issues⁷⁶.

If we compare Mr. Justice Wills and Mr. Justice Stephen instructions, we cannot fail to note a marked difference between their approaches. As we have seen, the case of Adelaide Bartlett and the story of Florence Maybrick had more than one similarity: both women had married elderly men, both were suspecting of having lovers (Mr. Dyson for Adelaide and Mr. Brierley for Florence); in both cases the extramarital intimacy could be considered a motive for the wilful murder of their husbands⁷⁷. However, while Mr. Justice Wills pointed out the strong elements in favour of the woman, Mr. Justice Stephen emphasised the «the dreadful injury» inflicted by Florence on her married life. In his closing speech, Russell had stressed the «wide chasm» existing between the moral offence committed by the woman and the criminal guilt supported by the prosecution, whereas the judge in his summing up did the exact opposite. We do not know to what extent the moral question may have influenced the jurors' deliberation, but certainly this element should not be neglected in the analysis of the case in its wholeness.

As in the Pimlico mystery, the jury was required to decide upon the guilt or innocence of the defendant, with the awareness that, in the event of a conviction, Florence would have been sentenced to death⁷⁸. After an absence of about thirty-five minutes, the jurors returned a verdict of guilty. Upon hearing the jury's decision, Florence protested once again her innocence: her only guilt was the intimate relation with Mr. Brierley that the woman had never denied⁷⁹. Immediately thereafter, Mr. Justice Stephen pronounced his judgment and sentenced the prisoner to be hanged by the neck until death⁸⁰.

As was to be expected, this outcome was the subject of discussion in the newspapers. Many comments were made about the short space of time taken by the jury to find a unanimous agreement, which led someone to believe that

⁷⁶ Ivi, p. 351-352.

⁷⁷ On this perspective see the article published by *Lake's Falmouth Packet and Cornwall Advertiser* on 19 August 1889.

⁷⁸ C. E. Grinnell, *The Task of the Jury in the Case of Mrs Maybrick*, in «Harvard Law Review», vol. 13, no. 6 (1900), p. 490-515.

⁷⁹ Asked by the clerk of the court, Florence said: «Although I have been found guilty, with the exception of my intimacy with Mr. Brierley, I am not guilty of this crime». *Trial of Mrs Maybrick*, cit., p. 355.

⁸⁰ The sentence was as follows: «This Court doth ordain you to be taken from hence to the place from whence you came, and from thence to the place of execution, and that you be there hanged by the neck until you are dead; and that your body be afterwards buried within the precincts of the prison in which you shall have been confined after your conviction, and may the Lord have mercy on your soul». Ivi, p. 356.

most of the jurors had decided what the verdict was to be long before the judge concluded his summing up⁸¹. Interviewed by the press, the foreman said: «I would have given anything not to be on the jury and twice as much to be able honestly to find another verdict»⁸². For someone the elements against the woman had inevitably led to this decision, while others believed that the case was «unduly prejudiced by the evidence of the motive»⁸³. One way or the other, the Maybrick verdict produced «excitement and surprise» in all parts of the country⁸⁴.

More than one journal discussed the possibility of reprieve the sentence or, at least, seeking a commutation of the capital punishment⁸⁵. Serious efforts were actually made to have the sentence commuted. This result was achieved two weeks later when the Home Secretary⁸⁶ suspended the capital punishment with the following motivation: «although the evidence leads clearly to the conclusion that the prisoner administered and attempted to administer arsenic to her husband with intent to murder, yet it does not wholly exclude a reasonable doubt whether his death was in fact caused by the administration of arsenic». Consequently, the sentence was commuted to penal servitude for life⁸⁷. As written by the *Aberdeen Evening Press* the day after the Home Secretary's decision, the Maybrick case «was and remains a case of terribly strong suspicion, but suspicion that misses moral certainty»⁸⁸.

Despite the commutation of the sentence, the protest did not subside. The critical voices increased two years later, when Mr. Justice Stephen was forced to retire from the bench on health grounds. In 1885 he had had his first stroke, which had obliged him to take some time off; thereafter, he had returned to work in full strength. On his retirement in 1891 his guidance in the Maybrick case was put into question, but the judge firmly denied any misconduct in the direction of the proceeding⁸⁹.

⁸¹ *Northern Daily Telegraph*, 09 August 1889.

⁸² *Hartlepool Northern Daily Mail*, 09 August 1889.

⁸³ *Sheffield Daily Telegraph*, 10 August 1889.

⁸⁴ *Liverpool Echo*, 08 August 1889.

⁸⁵ See for instance *Manchester Times*, 10 August 1889 and *Liverpool Mercury*, 10 August 1889.

⁸⁶ The Home Secretary is the member of the UK government in charge of the Home Office. For an investigation into the role of the Home Office in the Victorian period: R. Chadwick, *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian Britain*, New York and London 1992.

⁸⁷ *Trial of Mrs Maybrick*, cit., p. XXXVII.

