

The Reluctant Witness by Andrew Forrester, Jr.

One afternoon, about four years ago, the Court of Queen's Bench, at Westminster, was called upon to try a running-down case, in which there appeared to be no special public interest, and the reporters had taken their departure, when a somewhat curious incident occurred.

The reader will please to understand that Mr. Serjeant Heavy, as counsel for the plaintiff, had made his opening speech, in which he had described the serious permanent injuries his unfortunate client had sustained through the very gross negligence of the defendant's servants; and had called upon the jury to award substantial damages, to atone for the suffering and loss endured and to be endured. He intimated that he should be able, he believed, to prove his case to the satisfaction of the jury, although his principal witness, he must warn them, according to his instructions, was a man who had some reluctance to give evidence, who had only been brought there that day, by the force of a subpoena, and it might be the dread of consequences to himself if he stayed away. He need scarcely inform them, as no doubt, if necessary, the learned judge would so rule, that if this reluctant witness should betray a feeling in the box adverse to the unfortunate plaintiff, he, the learned serjeant would have a right to cross-examine him, although he had called him as his own, or his client's witness. This, however, he ventured to hope, would not be necessary. He could scarcely suppose that any gentleman having witnessed such an occurrence as that by which the plaintiff had been so dreadfully injured would attempt to colour, lighten, or give undue weight, for either suitor, to the facts of the case. Still there was, unquestionably, the circumstance—which did render him a little uncertain, notwithstanding the plain unvarnished story related in his brief, and which he had, to the best of his humble power, laid before them—that this witness, instead of manfully coming forward to tell the truth, without fear, favour, of affection for plaintiff or defendant, had hung back. They had been obliged to trace him out; they had got from him, and with difficulty, but an imperfect *resumé* of his evidence; and he, the learned counsel, had to call him into the witness box with a misgiving as to whether he might not, in his annoyance at being called from his business, on the subpoena, perhaps half unconsciously—for he, the learned serjeant, would not say that any man would in cool deliberation—lean against the victim of a sad misfortune. However, as counsel for the plaintiff, he had frankly stated his difficulty. He asked the jury to assist him in eliciting the truth, and in performing his duty, under the rather embarrassing situation in which he was placed.

The learned eloquent serjeant, at the conclusion of his address, called one or two witnesses, to give merely formal evidence, and then he called John Thomson.

“John Thomson!” shouted the usher, once, twice, thrice. The shout was echoed through Westminster hall, and after an interval of two or three minutes, Mr. John Thomson walked slowly and sulkily up the steps of the court, through the aisles, and into the witness box.

All eyes were turned in the direction of Mr. Thomson. This, everybody saw, must be the plaintiff's reluctant witness.

“The evidence you shall give to the Court—”

The associate who was administering the oath was stopped short.

“Please, my lord, am I bound to give evidence in this case?”

“Why,” returned the judge, “I suppose you have been properly subpoenaed, and *are* bound to do so: but what is your objection?”

“Well, I don’t think I’ve been treated fair by that man there,” rejoined the witness, pointing to a well-dressed, bland, and shrewd-looking gentleman, who was seated at the attorney’s table below.

“Unfairness of treatment is not an excuse; but tell the Court what has he done to you?”

“Well, I’ll tell you, my lord; he came to my house last Monday night, and he says to me, I know you know all about the accident to Mr. Brown, on the 26th of last June, in Piccadilly. Well, says I, suppose I do, others must know as well as I do. Yes, he says, but you are a respectable, intelligent man, Mr. Thomson, and I should prefer your evidence to that of the others. Well, says I, you can’t have it. Why can’t you get somebody else? I’m a business man, and I can’t spare time to wait about courts, to be bully-ragged by counselors, and lose my business. Well, then he says to me, I’m sorry, he says, that you are so unwilling to come for’ard, and I suppose I *must* do without you, but, if I promise to do without your evidence, you won’t surely then object to tell me quietly all you know about this affair? No, says I, if you’ll promise me that, fair and square, I don’t mind telling you all I know about it. That was agreed between us, fair and above board, as I say, and then I told him, my lord, what I knew, and he wrote it all down on paper. Then,” said the garrulous witness, slowly, “when he had got all out of me that I knowed, and had put it all down, he says Mr. John Thomson, I must give you this ’speener, and he put a bit of paper on my table with a shilling on it.”

This hasty speech by the witness caused a titter in court, and the jury and the judge smiled at the trick which had been played upon the indignant and mercenary witness.

His lordship, however, addressing Mr. Thomson, observed that, “It did appear to be rather sharp practice, but the Court was not then engaged in the trail of the attorney for an alleged breach of professional etiquette or courtesy. Something, moreover, might be said about the witness’s own improper reluctance to appear, if he knew anything that would help the plaintiff. However, all the Court then cared to say, was that the witness had shown no valid reason why, now being present in court, he should not be sworn, and called upon as a witness to the truth.”

“The evidence you shall give the Court and the jury—”

“My lord,” exclaimed the witness, “I know a lawyer’s clerk who says I am not bound to say anything if I am not paid. Is a shilling enough?”

