

### Arthur Octavius Kitson

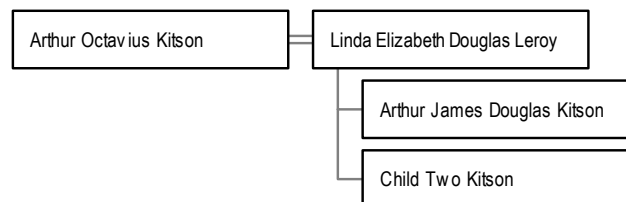
I had given up on trying to find any information about Arthur Kitson, the last known child of James Kitson and his first wife Ann, other than the registration of his birth in the Apr-Jun quarter of 1848, his presence with his family for the 1851 and 1861 census returns, and the fact that he was a witness for the marriage of his brother John Hawthorn Kitson on 2<sup>nd</sup> September 1868.<sup>1</sup> It was not until a later record came to light that we even find out that he had a middle name – Octavius.<sup>2</sup>

It was research on Arthur's sister Emily and her husband William Smoult Playfair, and a reference to legal action and the subsequent sensational 1896 trial of Kitson versus Playfair that put me back on the trail of Arthur. The legal action arose from the quandary that still exercises the conscience of the medical profession - the matter of medical disclosure. In this instance William Smoult Playfair had attended a sister-in-law of his wife for what he believed to be the effects of miscarriage or abortion. After repeated attempts to allow her to prove that she had not been unfaithful to her husband – who had been out of the country for the previous 13 months – Playfair disclosed his opinion to both the other doctor present and to members of his wife's family.

On learning this I tried to work out which sister-in-law the matter referred to, but could not come to any reasonable conclusion. It was not until I obtained a copy of an article published in 1993 that all became clear and it is from this article, and the Times newspaper, that the following information is sourced.<sup>3</sup>

To set the scene and to introduce the principal players : While the Kitson v Playfair trial was on one level concerned with privileged communications, it was also essentially a domestic dispute. The Kitson family fortune was established in the mid-nineteenth century by a Leeds iron founder James Kitson. One of his sons, also called James, was a prominent industrialist, who led an active public life as Lord Mayor of Leeds (1896-97), President of the National Liberal Association (1883-1890) and a Liberal Member of Parliament representing Coln Valley (1892-1907). James concluded his career as the first Baron Airedale. As a measure of the wealth of the Kitson 'empire', when James died in 1907 he left an estate worth one million pounds. In 1864, Emily Kitson, one of James S<sup>r</sup>'s daughters and brother of James J<sup>nr</sup>, married Dr. William Smoult Playfair, a well known obstetrician who was on his way to becoming the royal accoucher. Entering into this very comfortable and highly respectable milieu, and subsequently decidedly unwelcome, we have Arthur Kitson – or more correctly his wife – as Arthur was very much a 'bit player' in the forthcoming drama.

Arthur, the youngest of the children born to James and Ann Kitson, filled the role of the family ne'er do well, his life undoubtedly marked by irregularities of conduct. Ostensibly acting as his father's overseas agent, he went (or was sent) off to Australia to make his fortune. I am currently trying to establish the date, which would have been after September 1868, and the point of arrival in Australia. However we do know that he spent some time at Ipswich, Queensland where the electoral rolls show that he was resident at Gordon Street for six months during 1874-75.<sup>4</sup> Some time between then and 1881 Arthur relocated to Rockhampton. It was there that he married Linda Elizabeth Douglas Leroy on 4<sup>th</sup> August 1881 at the Baptist Church. The Marriage Certificate states that Arthur Octavius Kitson, the groom, was a 33 year old bachelor, born in Leeds, and a son of James Kitson, Gentleman, and Ann Newton. The bride, Linda Elizabeth Douglas Leroy was a 25 year old spinster, born in Islington, Middlesex, the daughter of James Douglas Leroy, Captain, HEIC, and Linda Elizabeth Leroy. The rank or profession of the couple was respectively Gentleman and Domestic Duties. The witnesses were H.G. Blair and Fanny Mederaf(?).<sup>5</sup> Arthur James Douglas, the first child of Arthur and Linda, was born on 2<sup>nd</sup> June 1882 at Alma Street, Rockhampton, and the birth was registered by the father on 13<sup>th</sup> June. The attending doctor and nurse were Dr. Callaghan and Mrs. Elliot.<sup>6</sup> A second child was born on 11<sup>th</sup> May 1884, but I have not yet obtained a copy of a birth certificate, so am not sure if this child was also born in Rockhampton. Apparently the pregnancies precipitated a good deal of illness, exacerbated by a weakening series of miscarriages.