⁸⁸ *Aberdeen Evening Press*, 23 August 1889.

⁸⁹ Mr Justice Stephen said: «Not very long ago I was made acquainted, suddenly, and to my great surprise, that I was regarded by some as no longer physically capable of discharging my

The following year an attempt was made to secure the release of the woman. Lumley & Lumley Solicitors prepared an elaborate brief in order to prove that there was no conclusive evidence that Mr. Maybrick died from arsenical poisoning nor that his wife administered or attempted to administer poison to him. The supporters of the woman would have liked a new trial but, in the late nineteenth century, a court of criminal appeal still did not exist in England⁹⁰. Indeed in 1848 the Crown Cases Act had created the Court for Crown Cases Reserved (CCCR), whose jurisdiction however was confined to points of law: the prisoners, therefore, did not have the possibility to appeal on the facts of the case, not even for the most serious crimes⁹¹. Other attempts were made to procure Florence's release, but none were successful, thus the woman – despite all efforts – remained in prison⁹².

6. *The reparation of judicial errors in criminal cases: a comparative approach*

The story of Mrs. Maybrick is «one of the most extraordinary miscarriages of justice of modern times» wrote Joseph Hiam Levy in the preface of his book *The Necessity for Criminal Appeal as Illustrated by the Maybrick Case* published in 1899. In Levy's opinion, such a case raised a doubt «in the minds of most reasonable people» and required careful consideration on «the vital principles of law and justice»⁹³. In order to promote a broad reflection on this matter, Levy asked for the collaboration of legal experts from different countries: among them, we find Max J. Kohler from the United States, Frantz F. Melhuus from

duties. I made every inquiry to ascertain what grounds there were for this impression, and I certainly rejoice to say that no single instance was brought to my notice in which any alleged failure of justice could be ascribed to any defect of mine». The quotation is taken from *The Maybrick case. A treatise by Alexander William Macdougall on the facts of the case, and of the proceedings in connection with the charge, trial, conviction, and present imprisonment of Florence Elizabeth Maybrick*, London 1891, preface.

⁹⁰ For an investigation into the legal methods of review in the English judiciary system between nineteenth and twentieth century see J. H. Baker, *An Introduction to English Legal History*, London 2002⁴, p. 135-154. On the relation between criminal appeals and jury trials: B. L. Berger, *Criminal Appeals as Jury Control: An Anglo-Canadian Historical Perspective on the Rise of Criminal Appeals*, in «Canadian Criminal Law Review», 10 (2005), p. 1-41.

⁹¹ On the nature and scope of the Court for Crown Cases Reserved see P. Handler, *The Court for Crown Cases Reserved 1848-1908*, in «Law and History Review», vol. 29, no. 1 (2011), p. 259-288.

⁹² *Trial of Mrs Maybrick*, cit., p. XXXVIII- XLIV.

⁹³ J. H. Levy, *The Necessity for Criminal Appeal as Illustrated by the Maybrick Case and the Jurisprudence of various countries*, London 1899, p. VI.

Norway, Antigono Donati from Italy, and Yves Guyot from France. The authors interviewed by Levy described, with more or less detail, the methods for the reparation of judicial errors in their own countries by taking into account a plurality of perspectives: this field of research, indeed, required different levels of investigation closely related to each other. A first level of analysis consisted in the role exercised by the presiding judge and the influence his opinion could have on the final deliberation of the jury; secondly, consideration was given to the relation between the evidence given in the trial and the verdict issued by the jurors who, as well known, did not have to give reasons for their decision; thirdly, the need was examined for courts of appeal in criminal cases, in order to carry out a new assessment on the facts of the case; fourthly, the possibility was suggested that a trial could be reopened under specific conditions explicitly regulated by the law; finally, the provision was discussed of pecuniary compensation due to the victims of judicial errors. As we are going to see, on the threshold of the twentieth century, these issues were the subject of an intense debate, which sometimes led to innovative reforms.

The first author interviewed by Levy examined the methods of review in the United States. The starting point of the analysis proposed by Max J. Kohler was the distinction between Federal Courts and State Courts: the former have jurisdiction over offences against the Federal Government; the latter over the great mass of criminal cases committed in the various States⁹⁴. From the beginning of the nineteenth century, the right of review was introduced in different jurisdictions of the country, while in the Federal Courts the right to request a revision in capital cases was established in 1889⁹⁵. In the late nineteenth century, most of the revisions against capital convictions affected the causes tried before the Judge Isaac C. Parker in the Western District of Arkansas. Judge Parker was known as the ‘hanging judge’, because he sent more than 80 persons to the gallows at Fort Smith⁹⁶. After the enforcement of the 1889 Act, the Supreme Court reversed three dozen of capital cases from Judge Parker’s court⁹⁷. According to Kohler, the large number of reversals justified the existence of a system for the reparation of judicial errors, because «it is better for society that ninety-nine guilty men should escape punishment, than that one innocent

⁹⁴ M. J. Kohler, *Methods of Review in Criminal Cases in the United States*, p. 502-503.

