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BURNS AND THE LAW[1]

By ZELMAN COWEN*

I

A story is told of an American lawyer inexperienced in the ways of the Supreme Court of the United States who found himself one day before that august tribunal with a very shaky case. One of the judges was leafing through the papers, incredulous that so poor a case had made its way so high. Interrupting the uncertain oratory of the pleader, he asked, 'Mr X, how *did* you get here?' For the first time, the lawyer found himself on sure ground. 'Why, your Honour', he said, 'by the Atchison, Topeka and Santa Fe', referring to the most poetically named of the great American railroads.

In standing here tonight, I feel in like case. How did I get here? That the Melbourne Scots should have invited me to deliver the Burns Oration is, to use a word much beloved of lawyers, *prima facie* inexplicable. After hearing what I have to say, I have little doubt that the company will firmly resolve that its officers have committed an outrageously *ultra vires* act in making this choice of an orator.

For, and again using a lawyer's Latin phrase—*res ipsa loquitur*—I am no Scot and I am no Burns scholar. My Scots links are with a collegiate institution of this town which bears a Caledonian name, and where thirty years ago in the Hall we made ready for the Foundation Day concert by singing a repertoire of songs which included one or more of Burns's marvellous songs. Whether, under the flailing baton of the harassed singing master and under the watchful eye of prefects ready to beat us if we talked to our neighbours instead of joining in the singing tumult, we did justice to Burns is very doubtful. But we sang some of the loveliest and most haunting of words

O my Luve's like a red red rose
That's newly sprung in June
O my Luve's like the melodie
That's sweetly play'd in tune.

As fair art thou my bonnie lass
So deep in luve am I
And I will luve thee still, my Dear
Till a' the seas gang dry.

This is surely the most perfect love song; it isn't Mary or Jean or Annie; it is any man to any girl, and as one of Burns's most distin-

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[1] This is the text of the Burns Oration for 1965 delivered to the Melbourne Scots on 15 March 1965.

guished critics has put it, this kind of poetry 'isolates the individual experience to make it, for the moment, the sum of all life'.

I am grateful to you for having invited me to come here this evening, for it has given me the opportunity to read, though happily for the *bonum publicum* not to sing, these wonderful songs. There is that haunting song—Burns's last which he wrote for Jessie Lewars who nursed him in his final illness, and in which, with a magnificent effort, he reversed the roles, as though to appear that he was the protector and she the protected

O wert thou in the cauld blast
On yonder lea, on yonder lea;
My plaidie to the angry airt,
I'd shelter thee, I'd shelter thee.

It is hard, once started to leave these marvellous songs. And I found myself very happy with other lines of Burns, for I wooed and married a girl called Anna, and the poet had some splendidly apt things to say about a girl of that name. In *Yestreen I had a Pint o' Wine,* recall

The kirk and state may gae to hell
And I'll gae to my Anna

and again

I'll ne'er forget that happy night
Amang the rigs wi' Annie.

And then there were the times when the poet slipped. At the end of 1786, having published the *Kilmarnock* edition, Burns set out for Edinburgh and, as the Heaven-taught ploughman, was received with acclaim and enthusiasm by the *literati.* He felt it his duty to address a poem to the great capital which had done him such honour. He hailed Edinburgh as 'Edina, Scotia's darling seat', and, as a critic writes 'the firm of Edinburgh plumbers and sanitary engineers who in a later generation adopted the name "Edina" for their version of a necessary but hardly a poetic kind of seat were demonstrating, if somewhat crudely, real critical insight'.

But I fear that I am falling into the trap against which all the learned warn. They warn us about the 'annual Burns Night speeches of enthusiasts (where) his significance as Scottish poet and literary craftsman is wholly obscured in mists of sentimental oratory'. And I am instructed to talk to you about Burns and the Law, and I must try to stick to my last.