In October 1892 Linda Kitson and her children returned to England while Arthur, still trying to strike it rich and apparently pursued by creditors, went to Port Darwin for a time and from there set off on a series of mysterious trips in the Pacific, including calls in Hong Kong and Hawaii. Apparently she was made welcome by the family, and particularly by the Playfairs. Not only was she allowed to associate with them on terms of friendship, Emily

and William had championed her cause with James and John Hawthorn Kitson to make over to her the allowance that they had up to then sent to the Kitsons in Australia. This annual allowance of £500 had commenced from the time that the agency arrangement between James and Arthur Kitson was abandoned in 1881, perhaps due to Arthur's marriage to Linda. James and John Hawthorn were won over. However it seems that this allowance was reduced from £500 to £400 a year and this was now Linda's sole income as she was receiving nothing from her errant husband. The family had apparently decided that Arthur had led the life of a remittance man long enough and was a 'lost cause' and was now to be left to sink or swim.

Linda initially stayed with her in-laws, the Playfairs, and then she settled into a house in Kensington. Her health still failing, she consulted a Dr. Williams. As an obstetrical problem seemed to be the source of her discomfort, Williams suggested that she be referred to Dr. Playfair. Linda was initially reluctant, but in January 1894 she agreed and she was examined by Dr. Playfair on 16<sup>th</sup> January and again on 24<sup>th</sup> February, and on the latter occasion was put under chloroform for an internal examination in the presence of Dr. Williams.

It is claimed that Dr. Playfair's personal success made it difficult for him to sympathise with the misfortunes of others and this attitude was exacerbated when dealing with the wife of the family black sheep. According to Linda Kitson, she regained partial consciousness during her second visit and heard Playfair saying "I don't know what else it can be. I know very little about her. She must have been up to some "hanky panky" although this was later denied by both doctors. What was actually said did not matter. The point was that both doctors discovered that Linda Kitson had recently had either a natural miscarriage or an abortion, which they had to clean up. Given that she had not seen her husband for something like a year and a half, it could only be concluded that she was an adulteress.

Playfair immediately determined that he could not allow his unchaste sister-in-law to socialise further with his wife and grown up daughters and he conveyed this to her through Dr. Williams. Linda Kitson frantically wrote to Playfair saying she could not communicate with him through Dr. Williams and begged for a personal interview. To his implication that she had been made pregnant by an adulterous relationship, she responded with the guarded assurance :

I can say as to whatever it is you are thinking, that *none but the right one is the cause*. My heart is breaking. There is only one can clear me, but not yet.

What she appeared to be implying was that she had been made pregnant, but that her husband who was responsible could not, for the moment, reveal that he had secretly been in England. Playfair coolly replied that she should use her illness as an excuse to leave London. If she did not, he would be duty-bound to inform his wife of the facts.

No one who respects himself, his wife and his family can suppose for a moment that I can allow social relations between you and my family to go on as they were when I know you have had a miscarriage.

Throughout a confused and protracted correspondence Linda Kitson, although never denying the "facts" of the case, pleaded for time to vindicate herself. She repeatedly implied that her husband could clear her name. Playfair never really believed her but he declared himself ready to be convinced.

If you are able to inform me that your husband has been in London I shall not only greatly commiserate you, but be very sorry for the suspicion which under the circumstances was inevitable.

But Linda Kitson never provided a straight answer. To do so would be to lie because, as she later admitted, her husband had in fact not been in England. Playfair, not getting a clear answer and faced with the prospect of his family renewing social ties with Linda Kitson, finally wrote to say that he had no alternative but to inform his wife of the situation. Linda Kitson now wrote to Emily Playfair begging her not to tell her brother, Sir James. Emily Playfair, like her husband, asked for assurances that Arthur had been in London, though she wondered how that could be since the family had received his telegrams from Australia. With no clear response again being made, Emily asked her husband to inform James Kitson of the situation who then immediately wrote to Linda Kitson advising that all communication with the family had to cease and that her allowance would be ended, but that if she returned to Australia he would provide a small maintenance.

In the meantime, all through the spring of 1894, Linda Kitson had been trying to contact her husband. A letter finally reached him in Australia in June and by September he was back in London declaring himself ready to fight his own people. His first move was to claim, falsely, that he had, as his wife implied, returned secretly to England the previous December. Playfair (at this stage not aware of the lie) was begrudgingly forced to apologise.

