

The Writ of Habeas Corpus

The Experiences of a Barrister, #5

by Samuel Warren, 1807-1877

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In the month of February of the year following that which witnessed the successful establishment of the claim of Sir Harry Compton's infant son to his magnificent patrimony, Mr. Samuel Ferret was traveling post with all the speed he could command towards Lancashire, in compliance with a summons from Lady Compton, requesting, in urgent terms, his immediate presence at the castle. It was wild and bitter weather, and the roads were in many places rendered dangerous, and almost impassable, by the drifting snow. Mr. Ferret, however, pressed onwards with his habitual energy and perseverance; and, spite of all elemental and postboy opposition, succeeded in accomplishing his journey in much less time than, under the circumstances, could have been reasonably expected. But swiftly as, for those slow times, he pushed on, it is necessary I should anticipate, by a brief period, his arrival at his destination, in order to put the reader in possession

of the circumstances which had occasioned the hurried and pressing message he had received.

Two days before, as Lady Compton and her sister, who had been paying a visit to Mrs. Arlington at the Grange, were returning home towards nine o'clock in the evening, they observed, as the carriage turned a sharp angle of the road leading through Compton Park, a considerable number of lighted lanterns borne hurriedly to and fro in various directions, by persons apparently in eager but bewildered pursuit of some missing object. The carriage was stopped, and in answer to the servants' inquiries, it was replied that Major Brandon's crazy niece had escaped from her uncle's house; and although traced by the snow-tracks as far as the entrance to the park, had not yet been recovered. Mrs. Brandon had offered a reward of ten pounds to whoever should secure and reconduct her home; hence the hot pursuit of the fugitive, who, it was now supposed, must be concealed in the shrubberies. Rumors regarding this unfortunate young lady, by no means favorable to the character of her relatives as persons of humanity, had previously reached Lady Compton's ears; and she determined to avail herself, if possible, of the present opportunity to obtain a personal interview with the real or supposed lunatic. The men who had been questioned were informed that only the castle servants could be allowed to search for the missing person, either in the park or shrubberies; and that if there, she would be taken care of, and restored to her friends in the morning. The coachman was then ordered to drive on; but the wheels had not made half-a-dozen revolutions, when a loud shout at some distance, in the direction of the park, followed by a succession of piercing screams, announced the discovery and capture of the object of the chase. The horses were urged rapidly forward; and ere more than a minute had elapsed, the carriage drew up within a few yards of the hunted girl and her captors. The instant it stopped, Clara Brandon, liberating herself by a frenzied effort from the rude grasp in which she was held by an athletic young man, sprang wildly towards it, and with passionate intreaty implored mercy and protection. The young man, a son of Mrs. Brandon's by a former husband, immediately re-seized her; and with fierce violence endeavored to wrench her hand from the handle of the carriage door, which she clutched with desperate tenacity. The door flew open, the sudden jerk disengaged her hold, and she struggled vainly in her captor's powerful grasp. "Save me! save me!" she frantically exclaimed, as she felt herself borne off. "You who are, they say, as kind and good as you are beautiful and happy, save me from this cruel man!"

Lady Compton, inexpressibly shocked by the piteous spectacle presented by the unhappy girl—her scanty clothing soiled, disarrayed, and torn by the violence of her struggles; her long flaxen tresses flowing disorderly over her face and neck in tangled dishevelment; and the pale, haggard, wild expression of her countenance—was for a few moments incapable of speech. Her sister was more collected: "Violet," she instantly remonstrated, "do not permit this brutal violence."

"What right has she or any one to interfere with us?" demanded the young man savagely. "This girl is Major Brandon's ward, as well as niece, and shall return to her lawful home! Stand back," continued he, addressing the servants, who, at a gesture from Miss Dalston, barred his progress. "Withstand me at your peril!"

"Force her from him!" exclaimed Lady Compton, recovering her voice. "Gently! gently! I will be answerable for her safe custody till the morning."

The athletic fellow struggled desperately; but however powerful and determined, he was only one man against a score, nearly all the bystanders being tenants or laborers on the Compton estates; and spite of his furious efforts, and menaces of law and vengeance, Clara was torn from him in a twinkling, and himself hurled with some violence prostrate on the road. "Do not let them hurt the man," said Lady Compton, as the servants placed the insensible girl in the carriage (she had fainted); "and tell him that if he has really any legal claim to the custody of this unfortunate person, he must prefer it in the morning."

