**'*R v Hall* and the changing perceptions of the crime of bigamy'**

On 1 April 1845, Thomas Hall, alias Thomas Rollins, was charged with bigamy at the Warwickshire Assizes. The evidence was clear: he had married Mary Ann Nicholls at Northleach in Gloucestershire on 18 April 1830, and ten years later he had married Maria Hadley at Hampton-in-Arden, on 15 February 1840.[1] His defence was that his first wife had robbed him and left him, taking their child, but this, while regarded as a mitigating factor, did not excuse the offence. He was duly convicted and sentenced to imprisonment.

By itself, this would have been nothing out of the ordinary. In that same year there were 21 prosecutions for bigamy at the Old Bailey, and the Criminal Registers record a further 46 cases as having been tried at local assizes.[2] Many of those who were convicted had similarly sad stories of marital breakdown to relate. But Hall's case acquired sudden prominence because it was reported in *The Times* as an example of the unequal way in which the law operated, with great play being made of the steps that Hall could have taken to free himself from his first wife by a divorce, were it not for the trifling matter of the cost involved:

> Mr Justice MAULE, in passing sentence, said, that it did appear that he had been hardly used. It was hard for him to be so used, and not be able to have another wife to live with him, when the former had gone off to live in an improper state with another man. But the law was the same for him as it was for a rich man, and was equally open for him, through its aid, to afford relief; but, as the rich man would have done, he should also have pursued the proper means pointed out by law whereby to obtain redress of his grievances. He should have brought an action against the man who was living in the way stated with his wife, and he should have obtained damages, and then should have gone to the Ecclesiastical Court and obtained a divorce, which would have done what seemed to have been done already, and then he should have gone to the House of Lords, and, proving all his case and the preliminary proceedings, have obtained a full and complete divorce, after which he might, if he liked it, have married again. The prisoner might perhaps object to this that he had not the money to pay the expenses, which would amount to about 500l. or 600l. – perhaps he had not so many pence – but this did not exempt him from paying the penalty for committing a felony, of which he had been convicted. His Lordship might, perhaps, have visited the crime more lightly if the prisoner had not misrepresented himself as a bachelor to Maria Hadley, and so deceived her. If he had told her the circumstances, and said, "Now I'll marry you if you like to take the chance," &c.; but this he had not done, and thus he had induced her to live with him upon terms which she perhaps else would not have

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[1] *Royal Leamington Spa Courier etc*, 22 March 1845.

[2] Cases heard at the Old Bailey can be found at https://www.oldbaileyonline.org. The Criminal Registers can be found at the National Archives: Series HO 26 and HO 27. The data for this paper was collected from the scanned versions available at www.ancestry.co.uk, but references to the original sources are provided for those without access to this site.

> done. It was a serious injury to her, which he had no right to inflict because his wife and others had injured him. For this offence he must receive some punishment, and the sentence was, that he be imprisoned and kept to hard labour for four months, which he hoped would operate as a warning how people trifled with matrimony.'[3]

Maule J's speech is so often quoted that readers may often be tempted to skip past it whenever they encounter it. But it is worth refocusing on exactly what Maule was reported to have said at the time, because this differs in a number of particulars from what later commentators have reported him as saying. Subsequent accounts inflate the cost of obtaining a divorce while playing up the misconduct of the first wife and reducing the sentence handed down to Hall. Some also add in much more repartee between the judge and the luckless bigamist, while exaggerating the poverty and lowly status of the latter. Most significantly of all, nearly all completely ignore the point about the injury to the second wife. Later versions also have Maule J adding much more commentary on the law: Stone, for example, suggests that Maule delivered a 'brilliantly sarcastic'[4] speech that highlighted the need for reform of the law of divorce, but the heavily ironic references to the 'irrational excuses' of Hall, to the remedy provided by the 'law in its wisdom', to the law being 'the perfection of reason' and to Hall 'wilfully reject[ing] the boon' of Parliamentary divorce, appear nowhere in the original version.

Stone does at least acknowledge that various versions of the speech are in circulation and that the one he quoted was 'the most elaborate' of the various versions of this speech, and 'possibly embroidered by other hands.'[5] The version he quoted was from Oliver McGregor's 1957 study of divorce,[6] which was in turn quoting a work from 1938, Margaret Cole's *Marriage Past and Present*.[7] Cole herself cites no source, and many of the particularly choice phrases in her much-expanded version appear in no earlier source. This suggests that she may well have been the one responsible for embroidering the account, almost 100 years after *R v Hall*. Despite its dubious provenance, this particularly elaborate version has proved popular, with those quoting it being seemingly content to cite secondary sources[8] or to give no source at all.[9] Some, even more misleadingly, cite the date of the original publication in *The Times* as well, thereby giving an undeserved impression of authenticity to Cole's version.[10]

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[3] *The Times*, 3 April 1845.
[4] L Stone, *Road to Divorce* (Oxford: Oxford University Press, 1990), p 369.
[5] Ibid.
[6] OR McGregor, *Divorce in England: a Centenary Study* (London: Heinemann, 1957), pp 15-16.
[7] M Cole, *Marriage Past and Present* (London: JM Dent, 1938), pp 55-56.
[8] See eg W Latey, *The Tide of Divorce* (Harlow: Longmans, 1970), p 83, quoting McGregor and Cole as the 'most detailed' report; R Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), pp 416-17, citing McGregor; D Friedman, *Towards a Structure of Indifference: The Social Origins of Maternal Custody* (New York: Walter de Gruyter, 1995), pp 62-3, citing Phillips; RB Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge: Cambridge University Press, 2010), p 160, also citing Phillips.
[9] See eg N Cowper, 'A Gravity of Lawyers' (1956) 28 The Australian Quarterly 57, p 64; M Waller, *The English Marriage: Tales of Love, Money and Adultery* (London: John Murray, 2009), pp 262-62.
[10] See eg I Ward, *Sex, Crime and Literature in Victorian England* (Oxford: Hart, 2014), p 35, who at least acknowledges that this was quoted by Stone; H Kha and W Swain, 'The Enactment of the Matrimonial Causes Act 1857: The Campbell Commission and the Parliamentary Debates' (2016) 37(3) Journal of Legal History

Other commentators have similarly tried to make claims for the authenticity of their particular version. Some commentators were quite vituperative if they thought others had used an inauthentic version: the reviewer of LJ Bigelow's 1871 book *Bench And Bar*[11] referred to his 'miserable perversion of the fatuous judicial satire of Mr Justice Maine (sic)' before reproducing an equally inauthentic version himself.[12] Another early twentieth-century author opined that the version he quoted – which had been published in 1869 – was 'obviously the work of an eye-witness',[13] on the rather slight basis that it included a conversation between Maule J and Hall. The title of the work in question – Robert Walton's *Random Reflections of the Midland Circuit*[14] – does not suggest meticulous recording, and its author gets at least one basic detail wrong, describing Hall as 'alias Pollins' rather than Rollins. In any case, the account is not presented as that of an eye-witness and a number of the other stories of Maule J presented in the same chapter are clearly based on secondary sources. A final reason for doubting the veracity of this particular account is the sheer unlikelihood of judge and bigamist engaging in any kind of banter during a criminal trial.

