

THE TICHBORNE CASE

*By William J. Kinsley, Examiner of Questioned Documents,
New York.*

The remarkable contest completed about one year ago in the Probate Court of Middlesex County, Massachusetts, in which the claimant was defeated in the effort to establish his identity as Daniel Blake Russell, joint heir to the five hundred thousand dollar estate of the late Daniel Russell of Melrose, Mass., has brought forth many claims that this is the world's record probate contest. In the Boston newspapers and the associated press despatches, such statements as the following have appeared: "Judge Lawton's decision ends the most remarkable contest ever recorded in the courts of the world. Even the famous Tichborne case, which for years has been a study for lawyers throughout the world, sinks into insignificance when compared with the remarkable legal battle just closed in Middlesex county."

The Russell case opened on September 20, 1909. The testimony ended March 24, 1910. Summing up opened April 4, 1910, and occupied five days; days since hearing opened were 202; court in session on 123 days; witnesses called 205; exhibits in the case, 346.

This is probably the nearest approach that the new world has ever had in any case, in importance and length of hearing, to the famous Tichborne case of England, but the Tichborne case does not "sink into insignificance when compared with the Russell case." In fact, in England and in this country no other case has ever equalled in interest and amount involved the famous Tichborne identity case.

So great was the interest in England over the case that parents became estranged from children by differences in opinion produced by discussions over it. Friendships were broken and partnerships dissolved because of these differences of opinion. G. H. Walley, M. P., and Guilford Onslow, M. P., were each fined one hundred pounds for contempt of court for presiding at public meetings and delivering speeches in favor of the claimant. Their remarks were considered as reflecting upon the integrity of the court. G. B. Skipworth, the barrister, was fined five hundred pounds and imprisoned three months for the same reason.

In addition to that, the brilliant Irish barrister, Edward Vaughan Kenealy, who was an LL.D. and Queen's Counsel, was disbarred because of his practice in the second or criminal trial of this famous case. Many lawyers, as well as laymen, have believed that Dr. Kenealy was improperly disbarred, because he believed to his dying day that the claimant was Sir Roger Charles Doughty Tichborne, Bart.

After Dr. Kenealy's disbarment in April, 1874, he started a weekly periodical known as "The Englishman," subscription price two pence a week. So great was the interest in this famous case and in the fate of Dr. Kenealy and the claimant (who was of course, confined in prison), that an edition of 100,000 copies of the first issue was speedily exhausted, and the papers sold by newsboys as high as a shilling to a half a crown each; and in some cases, so eager were the people to secure copies that the paper was torn in two, and each half sold for sixpence. I have before me as I write a full set of "The Englishman" dealing with the Tichborne trial; and by the way, this periodical, while claiming to be, as one of the English literary reviews at the time said, "Redresser of Wrongs in General," yet in point of fact, dealt practically only with the Tichborne case and its many ramifications. There are eight massive folio volumes dealing with the second trial, and one volume of introduction. They vary from 330 pages in the smallest volume to 820 pages in the largest—about 4,500 folio pages set in ordinary nonpareil type.

Additional interest is added to the revival of the discussion of the Tichborne case by the suit of Miss Annesley Kenealy, journalist, daughter of the late Dr. Kenealy, against Lord Northcliffe in London in January for wrongful dismissal from the "Daily Mail" staff. The suit was decided in favor of Lord Northcliffe on January 20th. On February 3rd in the office of the "Daily Mail," Miss Kenealy made a dramatic attempt at suicide by taking poison, but the attempt did not succeed.

In 1908 Miss Kenealy published a volume of memoirs of her father, Dr. Kenealy. In this volume she states that the late Hon. John Bright had suggested to her father after Dr. Kenealy had been elected a member of parliament, that he could be reinstated at the bar, and also intimated a substantial remuneration, if Dr. Kenealy would stop the publication of "The Englishman" and drop the Tichborne case.

The Tichborne family was of Saxon descent, one of its members being executed in 1586 for participation in the Babington conspiracy against Queen Elizabeth.

The Tichborne estates in England included a great part of the parish of Tichborne—2,290 acres; the manor of Tisted near Tichborne; the manors of Priors Dean and Colemore; and lands and farms in Cheriton, Hawley, Froxfield, Ovington, Ropley and Alresford. The estates in the county of Hants were so extensive that they extended in one direction a distance of thirteen or fourteen miles. In addition to these, there was inherited from the Doughty branch of the family numerous and very valuable properties in London and four English counties.

