

The Silent Witness

From a Lawyer's Diary

by Sylvanus Cobb, Jr.

I HAD SPENT some years in the West, in the practice of my profession, and was on a visit to my friends in New England. Among those who came first in my list of friendship was Fred Elliott, and I arranged to visit him as soon as I could. Fred and I had grown up together as boys; we had entered college together; had graduated together; and when I entered upon the practice of law, he entered his uncle's store in the capacity of bookkeeper, with a good prospect ahead. And there was another tie between us—a near and dear one—near and dear to us who were both orphans, and who had few relatives living: Fred had married my own cousin—sweet Hattie Keene. He had married her since I was away, though the event had been upon the docket a long while before. And thus I was to meet two of my dearest friends beneath the same roof.

It was just dark when the carriage left me at the door of the house which had been pointed out as that occupied by my friend; and which I at once recognized as the former home of old Timothy Elliott, the “uncle” of whom I have spoken. My summons was answered by a light, quick step upon the hall floor; and when the door was opened I recognized the fair, fond features of my dearly remembered cousin. She was five years older than when I saw her last, and had grown to be a little more womanly, and a little more sedate. In fact, she had put on the holiest of all female characters—that of Mother. The beauty, the life, the animation, the smiles, of other years were not gone; but they were elevated with, softened by, and blended into, that nobler character. At first she did not know me; but when I called her by name—when I called her HATTIE, as I used to in the old times—she caught me by the hand, and, in a moment more, had both her white, soft arms about my neck. She was a sister to me in heart and soul, and with a sister's love she greeted me.

We went into the parlor, where an astral lamp was already burning upon the centre table, and where a fire was reflecting a genial warmth from the polished grate; for it was autumn, and the evenings were quite cool. Upon a chair, near the table, sat a little boy, of some three years, playing with the richly ornamented bridle of a rocking horse; while upon the carpet was a gleesome child, not yet able to walk with safety, engaged in tumbling about a large marten muff. And these were Hattie's children—two as bright and beautiful things as ever made music in an earthly house. She told them that I was their Uncle Enoch. She had neither brother nor sister, so I was forced to be an uncle to her children.

Where had I been? What had I been doing? How had I been? Was I married? Did I ever mean to be? And a hundred more questions of like character were showered upon me before I had time to ask any in return. By and by Fred came. There was a cloud upon his face when he entered the room—I saw it very plainly—but his wife hurried to his side, and kissed him, and whispered in his ear, and in a moment he brightened up; and, when he greeted me, and held my hand, and patted me upon the shoulder, he appeared the same warm, genial spirit as of old. At the tea table he asked after my fortunes in the distant home I had sought; and when I told him that I had

succeeded beyond my most sanguine expectations, and that material wealth was rapidly accumulating for me, he was not only pleased, but intimated that such business and such prospects would suit him.

I laughed outright at what I considered the absurdity of this last idea. It would do very well, I told him, for a poor fellow, with only his two hands and his wit to help him, to go off into the western wilds; but for one like him, with an independent fortune at his command, to think of such a thing, was simply ridiculous. He smiled as I spoke, and turned the subject of the conversation.

Within an hour after we adjourned to the parlor I was sure that something had gone wrong with my friend. He tried to be cheerful—to talk of our old pranks—and to laugh and joke as in the days of earlier youth; and, as a last resort, he endeavored to arouse himself in caressing his sweet children. But it would not do. I had seen too much. Hattie succeeded better than he did; and yet, as the evening wore on, I could see that there was a heavy load upon her heart as well.

At length the children were abed, and the mother soon followed them. I plainly heard her sob as she left the room; and a smothered groan, which could not escape me, burst from her husband's bosom. Fred poked up the coals, and then took two or three turns across the floor, after which he returned and sat down near me.

“Enoch,” he said, his face now all wrapped in gloom, “perhaps you think I act very strangely.”

“I think something is the matter with you,” I returned. “Something must have gone wrong.”

