

# *The Trial for Murder*

by William Russell

IT has frequently occurred to me that if any member of the bar, who has been for a few years in practice in our criminal courts, possessing the not uncommon qualities of a moderate understanding, a mind open to conviction, and a tolerable share of attention to the cases which occur, would communicate to the world the result of his experience, he would do more to enlighten the public mind upon the nature and practical operation of that most valued of our institutions, trial by jury, than could be effected in any other mode. No man can have attended, even for a single day, either as a juror or a witness, in anyone of our courts whether civil or criminal, without having been struck, if he be of an observant habit, by verdicts utterly at variance with the facts upon which these verdicts have been founded.

One of the most extraordinary and interesting trials of which I find any account in my notebook, took place very little less than thirty years ago. It is instructive in many points of view. To those who believe that they see the finger of Providence especially pointing out the murderer, and guiding, in a slow but unerring course the footsteps of the avenger of blood, it will afford a matter of deep meditation and reflection.

In the year 18—, John Smith (I use fictitious names) was indicted for the willful murder of Henry Thompson. The case was one of a most extraordinary nature, and the interest excited by it was almost unparalleled. The accused was a gentleman of considerable property residing upon his own estate, in an unfrequented part of the country. A person supposed to be an entire stranger to him, had, late in a summer's day, requested and obtained shelter and hospitality for the night. He had, it was supposed, after taking some slight refreshment, retired to bed in perfect health, requesting to be awakened at an early hour the following morning. When the servant appointed to call him entered his room for that purpose, he was found in his bed perfectly dead; and from the appearance of the body, it was obvious that he had been so for many hours. There was not the slightest mark of violence on his person, and the countenance retained the same expression which it had borne during life. Great consternation was of course excited by this discovery, and inquiries were immediately made—first, as to who the stranger was, and secondly, as to how he met with his death. Both were unsuccessful. As to the former no information could be obtained, no clue discovered to lead to the knowledge either of his name, his person, or his occupation. He had arrived on horseback, and was seen passing through a neighboring village about an hour before he reached the house where his existence was so mysteriously terminated, but could be traced no further. Beyond this all was conjecture.

With respect to the death, as little could be learned as of the dead man. It was, it is true, sudden, awfully sudden; but there was no reason, that alone excepted, to suppose that it was caused by the hand of man rather than by the hand of God. A coroner's jury was of course summoned; and after an investigation, in which little more could be proved than that which I have just stated, a verdict was returned to the effect that the deceased died *by the visitation of God*. Days and weeks passed on, and little further was known. In the mean time, rumor had not been idle. Suspicions, vague, indeed, and undefined, but of a dark and fearful character, were at first whispered, and afterwards boldly expressed. The precise object of these suspicions was not clearly indicated; some implicated one person, some another, but they all pointed to Smith, the master of the house,

as concerned in the death of the stranger. As usual in such cases, circumstances totally unconnected with the transaction in question, matters many years antecedent, and relating to other persons, as well as other times, were used as auxiliary to the present charge. The character of Smith in early life had been exposed to much observation. While his father was yet alive, he had left his native country, involved in debt, known to have been guilty of great irregularities, and suspected of not being over-scrupulous as to the mode of obtaining those supplies of money of which he was continually in want, and which he seemed inexplicably to procure.

Ten years and more had elapsed since his return; and the events of his youth had been forgotten by many, and to many entirely unknown; but on this occasion, they were revived, and probably with considerable additions; and in fine the magistrates were induced to commit Mr. Smith to jail, to take his trial for the willful murder of Henry Thompson. As it was deemed essential to the attainment of justice to keep secret the examination of the witnesses who were produced before the magistrate, all the information of which the public were in possession of, before the trial took place, was that which I have here narrated. Such was the state of things on the morning of the trial. Seldom, perhaps, had speculation been so busy as it was upon this occasion. Wagers to a considerable amount were depending upon the event of the case; so lightly do men think and act with reference to matters in which they are not personally concerned, even though the life of a fellow creature is involved in the issue.

The judge's charge to the grand jury upon the subject of this murder excited a good deal of attention. He had recommended them if they entertained reasonable doubts of the sufficiency of the evidence to ensure a conviction, to throw out the bill; explaining to them most justly and clearly that, in the event of their doing so, if any additional evidence should, at a future time, be discovered, the prisoner could again be apprehended and tried for the offense; whereas, if they found a true bill, and from deficiency of proof, he was now acquitted on trial, he could never again be molested, even though the testimony was clear as light. The grand jury, after, as was supposed, very considerable discussion among themselves, returned a true bill. After the charge, it was conjectured that the proofs offered to the grand jury must have been strong to authorize such a finding; and a strong impression in consequence prevailed that there would ultimately be a conviction.