II

The Scots law bears within it some English influence, but it is a strange beastie with an uncommon vocabulary for English (in which

I include Australian) lawyers. Scots cases coming to the common Court of Appeal for the United Kingdom, the House of Lords, contribute to our jurisprudence, though there are not wanting some churlish Scots lawyers who say that the English judges on that august Bench do much injustice to the pure fabric of the Scots law. And Burns's own time was a lively one for Scots law and legal thought. Not very long before the *Kilmarnock* edition of Burns saw the light of day, Lord Kames in his *Elucidations respecting the Law of Scotland* was making pungent observations on matters legal. 'No science', said Lord Kames, 'affords more opportunity for exerting the reasoning faculty than that of law; and yet in no other science is authority so prevalent.' Again 'What are our law-books but a mass of naked propositions drawn chiefly from the decisions of our supreme courts rarely connected either with premises or consequences?' Of law students, Kames said that 'they husband their reasoning faculty as if it would rust by exercise', and, alas, of professors of law, that 'they load the weak mind with a heap of uninteresting facts, without giving any exercise to the judgment'. All this seems to find its echo in Burns's portrait of the lawyer

> But what his common sense came short
> He ekèd out wi' law, man.

Burns has left us with two verses in which he dealt with two notable Edinburgh lawyers of his day. One was the Lord Advocate of Scotland, Sir Ilay Campbell. This notable gentleman who later became Lord President of the Scots Court of Session and whose reports on the state of the courts of law in Scotland, which he compiled over a period of fifteen years, are still works of reference, was described by Lord Cockburn as having 'great experience and great reputation in every legal sphere' and was portrayed by Burns in his *Extempore in the Court of Session*

> He clench'd his pamphlets in his fist,
> He quoted and he hinted,
> Till, in a declamation-mist,
> His argument he tint[2] it:
> He gapèd for 't, he grapèd for 't,
> He fond it was awa' man;
> But what his common sense came short
> He ekèd out wi' law, man.

As Lord Cockburn said of the subject of this sketch, 'his speaking, always admirable in matter, was the reverse of attractive. His voice was low and dull, his face sedate and hard', and Burns's lines convey at least some part of this picture.

[2] 'lost'.

And then there was the verse picture of Sir Harry Erskine, Dean of the Faculty of Advocates. Sir Harry stood in high repute for his legal skills, his humour, his wide ranging intellectual tastes. In Burns's *Extempore in the Court of Session,* Campbell's poor oratory was compared with Erskine's more vigorous and histrionic style:

Collected, Harry stood awee,
Then open'd out his arm, man;
His Lordship saw wi' ruefu' e'e
And ey'd the gathering storm, man:
Like wind-driv'n hail, it did assail,
Or torrents owre a lin, man;
The Bench sae wise, lift up their eyes
Hauf-wauken'd wi' the din, man.

We are told by another that 'nothing was so sour as not to be sweetened by the glance, the voice, the gaiety, the beauty of Henry Erskine', and Burns gives us an affectionate picture which immortalizes the lawyer in full flood, pouring his cascades of oratory over the Bench.

For the rest, Burns had few, though pungent, things to say about the law. He gave testimony to Scotch drink as a fine composer of legal differences.

When neebors anger at a plea
An' just as wud as wud can be
How easy can the barley-brie
Cement the quarrel
It's aye the cheapest lawyer's fee
To taste the barrel.

The most vehement of all of Burns's poetic commentaries on courts and law are in *The Jolly Beggars.* This famous cantata was not published in Burns's lifetime; it appeared as a chapbook published by Stewart and Meikle in Glasgow in 1799. In 1793, in a letter to George Thomson, Burns had written 'I had forgot the cantata you allude to, as I kept no copy, indeed did not know that it was in existence. However, I remember that none of the songs pleased myself except the last—something about

Courts for cowards were erected
Churches built to please the priest.'

The scholars doubt whether Burns was telling the truth, and suggest that he may have feared in 1793, when feeling in England about the French Revolution was running high, that this wildly radical piece would not please his more sedate friends. But *The Jolly Beggars* is accounted, and rightly accounted, one of Burns's finest achievements. 'The Jolly Beggars', we are told, 'appeals to humanity's unofficial self . . . to a degree extremely rare in literature. One side of any adequate

human personality always demands anarchy, the repudiation of all conventions and social institutions, just as another side always demands set forms and rituals. *The Jolly Beggars* isolated this first side —gives it gloriously triumphant expression—while not shirking any of its implications. Squalor, beggary, lust, drunkenness are all here, but so are conviviality, comradeship, independence, courage.' We are told that the cantata had its inspiration in a visit late one night by Burns and some companions to Poose Nansie's inn in Mauchline. There, after 'witnessing much jollity', they came away and what Burns had seen moved him to write *The Jolly Beggars*. The cantata moves to an uproarious conclusion

Set the smoking bowl before us!
Mark our jovial, ragged ring!
Round and round take up the chorus,
And in raptures let us sing:
Chorus
A fig for those by law protected!
Liberty's a glorious feast,
Courts for cowards were erected,
Churches built to please the priest!