Yet even those who have noted the fact that different accounts are in circulation, or acknowledged that some versions may be less authentic than others, have not asked why these differences exist, or what their significance might be. The importance of doing so lies not merely in the desire for accuracy. Tracing the evolution of the account over time, and identifying the timing of the various changes, tells us much about how both the law of divorce and the law of bigamy were seen at different times. All of the changes in the story occurred for a reason. Estimates of the cost of obtaining a divorce changed because reformers wished to emphasise how difficult it was. The behaviour of the first wife became even worse, to underline the desirability of Hall being able to obtain a divorce. The sentence handed down to Hall became much lighter, to suggest that the whole system was a farce. The second wife simply faded from the picture because she did not fit with the story that anyone wanted to tell. And the occupational status of Hall himself subsequently mutated because of changes in who needed to resort to bigamy rather than obtaining a divorce. Uncovering these changes in the telling and retelling of Thomas Hall's story thus provides an important insight into the way that history is used – by politicians, reformers, and scholars – to support both a particular view of the past and to bolster claims as to how the law should change for the future.

But before analysing how each part of the story changed over time, there is one intriguing question about the veracity of the version in *The Times* itself: what did Maule J actually say?

*What did Maule J actually say?*

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303, who even more misleadingly add 'discussed in McGregor', which does not make it clear that it is the version in McGregor that they are quoting.

[11] LJ Bigelow, *Bench And Bar: A Complete Digest of the Wit, Humor, Asperities, And Amenities Of The Law* (New York: Harper & Brothers, 1871).

[12] 'Wit and Humor' (1872) 24 The Southern Review 336, at 352.

[13] J Beresford Atlay, *The Victorian Chancellors*, Vol 2 (London: Smith, Elder, & Co, 1908), pp 70-71.

[14] R Walton, *Random Reflections of the Midland Circuit* (London, 1869).

Since records of the Assizes at which Hall's case was heard no longer exist, it is to newspapers that we must turn for other contemporary accounts of Hall's case. The local papers provide significantly different accounts from that in *The Times*, making no mention of any disquisition by Maule J on the unavailability of divorce. The *Warwick & Warwickshire Advertiser* simply noted the evidence given of the first wedding and by the second wife,[15] while the Royal *Leamington Spa Courier, and Warwickshire Standard* added the additional detail that Hall was 'severely reprimanded by the judge.'[16] The report in the *Coventry Herald and Observer* was even sparser, simply giving the dates of the two marriages and the sentence.[17]

It would be reasonable to assume that the reports in the local newspapers were written by those who had attended the trial. Whether there had been a representative from *The Times* at the Warwick Assizes is more speculative. Given that the trial was held on 1 April and reported on 3 April, it would just have been possible for a journalist – or perhaps a lawyer present at the Assizes who was paid to write up a report[18] – either to have travelled back to London in time to file his copy or to send an account. The London & Birmingham Railway had opened in 1838, with Coventry as a station stop. The Warwick & Leamington Union Railway subsequently opened on 9 December 1844, and linked Coventry to this line's (then) terminus at Warwick Milverton station (at the junction of Warwick New Road and Princes Drive). From the court in Warwick, it was less than two miles to Warwick Milverton, from which six trains a day ran to Coventry, the journey taking just 21 minutes.[19] In the 1840s, the fastest (mail train) journey from Coventry to Euston took four hours and 13 minutes, and it would have been possible to reach Euston by mid-afternoon if one left Warwick sufficiently early. But as the article reporting *R v Hall* went on to report two cases which had been heard on 2 April, implying that whoever was responsible for the report did not leave until the latter date, the timing would have been tight.

Of course, even if a journalist from *The Times* had been in attendance, this does not mean that everything in the report was true. A few days later *The Spectator* picked up the story and praised Maule as a judicial Voltaire, exposing the inequalities of the law in his 'admirable covert satire'.[20] Yet it is telling that even at this stage it was speculating that some of the details of the speech may have been added:

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[15] *Warwick & Warwickshire Advertiser*, 5 April 1845. This was a weekly paper and so its account of the case did not appear until the Saturday.
[16] *Royal Leamington Spa Courier, and Warwickshire Standard*, 5 April 1845.
[17] *Coventry Herald and Observer*, 4 April 1845.
[18] On the role of barristers in writing for the press in this period, see J Rowbotham, K Stevenson and S Pegg, *Crime News in Modern Britain: Press Reporting and Responsibility, 1820-2010* (Basingstoke: Palgrave Macmillan, 2013), p 25. The report in *The Times* does not identify who was responsible for writing the account of the case.
[19] *Jackson's Oxford Journal*, 14 December 1844.
[20] 'Law for Rich and Poor', *The Spectator*, April 1845, p 325. This article was itself swiftly reproduced: see eg *Devizes and Wiltshire Gazette*, 10 April 1845.

> We suspect that, after all, the Judge was not quite such a wag as he is made to appear, but that some of the wit is due to the reporter – it looks so very naïve and inartificial [sic].[21]

With this in mind, it is worth contemplating the possibility that the 'admirable exposition of the law' that appears in *The Times* was not the work or words of Maule at all. Cutting out all those parts of the speech not directly attributed to the judge, we find something that better fits the *Courier*'s description of a severe reprimand and makes more sense of the closing sentence. Thus:

> Mr Justice MAULE, in passing sentence, said, that it did appear that he had been hardly used. His Lordship might, perhaps, have visited the crime more lightly if the prisoner had not misrepresented himself as a bachelor to Maria Hadley, and so deceived her. If he had told her the circumstances, and said, "Now I'll marry you if you like to take the chance," &c.; but this he had not done, and thus he had induced her to live with him upon terms which she perhaps else would not have done. It was a serious injury to her, which he had no right to inflict because his wife and others had injured him. For this office he must receive some punishment, and the sentence was, that he be imprisoned and kept to hard labour for four months, which he hoped would operate as a warning how people trifled with matrimony.[22]

From the start, then, it is possible that a fairly straightforward case was used by advocates of reform to illustrate the problems with the law and the ironic description of divorce law was inserted by the person reporting or writing up the case.

After all, it needs to be borne in mind that this particular speech was not the first to draw attention to the limitations of the law of divorce, or even to make a link between bigamy and divorce, in contrast to some of the claims made by later commentators.[23] Fifteen years earlier, in 1830, the ecclesiastical lawyer Dr Phillimore had proposed that the Commission recently appointed to inquire into the state of the ecclesiastical courts should widen its remit to consider allowing a court to grant divorces.[24] Echoing his comment on the expense of divorce, a fellow MP observed the 'great increase' in prosecutions for bigamy, suggesting that most of them involved men whose wives had left them. As he went on:

> 'if those persons had been placed in a higher station of life, they would have procured the relief which that House had the power of granting; but not being able to procure that relief, they became liable to a criminal prosecution, and were perhaps punished, because they wished to enjoy the comfort and satisfaction of domestic society.'[25]

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[21] Ibid.
[22] *The Times*, 3 April 1845.
[23] See eg Sir EA Parry, *The Law and the Poor* (London: Smith, Elder & Co, 1914), p 129, suggesting that Maule J 'woke up the country to the fact that there was a divorce problem, and that it wanted solving.'
[24] *Hansard*, HC Deb 3 June 1830 vol 24 col 1267.
[25] *Hansard*, HC Deb 3 June 1830 vol 24 col 1284 (Mr CW Wynn).

In other words, there was no need for a judicial 'Voltaire' to point out the deficiencies of this particular law, of which contemporaries were already well aware.

Nor is there anything in any other contemporary case to confirm the likelihood of Maule J delivering this particular critique of divorce law. Two years earlier he had sentenced one particularly deceitful bigamist to the maximum sentence of seven years' transportation.[26] He was however reported as venturing a small pun in one other bigamy case four years previously – in that upon discovering that the female prisoner's maiden name was 'Cheatham', he apparently repeated it as 'Cheat him'.[27] His speech when passing sentence did not make any reference to the need for reform of divorce law, focusing instead on the harm of the crime of bigamy – 'an offence which… interferes with the security of the institution of marriage, and also of the institutions of all civil society.'[28] Despite taking the view that neither the first nor the second husband had suffered any particular harm in that case, he sentenced the woman to six months in prison for 'trifling with the sacred orders of the church, and trifling with the institutions of marriage, things which will not be allowed without some serious punishment.'[29] One can see here the same terminology of 'injury' and 'trifling' as appear in the words attributed to him in *R v Hall*, but nothing to confirm or deny his authorship of the remainder.

