

Gleanings from Dark Annals

FROM the most direct to the most circumstantial, there are almost as many gradations of evidence as there are of crime; nor is the latter kind less valuable than the former (as it would certainly appear to be at first sight), since what it lacks in the way of identification is compensated for in its freedom from personal spite.

There can, at least, be no malice in a chain of undesigned coincidences, whereas nothing is easier than the swearing away a man's life falsely. Moreover, it is not to be expected, in very serious cases, that direct evidence should be forthcoming. Murder especially demands solitude and night as sentinels of its dreadful work. Its appearance without those attendants, red-handed and defiant, is rare, although there are a few examples of it on record.

Robert Irvine, who murdered his two pupils at Edinburgh in 1717, perpetrated the deed in broad daylight and in the open fields, and was distinctly seen by persons walking on the Castle Hill, within half a mile of the spot. A few years before, Alexander Balfour shot his rival, a pedagogue, sitting in the school-room among his pupils. Nor in this case did the murderer meet with his desert, for after condemnation, he escaped in his sister's clothes from prison.

The most extraordinary instance of openness, however, in this worst of crimes occurred in 1712. One William Johnson, who had been a butcher a corn-dealer, a publican, and mate to a surgeon at Gibraltar, and eventually had given up all these professions for that of a highwayman, was greatly attached to one Jane Hunsden, who turned her less diversified talents toward coining only.

Being put upon her trial at the Old Bailey, a second time, for this offense, Johnson wished to address her in the dock; and on Mr. Spurling, the head turnkey, informing him that no such thing could be permitted until "that little matter," the trial, was concluded, he instantly drew a pistol, and much encouraged thereto by the object of his affections, shot Spurling dead in court.

The judges, deeming it unnecessary to proceed with the case of coining, ordered both offenders to be tried at once for the murder; and there being no want of witnesses for the deed, they were immediately convicted, and received sentence of death.

It is remarkable that they both pleaded "Not Guilty," and resolutely averred their innocence upon the scaffold.

Certainly as the identity of the above-mentioned criminals was established, not less surely has guilt been brought home to others by the most indirect and apparently inconsequential means.

When Mr. Blight was shot at Deptford in 1806, there was no suspicion of the real assassin until Sir Astley Cooper came down from London—not as a detective, but as a surgeon—and at once, as it were, laid his finger on the murderer whom he had never set eyes on in his life.

From an examination of the wound, he inferred positively that the fatal weapon must have been fired by a *left-handed* man. Now, the only left-handed person near the premises, when the crime

was committed, was a particular friend of the deceased, and the last man to have been implicated in the matter, but for this revelation of science. He was, in consequence, arrested, tried, and convicted, and, before execution, made a full confession of the whole matter.

There have been many examples of the complete efficacy of evidence of this sort; but of late years, since medical jurisprudence has been taken up by the experts as a profession, such testimony has been received with caution. Yet fatal mistakes are, doubtless, much less common than they used to be, and the indecent haste with which the links of circumstance used to be woven into a chain sufficient to hang a man, is not to be found in modern judicial proceedings. "Presumptive proof," observes the most agreeable of essay writers, "is a very presumptuous personage. People circumstantially found guilty ought, at the worst, to undergo only a circumstantial hanging. A gallows should be paraded round them, the executioner should make a circuitous pretense of turning them off, and the by-standers should exclaim: 'There you are, not, indeed, positively hanged, but circumstantially. You may presume that you are dead; the proof of your being so is not direct, but strong symptoms of an execution are round about you. You may say that you have been in very hanging circumstances.'"

The above remarks are comments upon the case of William Shaw, who suffered at Edinburgh in 1721, for the murder of his daughter Catharine. She had been passionately attached to a young man of dissipated habits, while her father was desirous that she should marry a steady husband of his own choosing.

On one occasion, the quarrel between them was very violent, and the words *barbarity*, *cruelty*, and *death*, pronounced by the girl, were distinctly overheard by a watchmaker living in the same stair, and whose apartment was divided from that of the Shaws by a single partition only.

