

"Unwritten Law" Saves Officer In England

Details of a Husband's Summary Defence of His Wife's Honor and Acquittal By British Jury

A remarkable case is that of Lieutenant Douglas Malcolm, Royal Artillery, attached to the Headquarters Staff of the British army in France, who, at Old Bailey, London, on Sept. 11, after a trial of a few hours, was acquitted of the murder of Anton Baumberg, alias "Count Borch," believed to be a German agent, but mentioned in the London press merely as a "dacker."

Before the coroner's jury which gave the verdict of "justifiable homicide," the police court justice who held him for trial, and the jury at Old Bailey which set him free, Malcolm repeatedly declared that he had killed the count to save his honor.

The London press emphasized the fact that the case is the first in the history of English jurisprudence where the "unwritten law" has prevailed as a defence at a murder trial.

Yet, the defense made no attempt to introduce that plea and the prosecution repeatedly declared that it could not be admitted. The prosecution, however, did a remarkable thing. Its attorney at the examination said:

"All homicide is prima facie murder. This case contains every element of willful murder. But in this case it will be admitted by the prosecution, and contended by the defense, that if ever there did exist, or could exist, a motive which would be adequate for murder, that motive existed with the prisoner in this case."

There were other curious phases: The whole procedure occupied less time than was ever known before in a British murder case—the deed was done on Aug. 14; on Sept. 11 the perpetrator was a free man. There were stories of challenges to duels sent and ignored and revelations secretly made by Scotland Yard to the defendant in regard to the mysterious "count" which did not figure as evidence at either the examination or trial.

The Inquest At the inquest held by Mr. Byrne, deputy coroner for Paddington, it was shown that "Count de Borch," age 32, was found in his bed on the morning of Aug. 14 in a boarding house at 3 Portchester Place, Hyde Park, with fatal shot wounds in his head and chest and that Lieutenant Malcolm was present.

Detective Sergeant Alfred Davies said that Lieutenant Malcolm, while waiting to go before the magistrate, said: "It is all over now. I went to give him a good thrashing with the whip. I gave him one before he is such a coward. I have done all I can to get him away from my wife, and her from him. He is a white slave trafficker, and a spy. Scotland Yard knows all about him. I have called there. You can imagine how I felt when I saw the coward who has been trying to get my wife to go away with him, and me out in France helpless to defend her honor. Can you wonder at what I did on the impulse of the moment when I saw the cur before me who was luring my wife to dishonor?"

The witness, continuing, said that Baumberg was a powerfully built man of 5 feet 11 1/2 inches, but was not in good condition, being "flabby" in appearance. Police Constable Stephens of Scotland Yard said that Lieutenant Malcolm said to him: "I want you to come to 3 Portchester Place. I have shot a man. The witness accompanied the lieutenant to that address, and there saw the body of a man lying on the bed bleeding from the head and chest, with the mouth wide open. The bedclothes were all disarranged. Lieutenant Malcolm said to him: 'I suppose you had better have the revolver that I shot him with.'"

Detective Sergeant McLattie, who made a search of Baumberg's room, said that he found a loaded pistol in one of the drawers, correspondence, mostly from women, and three letters addressed to Baumberg from Lieutenant Malcolm. He also found several letters from Mrs. Malcolm to Baumberg. Mrs. Malcolm had acknowledged that she had written them. At the police station the witness charged Lieutenant Malcolm with the murder of Anton Baumberg, and he replied: "Very well, I did it for my honor."

On August 11 Lieut. Malcolm wrote to Baumberg as follows: "If I ever hear of your trying to see or even talk to my wife again, wherever I am I will get leave and hunt you out and give you such a thrashing that even your own mother would not know you, and I will thrash you until I have maimed you for life. This I swear before God, in whom I believe, and He is my witness."

On August 14 (the day on which Baumberg was shot), Lieut. Malcolm wrote to his wife: "My Very Own Darling Dorothy:—Dear God. It is time—everything points to it that this creature is the most unutterable blackguard ever lived. I shudder to think that he ever dared to speak to you. I simply can't stand it any longer. I am going to thrash him until he is unrecognizable. I may shoot him if I think he has got a gun. I expect he has, as he is too much of a coward to stand a thrashing. If the inevitable has to happen, of course, I may get it in the neck. You see I am quite cool. If that happens, oh, believe me, my own little darling, my beloved soul whom I love so absolutely, believe me, it is only for your sake, believe me, my own brave woman, noble, honorable and upright, with a beautiful soul, I believe in God. I said yesterday that I did not, but I do, I do. I thank God from the bottom of my heart that He has sent me over in time to save you from this devil incarnate. Your honor is saved, thank God. Oh, thank God."

