

THE
TRIAL AT LARGE
OF
Henry Jadis, Esquire,
FOR
CRIMINAL CONVERSATION
With the Wife of
The Hon. Allan Hyde Gardner;
Captain in His Majesty's Navy, and Son to
Lord GARDNER.

WITH THE
WHOLE PLEADINGS OF THE COUNSEL,
*Before Lord Ellenborough, Chief Justice of the King's Bench,
on Saturday, March 2, 1805.*

By RICHARD JOHNSON, Esq.
OF THE MIDDLE TEMPLE.

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Trials

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OF

Henry James Esq.

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With the Wife of

The Hon. Mr. Hyde Gardner

in the Majesty's Navy, and Son to

Lord Gardner

With the

WHOLE PROCEEDINGS OF THE COURT

Before Lord Ellenborough, Chief Justice of the King's Bench

on Saturday March 2, 1802.

By RICHARD JOHNSON, Esq.

OF THE INNER TEMPLE.

LONDON:

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THE

TRIAL

OF

Henry Jadis, Esquire.

ON Saturday March 2, 1805, came on in the Court of King's Bench, Guildhall, London, before Lord Ellenborough and a Special Jury, the Trial of Henry Jadis, Esq. for Criminal Conversation with the wife of the hon. Allan Hyde Gardner, Captain in his Majesty's Navy, and son to Lord Gardner.— Damages laid at 20,000l.

MR. CUMMINGS opened the pleadings.

MR. ERSKINE opened the case for the Plaintiff, to the following effect.

Gentlemen of the Jury,

This action is brought by the honourable Allan Hyde Gardner, a Captain in his Majesty's

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Navy, and son of that gallant and meritorious officer Admiral Lord Gardner, who has long vindicated the honour of his country, and who is now advanced to a peerage; and it is among the most afflicting parts of this case—if indeed one part can be more afflicting than another, in a case of this description—that in consequence of the connexion which has taken place between the Defendant and the wife of the honourable Captain, and which connexion is the cause of this action, there has been issue; that unless the evidence which shall come before you to-day, should be fortified hereafter before another jurisdiction, by which that issue may be bastardized, it will inherit all the honours that have been conferred on that great admiral, in consequence of the services to which I have alluded, and which however he has so well deserved; so that I am persuaded that every well-disposed mind must feel a considerable leaning against such an unfortunate consequence; and I am extremely happy to see from my instructions, of what the evidence will be, that the fact of illegitimacy of the issue will be made out without any kind of controversy. Gentlemen, Captain Gardner was married to this lady at Madras, in the East Indies, in the month of March, 1796. She was the daughter of a Mr. Adderley, by his wife, who, on his death, married Lord Hobart. The Plaintiff and his wife were married, as I have said already, at my Lord Hobart's house, at Madras, who was then

the governor of that settlement. One gentleman, who will be called to you, Sir Alured Clark, was present at the ceremony; and I understand, that the happiness of this couple was uninterrupted untill their unfortunate separation. By unfortunate separation I do not mean by the act of the Defendant, but from the Plaintiff being called abroad in the service of his country, and which, although honourable to the Plaintiff, was yet unfortunate that it led to the crime of which we are now complaining.—Captain Gardner having been thus abroad, returned to England from the East Indies with his wife, in the year 1797. They remained together until May 1799, and indeed some time afterwards; but at that period Captain Gardner was appointed to the command of his Majesty's ship the Ruby, and afterwards to the 74 gun ship the Resolution, whose station was in the Channel with the grand fleet. Up to this time the greatest harmony had subsisted between the Plaintiff and his wife, and such was her apparent affection for her husband, that on the ship's coming into port—(as we see every day ships of war doing, to refit, after encountering storms, tempests, and other perils of the sea)—no sooner did she hear of her husband's ship coming into port, than Mrs. Gardner put herself into a mail coach to join her husband, with whom she staid, apparently with perfect affection, while the ship remained in harbour; and on the sailing of the ship, she returned to London, to a place

