

A Defense Without Evidence

Many years ago, when I had been just long enough at the bar to begin to attract notice, and to convince my seniors that it was not *always* safe to encounter me without preparation, I found myself, on a certain occasion, in the course of my circuit travels, at the village of B., a frontier county seat in one of the southwestern states.

It was Saturday evening, and court was to commence on the following Monday. I was busy in my room at the tavern—the only one the place contained—looking over a bundle of depositions in the single case I had come there to try, when a gentle tap at my door interrupted my labors.

“Come in!” I somewhat gruffly responded; for the contents of the documents which engaged my attention were not of a character to promote either amiability, or any very sanguine hopes of the case to which they pertained.

The door was timidly opened, when a plainly dressed female, young, and of a prepossessing though saddened expression of countenance, entered the room. By the courtesy of my manner, I made the only atonement in my power for a seeming rudeness for which it was impossible to offer a more direct apology, and handing a chair, I invited her to be seated. After a moment’s hesitation—

“You are Mr. C., I presume?” she said inquiringly.

“Yes, madam.”

“I have called to see you in reference to my husband,” she said in a tremulous tone; “he is to be tried at the court which comes on day after tomorrow, on a most fearful charge, but indeed, indeed sir, he is quite innocent.”

A burst of tears choked her utterance, and it was some moments before she had recovered sufficient composure to be able intelligibly to answer the questions by which I, at length, succeeded in eliciting her story.

It was briefly this:

Shortly after her marriage to William Preston, which had taken place in Kentucky, she had accompanied her husband to their present home, in the vicinity of B. For more than a year the youthful couple had realized, in their new abode, every happiness which their fondest anticipation had pictured. Their infant boy became the center of brighter and more endearing hopes, increasing, it is true, their cares and anxieties, but infinitely more their joys and pleasures, and doubly embracing their attachment by the common bonds of parental love.

One day, a traveler, worn out with fatigue and illness, stopped at their house and begged the privilege of remaining there a few days till he should have regained strength sufficient to resume his journey. Permission was cheerfully accorded; but instead of deriving from rest the relief he had expected, the stranger found himself prostrated by an attack which, for many weeks,

confined him to his bed, and from which his eventual recovery was in no slight degree attributable to the kind and careful attentions of those whose hospitality he shared.

When, at length, he was able to take his departure, the stranger, after in vain pressing on his host a suitable recompense, took from his pocket a handsome gold watch, which he so urgently insisted should he received as a present by Mrs. Preston, as to admit of no refusal.

Preston, in accordance with established custom, before taking leave of the stranger, proposed to accompany him a few miles on his way, and the two, in the presence of a neighbor who had called on some errand, rode off together.

In the course of a couple of hours Preston returned, and after devoting the residue of the day to his ordinary avocations, spent the evening, in a more than usually cheerful mood, in the society of his wife and child.

In the morning he rose at his accustomed hour, and had been already some time at work, when two men, neither of whom he knew, rode up and accosted him:

“Is your name Preston?”

“It is,” was the answer, given in a frank and unembarrassed tone.

“Then we have an unpleasant duty to perform,” said one of the strangers, both of whom had already dismounted, as they advanced and seized their astonished auditor, each by an arm.

“What is the meaning of this?” inquired Preston, who recoiled instinctively from their grasp.

“That you are accused of the crime of willful murder!” exclaimed the previous speaker; “and here is the warrant for your apprehension,” which he immediately produced.

“Willful murder!—but no, it cannot be! This is surely some terrible mistake!”

“I trust it may prove so,” returned the other, with a touch of pity in his voice; “but at present appearances are much against you. The traveler who left your house yesterday has been found murdered, and you were last seen in his company.”

“Great Heaven! But I parted with him leaving him alive and well, after having accompanied him a short distance; it surely cannot be believed that I would, by treachery and violence, seek a life which my own and my poor wife’s exertions had been mainly instrumental in preserving. Besides, this man was my friend—had become such under circumstances not to be forgotten by either of us; must all this go for nothing?”

“It is needless at present to discuss a question which must be inquired into elsewhere and at another time,” replied the officer; “it is now necessary that we search your dwelling, and that you accompany us thither.”

Without further remonstrance, William Preston yielded to the requirements of his captors, by whom he was conducted as a prisoner, bowed down and humiliated, beneath that roof whose shelter he had never before entered save with mingled feelings of pride and happiness.

It is impossible to describe the horror and amazement with which the terrified and anguish-stricken wife received the announcement of the terrible accusation which had fallen upon her husband. *She*, at least, had no doubt of his innocence, and found it impossible to conceive that it should not be equally manifest to others. With the most passionate appeals she implored his release, not seeming conscious that those whom she addressed were powerless to yield compliance.

With as much delicacy as possible, the officers proceeded to discharge their duty. In a drawer they found the watch already mentioned. As the damning effect of this discovery flashed on Mrs. Preston's mind, she exclaimed:

"Oh, God! That watch! That it should be found here!" and immediately fell swooning to the floor.

Assistance for the helpless woman was at once procured from a neighboring house; and while her stunned senses fortunately rendered her unconscious of what was passing, her husband, manacled and bound upon a horse, was led away to prison.

