Snark
Raving Mad

Legal Nonsense and Reality in "The Barrister's Fit"

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Contents

I

INTRODUCTION

The sixth fit of Lewis Carroll's nonsense poem *The Hunting of the Snark*, "The Barrister's Dream", is an exercise in delightful legal satire.[1] The target of the satire, an English legal system creaking and crying out for reform,[2] was ripe for the mocking, and the ridiculousness of cases like the Tichborne trial (one of the longest in English history) was plainly an inspiration for Carroll's satire.[3] Yet, the absurdity of the law, the nonsense inherent in the arbitrary and unknowable twists of the common law and Britain's labyrinthine statute book, means that what, to the non-legal reader, may appear in the barrister's dream to be the purest silliness is, in fact, a true reflection of the state of English law as it stood in Carroll's time, if no less silly for the truth. While *Snark* has been picked apart thoroughly for its allusions and literary qualities,[4] in this paper, I take a different tact and try to treat the nonsense as seriously as possible. The result shows that, intentionally or not,[5] Carroll's oneiric fantasy of a barrister's mind approaches legal fact with surprising frequency.

1 All page references to the poem are to Lewis Carroll, The Annotated Snark (Martin Gardner ed., Simon & Schuster 1962) (1876); all references to footnotes within the poem are to the annotations authored by Gardner. All references to statutes are to U.K. Acts of Parliament unless otherwise indicated. For the ease of the reader, all references will be to Lewis Carroll, including in personal life, rather than alternating between Carroll and Dodgson.

2 Snark was originally published in 1876, a year after the Supreme Court of Judicature Act 1875 had pushed forward the cause of reforming the endless delay and complexity that had given rise to on-the-nose criticisms in works like Charles Dickens, Bleak House (1853), and the same year that the Appellate Jurisdiction Act 1876 regularized and professionalized the role of the House of Lords as the highest court of appeal (which lasted until the the framework for final appeals was revised by the Constitutional Reform Act 2005, which created the Supreme Court of the United Kingdom). Further reforms to modernize the court system—like the ability of the accused to give evidence in his own defense, the creation of a criminal appellate court, and the founding of a specialized commercial court—were still years away. For the first, *see* Criminal Evidence Act 1898; for the second, *see* Criminal Appeal Act 1907, and for the third (in 1894), *see* Sir Anthony Colman *et al.*, The Practice & Procedure of the Commercial Court 1–7 (6th ed. 2008).

3 *See id.* at 75–76 n.48 (highlighting the influence of the Tichborne case and noting the resemblance of the original illustrations to counsel in the case). On the Tichborne case generally (a bizarre saga involving a man claiming to be a lost baronet who appeared actually to be a butcher from Australia), *see, e.g.,* Rohan McWilliam, The Tichborne Claimant (2007). One charming indicator of the lasting cultural impact of the gripping Tichborne saga on British national memory is an advertisement from 1964 featuring a dozing judge, and comparing the length of the trial favorably to the length of the relief provided by the nasal spray being advertised. *See* Ciba Laboratories Advertisement ("For the longest-lasting gentlest relief of all Otrivine the leading nasal decongestant") (1964) (on file with the Welcome Collection, Drug Advertising Ephemera, Box 28) *available at* `https://wellcomecollection.org/works/p2vhgb5q`.

4 *See, e.g,* Arthur Ruhl, *Finding of the Snark*, 9 Saturday Rev. Lit. 490 (1933). For a humorous, parodic, and lighthearted but nonetheless enlightening (with Carroll, satirical analysis can be as useful as serious ones, if not more so), *see* F.C.S. Schiller, *A Commentary on the Snark*, Mind! 87 (1901), *reprinted in* Caroll, *supra* note 1, at 96.

5 *See generally* Roland Barthes, Image-Music-Text 142–148 (Stephen Heath trans., 1978) (discussing the role of authorial intent in literary criticism).

II

GLASS IN THE EYE, PIG OUT OF THE STY

HE DREAMED *that he stood in a shadowy Court,*
Where the Snark, with a glass in its eye,
Dressed in gown, bands, and wig, was defending a pig
On the charge of deserting its sty. [6]

A

The Monocle

The above stanza, opening the barrister's dream, can seem like the purest nonsense. Yet, the Snark may have more than a passing resemblance to a real figure in British legal life. Although Carroll was careful never to describe the Snark in detail (and especially not in consistent detail), one of the few descriptions we are given refers to Snarks as having either feathers or whiskers.[7] The consequent image of a whiskered creature in a monocle and full courtroom dress bears a striking resemblance to a caricature which appeared in *Vanity Fair* on February 19, 1870, of Sir Robert P. Collier, Q.C.,[8] M.P., then-Her Majesty's Attorney General for England (and later a judge on the Judicial Committee of the Privy Council and eventually ennobled as the Lord Monkswell).[9]

6 CARROLL, *supra* note 1, at 76.

7 *Id.* at 52.