“You are right. Something has gone wrong. In fact,” he added, as a shudder crept over his frame, “a storm has burst upon me, which is to ruin me!”

He spoke this so solemnly, and so steadily, that I knew there must be some deep meaning to it; and I asked him if he could tell me his trouble. Of course he would tell me. He was anxious to tell me; for I was not only one of his dearest friends, but I was a lawyer, and I might possibly assist him.

“You know,” said he, “that I went into business with my uncle Timothy. When I was married, he made me come and live in his house; he put the whole establishment into our hands, and then he boarded with us. I had no money—not a dollar; but when I had served him one year as bookkeeper, he gave me a good share in the business. Three years ago he died, leaving an estate of about sixty thousand dollars.”

“Aye,” I replied, as my friend came to a pause, “I heard all of that. There were sixty thousand dollars of good, available funds, after everything was settled.”

“Yes,” said Fred.

“And,” I added, “you came into possession of it.”

“Yes,” he answered. “There was no will left; or, at least, such was supposed to be the case; and it all came to me, as I was the only near blood relative living. Uncle Timothy had one brother and one sister. He married when quite young, but his wife died without issue. His sister married a man named Isaac Staffer. This Staffer had one son living by a former wife, but he never had any children by my aunt. He died at the end of two years, leaving her with no means, and she found a home with her brother, taking her stepson with her. In time she died, and the boy was left in my uncle’s charge, who kept him until he was one-and-twenty. So much for the sister. The brother married, and had one child, and that child was myself. You know of my parents. My father died when I was a mere child; and my mother died before I graduated. So, you see, I was the only heir to be found. In fact, I was the only representative of Uncle Timothy’s blood.”

“Certainly,” I said; “and of course the whole property fell to you.”

“Yes,” he replied; “and it was given to me; and I took possession, and have opened into a flourishing business. Upon the strength thereof I have entered society, and responsible offices have been put upon me.”

“Well,” said I, as my friend paused again, “what has happened to disturb all this?”

“I’ll tell you,” he returned, starting from a moody reverie, into which he had fallen. “Don’t you remember that my father and Uncle Timothy once had a serious falling out?”

“Yes,” I told him. “I have some recollection of it; but that was a good many years ago. We were boys then.”

“Aye—it was near twenty years ago,” said Fred; “but I remember it very well, for I remember how badly it made my mother feel. The estrangement lasted some years; and during that time the bitterness was very strong. My uncle declared that he would have nothing more to do with his brother; and, under the influence of this feeling, he made a will, conveying the great bulk of his property to John Staffer, the son of his sister’s husband. You remember that?”

“Yes,” I said. And I did remember it very well; for the thing made considerable talk at the time; and the more so, because Staffer, who had married Timothy Elliott’s sister, had not been considered much of a man, and it was not generally supposed that the boy, whom he had left upon the care of his wife’s relative, gave any promise of a valuable life.”

“And,” pursued Fred, “you probably recollect that, when my father was very sick, Uncle Timothy came to him, and the quarrel was thrown away, and from that time, while my father lived, their brotherly love was warm and generous.”

“Yes, I know all that.”

“Well—at that time my uncle spoke of the will he had made, and said he should destroy it; and I believe he did. In fact, I know he did. I know it as well as I know anything which I did not see with my own eyes. Before my uncle died he told me that he should make no will, for there was no need of it. He said I was the only lawful heir, and that was enough.”

“My uncle died, and I came into possession of the property; and I have enjoyed it, and have tried to do good with it; and as the years have passed on I have added something to the original fortune, for I have been careful and prudent. In a dark hour, however, a storm has burst upon me. It seemed only a cloud at first; but it has proved a fearful one. John Staffer has returned. He went away ten years ago—went away because my uncle would not give him a home any longer—and has not been back since until within the last year. He has come, and he has laid claim to my property. He claims the whole of it!”

“But how?” I asked, as my friend stopped to take breath.

“You remember Stephen Akers, the old lawyer?” asked Fred.

