

Recollections of a Retired Lawyer

RECOLLECTIONS INTRODUCTORY

I brought away from the practice of my profession nearly the full measure of reverence for it, with which I commenced the study at nineteen. And that measure exceeded even the reverence attributed to honest Dandie Dinmont; of whom it is written, that in his heart, next to his own landlord, he honored a lawyer in high practice. Not one of my teachers—neither he who carried me, cyphering, through the Rule of Three, nor any of those who taught me Greek, Latin, and Mathematics, —no, nor our neighborhood preacher himself—ever half so filled my soul with idolatrous emotions, as a certain eminent barrister did, who sometimes, in going to or from one of his courts, called to spend a night or a day at my father’s house. In conversation he was capital: fluent, copious, and lively; full of anecdote, drawn from both life and books; duly fond of fighting his forensic battles o’er again; and in the opinion, as well of my father (who was no bad judge) as of all our public, —one among the truest of men, and safest of counsellors. At the bar, he ruled juries, and some courts, with absolute sway, by his ingenuity, eloquence, and reputation for knowledge and honesty; insomuch, that (as was said of a great Edinburg advocate) any litigant thereabouts would have deemed it ‘a mere tempting of Providence to omit retaining’ John Mason. With talents which, had he been ambitious would have raised him to what dignity he pleased, —the more readily, as his political opinions were of the popular cast—he never sought office, and therefore never held it; for the days of Regulus and Cincinnatus, when consular robes went to seek retiring merit, have not been our days. When solicited to stand as a candidate for Congress, he constantly shrunk back, appalled at the obloquy sure to bedaub public men, and disgusted at the base compliances which general usage or party discipline exacted from them. The life of an independent country lawyer was the life for him. In serving his clients, whom he served just as ably when they could pay him no fee as when they paid him hundreds—in scourging fraud, as he always did when it came in his way, without ever abetting it, even in a client—in vindicating wrongly-accused innocence, and sometimes (it must be owned) in screening guilt behind the ægis of his eloquence in the bosom of his happy family, the enjoyments of friendship, the sports of the field, and the pursuits of literature—he found pleasures, oh, how little known to those who tread the steep yet miry path, leading to the bright, bleak, and barren summit of vulgar ambition! Still, he was not indifferent, far less ignorant, on public questions. He examined them all thoroughly; reading for that purpose, the newspapers on both sides, with the impartial eye of one who looks only to truth, and the public good. Oftener than once, at critical junctures, he addressed the people in resistance or in support of men or measures that appeared dangerous or beneficent; and with those auditories, no antagonist could ever withstand him. It may seem strange to many, that being so gifted, he should have so shunned those walks, wherein his endowments might have displayed themselves in their full amplitude and luster. He held not only political distinction, but the very professional trophies which every court-day brought him, as of little worth, compared to the joys of society and the chase. Our house was one of his resorts, at proper seasons, for hunting. I attended him and my father afield, from the time when I was able to carry a hare, or half a dozen partridges; and it was he, John Mason, who, in my eleventh year, placed a gun in my hand, to fire at a flock of larks, of which I killed three—my first exploit at gunnery. Those three birds were veritable *opime* spoils to me. Their killing was an epoch in my existence. From that day, for ten good years, the great theme of my thoughts and dreams, was hunting. Yet it was not alone that mastering passion, it

was rather the blandness of his tone and the paternal fondness of his whole manner, —that printed on my heart his words, as, upon my begging him to let *me* shoot, he handed me the gun; “that you shall, my dear boy!” —At fifteen, I was his rival in winging game. But our chief strife was in deer-hunting. He preferred my father’s big gun, called “Ben Bowles,” that would chamber five buckshot, and carry forty at a load. I used the rifle. With these, and six good hounds—But I am garrulous; let all this pass.