8 Queen's Counsel, the rank of senior barristers of the Inner Bar, sometimes called "silks" because of the nature of their gown, and, when the Sovereign is a male, as at present, referred to as King's Counsel or K.C. instead.

9 David Pugsley, *Collier, Robert Porrett, first Baron Monkswell (1817–1886)*, OXF. DICT. NAT'L BIO., Sep. 23, 2004. https://doi.org/10.1093/ref:odnb/5921.

FIG. 1: THE CARICATURE OF SIR ROBERT P. COLLIER[10]

The portrait of Sir Robert is remarkable for two features: first, his distinctive monocle, and second, his very prominent whiskers, which sit somewhere between sideburns and beard and make the wig seem almost superfluous. The detail of the caricature is thus that they could as easily pass for feathers; there is a distinctively pillow-like appearance to them. The texture of these remarkable whiskers bears some resemblance to the rear-view of the Snark seen in Swain's illustration.[11] It is entirely possible that Carroll saw this cartoon when it appeared, or some other depiction of Sir Robert. Carroll first saw *Vanity Fair*'s founder & editor, Thomas Gibson Bowles on stage in 1864, four years before Bowles founded the magazine. In 1879, three years after *Snark*'s publication, Carroll called on Bowles, who a few months later returned the favor and called on Carroll in Oxford. The two struck up a close friendship, and Bowles was able to convince Carroll, who had avoided publishing in periodicals until then, to write a regular word game column in the magazine.[12]

Of course, this was after *Snark* came .out, and even if Carroll were a reader of *Vanity Fair* before meeting

10 VANITY FAIR, Feb. 18, 1870, at 106. The artist was Alfred Thompson, working in watercolor. *See* 'Robert Porrett Collier, 1st Baron Monkswell', NAT'L PORTRAIT GALLERY, *available at* `https://www.npg.org.uk/collections/search/portrait/mw04464`.

11 CARROLL, *supra* note 1, at 77.

12 *See* EDWARD WAKELING, LEWIS CARROLL: THE MAN AND HIS CIRCLE 353–357 (2015).

and befriending its founder and editor, one caricature in 1871 may not have stayed in his memory to 1876. This, however, is where, once more, authorial intent is irrelevant. The poem is some of the finest nonsense ever put to writing,[13] and thus the real legal allusions require nothing so sensible as intention. The fact is that silly whiskers and a monocle had been claimed by a real lawyer—the Attorney General of England, no less—long before the Snark came along. Art here is, consciously or not, imitating life.

Life, though, may have further subsequently imitated art, for the greatest monocle-wearer at the English Bar was yet to break onto the scene when *Snark* was published.[14] Florance Guedella, who would obsessively play with his monocle, inspired the performance of his client, Charles Laughton, as Sir Wilfrid Robarts, Q.C., in 1957's Agatha Christie adaptation *Witness for the Prosecution*.[15] Laughton's celebrated performance in the film, under the direction of Billy Wilder, made use of this monocle tic, which became so identified with the character that the modern DVD release of the film features a poster in which Laughton's monocle, reflecting light on the client (a trick Sir Wilfrid uses to test witnesses), takes center stage.

