

## CHAPTER X

THE fourth day of the trial drew the greatest crowd—perhaps because the newspapers had made so much of Sommers's strange question about the egg stain on Captain O'Malley's vest.

The crowds came as much to see O'Malley as to hear Sommers ask his silly questions. And again they were disappointed. O'Malley was not in evidence, and Sommers cross-examined nobody but Sergeant Ole Hanson. And he handled the sergeant in his old-time manner.

He began mildly enough, with a summation of Hanson's testimony on direct examination.

"You have testified, Sergeant, that Captain O'Malley found my handkerchief in the wastebasket and then ordered you to search the receptacle for further evidence against me. You have stated you took out all the papers in the basket, piece by piece, carefully, methodically, scanning every scrap. You found nothing until you began putting these papers back, and, stuck to a receipt, you found a wad of gum. It was a heavy wad, 'a suspicious wad' I believe you said. It was hard. You had to use your pocketknife to cut it. You did cut it. And there was

a piece of glass that resembled a diamond. I think that is all you said, is it not?"

Hanson gave the nice old man a superior smile.

"Yes," he said. "Isn't that enough?"

"The poodle snaps at the lion," Prosecutor Keen said to himself. "Now perhaps the lion will be himself." For three days Keen had waited for his former idol to "go into action." For three days he had heard him ask questions that seemed not only absurd, but even insolent. But now that this fresh young man took the aggressive——

Sommers raised his hand, as he would to a saucy child.

"What else did you find, Sergeant?"

Hanson looked annoyed, answered sharply that he had already answered the question.

"Well, answer it again," Sommers said.

Ah! The court-room fans recognized him now. This was the old Anthony Sommers. Now watch the fur fly.

"I want to know what kind of papers you found. I remember you spoke of receipts. Receipts for what? What were the other papers so methodically taken out, so meticulously returned, so diligently studied?"

The witness reddened, held his tongue.

"Are you tongue-tied, Sergeant?"

"Scraps of letters," Hanson shouted. "Bills,<sup>1</sup> Papers with crazy drawings on them—such as those

on your table. Lists of names. Prices of Scotch and rye and gin and vermouth. Receipts for the payment of money to sea captains, wholesale butchers, and grocers, costumers. And—and things like that. Bits of string. Chewing-gum wrappers.”

“That’s more like it,” and Sommers stepped away and looked at the witness through eyes that squinted just a trifle—perhaps because the sun was in them.

“You are the wastebasket expert of the department, Sergeant? You’ve examined other rubbish heaps for bits of golden evidence?”

“I have.”

“You’ve found wads of gum before, I dare say. You didn’t cut any of them open to see if you could find a pearl?”

Women tittered in the court room. Keen began a protest. Hanson writhed with impotent anger. The gavel came down on the bench. Hanson jumped with the sound of it.

“I withdraw the question,” Sommers said. “Sergeant, you say you were looking for evidence. Did you consider the gum wrappers evidence of anything?”

“I did not.”

“Where did you find these gum wrappers you so tenderly lifted out, so gently returned? In the top of the basket?”

“In the top. No, pardon me, in the bottom.”

“Surely you don’t mean the middle of the basket?”

"No. The bottom. The top."

"You're sure of that?"

There was no one in the stifling court room who couldn't feel the hot embarrassment of the witness.

"I don't know where they were," he said at length.

"Where were the receipts?"

"I don't know."

"Where were the scraps of letters; and the crazy drawings? What position did they occupy in the—scheme of things?"

"I don't know."

"Where was the wad of gum?"

"I don't know."

"You don't know! You can't tell whether it was buried under the papers, or—like my handkerchief—lay openly on top of the heap for all the world to see and to identify. You don't remember. You don't know."

"I don't know."

"And like the egg on the captain's vest, that wad of gum might have been tossed into its abiding place a week before you found it—or an hour."

"I don't know."

"I know you don't. That's all. Step down."

