



# THE DOG ANDREW

## PART 1

*Arthur Train*

A couple of years ago we published one of Arthur Train's true-crime stories. *The Lost Stradivarius*, 18 GREEN BAG 2D 313 (2015). It went over pretty well. So, now we are back with one of Train's not-true-crime stories, featuring his most famous fictional creations: super-lawyer Ephraim Tutt (commonly referred to as Mr. Tutt) and his colleague, whose name is also Tutt (commonly referred to as Tutt). In "The Dog Andrew" – first published in the November 15, 1919, issue of *The Saturday Evening Post* – there are a few of the nearly inevitable tasteless, tiresome archaisms of the sorts we can expect in stories from the times in which Train lived and for the audiences for which Train wrote. (Though in Train's case they may well have been intended as parodies of conventional stereotypes. Consider, for example, the way his obnoxiousness about obesity and femininity early in the story crater very neatly when – spoiler alert! – the actions of the dog Andrew land the Appleboys and the Tunnygates in court.) In any event, enduring echoes of the mores of olden days, whether mocked or followed, is the price we must pay for a look at a classic lawyer story by one of the best-selling authors of his day.

– *The Editors*

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*Arthur Train was in private practice in New York City when he wrote "The Dog Andrew." His stories about Mr. Tutt and Tutt were so successful that he gave up practice in 1922 to devote himself full-time to writing.*

Arthur Train

“Every dog is entitled to one bite”

— *Unreported opinion of the Appellate Division  
of the New York Supreme Court.*

“NOW SEE HERE!” shouted Mr. Appleboy, coming out of the boathouse, where he was cleaning his morning’s catch of perch, as his neighbor Mr. Tunnygate crashed through the hedge and cut across Appleboy’s parched lawn to the beach. “See here, Tunnygate, I won’t have you trespassing on my place! I’ve told you so at least a dozen times! Look at the hole you’ve made in that hedge, now! Why can’t you stay in the path?”

His ordinarily good-natured countenance was suffused with anger and perspiration. His irritation with Mr. Tunnygate had reached the point of explosion. Tunnygate was a thankless friend and he was a great cross to Mr. Appleboy. Aforetime the two had been intimate in the fraternal, taciturn intimacy characteristic of fat men, an attraction perhaps akin to that exerted for one another by celestial bodies of great mass, for it is a fact that stout people do gravitate toward one another — and hang or float in placid juxtaposition, perhaps merely as a physical result of their avoirdupois. So Appleboy and Tunnygate had swum into each other’s spheres of influence, either blown by the dallying winds of chance or drawn by some mysterious animal magnetism, and, being both addicted to the delights of the soporific sport sanctified by Izaak Walton, had raised unto themselves portable temples upon the shores of Long Island Sound in that part of the geographical limits of the Greater City known as Throggs Neck.

Every morn during the heat of the summer months Appleboy would rouse Tunnygate or conversely Tunnygate would rouse Appleboy, and each in his own wobbly skiff would row out to the spot which seemed most propitious to the piscatorial art. There, under two green umbrellas, like two fat rajahs in their shaking howdahs upon the backs of two white elephants, the friends would sit in solemn equanimity awaiting the evasive cunner, the vagrant perch or cod or the occasional flirtatious eel. They rarely spoke and when they did the edifice of their conversation — their Tower of Babel, so to speak — was monosyllabic. Thus:

“Huh! Ain’t had a bite!”

“Huh!”

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Silence for forty minutes. Then: “Huh! Had a bite?”

“Nope!”

“Huh!”

That was generally the sum total of their interchange. Yet it satisfied them, for their souls were in harmony. To them it was pregnant of unutterable meanings, of philosophic mysteries more subtle than those of the esoterics, of flowers and poetry, of bird-song and twilight, of all the nuances of softly whispered avowals, of the elusive harmonies, of love’s half-fainting ecstasy.

“Huh!”

“Huh!”

And then into this Eden – only not by virtue of the excision of any vertebra such as was originally necessary in the case of Adam – burst woman. There was silence no longer. The air was rent with clamor; for both Appleboy and Tunnygate, within a month of one another, took unto themselves wives. Wives after their own image!