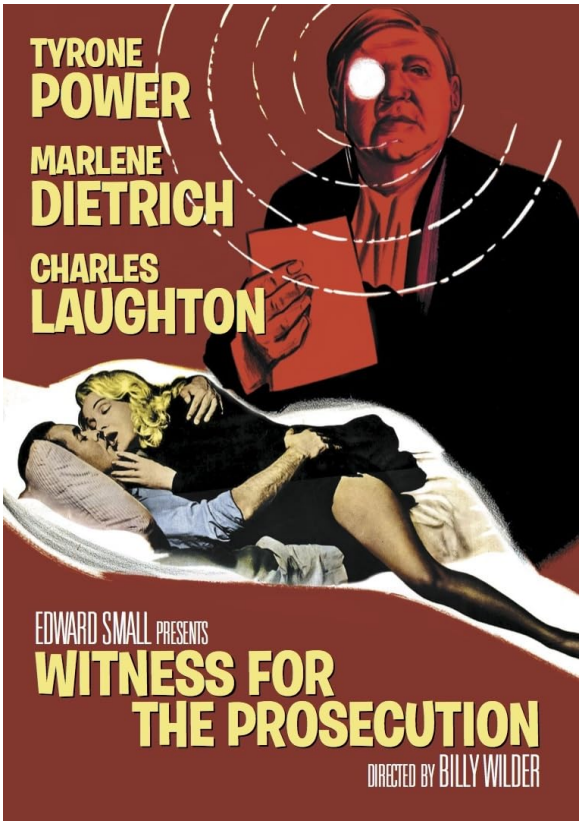

FIG 2: MODERN POSTER FOR *WITNESS TO THE PROSECUTION*[16]

13 On this point of taste, there can be no citation, but, not excepting even the work of Edward Lear, this author cannot think of a higher achievement in English nonsense poetry.

14 This is, of course, a subjective classification; there were other monocle wearers who would postdate SNARK, such as Arthur Hutton, but this author is entitled to be as subjective with monocles as with nonsense poetry. On Hutton's monocle habit, *see* HARGRAVE LEE ADAM, OLD DAYS AT THE OLD BAILEY 6 (1932).

15 *See* ED SIKOV, SUNSET BOULEVARD: THE LIFE AND TIMES OF BILLY WILDER 401 (1998).

16 *Witness for the Prosecution*, AMAZON, `https://www.amazon.com/Witness-Prosecution-DVD-Billy-Wilder/dp/B0CN3TV4B7` (last visited Jan. 21, 2024).

As a result, the popular image of English defense counsel has become associated with not only the traditional gown, bands, and the wig, but also with the glass in the eye. The modern reader of *Snark* is as likely to associate the Snark's appearance with Laughton's Sir Wilfrid as Carroll's original reader might have been to associate it with the real Sir Robert. The consequence is that Carroll's nonsense—the combination of the silliness of the Snark wearing a monocle and the easy scan of 'glass in the eye'—has, by the coincidence of Laughton's performance, acquired new resonance for English lawyers.[17]

B

Escaping the sty

The Snark is tasked with the defense of a pig which has escaped its sty. To the normal reader, this may seem like brilliant nonsense, but the liability of pig defendants and pigs deserting their sty is a subject very familiar to English law. Indeed, pigs deserting their sty raises two questions of liability: one is the civil liability caused by a rampaging pig and the other is the criminal liability which a pig itself might incur for his actions.

1

CRIMINAL LIABILITY

The first head of possible criminal liability for the pig would apply to its owners. An escaping pig, wandering about, would, by the time of *Snark*'s composition, put its owner at risk of a five shilling fine if it strayed into a public highway.[18] If the pig was found in the Metropolis (being the area today known as Greater London), the mere act of it straying would also trigger a criminal penalty.[19]

However, *Snark* raises the possibility of the pig itself being directly liable, charged in court, not its owner. This is less absurd than. In medieval Europe, animals were held liable for criminal acts (usually homicide), and pigs were the prevalent defendants in these types of cases.[20] The reason for swine so often ended up in the dock was likely a function of the fact that in medieval Europe large packs of pigs wandered about with a great deal of freedom.[21] The association of the pig with filth and idolatry probably did not help the chances of these pigs on trial.[22]

17 Purely anecdotally, in my experience, WITNESS FOR THE PROSECUTION (Edward Small Productions, 1957) remains incredibly popular among English lawyers, to a surprising extent given that even a very senior K.C. today was at best a young child when it was released.

18 *See* Highway Act 1864 (27 & 28 Vict. c. 10), s. 25.

19 *See* Public Health (London) Act 1891 (54 & 55 Vict. c. 76), s. 17.

20 *See* KATY BARNETT & JEREMY GANS, GUILTY PIGS: GUILTY PIGS : THE WEIRD AND WONDERFUL HISTORY OF ANIMAL LAW 100 (2022).

21 *See* E. P. EVANS, THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS 158 (1906).

22 *See id.* at 56–57, 165.

Yet, such animal trials were unlikely to be seen in a medieval English court, as English law, unlike its continental counterparts, restricted homicide to the killing of a human being by another human being.[23] So, while capital pig trials are attested in Europe as late as the 1860s,[24] an English trial would not have ever had a pig as the criminal defendant.