This reveals a significant strain in Burns's character and writing: a strong yearning for liberty, an antagonism to established order, and a sense of exultation in the affirmation of the rights of man. The unfolding of the French Revolution excited and stirred him; and—oddly consorting with Jacobinism—antagonism to vested authority aroused in him a romantic and protesting Jacobitism. This finds its most romantic strains in the songs:

An' Charlie he's my darling
My darling, my darling,
Charlie he's my darling,
The young Chevalier

and in the sad beauty of Jacobite exile:

Now a' is done that men can do,
And a' is done in vain:
My Love and Native Land farewell,
For I maun cross the main, my dear,
For I maun cross the main.

Jacobite feeling was, on occasion, expressed in a dangerous explosion of anger against the Hanoverians, as in the lines *On seeing the royal palace at Stirling in ruins*

The injured Stewart line is gone
A race outlandish fills their throne:
An idiot race, to honour lost—
Who knows them best despise them most.

That was not very wise, and it was the sort of thing calculated to make life uncomfortable for Burns. And when Jacobitism turned into Jacobinism, Burns found himself in some trouble. Some of his more genteel friends among the *literati* were alienated, and, as an excise-man, he was denounced as unpatriotic to the Excise Board by an informer, though he was exonerated after an informal inquiry, but admonished to be more careful in future.

Through Burns's writings there runs a protest against an ordering of society in which inequality and injustice are perpetuated.

> There's wealth and ease for gentlemen
> And simple folk maun fecht and fen

and

> If I'm designed yon lordling's slave
> By nature's law designed
> Why was an independent wish
> E'er planted in my mind?

and he wrote in the *Epistle to Davie*:

> It's hardly in a body's power
> To keep at times frae being sour
> To see how things are shared.

And the law itself descends relentlessly upon the little man, as the lady vagabond thief laments in *The Jolly Beggars*:

> A highland lad my Love was born,
> The lalland laws he held in scorn:
> But he still was faithful to his clan,
> My gallant braw John Highlandman.
>
> But Och! they catch'd him at the last,
> And bound him in a dungeon fast,
> My curse upon them everyone,
> They've hang'd my braw John Highlandman.

So, what's the conclusion of it all? First the wonderful roaring chorus of *The Jolly Beggars,* unforgettable and anarchic:

> A fig for those by law protected!
> Liberty's a glorious feast,
> Courts for cowards were erected,
> Churches built to please the priest!

And in another key, and following out another recurrent theme:

> For a' that an' a' that
> Our toils obscure an a' that
> The rank is but the guinea stamp
> The man's the gowl for a' that.

For a' that an' a' that
It's coming yet for a' that
That man to man the world o'er
Shall brithers be for a' that.

This, of course, is not anarchy but brotherhood. Brotherhood there is also in *The Jolly Beggars,* but it is the brotherhood of the vagabonds in tumultuous protest against society and its constricting bonds of church, state and, above all, of law.

III

Burns had various involvements with lawyers and with the law. In a letter to Peter Hill, a bookseller of Edinburgh whom Burns first met in 1787, he wrote a displeased and displeasing comment on lawyers. 'Though I have mentioned so many men of law, I shall have nothing to do with them professedly—the faculty are beyond my prescription. As to their clients that is another thing; God knows they have much to digest.' His own involvements with lawyers were sometimes, in fact, pleasant and profitable. When the heaven-taught ploughman made his way at the end of 1786 to Edinburgh, he wrote to a lawyer friend Gavin Hamilton, 'For my own affairs, I am in a fair way of becoming as eminent as Thomas à Kempis or John Bunyan . . . Lord Glencairn and the Dean of Faculty, Mr H. Erskine, have taken me under their wings; and by all probability I shall soon be the tenth Worthy, and the eighth Wise Man, of the world.' Burns singled out the Dean of the Faculty of Advocates as a figure of special importance, as indeed he was, for apart from his legal eminence Sir Harry Erskine was a social and intellectual leader of Edinburgh society, and his acknowledgement of the poet materially contributed to his wide acceptance in the society of the Scottish capital. Gavin Hamilton, to whom this letter was written, was also a lawyer, and the person to whom Burns dedicated the *Kilmarnock* edition of his poems in 1786, the edition which set Burns on the road to fame. Burns paid tribute to this lawyer in the *Epistle to John M'Math*

See him the poor man's friend in need,
The gentleman in word an' deed—
An's shall his fame an' honor bleed
By worthless skellums
An' not a muse erect her head
To cowe the blellums.

