

## *Circumstantial Evidence*

Several lawyers were sitting in a court room waiting for “his honor” to come, so that the court would open and they could proceed with business. To amuse themselves they were “spinning yarns,” and, as might be expected, every story was of some incident of the law.

“Judge Holmes, it is your turn,” said a young attorney, addressing an old man who had been a silent listener to what the others had related.

Judge Holmes brought his chair forward nearly to the centre of the group, seated himself, and said:

“I suppose, gentleman, that I might tell you something.”

“I do not doubt but what it would be interesting, and I am for one anxious to hear,” said an attorney who had much respect for the old Judge.

“Yes! go on Judge; tell us the queerest experience you ever had,” said another.

“Well, gentlemen. I will tell you how I came to lose faith in circumstantial evidence,” said the Judge. “It was when I was upon the northern circuit, the first year that I was Judge. That was a good many years ago, when the country was new. The judge then had to go from one court house to another on horseback. There were no railroads then. I tell you there has been a great change in this country. Well, I am getting off from the subject. I was to hold the November term in Plamville; the court house was an immense log cabin; behind it was a log barn made on purpose for the judge to keep his horse in. After a long, tiresome ride, I arrived at Plamville. I noticed a very large crowd of people around the court house, and wondered what it meant. While I was caring for my horse four or five of the citizens, too, of the place, came into the barn.

“Good morning, Judge,” said one who had appeared to be the spokesman of the party.

“Good morning, sir,” I replied.

“Fine day, Judge.”

“Yes sir, very fine.”

“Got much to do in court?”

“I do not know.”

“You have got one queer case, and a bad one, too.”

“Is that so?”

“Yes – a murder.”

“I am sorry.”

“It is bad, Judge, and a woman, too.”

“A woman murdered?”

“No, no; a woman did the murdering.”

“That is bad; I am very sorry to hear that any woman should be accused of murder.”

“It’s awful, Judge. She is guilty, and that makes it worse.”

“Has she been tried?”

“No, she ain’t tried; you’ve got to try her, and what we want is this: don’t let up on her a bit; you just sentence her, and we’ll be glad to do the hanging.”

“But suppose that she is not guilty? you don’t want her to be hung in that case, do you?”

“But *she is guilty*. She bought poison, and gave it to her man. And did we not find his body in the river, and the poison in his body?”

“And did not she and her husband have a big quarrel, and she make awful threats to him the night before he was found dead? There is no question about the guilt, Judge.”

“Has she been indicted?”

“Yes, at the last court; she was indicted and we would have lynched her; yes, sir, we came near stringing her up.”

“We must give her a fair trial before we hang her,” I remarked.

“We don’t object to that. Everybody says that she is guilty; and she is guilty, and must be hung, that’s all there is to it, Judge.”

I concluded that it was not wise to continue the conversation any further I went into the court room and took my seat on the bench. I had a hard time to get into the court room, the crowd of people was so dense. As I passed through among them, I received many gratuitous admonitions like this: “Give her what she deserves, Judge.” I saw that the popular feeling was against the woman, and I too, began to think that the people, for they were a good people, were right.

After the preliminary business of the court was done, I found that by arrangement with the attorneys every case had been put off, so as to have the murder trial first. So the jury was drawn. I knew that every man in the jury box believed her guilty, but I could not help it. It was impossible to get any jury-men who thought differently.

The prisoner was brought in handcuffed. I thought that the handcuffing was unnecessary, but the sheriff took that precaution. The first impression that came to mind as I looked at the prisoner, was, how could someone so young and so beautiful commit such a terrible crime? She turned her pale; tear-stained face and looked at me. In that pitiful look I read her prayer. It was that I should protect her.

“Are you guilty, or not guilty?” said the district attorney.

“*Not guilty!*” Her answer was in firm, sad voice.

For a moment I allowed myself to believe that she had pleaded truthfully. But when I heard the subdued hiss that came from the people, I said to myself *she lies*.

The evidence was conclusive. Her husband had come home the worse for liquor. They had some hard words; she had told him that if he did not stop drinking, she would stop him. “You will be sorry for it. If you don’t stop, you will be a dead man. I will be better off as *your widow* than as the slaving wife of a drunkard.” Then right after the quarrel she had bought poison. She told the druggist that she wished to poison some cats that disturbed her sleep. The next morning the dead body was found and the doctor found poison in the body. There was only one thing that looked queer. She had not been allowed *to see the remains*.

As I said before, the evidence was conclusive, and the verdict of the jury was “guilty,” and I must do my duty.

“Mary Brainard, stand up.”

She staggered to her feet and stood facing me.

“The jury have found you guilty of murder in the first degree. Have you anything to say why the sentence of the court should not be passed upon you?”

“‘I am not guilty!’ She bowed her head and stood waiting for what was to come.

“Mary Brainard, this is a painful duty which I have to perform. Usually in passing a sentence upon one found guilty of a crime, a court passing that sentence utters words of advice to the guilty. In this case I cannot do so; the crime is too great. I will proceed at once to pass the sentence of the court. Mary Brainard, the sentence of this court is that on the 21<sup>st</sup> day of February next, between the hours of 12 o’clock at noon and 2 o’clock in the afternoon, in the court house yard, at Plamville, you be hanged by the neck until you are dead, and may God have mercy upon your soul!”

As soon as I had finished, she sank back in her chair, like one exhausted. The people in the court room cheered in token of their approval. Just as the sheriff was about to take her back to jail, a man elbowed his way through the crowd, to where the prisoner was. Claspng her in his arms, he cried out:

“Mary! Mary!”

She gave one wild scream. I shall always remember it. I heard her say:

“John, is this you?” She then fell forward upon his shoulder.

The dead was alive; it was her husband!

“Yes,” he said, “I am this woman’s husband. I am John Brainard. I went away vowing that I would not return again until I had freed myself from my appetite for drink. I am now a sober man, and thank God that I am able to save my wife from being murdered simply because the law says so.”

“That’s my story,” continued Judge Holmes. “Ever since then I have had no faith in circumstantial evidence.”

“Who was the man that they found dead?” asked one of the lawyers.

“That I never knew; a case of suicide, perhaps,” replied the Judge.

“That was a queer experience, but it is only a fair illustration of what may have occurred many times in the past,” said one.

“And may occur many times in the future,” said another.

“That is true,” said Judge Holmes, “But here is the Judge of this court. The train must have been behind, or he would not have been so late. Business, gentlemen, we must now attend to business.”

*The News and Herald* [SC], March 1, 1883