The last heir, Sir Roger Charles Doughty Tichborne, was born in Paris, January 5, 1829, during the temporary residence there of his parents. He was educated in the French, and later in the English schools, finally entering Stonyhurst (Jesuit) College. He left college before graduation, and became an officer in the Sixth Dragoon Guards in 1849. He served in Dublin with his command and became lieutenant, but finally left the army in 1852. He sailed from Southampton, England, for Havre, France, in March 1853, and from there sailed to Valparaiso, Chili, where he arrived in June, 1853. The last letter received from him was dated Buenos Ayres, March 1, 1854. He sailed from Rio Janeiro on April 20, 1854, on board the ship *Bella* bound for New York. This vessel was seen a wreck on April 26, 1854 but no bodies were found, and no person who sailed in her was ever heard from again; apparently all on board were lost. At the trials, a Danish seaman, Jean Luie, claimed to have been aboard a ship known as the *Osprey* as steward, which ship picked up a boat of the ill-fated *Bella* containing some of the officers, crew and passengers, including Sir Roger Tichborne, after the *Bella* had foundered. But Jean Luie was convicted as a perjurer and sent to prison for his testimony in the case, and it was mainly because of Luie's testimony that Dr. Kenealy was disbarred. The court, jury and the public quite largely believed that Dr. Kenealy knew that Luie was a perjurer. Dr. Kenealy always disclaimed having any knowledge of Luie prior to the disclosures which stamped Luie as a perjurer, and in public and in open court Dr. Kenealy disclaimed responsibility for Luie.

Sir Roger Tichborne's mother could never believe that her son was lost, and through advertising agents she advertised for the lost young man the world over.

Arthur Orton, a London butcher boy who had emigrated to Australia, read one of the advertisements and decided to pass himself off as the rightful Sir Roger Tichborne. Orton was living in the bush in Australia at that time, but came to Sydney in 1866 to better prosecute his claim. In 1865 he had married an Australian woman, and at the time he announced his identity, he had a six months' old daughter. The claimant, Arthur Orton, wrote to Lady Tichborne in England, announcing his identity and asking for an advance of money to pay expenses of himself and family and some retainers to England. Not hearing from Lady Tichborne promptly, he left Sydney in September, 1866, and via Panama and New York, reached London on Christmas day, 1866.

One of the strangest occurrences in this or any other identity case was that Lady Tichborne identified this coarse, rough, ignorant, burly man of 250 to 300 pounds as the rather under-sized young man whom, thirteen years before she had parted when he was twenty-four years of age. This identification of the claimant by Lady Tichborne was the keystone in the arch of the claimant's case, and was sufficient to cause scores of others to believe they recognized in this "mountain of flesh" that stripling that fifteen years before they had seen in England, Ireland and France.

When Roger Charles Doughty Tichborne left England in 1853, there were two lives between himself and the title and estates of the Tichbornes. A few years after his disappearance, both his uncle, the title holder, followed by his father died, and Roger, being the oldest direct male descendent, would have succeeded to the title and the estates, had he been alive.

A short while after the claimant's arrival in England, he filed his claim to the title and estates, but those of the Tichborne family in possession refused to acknowledge him as the rightful heir. The bills were actually filed on June 27, 1867, *Tichborne v. Tichborne* and *Tichborne v. Mostyn*. The claimant engaged the famous Serjeant Ballantine as his attorney. Lady Tichborne acknowledged in writing that the claimant was her son, but it was not in the proper legal form to introduce at the trials, and Lady Tichborne died on March 12, 1868—before the first trial.

The first Tichborne trial was a suit of ejectment—*Tichborne v. Lushington*. This suit lasted 103 court days in the Court of Common Pleas before Lord Chief Justice Bovill. In this trial the claimant called eighty witnesses; the family called seventeen. There were many more witnesses for the family, but the jury

intimated that they had heard sufficient to decide against the plaintiff (the claimant) whereupon the plaintiff withdrew the case from the consideration of the jury—allowing himself to be nonsuited.

Lord Chief Justice Bovill immediately committed the claimant to Newgate prison for forgery and perjury. Bail was refused and he was confined for two months. Finally bail in the sum of 5,000 pounds was given by Lord Rivers, Mr. Onslow, M. P., Dr. Atwood and a fourth unknown.

Dr. Keanealy in his diary states that he first saw the claimant May 10, 1871, in court, when the case of *Tichborne v. Lushington* was called the first day, but it was not until March 24, 1873, that he actually met the claimant, being introduced to him by Lord Rivers. At this time, of course, the civil suit has been decided against the claimant, he had been in prison and was then out on bail.

The civil suit, while occupying 103 court days, began in May, 1871, and extended over to March, 1872, and this was a jury trial too. At this trial the claimant was examined for twenty-four days.