For a while things went well enough; it takes ladies a few weeks to find out each other’s weak points. But then the new Mrs. Tunnygate unexpectedly yet undeniably began to exhibit the serpent’s tooth, the adder’s tongue or the cloven hoof – as the reader’s literary traditions may lead him to prefer. For no obvious reason at all she conceived a violent hatred of Mrs. Appleboy, a hatred that waxed all the more virulent on account of its object’s innocently obstinate refusal to comprehend or recognize it. Indeed Mrs. Tunnygate found it so difficult to rouse Mrs. Appleboy into a state of belligerence sufficiently interesting that she soon transferred her energies to the more worthy task of making Appleboy’s life a burden to him.

To this end she devoted herself with a truly Machiavellian ingenuity, devising all sorts of insults, irritations and annoyances, and adding to the venom of her tongue the inventive cunning of a Malyan witch doctor. The Appleboys’ flowerpots mysteriously fell off the piazza, their tholepins disappeared, their milk bottles vanished, Mr. Appleboy’s fish lines acquired a habit of derangement equaled only by barbed-wire entanglements, and his clams went bad! But these things might have been borne had it not been for the crowning achievement of her malevolence, the invasion of the Appleboys’ cherished lawn, upon which they lavished all that anxious tenderness which otherwise they might have devoted to a child.

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It was only about twenty feet by twenty, and it was bordered by a hedge of moth-eaten privet, but anyone who has ever attempted to induce a blade of grass to grow upon a sand dune will fully appreciate the devilry of Mrs. Tunnygate's malignant mind. Already there was a horrid rent where Tunnygate had floundered through at her suggestion in order to save going round the pathetic grass plot which the Appleboys had struggled to create where Nature had obviously intended a floral vacuum. Undoubtedly it had been the sight of Mrs. Appleboy with her small watering pot patiently encouraging the recalcitrant blades that had suggested the malicious thought to Mrs. Tunnygate that maybe the Appleboys didn't own that far up the beach. They didn't – that was the mockery of it. Like many others they had built their porch on their boundary line, and, as Mrs. Tunnygate pointed out, they were claiming to own something that wasn't theirs. So Tunnygate, in daily obedience to his spouse, forced his way through the hedge to the beach, and daily the wrath of the Appleboys grew until they were driven almost to desperation.

Now when the two former friends sat fishing in their skiffs they either contemptuously ignored one another or, if they "Huh-Huhed!" at all the "Huhs!" resembled the angry growls of infuriated beasts. The worst of it was that the Appleboys couldn't properly do anything about it. Tunnygate had, as Mrs. Tunnygate sneeringly pointed out, a perfect legal right to push his way through the hedge and tramp across the lawn, and she didn't propose to allow the Appleboys to gain any rights by proscription, either. Not much!

Therefore, when Mr. Appleboy addressed to Mr. Tunnygate the remarks with which this story opens, the latter insolently replied in words, form or substance that Mr. Appleboy could go to hell. Moreover, as he went by Mr. Appleboy he took pains to kick over a clod of transplanted sea grass, nurtured by Mrs. Appleboy as the darling of her bosom, and designed to give an air of verisimilitude to an otherwise bare and unconvincing surface of sand. Mr. Appleboy almost cried with vexation.

"Oh!" he ejaculated, struggling for words to express the full content of his feeling. "Gosh, but you're – mean!"

He hit it! Curiously enough, that was exactly the word! Tunnygate was mean – and his meanness was second only to that of the fat hippopotama, his wife.

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Then, without knowing why, for he had no formulated ideas as to the future, and probably only intended to try to scare Tunnygate with vague threats, Appleboy added: "I warn you not to go through that hedge again! Understand – I warn you! And if you do I won't be responsible for the consequences!"

He really didn't mean a thing by the words, and Tunnygate knew it.

"Huh!" retorted the latter contemptuously. "You!"

Mr. Appleboy went inside the shack and banged the door. Mrs. Appleboy was peeling potatoes in the kitchen-living room.

"I can't stand it!" he cried weakly. "He's driving me wild!"

"Poor lamb!" soothed Mrs. Appleboy, peeling an interminable rind. "Ain't that just a sweetie? Look! It's most as long as your arm!"