John Mason died, a year before my law-studies began; disappointing all my well-founded hopes of advantage from his instructions, and his matchless example. Undesignedly, however, he gave me lessons which were of the most signal use; lessons, contained in what I myself remembered of his manners and character, and in the innumerable traits of integrity, benevolence, and high bearing, long preserved by tradition through the whole country-side. A most important influence those lessons have exercised upon my life. If my professional deportment was at all remarkable for the absence of these foibles vulgarly ascribed to lawyers; if, when consulted about the propriety of bringing a law suit, I always rigidly cross-examined my client touting the grounds of his claim, and dissuaded him from proceeding when I found it ill supported; if the suits which I thus prevented, were more than the many which I carried through; if I ever disdained pedantic display, appeals to prejudice, misplaced pomp of language, and every form charlatantry; if I invariably strove to avoid misrepresenting either the facts in a case, or the argument of an adversary; if I was ever careful to lay down as *law*, to court or jury, nothing, save what I knew or believed to be law; if, instead of attempting to brow beat or abash younger lawyers, I did all in my power to encourage and assist them; if I never tried, by laughing, or grimace, or interruption, to impair the effect of an adversary’s speech; if clients much oftener wondered at the lowness than complained of the exorbitancy of my fees, while I was always anxious rather to overgo than fall under the charges of my brethren; if I never would gratify an employer’s ill nature by wounding the feelings of an adverse witness or party; nor could be deterred by any personal danger, from lashing fraud, perjury, or impertinence;—it is all owing more to John Mason, than to any other human being, except my parents.

My early reverence for the profession of the law is now explained. Identified in my thoughts with John Mason, it could not but appear to me a sanctuary of the virtues. Nor has experience, the great dispeller of youthful visions, taken much away from the mass of my esteem. The law has its anomalies; what inexact science has not?—but in the reasonableness and happy fitting together of its principles; in their applicability to endlessly diversified facts; in the beauty and aptness of its analogies; in the delicate nicety, yet clearness, of its distinctions; in the multitude of subjects with which it is conversant; in the number, as well as magnitude, of the interests it guards; and in the noble field of exercise it affords to the highest and best faculties of the human mind; the law leaves all other sciences, all other professions, immeasurably far behind. Its votaries, too, if comprehensively viewed, are worthy ministers at such a shrine. Ridiculous, and evil traits, undoubtedly, many of them have. Brought daily into contact with depravity, and forced to see, often, in those whom the world believes immaculate, the lawyer runs a fearful risk of infection; nor does he always escape. But when he does escape, his quality is like trebly refined gold—pure, bright, and precious. And, whether it is, that lawyers generally see the frightful mien of vice so palpable, as to hate and shun it of course; or that their professional training and practice contain some antidote to the poisoned atmosphere they breathe; or that their professional training and practice contain some antidote to the poisoned atmosphere they

breathe;—so large a proportion of them actually do escape the threatened contamination, that whoever meets a lawyer, feels reasonably sure of meeting a man of honor, as well as of intelligence. The instances to the contrary are exceptions to a general rule; and the wittings, here and in England, who have made such instances the pretext for throwing odium or ridicule upon the whole fraternity, rank but with the saucy joster who held up Socrates to derision, or the punier ones who have circulated the numerous current witticisms in disparagement of woman-kind. In looking for genuine representatives of the legal profession, a candid investigator will turn not to such impotent abortions in morals or intellect, as appear now and then at the city and country bar; but to those who tread emulously (no matter, whether conspicuously or not) in the foot-steps of D'Aguesseau, Somers, Erskine, Sir Wm. Jones, Quincy, John Adams, Wythe, Wirt, and Marshall.

Law-practice has one unhappy effect, upon many of its virtuous followers; in leading them to think ill of human nature, from the obliquities they behold. This, however, rarely happens except to those whose digression is bad, or who have been defeated in some political aspiration. A few, I have known to acquire this form of misanthropy from mistaken views of religion and the Creator; and one or two, from having been early imbued with the head-wise but heart-foolish Maxims of Rochefoucault. The judgement of these lust, has an affinity to that of knaves; whose discolored optics naturally transfer their own hues to whatever they contemplate those who have Juvenal's cardinal object of prayer— a *thoroughly* sound mind, in a sound body, —learn to make allowances for human weakness; to know how hard passion is to resist, when it concurs with tempting opportunity; to perceive that much of the villainy apparent to a lawyer, is seen through the blackening and distorting medium against the worst man's worst actions, some partially redeeming virtue, which even *he* is sure to possess. The vilest I ever knew—one who was universally deemed well worthy of the penitentiary, though his cunning always kept him out of it, and whom it was my lot once to expose and scourge before a jury so that they utterly discredited his oath, for his notorious perjuries, —had yet so kind a heart, that he was known to share his last dollar, and was ever ready to divide his last loaf, with a distressed fellow creature. Nay, so little prone was he to malice, that even towards me, who had repeatedly been obliged to gall and thwart him, he preserved I believe, something more than the semblance of good feeling.