The dedicatory poem in the *Kilmarnock* edition, *Holy Willie's Prayer,* recorded the success of Hamilton in resisting charges of neglect of ecclesiastical duty. Hamilton was also Burns's landlord at Mossgiel, which the poet took from him by way of sub-lease in 1784.

Gavin Hamilton took a keen and enthusiastic interest in Burns's affairs. It seems that the friendship cooled a little after Burns in 1788 declined a proposal by Hamilton that he, Burns, should become a guarantor of his brother Gilbert Burns for a considerable sum. Burns regretted that he could not agree. 'My brother has already got money, and shall want nothing in my power to enable him to fulfil his engagement; but to be security on so large a scale, even for a brother, is what I dare not do, except I were in such circumstances of life as that the worst that might happen could not greatly injure me. I never wrote a letter which gave me so much pain in my life, as I know the unhappy consequences: I shall incur the displeasure of a Gentleman for whom I have the highest respect, and to whom I am deeply obliged.' The friendship, however, survived, and the last written record we have of the association was a letter by Burns to Hamilton asking, on behalf of a lady, for the lawyer's help in the settlement of her husband's affairs.

Burns had been introduced to Hamilton by Robert Aiken, 'Orator Bob', another lawyer in 1783. The words 'Orator Bob' will not be unfamiliar to members of this Society, though not as applied to Aiken. Burns met Aiken in 1783, and the lawyer, a successful practitioner and a convivial companion, was much impressed by Burns's poetic skill. It is recounted that Burns said that he had not fully appreciated his own work until he heard Aiken read it aloud. There are various references in Burns's letters to Aiken as his first patron, and certainly Aiken worked very hard and successfully in collecting about one-quarter of the total number of subscribers to the *Kilmarnock* edition. *The Cotter's Saturday Night* was dedicated to Aiken, and it is said that Burns's letters to the lawyer were probably among the most revealing he ever wrote. Unfortunately, most of them have been destroyed.

There is one interesting story involving Burns with Aiken and Burns with the law. This arose out of Burns's amatory adventures with Jean Armour, who later became his wife. Burns had had an affair with Elizabeth Paton, who had been a servant in his father's household, and she bore him a daughter in May 1785. There had never been any question of marriage, though Burns welcomed his daughter with a poem in which he called for misfortune to befall him

> if I blush when thou shalt ca' me
> Tyta or daddie.

The lady, however, made one more appearance in 1786, when she made a claim against Burns which was settled for twenty pounds which was paid out of the profits of the *Kilmarnock* edition.

The Jean Armour story has much more to it. In August 1785 Burns wrote

> But when I cam roun' by Mauchlin town
> Not dreadin' any body
> My heart was caught before I thought
> And by a Mauchlin Lady—

This was Jean Armour, the daughter of a respected master mason of Mauchline. It seems that the affair grew hot in 1785, and early in 1786 Jean was plainly pregnant. Burns wanted to marry her, but her family at this stage would have nothing of it, even in these circumstances. It seems that Burns and Jean went through some form of marriage only to have it repudiated under pressure from her parents. Scots law contemplated a marriage by mutual promise sealed by prior or subsequent consummation. Burns gave Jean a written document to reinforce his verbal promise to marry her. But father James Armour, as one of the Burns's scholars tells us, 'horrified at finding that his daughter had been made pregnant by a struggling tenant farmer with a reputation for rhyming and blasphemy, persuaded Robert Aiken—Burns's friend but also the Armour's lawyer—to cut the names out of the paper evidently assuming that this would end all suggestion that Jean and Robert were married'. Dr Daiches, who relates this story, makes the sound lawyer-like observation: 'Why the paper was mutilated rather than destroyed is difficult to understand; nor is it easy to see why Aiken, with his expert legal knowledge, did not persuade Armour of the irrelevance of this action. But this is, in fact, what happened: Jean was bullied by her father into surrendering the paper, and Aiken was then persuaded to mutilate it.' The story told in such positive terms by this writer is told more cautiously by another Burns scholar. He says that 'It was *probably* Aiken—his part in the affair has never been proved—who mutilated the promissory paper Burns gave to Jean Armour, by cutting out their names, possibly to placate James Armour'. This more cautious account ends with the superb sentence, 'This led to a temporary coolness between the lawyer and the poet'. Burns said that the news of this mutilation of his document and its horrid purpose 'cut my very veins'.