“You are entitled to be paid your allowance and proper expenses, if you please to insist upon them,” the judge said.

“Well, I do insist, then,” said the witness.

During part of this colloquy, the attorney and senior counsel for the plaintiff had been engaged in conference. Money passed from one to the other.

“Here, witness,” shouted Serjeant Heavy, “is a sovereign; that’s more than you are strictly entitled to. Now, my good man, let me entreat of you to tell his lordship and the jury all you know about this unfortunate affair.”

“Is this all I am entitled to? I was here all day yesterday a waiting,” said this very reluctant witness.

“Yes,” exclaimed the judge, in a severe tone, “it is fully as much as you are entitled to demand, and now listen to me, sir! The Court has observed your demeanor with great pain. In a case like the present, you ought not to have shown so much reluctance to give what evidence you could. Attend to the learned counsel’s questions; let your answers be plain, straightforward, honest, and truthful, or it may be my painful duty to commit you for contempt of court.”

The witness looked crestfallen and discontented. He, however, answered all the questions put to him in such a manner that the judge was not called upon to exercise his prerogative or even to repeat his threat.

The evidence given by Mr. Thomson was of the essence of the plaintiff’s case. It fully established the main fact of culpable negligence of the defendant’s servant, and the consequent liability of the defendant.

The cross-examination of this reluctant witness was a mere form. How could the defendant’s counsel hope to break down the testimony given by a man so unwilling to aid the plaintiff?

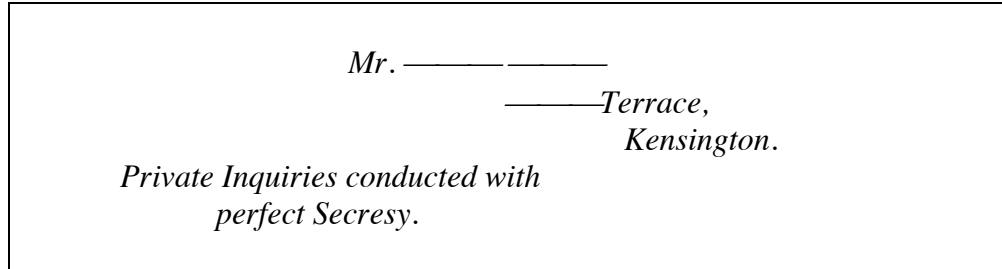
The judge summed up, remarking, of course, upon the attitude assumed by the witness Thomson, and leading the jury to determine how far that demeanour ought to increase or diminish the value of his word. The jury, without leaving their box, gave a verdict for the plaintiff in two hundred pounds.

I was in court waiting for the next cause to be called on, as I had evidence to give in that case. I listened with greedy ears to every word of the dispute, and critically scanned the face of the reluctant witness. I will tell the truth as it relates to me. The witness looked like an honest man, and I had never seen nor heard anything to his disadvantage. If a perjurer, he acted the part well, indeed. I could not form a definite idea of the fraud being perpetrated; yet a sort of instinct told me that it was a fraudulent case, and the intricacy of the plot only gave a zest to my detective curiosity. Could I unravel it, I asked myself? Should I offer my services? Yes, was the first notion. No, was the afterthought. Professional gentlemen shrink from even the appearance of touting. I would, however, just whisper my suspicions to the defendant’s attorney. There could be no harm or professional indelicacy in that. Accordingly, I placed myself in the way of this gentleman as he was leaving the court.

“I suspect fraud in that witness Thomson,” I said.

“Who are you?” growled rather than spoke the attorney in reply.

I was nettled, and retorted—“One who has had some experience with knaves.” As I spoke I handed him my card.



“Oh! I understand. When I want your services I’ll send for you,” was his impertinent conclusion of our interview, and off he went with his client, who had heard our conversation, but was, I believe, too bewildered to understand it.

Two years had nearly elapsed since the occurrences I have described, when I was engaged to hunt down a gang of forgers. I got on the scent of their movements, and had the authority to condone the offence with one of the set, upon condition that he disclosed the operations and names of his confederates. I was visited one day by a woman, who said that if she were satisfied on that point, she could introduce a party to me. I satisfied her on that head, and next day, by appointment, I met the lady’s friend, who was no other than Mr. John Thomson. We had several meetings over the present business. I had to arrange plans so as to cover him, and let all the rest of the gang into the trap. We thus became confidential; and one evening over brandy and water and cigars, he told me all about the case in which he played the part of a reluctant witness so ably. It would be tedious to relate them all here. Let it suffice to say, that the affair was a swindle, and that all the evidence was perjured. The little game of Thomson was to divert suspicion by appearing to give evidence reluctantly.

The supposed victim had never been hurt. His story was a lie; the tale of the eye-witness Thomson was a lie; the evidence of the surgeon was a lie; the testimony of the nurse was a lie. All these individuals conspired to perpetrate a fraud, and they succeeded.

The Revelations of a Private Detective by Andrew Forrester, Jr. London: Ward and Lock, 1863. 125-131.