Immediately on arrival at the castle, the escaped prisoner was conveyed to bed, and medical aid instantly summoned. When restored to consciousness, whether from the effect of an excess of fever producing temporary delirium, or from confirmed mental disease, her speech was altogether wild and incoherent—the only at all consistent portions of her ravings being piteously—iterated appeals to Lady Compton not to surrender her to her aunt in-law, Mrs. Brandon, of whom she seemed to entertain an overpowering, indefinable dread. It was evident she had been subjected to extremely brutal treatment—such as, in these days of improved legislation in such matters, and greatly advanced knowledge of the origin and remedy of cerebral infirmity, would not be permitted towards the meanest human being, much less a tenderly-nurtured, delicate female. At length, under the influence of a composing draught, she sank gradually to sleep; and Lady Compton having determined to rescue her, if possible, from the suspicious custody of her relatives, and naturally apprehensive of the legal difficulties which she could not doubt would impede the execution of her generous, if somewhat Quixotic project, resolved on at once sending off an express for Mr. Ferret, on whose acumen and zeal she knew she could place the fullest reliance.

Clara Brandon's simple history may be briefly summed up. She was the only child of a Mr. Frederick Brandon, who, a widower in the second year of his marriage, had since principally resided at the "Elms", a handsome mansion and grounds which he had leased of the uncle of the late Sir Harry Compton. At his decease, which occurred about two years previous to poor Clara's escape from confinement, as just narrated, he bequeathed his entire fortune, between two and three thousand pounds per annum, chiefly secured on land, to his daughter; appointed his elder brother, Major Brandon, sole executor of his will, and guardian of his child; and in the event of her dying before she had attained her majority—of which she wanted, at her father's death, upwards of three years—or without lawful issue, the property was to go to the major, to be by him willed at his pleasure. Major Brandon, whose physical and mental energies had been prematurely broken down—he was only in his fifty-second year—either by excess or hard service in the East, perhaps both, had married late in life the widow of a brother officer, and the mother of a grown-up son. The lady, a woman of inflexible will, considerable remains of a somewhat masculine beauty, and about ten years her husband's junior, held him in a state of thorough pupilage; and, unchecked by him, devoted all her energies to bring about, by fair or foul means, a union between Clara and her own son, a cub of some two or three-and-twenty years of age, whose sole object in seconding his mother's views upon Clara was the acquisition of her

wealth. According to popular surmise and report, the young lady's mental infirmity had been brought about by the persecutions she had endured at the hands of Mrs. Brandon, with a view to force her into a marriage she detested. The most reliable authority for the truth of these rumors was Susan Hopley, now in the service of Lady Compton, but who had lived for many years with Mr. Frederick Brandon and his daughter. She had been discharged about six months after her master's decease by Mrs. Major Brandon for alleged impertinence; and so thoroughly convinced was Susan that the soon-afterwards alleged lunacy of Clara was but a juggling pretence to excuse the restraint under which her aunt-in-law, for the furtherance of her own vile purposes, had determined to keep her, that although out of place at the time, she devoted all the savings of her life, between eighty and ninety pounds, to procure "justice" for the ill-used orphan. This article, Susan was advised, could be best obtained of the lord chancellor; and proceedings were accordingly taken before the keeper of the king's conscience, in order to change the custody of the pretended lunatic. The affidavits filed in support of the petition were, however, so loose and vague, and were met with such positive counter-allegations, that the application was at once dismissed with costs; and poor Susan—rash suitor for "justice"—reduced to absolute penury. These circumstances becoming known to Lady Compton, Susan was taken into her service; and it was principally owing to her frequently-iterated version of the affair that Clara had been forcibly rescued from Mrs. Brandon's son.

On the following morning the patient was much calmer, though her mind still wandered somewhat. Fortified by the authority of the physician, who certified that to remove her, or even to expose her to agitation, would be dangerous, if not fatal, Lady Compton not only refused to deliver her up to Major and Mrs. Brandon, but to allow them to see her. Mrs. Brandon, in a towering rage, posted off to the nearest magistrate, to demand the assistance of peace-officers in obtaining possession of the person of the fugitive. That functionary would, however, only so far comply with the indignant lady's solicitations, as to send his clerk to the castle to ascertain the reason of the young lady's detention; and when his messenger returned with a note, enclosing a copy of the physician's certificate, he peremptorily decided that the conduct of Lady Compton was not only perfectly justifiable, but praiseworthy, and that the matter must remain over till the patient was in a condition to be moved. Things were precisely in this state, except that Clara Brandon had become perfectly rational; and but for an irrepressible nervous dread of again falling into the power of her unscrupulous relative, quite calm, when Mr. Samuel Ferret made his wished-for appearance on the scene of action.