"Good-bye, which means God be with you. I love you. I shall go on loving you for eternity, for ever and ever. I know I shall meet you in the next world. If the worst happens, when you will come to me with open arms, and with those beautiful eyes shining, and say to me, 'Duggy, I forgive.' " "Yours for ever and ever, oh, so lovingly, your own Duggy."

After the coroner's jury had brought in the verdict: "Justifiable homicide in self-defense," Lieut. Malcolm was instantly arrested and arraigned at Marylebone police court. The examination at the Marylebone police court took place before Mr. Bingley, R. D. Muir, instructed by F. W. Williamson, represented the director of public prosecutions, and H. D. Roomer, instructed by A. E. N. Ward, solicitor, defended the prisoner. Lieut.-Col. Lord Abthumney and Captain H. T. Hewett, assistant provost marshals, were present on behalf of the military authorities.

"The prisoner," said Mr. Muir, in his opening statement, "is charged with the willful murder of Anton Baumberg, and it will be my duty to ask you to consider the material facts as simple. The prisoner was married to his wife some time in 1914, before the war, and in the present year he was serving with his regiment in France. His wife was at home, and the prisoner had made every provision for her which an indulgent husband of considerable means could make. "She seems to have formed a connection at some time or other with this man Baumberg. What their real relations were is immaterial. What is material is what the prisoner believed them to be. He believed his wife had been quite faithful to him, but was being pursued by Baumberg, who was endeavoring to persuade her to go away with him and abandon her husband."

LEGAL FLOUR Best for Bread Best for Cakes Best for Pies Best for all Household Baking

REV. H. C. FRASER Says the Vancouver World: "Cook's Presbyterian church, Chilliwack (B. C.), was filled to the doors on Sunday last, when the Rev. H. C. Fraser, M.A., delivered his farewell address to the congregation, prior to his leaving for St. John (N. B.), where he will take over the charge of Knox Presbyterian. Mr. Fraser has been ministering to the congregation of Cook's for the past four years, during which time, through his straightforward, kind and genial disposition he won the hearts of all, and his departure is much regretted. He has, however, been called to a large field of activity in the important eastern city of St. John, and in that sphere he will have the good wishes of the people of the Garden City."

"That, in brief," went on Mr. Muir, "is the tale of the tragedy. There are three courses open to you," he said to the magistrate, "first, to commit the prisoner for trial for willful murder; secondly, to commit him on the minor charge of manslaughter; or, thirdly, to discharge him if, in your opinion, upon the evidence the homicide was justifiable. All homicide is prima facie murder. This case contains every element of willful murder in its primary sense, and I submit that willful murder was the thing determined upon before the prisoner ever entered Baumberg's room."

"It has many times been stated, as to motive, that no motive can be adequate for murder. But in this case it will be admitted by the prosecution, and contended by the defense, that if ever there did exist or could exist a motive which would be adequate for murder, that motive existed with the prisoner in this case. He had a wife to whom he was devotedly attached, in whom he had complete confidence, and who, by reason of her husband's absence at the front, was left in England unprotected. She was being pursued by a man who had only been described as a scoundrel of the worst type to take advantage of a young woman in this straitened position. He believed that his wife was being, until then, unsuccessfully pursued by this man, and was on the brink of ruin, and that nothing but a separation from him would save her."

"He had tried the expedient of thrashing him, unsuccessfully; he had challenged him to fight a duel, without reply; he had even suggested the expedient of buying him off with a man who carried a deadly weapon; he took with him also a heavy hunting crop; and when he entered the count's room he was apparently quite master of himself and his own emotions. "There was nothing in any statement made by the prisoner to show that any attempt at self-defense had been made by the count; indeed, all the prisoner's statements showed that the shooting was deliberately and intentionally done. Maybe, when he set his eyes upon this scoundrel, the effect upon him was so great that he could not wait to give him a thrashing, but shot him dead at once."

Detective Sergeant Alfred Henry deposed that while the prisoner was waiting to go before the magistrate on Aug. 14, he remarked: "Oh, well, it is all over now. I went to give him a good thrashing with the whip. I gave him one before, but he is such a coward, I have done all I can to keep him away from my wife and her from him. He is a white slave trafficker and a spy. Scotland Yard knows all about him. I have called there. You can imagine how I felt when I saw the coward who was trying to get my wife to go away with him, and me out in France helpless to defend her honor. Can you wonder at what I did on the impulse of the moment when I saw the cur before me who was luring my wife to dishonor?"