The Armour parents took the whole matter very badly. It is said that when the news of Jean's pregnancy was communicated to her father, he fainted and his wife had to 'run for a cordial'. But he recovered and set after the poet in a purposeful fashion. At this time, Burns, generally unhappy at the way things were going, was talking about emigrating to Jamaica, and James Armour with some knowledge of the law relating to the service of process and the enforcement of judgments against a non-appearing defendant, looked about for means to compel Burns to pay for the support of the yet unborn child, which

was going to be twins, anyway. Burns, much concerned, and fearing imprisonment for unsatisfied debt left Mossgiel and described himself as 'wandering from one friend's house to another'. But, prudently, though not admirably, he assigned his share in the Mossgiel farm to his brother Gilbert for the support of his daughter by Bessy Paton, and he also assigned to Gilbert, in trust for his daughter the copyright in his poems and 'the profits that may arise from the Publication of my Poems presently in the Press'—as fine a piece of alliteration as ever appeared in a deed of assignment.

Earlier, his peccadilloes with Jean—from which he learned absolutely nothing, as his future conduct showed—also cast him into ecclesiastical hot water. He was required to appear before the Kirk Session and to confess his responsibility for Jean's pregnancy. Some little time later he wrote to a friend: 'I am just going to put on Sackcloth and ashes this day.' Three times he and Jean were required to appear in Church to receive public rebuke for their sin. And after the third appearance, he was apparently given a clean bill. As Dr Daiches tells us 'such appearances were frequent in Scottish churches at this time; fornication was among the commonest sins, especially in rural areas, while pre-marital intercourse among the peasant and farming people was very common. Burns and Jean were doing what many another young man and woman in Mauchline and elsewhere had done and were to do again. Burns was conspicuous to the orthodox less as a fornicator than as a wild rhymster with a satirical pen and heretical ideas whose sinning was to be expected and gloated over.'

So Burns was free and judgment proof. But this is not the end of the story of Robert and Jean. After the publication of the *Kilmarnock* edition which brought him fame, and after his subsequent brilliant success in Edinburgh, Burns turned up again in Mauchline in the early summer of 1787. Then he found that the Armours had quite a different view of him, and now wished for Caledonia's Bard as their son-in-law. Burns found their 'new servility' intolerable, but left Jean pregnant once again. The Armours were furious and turned Jean out of the house. Burns was back in Edinburgh and was now engrossed in his epistolatory love affair with Clarinda, and was physically handicapped by an injured leg. He took some time to get back to Mauchline, and after some distressing and rather puzzling episodes, acknowledged Jean as his wife in 1788. As he wrote to a friend, he had 'lately and privately' given Jean 'a matrimonial title to his corpus'. The matrimonial title did not give her exclusive possession; he was off on other peccadilloes, and as Jean observed, 'Oor Rob should hae had twa wives'. Why in her good nature she would allow such a meagre ration of polygamy to the errant poet is not clear. On his reconciliation and marriage to Jean, Burns wrote this fine song:

Of a' the airts the wind can blaw,
I dearly like the west,
For there the bony Lassie lives,
The Lassie I lo'e best:
There's wild-woods grow, and rivers row,
And mony a hill between;
But day and night my fancy's flight
Is ever wi' my Jean.

Let me finish the story. Soon after the acknowledgement of Jean as his wife, Burns became reconciled with his father-in-law, and two of Burns's last letters were written to James Armour asking that Mrs Armour come to Dumfries to look after Jean, then in the final stages of her last pregnancy. That letter dated 10 July 1796, was signed: 'Your most affectionate son, R. Burns.' Jean is described by a Burns scholar in these terms: 'She seems to have been a generous, compliant woman, with a clear singing voice, though in no way her husband's intellectual equal, and willing to put up with his wildest extravagancies.' She bore him nine children, the last of whom was born on the day of his funeral. Only three of the children survived her, and she survived her husband by thirty eight years, as we are told 'answering the questions of the early hagiologists with patient good nature'.