“Aye,” I replied. “I know him very well. He has been out West, and done some business there; but he can do no more where he is known, for he has proved himself a villain.”

“Ha—do you know this?” cried my friend.

“Yes—I do know it. But what has he to do with you?”

“I’ll tell you. In the first place, he used to do business here; and my uncle employed him some.”

“I remember that.”

“And it was he who made that old will for my uncle.”

“Yes—I recollect it now.”

“Well,” continued Fred, “this old villain of a lawyer came back here about six months ago, and ere long he and John Staffer had their heads together. In a little while Staffer came out and laid claim to my uncle’s property; and when he was asked what he meant, he produced a paper which appeared to be the last Will and Testament of Timothy Elliott. And Stephen Akers swears that this is the same will which my uncle made many years ago, and that it has been in his charge ever since. He says that when he went away to the western country he overlooked it among his other papers, and took it along with him. He furthermore declares that he received several letters from Mr. Elliott, asking him to be careful with the will, and keep it, so that it could be brought to light in case of need.”

“Of course,” said I, “this will must be a fraudulent one.”

“Most certainly it is,” returned Fred. “And yet it has been admitted to probate. The judge has accepted it.”

“And how stands the case now?”

“I have appealed, and it goes up to the Superior Court; and, moreover, the trial comes off tomorrow. For myself, Enoch—if I were alone in the world—I would care little, for I could put forth my energies anew; but for my wife and children—O! O!—It is hard! Hard!”

He buried his face in his hands, and wept aloud; but, in a little while, he became calm again, and I questioned him as I saw fit. Another witness to the will beside Stephen Akers, was living, and he had testified that he believed the instrument now produced was the one to which he put his name. In short, the case looked dark enough; and I dared not give my friend much hope. Yet I promised to think of the matter, and be present with him at the trial.

On the following morning I got away as soon as I could, for I could not bear to witness Hattie’s grief; but I promised to come back again; and, as I held her hand at the door, I told her to keep up a good heart.

An uncle of mine, named Ansel Forbes, a brother of my mother, was in town on business, and I meant to see him. He was a paper manufacturer, and worth a handsome property. I found him at his hotel, and passed a happy hour with him; for I had been his pet in boyhood, and it was by his generous bounty that I went through college. I told him about the trial which was coming off, and he said he meant to be present if he could. He had been well acquainted with Timothy Elliott, and he was firmly convinced that the only will which Elliott had ever made had been destroyed.

When the hour of trial had arrived it was announced that I would assist in the case, and I took my seat with the counsel already engaged. As the trial went on, it did certainly look dark enough for my friend. Stephen Akers, a dark-browed, foxy-looking man, with hair of a grizzled red, which stood out like hedgehog’s quills upon his small head, swore that this was the will which he, as Timothy Elliott’s attorney, had made eighteen years before; and that it had been in his possession ever since, until he had lodged it in the Probate office. And he also swore to the receiving of letters from Elliott, bidding him to keep the will safe. There was no getting around his testimony. It was plain and direct, and we could not break through it.

An old man named Jackson, who had been one of the witnesses to the old will, testified that he believed the instrument now before him was the one to which he had put his hand. He should say that that was his own signature. He was an honest old fellow, and admitted that he had always supposed that the will had been destroyed.

For our client we as yet had nothing of clear, plain facts to help us. We had any amount of *impressions* and *opinions* in our favor. It had been the impression of all Timothy Elliott’s intimate friends that the will which he made had been destroyed. He had talked to them in that way. And yet, not one of them could swear that they ever heard him say, directly, that such was the fact. In short, though the belief in the destruction of that will was so general and so firm, yet we could not present to the jury a **FACT** to sustain us in the decision.

Had the counsel for the appellant any more testimony to introduce?

Fred placed his hand, trembling like an aspen, upon my arm, and whispered:

“O, my soul! I am lost!”

He was pale as death, and his suffering was intense. As the case now stood, I could have no hope. Whatever may have been the opinion of the court and the jury upon the right and justice of the thing, there could have been but one opinion upon the law and the fact. My heart sank within me.