The fact that the bigamist in this other case was female does however render it less likely that divorce reform would have been discussed in any case. So few women had succeeded in obtaining a divorce that it was too far-fetched to argue that a female bigamist could have obtained a divorce had she been wealthier. Before 1830 only one divorce had been granted to a woman – and in her case her husband was guilty of incestuous adultery, having run off with his wife's sister.[30] By the 1840s two more women had succeeded in obtaining a private Act of Parliament to divorce their adulterous husbands, but both of their cases had similarly involved some additional aggravating factor.[31] Even if Maule J had wished to draw attention to the state of divorce law, a case involving a female bigamist would not have been an ideal forum.

Yet in assessing the likelihood of him doing so it needs to be born in mind that judges of this period, especially those hearing cases at the Assizes, very rarely embarked on rhetoric of this kind. By contrast, *The Times* had itself already begun to contribute to the debate on divorce reform: a year earlier, in commenting on a proposal by Lord Brougham to reform the law, it had noted that:

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[26] *John Bull*, 15 July 1843, reporting the case of Richard Belcher; see also HO 27/69, p 25.
[27] *The Leeds Mercury*, 10 April 1841.
[28] *Liverpool Mercury etc*, 16 April 1841.
[29] Ibid.
[30] For discussion see D Wright, '"Well-Behaved Women Don't Make History": Rethinking Family, Law, And History Through An Analysis Of The First Nine Years Of The English Divorce And Matrimonial Causes Court (1858-1866)' (2005) *Wisconsin Women's Law Journal* 211, 212.
[31] Stone, above n 4, p 362.

> 'An anomaly it is, and not a creditable one, that a divorce *a vinculo matrimonii* – a divorce which leaves the parties concerned at liberty to contract a fresh marriage – should be in this country given to the rich and denied to the poor. Such, of course, is the effect of referring aggrieved parties to an act of Parliament – price 500l. at least – as their only remedy.'[32]

The parallels between this and the report of *R v Hall* just a year later are very striking. There is the explicit reference to the rich and the poor, and the exact same sum being given as the cost of obtaining a divorce.

Taken together, the lack of any reference to any discussion of divorce reform in the local papers, the unlikelihood of a judge in this position making such criticisms, and the evidence that *The Times* was already making the exact same points that appeared in its report of *R v Hall*, all cast doubt on the words in question being those of Maule. Yet whatever the truth of the matter, it is clear from other contemporary sources that Maule was thought to have delivered the speech in question. *Punch* noted that Maule 'always had a pretty reputation for humour' and was gladdened by the fact that 'the dignity of Judge has not… overlaid the drollery of the advocate.'[33] Quoting precisely that part of the speech that might not be the words of Maule at all, it opined that there was 'a delicious vein of humour in this. It smacks of the grave, earnest fun of Swift.'[34] Others, however, were less impressed. *The Satirist, or the Censor of the Times*, clearly thought that the comments did not befit a judge:

> 'Can there be a graver joke, a more solemn farce, than Mr Justice Maule trying to impress this poor fellow's mind with the heinousness of bigamy by pointing out the measures he should have taken to avoid it?... It needs all the gravity of a Judge to taunt so poor a bigamist…. Those who read the case would be much less inclined to marvel at the prisoner seeking a better wife than the one he had got, than to wonder what could have induced the Judge to play the fool so gravely.'[35]

Overall, however, the tendency was for Maule to be celebrated rather than castigated for the comments in question. It was thus unsurprising that others should have followed where Maule was thought to have led, with other judges beginning to articulate similar concerns about the law. In December 1845 the *Standard* reported a Southwark magistrate as explaining that he did not have the power to separate married couples, and telling the cuckolded husband before him that 'even if his wife consented to a separation, he could not marry, for, if he did, it would be bigamy, unless he obtained a divorce in the Ecclesiastical Court, and a suit of that description was attended with such an enormous expense that but few men could bear it'. [36] A few years later, in 1851, the newspapers reported a bigamy case in which a young man had

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[32] *The Times*, 12 March 1844.
[33] 'Waggery of the Bench – "Justice Mauled"', *Punch*, 12 April 1845, p 168. This piece was also reprinted in *The Examiner*, 12 April 1845.
[34] Ibid.
[35] *The Satirist, or the Censor of the Times*, 6 April 1845.
[36] *Standard*, 17 December 1845.

been sentenced to just one week in prison. The judge, Platt B, was reported as saying that the accused could not be expected to live with his unfaithful wife and that '[i]f he had been a rich man he might have gone to a court and got a divorce, by which the marriage would have been dissolved, and he would have been a free man. But he was a poor man and could not go to that expense. That was one of the great defects of our law.' His comments were widely reported, with one newspaper describing them as 'a small and not ineffective imitation of a somewhat celebrated "judgment" by Mr Baron Maule.'[37] Others similarly set out the steps needed for a divorce and highlighted the unavailability of the remedy to those in a humble station of life.[38] Whoever was responsible for the ironic description of the process for obtaining a divorce in *R v Hall*, it clearly resonated with its readers and represented a turning point in the way that judges dealt with bigamy cases, and in their willingness to be openly critical of the law.[39]

It was therefore unsurprising that Maule J's speech should also have featured in discussions of divorce reform. More surprising perhaps is just how quickly the key elements of the story changed, as the following sections will show.

*The inflated cost of obtaining a divorce*

It was Lord Campbell who was responsible for inflating the cost of obtaining a divorce from the £500-600 suggested by Maule J to the more commonly quoted figure of £1000.[40] In the course of debates on the (unsuccessful) Divorce and Matrimonial Bill 1856, Campbell referred to the three stages necessary to end a marriage as apparently set out by Maule, and claimed that the following exchange had concluded this exposition:

> 'The whole proceeding would not have cost you more than £1,000.' 'Ah, my Lord,' replied the man, 'I never was worth a 1,000 pence in all my life.' The Judge's answer was, 'That is the law, and you must submit to it.' Who could wonder that the man should return, 'That is hard measure to us who are poor people, and cannot resort to the remedy which the law has afforded to the rich.'[41]

Campbell also seems to have been the first to imagine a dialogue between Hall and Maule J. There is no indication in any earlier accounts that Hall voiced such an eloquent indictment of the law.

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[37] *The Royal Cornwall Gazette, Falmouth Packet, and General Advertiser*, 4 April 1851. See also *The Bristol Mercury*, 22 March 1851.
[38] See eg *Lloyd's Weekly Newspaper*, 4 December 1853; *The Bristol Mercury*, 1 April 1854; *Jackson's Oxford Journal*, 10 March 1855.
[39] Of course, it is possible that these judges did not utter such criticisms either, but the reports do specifically indicate that this is what they said, which was not the case in the original report of Hall's case in *The Times*.
[40] It is even quoted in the biography of Maule J: see JD FitzGerald, 'Maule, Sir William Henry (1788–1858)', revised by H Mooney, *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004).
[41] *Hansard*, HL Deb, 26 June 1856, vol 142 col 1985.