⁹⁵ See D. Rossman, “Were There No Appeal”: *The History of Review in American Criminal Courts*, in «The Journal of Criminal Law and Criminology», vol 81, no. 3 (1990), p. 518-566.

⁹⁶ For further information: R. H. Tuller, “Let No Guilty Man Escape”. *A Judicial Biography of “Hanging Judge” Isaac C. Parker*, Oklahoma 2001 and M. J. Brodhead, *Isaac C. Parker. Federal Justice on the Frontier*, Oklahoma 2003.

⁹⁷ R. Lettow Lerner, *How the Creation of Appellate Courts in England and the United States Limited Judicial Comment on Evidence to the Jury*, in *GWU Legal Studies Research Paper*, 20 (2016), p. 225.

person should suffer it»⁹⁸. When the error committed against a defendant could not be reviewed, the solution must be the exercise of the pardoning power entrusted to the Executive⁹⁹.

From the United States to the «gallant little Norway»: in the late nineteenth century, indeed, this country approved an important reform which made a sort of revolution in the Norwegian judiciary system. Frantz F. Melhuus, Advocate of the Highest Court of Justice in Kristiana, explained in great details the law of criminal appeal of Norway as introduced by the Criminal Procedure Act of 1 July 1887¹⁰⁰. First of all, the author provided useful information on the role of laypersons in criminal matters which could take on two different forms: in the mixed courts (*Meddomsret*) the laymen worked side by side with the magistrates and decided on both the questions of fact and the questions of law, while in the jury courts (*Lagmandsret*) the laymen acted as jurors, thus deciding only upon the facts of the case¹⁰¹. The jury courts were composed by three professional judges and ten jury members, who issued their verdict by a simple majority of votes: this means that a prisoner could be found guilty by only six jurors out of ten. The three magistrates were bound to pass a sentence in accordance with the deliberation issued by the jurors who were the sole judges of the fact of the case. There was however an important exception: if the jurors found a verdict of guilty, the magistrates, as long as they believed that the verdict was not supported by satisfactory evidence, could suspend the sentence and direct the case before another jury. This possibility – explicitly prescribed by section 358 of the Criminal Procedure Act – represented a protection for

⁹⁸ M. J. Kohler, *Methods of Review in Criminal Cases*, cit., p. 506-507.

⁹⁹ The author noted that in the United States «there is a clear and marked separation between the executive and the judiciary, and the executive cannot be regarded as correcting his own errors by the exercise of the pardoning power; hence the Court itself must be clothed with power to grant a new trial». Ivi, p. 505.

¹⁰⁰ F. F. Melhuus, *The Law of Criminal Appeal of Norway*, p. 562. In his analysis, Melhuus referred to the *Lectures on the Norwegian Criminal Procedure* (1892) by George Francis Hagerup (1853-1921). In the first decades of the twentieth century, Hagerup's textbook was an essential resource for both jurists and students. L. Björne, *Hagerup, The General Doctrines of Criminal Law*, in S. Dauchy - G. Martyn - A. Musson - H. Pihlajamäki - A. Wijffels (eds), *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing*, Cham 2016, p. 436-438. For more information on this author: S. Blandhol - D. Michalsen (eds), *Rettsforsker, politiker, internasjonalt: perspektiver på Francis Hagerup*, Oslo 2007.

¹⁰¹ On the role of laypersons in the Norwegian judiciary system: A. Strandbakken, *Lay participation in Norway*, in «Revue Internationale de Droit Pénal», 72 (2001), p. 225-251. For further details see also A. Offit, *Dismissing the Jury: Mixed Courts and Lay Participation in Norway*, in S. Kutnjak Ivković - S. Seidman Diamond - V. P. Hans - N. S. Marder (eds), *Juries, Lay Judges and Mixed Courts: A Global Perspective*, Cambridge 2021, p. 197-217.

the defendants against the risk of convictions based on insufficient evidence. Apart from this provision, the Norwegian jury system did not allow any sort of appeal against the deliberation of the jury as far as concerned the facts of the case. Nonetheless, the trial could be renewed in the event that new facts turned up or new proofs were discovered, which seemed likely to bring about the acquittal of the prisoner. As pointed out by the author in the final part of his essay, such resumption was an extraordinary remedy to be used under specific conditions against a sentence which could not be revised by any other means¹⁰².

The trial by jury in the Norwegian jurisdiction at the turn of the nineteenth and early twentieth centuries has a number of similarities with the Italian system. In Italy the courts of assize were composed by three professional judges and twelve jurors chosen on the basis of established criteria as indicated by the Jury Reform Act approved in June 1874¹⁰³. The Italian juries, like the Norwegian ones, issued their verdict by answering 'yes' or 'not' to a series of questions concerning the main fact as well as the circumstances of the case which could either aggravate or mitigate the position of the accused. Like their colleagues in Norway, the Italian jurors were not bound to find a unanimous agreement: according to the rule of simple majority, the verdict was to be pronounced by at least seven votes out of twelve. As prescribed by the art. 509 of the Italian Code of Criminal Procedure enacted in 1865, whether the jury found a verdict of guilty by a majority of seven votes, the three magistrates could suspend the sentence inasmuch as they were unanimously persuaded that that verdict was wrong¹⁰⁴. Such an article, which has clear similarities with section 358 of the Norwegian Criminal Procedure Act, seems however to have never been applied in the Italian judicial practice¹⁰⁵.