Keen almost clapped his hands as the abashed sergeant hurried out of court. At last he had seen Sommers do something. At last he knew that he had an opponent worthy of himself. So that explained the question about the egg on the vest. What about

those other silly questions? Were they so silly, after all? Perhaps they had some bearing on the case—would serve to set the lion free from the hounds of the law.

“The State rests,” he said. His voice was calm, but his hands shook, and for the first time in a court room he felt the chill of nervous apprehension. Sommers was as guilty as sin. He had committed a brutal, sordid murder. Was he going to get away with it?

“The State rests,” he said again.

## CHAPTER XI

ANTHONY SOMMERS, making the last plea he was ever to make to a jury, stood in front of the twelve uncomfortable men, and coughed.

“Could one of you gentlemen loan me a handkerchief?” he asked. Juror No. 3—one of Keen’s “Airedales”—obliged the lawyer.

Sommers shook out the folded white square and held it by a corner.

“I see it has your initial on it,” he said.

He crossed the room to the prosecutor’s table, quickly picked up a spindle, and stuck it in the wood. It quivered there a moment. Ostentatiously Sommers let the handkerchief fall beside it.

“I’m sorry,” he said to Juror No. 3. “I’ve just killed a man with a spindle—and Captain O’Malley has found your handkerchief by the body. It has your initials on it—you know. And your finger prints, too. I’m sorry. Mr. Keen will have to try you for murder.”

He smiled at the jury, then pulled out his own handkerchief and dabbed at his forehead.

“Gentlemen,” he said, “the State has finished its

case. It is now my privilege to make my opening statement to you, then to take the stand if I care to, tell my story, be cross-examined, and then to make my plea. After I have finished with my plea, Mr. Keen will make his closing address, telling you, among other things, why you should put me to death for the murder of a little rat who should have been murdered long ago.

“But inasmuch as I am my own attorney, I propose to omit the opening statement and the examination on the witness stand. We shall get through more quickly. I have been sworn, and it has been agreed that if Mr. Keen wishes to cross-examine me, he may do so. If he does I shall take the stand.

“I could, if I wanted to, tell you a story so logical and so seemingly true that you would believe, and acquit me in a minute. But I propose to tell you nothing but the truth, the whole truth.

“You wondered, perhaps, why I asked Dr. Korn what would happen if I punched him on the nose. Maybe you thought I really did want to ‘take a poke at him.’ No, no. I simply wanted him to answer: ‘If you punched my nose it would bleed.’ Well, it doesn’t take a doctor to tell you that.

“If I told you that Larkin had hit me in the nose with the base of the spindle, you would realize of course that I would have a bloody nose—and that would account for the blood stains on my clothing.

“I could say that after he had thus maltreated me

I tried to take the spindle from him, using my left hand, and that, to keep myself from falling, I clutched his pompadour with my right, and held on. I could say—and it would be quite logical—that Larkin jerked his hand from mine—while I was pulling his head down—and that in jerking away he accidentally sent the point of the spindle into his throat. Then I could say he slipped—perhaps because my right hand was still in his hair—and his head fell face downward on the table, and the spindle went clear through his neck and killed him. He put his hands on the table, I could say, to save himself from falling.

“Of course that would make it plain that I wasn’t a murderer in any sense of the word. And, though I wiped my bloody hands on my handkerchief, that signified nothing—it did not prove me guilty.

“You remember I talked to the waiter, Flat Wheel, about his cold, and the rock and rye I had given him. I could easily say that I had also given him a handkerchief—just as Juror No. 3 gave me his handkerchief when I pretended to cough. I could intimate that Flat Wheel dropped the handkerchief where it would do the most good—and harm—when he came into the room.

“That would tend to show that I had been framed. I don’t know whether you gentlemen know the meaning of that word, used in the sense I mean it.

“When a policeman frames a man he arrests him



for carrying a gun—and shoves a gun into his pocket. I framed Juror No. 3 when I dropped his handkerchief over there by the spindle.