She held it up dangling between her thumb and fore-finger. Then, with a groan she dropped it at his feet. "I know it's a real burden to you, deary!" she sighed.

Suddenly they both bent forward with startled eyes, hypnotized by the peel upon the floor.

Unmistakably it spelt "dog"! They looked at one another significantly.

"It is a symbol!" breathed Mrs. Appleboy in an awed whisper.

"Whatever it is, it's some grand idea!" exclaimed her husband. "Do you know anybody who's got one? I mean a – a –"

"I know just what you mean," she agreed. "I wonder we never thought of it before! But there wouldn't be any use in getting any dog!"

"Oh, no!" he concurred. "We want a real – dog!"

"One you know about!" she commented.

"The fact is," said he, rubbing his forehead, "if they know about 'em they do something to 'em. It ain't so easy to get the right kind."

"Oh, we'll get one!" she encouraged him. "Now Aunt Eliza up to Livornia used to have one. It made a lot of trouble and they ordered her – the selectmen did – to do away with it. But she only pretended she had – she didn't really – and I think she's got him yet."

"Gee!" said Mr. Appleboy tensely. "What sort was it?"

"A bull!" she replied. "With a big white face."

"That's the kind!" he agreed excitedly. "What was its name?"

"Andrew," she answered.

"That's a queer name for a dog!" he commented. "Still, I don't care what

his name is, so long as he's the right kind of dog! Why don't you write to Aunt Eliza to-night?"

"Of course Andrew may be dead," she hazarded. "Dogs do die."

"Oh, I guess Andrew isn't dead!" he said hopefully. "That tough kind of dog lasts a long time. What will you say to Aunt Eliza?"

Mrs. Appleboy went to the dresser and took a pad and pencil from one of the shelves.

"Oh, something like this," she answered, poisoning the pencil over the pad in her lap:

"Dear Aunt Eliza: I hope you are quite well. It is sort of lonely living down here on the beach and there are a good many rough characters, so we are looking for a dog for companionship and protection. Almost any kind of healthy dog would do and you may be sure he would have a good home. Hoping to see you soon. Your affectionate niece, Bashemath."

"I hope she'll send us Andrew," said Appleboy fervently.

"I guess she will!" nodded Bashemath.



"What on earth is that sign?" wrathfully demanded Mrs. Tunnygate one morning about a week later as she looked across the Appleboys' lawn from her kitchen window. "Can you read it, Herman?"

Herman stopped trying to adjust his collar and went out on the piazza.

"Something about 'dog'," he declared finally.

"Dog!" she exclaimed. "They haven't got a dog!"

"Well," he remarked, "that's what the sign says: 'Beware of the dog!' And there's something above it. Oh! 'No crossing this property. Trespassing forbidden.'"

"What impudence!" avowed Mrs. Tunnygate. "Did you ever know such people! First they try and take land that don't belong to them, and then they go and lie about having a dog. Where are they, anyway?"

"I haven't seen 'em this morning," he answered. "Maybe they've gone away and put up the sign so we won't go over. Think that'll stop us!"

"In that case they've got another think comin'!" she retorted angrily. "I've a good mind to have you go over and tear up the whole place!"

"N pull up the hedge?" he concurred eagerly. "Good chance!"

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Indeed, to Mr. Tunnygate it seemed the supreme opportunity both to distinguish himself in the eyes of his blushing bride and to gratify that perverse instinct inherited from our cave-dwelling ancestors to destroy utterly – in order, perhaps, that they may never seek to avenge themselves upon us – those whom we have wronged. Accordingly Mr. Tunnygate girded himself with his suspenders, and with a gleam of fiendish exultation in his eye stealthily descended from his porch and crossed to the hole in the hedge. No one was in sight except two barefooted searchers after clams a few hundred yards further up the beach and a man working in a field half a mile away. The bay shimmered in the broiling August sun and from a distant grove came the rattle and wheeze of locusts. Throggs Neck blazed in silence, and utterly silent was the house of Appleboy.

With an air of bravado, but with a slightly accelerated heartbeat, Tunnygate thrust himself through the hole in the hedge and looked scornfully about the Appleboy lawn. A fierce rage worked through his veins. A lawn! What effrontery! What business had these condescending second-raters to presume to improve a perfectly good beach which was satisfactory to other folks? He'd show 'em! He took a step in the direction of the transplanted sea grass. Unexpectedly the door of the Appleboy kitchen opened.