provided for her in his absence, with every thing fitting for her honourable station. About the 5th or 7th of January, no matter which, Mrs. Gardner came on board the ship of which her husband was commander, which was called the Resolution, to see her husband; that was in the year 1802—and remained on board until the 30th of the same month. She staid in the ship until she got from Spithead opposite to Portsmouth, to Saint Helen's, which is the eastern point of the Isle of Wight, and then she parted from her husband, went on shore, and returned to London, and Captain Gardner sailed finally from England about the 7th of February; and it was impossible that this lady could afterwards have seen her husband until the month of July in the year 1802, the period of his return, which was about the end of that month. He found Mrs. Gardner was pregnant. The length of time she had been pregnant could not be known to him. He was at that time, considered by medical persons to be in such ill health that she could not cohabit with her husband, and Captain Gardner went to sea again, and afterwards found by information that his wife had been delivered of a male child on the 9th of December 1802, so that it was impossible Captain Gardner could be the father of that child, for she went on board the ship to him in the month of January, and quitted the ship on the 30th; or if she remained on board until the 7th of February, when the ship sailed, it was the

latest time, and she was not delivered until the 9th of December, in the same year, a period of 44 weeks and 3 days, if you take the time, at which she left the ship; but if you take the time, not from the period at which she did actually leave the ship and return to London, but from the time of the husband going abroad on the ship sailing, there will be a period of 43 weeks and 3 days, between that time and the time of her delivery; so that either period is much beyond the time—(even making allowances for those complaints, which, by the way, generally end in immediate death)—of the *gestation* of a woman by the law of nature.—There have been controversies of this kind determined in our Courts of Law, and faithful reports of them are to be found in our antient books as far back as the time of Edward the Third; and there were several of them in the time of Queen Elizabeth. They were collected and brought together by the learned Mr. Hargrave, in his late edition of Coke upon Littleton, where the period of human gestation is stated at 40 weeks and 10 days, which is 41 weeks and 3 days. That is stated to be—*post ultimum tempus partus Natura*; but independent of that, I shall be able to establish, if not here, certainly before another tribunal, that it is impossible Captain Gardner can be the father of that child, and that the Defendant, by his own confession, is the father, by this unhappy Lady. Gentlemen, it would be wasting your time to enter into a detail of the nature of the

injury which the Plaintiff has sustained in this case. He was married to a beautiful woman, and I am ready to admit, that when a man is called, as a military man or a naval officer, away from such a wife, in the service of his country, it is a misfortune to him, rather than an advantage, as far as regards the chance of the constancy of his wife; for when he has an opportunity of attending and protecting her, and performing all the duties of a husband, he must be more secure in the preservation of her honour; and unquestionably, the beauty of a woman is matter of great moment and satisfaction, and, I may say, the pride of a husband, while her virtue is entire; but a woman of extraordinary beauty, which I understand this lady to be, in this great town in which we live, unfortunately without the protecting presence of her husband, fortunately and glorious to the character of that husband, as he acquired laurels in the service of his country; yet unfortunate in respect to the honour of his wife; and that beauty was her misfortune. To state the precise period when the intimacy between this unhappy Lady, and the Defendant commenced, is beyond our power. But I will prove the adultery to your perfect satisfaction.

Sir Alured Clark, examined by Mr. Dallas,

—proved the marriage of the Plaintiff and his wife, which took effect at Madras, in the church of St. George, at which Lord and Lady Hobart were present; it was in the year 1796.

Cross-examined by Mr. Garrow.

—I do not recollect seeing them together in England, but I have seen them both. She was certainly very young, and very handsome—I do not know the Defendant at all.

Susan Baker examined by Mr. East.

—I lived servant with Mrs. Gardner, in July, 1801. I was not, at first, the maid who attended her person. I did not attend her as her own maid, until near August in the same year. I went down to Portsmouth with her to see Captain Gardner, who was going to the West Indies. We staid there a week—he came on shore to her; during that time I saw them together, they appeared to be very fond of one another. I afterwards went with Mrs. Gardner to Brockton, in Staffordshire, from Portsmouth to the house of Mr. and Mrs. Woollsey, where we staid about three months; during that time I saw Mr. Henry Jadis in the house; he was a visitor there, but I had no opportunity of observing his conduct towards Mrs. Gardner there. I slept at some distance from my mistress—Mr. Jadis's bed-room was near that of my mistress—when we left that place, we came to town—I accompanied my mistress. I saw Mr. Jadis afterwards in about three weeks. He came frequently to visit my mistress. There was a correspondence between them by letters."