Long and anxious was the conference which Mr. Ferret held with his munificent client and her interesting protégée, if conference that may be called in which the astute attorney enacted the part of listener only, scarcely once opening his thin, cautious lips. In vain did his eager brain silently ransack the whole armory of the law; no weapon could he discern which afforded the slightest hope of fighting a successful battle with a legally-appointed guardian for the custody of his ward. And yet Mr. Ferret felt, as he looked upon the flashing eye and glowing countenance of Lady Compton, as she recounted a few of the grievous outrages inflicted upon the fair and helpless girl reclining beside her—whose varying cheek and meek suffused eyes bore eloquent testimony to the truth of the relation—that

he would willingly exert a vigor even *beyond* the law to meet his client's wishes, could he but see his way to a safe result. At length a ray of light, judging from his suddenly-gleaming eyes, seemed to have broken upon the troubled chambers of his brain, and he rose somewhat hastily from his chair.

"By the by, I will just step and speak to this Susan Hopley, if your ladyship can inform me in what part of the lower regions I am likely to meet with her?"

"Let me ring for her."

"No; if you please not. What I have to ask her is of very little importance; still, to summon her here might give rise to surmises, reports, and so on, which it may be as well to avoid. I had much rather see her accidentally, as it were."

"As you please. You will find her somewhere about the housekeeper's apartments. You know her by sight, I think?"

"Perfectly; and with your leave I'll take the opportunity of directing the horses to be put to. I must be in London by noon to-morrow if possible;" and away Mr. Ferret bustled.

"Susan," said Mr. Ferret a few minutes afterwards, "step this way; I want to have a word with you. Now, tell me are you goose enough to expect you will ever see the money again you so foolishly threw into the bottomless pit of chancery?"

"Of course I shall, Mr. Ferret, as soon as ever Miss Clara comes to her own. She mentioned it only this morning, and said she was sorry she could not repay me at once."

"You are a sensible girl, Susan, though you *did* go to law with the lord chancellor! I want you to be off with me to London; and then perhaps we may get your money sooner than you expect."

"Oh, bother the money! Is that *all* you want me to go to Lunnon for?"

Mr. Ferret replied with a wink of such exceeding intelligence, that Susan at once declared she should be ready to start in ten minutes at the latest.

"That's a good creature; and, Susan, as there's not the slightest occasion to let all the world know who's going to run off with you, it may be as well for you to take your bundle and step on a mile or so on the road, say to the turn, just beyond the first turnpike." Susan nodded with brisk good-humor, and disappeared in a twinkling.

An hour afterwards, Mr. Ferret was on his way back to London, having first impressed upon Lady Compton the necessity of immediately relieving herself of the grave responsibility she had incurred towards Major Brandon for the safe custody of his ward, by sending her home immediately. He promised to return on the third day from his departure; but on the nature of the measures he intended to adopt, or the hopes he entertained of success, he was inflexibly silent; and he moreover especially requested that no one, not even Miss Brandon, should know of Susan Hopley's journey to the metropolis.

Mr. Ferret, immediately on his arrival in town, called at my chambers, and related with his usual minuteness and precision as many of the foregoing particulars as he knew and thought proper to communicate to me. For the rest I am indebted to subsequent conversations with the different parties concerned.

"Well," said I, as soon as he had concluded, "what course do you propose to adopt?"

"I wish you to apply, on this affidavit, for a writ of *habeas ad sub.*, to bring up the body of Clara Brandon. Judge Bailey will be at chambers at three o'clock: it is now more than half-past two, and I can be off on my return by four at latest."

"A writ of habeas!" I exclaimed with astonishment. "Why, what end can that answer? The lady will be remanded, and you and I shall be laughed at for our pains."

This writ of *habeas corpus "ad subjiciendum,"* I had better explain to the non-professional reader, is the great *prerogative* writ, the operation of which is sometimes suspended by the legislature during political panics. It is grounded on the principle that the sovereign has at all times a right to inquire, through the judges of the superior courts, by what authority his or her subject is held in constraint. It issues, as a matter of right, upon the filing of an affidavit, averring that to the best of the belief of the deponent the individual sought to be brought up is illegally confined; and it is of the essence of the proceeding, that the person alleged to be suffering unlawful constraint should actually be brought before the "queen herself"; that is, before one or more of the judges of the court which has issued the writ, who, if they find *the detention illegal*, the only question at issue upon this writ may discharge or bail the party. It was quite obvious, therefore, that in this case such a proceeding would be altogether futile, as the detention in the house of her guardian, under the sanction, too, of the lord chancellor, the *ex-officio* custodier of all lunatics—of a ward of alleged disordered intellect—was clearly legal, at least *prima facie* so, and not to be disturbed under a *habeas ad sub.* at all events.

"Perhaps so," replied Ferret quite coolly in reply to my exclamation; "but I am determined to try every means of releasing the unfortunate young lady from the cruel thralldom in which she is held by that harridan of an aunt-in-law. She is no more really insane than you are; but at the same time so excitable upon certain topics, that it might be perhaps difficult to disabuse the chancellor or a jury of the impression so industriously propagated to her prejudice. The peremptory rejection by her guardian of young Burford's addresses, though sanctioned by her father: you know the Burfords?"