It was of course Campbell who had chaired the Royal Commission that had been set up to investigate the law. The Commission had criticised the required procedure for obtaining a divorce, noting that '[t]he great expense and the long delay of these proceedings is a grievous hardship and oppression to individuals, and they amount in many cases to a denial of justice'.[42] However, their estimate that the minimum cost would be £700-800, and that 'when the matter is much litigated it would probably reach some thousands',[43] has been challenged by a number of scholars. Anderson, for example, has pointed out that 'two figures seem simply to have been invented by Campbell' in reaching this estimate.[44] Nor did the figures cited by the Commission distinguish those cases where the husband was left to pay everything from those in which the damages awarded against the co-respondent in the action for criminal conversation shifted some or all the burden to him.[45] In bolstering the credibility of the Commission's figures, it was no doubt useful to give the impression that others had previously, and independently, come up with similar or even higher figures. As Anderson notes, 'facts played but a small part in the reform debates of the 1850s'.[46]

Nonetheless, Campbell's version of Maule's speech was itself widely reported at the time,[47] and no doubt helped to underline the need for reform.[48] Later versions added in further intricacies, usually to underline Maule J's supposedly sarcastic wit. Some inserted specific estimates for the different stages of obtaining a divorce. *The Saturday Review*, claiming to be giving 'the true version of one of the wittiest speeches ever made' in its obituary of Maule in 1858, just after the new divorce law had come into force, had the judge suggesting that the action for criminal conversation would cost around £100, the suit in the ecclesiastical courts £200-300 and the total 'about £1000 or £1200'.[49] This version found its way into a number of humorous accounts of the law.[50] Parry – building on Campbell's imagined dialogue, with interruptions and protestations from Hall as to his lack of money and repeated warnings from Maule J not to interrupt him – had Maule suggesting that the costs of bringing an action for criminal conversation might amount to 'perhaps a hundred or a hundred and fifty pounds'.[51]

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[42] *First Report of the Commissioners Appointed by Her Majesty to enquire into the Law of Divorce* (1853), Session 1852-3, vol 40, p 18.
[43] Ibid.
[44] S Anderson, 'Legislative Divorce – Law for the Aristocracy?' in GR Rubin and D Sugarman (eds) *Law, Economy and Society* (Oxford: Professional Books Ltd, 1984), p 436.
[45] S Wolfram, 'Divorce in England, 1700-1857' (1985), 5(2) Oxford Journal of Legal Studies 155, pp 166-172.
[46] Anderson, above n 44, pp 443-44.
[47] See eg *Punch*, 5 July 1856, noting that 'Judge Maule's speech concentrates so much of the poor man's case, that Mr Punch must quote it', but proceeding to quote the version given by Campbell.
[48] It was also quoted in the course of debates on divorce reform in New Zealand, with the cost being elevated to a still higher £1500: see New Zealand Parliament, Parliamentary Debates: Second Session of the Fourth Parliament, Legislative Council and House of Representations, Vol 1, Pt 1, p 254.
[49] *The Saturday Review of Politics, Literature, Science, Art, and Finance*, 3 July 1858.
[50] M Lemon, *The Jest Book – The Choicest Anecdotes and Savings* (Cambridge: Sever and Francis, 1865), pp 288-89, J Timbs, *The Book of Modern Legal Anecdotes: The Bar, Bench and Woolsack* (London: George Routledge & Sons, 1879), p 28; 'Anecdote Corner' (1882) 42 London Society 500, pp 513-514; W Walsh, *Handy-Book of Literary Curiosities* (Philadelphia: JB Lippincott Company, 1893), p 620; CA Shriner, *Wit, Wisdom and Foibles of the Great: Together with Numerous Anecdotes Illustrative of the Characters of People and their Rulers* (London: Funk and Wagnalls, 1920), p 407; J Aye, *Humour Among the Lawyers* (London: The Universal Press, 1931), pp 125-6. See also E Manson, *Builders of Our Law During the Reign of Queen Victoria* (London: Horace Cox, 2nd ed 1904), p 68.
[51] Parry, above n 23, p 231.

Others, however, chose to hedge their bets between competing versions by suggesting that the expense 'might have amounted to £500 or £600, or perhaps £1,000',[52] or simply referred to a divorce costing 'many hundreds'.

Campbell's account has also been relied on by a number of later scholars in preference to the original version from *The Times*.[53] This underlines the popularity of a particular narrative about the inaccessibility of divorce in earlier times that resonates with modern commentators as well as contemporary reformers. That divorce was out of reach of the vast majority of the population cannot be denied. Yet the inflation of the cost of obtaining a divorce gives a misleading impression of the almost 200 men who succeeded in doing so over the first six decades of the nineteenth century.[54] As James has noted, '[n]o group was entirely debarred, no group automatically admitted,'[55] and there were successful applications from the service, professional, merchant and even lower ranks.[56]

Somewhat surprisingly, however, Cole's more elaborate 1938 version does give the original figure of £500-£600 despite departing from the original in almost every other respect.[57] Perhaps there was simply no need to exaggerate this particular element by then. After all, by that time the cost of obtaining a divorce had fallen to considerably below £500 save in the most extreme cases, so the fact that it had cost that much a hundred years earlier would have been startling enough. But the fact that this particular version was consistent with the original in this particular respect should not be taken as any guarantee of the authenticity of the rest. As the next section will show, its account of the first wife departed very considerably from the original 1845 report.

*The misconduct of the first wife*

Just as the cost of divorce became inflated, so too the reputation of the first wife was blackened. In 1845 *The Times* had reported Hall as stating that 'within a year or two of his marriage with Mary Ann, she robbed him, and sallied forth with the child.' He had accordingly 'obtained a special warrant for her apprehension, armed with which he proceeded to the region of her seclusion or retirement, when he got sadly handled by ruffians, and was

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[52] J Chancy, *Why Should Priests Wed?* (New York: AE Costello, 1888), p 162. See also WEH Lecky, *Democracy and Liberty*, Vol. 2 (Indianapolis: Liberty Fund, 1981; originally published 1896), p 171.
[53] See eg RH Graveson and FR Crane (eds), *A Century of Family Law* (London: Sweet & Maxwell, 1957), p 8; M Woodhouse, 'The Marriage and Divorce Bill of 1857' (1959) 3 American Journal of Legal History 260, at 262-64; ML Shanley, *Feminism, Marriage and the Law in Victorian England* (Princeton: Princeton University Press, 1989), p 37 (quoting Graveson and Crane); DM Stetson, *A Woman's Issue* (Westport, Connecticut: Greenwood Press, 1982); C Gibson, *Dissolving Wedlock* (London: Routledge, 1994), p 55; S Cretney, *Family Law in the Twentieth Century: A History* (Oxford: OUP, 2003), p 161 (quoting Graveson and Crane, while noting that it was 'whilst possibly less accurate is shorter than some'); RE Emery (ed) *Cultural Sociology of Divorce: An Encyclopedia: Vol 1* (London: Sage, 2013), pp 680-81; C Barton, 'Bigamy & Marriage – Horse & Carriage' [2004] Fam Law 517.
[54] Wolfram, above n 45, 157.
[55] D James, 'Parliamentary Divorce, 1700-1857' (2012) 31 Parliamentary History 169.
[56] Ibid.
[57] Cole, above n 7.

made heartily glad to make the best of his way home to save his life, leaving his baggage in his precipitate departure from that profligate retreat'.[58]

It is worth reflecting on the ambiguities of this account: at a time when a woman's property became that of her husband upon marriage, Mary Ann's 'robbery' of Hall may have consisted in her taking some money to support herself or indeed any belongings other than her own personal possessions. Similarly, while at the time fathers were regarded as the appropriate custodians of their children, save in very exceptional circumstances,[59] posterity would probably not judge Mary Ann harshly for leaving with their child.[60] Nor is there anything to indicate that the 'ruffians' mentioned in the account were set on Hall by Mary Ann. An alternative reading of their conduct is that they might have been protecting her against an angry husband trying to force her to return to him against her will. Most fundamentally of all, there is no explicit statement in this account that Mary Ann had committed adultery. In context, the reference to her 'profligate retreat' simply implies that she is spending his money: financial rather than physical profligacy. Had she indeed run away with another man there is no reason why Hall would not have stated this explicitly, since this would have been regarded as some excuse for his conduct. It is only in that part of the report that may have been inserted as editorial comment by *The Times* that we find any reference to Mary Ann living with another man. So the fact that only a few days later *The Satirist* described the first wife as 'one of the worst of characters'[61] seems entirely unjustified.