¹⁰² F. F. Melhuus, *The Law of Criminal Appeal of Norway*, cit., p. 589-593.

¹⁰³ The Italian jurists devoted rivers of ink on this reform. Among the authors who dealt with the topic: L. Casorati, *La nuova legge sul giurì corredata dei lavori preparatorii e delle discussioni parlamentari*, Prato 1874; L. Franceschini, *I giurati secondo la nuova legge 8 giugno 1874: osservazioni e commenti*, Roma 1874; G. Manfredini, *Il giurato italiano dopo il 1 gennaio 1875*, Padova 1875; F. Saluto, *Commenti al codice di procedura penale per il Regno d'Italia*, III ed., Torino 1882; G. Borsani - L. Casorati, *Codice di procedura penale italiano II Le corti di assise*, Milano 1883; A. Setti, *Il giudice popolare nelle corti di assise: manuale ad uso dei giurati e dei presidenti di assise. Commento alla legge sul giurì coordinata alle nuove modificazioni del cod. di procedura penale*, Milano 1915.

¹⁰⁴ A detailed analysis on this article has been proposed by G. De Gioannis Gianquinto, *Rinvio di giudizio penale da una ad altra sessione di corte di assise per errore di verdetto di colpevolezza: commento dell'art. 509 del codice italiano di procedura penale*, Pisa 1868; P. Nocito, *Il giudizio di rinvio secondo l'articolo 509 del codice italiano di procedura penale*, Bologna 1869; G. Orano, *I verdetti dei giurati a maggioranza di sette voti. Studio sull'articolo 509 del codice di procedura penale*, Roma 1896.

¹⁰⁵ An unsuccessful attempt was made by the court of assize of Milan in 1904. On this case see: E. Daggunagher, *Giudice togato e giuria: le numerose voci dell'opinione pubblica nella contestazione*

No appeal was allowed against the verdict issued by the jurors as far as concerned the facts of the case. As explained by Antigono Donati, «it is only when the interpretation of the law is called in question, or when there is some doubt raised as to the regularity of the procedure, that appeal can be made to the Supreme Court»¹⁰⁶. The Supreme Court of Cassation decided whether the law had been correctly or incorrectly applied, but did not discuss the merits of the case, which fell within the exclusive competence of the jury¹⁰⁷. The Italian Code of Criminal Procedure established another remedy which could be used against a conviction affected by an error of fact, that is the review of the trial¹⁰⁸. This remedy was allowed under three conditions regulated by the law: firstly, when two irreconcilable sentences convicted two different persons for the same crime; secondly, when it turned out that the alleged victim of a murder was alive; and thirdly when the witnesses who testified against the accused were convicted of perjury or reticence¹⁰⁹. Donati however did not go into the matter and dismissed the question by stating that judicial errors «must be assumed to be rare exceptions» in daily practice¹¹⁰.

The Italian system, however, was far from being exempt from criticism as noted by other legal authors, notably by Giuseppe Orano. In his essay on the review of the trial in criminal cases published in 1888, Orano pointed out the immense distress and great upset of the persons who had been wrongly

di un verdetto del 1904, in F. Colao - L. Lacchè - C. Storti (eds), *Processo penale e opinione pubblica in Italia tra Otto e Novecento*, Bologna 2008, p. 415-438. On this case see also C. Passarella, *The jurors' wisdom in the administration of criminal justice: Irish jurisdiction and the Italian justice system in the late nineteenth and early twentieth centuries*, in «Comparative Legal History», vol. 7, no. 2 (2019), p. 180-183.

¹⁰⁶ A. Donati, *The reparation of judicial errors in Italy*, p. 560.

¹⁰⁷ The line between the duties of the judges and the responsibilities entrusted to the jurors was actually fleeting and evanescent. The trial of Alberto Olivo – charged with the murder of her wife and tried before the court of assize of Milan in the early twentieth century – is a prime example in that respect. For further details on this *cause célèbre* see: C. Storti, *Giuria penale ed errore giudiziario: questioni e proposte di riforma alle soglie della promulgazione del codice di procedura penale italiano del 1913*, in *Studi in ricordo di Giandomenico Pisapia*, III, Milano 2000, p. 639-710.

¹⁰⁸ See art. 688 – 694 of the Italian Code of Criminal Procedure (1865).