IV

For the last few years of his life, Burns served as a law enforcement officer, in the excise service. When he first went to Edinburgh, he was looking for an excise post, wanting to be away from the burdens of farming. The appointment did not come for some time. In 1788 Burns took a six weeks course of instruction for prospective excisemen at Mauchline, and received his commission in the summer of that year. This made him eligible for appointment, and in 1789 he was appointed as exciseman in charge of the 'Dumfries first Itinerary', and for a salary of £50 a year his duty was to inspect a large district and to police the laws relating to liquor and other dutiable goods, and particularly to keep watch on smuggling. This was a very arduous task; Burns was still farming, and in the discharge of his duties in the excise service he had to ride two hundred miles a week over bad roads and in bad weather, and this affected his health. He was a good and conscientious exciseman, and in the summer of 1790 he was promoted to the Dumfries '3rd, or Tobacco, Division' with a salary of £75 a year.

In 1791 he decided to give up his farm, and at the end of that year he moved with his family to Dumfries where he lived on his meagre salary as an exciseman and on what capital he had scraped together from his published editions and from the disposal of his farming assets. Until his death in July 1796, he lived on in Dumfries, work-

ing as an officer in the Dumfries Port Division of the Excise. He appears to have been happy during these years, with his friends and with his job, though he was plagued by ill health. He died of some form of *endocarditis;* for he had contracted a rheumatic heart disease in his youth as a result of too much physical exertion on the farms on an inadequate diet. For a long time a false story persisted that he died prematurely because of over heavy drinking. This, as Dr Daiches tells us, was put about by Dr Currie, Burns's first biographer, 'an ardent prohibitionist who (presumably believing that the end justifies the means) used his life of Burns to further the prohibitionist cause'.

Of Burns as a law enforcement officer in the excise service there is not too much more to tell, though there is one interesting story. It involves the capture of the smuggler ship, *Rosamond,* in the Solway Firth in Burns's district. The story was first given prominence in the *Life of Burns* by J. G. Lockhart, LL.B., son-in-law of Sir Walter Scott, published in 1828. The story, as told by Lockhart is that in February 1792, this contraband carrier was seen in the Firth in shallow water, and Burns was left with a party to watch the brig and to prevent landings or escape while Lewars, a brother exciseman, went off to Dumfries to get reinforcements. Lockhart proceeds:

> . . . it appears that Burns manifested considerable impatience while thus occupied, being left for many hours in a wet salt-marsh, with a force which he knew to be inadequate for the purpose it was meant to fulfil. One of his comrades hearing him abuse his friend Lewars in particular, for being slow about his journey, the man answered that he also wished the devil had him for his pains, and that Burns, in the meantime, would do well to indite a song upon the sluggard: Burns said nothing; but after taking a few strides by himself among the reeds and shingle, rejoined his party, and chanted to them the well-known ditty, *The Deil's run awa' wi' the Exciseman.* Lewars arrived shortly afterwards with his dragoons; and Burns, putting himself at their head, waded sword in hand to the brig, and was the first to board her. The crew lost heart, and submitted, though their numbers were greater than those of the assailing force. The vessel was condemned, and, with all her arms and stores, sold by auction next day at Dumfries: upon which occasion, Burns, whose behaviour had been highly commended, thought fit to purchase four carronades, by way of trophy. But his glee went a step farther;—he sent the guns, with a letter, to the French Convention, requesting that body to accept of them as a mark of his admiration and respect. The present, and its accompaniment, were intercepted at the custom-house at Dover; and here, there appears to be little room to doubt, was the principal circumstance that drew on Burns the notice of his jealous superiors.

Here we have it all: the dashing and courageous exciseman, the romantic origin of a Burns poem, and an illustration of the intoxication with the French Revolution which got Burns into trouble.

The story was repeated by others, then doubted and then rejected by Burns scholars. A German professor in 1919 dismissed 'Die ganze episode', and relegated it to the dusty halls of 'Burnsanekdoten'. What a language for talking and writing about Burns! But, after the story reached the scholarly doghouse, an American scholar having earlier concluded that 'The brig *Rosamond* affair should be absolutely deleted from any account of Burns's life', discovered that the *Rosamond* was real enough, that she was carrying contraband, that she grounded, was abandoned by her crew, was seized by Burns and his colleagues, and that Burns took charge of her for the Crown. Then we have records in Burns's hand which show that he was busily engaged in repairing and refloating the vessel and finally sending her to Kelton, just below Dumfries, where she was laid up and dismantled. There are records of disbursements by Burns; he had to pay for material, carpenters and workmen, for dragoons maintained on board, and there were also the expenses of the sale.