Mr. GARROW.—You must not talk of letters unless you produce them."

Witness.—"We did not hear any thing of Captain Gardner until he came into Plymouth, which was, I think, in July.

Q. "Did you ever see Mr. and Mrs. Gardner together from the time you parted from him at Portsmouth, until he came back from his voyage?"

LORD ELLENBOROUGH.—"That relates to a subject which is extrinsic of this issue."

MR. ERSKINE.—"My Lord, I know that when a Bill of Divorce comes before Parliament, the minutes of this trial will be looked into, and I am anxious to establish the time during which Captain Gardner had no cohabitation with his wife, because that will have a material effect on the decision respecting the birth of the child. I am anxious, therefore, that these facts should appear upon your Lordship's notes."

LORD ELLENBOROUGH.—"If the House of Lords will look into my notes for evidence on that subject, their Lordships will look for what they ought not to find, for the evidence now proposed would only go to establish an act of adultery with *somebody*. That is not the issue we have to try. The issue is on the act of adultery between the Plaintiff's wife, and the *Defendant upon this Record*."

MR. ERSKINE.—"I can prove to a letter what I have stated to the Jury: that which your Lordship rejects we must prove before another tribunal."

MR. GARROW.—"I am the less anxious

about it, when I see who is to decide this cause, otherwise I ought to have taken an objection to this sort of evidence.

LORD ELLENBOROUGH.—“Whoever is the father of the child is nothing to this Defendant, until you affect him by proof of adultery.”

The *Witness proceeded*.—“Before I attended my mistress to see my master at Plymouth, Mr. Jadis had been in the habit of seeing her from time to time. I remember, on one particular occasion, his coming to the house, and her going up stairs to him. I was up stairs one day, and Mr. Jadis was with my mistress. I was sitting in her bed-room. She came up, and said—“She came to look for a fan. She desired me to go down stairs and fetch her some broth.”—I went, and staid down stairs while the broth was warming. When I returned, I found them in the drawing-room. I went immediately into the bed-room, and observed the bed to be very much tumbled. The bed was not in that state before I went down stairs—when I went down stairs for the broth, I left them in the bed-room—when I came up again, I observed that one of the blinds of the window was down. In January 1802 we went down to Portsmouth, in consequence of some information which my mistress received, and found Captain Gardner there; his ship was come in. We staid there near a month on board the *Resolution*. When we left Captain Gardner, we went to Fareham in our way

to town. My mistress's brother came down and was on board with her ; I did not see Captain Gardner until the July following—but between the time we left him on board the *Resolution*, and July, I never saw any thing of him. After we returned to town I saw the Defendant, Mr. Jadis, frequently ; he used to visit my mistress in Portugal-street, where her house was. I have known her go to him in Conduit-street, which was my Lord Strathmore's. She used to go to dinner there ; she used to come home very late ; sometimes at four o'clock in the morning. When Mr. Jadis was with my mistress, the door used to be locked ; not in her own house, but at my Lord Strathmore's. These visits were very frequent, and they used to stop a long time together. I remember when Mr. Jadis was at my mistress's house, Lord Hobart calling in Portugal-street. Mr. Jadis left the room when my Lord Hobart came up stairs. Mr. Jadis went into the back room, and he did not make his appearance while my Lord Hobart was there. When Captain Gardner returned in July 1802, he was very ill, and the Doctor of the ship was obliged to come up with him. At the time of his return my mistress was in a state of pregnancy. Captain Gardner did not sleep with my mistress when he returned ;—the reason was, he said, that the Doctor ordered him not to sleep with her."

Mr. GARROW.—" This is not evidence."

Lord ELLENBOROUGH.—" Yes, I think it

is, being an explanation accompanying an act. I think my Lord KENYON went rather farther than this in receiving evidence. The state of the health of the party, is a fact, and this is a reason accompanying that fact; but, however, we are not here on that part of the case to which this evidence applies; for it is for *Parliament* to say, whether the *issue shall be bastardised or not*. The question here is simply—Whether this Defendant has committed the adultery stated upon this Record? But have you any other fact Mr. ERSKINE, on the subject of the adultery?"