Your coming surreptitiously to London without informing the family has been the cause of all this annoyance. Your statement that you have been in London allows of the withdrawal of any imputation on your wife."

Arthur Kitson was not appeased, presumably because the family allowance was still not renewed and taking this as evidence that the Playfair apology was worthless, Linda Kitson in February 1895 sued for libel and slander against Dr. and Mrs. Playfair. The case which began on 21<sup>st</sup> March 1896 was tried before a special jury at the Queen's Bench, presided over by Mr. Justice Henry Hawkins who was better known as "Hanging" Hawkins, a devoted opponent of immorality.

The Playfairs' solicitor was the well-known Sir George Lewis and their leading counsel Sir Frank Lockwood, QC, a former Solicitor-General. Counsel presented the defendants with a choice. One course of action open to them was "to justify", that is, contend that the slander was true. Truth is an absolute defence against the charge of slander. But proving to the satisfaction of a jury, on the basis only of medical evidence, that Linda Kitson had committed adultery was a daunting challenge and the Playfairs' counsel were also very aware that if such a dishonourable charge failed, an irate jury could be counted on to award punitively high damages. The safer course, therefore, was to argue that, even if the story of Linda Kitson's adultery was false, in this particular situation it was "privileged communication" – that is to say, a communication which because it only occurred within the immediate family, could not be considered either libelous or slanderous. Playfair, on the advice of his counsel, took the latter course of pleading privilege. The defence's line of argument was that Playfair, with no malice intended, but only the protection of his family honour in mind, had felt duty bound to tell his wife of what he thought was evidence of Linda Kitson's immorality and Mrs. Playfair, in turn, told her brother.

On the face of it the defence seemed to have a pretty strong case and, despite the fact that the case was to be fought on the grounds of "privileged communication, the court was presented with a good deal of evidence which substantiated Playfair's belief in Mrs. Kitson's adultery. The only 'expert' to question the medical evidence was Dr. Herbert Spencer, professor of midwifery at University College, London, who in testifying on Linda Kitson's behalf put forward the proposition that the February 1894 miscarriage was possibly related to a legitimate conception that occurred in October 1892, some eighteen months earlier! This opinion was laughed out of court by the medical experts called by the defence. Furthermore, Mr. Lawson Walton, who led for the plaintiff, did not exploit the rumours that Playfair had divulged his suspicions about Linda Playfair to others beyond his immediate family, thus undermining the defence of privileged communication. Nor did the plaintiff's legal team make much of the malice that could have been inferred from the fact that Playfair was aware that his disclosures jeopardised Linda Kitson's annual allowance. Mr. Lawson Walton shrewdly appealed to the emotions rather than the intellect of the jurors.

After all, the trial was believed by the public to hinge on what in Victorian society could only be considered the riveting question of whether or not a middle-class woman's adultery had been exposed by a man who was both her physician and her brother-in-law. This is what made the affair so sensational. The defence thought it safer and more gentlemanly to avoid such a volatile issue and argue simply for privilege. This proved to be a mistake because it prevented the defence from responding to Walton's constant portrayal of his client as an innocent woman fighting to protect her honour against the slurs of a cold-hearted physician whose base motives could only be guessed at.

Linda Kitson proved to be an excellent witness. She was the picture of the affronted female; attractive but wracked by anxiety, dressed elegantly in black, with a white rose at her throat. She wept, she swooned. On the first day of the trial she almost fainted and was led by her husband into the open air. He too made a good impression as the poor relative fighting his wealthy and powerful family to protect the honour of his wife.

The fact that Linda Kitson had lied proved no embarrassment. The inconsistencies and insinuations of Linda Kitson, which on the face of it were so damaging, were transformed by Walton into an integral part of his portrayal of an honest, innocent, impressionable woman driven to distraction by a "moral inquisitor". The court allowed her simply to apologise for having falsely and repeatedly implied that her husband was in London and it was left at that. So well did she play her role that Sir Frank Lockwood, sensing that the jury's sympathies were with a lady who had apparently suffered so much, was afraid of subjecting Linda to an intense cross-examination for fear that it could only win her more support – if he had, maybe he could have investigated more vigorously her claim that she could

...account for every moment of her time "except the evening she spend with a broken-hearted sailor"<sup>vi</sup>