The last witness was Detective Sergeant McLattie, who said, when charged with the murder the prisoner said: "Very well, I did it for my honor." In a drawer in Baumberg's room the sergeant said he found the letter which the prisoner sent to the deceased challenging him to a duel, and also the letter in which he repeated the challenge, and a third one in which he threatened to thrash de Borch. Then came the trial by jury at Old Bailey before Justice McCarthy, at which most of the foregoing evidence was reproduced. In opening for the defense Attorney Simon declared: "We do not appeal to the 'unwritten law,' but only to justice. Lieutenant Malcolm acted the only course open to him to save not only his wife's honor but her body and soul from destruction at the hands of an infamous scoundrel."

Justice McCarthy in summing up vigorously attacked the "unwritten law." "The 'unwritten law,' his honor declared, "opposes the elementary principles of British justice that the husband has no legal property in his wife's body; that she is mistress of her own destiny and if she chooses to give herself to another the husband is not entitled to punish the other man." In spite of this summing up the jury ordered the defendant acquitted.

BIG YACHT SUNK An American Port, Sept. 17.—News of the sinking of the yacht Union off the Canadian coast five days ago, as the result of explosions in her oil tanks, reached here tonight on the arrival by rail from a Canadian city of sixty-four members of the crew. There was no loss of life in the disaster, and only one man was injured. He is in a Canadian hospital suffering from burns. The Union, once the Vanadis, and one of the most beautiful of the American racing yachts, was owned until recently by C. K. G. Billings. At the time of her destruction she was the property of the Russian provisional government.

IDLE SHELL PLANTS TO BE CONVERTED

Imperial Munitions Board Makes Important Proposition Respecting Change; Orders to be Filled Ottawa, Sept. 18.—Many plants which have hitherto been engaged in the manufacture of 8 inch and 9.2 inch shells for the British government will be converted into plants suitable for producing six inch shells. A recent announcement by the Imperial Munitions Board was to the effect that the manufacture of certain types of projectiles which can be turned out in Great Britain in as large quantities as required would not be continued in Canada. It is also stated that certain other shells would be manufactured in reduced quantities and that still others would be manufactured in large quantities which would keep the factories running day and night. Plants that previously made the 9.2 and 8 inch sizes, of which there is a considerable number in Ontario and Quebec, have of late not been in operation. The Imperial Munitions Board has proposed that those plants be changed to make the six inch projectile. To firms which so convert their plants contracts for the smaller shells will be given.

Y. W. C. A. DIRECTORS A meeting of the board of directors of the Y. W. C. A. was held in the conference room of the association yesterday afternoon. Mrs. John McAvity was in the chair and a large number were present. The president presented a very full report touching on the work of all the departments in connection with the home. Reports were also presented from the committee on house membership and on travelers' aid work. An expression of appreciation was given on the splendid work done by Mrs. P. B. Warren, and regret was expressed that she is leaving the city. Mrs. Plagor was appointed convener of the membership committee in place of Mrs. Warren. The number of memberships in the association is 78.



Economy Begins at Home Now-a-days Governments, Chancellors, bankers and business men talk economy. However, it is one thing to talk economy and another to put it into practice. The Canadian Housewife holds the key to the situation. Real economy may be practised by the housewife in food purchasing for the home. At very small cost she may obtain the finest cocoa that money can buy—a cocoa unexcelled as a food drink and unrivalled as a flavoring, that adds extra delight to hundreds of dainty desserts. Write for COWAN'S Recipe Book on Desserts—mailed free. COWAN'S COCOA "Perfection Brand"

Mrs. Lawrence gave a report of the travelers' aid for the month. The report showed that 246 claims were met and 151 persons were cared for within the walls of the home. Subscriptions to the aid of \$60 were reported and the board directors express their thanks to 43 persons who contributed to the work in the city who contributed to the work.



These Men Will Help You Decide

Are you liable to be selected for service under the Military Service Act? The answer to this question is being made readily available for you. Remember that the first class to be called includes only men between the ages of 20 and 34, both inclusive, who are unmarried or widowers without children, those married after July 6, 1917, being deemed single for the purposes of the Act. Medical Boards are now being established throughout Canada. These Boards will examine, free of charge and obligation, all men who wish to be examined as to their physical fitness for military service. They will tell you in a very short time whether your physical condition absolves you from the call or makes you liable for selection. It is important that you obtain this information as soon as possible. A certificate of unfitness from a Medical Board will secure for you freedom from responsibility under the Military Service Act from any Exemption Tribunal. A certificate of fitness will not preclude an appeal for exemption on any ground. In order that you may be able to plan your future with certainty, visit a Medical Board as soon as possible and find out if you are liable to be selected. Your family and your employer are interested as well as yourself. Issued by The Military Service Council.

Tea or Coffee Drinking is a habit easily given up when one changes to INSTANT POSTUM. If Tea or Coffee Disagree, Make the Change. Includes image of a Postum tin.

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