Few lawyers practice long and with tolerable success, without witnessing, and being actors in, scenes or incidents more striking, by their pathos, or their comic power, than many which have made the fortunes of novelists and play-wrights. Strangely ingenious villainies, defeated by chances or devices no less strange; crimes, brought to light and sometimes to punishment, by oddly combined circumstances, or shielded by professional skill and eloquence; unexpected turns of evidence, covering the most hopeful suitor with blank dismay; displays of simplicity or of humor in witnesses or counsel, that set the court room in a roar; instances of sordidness, fraud, generosity, integrity, at which it were doubtful whether the laughing or the weeping philosopher might give the more scope to his propensity; these are a few of the objects which pass before the lawyer's eyes—a living drama and romance, where a sensible man may learn more of human nature, than from a dozen Shakespeares. I have had my share of such incidents. These, of which (I could say *almost* with Father Æneas) “I *saw* all, and *was* myself no small part,” I have occasionally narrated to my children and grandchildren; who flatter me into the fancy that what they have so eagerly listened to, may equally please strangers to my name. Possibly, too, good may be done by putting honesty on its guard against fraud, and showing how to unmask knavery.

Whether my memory, or my skill in selecting and arranging the facts I tell, will suffice to make them interest a reader as they have done my partial auditors, is very questionable. It is harder, for most people, to tell a story passably on paper, than by word of mouth. My eldest daughter's eldest daughter, however, promises to overlook my handiwork, correct the punctuation, improve the language where needful, and then read it to her mother, who is to act the part of Moliere's old woman, in deciding whether or not the piece will suit the public taste or not. Emboldened by their assurances of success, and promises of help, I begin. But let me advertise the reader, that if he meets any fine flourishes, of sentiment or of diction, in these narratives, they will be chargeable not to me, who am a plain writer, and a matter-of-fact man; but to the clever hussy aforesaid, who will retouch and "improve" (as she says) all my effusions. Her style is sometimes too ambitious: a rare fault in women.

Recollection I.

THE PLEA OF INFANCY

In the year 17**, a young man named T— E— commenced the trade of merchandise in a county adjoining his native one of B. His capital was not more than four or five hundred dollars; and his stock in trade consisted only of a barrel of sugar, a bag or two of coffee, two casks of whiskey, one ditto of hard cider, some nails, bar iron, and half a dozen small "notions," such as pins, fishhooks, &c. &c. Nothing particular was known of him, in that neighborhood, though some of the wise heads had been occasionally shaken at the idleness of his life. It had certainly verged upon dissipation. His father had never controlled, never usefully employed him; but had suffered him to raise pocket money in the three stages of childhood, boyhood, and youth, successively by selling hare-skins and raccoon-skins, and by gambling. He was at times a roystering, turbulent blade, as ever pitched a dollar or drained a glass; but, like most "do-nae-gods," he could be, when he pleased, smooth and specious in word and manner, as Belial himself. He was moreover handsome; of precisely that feminine beauty, which in any *man* is apt to betoken a light mind and frivolous character, but in one whose lot of life is low, hardly ever fails to indicate, if it does not cause, utter good-for-nothingness.

Such was our young merchant, but none of his new neighbors dreamed of half the ill that was in him: the good was on the surface, and everybody was captivated by it. Never had so small a grocer, so large a run of custom. His sugar and coffee had to be renewed every two months, and his whiskey every two weeks. E—'s "store" became the favorite haunt of all the good fellows within five miles around. All Saturdays, and many other days beside, were devoted there to tippling, pitching with dollars or with flat stones instead of quoits, play "old sledge" (or "all-fours") with dirty, greasy cards; quarrelling and fighting. E. was the inspiring genius of every such frolic, not only by dealing out the liquor, but by mixing with the drinkers, and driving forward the jest, the laugh, the game; nay, sometimes, (for he could *bully* very plausibly) the quarrel and the fight. If *he* ever himself fought, it was in a very slight way, merely to maintain a reputation for *spirit*, which was indispensable to a good standing, in that region. It never lost him a friend, or gained him a black eye for more than three days. He was the darling of the toppers. He was so gay, and frank; his laugh was such ready chorus to all their jokes; he poured out his good drink for them so ungrudgingly, not only while their money lasted, but so long as they had a cow, or a feather bed at home; he took such care of them when they were overcome with liquor—helping to lift them from the floor, where they would be trampled upon, to his own bed in the counting room, and when that was full, to a snug corner, where they might lie and v—!