"I warned you!" enunciated Mr. Appleboy with unnatural calmness, which with another background might have struck almost anybody as suspicious.

"Huh!" returned the startled Tunnygate, forced under the circumstances to assume a nonchalance that he did not altogether feel. "You!"

"Well," repeated Mr. Appleboy. "Don't ever say I didn't!"

"Pshaw!" ejaculated Mr. Tunnygate disdainfully.

With premeditation and deliberation, and with undeniable malice aforethought, he kicked the nearest bunch of sea grass several feet in the air. His violence carried his leg high in the air and he partially lost his equilibrium. Simultaneously a white streak shot from beneath the porch and something like a red-hot poker thrust itself savagely into an extremely tender part of his anatomy.

"Ouch! O – o – oh!" he yelled in agony. "Oh!"

"Come here, Andrew!" said Mr. Appleboy mildly. "Good doggy! Come here!"

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But Andrew paid no attention. He had firmly affixed himself to the base of Mr. Tunnygate's personality without any intention of being immediately detached. And he had selected that place, taken aim, and discharged himself with an air of confidence and skill begotten of lifelong experience.

"Oh! O – o – oh!" screamed Tunnygate, turning wildly and clawing through the hedge, dragging Andrew after him. "Oh! O – oh!"

Mrs. Tunnygate rushed to the door in time to see her spouse lumbering up the beach with a white object gyrating in the air behind him.

"What's the matter?" she called out languidly. Then perceiving the matter she hastily followed. The Appleboys were standing on their lawn viewing the whole proceeding with ostentatious indifference.

Up the beach fled Tunnygate, his cries becoming fainter and fainter. The two clam diggers watched him curiously, but made no attempt to go to his assistance. The man in the field leaned luxuriously upon his hoe and surrendered himself to unalloyed delight. Tunnygate was now but a white flicker against the distant sand. His wails had a dying fall: "O – o – oh!"

"Well, we warned him!" remarked Mr. Appleboy to Bashemath with a smile in which, however, lurked a slight trace of apprehension.

"We certainly did!" she replied. Then after a moment she added a trifle anxiously: "I wonder what will happen to Andrew!"

Tunnygate did not return. Neither did Andrew. Secluded in their kitchen living-room the Appleboys heard a motor arrive and through a crack in the door saw it carry Mrs. Tunnygate away bedecked as for some momentous ceremonial. At four o'clock, while Appleboy was digging bait, he observed another motor making its wriggly way along the dunes. It was fitted longitudinally with seats, had a wire grating and was marked "N.Y.P.D." Two policemen in uniform sat in front. Instinctively Appleboy realized that the gods had called him. His heart sank among the clams. Slowly he made his way back to the lawn where the wagon had stopped outside the hedge.

"Hey there!" called out the driver. "Is your name Appleboy?"

Appleboy nodded.

"Put your coat on, then, and come along," directed the other. "I've got a warrant for you."

"Warrant?" stammered Appleboy dizzily.

"What's that?" cried Bashemath, appearing at the door. "Warrant for what?"



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The officer slowly descended and handed Appleboy a paper.

“For assault,” he replied. “I guess you know what for, all right!”

“We haven’t assaulted anybody,” protested Mrs. Appleboy heatedly. “Andrew –”

“You can explain all that to the judge,” retorted the cop. “Meantime put on your duds and climb in. If you don’t expect to spend the night at the station you’d better bring along the deed of your house so you can give bail.”

“But who’s the warrant for?” persisted Mrs. Appleboy.

“For Enoch Appleboy,” retorted the cop wearily. “Can’t you read?”

“But Enoch didn’t do a thing!” she declared. “It was Andrew!”

“Who’s Andrew?” inquired the officer of the law mistrustfully.

“Andrew’s a dog,” she explained.



“Mr. Tutt,” announced Tutt, leaning against his senior partner’s door jamb with a formal-looking paper in his hand, “I have landed a case that will delight your legal soul.”

“Indeed?” queried the elder lawyer. “I have never differentiated between my legal soul and any other I may possess. However, I assume from your remark that we have been retained in a matter presenting some peculiarly absurd, archaic or otherwise interesting doctrine of law?”