But over time she was to become worse still. By 1856 the fact that Mary Ann had taken her child with her had been replaced by a claim that she had abandoned her children (now plural) and that Thomas, in committing bigamy, 'had sought to provide his children with a mother.'[62] The bad mother had become the one who left her children rather than the one who took them away from her father. It was a useful counterblast to those women who were arguing for greater rights in relation to their children to have an example of a supposedly heartless woman who had abandoned her children for her lover. It also required a number of other facts to be suppressed that did not fit with this particular narrative. In reality, around seven or eight years seem to have elapsed between Mary Ann leaving Hall and his bigamous marriage to Maria; in those versions that have him marrying Maria to provide a home for his children her desertion has to be much more recent for the (invented) children still to be young enough to need a mother's care. Even imaginary children have to grow up.

Later versions also left Mary Ann's invented adultery in no doubt. In 1857 *The Times* rephrased its earlier version as a much more direct speech from Maule J:

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[58] *The Times*, 3 April 1845.
[59] S Abramowicz, 'English Child Custody Law, 1660-1839: The Origins of Judicial Intervention in Paternal Custody' (1999) 99(5) Columbia Law Review 1344; DC Wright, 'The Crisis of Child Custody: A History of the Birth of Family Law in England' (2002) 11(2) Columbia Journal of Gender and the Law 175.
[60] The existence of the child can at least be verified: Eliza, the daughter of Thomas and Mary Ann Hall, was baptised in Northleach on 23 March 1832: Gloucestershire Archives; Gloucester, England; Reference Numbers: P231 IN 1/8.
[61] *The Satirist*, 6 April 1845, p 107.
[62] *Punch*, 5 July 1856, p 2.

> 'You tell me, and indeed the evidence has shown, that your first wife left her home and her young children to live in adultery with another man…. Now, listen to me, and I will tell you what you ought to have done. Immediately you heard of your wife's adultery you should have gone to an attorney and directed him to bring an action against the seducer of your wife.'[63]

It also had Maule J adding a particularly choice quote from Milton to the effect that 'a hated woman, when she is married, is a thing that the earth cannot bear' and a mangled version of Proverbs chapter 12 verse 4, 'a bad wife is to her husband as rottenness is to his bones'.[64] The worse the first wife, the more Hall's conduct in committing bigamy could be excused – and the greater the need for divorce reform to free other men in a similar position from their unfaithful wives.[65]

As the century progressed, Mary Ann's character flaws accumulated. By the second half of the nineteenth century she was not only 'dissipated' but also a drunkard. One late Victorian account set the scene thus:

> A labouring man, of sober habits and fond of home, unfortunately married a woman who, in her extreme love for the gin-shop, not only spent the greater part of her husband's hard earnings there, but frequently pawned his wearing apparel. At length her course of dissipation led her to leave her husband's home, and form a connection with a labourer quite as fond of tippling as she was.[66]

It seems here that (supposed) 'fact' may well have been borrowing from fiction. The parallels between the first wife of Thomas Hall and the wife of Stephen Blackpool in Dickens' *Hard Times* have been noted by a number of commentators.[67] As Baird points out, 'both Hall and Stephen Blackpool are poor men who marry, about the age of twenty, wives who soon become far worse than no wife'.[68] It is possible that Hall was the prototype for Stephen Blackpool, but he was by far from being the only bigamist to whom this description would apply – and Stephen, of course, does not commit bigamy. But the late-Victorian descriptions of Mary Ann clearly owe much more to Stephen's wife than to the known facts of *R v Hall*.

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[63] *The Times*, 27 January 1857. As discussed further below, this particular version does not name Hall but has always been assumed to refer to him.
[64] *The Times*, 27 January 1857.
[65] This version was also cited in obituaries of Maule when he died the following year: see 'Sir William Henry Maule' (1858) 5(1) Law Magazine and Law Review 1, pp 23-24.
[66] C Jay, *The Law: What I Have Seen, what I Have Heard, and what I Have Known* (London: Tinsley Brothers, 1868), p 96. The same account is given by Bigelow, above n 11, at p 367.
[67] One even claims that it was *Hard Times* that inspired Maule J's speech, mistakenly dating *R v Hall* to 1857: see TA Jackson, *Charles Dickens: The Progress of a Radical* (New York: Haskell House Publishers Ltd, 1971).
[68] JD Baird, 'Divorce and Matrimonial Causes: An Aspect of *Hard Times*' (1977) 20(4) Victorian Studies 401, p 410.

Since Stephen's wife drinks and pawns his belongings, so too must Mary Ann, to underline her status as one of the worst of wives.[69]

Cole's 1938 version synthesizes these different elements, with the references to 'dissipation' and drunkenness migrating from the description of the case into Maule J's by now much-expanded address:

> 'You plead in mitigation of your conduct that she was given to dissipation and drunkenness, that she proved herself a curse to your household while she remained mistress of it, and that she had latterly deserted you, but I am not permitted to recognize any such plea. You had entered into a solemn engagement to take her for better, for worse, and if you got infinitely more of the latter, as you appear to have done, it was your duty patiently to submit.'[70]

Given that when this version first appeared the law had just changed to permit divorce on the basis of cruelty and desertion,[71] as well as adultery, it seems highly likely that the exaggerations and additions were designed to emphasise how much had been achieved by way of reform.

*The sentence*

Changes in the sentence handed down to Hall were also linked to the campaign for divorce reform. According to the 1845 report in *The Times*, the sentence handed down by Maule J was for four months. This is confirmed by the Criminal Registers for the Warwick Assizes.[72] But in January 1857 *The Times* published an even more scathing attack on the law of divorce which included an account of an address by Maule J to an unnamed bigamist who was imprisoned for just one day.[73] The writer of the article did not pretend that it was an exact version, openly admitting that 'we have, perhaps, given but an imperfect version of it. It was years ago'.[74] Its purpose was to argue for the need for reform to the law of divorce. By reducing the sentence to just one day, the law could be mocked much more effectively: such a sentence made it clear that the judge's sympathies were with the luckless bigamist and implied the whole system was a farce.

For this message to be effective, it had to have some grounding in reality. At the time that Hall was convicted, those convicted of bigamy still potentially faced a sentence of

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[69] See also AHF Lefroy, 'The Marriage Laws of Canada' (1915) 35(6) Canadian Law Times 503, pp 508-9, describing her as a 'shrew' as well as a drunkard.
[70] Cole, above n 7, p 55.
[71] By virtue of the Matrimonial Causes Act 1937.
[72] HO 27/77, p 254.
[73] 'The Law of Divorce', *The Times*, 27 January 1857.
[74] Ibid.

transportation, and four bigamists did in fact receive such a sentence that year.[75] Transportation tended to be reserved for cases that had a number of aggravating factors such as multiple bigamies, marriages for financial gain, deceiving the second spouse, particularly if an alias had been used, or abandoning the second spouse. At the Berkshire Assizes in March 1847, the judge was particularly severe in his comments when sentencing William Boulton, expressing his commiserations to the 'young woman whom you have so basely deceived, and whose prospects you have destroyed —and that, too, for purposes of your own lust'.[76] Given that Hall had deceived his second wife by using an alias, it was highly implausible that he would have been given a sentence of just one day.