Then, if one of their horses at night-fall, tired of standing all day, gnawing the fence rail to which he was tied, happened to get loose and set off homewards, E. was sure to catch him and secure him for the night, either by tying him to the same stake again, or by putting him in a pen hard by; often, too, throwing him several cornstalks to browse upon—which the animal, if it were only for variety's sake, relished better than the rail. There was nobody like T— E—.

The women of the neighborhood, one might well think, would be with most difficulty won over to E.'s interest. Their discomfort certainly increased with his trade. Husbands and fathers were oftener and oftener seen staggering home, with red bloated faces, shiny, stupid eyes, their whole persons exhaling insufferable odors, and their tempers ready for furious out-breakings. Female wailings were sometimes heard, on such occasions. Mothers began to wear clouded countenances, and lift up deprecating hands and eyes to Heaven, when they heard their grown up sons talk of going to E.'s store: daughters hung their heads, and almost hid their faces in their long-eared calico bonnets, to conceal their sorrow and bruises, as they entered the meeting-house on a Sunday after one of their fathers' convivial Saturdays: and wives drooped in silent, unutterable woe, under the brutality which was now requiring the surrender of their young hearts, and the constant devotion of all their womanly energies. Yet, unaccountably, they did not view T— E— as the author of their griefs. It had always been the custom, that every man who could find his account in selling spirits, should do so if he pleased. He had never been regarded as a mischievous tempter; nor had any of the misery he caused, been laid at his door. Besides, E., personally, was so pleasing—he flattered the dames and flirted with the lasses so winningly—he was so demure and moral when it was his cue, and so handsome at all times—that he was no less a favorite with the women, than with the tippling men.

Among his female friends, was a widow woman, who became desirous to turn her little farm and farming stock into money, which she thought would yield her a more certain and easy support. So infatuated was she with the manners and ostensible character of T— E—, that she suffered him to be the purchaser, at the price of 1500 dollars, upon his own, unsecured bond, for paying her an annuity during life. It never occurred to her that this flourishing merchant and charming young man could possibly be insolvent; nor (what proved more material) that he was not of an age to bind to bind himself by a contract.

For one or two years, the annuity was duly paid; but for the third and fourth, it was unpaid; and, all other means having failed, the bond was placed in my hands, "to be collected by suit." The suit began, and proceeded to that stage, at which, if no defense were made, a judgement by *default* would be confirmed against the defendant. Just at that stage, by counsel, entered his appearance, and pleaded *infancy*; i. e. that when he made the bond, he was not twenty-one years of age. The case was laid over till the ensuing term, at his instance; the loose practice then prevalent, not requiring him to make affidavit that his defense was just—else, in all probability, he would have so sworn.

At the next term of the court, when the cause was called, both parties announced themselves ready for trial. My client had for her agent a kind neighbor, who saw to the summoning of her witnesses, and served as a link of communication between her and me. Her adversary was present in person, prompting his counsel, and holding earnest conversations with his only witness—his father—who stood near, with a pury book like a Bible, under his arm. As we could

neither allege that the obligation had been given for *necessaries*, nor that the defendant had confirmed it by any promise made since he came of age, there was no alternative but to dispute the fact of infancy. The great question to be tried therefore, was, whether he was under age or not, when the bond was made?—In opening the case, I stated to the jury the nature of the transaction; exhibited the bond; told them what question they were to decide, and that the burthen of proof was on the defendant, to show his infancy; touched briefly upon the general dishonesty of that defense; adjured them because of that dishonesty, and because this money was literally *the all* of my poor widowed client, to be satisfied with none but the most clear and convincing evidence of what her debtor alleged; and then recited the circumstances on which I relied, to repel his allegation. These were merely, that he had transacted business with many persons on his own account; that his father had not, for a year or two before his becoming a merchant, exerted the slightest authority over him; that his features and appearance were those of an adult; and that he had voted in an election previous to the date of the bond.