“Not directly,” responded Tutt. “Though you will doubtless find it entertaining enough, but indirectly – atmospherically, so to speak – it touches upon doctrines of jurisprudence, of religion and of philosophy, replete with historic fascination.”

“Good!” exclaimed Mr. Tutt, laying down his stogy. “What kind of a case is it?”

“It’s a dog case!” said the junior partner, waving the paper. “The dog bit somebody.”

“Ah!” exclaimed Mr. Tutt, perceptibly brightening. “Doubtless we shall find a precedent in Oliver Goldsmith’s famous elegy:

“And in that town a dog was found,  
As many dogs there by,  
Both mongrel, puppy, whelp, and hound,  
And curs of low degree.”

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“Only,” explained Tutt, “in this case, though the man recovered of the bite, the dog refused to die!”

“And so they want to prosecute the dog? It can’t be done. An animal hasn’t been brought to the bar of justice for several centuries.”

“No, no!” interrupted Tutt. “They don’t –”

“There was a case,” went on Mr. Tutt reminiscently. “Let me see – at Sauvigny, I think it was – about 1457, when they tried a sow and three pigs for killing a child. The court assigned a lawyer to defend her, but like many assigned counsel he couldn’t think of anything to say in her behalf. As regards the little pigs he did enter the plea that no animus was shown, that they had merely followed the example of their mother, and that at worst they were under age and irresponsible. However, the court found them all guilty, and the sow was publicly hanged in the market place.”

“What did they do with the three little pigs?” inquired Tutt with some interest.

“They were pardoned on account of their extreme youth,” said Mr. Tutt, “and turned loose again – with a warning.”

“I’m glad of that!” sighed Tutt. “Is that a real case?”

“Absolutely,” replied his partner. “I’ve read it in the Sauvigny records.”

“I’ll be hanged!” exclaimed Tutt. “I never knew that animals were ever held personally responsible.”

“Why, of course they were!” said Mr. Tutt. “Why shouldn’t they be? If animals have souls why shouldn’t they be responsible for their acts?”

“But they haven’t any souls!” protested Tutt.

“Haven’t they now?” remarked the elder lawyer. “I’ve seen many an old horse that had a great deal more conscience than his master. And on general principles wouldn’t it be far more just and humane to have the law deal with a vicious animal that had injured somebody than to leave its punishment to an irresponsible and arbitrary owner who might be guilty of extreme brutality?”

“If the punishment would do any good – yes!” agreed Tutt.

“Well, who knows?” meditated Mr. Tutt. “I wonder if it ever does any good? But anybody would have to agree that responsibility for one’s acts should depend upon the degree of one’s intelligence – and from that point of view many of our friends are really much less responsible than sheep.”

“Which, as you so sagely point out, would, however, be a poor reason

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for letting their families punish them in case they did wrong. Just think how such a privilege might be abused! If Uncle John didn't behave himself as his nephews thought proper they could simply set upon him and briskly beat him up."

"Yes, of course, the law even to-day recognizes the right to exercise physical discipline within the family. Even homicide is excusable, under Section 1054 of our code, when committed in lawfully correcting a child or servant."

"That's a fine relic of barbarism!" remarked Tutt. "But the child soon passes through that dangerous zone and becomes entitled to be tried for his offenses by a jury of his peers; the animal never does."

"Well, an animal couldn't be tried by a jury of his peers, anyhow," said Mr. Tutt.

"I've seen juries that were more like nanny goats than men!" commented Tutt. "I'd like to see some of our clients tried by juries of geese or woodchucks."

"The field of criminal responsibility is the No Man's Land of the law," mused Mr. Tutt. "Roughly, mental capacity to understand the nature of one's acts is the test, but it is applied arbitrarily in the case of human beings and a mere point of time is taken beyond which, irrespective of his actual intelligence, a man is held accountable for whatever he does. Of course that is theoretically unsound. The more intelligent a person is the more responsible he should be held to be and the higher the quality of conduct demanded of him by his fellows. Yet after twenty-one all are held equally responsible – unless they're actually insane. It isn't equity! In theory no man or animal should be subject to the power of discretionary punishment on the part of another – even his own father or master. I've often wondered what earthly right we have to make the animals work for us – to bind them to slavery when we denounce slavery as a crime. It would horrify us to see a human being put up and sold at auction. Yet we tear the families of animals apart, subject them to lives of toil, and kill them whenever we see fit. We say we do this because their intelligence is limited and they cannot exercise any discrimination in their conduct, that they are always in the zone of irresponsibility and so have no rights. But I've seen animals that were shrewder than men, and men who were vastly less intelligent than animals."