Such is a substantial history, in my own words, of this singular case, as I gathered it from the oft interrupted narrative of the heart broken wife, of whose sincerity, I may add, whatever might be the truth in relation to her husband's guilt or innocence, I felt fully convinced. She, I am sure, believed him innocent; and her explanation of the presence of the watch—the most pregnant circumstance against the prisoner—was given with a degree of earnestness and simplicity which it would have required an older and more case hardened lawyer than myself to discredit.

I promised to see the prisoner immediately, and make such arrangements for his defense as might be deemed advisable. Before taking her leave, the poor woman took from her purse I know not how much, but all it contained, and was about to deposit it on the table, when I gently put aside her hand, and, remarking it would be time enough to settle *that* question after my services were over.

I had an interview with Preston that evening. I gleaned but little from him I had not already learned from his wife. He seemed fully to appreciate the difficulties by which he was surrounded, and appeared quite despondent as to the issue. Of one thing he desired to assure me—and the expression of his clear, blue eye, as he spoke, was truthfulness itself—let the result be what it would, he was innocent of the dreadful crime laid to his charge.

A brother of the murdered man had come to attend the trial, who, I was informed, clearly identified the watch found in the prisoner's house as having belonged to the deceased. The case, indeed, presented few hopeful aspects. The body of the man had been found under such circumstances as to leave no doubt that he met his death by lawless violence; he was last seen in the company of the prisoner, with whom he had ridden away alone, and that a very short time

before the murder must have been committed, and within a brief period afterwards, the watch of the deceased had been found in the prisoner's house. It was what lawyers call "a beautiful case of circumstantial evidence," and I was afraid it must appear so to any one who had not heard—and the jury would have no right to hear—the simple, and to my mind evidently truthful statement of the unfortunate husband and wife.

The former was the party accused, and the law, in theory, excluded his testimony, as much out of tenderness to *him*, as because of the great temptation to falsehood offered by his situation. For if it were left optional with the defendant, in criminal trials, to become a witness or not, every prisoner would be under the necessity of testifying, and either admitting every fact which bore against him, or perjuring himself by its denial, since a refusal to exercise the privilege would be tantamount to an open confession of guilt.

But the rule of excluding the evidence of husband and wife, "*for or against each other*," at least in some of its applications, struck me as resting on a more questionable foundation. Why, for instance, in a case like the present, should the testimony of the wife be held inadmissible to establish an exculpatory fact, known only to herself and husband, in a trial involving the life of the latter, when the same law, "*from the necessity of the case*," would hold her competent in an action by her husband against a carrier to swear the contents of a *trunk* packed by herself?

But it was wasting time finding fault with the law. The rule in question was inflexible, and my only hope lay in being able, on the evidence presented by the State, and by proof of the prisoner's previous good character, to raise a "*reasonable doubt*" of his guilt.

Court opened on Monday morning; and the case in which I had been so recently retained was the first set down for trial—the prisoner having been indicted at the last preceding term. The courtroom was crowded to its utmost capacity by an eager and excited audience. The prisoner's countenance wore an expression of pensive resignation. His wife, pale and nervous, was seated by his side, anxiously awaiting the commencement of a ceremonial which involved for her and the wondering child upon her knee so much of terrible interest.

The empanelling of the jury occupied some time. I carefully exercised my right of challenge, closely interrogating each juror proposed touching his freedom from bias, and excluding all of those whose impartiality I entertained the slightest doubt.

The case was briefly and fairly opened on behalf of the prosecution; and the witnesses called fully sustained the statements of counsel. The testimony of the parties who had found the body; the statement of the physician who had examined it, describing the marks of violence which it exhibited; its identification as that of the stranger who had remained for some time at the prisoner's house, which he had finally left in the company of the latter, the last time he was seen alive; the recognition by the brother of the deceased, of the watch found constructively in the defendant's possession, and his identification of the body which had been exhumed after his arrival—all taken together made a case of fearful cogency and one which no cross-examination could weaken, for every circumstance detailed was strictly true.

At the close of the evidence for the State, the court took a recess till the afternoon. As I walked back to the hotel, despondent and disheartened, I felt my elbow touched lightly, and looking round, beheld a gray-headed negro, whom I had previously observed in the gallery of the courtroom, watching the proceedings with intense interest.

“Well, what is it, uncle?” I inquired carelessly, as the old man stood bowing respectfully with this hat off.

“Could I see you a minit alone, sah?”

“My time is very precious just now,” I replied.

“I know dat, sah; but I ‘spec I could tell sumfin dat ‘ud help data r poor massa Pressun dat dey say dey’s a gwine to hang.”

I was in a state of mind to catch at hope from any quarter.

“Let me see you at my room immediately,” I eagerly answered; “it’s No.—.”

“Yes, sah; I’s engaged in de house, and will make ‘bleeve to go up and brack your boots.”

I was not long kept in suspense. I had scarcely entered my room when a rap announced the negro’s arrival, who at once made his appearance in answer to my summons, with the implements of his ostensible errand conspicuously displayed.