The defending counsel then rose, to make the opening statement on behalf of his client. He justified the young man for pleading infancy, by the general good policy and presumed justice of the law which authorized it, and by the particular fact that in this instance he had, through inexperience and youthful confidence, been induced by the plaintiff's artful representations, to offer her twice the value of her property. As to the question of infancy, the learned counsel said (with an air of undoubting triumph) that he would offer proof which would defy all my ingenuity to parry or elude, and any amount of skepticism in the jury to disbelieve; proof, by the oath of his client's own father, a man of unimpeachable character, that on the day when the bond bore date, the obligor was only nineteen years and some months old.

This was what I feared. The old man was sworn in solemn form (and methought the clerk propounded the oath with unwonted solemnity) to speak "the truth, the whole truth, and nothing but the truth; so help you God!" He was then desired by my adversary to tell, if he knew, on what day of what year his son, the defendant, was born?

I objected to his answering the question, if there was a *register*, anywhere, of the son's birth. The register itself must be produced: no other evidence was admissible.

The court assented to my proposition. The adverse counsel and client exchanged sly looks of triumph. Their witness too, looked wise and self-important, as, with an air which said "I expected it—I am ready for you"—he produced from under his arm the pousy book above mentioned.

"Here's my son's birthday, written by me with my own hand in this here Bible. It's my own handwrite."

"Read it," said the counsel.

The old man put on his spectacles, and read an entry, importing that "T— E—, son of the above" (meaning his parents, whose marriage was noted on the same page) "was born on such a day, 17**; being just nineteen years, eleven months, and six days, before the date of the bond.

“When did you write this?” said the counsel.

“The very day after *he* was born,” said the old man, nodding at his son.

“You are clear and distinct in your recollection of that?”

“O yes; for I’ve had the Bible ever since, and read over this register a thousand times.”

“Very well,” said the counsel again, and with a big, exciting look: “I am satisfied—and so, I presume, are the jury. But perhaps, Mr. W. You *still* wish to cross-examine the witness?”

I certainly did wish to cross-examine him; and said so. Meantime, I had scrutinized the old man’s Bible. It had no pages marked off between the two testaments, for a FAMILY RECORD, as modern Bibles have: the register of marriages, births and deaths, was written on a blank leaf at the beginning. It was observable, that all entries, though purporting to cover twelve or fifteen years, were not only in the same hand, but made with ink of exactly the same color. Several different pens did appear to have been used; but this, it struck me, might be only a finesse, to make the time of writing seem different. The identity of ink and handwriting, was extremely suspicious.

“Mr. E—,” said I, “upon your solemn oath do you say, that you wrote this entry of your son, T.’s birth, here in this Bible, on the very next day after he was born?”

“Yes, if I was to die this minute, I say so!”

“And did you write these other registers?”

“I did—at the partikkler time every one of ‘em bars date.”

“Then, if so, why is the ink in the *last*, exactly as old-looking as the ink in the *first*, which, you say, is fifteen years older?”

“I don’t know—the long time, I suppose, had made ‘em all look old alike. Can *you* see any difference in teeth, betwixt a horse that’s fifteen and a horse that’s twenty? Besides—the ink is pale, and here was a different *pen* marks; that’s evident.” And his counsel, delighted with his reply, held the book ostentatiously towards the jury; who seemed but too much of the old man’s mind.

Staggered but not desperate, I again took the Bible, and turned to the title page; where, to my surprise and joy, I saw that it had been printed only ONE YEAR *before the bond itself had been executed!* The book had not existed, until nineteen years after the time when, as the father swore, he had there registered his son’s birth!