¹⁰⁹ The review of the trial in the late nineteenth century Italy has been studied by A. Monti, *Errore giudiziario e revisione del giudicato in Italia nella seconda metà dell'Ottocento*, in A. Gouron - L. Mayali - A. Padoa Schioppa - D. Simon (eds), *Error iudicis. Juristische Wahrheit und justizieller Irrtum*, Frankfurt am Main 1998, p. 157-203. With particular attention to the debate on the possibility to admit a review of the trial *contra reum* see M. N. Miletti, *La paura del processo. Spunti nella penalistica italiana (secoli XVIII-XX)*, in «Quaderno di storia del penale e della giustizia», 1 (2019), p. 225-228.

¹¹⁰ A. Donati, *The reparation of judicial errors in Italy*, cit., p. 561.

convicted¹¹¹. For his part, the Italian lawyer Giuseppe Rebaudi focused his attention on the most famous miscarriages of justice which had taken place in Italy, France and England in the late modern period. For what concerns us here, the author pointed out how in the English judiciary system many individuals were victim of judicial errors despite the extensive procedural guarantees granted to the defendants: faced with this situation, Rebaudi recommended the creation of a court of appeal in order to avoid the conviction of innocent persons¹¹². The reparation of judicial errors specifically in late nineteenth century Italy was the subject of another volume which represents an essential reference study on this matter: *Gli errori giudiziari* by Domenico Giuriati. In chapter VII, Giurati considered the role entrusted to the magistrates presiding over the Italian courts of assize: deliberately or not, most of the judges gave their personal opinion on the case, and that was generally in favour of the prosecution¹¹³. This attitude was extremely dangerous, because the passionate words of the judge could affect the deliberation of the jury and lead to the conviction of an innocent person. As defender, Giurati had often left the courtroom in protest over a biased summing up which could influence the jurors and seriously compromise their judgment¹¹⁴.

In France too the presiding judge was entrusted with an important responsibility, as explained by Maurice Lailier and Henri Vonoven in their book *Les erreurs judiciaires et leurs causes* published in 1897¹¹⁵. The two authors examined the different causes of judicial errors which could operate both inside and outside the tribunals. Special attention was paid to the role attributed to the president of the assize, who was required to summarize the trial before the jurors retired to deliberate. As noted by the French authors, some magistrates did not hesitate to hamper the prisoner's defence, while other judges supported the prosecution

¹¹¹ The Italian law provided two kinds of remedies against wrongful convictions: the so-called preventive remedies, in order to prevent such errors from being committed, and the reparative remedies which operated after the judgment. As obvious, the review of the trial was classified as a reparative remedy as well as the power of clemency. G. Orano, *Sulla revisione dei giudicati penali*, Roma 1888, p. 17-31.

¹¹² G. Rebaudi, *La pena di morte e gli errori giudiziari: studi sperimentali*, Roma 1888, p. 271-272.

¹¹³ D. Giurati, *Gli errori giudiziari: diagnosi e rimedi*, Milano 1893, p. 170-171.

¹¹⁴ «Più di una volta a me che scrivo è avvenuto di non poter tollerare in pace il riassunto mefistofelico o soverchiamente parziale e di andarmene via dall'aula. In qualche caso il presidente assorto non se ne curò e proseguì fino al termine del suo sproloquio; in qualche altro si fermò, mandò ad invitarmi per mezzo del cancelliere o dell'usciera, io non aderii, fu sospesa la udienza e vi ritornai dopo aver convenuto di buon accordo qualche *errata corriges*. Ivi, p. 171.

¹¹⁵ M. Lailier - H. Vonoven, *Les erreurs judiciaires et leurs causes*, Paris 1897.

in a less visible but equally dangerous way. Thus, we must ask ourselves the following question: when the jurors make a mistake, who is the real culprit?¹¹⁶

The book *Les erreurs judiciaires* was published two years after the enforcement of the law of 8 June 1895, which modified the French Code of Criminal Procedure by introducing a system of revision¹¹⁷. The revision presupposed an error of fact, in particular, as far as we are concerned, a conviction wrongly pronounced although at the trial all legal formalities had been duly observed. This remedy could be used after a verdict of guilty when new evidence was produced in order to establish the innocence of the condemned person. The promoters of the law were enthusiastic, because they thought they had assured the possibility of reparation of judicial errors in criminal cases¹¹⁸, but the new system had a weak spot: the right of asking for revision after a verdict of guilty, indeed, belonged to the Minister of Justice alone. The Minister was a political figure, thus his assessments could be moved by «other considerations than those of justice»: the real problem was that in France the Judiciary was not completely independent from the Executive. Experiences such as the Dreyfus affair prove that the system must be changed by allowing individuals to lay their cases directly before the Cassation¹¹⁹.

