

RANDOM NOTES.

THE LAWYER IN FICTION—JOHN FRENSHAM, K.C.—This is a very entertaining book for any one, especially so for a lawyer.

John Frensham in the full tide of success at the Bar, a most sought after and brilliant cross-examiner, with a loving wife and interesting boy, Peter, meets a lady with whom, ten years before, he had been desperately in love.

She, strange to say, had refused him, because as she told him she was afraid of love, of that passionate sort that frightened her. She describes it as such as would burn them both: that if she was completely his she would demand of him so much that he would be unfitted to build up his own fortune, that she would expect that every hour of every day be spent at his side. Such love as hers, she told him, if once unleashed, would destroy him. And she loved too deeply to destroy.

She went to India and there made a friend of a Mrs. Julia Thurston, married to a brute, who led a life of pleasure and unfaithfulness which turned his wife, a shallow woman, into similar ways. A ball and leaving it for a night frolic in a motor, a road house, and a late return, gave the husband a hold on her that resulted in a suit for divorce.

Mrs. Thurston went to England to fight the divorce and a frantic cablegram brought Edna Carrol back to assist her friend. What she could say or do to help her was very little.

Frensham was retained by Thurston, and met Edna. His love and hers flamed up again and they decided to run away together when the divorce suit was over. Frensham learned with disgust that Edna was Mrs. Thurston's friend, but had no idea that she was expected to be a witness for the defence. How she could help her friend in that capacity is by no means clear. However that does not matter to the story. The divorce suit came on and Frensham cross-examined with his usual subtle skill and turned Mrs. Thurston's story to her supreme disadvantage. The Court rose for the night and Edna met him, urged by the agonized Mrs. Thurston to help her. In the interview Edna tells Frensham that she must be a witness and tries to induce him to withdraw from the case. Finally she hints that if she does give evidence it might damage her

reputation. She said to him, "Suppose there was something, but that putting it forward would involve me, what would you do? He replies, "But I could not dream of involving you, I'd sooner throw up the case." They part and Frensham at once decides to withdraw. Next morning he informs the solicitor that on account of knowledge which had just come to him personally and which he was not at liberty to divulge he would be unable to do anything more in the case. This is mentioned to the Judge when the Court opens, and then, and this is hard to understand, the case is at once abandoned. So that the husband gives up his right to a divorce because the defence collapses. This is really extraordinary because Frensham's cross-examination is stated to have been so successful that Mrs. Thurston's counsel told her after it was over that he could not counteract it unless Edna could give such evidence as would completely turn the scale. This, of course, she could not do, as it appears that when Mrs. Thurston got back from her night excursion with Miles, Edna, who was staying with the Thurstons was in their house having arrived back from the ball some time before.

This is another instance of how much novelists know about law.

Such is a brief outline of a story which has many interesting episodes and thrilling situations. One of these is Thurston's interview with Frensham after the cross-examination of the wife. The injured husband did not appreciate the silky and devastating cross-examination and thought it ineffective. Frensham resents his insinuations and knocks him down—Frensham's reconciliation with his wife has its dramatic moments.

Another illustration of mistaken law appears in a tale of one of his forensic triumphs where Frensham represents himself as prosecuting and as putting his case so strongly and unanswerably that the Judge decided that the defence could not upset it and would not be called upon to reply!

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"THE STORY OF IVY."—Counsel's responsibility in a criminal trial is necessarily heavy and often of varied degree. Mrs. Belloc Lowndes in "The Story of Ivy" evidently adopts the view that that responsibility is only to the client. This is I think a mistaken view, or more correctly only a partial statement of counsel's duty. The course followed by counsel at the trial described in this interesting work of fiction raises an interesting question. Simply stated, it is whether counsel defending a prisoner charged with murder, whom

he believes to be innocent, is at his client's urging justified in perfunctorily cross-examining a witness who, as he thinks, did the deed herself instead of subjecting her to such a searching enquiry as would tend to raise a reasonable doubt in the minds of the jury as to the guilt of his client.

The major tactics at such a trial are so clearly understood by the profession and followed not only by those concerned but by an extremely able and well-informed press, that we seldom get "journalèse" instead of a correct appreciation of what is essential or vital, and not only what is merely dramatic in the moving event.

The answer to the question seems to me clear if the scope of the duty undertaken by a defending counsel is firmly kept in mind. A barrister is an officer of the Court as well as an advocate for his client. It is a counsel of perfection to say that he must be as diligent in eliciting the real truth as he is in saving his client from conviction. That would be straining human nature too far. His right is to take the facts as he finds them at the trial, not to pose as an inquisitor, which is the role of the Crown Counsel, and, while not misleading the tribunal nor concealing what in common fairness and honesty he should not hide, to argue that they disclose no guilt in his client. That is his duty to the Court and it is in accordance with his oath. When, however, he is asked to use his talents in such a way to work a detriment to his client's true interest, even at that client's request, he may be confronted with a very difficult problem. To refuse to comply may result in casting suspicion on someone who may well be innocent and who is not on trial. To do this at his own volition, based on his individual view of the case, may do as grave an injustice as compliance might do if his client were not guilty, a matter which is necessarily in at least some doubt. But only in very exceptional cases is counsel, in my view, justified in subordinating his conduct of the defence to a request, the following of which will in all probability result in his client's undoing.

The case which gives rise to the *quaere* discussed is certainly not such an exceptional one as to justify the writer's assumption that counsel for the defence can be exculpated for his course in entirely emasculating his cross-examination, but it illustrates the repeated failure of writers of fiction to appreciate fully the high standards of the legal profession, or the heart searching problems which have often to be solved on the spur of the moment.

F. E. H.