But the most important witness for the plaintiff proved to be Dr. Playfair. Under cross-examination he was asked if he still held an adverse opinion as to the honour. This was, in fact, not at issue, and Playfair questioned the propriety of the query. However, when instructed by the judge to answer the question, Playfair caused a sensation in the courtroom by making the blunder of coldly and categorically stating that he continued to view Linda Kitson as dishonoured. Walton immediately pounced on this and accused Playfair of

not being man enough to fight out this issue in court rather than employing the cowardly defence of privilege. In effect, Playfair was indelibly portrayed as a cad. Playfair also did little to woo the jury to his cause by his penchant for asserting that his medical conclusions were infallible and the impression he exuded as a dogmatic moralist who could not be reasoned with.

It did nothing to advance the defendants' cause that Judge Hawkins, who saw his role and duty as making sure that that the jury did not go wrong, in his summing up made it quite clear that his sympathies lay with the plaintiff. He agreed with the plaintiff's counsel in opining that if Linda Kitson toyed with the truth, it was because Playfair had put her in a tight corner. But most telling of all was Hawkins' spirited depiction of a doctor's informing on a woman who had aborted as a 'monstrous cruelty'. He instructed the jury that they had to answer three questions. Were the words complained of uttered by Playfair in good faith? Were they uttered without malice? Were they uttered, not from a mere sense of duty, but from some indirect motive? Hawkins reminded the jurymen that whether or not Linda Kitson had been unchaste was not at issue, but that "If they found that she had played the wanton they could take that into consideration in estimating the damages".

After three hours the jury returned to find for the plaintiff on all three counts. The amount awarded to Linda Kitson was £12,000, reputedly the largest settlement for libel and slander ever made in a British court.<sup>vii</sup> Mr. Lawson Walton must have been a very shrewd judge of circumstances. He had recognised the effectiveness of his prime witness in garnering sympathy and he had accurately 'read' the jury. From the press reaction to the outcome it can be seen that he had also been in tune with the general public. The Times reported that the verdict was greeted with loud applause in court and Reynold's Newspaper, a more popular periodical, noted applause, clapping and stamping of feet.

I am now trying to find out what happened to Arthur and Linda Kitson once the trial was over. I have not located them in the England census of 1891. Having been awarded what amounted to a small fortune, did Linda share it with her husband, and did she still feel pressured to return to Australia or did she choose to return there? Did they decide to go their different ways? What happened to the children? Did Linda recover her health?

I think I have located Arthur Kitson for the 1901 census, but there are no members of his immediate family with him. He is in lodgings with a motley collection of other boarders in a Lodging House at 9 and 10 Coptic Street, Bloomsbury., He is described as a 52 year old married man, born in Leeds and living on his own means. His profession is very difficult to read but could be Retired C. Eng.<sup>ix</sup>

Similarly, I have located a death registration for the Jan-Mar quarter of 1915, in the East Grinstead district for one Arthur Kitson, born about 1848. The death certificate for this registration is not particularly revealing, but states that Arthur Kitson, a 67 year old male, and living on his own means, died at Groombridge, Withyham, East Grinstead, on 25<sup>th</sup> February 1915. The cause of death was (1) Chronic Bronchitis and (2) Dilation of heart syncope. A Mary Jennings, also of Groombridge, was present at the death. Groombridge is a small village, part of the civil parishes of Withyham and Speldhurst and straddling the borders of East Sussex and Kent, half way between Crowborough and Tunbridge Wells.<sup>x</sup>



### Arthur James Douglas Kitson



The one known child of Arthur Kitson and his wife Linda is Arthur James Douglas Kitson, whose birth on 2<sup>nd</sup> June was registered in Rockhampton, Queensland, Australia, in 1882.<sup>xi</sup> He came to England with his mother in 1892, but what happened to him immediately after the 1896 Playfair v Kitson case is not known, and neither he or his mother have been located in the 1901 census. However I did locate a possible marriage registration for him which, on being followed up, proved to be the record of his marriage on 20<sup>th</sup> September 1909 to Maud Annie Deacon. The ceremony was conducted at St Paul's Church, Hammersmith, by banns and according to the Established Church rites and ceremonies. The certificate lists Arthur James Douglas Kitson as being a 27 year old bachelor whose profession was Engineer. He was living in North Fields, Stamford. Maud, a spinster of no profession, also gave her age as 27 but, as we will see, she was in her early thirties when she got married. She gave her address as 9 Roseford Terrace, Shepherds Bush. Both fathers, Arthur Kitson and Charles Deacon, were described as Gentleman. The marriage was witnessed by one G.A. Kelly and Kate W. Deacon, sister of the bride.<sup>xii</sup>