The American scholar who investigated all this thirty years ago tells that the inventory discloses that there were 'four four pounders Carronade Guns mounted on Carriages with takle and furniture compleat', but that there was no evidence that Burns purchased the four carronades and sent them to France. The story told by the American Burns scholar ends rather nicely

> . . . Perhaps Lockhart invented the story of Burns and the carronades, as artistic embroidery on an otherwise matter-of-fact anecdote. Perhaps a century from now some one will pry further into the store-rooms at Abbotsford and discover the missing document, in Lewars' handwriting. But the story of Burns and the *Rosamond* is complete without any further additions. For some seven weeks—from 28 February to 19 April—Burns had found relief from the routine of his lack-lustre official life at Dumfries, and had played a leading part in what must have seemed to him a glorious adventure. When it was ended, the bills paid, and the last account verified, he went back to Dumfries, where Jean Armour was teaching her sixth child to walk, and where—possibly, at least—pretty Anne Park, 'Anna wi' the gowden locks', in the Globe Inn, had just seen her daughter Elizabeth safely through the first year of babyhood. There was Maria Riddell, too, at Woodley Park, outside the town —already growing a little tired of the husband whom she had impetuously married in the West Indies. Is there any wonder that a poet forgot to tell precisely what happened to those four guns?

V

There is one more chapter in the story of Burns and the law and it might well be entitled the price of popularity. The publication of the work of a popular poet was a great prize, and after Burns's death there were some publishing battles. In the years 1784-1787, one John Rich-

mond had been a close friend of Burns. He had been one of the members of the Court of Equity, the name of a secret bachelors' association which met from time to time at the Whitefoord Arms Inn at Mauchline. The object of the association was 'to search out, report and discuss the merits and demerits of the many scandals that crop up from time to time in the village' and to decide what punishments should be awarded to offenders. Burns, commemorated its meetings in a bawdy poem *The Court of Equity*. Richmond was also associated with Burns in the revelry which led to the writing of *The Jolly Beggars*. Burns shared lodgings with Richmond during his first visit to Edinburgh. It appears that relations between the two men became strained at this time, and apparently they did not meet again. But Burns had given Richmond some manuscripts, and Richmond, who had settled down as a solicitor in Mauchline, turned over Burns's papers, after the poet's death, to a nephew Thomas Stewart of the Glasgow booksellers and stationers, Stewart and Meikle. The firm first published a small pamphlet in which Burns's poem *An Unco Mournfu Tale* made its first appearance. In 1799 Stewart and Meikle for the first time published *The Jolly Beggars* as a sixteen page pamphlet, and announced further offerings. In 1800 they issued the bound up pamphlets in book form with considerable success. In the same year, the London publishers Cadell and Davies brought out the first collected edition of the *Works of Robert Burns* in four volumes. Dr Currie had been commissioned to edit this edition, and this was, in terms of copyright, the authorized edition. Legal action was taken to stop these activities of Stewart and Meikle, and they were stopped in September 1800. Stewart himself carried on the battle; in 1801 he offered for sale a book bearing the title *Poems ascribed to Robert Burns* which contained *The Jolly Beggars,* some poems of Burns which had not been previously published, and a letter written by Burns to Robert Muir, a Kilmarnock wine merchant, whom Burns first met in 1786, and who was a substantial subscriber to both the *Kilmarnock* and first *Edinburgh* editions of Burns's poems.

About this time, pirated editions of Burns's works appeared in various parts of Scotland, one of which published in Glasgow and printed by Thomas Duncan, contained *The Jolly Beggars* with a completely new section added to it, and sixteen new poems. Where Duncan found these poems is a matter of speculation; one suggestion is that they were fed to him by Stewart who in 1802 published *Stewart's Elegant Pocket Edition,* including the new poems printed by Duncan. Another Glasgow publisher, John Murdoch, found himself in legal trouble for pirating, and in 1801, Paisley and Edinburgh pirate publishers bit the legal dust. Stewart made one more *coup*. He published a series of letters from Burns to Mrs Agnes M'Lehose. This