Mr. ERSKINE.—“O yes, my Lord,”

The Witness—“After July, I never saw my mistress and Captain Gardner together—I saw Mr. Jadis and my mistress in bed together in South Audley-street in Captain Gardner's house.—It was after Captain Gardner returned, it was about December, as near as I can recollect. It was after she was brought to bed. Mrs. Gardner was brought to bed on the 8th of December. I cannot say how soon after Mrs. Gardner was brought to bed, that I saw her and Mr. Jadis in bed together; it was about five or six weeks afterwards. She used to come home from my Lord Strathmore's about three or four o'clock in the morning—she has staid there all night. I have been at the door, and she has told me so. I have received orders from her, when I left her there, to come and meet her the next morning, sometimes in Grosvenor-street, and some-

times in South Audley-street. When she used to meet Mr. Jadis at my Lord Strathmore's, my Lord Strathmore's family was not in town. Mr. Jadis's servant used to let me in, when I knocked at the door."

Cross-examined by Mr. Garrow.

"She staid out somewhere all night frequently; but I never went in the morning and found her at my Lord Strathmore's. We continued at Mr. Woolsley's for three months, then we came to town; but we had not been a very long time in town before that circumstance occurred; about six weeks, I believe. Captain J. Gardner and Mr. Jadis were not at all acquainted, to my knowledge; I never saw Mr. Jadis in Mrs. Gardner's company, in the presence of Captain Gardner, nor in the presence of Captain Gardner's relations, or her relations. Mr. Jadis is a very young man; but I cannot say what age he is.

Admiral Caldwell examined by Mr. Erskine.

"I am acquainted with Captain Gardner, and have been ever since he was an infant—I was not in the East Indies when he was married.—I was anxious to see him, and I did see him during his residence in England; frequently after his marriage. I saw him before he was appointed to the command of the *Ruby*, and afterwards to the *Resolution*.—I saw him hundreds of times; and I saw Mrs. Gardner almost every time I saw him, except when I happened to meet him in the street."

Q. " You thought her a very beautiful woman, I believe, Admiral?"

A. " I did not think her as handsome as others did."

Q. " Did it appear to you that they were affectionate to one another?"

A. " Most certainly, without a doubt, because for one year they lived next door to me in Charles-street, Berkley-square. I recollect Captain Gardner going to the Ruby, but I cannot say what time; and I recollect perfectly he went into the Resolution, in the Channel, afterwards; but when he went abroad I cannot recollect. Mrs. Caldwell used to visit Captain Gardner and his Lady, and they visited one house, and have had card parties like other visitors."

DEFENCE.

Mr. GARROW commenced the defence in the following speech:—

" GENTLEMEN OF THE JURY,

" I have the misfortune on this occasion to be one of the Counsel for this unfortunate Defendant; and I shall give you very little trouble in this case, because I know your good sense and moderation in the administration of justice, for although you must find a verdict for the Plaintiff, I am quite sure you will not give outrageous damages, so as to ruin my Client, which would be the inevitable consequence of very large damages. Gentlemen, it has been the fashion of late years to

give very large damages in actions of this nature. I am not disposed to quarrel with those verdicts. I think that in a great many instances they were well founded. When you see an artful man going through a plan of the seduction of his friend's wife, availing himself of the advantages which the laws of hospitality afford, to gain an ascendancy over the affections, and then to debauch the wife of the friend of his youthful days; pretending extraordinary friendship for the husband, affecting more than common sentiments of morality, and the like: In all these cases damages are and ought to be considerable; but this is a case in every respect directly the reverse of any of these.—You find a very young man coming into the company and acquaintance of a very beautiful young woman; left without any friend to take care of her, as appears on the evidence before you, and as my most learned friend Mr. ERSKINE most truly states, it was the misfortune of her husband to be obliged to leave her, and she is left entirely to herself, at an age, and under circumstances most likely to produce the very misfortune which has happened. To prevent her falling into this misfortune, she ought to have had the care, if not of her husband, yet of somebody to keep her out of the way of temptation. Instead of which we find her on a visit in the country, and this very young man, then scarcely of age, has an opportunity of being in her company. Her manners were engaging