“Or, gentlemen, I might tell you another story. I might say that I was doped, was carried to the place where they found me, and was saturated with blood—denying entirely that I remained in that room with Larkin for more than a few moments.

“You heard Marcia—the black-haired girl—say she had sleeping powders. You heard me ask Theresa—the nice old lady in the dozen dresses—whether the girls didn’t use opiates. She wasn’t allowed to answer—but I could get around that. And you heard Mora admit he gave me the whisky that I drank that night. What simpler than to say the whisky was doped with one of those sleeping powders? And—for all I know—that may be the truth.”

He looked at the jurors for a few moments.

“Yes, it may well be that the whisky Mora gave me was doped,” he said. “But I would not say it was.”

He paced up and down before the jury box, as though he were in his own room.

“You heard Mickey Finn admit the diamond in his tie was glass. A clever lawyer would find some connection between that piece of glass and the one that Sergeant Hanson fished out of the catch-all in the den of Big Joe Carozzo. I would myself, were I defending another client.”

Again he paced the floor in front of the jury box, busy with his thoughts.

“Suppose I told you gentlemen that a week before the murder Mickey Finn and I sat at that table, talking about diamonds and diamond thefts and the ways of diamond thieves. Suppose I told you that Mickey, to illustrate one popular method of thievery, wrapped a piece of glass in gum and stuck it underneath the table—where it would fall into the wastebasket if it fell.

“You know that some thieves go into a jewellery store, look over trays of diamonds, select the one desired, and, with a moist piece of gum, hide it under the counter. Of course the thief must be quick and deft or the trick will not work. The diamond is missed. The thief is searched, but inasmuch as the stone is not found on him he is allowed to go his way. The next day his confederate enters the store, and quietly removes the wad of gum and the diamond—and goes out with it.

“Or suppose I told you that it was not Mickey Finn who did this, but Spots Larkin? You would probably believe me. Yes, I could make you think Larkin stuck the gummed piece of pop-bottle under the edge of the table, and that it fell into the wastebasket. I could say that Larkin became enraged when I asked him if that was how he had stolen the diamond he meant to sell Carozzo—and that he assaulted me

with the base of the spindle, and—struggling with me—accidentally killed himself.

“It would be as logical as the State’s contention that I killed the man to get this forged diamond, thinking it real, and that I disposed of it, so clumsily, to keep suspicion from me.

“The State says I thought the diamond genuine and determined to get it. Ah, I had told Carozzo I was going to New Orleans, and Mora that I was going to San Diego and would have lots of money. But I was going to Detroit and Mr. Keen would have you believe I intended to take the diamond with me.

“Gentlemen, imagine my chagrin when I looked at that synthetic Kohinoor, after running a bodkin through the neck of my companion. ‘My error,’ I said to the man I had just slain. ‘Excuse it, please. I must be going.’ But before I left I draped my blood-stained handkerchief across the wastebasket, where it would catch O’Malley’s eye. I hid the diamond in my gum—although even Carozzo admitted he had never seen me chew gum—and said, ‘That’s for Sergeant Ole Hanson. My, won’t he be surprised?’ And so I went out on the roof, and stretched and yawned and went to sleep! Wasn’t it vulgar of me? Wasn’t it stupid of me?”

He tossed his white mane and glared at the jurors.

“Gum!” he shouted. “They accuse me not only

of murder, but of gum chewing! It is bad enough to be accused of murder. But gum chewing—I resent that bitterly. Murder and gum! If you don't believe I killed Larkin, there's the 'suspicious-looking wad of gum' to prove it.

"Hanson raked it out of the wastebasket. How long had it been there? Does anyone know? How long since O'Malley's vest received its baptism of soft-boiled egg? It might be a month, for all I know. Why were those receipts found in the basket? They belonged on the spindles on Carozzo's desk. Why in the basket and not where they belonged? Apparently it never occurred to the police or the district attorney to wonder about that. If it had, they would have blamed it onto me.