Hiding my joy, however, and composing myself as much as possible, I again, by reiterated questions, made the poor old man repeat, beyond all chance for retraction or denial, his well conned story; and then, by reading aloud the printed date in the title page, and showing it to the

jury, I satisfied them that the book had been bought, and the entries made in pale, oldish colored ink, with pens purposely varied, *since the present suit began, and for this very occasion.*

The wretched father sunk down in confusion, upon the witness bench. Without leaving their box, and without another word of testimony, the jury found a verdict for the plaintiff.

Still the judgements could be final only for the two delinquent instalments of the annuity. For future instalments, a resort to the court again and again would be necessary. And to satisfy even the present judgement, the caitiff debtor had no personal property upon which an execution could be levied. I therefore caused an execution to be issued, which as I expected, was returned "*no effects.*" I then filed a bill in equity, stating the facts; and praying that the *land* which my client had sold, might be applied to pay its own purchase money. As no security had been taken, and E— had not sold the land to any third person, her "vender's lien," for the purchase money was held valid: the farm was decreed to be sold on terms very similar to those on which E. had bought, but the new purchaser was required to give *good* security for his payments: and my client spent the rest of her days in tolerable comfort.

All who have read Miss Edgeworth's admirable "PATRONAGE," must remember an incident somewhat similar to this which I have narrated: the forgery of a will, detected by finding, under the wax of the seal, a sixpence coined long, long subsequently to the date of the will. The witness, (there also an aged man) had sworn, that on attesting the instrument, he had himself placed this sixpence under the seal. Instead of one coined in Queen Anne's time—which he ought to have used, to make his story good—he had put in one of George III.

In crime, as in literature, there is less absolute novelty than the slight observers of either imagine. Authors, of the greatest reputed originality, are often found, wittingly or unwittingly to have taken unnumbered ideas, nay whole skeletons of books, from humble forerunners: and many tricks or atrocities, which their beholders deem without precedent or parallel, are in their leading features mere duplicates of each other. The resemblance between the two foregoing *detections*, exemplifies this. My own experience affords another example of the same kind. It was my fortune a second time to expose a foul fraud, by means of a blunder in the criminal, very similar to the former.

An executor, who had been in that office for several years, and had brought its duties nearly to a close, came one day to inform me, that an alarming claim had been brought forward against the estate of which he was just about to clear his hands. It was a bond, signed by his testator, and binding him to pay one L., nine hundred dollars. It bore date, two years before the testator's death. The executor had funds enough (*assets*) in his hands, to pay the demand; but he doubted its authenticity. L., had always lived within twenty-five miles of the deceased, and of his executor; had known the latter to be executor of the deceased, and to be ready to pay all just demands; and had himself been not all forbear to present his claim. The signature to the bond (my consulter said) seemed to him genuine: if a forgery, it was a most skillful one. L's character had not been entirely fair: so, coupling this with the other circumstances, I advised the executor to let him sue upon the bond.

Suit was brought. When the declaration had been filed, and with it the bond, I took the first opportunity to examine them. The latter was in the old fashion, of an obligation, with condition to pay 900 dollars; very long and wordy, covering more than half a page of foolscap; all printed, except the date, sums, and parties' names, which were written in blanks left on purpose. The paper and ink looked old as the date: the signature appeared to be the testator's own, (for I knew his hand) but the blanks were filled evidently by a different hand, which the clerk said was L.'s. I pleaded, that the supposed writing obligatory was not the testator's deed, [*non est factum*;) which plea my client made oath, that *he believed* to be true. An additional cause of suspicion had occurred to me. Holding up the bond towards a window, I read, wire-woven in the paper, its maker's name, T. AMES, S. Now I had a strong impression that Mr. Ames had not established his manufactory in S. more than five years: the bond purported to be seven years old. I held the necessary communication with him by letter; gave the needful instructions to my friend the executor; and at the trial, when L. had proved by several respectable witnesses that the signature to the bond, as they believed, was in the testator's own hand writing—I produced, properly taken and certified, the deposition of Mr. Ames—who resided in another state. He testified, that his paper manufactory in S. had not been established until the year 180*—two years after the date of the pretended bond; and that no other person of his name, had ever manufactured paper there, or elsewhere to the best of his knowledge and belief.

The jury found for the defendant; and the plaintiff escaped a prosecution for forgery only by his promptitude in leaving the court and the country, before the requisite measures were taken to apprehend him.

Southern Literary Messenger, February 1939