2

CIVIL LIABILITY

However, this does not mean that pigs were free and clear in English law. One notable civil absurdity involving the liability (or lack thereof) of pig *owners* occurred in 1874, when a statutory reference requiring railway landowners to build fences to keep out wandering cattle was held to include pigs (meaning the owner was not liable for trespass caused when his pigs wandered).[25] There is something delightfully Carrollesque in a pig being legally a cattle, which only marginally less absurd than a pig being a defendant.

That absurdity concerns the liability of the owners of pigs, not the pigs themselves. However, a pig who was associated with wandering off and committing some injurious act (up to and including killing a human being) was liable to find itself civilly forfeited without so much as a trial, under the ancient law of deodands. Deodands invovled the dangerous object, which in this case could include an animal, being forfeited to the Crown. One such instance involved a sow being arrested in 1396 in order that it would be forfeited as the result of it having eaten the head of a young child.[26] Thus, in a fine distinction, while a pig would not be the defendant *per se* in an English trial, it might well find itself under arrest and forfeited to the authorities as a result of its dangerous conduct. Under even older Anglo-Saxon law, from which deodands is derived, the *victim* would be the one to receive the pig, in an odd form of compensation known as "noxal surrender."[27]

23 *See* Barnett & Gans, *supra* note 20, at 106. *See also* 2 Henry de Bracton, De Legibus et Consuetudinibus Angliæ 340 (George E. Woodbine ed., Samuel E. Thorn trans., 1968) ("*Et est homicidium hominis occisio ab homine facta. Si enim a bove, cane, vel alia re, non dicetur proprie homicidium. Est enim dictum homicidium ab homine et cædo, cædis, quasi hominis cædium.*") ("Homicide is the slaying of man by man. If it is done by an ox, a dog or some thing it will not properly be termed homicide. For it is called 'homicide' from '*homo*' and '*cædo*, *cædis*,' 'man-killing,' so to speak.").

24 *See* Evans, *supra* note 21, at 137 ("as late as 1864 at Pleternica in Slavonic, a pig was tried and executed for having maliciously bitten off the ears of a female infant aged one year").

25 *See* Childs v. Hearn, 43 L.J.R. 100, 103 (Exch. 1874) ("I think 'cattle' [in the Railways Consolidation Act 1845 (8 Vict. c. 20), s. 68] includes pigs.") (Bramwell, B.).

26 *See* Barnett & Gans, *supra* note 20, at 106–107.

27 *See id*.

III

ERROR AND THE STATE OF THE LAW

THE WITNESSES proved, without error or flaw,
That the sty was deserted when found:
And the Judge kept explaining the state of the law
In a soft under-current of sound. [28]

A

Error

The reference to error and the state of the law in this stanza may seem to be just a straightforward statement that the witnesses gave cogent evidence. Yet, this stanza actually can be read as a subtle satire of one of the odder points of the development of the common law: the way in which error could itself become the authoritative law. English law turned on the the maxim *communis error facit jus*—that communal error made the law—by which precedents based on flawed reasoning became authoritative even when later the error in their logic was discovered.[29] Flaw, in this sense, was not an obstacle to the law but an essential component of it.

Nor, for that matter, was the proof of witnesses necessarily a matter of proving that something was true. For instance, a 14th-century action in English law required the plaintiff have a "suit" of entirely fictitious supporters listed on the record, and if these non-existent people were not attested in the pleadings, the action would fail.[30] Equally, proof that a dead was sealed with wax, as required by law, could be done simply by writing the letters "LS" (for *locum sigilli*) in a circle, such that a little stroke of the pen could legally be taken as proof of a required formality.[31] In other words, one could prove something that never existed nonetheless existed, and flaw might itself be an essential element of the law. This absurdity fits well with the

28 CARROLL, *supra* note 1, at 76.

29 *See, e.g.*, JOHN BAKER, THE LAW'S TWO BODIES: SOME EVIDENTIAL PROBLEMS IN ENGLISH LEGAL HISTORY 5–6 (2001).

30 *See id.* at 40–41.

31 *See id.* at 46.

text of *Snark* here, because the witnesses are tasked with, in miniature, replicating the evidential absurdities of the English system.