was the famous *Correspondence between Sylvander and Clarinda* which has been described, not without justification, as 'a series of amatory epistles, one of the silliest of such effusions on record'. Sylvander was Burns, Clarinda, Mrs M'Lehose. The correspondence had begun when Burns was enjoying brilliant success in Edinburgh. The lady was described as of 'bosomy figure, large eyes, and a smattering of culture, which put her beyond the ordinary, so far as women were concerned, in an age when it was not thought necessary, or desirable, that women should receive much education'. Mrs M'Lehose had married a dissolute young Glasgow law agent, M'Lehose, who wooed and won her despite opposition on the part of the lady's father. But she left him, and was living in Edinburgh when Burns came there at the end of 1786. The correspondence flowed, though there was a break when Burns married Jean Armour. But it was resumed, and they met for the last time in December 1791, in Edinburgh. That month Burns sent her his lovely song *Ae Fond Kiss, and Then we Sever* and some days later the lady sailed for the West Indies to attempt a reconciliation with her husband. It failed and she returned to Scotland in the same ship. There were a few more letters between Burns and Clarinda, but Burns's passion was spent. She lived on to very old age, and died in 1841. When Stewart published the letters in 1802, the lady was still well and truly alive. His, Stewart's, career came rapidly to an end. In the Decisions at the Court of Sessions for 1802, Cadell and Davies, booksellers in London, and William Creech, bookseller in Edinburgh, successfully moved to interdict (enjoin) the publication of *Letters addressed to Clarinda, by Robert Burns, the Ayrshire poet.* Stewart continued the struggle for a short time thereafter but the Lords of the Court of Session declared the interdict to be perpetual and awarded costs to the heirs of Burns.

VI

Caledonia's Bard saw the law with eyes very different from those of the Bard of Avon. Shakespeare portrayed the law in many aspects; he saw it in its majesty. Recall the great passage from the second part of *Henry IV,* Act V, scene II, where the Chief Justice expounds the authority of the law over every man other than the King, including the heir to the throne himself:

King

How might a prince of my great hopes forget
So great indignities you laid upon me?
What! rate, rebuke, and roughly send to prison
The immediate heir of England! Was this easy?
May this be wash'd in Lethe, and forgotten?

Chief Justice

I then did use the person of your father;
The image of his power lay then in me:
And, in the administration of his law,
Whiles I was busy for the Commonwealth,
Your highness pleased to forget my place,
The majesty and power of law and justice,
The image of the king whom I presented,
And struck me in my very seat of judgment;
Whereon, as an offender to your father,
I gave bold way to my authority,
And did commit you. If the deed were ill
Be you contented, wearing now the garland,
To have a son set your decrees at naught,
To pluck down justice from your awful bench,
To trip the course of law, and blunt the sword
That guards the peace and safety of your person.

And the King answers

You are right, justice; and you weigh this well;
Therefore still bear the balance and the sword:
And I do wish your honours may increase.

For Burns, this made very little sense. Remember

A fig for those by law protected!
Liberty's a glorious feast,
Courts for cowards were erected,
Churches built to please the priest!

Maybe Burns did not always feel that way, but he looked with no great affection on authority or establishment.

I have greatly relished this opportunity to write on Burns. If the aspect of my writing about him has been odd, it has given me occasion to renew acquaintance with the magic of his songs. There is so much tenderness, so much beauty there, whether he talks of present ardours or of passions remembered in the evening of life:

John Anderson my Jo, John,
When we were first Acquent;
Your locks were like the raven,
Your bony brow was brent;
But now your brow is beld, John,
Your locks are like the snaw;
But blessings on your frosty pow
John Anderson my Jo.

John Anderson my Jo, John,
We clamb the hill the gither;
And mony a canty day John
We've had w' ane anither.

Now we maun totter down, John,
And hand in hand we'll go
And sleep the gither at the foot
John Anderson my Jo.

I have struggled to keep my mind on the theme of Burns and the law, but temptation has come again and again to recite—it were better for another to sing—another song. If I have failed in the lawyerlike requirement of relevance I plead

The best-laid schemes o' Mice an' Men
Gang aft agley

or with the Lord Advocate

His argument he tint it.

And if I have failed through the blinkers of my training and the prosiness of my art to kindle imagination, remember that I suffer from the same defects as that same Lord Advocate

But what his common sense came short,
He ekèd out wi' law, man.