In the interim between the close of the civil and the beginning of the criminal trial, scores of mass meetings in the largest halls in the principal cities and towns of England were held. Lord Rivers, prominent members of Parliament, barristers and leading citizens presided at these meetings or spoke to the audiences. Enormous crowds filled the largest halls obtainable. The claimant was hailed as a hero on the streets, the horses taken from the carriage, and the carriage drawn in triumph from the hotels to the places of meeting. He held receptions at the hotels, in the halls, and on all sides was hailed as the rightful heir. In addition to this, the "Tichborne Defence Fund" was organized, and bonds sold based on his chance of coming into his estates. In this way about £60,000 was raised.

In the Queen's Bench the case of the *Queen v. Thomas Castro*, otherwise Arthur Orton, otherwise Sir Roger Charles Doughty Tichborne, Bart. was called on Wednesday, April 23, 1873, before Lord Chief Justice Cockburn, Mr. Justice Mellor, Mr. Justice Lush and a special jury. The counsel for the prosecution were Mr. Hawkins, Q. C., Mr. Serjeant Parry, Mr. Chapman Barber, Mr. J. C. Mathew and Mr. C. Bowen, instructed by Mr. Gray, Q. C., Solicitor to the Treasurer; counsel for the defendant,

Edward Vaughan Kenealy, LL.D., Q. C., Mr. Patrick McMahon, M. P., instructed by Mr. Hendricks, solicitor for the defendant. This trial lasted until Saturday, February 28, 1874—a total of 311 lapsed days, with court actually in session 188 days.

Dr. Kenealy began his summing up on the 132nd day of the trial, December 2, 1873, and concluded January 14, 1874, on the 158th day of this trial—a total of twenty-seven days. On the 159th day of the trial, January 15, 1874, Mr. Hawkins, Q. C., began his reply on behalf of the Crown. The whole of this reply was written out and read in court from a copy made beforehand. Mr. Hawkins completed his summing up on January 28, 1874, on the 168th day of the trial—having talked ten days.

Lord Chief Justice Cockburn began his charge to the jury on Thursday, January 29, 1874, on the 169th day of the trial and finished his charge on February 28, 1874, on the 188th day of the trial—having talked for twenty days.

Those who think that recent trials have been extended should consider these figures.

The jury was out half an hour and found the defendant guilty of both counts of perjury. In addition the jury communicated a written statement to the Lord Chief Justice, reading: "The jury wish to state that the charges of bribery, conspiracy and undue influence made against the Crown are entirely without foundation, and they regret exceedingly the violent language the learned counsel for the defendant used in his attacks on the conductors of the prosecution and on several witnesses for the Crown." Mr. Justice Mellor immediately sentenced the defendant for a term of seven years in penal servitude for the first count of the indictment and for a further term of seven years upon the second count, the second term to begin immediately upon the conclusion of the first.

Public meetings continued over England, the daily and weekly newspapers were filled with articles *pro* and *con* on the case, and, as stated before, Dr. Kenealy started the publication of "The Englishman" soon after. This periodical was practically given up to the discussion of this case alone.

Following the lead of the censure of the jury and the three judges in the case, the Benchers of Gray's Inn instituted a court of inquiry into Dr. Kenealy's conduct during the trial, with the result that at the age of fifty-four Dr. Kenealy was discharged. Dr. Kenealy soon after began lecturing on the case, and drew

enormous crowds and received great ovations whenever he appeared. Flowers were in his room at the hotels, the best rooms were assigned him, great crowds followed him on the street to the hotels and halls where he spoke, photographs of him were for sale in all the stationery shops, and he became a popular idol. The Liberal Government was defeated quite largely because of the Tichborne case, and Dr. Kenealy was elected a member of Parliament from Stoke-on-Trent in 1875 by 2,000 majority.

Seventy-two petitions containing over 200,000 names were presented to the House of Commons when Dr. Kenealy made a motion for a Royal Commission of inquiry into the Tichborne case, but this Commission was voted down.

Dr. Kenealy was first known to Americans when he was engaged to defend Noyes, one of the famous Bidwell brothers' gang of American forgers, who was implicated in a 100,000 pound forgery. Noyes was convicted as were both of the Bidwells.

The claimant, Arthur Orton, was in prison from 1874 to 1884. He died in London in 1898. While at one time a confession was secured from him, in which he acknowledged he was not Sir Roger Tichborne, but Arthur Orton the butcher boy, yet later he retracted this confession and died maintaining to the last that he was the rightful heir to the Tichborne estates.

William J. Kinsley.