B

State of the law

The mumbling and soporific judge, the subject of any number of perennial jokes told with the names and places swapped in English law,[32]. would appear to be at the center of the latter two lines of the stanza. However, from a legal perspective, the more interesting satirical bite comes from Carroll's use of the phrase "the state of the law." That expression, implies that the law changes and develops. This touches at a sore spot in English law: the idea that judges create and develop new law rather than simply discover the ancient and unchanging common law. Until, in the postwar years, Lord Reid broke the *omertà* on this "fairy story", there was a demand that a persistent fiction be maintained that the judge must, like Aladdin, simply say magic words to obtain the correct law (and that wrong decisions were the result of saying the wrong magic words). The idea that the judge could make and change the law, though rather obviously how the common law worked, was considered indecent to say.[33] The notion that law, rather than being unchanging, actually goes through states of developments, rather than constant judicial pronouncements of final authority, was a lesson only accepted in the latter-half of the twentieth century.[34] Thus, by alluding to the "state of the law", Carroll is saying what was, in his time, legally unsayable and highlighting the silliness of the *omertà* by having his absurd judge say a sensible thing no real judge would ever say (*i.e.*, that the law has a current "state").

32 *See, e.g.*, Michael Cook, *Cook Holds Court: Michael Cook Shares Some After Dinner Tales*, 162 New L.J. Journal 265, 266 (2012).

33 Lord Reid, *The Judge as Law Maker*, 12 J. Soc'y Pub. Tchrs. L. n.s. 22 (1972).

34 *See* Baker, *supra* note 29, at 7–9.

IV

UNCLEAR INDICTMENTS

THE INDICTMENT had never been clearly expressed,
And it seemed that the Snark had begun,
And had spoken three hours, before any one guessed
What the pig was supposed to have done. [35]

Here, the satire hinges on a point that bedevilled English criminal law for centuries: the "extreme precision required in the wording of indictments," by which stray spelling could invalidate an entire criminal case.[36] This was aggravated by the fact that until 1730,[37] all indictments had to be done in Latin in England, meaning the jury was unlikely to understand what was being said. Even in Carroll's time, when the indictment was in English, the indictment remained a lengthy and technical document of little help to understanding the crime, and to which the judge and counsel would rarely refer (preferring instead an abstract of the same).[38] The rules of pleading, which precisely limited each count to a single offence, requiring multiple counts for a single act, worsened this.[39] Thus, here Carroll is not so much satirizing the English legal system as simply giving a straightforward account of how convoluted and opaque indictments were in his time.

35 Carroll, *supra* note 1, at 76.

36 4 Sir William S. Holdsworth, k.c., A History of English Law 531 (1924).

37 *See* Proceedings in Courts of Justice Act 1730 (4 Geo. II c. 26).

38 *See* 1 Sir James Fitzjames Stephen, A History of the Criminal Law of England 287–293 (1883) (noting the "enormous length and intricacy of indictments," the historic "pedantries and technicalities" that disfigured the law of indictments, that to even include a sample indictment in full would be "tedious"—quite something in a three volume history, and that "the judge never looks at the indictment unless his attention is drawn to some particular point.").

39 *See id.* (bemoaning the "greater prolixity, obscurity and expense" this caused and illustrating how a single act could give rise to twenty six separate counts on an indictment.

V

JURY CONFUSION

THE JURY had each formed a different view
(Long before the indictment was read),
And they all spoke at once, so that none of them knew
One word that the others had said. [40]

Here too, Carroll is not so much satirizing as accurately giving a picture of the wild world of the Victorian jury. Jury service then was restricted to men with sufficient property holdings and generally picked at random from a pool for common juries; in the case of special juries (for cases in King's Bench or Revenue cases in the Exchequer), there were even higher qualifications based on social standing (esquire or above or those with certain property holdings or mercantile status).[41] Often, jurors were from among the less educated and less wealthy, both due to explicit exemptions for certain occupation and the fact, in part, that one could bribe local officials to avoid jury service.[42] The result was that the common juror came to be stereotyped as particularly stupid or incompetent.[43] From this, we can begin to see why Carroll could so readily stereotype the jury as a squawking, disagreeable lot.

The point about the jury all speaking at once, in the courtroom, is not satire. Jurors would often reach their verdicts on the spot, without deliberation, if they were all unanimous in the views they had formed. There was a strong incentive to do this, in that if the jurors did not at once reach a verdict, they would be locked in the jury room and deprived of heat, food, or drink, to encourage them to reach a verdict quickly.[44] Given this depredation, it is no wonder that each of the jurors in the *Snark* case are so eager to say their views at once and avoid the risk of cold and starvation. The whole process of the jury in that era was so farcical that the one of the most important legal thinkers oof the age, A.V. Dicey, in his definitive tome on the British

40 CARROLL, *supra* note 1, at 76–77.

41 *See* DAVID BENTLEY, ENGLISH CRIMINAL JUSTICE IN THE 19TH CENTURY 89–90 (2003); *see also* Juries Act 1825 (6 Geo. IV c. 50), Juries Act 1870 (33 & 34 Vict. c. 77).