Indeed, none of those convicted in 1845 received a sentence of less than a week, and only three received a sentence of less than a month. While among those cases heard at the Old Bailey the lightest sentence handed down was six months, with the median term being one year, among those heard at Assizes, the median term was four months – exactly the sentence that Hall himself received. Moreover, only three examples of bigamists being sentenced to a single day have been found in the Criminal Registers for the entire period between 1805 and 1845. One involved a particularly ingenious defence by the accused to the effect that he was not guilty of the particular offence of bigamy with which he had been charged, as he was already married to another woman at the time of the first marriage mentioned in the indictment: since this latter marriage was in fact his second, and therefore void, his subsequent marriage, alleged to be bigamous in the indictment, was in fact valid, his first wife having died in the meantime.[77] The jury found him guilty regardless, but when he came to be sentenced the judge grudgingly admitted that he had not in fact committed the offence.[78] The sentence of one day thus seems to have been for form's sake rather than reflecting the perceived gravity or otherwise of the offence. Details do not survive of the remaining two cases,[79] but single-day sentences were clearly a rare event at the time of Hall's trial.

Cases in which individuals were sentenced to a single day remained rare throughout the 1840s. Amelia Jones had good reason to believe that her first marriage was invalid, given that she was just 12 at the time and was separated from her husband within two days; he was duly prosecuted for abducting her and was sent to prison for a year. Her second marriage, four years later, was not much more successful either, this husband leaving her after three months.[80] Having pleaded guilty, her sentence was a purely nominal one: to be confined till the rising of the court that same day.[81] Such exceptional cases apart, it is telling that

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[75] Two of them had been tried at the Old Bailey: *Proceedings of the Old Bailey*, 12 May 1845 (John Dowling) and 16 June 1845 (James Smith). James Garden was convicted at the Kent Assizes on 10 March 1845). (HO27/77, p 10), and Vincent Lievers at the York Assizes on 10 July 1845 (HO27/77, p 386

[76] *Reading Mercury etc*, 6 March 1847. See also *Jackson's Oxford Journal*, 6 March 1846.

[77] Trial of Joseph Barraclough: *The Leeds Mercury*, 31 March 1832; *The Morning Chronicle*, 31 March 1832.

[78] *The Hull Packet and Humber Mercury*, 3 April 1832.

[79] The case of Harriet (or Mary) Dorighter was reported in the local press, but without any details that might explain the low sentence: *The Manchester Times and Gazette*, 6 August 1842. The case of Thomas Hoggs – from 1807 – does not appear to have been reported.

[80] *York Herald etc*, 22 January 1848.

[81] *York Herald etc*, 18 March 1848.

sentences of a month, rather than a single day, were regarded as particularly light: in sentencing to Benjamin Wilby to such a term, Erle J commented that the case was the 'most venial' that had ever come before him, with the most extenuating circumstances.[82]

By 1857, however, sentences were becoming a little lighter.[83] And there are two cases in particular which may well have underpinned the muddled report in *The Times* about Maule J sentencing a bigamist to just one day. *The Times* claimed that the case it was reporting had been decided on the Oxford circuit,[84] and there was one case heard there in 1850 that had attracted a particularly light sentence. The accused was Benjamin Griffiths, who had left his first wife after discovering that she had committed adultery with his nephew. After going through a second ceremony of marriage the overseers of the parish where his first wife was settled applied for him to maintain her. When the magistrates dismissed the summons – her adultery having negated his obligation to support her – the overseers then prosecuted him for bigamy. The judge 'told the Jury it was a shameful prosecution, and was evidently only instituted by the parish authorities as a kind of screw to compel an honest hard-working man to support a prostitute wife'.[85] When the jury reluctantly returned a verdict of guilty, he proceeded to fine Benjamin just one shilling, and ordered that he be discharged.[86] The judge in this case, however, was Platt J, not Maule, and there is no evidence of him articulating any criticism of divorce law.

The second case was that of Daniel Smith at the Gloucestershire Assizes in 1855. His defence was that his first wife was a drunkard, had attempted to poison him on one occasion, and, having sold his furniture, had gone off with another man. A little later she returned, but only to ask him for money and tell him that he was 'free to go where he pleased'.[87] The second wife, while reporting that he had represented himself to her as a single man, did not wish him to be prosecuted. By the time of the trial Daniel had been in prison for five months. Again, the judge clearly felt that the prosecution should not have been brought and that it was 'a case got up just for the sake of the costs of the prosecution'. The *Bristol Mercury* reported that he accordingly 'sentenced the prisoner to a day's imprisonment and he was at once, to his great astonishment, discharged'.[88]

The 1857 article in *The Times* thus seamlessly blended the supposed address of Maule J to Hall in 1845 and the apparent single-day sentence handed down to Smith in 1855 with the actual location of Griffiths' trial in 1850. But commentators simply assumed that the 1857 article was referring to *R v Hall*, and added some of the known facts of that case back into

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[82] *Leeds Intelligencer*, 29 July 1848; see also *Sheffield & Rotherham Independent*, July 22, 1848; *Leeds Mercury*, July 29.
[83] See eg *The Bristol Mercury*, 16 August 1851, George Tredwell sentenced to seven days; *Liverpool Mercury etc*, 18 August 1854, Thomas Ward, also sentenced to seven days; *Liverpool Mercury etc*, 24 August 1855; Robert Henry Jones and John Clayton, each sentenced to 11 days, to expire on the rising of the court.
[84] Hall, of course, had been tried at Warwick, which fell within the Midland circuit.
[85] *Morning Chronicle*, 16 March 1850.
[86] Ibid; see also HO27/94, p 99, confirming the sentence.
[87] *The Bristol Mercury*, 7 April 1855.
[88] Ibid. According to the Criminal Registers, the sentence was in fact 4 days (HO27/110, p 287), but the effect would have been the same.

their accounts.[89] Some even described this new version of Maule's supposed speech as being 'the most authentic'.[90] Subsequent writers almost invariably refer to Hall – or at least to the subject of Maule's sarcasm – as being imprisoned for just one day.[91] Lecky reinforced this by claiming in 1896 that the judge had 'imposed the lightest penalty in his power',[92] while in Holdsworth's *History of English Law* in 1903 we find an addition to the end of Maule's speech to the effect that the period of the sentence 'has already been exceeded, as you have been in custody since the commencement of the assizes'.[93] The logical conclusion, reflected in Burnaby's account a couple of years later, was that this meant Hall's immediate release. The fact that this version was published at a time when divorce reform was once again on the agenda at the start of the twentieth century may account for the pointed contrast made between the potential sentence of transportation and the supposed punishment of a single day, although the fact that Burnaby has Maule congratulating Hall 'on the line of conduct you have taken' is more unexpected and even less plausible.[94]

The widespread misreporting of Hall's case, combined with the lack of official statistics on sentencing patterns for the first half of the nineteenth century, has led to an assumption that sentences in bigamy cases were 'notoriously light'.[95] But this profoundly misunderstands how the crime was perceived in this period, and ignores the actual sentences that were handed down. It means that we risk failing to understand the impact on those accused of bigamy, and what the harm of the crime was thought to be. This, as the next section will show, was linked to the disappearance of the second wife from accounts of Hall's trial.