His communication was brief, but astounding. At the time of the commission of the murder, the negro was a fugitive from the cruelty of a master by whom he had since been sold into better hands, and was lying concealed in full view of the spot. He had seen the stranger assailed by one who had suddenly sprung out of the thicket, and, after seizing his horse by the bridle, had felled him to the earth with a heavy bludgeon. The murderer then completed his work with repeated stabs of a knife, and, after plundering the body, dragged it out of sight, leaving the horse to wander at large, the finding of which, I had forgotten to state, had afforded the first clue to the discovery of this nefarious crime.

The conclusion of the negro’s statement fairly startled me from my seat. The murderer was one whom he knew well, and whom he had had the fullest opportunity of recognizing. It was none other than Tomlinson, the man who had seen the prisoner and the deceased ride away together on the morning of the murder, and who had just given his testimony with an air of the utmost coolness and candor.

“Dat ar’s de hole trute an’ nuffin’ else; wish I may be dam if it isn’t,” would up Sam (for that, I learned, was his name) apparently desirous, being in the presence of a lawyer, of giving his evidence in due *legal form*.

“I’d a tole it all afore,” he resumed, after a brief pause, “ef I hadn’t been afeared o’ dat ar massa Tomlinson; for he’s a desput kracter, an’ ‘ud jes as soon knock a nigger on de hade as—as a

white man; but I couldn't bar to hole in no longer; an' ef you kin make enny use o' what I dun tole, without luggin' dis chile in no mor'b you can't hep, I'd be berry glad."

I assured Sam that no harm would befall him in consequence of his disclosure, for which I warmly thanked and commended him, expressing the hope that it might not prove altogether unavailing; at the same time strictly enjoining him to keep his own counsel.

I had but a few moments left for reflection. An imperative law of the State forbad the introduction of negro testimony in any case in which a white man was the party. I felt fairly maddened at the thought that a man's life was about to be sacrificed, whose innocence was capable of demonstration at the mouths of two witnesses, one of whom was rendered incompetent by a rule of at least doubtful policy, and the other by a law, whose hideous injustice, as it then stood revealed, in spite of the prejudices of education, filled my soul with abhorrence. My resolution was speedily formed. The case was well-nigh desperate; and I resolved to venture on a bold experiment.

On the reassembling of the court, the somber countenances of the jury told me how little I had to hope, unless my newly-formed plan proved successful beyond expectation.

I was called on to open my defense. As I arose, an oppressive stillness pervaded the assembly. Everyone was curious to hear what I had to urge in reply to the apparently unanswerable case made by the State.

After briefly, but as perspicuously as possible, pointing out the inconclusiveness, notwithstanding their seeming strength, of the circumstances in evidence, I continued:

"But, gentlemen, I do not rest my client's defense solely on the weakness of the evidence adduced against him. Providence, who rarely suffers truth to be permanently obscured, or guilt to be finally triumphant, has so ordered that I am able to produce an eye-witness of the atrocious deed this day unjustly laid at the door of an innocent man."

I then, graphically as I was able, went on to describe the particulars of the murder. As I proceeded, my eye fell on the countenance of the veritable culprit, overspread with a deadly pallor, every lineament evincing the agony of guilty fear.

"There!" I exclaimed, in conclusion, pointing to the shivering wretch whose trepidation the spectators, in their rapt attention, had hitherto failed to notice "stands the real criminal, whose guilt I now propose to establish, not by circumstances, but by the direct and positive testimony of a witness present in court!"

"Call your witnesses, Mr. C.," said the judge, who possessed in a remarkable degree, the faculty of *appearing* imperturbable under all circumstances.

"Samuel Johnson!" I called out, looking up at the gallery and catching Sam's eye, "come forward and be sworn."

With a bow and a scrape, Sam presented himself before the astonished clerk, with hand uplifted in grotesque imitation of the witnesses to whom he had previously seen the oath administered.

“You certainly do not claim the right to offer *this* man as a witness,” interposed the judge, without waiting to hear the objection which the prosecuting attorney had risen to make.

“I certainly *do* claim the right to *offer* him,” I replied.

“His evidence cannot be received,” responded the judge, in his usual tone of quiet decision.

“I shall take no exception to your honor’s ruling,” I observed, “and now propose to submit the case without argument.”

The opposite counsel assented, and after a brief charge from the court, in which the jury received the customary caution to look only at the evidence before, no allusion being made to the extraordinary scene they had just witnessed, they were directed to retire and consult upon their verdict.

They returned after a brief absence, but the interest of the case had already subsided. Though Sam’s evidence had been judicially excluded, the effect produced by its rehearsal, and the precipitate flight of Tomlinson, had evidently settled the question. The words “NOT GUILTY,” pronounced by the foreman, were drowned, as if by pre-concert, in a simultaneous burst of applause, for everybody knew what was coming.

Tomlinson was subsequently arrested in another state, and identified as the party who had drawn the money on a check recognized by the brother of the murdered man as having been in the possession of the latter at the time of his departure from home. A subsequent confession removed all doubt of the prisoner’s guilt, and in due time the law’s dread penalty was exacted without misgiving as to its justice.

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