42 *See* BENTLEY, *supra* note 41, at 93.

43 *See, e.g.*, 10 LAW TIMES 319 (1847–1848) ("The composition of the jury list seems to be conducted on the principle of selecting the most uneducated and incompetent persons in the county with the requisite property qualification.").

44 *See* BENTLEY, *supra* note 41, at 275.

constitution, felt compelled to respond at length to French criticism that the jury was "a joke, and, so far as the interests of the public are concerned, a very bad joke."[45] It is no wonder, then, that Carroll did not need to invent anything to show the jury's absurdities in *Snark*.

45 A.V. Dicey, Introduction to the Study of the Law of the Constitution 397 (8th ed. 1915).

VI

ANCIENT MANORIAL RIGHTS

"YOU MUST KNOW—" said the Judge:
but the Snark exclaimed, "Fudge!"
That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right. [46]

A

Desuetude

Once we get past the charming use of the sailors' exclamation of "fudge",[47] there is a hidden joke in the point that the statute is obsolete. Given the English statute book is terribly crowded with old laws, one would think it reasonable to point out when a statute is so obviously obsolete as to have fallen into desuetude. Yet, it is the longstanding doctrine of English public law that a statute, however old, cannot fall into desuetude; an obsolete Act of Parliament is, in legal terms anyway, a contradiction.[48]

B

Ancient manorial right

Landowning in England & Wales is a complex mess of layered statutes, such that, despite various Acts of Parliament for quite literally centuries,[49] As a result, the idea that a case can suddenly turn on a heretofore undiscovered ancient manorial right is not so absurd, and while not common in modern English jurispru-

46 CARROLL, *supra* note 1, at 77.

47 *See id.* at 77–78 n.51 (discussing the origins of "fudge" as a synonym for nonsense.

48 *See, e.g.*, R. v. Bishop of Coventry and Westwood, Y.B. Mich. 11. Hen. IV., fo. 7 pl. 20 (C.P. 1409), *quoted in* SOURCES OF ENGLISH LEGAL HISTORY 158–159 (Sir John Baker ed., 2024).

49 From, *e.g.*, the Tenures Abolition Act 1660 (12 Car. II c. 24) to the Administration of Estates Act 1925 (15 & 16 Geo. 5 c. 23), with both earlier and later examples littering the statute book.

dence, does still occasionally happen. In the 2008 case of *Crown Estate Com'rs v. Roberts*,[50] the Chancery Division of the High Court had to deal with a case where a Welsh landowner claimed to have ancient manorial succession to the title of Lord Marcher of St. Davids, and, by virtue of charters from 1115, held ancient manorial right (or specifically, nine rights) over certain land, as well as foreshore and seabed, to which the Crown claimed title.[51] Mr. Justice Lewison, considering everything from Welsh customary law to the implications of former frankalmoign title to the dissolution of the monasteries, eventually came to the conclusion that the self-described "eccentric antiquarian" defendant,[52] Mr. Roberts, was indeed Lord of the Manor of Trevine and Lord of the Manor of the City and Suburbs of St David's, and entitled to the ancient manorial right of moiety of wreck and the right of estrays.[53] The former right, refers to a right to a share of goods found on land (or on the foreshore, the area between the high and low tides) cast from a shipwreck, while the latter ancient right refers to the right to property over stray animals in which property can be held found without an owner (though "the absolute property in estrays does not vest until they have been proclaimed in the church and two market towns next adjoining the place where they are found and nobody has claimed them within a year and a day.").[54] As such, even in modern English & Welsh law, the seemingly absurd statement that the case all turns on some heretofore undiscovered ancient manorial right is not Carrollesque satire, but actual fact!

50 [2008] 4 All ER 828 (Ch.D.).

51 These were "i) Wreck de mer; ii) Wharfage; iii) Sporting rights; iv) A several fishery; v) Treasure trove; vi) Mises and profits consisting of chief rents paid by freeholders; vii) Court baron; viii) Court leet and lawdays; and ix) Estrays." *Id.* at ¶ 5.

52 *Id.* at ¶ 64.

53 *See id.* at ¶¶ 145, 172

54 *Id.* at App'x 1.