"I don't know anything about this gummy phony diamond, gentlemen. I never saw it before I entered this court. But I knew they were going to put it in evidence. Men who live in tombs may tell no tales—but sometimes they hear tales told. In my cell I heard the news. I didn't credit it. Here in this court I heard Mr. Keen tell you the story of the diamond in the gum. I was astonished.

"A thing fished out of rubbish that had been standing I don't know how long—brought forward as evidence!

"I repeat, gentlemen, that wad of gum that was gorged with a clumsy fake may have waited for Hanson an hour, a day, a week, two weeks. When

did the egg fall on O'Malley's non-skid vest? How long before I noticed it? An hour? A half a day? A month? I couldn't tell—and neither could he. But the State says bluntly and boldly—and stupidly—that I threw the wad of gum in the basket after the murder! Why? Because the State wants to send me to the chair, and will use suspicion as evidence.

“Gentlemen, Mr. Keen sincerely believes me guilty. He feels that I am what he says I am, a shrewd and calculating thief and murderer, who bungled because he drank. He is convinced of this—and so he feels that it is right to put me to death. And he feels it right to use any means he can to convict me.

“Some lawyers are liars when they come into a court of justice. We of the defense sometimes lie and steal and cheat to save our clients, suborn perjury as a matter of course. Some of us—but not so many as you think. District attorneys lie and steal and cheat sometimes, to win convictions—especially when they are convinced of a defendant's guilt. Their witnesses then are allowed to perjure themselves.

“You recall the manner in which Marcia Caponi told her story? It was as though she had learned it by heart. She told the day of the month, the day of the week, the hour of the day. She named the exact location. She named those present, when she told of her conversation with Larkin. He said, ‘Snake Eyes, give us a little kiss.’ I said something about the

cutting of throats. She said 'Go to hell!' This was a little time after the incident in the dressing room. How long after, she didn't say. Two or three days, maybe, a week, ten days. There was art in that answer. Why should she remember the exact day of the dressing-room occurrence? No reason. Therefore she was not made to fix the date.

"Gentlemen, with clever lies I have yanked a hundred men and fourteen women from the dungeon and the scaffold and the chair—frightened, trapped, whimpering little souls, some of them innocent, some of them guilty. I had to lie harder for the innocent than for the others—for though the truth be mighty it is not always believed."

He took the spindle from the table. He handed back the handkerchief he had borrowed.

"I have saved men and women with clever lies. But with clever lies I shall not save myself."

## CHAPTER XII

AGAIN Anthony Sommers stalked before the jury box, glaring.

“Gentlemen, it is true I meant to leave Carozzo. I was going to Detroit, and I said nothing of my departure to any living soul. There is a little girl in Detroit who was charged with killing her employer. She shot him. She confessed. She had no money, no friends, no influence. Not even honour was left to her. I believed I could save her—but since I have been in prison she has been tried, found guilty, and sentenced to spend the rest of her life in prison.

“I went to the cabaret that morning to get what few belongings of mine were in Carozzo’s den. I saw Larkin. I saw Carozzo. I saw Mora. I was given a bottle of whisky, and asked to entertain Larkin for a little while until Carozzo could come in to talk business with him. I agreed. Larkin and I went into the room. We drank and talked—not about the diamond—but about ’most everything else. There had been no conversation with Marcia that morning. And—while I think of it—let me deny that I ever went into her dressing room, or that I ever said anything to her about her stockings. The only words I ever ex-

changed with the young lady I exchanged in your hearing, in this court room.

"They would have you think me an old fool, pining away for love of her. Bah! I'd rather go to jail!

"We drank, Larkin and I, drank and talked.

"Now, perhaps that whisky Mora gave me was drugged. I suspect it was, but I will not say it was. For I do not know. At any rate, I was awakened some time later by two policemen. I was lying on the roof. My clothing was saturated with blood. I had no idea of what had happened to me. My nose pained me. My head was dizzy. It ached. I could hardly stand. I thought first that I was in a nightmare.

