



Irregular Stain

A Facsimile of the Original Manuscript of
“The Second Stain” by Sir Arthur Conan Doyle
with Annotations and Commentary on the Story

Edited and Introduced by
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Stained Vows: “The Second Stain” and English Matrimonial Law

by Elizabeth L. Rosenblatt

To the modern eye, Lady Hilda Trelawney Hope’s actions are difficult to explain. Eduardo Lucas blackmailed her by threatening to expose, in Lady Hilda’s words, “an indiscreet letter written before my marriage—a foolish letter, a letter of an impulsive, loving girl.” If we trust Lady Hilda’s characterization, the letter concerned only her life before marriage, and reflected a relationship long since ended. “It is years since I wrote it,” she explained. “I had thought that the whole matter was forgotten.” It seems a trifle. And yet, in response to Lucas’s blackmail, Lady Hilda was unable, or at least unwilling, to take her husband into her confidence. Instead, she stole a state document of such delicacy that its exposure would have plunged Britain into war, and freely handed it over to an international criminal. Even assuming that Lady Hilda was, as she said, unaware of the document’s contents, she was willing to commit theft, burglary and possibly even treason to hide her premarital indiscretion. Why? Was it, as she implied, a simple attempt to spare her husband’s feelings? If so, her actions seem implausibly disproportionate to her aims. “The motives of women are so inscrutable,” Holmes tells us. But are they?

The answer lies in the English matrimonial law of the time. Despite reforms in 1857, it remained extremely difficult for unhappy couples to divorce each other. Conan Doyle himself was so troubled by the difficulty of divorce that he ranked it the most important problem of the day. When the *Strand Magazine* asked luminaries of the time what they would change about the world, Andrew Carnegie answered that he would abolish war; Woodrow Wilson answered that he would institute nationwide health education . . . and Sir Arthur Conan Doyle answered that if he were given supreme power, a power as great as both Houses of Parliament, for a single day, he would exercise it in the direction of the reform of the divorce laws.¹

It may therefore be no surprise that “The Second Stain” is, at its heart, a critique of English matrimonial law.

¹. “What Reform is Most Needed?: A Symposium of Eminent Men and Women,” *The Strand Magazine* xlii.249 (Sept. 1911): 269-274.

Irregular Stain – Book Excerpt

“I Desire, Even Against His Will, to Share My Husband’s Anxieties”

Although the text does not provide a date, scholars have estimated that the events of “The Second Stain” took place between 1886 and 1896.² Regardless of the precise year, the story occurred in the shadow of a major transformation in English matrimonial law. Before 1857, divorce was primarily an ecclesiastical matter. In 1857, Parliament passed the Matrimonial Causes Act, which provided statutory rules for divorce and placed all divorce matters in the hands of a newly-created Court for Divorce and Matrimonial Causes.³

The Marital Causes Act provided for two sorts of marital separation: judicial separation (which replaced ecclesiastical divorce *à mensâ et thoro*) and divorce (which replaced ecclesiastical divorce *à vincula matrimonii*). Judicial separation could be sought by either the husband or the wife, and was granted only in cases of “adultery, or cruelty, or desertion without cause for two years and upwards.”⁴ It separated spouses, but did not permit remarriage. Divorce provided the ability to remarry, but was less available: A husband could petition for divorce only “on the ground that his wife has since the celebration [of marriage] been guilty of adultery”; and a wife could petition for divorce only “on the ground that since the celebration [of marriage] her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with [cruelty], or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.”⁵ For both husbands and wives, divorce was not permitted if the petitioner colluded in the other spouse’s adultery or forgave (“condoned”) the other spouse’s adultery. Moreover, divorce was not permitted if both parties had committed adultery or if the petitioner was cruel or deserted the respondent prior to the adultery.⁶

The Act also abolished and replaced the tort of “criminal conversation.”⁷ Prior to 1857, a person committed criminal conversation by having sexual relations with a married person. A wronged spouse could initiate an action at common law for the tort of criminal conversation against the alleged third-party adulterer, and if that action succeeded, could apply for an Act of Parliament to dissolve the marriage. This costly proceeding was superseded by the Act in 1857: instead of being liable for a separate tort, the third-party adulterer would be named as a co-respondent in an action for divorce or judicial separation, and could be liable for damages in connection with the matrimonial action and even for the costs of the divorce proceedings.⁸

“In a Matter of Love and Trust, [The Consequences] Were Only Too Clear to Me”

First, we can dispense with the idea that Lady Hilda feared her premarital activities would themselves constitute grounds for divorce, judicial separation, or annulment of her marriage to the

². See Peck, Andrew J., and Klinger, Leslie S., *The Date Being--? A Compendium of Chronological Data* (New York: Magico, 1996), 19 (identifying dates between 1886 and 1896 and sources therefor); Andrew, C.R. “Don’t Sell Holmes’s Memory Short,” *Baker Street Journal*, 4.4 (October 1954): 219-222 (identifying the date as 1894).

³. Matrimonial Causes Act 1857, 20 & 21 Vict., c. 85.

⁴. *Ibid.* at VII-XVII.

⁵. *Ibid.* at XXVII-XXX.

⁶. *Ibid.* at XXXI.

⁷. *Ibid.* at LIX.

⁸. *Ibid.* at XXVII-XXVIII; XXXIII-XXXIV.

Irregular Stain – Book Excerpt

Right Honorable Trelawney Hope.⁹ The Marital Causes Act explicitly provided that a premarital relationship (unless continued or resumed after the date of marriage) could not constitute adultery. Marriage wiped the slate clean, and matrimonial courts only considered events that took place after the marriage date. Events prior to marriage merited neither divorce nor the dissolution of marriage settlements. In the case of *Evans v. Carrington*, a husband had alleged that his wife had fraudulently induced him to enter a marriage settlement by claiming that she had been a virgin when, in fact, she was not.¹⁰ In that case, the Lord Chancellor explained that “[g]iving credit to the ante-nuptial incontinence imputed to the lady, it is impossible to say her suppression of her frailty, and the simple fact of her coming into the arms of her husband as if she had been an untouched virgin, would be such a fraud upon him as would have given him a right to set aside the marriage settlement.”¹¹

(Continued)

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⁹. The name “Trelawney Hope” likely was drawn from two significant cases from the High Court of Admiralty, *The Hope* (3 C. Rob. 215 (1801)) and *The Trelawney* (3 C. Rob. 223 (1802)). Both cases concerned the court’s jurisdiction over matters of salvage from ships in distress, and the official report of *The Hope* cites an early jurisdictional proceeding in the case of *The Trelawney*. The two cases were often cited together in later admiralty proceedings, including two in the Probate Divorce and Admiralty Division, a civil court that (as its name suggests) decided both divorce and admiralty matters. See *The Annie*, (1887) L.R. 12 P.D. 50; *The Elton*, (1891) P. 265. It is unlikely to be coincidence that the names Trelawney and Hope, while drawn from Admiralty cases, were connected in Conan Doyle’s mind to matters of divorce.

¹⁰. 45 E.R. 707 (1860).

¹¹. Naturally, a marriage could be dissolved as a result of the wife’s post-marriage adultery. In *Evans v. Carrington*, there was adequate evidence of the wife’s adultery (committed with the same paramour) to merit divorce, but since the marriage settlement was entered prior to the adultery, the court permitted it to stand. *Ibid*.