VII

TREASON, INSOLVENCY, NEVER INDEBTED

"In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea 'never indebted. [55]

A

Legal doublets

The first two lines, referring to charges of treason, mock a curious feature of legal English, the doublet or triplet: *i.e.*, the familiar pleonasm of strung together redundant words with little apparent modern distinction. Many of these will be familiar even to a modern American ear; think, for instance of "any way, shape, or form", "cease and desist", or the language of waivers (frequently encountered in this litigious age) to "defend, indemnify and hold harmless." Carroll, with his ear for the paradoxes of language, has caught on to the fact that the statutory language of assisting an offender, which is in force today just as much as it was when *Snark* was composed, refers to making "Whosoever shall aid, abet, counsel, or procure" the commission of a crime liable as a principal offender.[56] While "counsel" and "procure" have distinct meanings, "aid" and "abet" are a classic instance of redundant pleonasm (itself a redundant phrase). Highlighting the nonexistent distinction between these two identical and un-splittable and un-reversible ("abet and aid" sounds distinctly wrong) is a wonderful observation by Carroll on the silliness of legal language.

B

Never indebted

Once again, Carroll is simply recording real law; *nil debet* is a valid common law plea with regards to a civil action for debt (by which, as the name suggests, the alleged debtor claims that the debt does not exist).

55 Carroll, *supra* note 1, at 78.
56 Accessories and Abettors Act 1861 (24 & 25 Vict. c. 94), s. 8.

However, the reference to this plea, particularly as a way to escape an action, highlights a very Carrollesque absurdity in the common law. If the defendant, in his pleadings, used the words "not guilty" rather than "nil debet", this trifling mistake could not be cured by a subsequent verdict and vitiated the defendant's entire case.[57] This ridiculous emphasis on exact words and precise pleading was ripe for satire and Carroll, merely by referencing it, draws the reader's attention to real-world silliness.

57 *See* 3 William Blackstone, Commentaries *394.

VIII

COSTS

"THE fact of Desertion I will not dispute:
But its guilt, as I trust, is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved. [58]

This stanza involves a legal argument relating to costs (which, in the English system, generally follow the event—*i.e.*, the winning party will usually be entitled to receive from the loser party some portion of his or her legal costs). As litigation, even in Carroll's time, could be quite expensive, arguing over fine points of costs (particularly, the share of costs to be allocated where a party wins on some issues and loses on others) can be rather important, to the point that there is an entire legal profession in England & Wales dedicated solely to matters of costs (costs draftsmen, also known as costs lawyers).[59] It is no wonder, then, that jokes about costs coming up in the most absurd situations were prevalent at the time. Perhaps the most famous relates to a real case, *Fendall v. Wilson*,[60] where the Judicial Committee of the Privy Council rejected charges of heresy against the Anglican clerics (*i.e.*, Carroll's peers) the Rev. Henry Bristow Wilson and the Rev. Rowland Williams, for publishing a book that contained a paragraph implying universalism (the belief that there is no Hell). The Privy Council, whose opinion was delivered by the Lord Chancellor, Lord Westbury, held that clergy were entitled to hope that all might be pardoned on the Day of Judgment, and were not required by the Formularies of the Church of England to believe in *eternal* punishment of the wicked.[61] The result was a famous popular quip about Lord Westbury that "He dismissed hell with costs", which has endured as the popular legacy of *Fendall*.[62] As such, the notion of costs for a pig becomes much

58 Carroll, *supra* note 1, at 78.

59 *See generally* Legal Service Act 2007 (c. 29), schds. 4, 5 (authorizing the exercise of reserved legal activities by costs lawyers).

60 2 Moore New Series 375 (P.C. 1863).

61 *See id.* at 431–433.

62 Duncan Henderson, *The Devil's Law Cases*, 15 Ecc. L.J. 28, 42–43 (2013); *see also* Geoffrey Rowell, Hell and the Victorians: A Study of the Nineteenth-Century Theological Controversies concerning Eternal Punishment and the Future Life 116–138 (1974) (the chapter apprpriately being titled "Hell Dismissed with Costs").

less absurd when we consider that in the popular imagination Hell itself had been stuck with a costs bill!