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“Right-o!” assented Tutt. “Take Scraggs, for instance. He’s no more responsible than a chipmunk.”

“Nevertheless, the law has always been consistent,” said Mr. Tutt, “and has never discriminated between animals any more than it has between men on the ground of varying degrees of intelligence. They used to try ’em all, big and little, wild and domesticated, mammals and invertebrates.”

“Oh, come!” exclaimed Tutt. “I may not know much law, but —”

“Between 1120 and 1740 they prosecuted in France alone no less than ninety-two animals. The last one was a cow.”

“A cow hasn’t much intelligence,” observed Tutt.

“And they tried fleas,” added Mr. Tutt.

“They have a lot!” commented his junior partner. “I knew a flea once, who —”

“They had a regular form of procedure,” continued Mr. Tutt, brushing the flea aside, “which was adhered to with the utmost technical accuracy. You could try an individual animal, either in person or by proxy, or you could try a whole family, swarm or herd. If a town was infested by rats, for example, they first assigned counsel — an advocate, he was called — and then the defendants were summoned three times publicly to appear. If they didn’t show up on the third and last call they were tried in absentia, and if convicted were ordered out of the country before a certain date under penalty of being exorcised.”

“What happened if they were exorcised?” asked Tutt curiously.

“It depended a good deal on the local power of Satan,” answered the old lawyer dryly. “Sometimes they became even more prolific and destructive than they were before, and sometimes they promptly died. All the leeches were prosecuted at Lausanne in 1451. A few selected representatives were brought into court, tried, convicted and ordered to depart within a fixed period. Maybe they didn’t fully grasp their obligations or perhaps were just acting contemptuously, but they didn’t depart and so were promptly exorcised. Immediately they began to die off and before long there were none left in the country.

“I know some rats and mice I’d like to have exorcised,” mused Tutt.

“At Autun in the fifteenth century the rats won their case,” said Mr. Tutt.

“Who got ’em off?” asked Tutt.

“M. Chassensée, the advocate appointed to defend them. They had been

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a great nuisance and were ordered to appear in court. But none of them turned up. M. Chassensée therefore argued that a default should not be taken because all the rats had been summoned, and some were either so young or so old and decrepit that they needed more time. The court thereupon granted him an extension. However, they didn't arrive on the day set, and this time their lawyer claimed that they were under duress and restrained by bodily fear – of the townspeople's cats. That all these cats, therefore, should first be bound over to keep the peace! The court admitted the reasonableness of this, but the townsfolk refused to be responsible for their cats and the judge dismissed the case!"

"What did Chassensée get out of it?" inquired Tutt.

"There is no record of who paid him or what was his fee."

"He was a pretty slick lawyer," observed Tutt. "Did they ever try birds?"

"Oh, yes!" answered Mr. Tutt. "They tried a cock at Basel in 1474 – for the crime of laying an egg."

"Why was that a crime?" asked Tutt. "I should call it a *tour de force*."

"Be that as it may," said his partner, "from a cock's egg is hatched the cockatrice, or basilisk, the glance of whose eye turns the beholder to stone. Therefore they tried the cock, found him guilty and burned him and his egg together at the stake. That is why cocks don't lay eggs now."

"I'm glad to know that," said Tutt. "When did they give up trying animals?"

"Nearly two hundred years ago," answered Mr. Tutt. "But for some time after that they continued to try inanimate objects for causing injury to people. I've heard they tried one of the first locomotives that ran over a man and declared it forfeit to the crown as a deodand."

"I wonder if you couldn't get 'em to try Andrew," hazarded Tutt, "and maybe declare him forfeited to somebody as a deodand."

"Deodand means 'given to God,'" explained Mr. Tutt.