*The disappearance of the second wife*

Hall's deception of his second wife, and the judge's comments about the serious injury that she had suffered as a result, would have complicated the use of the case by those campaigning for divorce reform, providing an uncomfortable reminder that those wishing to obtain a divorce might not themselves be guiltless. It would also have been difficult to reconcile such deception and injury with the claim that Hall had received only a nominal sentence. And it would obviously have struck a discordant note in the books of humorous anecdotes in which versions of Maule J's speech tended to appear during the second half of the nineteenth century, indicating as it did that bigamy might involve tragedy as well as comedy. More surprising is the omission of this element of the story by feminist historians

[89] See eg 'Sir William Henry Maule' (1858) 5(1) Law Magazine and Law Review 1, at pp 23-24, referring to 'that sentence for bigamy at Warwick' and then quoting the 1857 article rather than the 1845 one.
[90] See eg E Littell and RS Littell, *Littell's Living Age*, Vol. 188 (Boston: Littell and Co., 1891), p 734.
[91] Jay, above n 66, p 97; Bigelow, above n 11, p 368; FC Moncreiff, *The Wit and Wisdom of the Bench and Bar* (Paris, London and New York: Cassell, Petter, Galpin & Co., 1882), p 29; C James, *Curiosities of Law and Lawyers* (London: Sampson Low, Marston and Company Ltd, 1896), p 317. The occasional exception can be found: Atlay, above n 13, commented that Maule 'inflicted the punishment of three month's imprisonment, more appropriate, but less dramatic, than the three days which figure in the more popular narratives of Hall's hard case.'
[92] Lecky, above n 52, p 171.
[93] WS Holdsworth, *A History of English Law Vol. I* (London: Methuen & Co., 1903), p 391. This also appears in HE Fenn, *Thirty-five Years in the Divorce Court* (London: T. Werner Laurie, 1911), p 11.
[94] E Burnaby, *Memories of Famous Trials* (London: Sissy's Ltd, 2nd ed, 1907), p 23.
[95] Ward, above n 10, p 70.

who have considered divorce reform. Failing to consider the impact on the second wife also leads to a very partial understanding of the crime of bigamy. In the early part of the nineteenth century, it was the harm to the second spouse – or, more specifically, the second *wife*[96] – that was at the crux of the perceived harm of the crime.

Hall's second wife Maria was very clear in her evidence to the court: '[b]efore our marriage, I always understood him to be a single man.'[97] The harm of the crime of bigamy has to be understood in the context of a society in which marriage was the only legitimate site for sexual relationships, at least for women. A woman who entered into a marriage believing it to be valid was being duped into having sex under false pretences. As Maule J noted, it was possible that Hall's failure to disclose his earlier marriage had 'induced [Maria] to live with him upon terms which she perhaps else would not have done'.[98]

The corollary of this focus on the harm to the second spouse was that those who were honest with their second spouse were likely to receive the lightest sentences. A woman who knowingly entered into a union that she knew to be void was regarded as not having suffered as much harm as one who was deceived into such a union. When James Collett was tried for bigamy at the Old Bailey in 1803 his father reported a discussion with James' second wife in which she acknowledged that she had been told of his prior marriage. James was sentenced to a week in Newgate and fined sixpence, one of the lightest sentences handed down in this period.[99] It was thus understandable that others accused of bigamy should make a similar plea in an attempt to establish what was regarded as a clear mitigating factor. In the 1840s, just under 10 per cent of those tried for bigamy at the Old Bailey claimed that their second spouse was aware of the first marriage. Other contemporary cases at the Assizes suggest that Hall's sentence might have been reduced to a month or so had he been honest with Maria.[100] This was the sentence handed down to William Parker at the Durham Assizes in March 1845, on the basis that he had left his first wife on account of her immoral conduct and his second wife knew he was already married.[101] William Nichols received a similar sentence, his first wife having initially left him for another man and subsequently become a prostitute in Walsall: the judge also refused to allow the constable his expenses, telling him that '[i]f the man had left his wife, and deceived a young woman, he ought to have been severely punished, but I don't like to see officers coming forward in this way to get up a case'.[102]

Those who were guilty of deceiving the second wife invariably received longer sentences, although judges did also take into account whether the bigamist had any reason to leave the

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[96] Female bigamists almost invariably received lighter sentences and judges emphasised that the injury done to the second husband was not the same as that done to a second wife.
[97] *Warwick & Warwickshire Advertiser*, 5 April 1845.
[98] *The Times*, 3 April 1845.
[99] *Proceedings of the Old Bailey*, 30 November 1803.
[100] See also the sentence of one month handed down to Charles Butterworth, a 60-year-old labourer who had thought that his prolonged absence from his wife while serving in the army entitled him to marry again; he had told his second wife that "his servitude being so long, and his wife not sending, would clear him": *Morning Chronicle*, 29 March 1845; see also *Liverpool Mercury*, 28 March 1845.
[101] *Newcastle Courant*, 7 March 1845. See also HO27/75, p 216.
[102] *Leicester Chronicle*, 29 March 1845.

first wife. William Blackwell was convicted of bigamy at the York Assizes just a few weeks before Hall: his first wife had similarly left the marital home and then returned in his absence to sell off his furniture.[103] Like Hall, Blackwell was sentenced to four months in prison,[104] having failed to inform his second wife of his earlier marriage.[105] Even where the sentence was not particularly lengthy judges might still emphasise the harm caused by deceiving the second wife: at the Northumberland Spring Assizes in 1844, Robert Martinson Taylor had claimed that he thought himself justified in taking a second wife because of 'the notoriously bad character' of his first. The judge sentenced him to just three months but made it clear that the behaviour of the first wife 'was no excuse, inasmuch as the second wife was the sufferer'.[106] John Lyon similarly pleaded that his first wife had gone off with another man, but the view of the judge was that this was no reason for 'using another woman ill' and sentenced him to a year's hard labour.[107] Even less sympathy was accorded to those who had been married multiple times and tried to blame all of their wives: the judge 'reprobated the conduct' of William Hayward in bringing suffering on 'three unfortunate women' and sentenced him to seven years' transportation for each of his bigamous marriages.[108]

The image of the deceived and sexually exploited second wife is one that sits uncomfortably with the modern narrative of bigamy as a means of self-divorce. It has been suggested that stable second unions might be preferred by the community to broken marriages.[109] This may well be true but not all second unions were stable. Some were broken by the bigamist moving on again – either to a third spouse or, in a small but not insignificant number of cases, back to the first. Other second marriages were broken when the second spouse discovered the invalidity of the marriage and sought to prosecute.[110] Indeed, the fact that prosecutions were most likely to be brought by the second spouse suggests that the majority did not know of the prior marriage at the time of their own marriage, and had no desire to live in a bigamous union when they discovered the truth.