For some time after Shaw left the room, the watchmaker heard no more of these exclamations, but presently there were several groans, and, being alarmed, he called his neighbors, who, also, listening attentively, heard Catharine two or three times faintly exclaim: "Cruel father, thou art the cause of my death."

Upon breaking into the room, they found her stabbed and speechless, with the fatal knife by her side; and upon questioning her as to whether she owed her death to her father, she was just able to make an affirmative motion with her head, immediately after which she expired.

Upon this evidence William Shaw was hanged. But in the August of the ensuing year, a man who had succeeded to the tenancy of the Shaws' apartments, found in the chamber in which Catherine had died, in a cavity on one side of the chimney, a paper folded like a letter, which contained, in her own handwriting, the avowal of her deliberate intention to commit suicide in consequence of her father's cruelty:

"My death," it concluded, "I lay to your charge. When you read this, consider yourself as the inhuman wretch that plunged the knife into the bosom of the unhappy. "CATHARINE SHAW."

The magistracy of the town being convinced hereby of the innocence of her father, caused his body to be taken from the gibbet in Leith Walk, where it hung in chains, and given to his family

for interment; while, as a reparation to his memory, they directed a pair of colors to be waved over his grave.

An uncle and niece also once fell out upon that unfailing topic of disagreement between old and young, the choice of a lover:

Young hearts are always finding out
That ancient matrons have no feeling;
While as for fathers—how should gout
Find any happiness in kneeling?

These relatives were walking in the fields together; a person at a little distance heard the girl say: “Do not kill me, uncle; do not kill me;” and afterward the discharge of a pistol—which was, in reality, that of a fowling-piece in an adjacent field.

The same night she eloped, and left England for a year, when, upon her return, she found that her unfortunate relative had been hanged for her supposed murder.

But the most extraordinary case of the failure of evidence on record, is, perhaps, that of Jonathan Bradford. This man kept an inn on the London and Oxford road, and bore an excellent character up to the date of the commission of the offense for which he suffered.

In 1786, one Mr. Hayes put up at his house, and in conversation with two gentlemen, with whom he supped, disclosed the fact that he was traveling with a large amount of money. These gentlemen, who slept in a double-bedded room, were awakened by groans proceeding from the next chamber, and entering that apartment, were horrified to find their companion of a few hours before lying stabbed upon his bed, with the landlord standing by with a dark-lantern in one hand and a bloody knife in the other.

Such evidence—which could scarcely be termed circumstantial—was, of course, held to be conclusive, although the accused averred that he had entered the apartment urged by the same humane motives as the witnesses, and terror-stricken by what he saw had dropped the knife upon the bedclothes.

Jonathan Bradford was hanged, protesting his innocence; whereas the real perpetrator of the deed was the murdered man’s own footman, who had decamped with his booty only a few seconds before the landlord made his appearance.

This miscarriage of justice is not, however, to be deplored like the others, inasmuch as Bradford confessed, to the prison chaplain, that he had entertained the same horrible intention as the assassin himself, and upon entering the bedroom was amazed to find that the murder which he contemplated had already been committed by another.

The sort of evidence, however, which is the greatest obstacle to the discovery of crime is misidentification. An over-eagerness for bearing witness is but too common among a very large class of persons, and, we regret to add, especially among females. Having once made a mistake,

the gentler sex seem to consider that their reputation demands their “sticking to it,” without sufficient consideration for the victim of their virtuous consistency.

Sometimes it is the thief whose lineaments they unmistakably recognize, and sometimes it is the property stolen which has stamped itself indelibly upon their memory: but in either case, nothing can exceed the positiveness of their statements—until their cross-examination begins by the prisoner’s counsel, which, in the good old times of which we write, was not permitted to worry honest witnesses for the prosecution.

In the month of April, 1726, a very curious sight “might have been seen,” as the novelists say, by any wayfarers who happened to pass through St. Margaret’s churchyard, Westminster—namely, the exposition of a human head upon a pole. Human heads on poles were more common in those days than these, notwithstanding that our own are called “sensational”; but still, this particular one did attract particular attention, for it was not the head of a traitor.