"Of Grosvenor Street you mean—the East India director?"

"Yes, his son; and that reminds me that the declaration in that everlasting exchequer case must be filed to-morrow. Confound it, how this flying about the country puts one out! I thought some one had kidnapped her son, or fired Compton Castle at least. By the way, I am much deceived if there isn't a wedding there before long."

"Indeed!"

"Yes, Miss Dalston with Sir Jasper's eldest hope."

"You don't mean it?"

"*They* do at all events, and that is much more to the purpose. A fine young fellow enough, and sufficiently rich too"—

"All which rambling talk and anecdote," cried I, interrupting him, "means, if I have any skill in reading Mr. Ferret, that that gentleman, having some ulterior purpose in view, which I cannot for the moment divine, is determined to have this writ, and does not wish to be pestered with any argument on the subject. Be it so:

it is your affair, not mine. And now, as it is just upon three o'clock, let me see your affidavit."

I ran it over. "Rather loose this, Mr. Ferret, but I suppose it will do."

"Well, it is rather loose, but I could not with safety sail much closer to the wind. By the by, I think you had better first apply for a rule to stay proceedings against the bail in that case of Turner; and after that is decided, just ask for this writ, off-hand as it were, and as a matter of course. His lordship may not then scrutinize the affidavit quite so closely as if he thought counsel had been brought to chambers purposely to apply for it."

"Cautious, Mr. Ferret! Well, come along, and I'll see what I can do."

The writ was obtained without difficulty; few questions were asked; and at my request the judge made it returnable immediately. By four o'clock, Mr. Ferret, who could fortunately sleep as well in a postchaise as in a feather-bed, was, as he had promised himself, on his road to Lancashire once more, where he had the pleasure of serving Major Brandon personally; at the same time tendering in due form the one shilling per mile fixed by the statute as preliminary traveling charges. The vituperative eloquence showered upon Mr. Ferret by the Major's lady was, I afterwards heard, extremely copious and varied, and was borne by him, as I could easily believe, with the most philosophic composure.

In due time the parties appeared before Mr. Justice Bailey. Miss Brandon was accompanied by her uncle, his wife, and a solicitor; and spite of everything I could urge, the judge, as I had foreseen, refused to interfere in the matter. The poor girl was dreadfully agitated, but kept, nevertheless, her eyes upon Mr. Ferret, as the source from which, spite of what was passing around her, effectual succor was sure to come. As for that gentleman himself, he appeared composedly indifferent to the proceedings; and indeed, I thought, seemed rather relieved than otherwise when they terminated. I could not comprehend him. Mrs. Brandon, the instant the case was decided, clutched Clara's arm within hers, and, followed by her husband and the solicitor, sailed out of the apartment with an air of triumphant disdain and pride. Miss Brandon looked round for Ferret, but not perceiving him—he had left hastily an instant or two before—her face became deadly pale, and the most piteous expression of hopeless despair I had ever beheld broke from her troubled but singularly-expressive eyes. I mechanically followed, with a half-formed purpose of remonstrating with Major Brandon in behalf of the unfortunate girl, and was by that means soon in possession of the key to Mr. Ferret's apparently inexplicable conduct.

The Brandon party walked very fast, and I had scarcely got up with them as they were turning out of Chancery Lane into Fleet Street, when two men, whose vocation no accustomed eye could for an instant mistake, arrested their further progress. "This lady," said one of the men, slightly touching Miss Brandon on the shoulder, "is, I believe, Clara Brandon?"

"Yes she is; and what of that, fellow?" demanded the major's lady with indignant emphasis.

"Not much, ma'am," replied the sheriff's officer, "when you are used to it. It is my unpleasant duty to arrest her for the sum of eighty-seven pounds, indorsed on this writ, issued at the suit of one Susan Hopley."

"Arrest her!" exclaimed Mrs. Brandon; "why, she is a minor!"

"Minor or major, ma'am, makes very little difference to us. She can plead that hereafter, you know. In the meantime, miss, please to step into this coach," replied the officer, holding the door open.

"But she's a person of unsound mind," screamed the lady, as Clara, nothing loath, sprang into the vehicle.

"So are most people that do business with our establishment," responded the imperturbable official, as he shut and fastened the door. "Here is my card, sir," he added, addressing the attorney, who now came up. "You see where to find the lady, if her friends wish to give bail to the sheriff, or, what is always more satisfactory, pay the debt and costs." He then jumped on the box, his follower got up behind, and away drove the coach, leaving the discomfited major and his fiery better-half in a state of the blankest bewilderment!