as her beauty was admirable. They were much together, but not from any preconcerted artifice of this Defendant. And while they were together at Mr. Woolsley's, you find that the conduct of this young man was exemplary,—no attempt was there made to seduce her. He was afterwards surrounded by temptation; in every hour he was assailed by the force of liveliness and beauty. They come to town; they meet at the Opera, and other places of gay resort. She meets him at these places—she is alone in this dissipated town, without a guide,—he visits her at her house, and she unfortunately, returns his visits, and this leads to the consequences which we all lament,—but here is no plan of seduction laid—no friendship betrayed, for it does not appear that this young man ever spoke to the Plaintiff, or to any of his relations, or of hers.—Why then, Gentlemen, have I not a right to ask whether this is not a very unfortunate case on the part of the Defendant. Whether he has not fallen under a temptation that would, perhaps, have been too much for more experienced persons than himself. If this be the complexion of his case, you will not punish him too severely. These are all the observations I have to make, and I now commit my Client to your moderation and your justice, which, in this case, are convertible terms. I do not apologize for him, he certainly is guilty of

doing what he should not do, and what the Law prohibits; but he was in a situation that exposed him to a temptation which could hardly be resisted. He has fallen under the temptation, as almost any other man under the same circumstances would have fallen."

Lord ELLENBOROUGH then addressed the Jury as follows:

"GENTLEMEN OF THE JURY,

"In this action Captain Gardner seeks to recover damages for an injury he has sustained by the act of the Defendant, which is, that of a criminal correspondence with his wife. As to the fact of the adultery there is no doubt, independent of the circumstance of their being found in bed together after she was delivered of a child in December 1802. The intercourse which took place between them at her house in Portugal-street, when the maid was sent down for the broth, proves it; for, it appears, that when she came back, she found the bed-cloaths tumbled, that could hardly leave a rational doubt of the act of adultery; and you observe that the blind of the window was shut, and nobody else had been in the room. These circumstances hardly leave any doubt that a criminal intercourse took place between them at this time. We have not any evidence of any real arts of seduction, by which her virtue was undermined—she appears to have been at the house of Mr. Woolfley for three months while the Defend-

ant was there. Whether what afterwards happened was owing to any artful advances on his part, or blameable facility on hers, does not appear; but it does appear that she had not the ordinary precaution of putting the bed-cloaths in order, or to put back the blind of the window, after what had happened; from which we ought to conclude that she was not, at that time, a woman of any considerable reserve, or care for her character, since she suffered her servant to see what had passed, and hardly left any room for doubt of a criminal intercourse. The visits also which she paid to the Defendant at Lord Strathmore's; her staying there until four in the morning; and her woman seeing her in the street after she had been out, or at least, from home all night, are points to be considered; for all this shews the conduct of a woman who has taken leave of her reputation. This is an action for the loss of the affection of a wife, and the amount of that loss ought to be estimated by the value of that affection, which is, in proportion to the virtue of that wife before the act of adultery was committed: If you think, from the evidence, that she was a woman of wanton manners, who might have yielded as much to the advances of any one, as she did to this Defendant, or was as ready to meet him as he was to address her, in that case, her character will go in mitigation of damages, and mix in your consideration of the case. You will consider whether this be a

case of an aggravated kind, by undermining the virtue of a woman who was more than under the ordinary protection of the law, when her husband left her, not on an idle pursuit of pleasure, but in consequence of being called abroad in the necessity of the public service—or the mere misconduct of the Defendant, without any circumstances of aggravation. You will consider what damages are necessary for the injury done to the Plaintiff in respect to such a wife as this.”

Mr. Barnewell, *one of the Jury*, observed, there was no evidence what were the circumstances of the Defendant.

LORD ELLENBOROUGH—“ I think that ought not to mix in your consideration, because the question is what is the amount of the *injury done to the Plaintiff*, not what are the *circumstances of the Defendant*.”

Verdict for the Plaintiff—Damages ONE THOUSAND POUNDS.

Certificate from the Judge that the Cause was fit for a Special Jury.

FINIS.