Nobody knew whose head it was, indeed, and the government had set it up, washed and combed, where it stood for the purpose of its identification. It had been found in a dry-dock near the Horseferry, Westminster; but there was no clue to those who had placed it there, although what detective force existed at that time was diligently engaged in the matter. Officers were also stationed among the crowd in the churchyard to take into custody any person who should discover signs of horror unwarranted by the exhibition and so disclose their guilt.

At the present time, it is probable that half London would thereupon have been taken up on suspicion of murder; but our great-grandfathers and their spouses were not so easily shocked. However, even now-a-days crimes are sometimes committed on unknown persons, and the public being invited to view a body, it is generally identified pretty positively as being that of five or six different people; nor need this be set down (as it has been) as proof of the frequency of the disappearance of our fellow-creatures from their homes and families, and of the prevalence of undiscovered crime, but rather to the great delight in identification taken by many persons.

So, in the case of the unknown head, there were many who recognized it very much to their own satisfaction, and gave the most detailed information, and misled the police of the period to the very best of their ability.

After this singular exhibition had lasted four days, it became necessary, for the preservation of the features, that the head should be placed in spirits, which was accordingly done, and the public were still invited to witness it at the establishment of a certain surgeon.

Among others came a poor woman from Kingsland, and, after a minute survey, she pronounced it to be the head of her husband, who had been missing from the very time it had been found. His other relatives were even hastier in their conclusions.

Regardless of grammar, they all cried, “That’s him!”

But, after all, it was not “him”; for the Kingsland truant was alive and well, with his head on his shoulders, and had only been detained from home by a press-gang or other emergency of that attractive time.

These repeated mistakes obstructed the course of justice excessively, although, at last, the genuine identification did take place, and the real criminals were taken into custody, among whom, and the chief of them, was the wife of the unhappy victim.

It is unnecessary to narrate the circumstances of the murder, which were dreadful enough to establish the reputation of any sensational periodical; but the measures which were taken with the supposed murderess were curious and noteworthy. Following, probably, the ancient usage of “ordeal by touch,” the peace-officers carried the woman to the place where the head was exposed, to see what effect it would have upon her. She recognized it immediately, exclaiming:

“Oh, it is my dear husband’s head!—it is my dear husband’s head!” [she having helped to cut it off with her own hands].

“She took the glass that contained it in her arms, and shed many tears as she embraced it,” like Boccaccio’s Isabella over her pot of basil. But when they took the head out of its resting-place to give her a lock of hair, as she had desired, her resolution gave way, and she fell into a fit. Petit treason—the murder of a husband by his wife—was at that time, and up to the thirtieth year of good King George III., punished by strangulation and burning: and although Queen Mary, from strong sentiments of religion, burned her bishops without any previous suspension, it was usual, in mercy, not to roast persons, and especially females, until they had hung a considerable time. Accidents, however, used to happen to the best regulated executions, and the wretched woman in question, being insufficiently strangled, was burned alive at Tyburn, while her more fortunate male accomplices were hung in chains.

In civil cases, weight is certainly sometimes given to evidence which would be disallowed in criminal procedures, as in the curious case of *Fish v. Palmer*, tried in the Court of Exchequer in 1806. The wife of the plaintiff, Fish, who had been possessed of property in her own right, died nearly ten years before these legal proceedings were instituted, after having given birth to a child which was supposed to have been born dead. In consequence of the plaintiff not having had a living child (as was assumed) by his marriage, the estate of the wife was claimed by Palmer, her heir-at-law, and surrendered by the widower without opposition. From information derived, after a great lapse of time, from some women who had been present at his wife’s accouchment, Fish began to think that the estate was in fact his own, and he brought his action accordingly. It lay with him, of course, to prove that the child had been born *alive*.

The accoucheur who had attended Mrs. Fish had died in the meanwhile, but it was proved that he had affirmed the child to be alive an hour before it was born, that he had directed a warm bath to be prepared, and had given the child, when it was born, to the nurse to be placed in the said bath. *The child neither cried nor moved*, but the women swore that when it was immersed there appeared twice a twitching and tremulous motion of the lips.