The notoriety of the Dreyfus affair expanded beyond the French boundaries: as explained by J. H. Levy in the preface of his volume, «[t]he conscience of the whole civilised world, outside of France, has recently been roused to indignation over the moral enormities of the Dreyfus case»¹²⁰. The circumstances of this *cause célèbre* are well known: in December 1894 the army captain Alfred Dreyfus had been convicted of treason for allegedly selling military secrets to the Germans. The question on the guilt or innocence of the army captain was the subject of a passionate debate which continued for over ten years

¹¹⁶ Lailler and Vonoven wrote: «Dans toute affaire terminée par une condamnation erronée, l'un des juges, à un moment quelconque, a enfreint une règle essentielle de sa délicate mission et, directement ou non, l'erreur est née de cette faute». Ivi, p. 2. This opinion, however, was in the minority: most of the French authors, indeed, refused to question the work of the judiciary. For further details on this perspective: B. Durand, *Rationalisme et «Romantisme» dans la perception de l'erreur judiciaire par les juristes français aux XIX^e et XX^e siècles*, in *Error iudicis*, cit., p. 83-87.

¹¹⁷ A. Berlet, *De la réparation des erreurs judiciaires. Étude de la loi du 8 juin 1895*, Paris 1896. On this matter see also: E. Bavière, *La réparation des erreurs judiciaires et la loi du 8 juin 1895. Thèse de doctorat*, Paris 1898.

¹¹⁸ «[G]lobalement, la loi de 1895 satisfait ceux qui réclamaient depuis un siècle, au nom de la justice et de l'équité, une réforme dans cette matière». P. Vielfaure, *La perception de l'erreur judiciaire par le législateur français 1808-1946*, in *Error iudicis*, cit., p. 339.

¹¹⁹ Y. Guyot, *The reparation of judicial errors in France*, p. 554.

¹²⁰ J. H. Levy, *The Necessity for Criminal Appeal*, cit., p. VII.

amid legal matters and political tensions: finally, in July 1906, the Court of Cassation set aside the previous judgment and ruled Dreyfus' innocence¹²¹.

This very famous miscarriage of justice brings us back to Florence and her conviction for murder. The connection between these two incredible cases is embodied by the defence counsel of the woman, Sir Charles Russell: in 1899 Russell was in France to attend the trial against the army captain at the court martial of Rennes¹²². After returning home, he reported his account to Queen Victoria: as written in the report, Russell had come to the clear conclusion that the case «was supported by no solid evidence», thus he believed that a revision trial before the Cassation would have made Dreyfus a free man. Seven years later, history proved him right.

Undoubtedly the Dreyfus affair and the Maybrick case are very different from each other. This difference does not concern only the factual events which took place on either side of the English Channel, but also and above all the procedure adopted in both cases. While in France Alfred Dreyfus was tried before a military court, in England the trial of Florence Maybrick was held before a jury in accordance with a series of rules attributing important safeguards to the suspect individuals. Nonetheless, both the French and the English system could lead to the conviction of an innocent person. The fate suffered by the defendants, therefore, established a relation between these two famous stories: not by chance, the Maybrick trial has been defined the «English Dreyfus case»¹²³.

7. *At the dawn of the twentieth century: the Criminal Appeal Act of 1907*

While the world was animatedly discussing the affair of the French army captain, Florence continued to serve her sentence in prison. Since 1896 Mrs. Maybrick had been confined at Aylesbury prison, where the inmates were allowed to receive a fixed number of letters and visits from relatives and

¹²¹ The Dreyfus case has been studied by many authors in the last years. Among the most recent publications see R. Harris, *The Man on Devil's Island: Alfred Dreyfus and the Affair that divided France*, London 2010 and P. P. Read, *The Dreyfus Affair: The Story of the Most Infamous Miscarriage of Justice in French History*, London - New York 2012. In the early twentieth century France, there was another famous miscarriage of justice: the case of Jules Durand, sentenced to death by the court of assize of Rouen in 1910 and rehabilitated by the Cassation in 1918. On this case M. Hédreich, *L'affaire Durand ou la «nouvelle affaire Dreyfus» (1910-1918) Autopsie de l'erreur judiciaire du siècle*, in «Histoire de la justice», vol. 30, no. 1 (2020), p. 43-52.

¹²² R. B. O' Brien, *The Life of Lord Russell*, cit., p. 310-326.

¹²³ G. Robb, *The English Dreyfus Case: Florence Maybrick and the Sexual Double-Standard*, in G. Robb - N. Erber (eds), *Disorder in the Court. Trials and Sexual Conflict at the Turn of the Century*, Basingstoke 1999, p. 57-77.

friends¹²⁴. At Aylesbury, Florence received a visit from Russell, who in the meantime had been appointed Lord Chief Justice of England. Although a long time had passed since the sentence, Russell still believed in the innocence of the woman and strongly protested against her imprisonment¹²⁵. Lord Russell died four years before Florence's release, which took place on 25 January 1904¹²⁶.