"Well, I'd give Andrew to God – if God would take him," declared Tutt devoutly.

"But who is Andrew?" asked Mr. Tutt.

"Andrew is a dog," said Tutt, "who bit one Tunnygate, and now the Grand Jury have indicted not the dog, as it is clear from your historical disquisition they should have done, but the dog's owner, Mr. Enoch Appleboy."

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“What for?”

“Assault in the second degree with a dangerous weapon.”

“What was the weapon?” inquired Mr. Tutt simply.

“The dog.”

“What are you talking about?” cried Mr. Tutt. “What nonsense!”

“Yes, it is nonsense!” agreed Tutt. “But they’ve done it all the same. Read it for yourself!” And he handed Mr. Tutt the indictment.

“The Grand Jury of the County of New York by this indictment accuse Enoch Appleboy of the crime of assault in the second degree, committed as follows:

“Said Enoch Appleboy, late of the Borough of Bronx, City and County aforesaid, on the 21st day of July, in the year of our Lord one thousand nine hundred and fifteen, at the Borough and County aforesaid, with force and arms in and upon one Herman Tunnygate, in the peace of the State and People then and there being, feloniously did willfully and wrongfully make an assault in and upon the legs and body of him the said Herman Tunnygate, by means of a certain dangerous weapon, to wit: one dog, of the form, style and breed known as ‘bull,’ being of the name of ‘Andrew,’ the said Enoch Appleboy did then and there feloniously, willfully and wrongfully incite, provoke, and encourage, then and there being, to bite him, the said Herman Tunnygate, by means whereof said dog ‘Andrew’ did then and there grievously bite the said Herman Tunnygate in and upon the legs and body of him, the said Herman Tunnygate, and the said Enoch Appleboy thus then and there feloniously did willfully and wrongfully cut, tear, lacerate and bruise, and did then and there by the means of the dog ‘Andrew’ aforesaid feloniously, willfully and wrongfully inflict grievous bodily harm upon the said Herman Tunnygate, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.”

“That,” asserted Mr. Tutt, wiping his spectacles, “is a document worthy of preservation in the Congressional Library. Who drew it?”

“Don’t know,” answered Tutt. “but whoever he was he was a humorist!”

“It’s no good. There isn’t any allegation of *scienter* in it,” affirmed Mr. Tutt.

“What of it? It says he assaulted Tunnygate with a dangerous weapon. You don’t have to set forth that he knew it was a dangerous weapon if you

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assert that he did it willfully. You don't have to allege in an indictment charging an assault with a pistol that the defendant knew it was loaded."

"But a dog is different!" reasoned Mr. Tutt. "A dog is not *per se* a dangerous weapon. Saying so doesn't make it so, and that part of the indictment is bad on its face – unless, to be sure, it means that he hit him with a dead dog, which it is clear from the context that he didn't. The other part – that he set the dog on him – lacks the allegation that the dog was vicious and that Appleboy knew it: in other words an allegation of *scienter*. It ought to read that said Enoch Appleboy 'well knowing that said dog Andrew was a dangerous and ferocious animal and would, if incited, provoked and encouraged, bite the legs and body of him the said Herman – did then and there feloniously, willfully and wrongfully incite, provoke and encourage the said Andrew, and so forth.'"

"I get you!" exclaimed Tutt enthusiastically. "Of course an allegation of *scienter* is necessary! In other words you could demur to the indictment for insufficiency?"

Mr. Tutt nodded.

"But in that case they'd merely go before the Grand Jury and find another – a good one. It's much better to try and knock the case out on the trial once and for all."

"Well, the Appleboys are waiting to see you," said Tutt. "They are in my office. Bonnie Doon got the case for us off his local district leader, who's a member of the same lodge of the Abyssinian Mysteries – Bonnie's been Supreme Exalted Ruler of the Purple Mountain for over a year – and he's pulled in quite a lot of good stuff, not all dog cases either! Appleboy's an Abyssinian too."

"I'll see them," consented Mr. Tutt, "but I'm going to have you try the case. I shall insist upon acting solely in an advisory capacity. Dog trials aren't in my line. There are some things which are *infra dig* – even for Ephraim Tutt."

*Pick up our Spring issue for Part 2, in which Mr. Appleboy goes on trial.*