Were the counsel for the appellant ready to rest their case?

I held the will in my hand. I believed it to be a forgery. I believed that the only will which Timothy Elliott ever made had been destroyed, and that Akers, in consideration of a share in the spoils, had, from the old draft in his hands, forged this instrument, counterfeiting even Jackson’s signature so nicely that the simple old man could not disown it. I was about to give the instrument up, and my last faint hope with it, when a dim mark in the corner of the sheet caught my eye. I examined it more closely. It was a stamp—an impression upon the paper—not so large as the mark of a finger’s end; but I caught at it, and solved it. Then I bent my head for a moment, to call to mind something of the past.

“What is it?” asked Fred, who had noticed my emotion.

I told him to wait. And then I arose and looked around the courtroom. Was my uncle there? Yes. I saw him close by me. I asked that Stephen Akers might be called to the stand again. The wretch saw that I was excited, and he trembled a little when he started in answer to the call, though he was firm enough when he had gained the stand.

“Mr. Akers,” said I, controlling myself as well as I could, “you made this will?”

“Timothy Elliott made it,” he replied. “I wrote it down for him as he dictated.”

“This will is dated,” said I, looking at its sign and seal, “‘*October third eighteen hundred and twenty-three.*’ That is eighteen years ago this very month.”

“Certainly,” replied Akers. “That is just when it was made.”

“And you swear that this is the identical instrument?”

“I do.”

“And you swear that Timothy Elliott set his hand and seal upon this paper at the time herein mentioned?”

“I do,” answered the witness. I looked him in the eye, and he must have read in that look something of my thoughts, for his countenance changed and his knees shook beneath him.

I told him that I had done with him.

Then I asked that Ansel Forbes might be called to the stand.

What did I want of him? And my uncle was also anxious to know why he was called upon. But I asked him to please me. So he went up. All eyes were turned curiously upon him, for he was as well known, and stood as high as the Judge himself.

“Mr. Forbes,” said I, “you are a manufacturer of paper?”

He said he was.

“How long have you been engaged in that business?”

He thought for a moment, and then replied:

“I entered the business in eighteen hundred and thirty-one; so I have been in it just ten years.”

“Now, sir,” said I, handing him the instrument which I held, “will you tell me—will you tell the jury—*when that paper was made?*”

He took it, and the moment his eye rested upon it, he started. He gazed upon it more closely—he examined the stamp upon the corner—and then, in a bursting, amazed tone he cried:

“I MADE IT MYSELF!”

“*When? When?*” I demanded.

“It could not have been over nine years ago; *for here is my mark—MY NAME—*upon it, as I alone have ever stamped paper in this country!” And he showed to the court and to the jury, the mark which he had detected. It was plain enough now—a little oval impression, with the name “A. FORBES” embossed within it. It was defaced and soiled, but not obliterated.”

Stephen Akers was trying to make his way from the courtroom, but the deputy brought him back.

Two wholesale paper dealers were summoned, and when they examined the paper they at once recognized it as of Ansel Forbes’ manufacture. They knew it—there could no question.

And thus, almost miraculously, was the whole current of the affair changed. We gave the case in, and in a very few minutes we had the verdict.

That evening Hattie hung about my neck, and blessed and thanked me until I fairly cried. And Fred, when he tried to speak of what had passed, at once broke down under the weight of joy and gratitude that was upon him. He was safe—his fortune was safe—and his wife and little ones were still blessed.

Some asked me how I happened to detect that little silent witness away up in the corner of that paper. I answered them, that my uncle gave me half a dozen reams of that same kind of paper

when he commenced making it, and I had been using it ever since; so the stamp was very familiar to me. The forger had selected for his wicked purpose a sheet of respectable age; but it had not proved quite old enough to answer the date he had put upon it.

Master John Staffer got off, and went to sea again; but Stephen Akers found his way to the State's Prison, where, for a term of years, he was forcibly restrained from cheating his fellow men.

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