Not long after, Mrs. Maybrick published her own story in a book significantly entitled *My fifteen lost years*¹²⁷. In the second part of the volume, Florence provided the readers with an analysis of her case from the death of her husband until the deliberation of the verdict at the Liverpool Summer Assizes. She complained the strong prejudice against her due to the «false and sensational reports circulated by the press during the interval between the arrest and the trial»: those reports had certainly affected the opinion of the jurors who «were not competent to weigh technical evidence». Nevertheless, the main element in her conviction was Justice Stephen who was «incapable of dealing with so intricate a case»¹²⁸. The woman believed that the jury was influenced by the judge's charge which «positively teemed with misstatements as to the evidence given during the trial»¹²⁹. Florence therefore considered herself as a victim of a miscarriage of justice: such a wrongful conviction could have been avoided if only England

¹²⁴ For an investigation into English prisons between the late nineteenth and early twentieth centuries: A. Brown, *English society and the prison: time, culture and politics in the development of the modern prison 1850-1920*, Suffolk 2003. For a collection of sources on this matter see V. Bailey (ed), *Nineteenth-Century Crime and Punishment*, vol. IV, *Prisons and Prisoners*, London 2021. With particular attention to the conditions of female prisoners during the Victorian period: L. Zedner, *Women, Crime and Custody in Victorian England*, Oxford 1991 and R. Bennett, *Bad for the Health of the Body, Worse for the Health of the Mind?: Female Responses to Imprisonment in England, 1853-1869*, in «Social History of Medicine», vol. 34, no. 2, 2021, p. 532-552.

¹²⁵ In 1898 Russell wrote to the Home Secretary as follows: «I think it my duty to renew my protest against the continued imprisonment of Florence Maybrick. I consider the history of this case reflects discredit on the administration of the criminal law». Two years later he wrote another letter by noting that «perhaps the man had not died of poison [...] because the quantity of poison revealed on analysis was infinitesimal and such as might well have been accounted for by the notorious arsenic-eating habits of the man». The Maybrick case therefore occupied his thoughts until the end of his life. R. B. O' Brien, *The Life of Lord Russell*, cit., p. 262-263.

¹²⁶ A few months later her release, the *Daily Mirror* wrote: «if Florence Maybrick be innocent, a terrible wrong has been done, and there is an indelible stigma on the administration of British justice». *Daily Mirror*, 16 July 1904.

¹²⁷ An analysis of Maybrick's prison experience has been proposed by A. Schwan, *Convict Voices. Women, Class, and Writing about Prison in Nineteenth-Century England*, New Hampshire 2014.

¹²⁸ F. E. Maybrick, *My fifteen lost years*, New York - London 1905, p. 236-237.

¹²⁹ Ivi, p. 239-240.

had had a court of criminal appeal, whose introduction was being discussed since a long time¹³⁰.

The first attempt dated back to the 1830s as part of «a broader movement for criminal law reform»¹³¹. The debate continued in the following years, particularly in the mid-1840s when a bill was introduced in Parliament¹³². These efforts were unsuccessful, nevertheless an important result was achieved, that is the creation of the Court for Crown Cases Reserved (CCCR) mentioned above. The opposition to the establishment of a court of criminal appeal was based on several reasons, including the confidence in the capacity of the jurors, who most of the time exercised their duties with seriousness and sense of responsibility. It was also believed that judicial errors were restricted to a small number of cases: «the danger of a wrongful conviction was very slight» in everyday practice, ergo the necessity for the institution of a court of appeal in criminal matters was not so urgent¹³³.

Mrs. Maybrick was of a completely different opinion: in English history, there had been many innocent men and women charged with serious crimes and unjustly convicted. Many of these judicial errors were destined to remain unknown, while others moved the conscience of the entire world, as happened in the case of Adolf Beck¹³⁴. Beck had been committed for trial for fraud at the Old Bailey in March 1896. The defence argued the man was victim of mistaken identity: despite the evidence given in the trial, the accused was found guilty and sentenced to seven years of penal servitude. Beck was released on good behaviour in 1901; three years later, however, he was charged with jewelry theft and put on trial again. The second trial also resulted in a conviction, but this time the judge decided to postpone the sentence. A few days later, the real offender was identified and arrested; shortly thereafter, the culprit confessed his crimes. As a consequence, Beck was given a free pardon and a compensation for wrongful detention¹³⁵.

¹³⁰ «There are numerous instances where judges, witnesses and juries have gone wrong. Indeed, it will be found that even in cases which have seemed the clearest and least complicated in the trial grievous mistakes have been made. But in England the blame rests on the public and the bar in that no means are provided to set the wrong right. What a difference it would have made in my life if I had been granted a second trial! I could have called other witnesses, submitted fresh evidence, and refuted false testimony». Ivi, p. 148-149.

¹³¹ P. Handler, *The Court for Crown Cases Reserved 1848-1908*, cit., p. 261.

¹³² On this matter see J. H. Baker, *An Introduction to English Legal History*, cit., p. 138-143.

¹³³ P. Handler, *The Court for Crown Cases Reserved 1848-1908*, cit., p. 268. As anticipated in the introduction, the Judicature Acts of 1873 and 1875 did not introduce any changes from this point of view.

¹³⁴ F. E. Maybrick, *My fifteen lost years*, cit., p. 155-162.