Upon their informing the accoucheur of this he bade them blow into its throat, which they did, but without any beneficial effect. The question was, therefore: was this *tremulous motion of the lips* sufficient evidence of the child having been born alive?

The doctors, as usual differed; but the jury, under direction, gave it as their opinion that the plaintiff had established his case; and, in consequence, he recovered an estate of which he had been deprived no less than ten years.

If this case had been one of infanticide the verdict would, doubtless, have gone the other way, on the ground of insufficiency of proof.

Of all descriptions of evidence, however, it is needless to say that the worst is intentional false-witness, though it is, perhaps, hardly so dangerous as misidentification, since the honesty of these who fall into this error intensifies the effect of their testimony, while that of a perjured person is often weakened by his having been the subject of suspicion.

In a few cases, testimony has been so positive, and yet so contradictory, that judges have declined to direct and juries to come to a decision. There is no example of evidence of this conflicting kind more striking than in the case of Edward M'Elroy, laborer, a lad of twenty years of age, accused, in 1825, of setting fire to a car-house belonging to his master, David Woods, near Carrickmacross, in the county of Monaghan. His employer deposed that, being awake at twelve o'clock at night, he heard a noise out of doors, and on getting up, discovered his car-house on fire, and distinctly perceived the prisoner urging the flames toward the dwelling-house.

Thomas Woods, son to the prosecutor, stated that on hearing his father call out that the car-house was on fire, he ran out naked, and saw the figure of a man at a distance running from the flames.

In defense, Charlotte Woods, eighteen, the daughter of the prosecutor, averred that on the evening in question, all the family, except herself and a servant-girl called Ellen, went to bed between nine and ten o'clock. These two slept in a small bedroom on the ground-floor off the kitchen, and the girl having some wearing apparel of her own to mend, she sat up with her, assisting her in the same—unknown to the rest of the household—until half-past eleven o'clock, when, hearing her father rise, they extinguished their candle, and began to undress: she was afraid of their sitting up being known, since he had expressly prohibited any of the family doing so.

These two had just knelt down to their prayers, when she heard a stool fall, and turning her face toward a small window which looked into the kitchen, she observed her father take a lighted turf from the fire-place and go out. The girl and herself then quietly followed him to the door, and actually saw him set fire to the car-house with his own hand, having previously set at liberty the calf and pig. She then heard him go upstairs and close his door, and after about a quarter of an hour reopen it, and give the alarm of fire.

In addition, she narrated a conversation she had overheard between her two elder brothers a night or two previous to the burning. One of them, speaking of the proposed crime, said: "It was a good plan to put M'Elroy out of the way." To which the other replied: "Yes; but I doubt my

father will go too far; he must perjure himself.” She also said that her father had previously accused her of encouraging the attention of M’Elroy, although his suspicions were quite groundless.

Being cross-examined on this point, she declared she had no particular regard for the prisoner, but had come forward actuated solely in the interests of truth and from a desire to save an innocent life. She admitted, however, that she was now living under the protection of the prisoner’s relatives, having left her father’s house a fortnight previously, at which time she and the servant, who accompanied her, had given information of the foregoing facts before a magistrate.

The servant-girl, Ellen, corroborated this statement of Miss Woods in every particular. A certain tailor also swore to the prisoner’s having come to his house on the day preceding the occurrence and remained therein from sunset to sunrise.

On the other hand, George Woods, one of the brothers in question, denied that any such conversation as had been detailed had passed between himself and Thomas Woods, and swore most positively that a close intimacy did exist between his sister and the prisoner at the bar. His brother Thomas was equally positive in corroboration of this.

Lastly, a girl named Collins, also in the service of the prosecutor, stated that she was in the kitchen on the night in question with Miss Woods and Ellen; that they went to bed in half an hour after the rest of the family, and did not mend any clothes; that she and they were all undressed and at their prayers when her master gave the alarm of fire; and that all they had stated of his conduct was untrue from beginning to end.

There must certainly have been a great deal of false swearing somewhere.

The jury remained closeted during that night and until the afternoon of the next day, when, not having agreed on any verdict, they were conveyed to the verge of the county and there discharged in the usual way.

Frank Leslie’s Pleasant Hours, 1867