The twist in the story of the deceived Maria is that she did in fact remain with Hall. The census for 1861 shows them living together in Dudley, with five children,[111] and a further two had been born by the time of the 1871 census.[112] The romantics might take this as a

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[103] *Sheffield & Rotherham Independent*, 1 February 1845; *Leeds Mercury*, 8 March 1845; *Hull Packet etc*, 21 March 1845.
[104] HO 27/ 77, p 361; *Leeds Mercury*, 22 March 1845.
[105] Contrast the two months sentence handed down to John Clennin, whose first wife had similarly sold the furniture and left him, but whose second wife confirmed that she knew of the first marriage: *Manchester Courier etc*, 28 January 1846; *Hants Advertiser etc*, 31 January 1845; *Liverpool Mercury etc*, 27 March 1845; *Bath Chronicle*, 2 April 1845.
[106] *Newcastle Courant*, 8 March 1844.
[107] *Lincoln, Rutland & Stamford Mercury*, 15 March 1844; *Lincoln, Rutland & Stamford Mercury*, 22 March 1844. See also the comments of the magistrate in the case of John Reid: *Liverpool Mercury,* 4 July 1845.
[108] *Lincoln, Rutland & Stamford Mercury*, 15 March, 1844.
[109] See eg G Frost, *Living in Sin: Cohabiting as Husband and Wife in Nineteenth-Century England* (Manchester: Manchester University Press, 2008), p 78.
[110] The breakdown of the marriage might also lead a spouse to investigate the validity of the marriage more closely in the hope of finding an alterative escape route.
[111] National Archives, RG 9/2055; Folio 90, p 24.
[112] National Archives, RG10/3011; Folio 135, p 15.

happy ending. The cynics might wonder what other options were available to her, especially given that she had already had two children by Hall when he was convicted of bigamy. It is also significant that they had moved from her home parish of Hampton-in-Arden, where they had settled after their marriage.[113] This must have occurred not long after he had served his term of imprisonment, as their daughter Priscilla had been born in Tipton in Staffordshire around 1848. A likely conclusion is that it was not an option for them to remain living in a community where their marriage was known to be bigamous and void, which in itself casts doubt on the acceptability of bigamy. Nor, sadly, does it sound from her evidence in his trial for bigamy that it was a particularly loving relationship: as she told the court, '[s]ince our marriage he has often told me I was no wife of his'.[114]

*The shifting status of the accused*

There was to be one final significant change in accounts of Thomas Hall, and it was linked to the success of the divorce reforms in which his story had played so significant a part. At the time of Hall's second marriage he was recorded as a labourer, and both he and Maria – and the two witnesses – all made their marks rather than signing their names.[115] There was no need for reformers to alter this particular element of the story as a divorce was clearly out of his reach, whether the cost had been £500 or £1000. In the wake of the 1857 Act, however, a number of accounts chose to represent him as belonging to a still lower circle of society, with his wife's new partner being described as a hawker. The *Saturday Review* seems to be responsible for introducing this particular element in 1858, including the following exchange in its account:

> 'Clerk of Assize: What have you to say why judgment should not be passed upon you according to law?
> Prisoner: Well, my Lord, my wife took up with a hawker, and run away five years ago, and I've never seen her since.'[116]

In this version, Maule proceeded to instruct the bigamist that he should have instructed his attorney 'to bring an action against the hawker for criminal conversation' and that he would be able to proceed once he 'had recovered substantial damages against the hawker'. This was to prove a particularly popular account in collections of humorous legal anecdotes,[117] underlining the implausibility of Hall ever obtaining damages, even if he had contemplated embarking on such an action.

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[113] National Archives, HO107/1129, Book 9; Hampton in Arden, Warwickshire; Enumeration District 1, Folio 5, p 2.
[114] *Warwick & Warwickshire Advertiser*, 5 April 1845.
[115] Warwickshire County Record Office; Warwickshire Anglican Registers; Roll: Engl/2/1306; Document Reference: DR(B) 63/8
[116] *The Saturday Review of Politics, Literature, Science, Art, and Finance*, Vol 6, 3 July 1858, p 8.
[117] See eg Lemon, Timbs, Walsh, all above n 50.

By the early twentieth century Hall himself had become a hawker in a number of accounts.[118] This shift in his occupational status reflected perceived changes in who could obtain a divorce and who was still compelled to commit bigamy as a result of the lack of other options. By the start of the twentieth century a growing number – if still a disproportionately small percentage – of labourers were succeeding in obtaining divorces under the 1857 Act.[119] This was reflected in judicial comments in bigamy cases as to whether or not the accused could have been expected to obtain a divorce. Sentencing a 35-year-old labourer to six months' hard labour in 1891, the judge seemed to think that a divorce might have been within his grasp, noting that '[h]e might probably, if able to afford it, have obtained a divorce, but he had not done so, and had contravened the law.'[120] By contrast, the comments of the Common Serjeant in the 1871 case of Thomas Kitley, a costermonger, had echoes of *R v Hall*: '[i]f he had been a little richer he could have obtained a divorce from his first wife long ago, but considering the position in life which he occupied it was scarcely to be expected that he should take steps with that view'.[121]

A comparison between the occupational status of bigamists in the 1850s and those in the 1890s similarly suggests that the greater accessibility of divorce had removed the need for the middle-classes and artisans to resort to committing bigamy.[122] Those accused of bigamy at the Assizes in the 1850s included an attorney, two teachers, and at least one gentleman, along with a number of men employed in white-collar occupations, and a significant proportion – just over a quarter of the total – of skilled artisans. By the 1890s, by contrast, semi-skilled and unskilled workers accounted for the vast majority. The changing occupational identity of Thomas Hall reflected these shifting expectations. In order for his story to continue to resonate with readers as that of the everyman denied a divorce to end his marriage, he had to be allocated to a group that was still more marginalised and less likely to be able to afford a divorce.

## Conclusion

The story of Thomas Hall has been presented in many subtly – and not so subtly – different ways over the years. Many of the key changes to the facts of his case occurred within a relatively short period of the case, since those campaigning for divorce reform wished to stress the impossibility of those in a humble station of life obtaining a divorce, the need for them to do so, and the farcical nature of the law. Elements of the story that did not fit with this narrative were excised from accounts of his case, or changed so that they did fit. Uncovering these changes, and the agenda behind them, reminds us that all sources have to

[118] Manson, above n 50.
[119] G Rowntree and NH Carrier, 'The Resort to Divorce in England and Wales, 1858-1957' (1958) 11 Population Studies 188; G Savage, '"Intended Only for the Husband": Gender, Class and the Provision for Divorce in England, 1858-1868' in K Ottesen Garrigen (ed) *Victorian Scandals: Representations of Gender and Class* (Athens: Ohio UP, 1992); G Savage, 'They Would if They Could: Class, Gender and Popular Representation of English Divorce Litigation, 1858-1908' (2011) 36(2) Journal of Family History 173.
[120] *Western Mail*, 5 August 1891.
[121] *Daily News*, 15 August 1871.
[122] The occupational status of bigamists has been ascertained from the newspaper reports of Assizes trials and from census data where it has been possible to trace the bigamist before or after their trial.

be treated with caution. The fact that a particular source is nearer in time to a particular case does not guarantee its reliability. Politicians, judges, and journalists, then as now, had their own agendas and reasons for framing their accounts in a particular way.

From one perspective, reformers' distortion of the facts of the case to bolster the case for reform of the law of divorce might even be seen as a positive. They did, after all, succeed in their campaign. The 1857 Act might have been presented as a merely procedural reform, but it fundamentally changed the basis of divorce from an exceptional privilege to a remedy available from a court. In its wake, each year hundreds of the unhappily married were freed, as compared to the handful who had obtained Parliamentary divorces. By contrast, the 1912 Royal Commission chaired by Lord Gorell was far more meticulous in its approach, quoting the original account of *R v Hall* as appeared in *The Times* in its entirety, despite the many different accounts that had appeared in the intervening years. The fact that it took over 25 years for its main recommendations to become law – and that the final impetus for what became the Matrimonial Causes Act 1937 was provided by a humorous novel, AP Herbert's *Holy Deadlock* – suggests that a scrupulous regard for the facts may not be the best strategy for those wishing to reform the law.

The different retellings by scholars and commentators, both past and present, have also had their own reasons. So many sources celebrate the wit and sarcasm of Maule J that it is unsurprising that accounts of *R v Hall* should have become wittier and more sarcastic over time to meet the expectations of readers. For some, a particular retelling of *R v Hall* may appeal as the most humorous version available. For others, it may fit with the story they wish to tell about the past, in order to emphasise the likelihood of a particular course of behaviour, a particular narrative about the harshness of the law, or the benefits of change. But we should always let the facts get in the way of a good story.