¹³⁵ See the findings of the Committee of inquiry appointed into the case: *Report from the*

In those same years another famous story hit the headlines: the case of George Ernest Thomson Edalji, the eldest son of Shapurji Edalji, the vicar of Great Wyrley in Staffordshire. George Edalji was charged with the mutilation of a horse and also accused of writing a number of anonymous threatening letters. At the trial, which took place in October 1903, the defendant was found guilty and sentenced to seven years imprisonment. In 1906 Edalji was released on parole, but his name had not been cleared. Thereupon the man gained the help of Sir Arthur Conan Doyle, who became his most influential supporter. In 1907 the Home Secretary appointed a Special Committee of inquiry to look into the case: the Committee finally awarded Edalji a free pardon for the crime of mutilation¹³⁶.

Within a few years, therefore, two scandalous judicial errors had clearly proved the fallibility of the British justice system. As pointed out by Giuseppe Rebaudi in 1888, despite the extensive procedural guarantees granted to the defendants, the risk of wrongful convictions was far from uncommon in daily practice¹³⁷. Faced with these incredible stories, the necessity for a court of appeal became evident¹³⁸: this outcome was achieved with the Criminal Appeal Act of 1907¹³⁹. The Criminal Appeal Act established the Court of Criminal

Committee together with minutes of evidence, appendix, and facsimiles of various documents, London 1904. The story of Adolph Beck was published twenty years later by E. R. Watson, *Adolph Beck 1877-1904*, Edinburgh 1924. On this cause célèbre see also T. Coates, *The Strange Case of Adolph Beck*, London 2001. The story was included in the *Notable British Trials Series*.

¹³⁶ S. Basu, *The Mystery of the Parsee Lawyer: Arthur Conan Doyle, George Edalji and the Case of the Foreigner in the English Village*, London 2021. Conan Doyle took a prominent role in another incredible story occurred a few years later: the case of Oscar Slater. In 1909 Slater was charged with murder and put on trial before the High Court of Justiciary in Edinburgh. He was found guilty by a majority of 9 jurors out of 15 and sentenced to death. Shortly thereafter the sentence was commuted into life imprisonment. Many authors supported the prisoner's innocence, including Sir Arthur Conan Doyle, who in 1912 published a book on this case in order to prove that Slater was not the murderer. See A. Conan Doyle, *The case of Oscar Slater*, New York 1912. Over fifteen years later, in 1928, Slater's conviction was finally quashed. For further details on the case in its wholeness: W. Roughead, *Trial of Oscar Slater*, Edinburgh and London 1929.

¹³⁷ G. Rebaudi, *La pena di morte e gli errori giudiziari*, cit., p. 271-272.

¹³⁸ In this perspective see H. Potter, "The Martyrdom of Adolph Beck" and the Creation of the Court of Criminal Appeal, in Id., *Law Liberty and the Constitution. A Brief History of the Common Law*, Suffolk 2015, p. 261-266.

¹³⁹ According to Forster Boulton, «[t]he creation of a Court of Criminal Appeal is probably the greatest change in English law and practice that this generation has seen». A. C. Forster Boulton, *Criminal appeals under the Criminal Appeal Act*, cit., p. VII. The development of criminal appeals between nineteenth and twentieth centuries has been studied by R. Pattenden, *English Criminal Appeals 1844-1994*, Oxford 1996.

Appeal which replaced the Court for Crown Cases Reserved. The new Court would allow the appeal «if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence». The appeal must be allowed also if the judgment of the court should be set aside «on the ground of a wrong decision of any question of law» or «on any ground there was a miscarriage of justice»¹⁴⁰. The appeal therefore could concern either the deliberation of the jury or the ruling of the judge¹⁴¹.

The Criminal Appeal Act of 1907 was the immediate consequence of the scandalous stories involving Adolf Beck in 1904 and George Ernest Thomson Edalji in 1906. Actually, however, behind the creation of the Court of Criminal Appeal there were years of debates and proposals, so that it was not «the mere expression of a passing whim»¹⁴². In such a context, the case of Florence Maybrick had also played an essential role: regardless of the innocence or guilt of the woman, indeed, her trial had provided the opportunity for a debate on the reparation of judicial errors and the methods of review in criminal matters which crossed the national boundaries and took on an international dimension.

¹⁴⁰ A. C. Forster Boulton, *Criminal appeals under the Criminal Appeal Act*, cit., p. 11-12.

¹⁴¹ The Court of Criminal Appeal lasted until 1966: under the Criminal Appeal Act 1966, the Court was abolished and replaced by the criminal division of a new Court of Appeal. On this matter S. White, *Deterrence and Criminal Appeals: The Effect of the Criminal Appeal Act 1966*, in «The Modern Law Review», vol. 38, no. 4 (1975), p. 369-396.

¹⁴² L. B. Orfield, *History of Criminal Appeal in England*, in «Missouri Law Review», 1 (1936), p. 337.