The birth of Maud Annie Deacon was registered at Fulham in the Jul-Sep quarter of 1875. She was the daughter of Charles Deacon and his wife Kate, whose maiden name was most likely Ross.<sup>xiii</sup> For the 1881

census the Deacon family was found living at 7 Roseford Terrace, Hammersmith.<sup>xiv</sup>

Charles Deacon	39	French Polisher	Clerkenwell, Middlesex *
Kate Deacon	32	Polisher's Wife	Liverpool
Maude A Deacon	5		Middlesex
Gertrude F Deacon	4		Middlesex
Charles W Deacon	15 mos		Middlesex
Emma Jones (Vis)(U)	38		Chester, Cheshire
Maria West (Lodger)	53	Nurse	Middlesex

\* note the different place of birth in subsequent census returns.

Ten years later and still living at 7 Roseford Terrace, Hammersmith, the Deacon family has expanded and they have an elderly bachelor lodger.<sup>xv</sup>

Charles Deacon	48	French Polisher	Penzance, Cornwall
Kate Deacon	42		Liverpool
Maud Deacon	15		Hammersmith, London
Gertrude F Deacon	14		Hammersmith, London
Charles W Deacon	11		Shepherds Bush, London
Leonard R Deacon	8		Shepherds Bush, London
Kate W Deacon	5		Shepherds Bush, London
Minna B Deacon	2		Shepherds Bush, London
Cyril H Deacon	11 mos		Shepherds Bush, London
Francis Fuller (Lodger)(S)	70	Retired Military Officer (Army)	Berhampore, Ease Indies (BS)

The Deacon family is one of the few in this Celebration account that remained at the same address for a number of decades. Again, for the census before Maud was married they are still found at 7 Roseford Terrace. It does not appear that the daughters of the family earned their keep, but by 1901 the second son was in work. Charles, the first son is not at home with his family. There is again a boarder in the house who, like the lodgers in the previous census returns, would have contributed to the family income.<sup>xvi</sup>

Charles Deacon	58	French Polisher on own account	Cornwall
Kate Deacon	51		Liverpool
Maud Deacon	25		Hammersmith
Gertrude Deacon	24		Hammersmith
Leonard Deacon	18	Boy Clerk (Civil Serv)	Hammersmith
Kate Deacon	15		Hammersmith
Minna B Deacon	12		Hammersmith
Cyril H Deacon	10		Hammersmith
Linda Hammond (Boarder)(W)	70		London

Further information for Arthur and Maud will have to wait until the release of the 1911 census data.



<sup>i</sup> FreeBMD Birth Index; HO107/2321/p14; RG9/3393/p15.; certified copy of Marriage Certificate MXD339912.

<sup>ii</sup> He may, of course, have assumed this middle name for himself.

<sup>iii</sup> A. McLaren, *Privileged Communications: medical confidentiality in late Victorian Britain*, Medical History, 1993, 37, 129-147. The author has made some errors in his article – e.g. in the number of children born to James Kitson and in stating that Emily Kitson was the only daughter. The Times coverage of the Kitson v Playfair trial – 23<sup>rd</sup> – 28<sup>th</sup> March 1896.

<sup>iv</sup> Information from State Library of Queensland.

<sup>v</sup> Certified copy of Marriage Certificate H0012487. There is some confusion on the certificate as regards the bride's name. She is referred to as both Linda and Louisa, and a notation in the marginal notes, signed by S. Hill, Register on 30/10/83, reads Linda Elizabeth. At signature of Bride for Louisa read "L"

<sup>vi</sup> Certified copy of Birth Certificate H00121488.

<sup>vii</sup> She later explained that she must have been referring to her husband on his supposed secret return to England.

<sup>viii</sup> Reduced on appeal to £9,200.

<sup>ix</sup> RG13/327/p25.

<sup>x</sup> FreeBMD Death Index; certified copy of Death Certificate DYB615041.

<sup>xi</sup> 1882/C005919.

<sup>xii</sup> FreeBMD Marriage Index; certified copy of Marriage Certificate MXD346972.

<sup>xiii</sup> FreeBMD Marriage Index.

<sup>xiv</sup> RG11/59/p42.

<sup>xv</sup> RG12/40/pp20-21.

<sup>xvi</sup> RG13/50/p22.