"The policemen led me into the den through a window; and I saw Larkin sitting there at the table, dead, the spindle sticking out through his neck. Oh, I don't doubt the spindle contains my finger prints. Why should it not? I have handled it a hundred times.

"Captain O'Malley asked me questions, and I would not answer them. Even if I had understood them I would not have answered, for I was beginning to realize I had been framed. He had my handkerchief. It was mine. But I have no idea how it got into the basket—I don't know who put it there.

"Ever since I have been in the Tombs, gentlemen of the jury, I have been doing my best to remember



what occurred in that room. And I can remember nothing except that we talked, Larkin and I, and drank, and laughed.

“That blood-stained handkerchief might have been dropped by anyone. By Carozzo, by Mora, by the waiter, by Finn.

“The diamond that Larkin owned was evidently stolen. It was not found in the den. It was not found in my pockets. It was not found in Larkin’s pockets, nor in his room, nor in any of his possessions. Whoever killed him stole the diamond. Perhaps the slayer planted the other stone, the fake stone, the further to enmesh me in the law’s wide net. Oh, they searched me thoroughly, don’t fear. But if they had found the diamond on me they would have told you so before. Diamonds, remember, are easier to find than egg stains.

“That is the truth, the whole truth, and nothing but the truth. And I know that it sounds in your ears like a clumsy lie. A good lawyer would have told you another story—such as I have outlined to you. A good lawyer would have brought his family here from Wisconsin, and sat them at his side—and I have a wife and five beautiful daughters who might, if I wished, make you feel a little sorry for me.

“But I am not a good lawyer for myself. I don’t care what you do to me, gentlemen. Not much. I would have you clear my name of this terrible stigma—for the sake of my wife and my little girls—for the

sake of the grandchildren I may some day have. But for myself? No!

“Gentlemen, had I not been a drunkard I would not be here to-day. Had I not loved whisky, I would never have been so easily framed. I have no doubt in the world that Carozzo and his mob framed me because they feared me. They feared me because I knew too much about them, and because I intended to rid myself of them. They knew I was going to leave their company because I had refused to take any more of their cases.

“They killed Larkin for his diamond. And they would put me in the electric chair to still my tongue—and to save themselves at the same time. Thus they would kill two birds with one fake stone. They would get rid of Larkin, and they would get rid of me, and their distrust and their hatred of me. And they would have the diamond that is worth a fortune.

“It was easy because I was drunk! Maybe the whisky was not doped. Maybe it was only whisky. But it did its work. It put me here.

“Whisky! Damn the man who first invented it. Damn the man who sells it. Damn the fool who drinks it and calls himself a man! Had it not been for whisky I should never have left my home, my wife, my pretty girls who love me still. Had it not been for whisky no man would ever dare to throw suspicion on me.

“Punish me if you will, gentlemen. But punish

me, not because I killed a man, for my hands are innocent of blood. Punish me because I was drunk.

"Punish me? What am I saying? How can you punish me, who have already so punished myself? What can you do to me that I have not already done? Put me in jail? Kill me? I laugh.

"Bah! Believe these clumsy lies contrived by the State, these lies spat out by Carozzo, the pig, by Mora, by Marcia, by Mora's wife, by the weasel-faced Finn whom I foolishly saved from Connecticut's bright new hemp—Finn who shot a man in the back. They're all in this frame-up—Mora the madman; Big Joe Carozzo, the ex-pirate; Snake Eyes; the mistress of the wardrobe; Finn; Flat Wheel, the waiter.

"Believe their clumsy lies if you will, and put me in the chair. Bury me deep in the earth and let men's minds forget my name that I once bore so proudly. After the tomb?"

He laughed at them.

"Here in my breast I have found peace—'the peace that passeth all understanding.' Some find it in Jesus, some find it crying on Jehovah, or on Buddha, or on Allah who is Allah. I find it here within my breast that is done forever with lies.

"After the tomb? Resurrection!"