IX

THE INCOMPETENT JUDGE

"MY POOR client's fate now depends on your votes."
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the ease.
BUT THE JUDGE said he never had summed up before;
So the Snark undertook it instead,
And summed it so well that it came to far more
Than the Witnesses ever had said! [63]

The English judge has a famous reputation for being incorruptible, but not necessarily for competence. A judge with little experience might end up on the Bench through political preferment, which was the subject of popular mockery. Some idea of how prevalent concerns about the quality of judges were around the time of *Snark* may be derived from Gilbert & Sullivan's comic operetta *Trial by Jury*, which premiered in 1875. In it, the judge openly admits to having stumbled into, after an unimpressive legal career, his place by a "job" (*i.e.*, an unethical deal) and subsequently displays the competence one would expect. The excerpt below shows that with both G&S and *Snark* arrived at the same point of criticism likely due to the fact that they were both highlighting an underlying social problem about judicial appointments being in the gift of the Lord Chancellor (and not always squeaky clean):[64]

63 CARROLL, *supra* note 1, at 78.
64 Text taken from ASIMOV'S ANNOTATED GILBERT & SULLIVAN 71 (Isaac Asimov ed., 1988).

JUDGE: For now I'm a Judge!
ALL: And a good Judge, too!
JUDGE: For now I'm a Judge!
ALL: And a good Judge, too!
JUDGE: Though all my law be fudge,
Yet I'll never, never budge,
But I'll live and die a Judge!
ALL: And a good Judge, too!
JUDGE [*pianissimo*]: It was managed by a job—
ALL: And a good job too!
JUDGE: It was managed by a job!
ALL: And a good job too!
JUDGE It is patent to the mob,
That my being made a nob
Was effected by a job.
ALL: And a good job too!

X

THE FAINTING JUROR

WHEN the verdict was called for, the Jury declined,
As the word was so puzzling to spell;
But they ventured to hope that the Snark wouldn't mind
Undertaking that duty as well.

SO THE Snark found the verdict, although, as it owned,
It was spent with the toils of the day:
When it said the word "GUILTY!" the Jury all groaned,
And some of them fainted away. [65]

Once again, Carroll is mocking the popular conception of the English jury as uneducated, as discussed *supra*. One additional point, beyond the stupidity of the jury that they cannot spell the word "guilty" (or worse yet, that they cannot spell "not"), is the fainting juror. This, yet again, is less satire than reality. When jurors were sequestered without access to heat, food, or drink, the natural consequence was that they would faint. A surgeon would then assess the fainted juror to determine if his life were in danger; absent danger to life, the fainted juror was left sequestered to continue the deliberations.[66] Thus, the seemingly silly sight of a fainting juror is actually a glimpse of the absurd reality of the English criminal trial.

65 CARROLL, *supra* note 1, at 78–79.
66 *See* BENTLEY, *supra* note 41, at 275.

XI

TRANSPORTATION

THEN the Snark pronounced sentence, the Judge being quite
Too nervous to utter a word:
When it rose to its feet, there was silence like night,
And the fall of a pin might be heard.
"TRANSPORTATION for life" was the sentence it gave,
"And *then* to be fined forty pound."
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound. [67]

Here, the poor judge is, surprisingly, quite correct on the legal soundness of a sentence of transportation. It had been essentially abolished by the Penal Servitude Act 1857,[68], although convicts sentenced under the old law continued to be sent to Australia until 1868.[69] Thus, Carroll's brilliant twist is that after being impotent and wrong the whole trial, the judge finally gets the law right at its very end!

67 CARROLL, *supra* note 1, at 79.

68 20 & 21 Vict. c. 3

69 On the last years of transportation, *see generally* Barry Godfrey & David J. Cox, *"The Last Fleet": Crime, Reformation, and Punishment in Western Australia after 1868*, 41 AUST. & N.Z. J. CRIMINOLOGY 236 (2008).

XII

CONCLUSION

BUT their wild exultation was suddenly checked
When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.
THE JUDGE left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.
THUS the Barrister dreamed,
while the bellowing seemed
To grow every moment more clear:
Till he woke to the knell of a furious bell,
Which the Bellman rang close at his ear. [70]

The ending of *Snark*, with the revelation that the pig was already dead, is a fittingly absurd conclusion to this masterpiece of nonsense. Yet, is that any more absurd than the spectacle of Oliver Cromwell's corpse being dug up and displayed at the time of the Restoration?[71] To the very end, the genius in "the Barrister's Fit" lies in the fact that the madness of the poem is to be found as much in Victorian legal reality as in nonsensical fantasy. Carroll's brilliance shines in the fact that the reader comes out of the paradoxical mix of fantasy and reality, unsure which is which, and perhaps spurred (for even nonsense can have a point) to think more critically on the silliness of the actual justice system.

70 CARROLL, *supra* note 1, at 80.
71 *See* PETER GAUNT, OLIVER CROMWELL 122 (2004).