The counsel for the prosecution opened his case to the jury in a manner that indicated very little expectation of a conviction. He began by imploring them to divest their minds of all that they had heard before they came into the box; he entreated them to attend to the evidence, and judge from that alone. He stated that in the course of his experience, which was very great, he had never met with a case involved in deeper mystery than that upon which he was then addressing them. The prisoner at the bar was a man moving in a respectable station in society, and maintaining a fair character. He was, to all appearance, in the possession of considerable property, and was above the ordinary temptations to commit a foul crime. With respect to the property of the deceased, it was strongly suspected that he had either been robbed of, or in some inexplicable manner made away with, gold and jewels to a very large amount; yet, in candor he was bound to admit that no portion of it, however trifling, could be traced to the prisoner. As to any motive of malice or revenge, none could by possibility be assigned, for the prisoner and the deceased were, as far as could be ascertained, total strangers to each other. Still there were most extraordinary circumstances connected with his death, pregnant with suspicion at least, and imperiously demanding explanation; and it was justice, no less to the accused than to the public,

that the case should undergo a judicial investigation. The deceased Henry Thompson, was a jeweler, residing in the metropolis, wealthy, and in considerable business, and, as was the custom of his time, in the habit of personally conducting his principal transactions with the merchants with whom he traded; and it was to meet one of the latter, of whom he was to make a large purchase, that he had left home a month before his death. It would be proved by the landlord of the inn where he had stopped, that he and his correspondent had been there; and a wealthy jeweler of the town, well acquainted with both parties, had seen Mr. Thompson after the departure of the other; and could swear positively as to there being then in his possession jewels of large value, and gold, and certain drafts, the parties to which he could describe. This was on the morning of Thompson's departure, and the day but one preceding that on which he arrived at the house of the prisoner. What had become of him in the interval could not be ascertained; nor was the prisoner's house situated in the road even, which he ought to have taken. No reliance, however, could be placed on that circumstance; for it was not at all uncommon for persons who travelled with property about them, to leave the direct road, even for a considerable distance, in order to secure themselves as effectually as possible from robbers, by whom the remote parts of the country were then greatly infested.—He had not been seen from the time of leaving H— till he reached the village adjoining Smith's house, through which he passed without even a momentary halt. He was seen to alight at Smith's gate, and the next morning was found dead in his bed. He now came to the most extraordinary part of the case. It would be proved beyond the possibility of a doubt that the deceased died by poison—poison of a most subtle nature, most active in its operation, and possessing the wonderful and dreadful quality of leaving no external mark or token by which its presence could be detected. The ingredients of which it was composed were of so sedative a nature that, instead of the body on which it had been used exhibiting any contortions or marks of suffering, it left upon the features nothing but the calm and placid quiet of repose. Its effects, and indeed its very existence, were but recently known in this country, though it had for some time been used in Europe; and it was supposed to be a discovery of the German chemists, and to be produced by a powerful distillation of the seed of the wild cherry tree, so abundant in the Black Forest.

But the fact being ascertained that the cause of the death was poison, left open the much more momentous question, by whom was it administered. It could hardly be supposed to be by the deceased himself. There was nothing to induce such a suspicion; and there was this important circumstance, which, of itself, almost negatived the possibility—that no phial or vessel of any kind had been discovered, in which the poison could have been contained. Was it then the prisoner administered it? Before he asked them to come to that conclusion, it would be necessary to state more distinctly what his evidence was.

The prisoner's family consisted only of himself, a housekeeper, and one man-servant. The man-servant slept in an outhouse adjoining the stable, and did so on the night of Thompson's death. The prisoner slept at one end of the house, and the housekeeper at the other, and the deceased had been put into a room adjoining the housekeeper's. It would be proved, by a person who was passing the house on the night in question, about three hours after midnight, that he had been induced to remain and watch, from having his attention excited by the circumstance, then very unusual, of a light moving about the house at that late hour. That person would state most positively, that he could distinctly see a figure, holding a light, go from the room in which the prisoner slept, to the housekeeper's room; that two persons then came out of the housekeeper's room, and the light disappeared for a minute. Whether the two persons went into Thompson's

room, he could not see, as the window of the room looked another way; but, in about a minute, they returned, passing quite along the house to Smith's room again and in about five minutes the light was extinguished, and he saw no more.

Such was the evidence upon which the magistrates committed Smith; and, singularly enough, since his committal, the housekeeper had been missing, nor could any trace of her be discovered. Within the last week the witness who saw the light had been more particularly examined, and, in order to refresh his memory, he had been placed, at dark, in the very spot where he had stood on that night, and another person was placed with him. The whole scene, as he had described, was acted over again, but it was utterly impossible, from the cause before mentioned, to ascertain, when the light disappeared, whether the parties had gone into Thompson's room. As if, however, to throw still deeper mystery over this extraordinary transaction, the witness persisted in adding a new feature to his former statement; that after the person had returned with the light into Smith's room, and before it was extinguished, he had twice perceived some dark object to intervene between the light and the window, almost as large as the surface of the window itself, and which he described by saying it appeared as if a door had been placed before the light. Now, in Smith's room, there was nothing which could account for this appearance. His bed was in a different part, and there was neither cupboard nor press in the room, which, but for the bed, was entirely empty, the room in which he dressed being at a distance beyond it. He would state only one fact more, said the learned counsel, and he had done his duty; it would then be for the jury to do theirs. Within a few days there had been found, in the prisoner's house, the stopper of a small bottle of a very singular description. It was apparently of foreign manufacture, and was described by medical men as being of the description used by chemists to preserve those liquids which are most likely to lose their virtue by exposure to the air. To whom this belonged, or to what use it had been applied, there was no evidence to show.

Such was the address of the counsel for the prosecution, and, during its delivery, I had earnestly watched the countenance of the prisoner, who had listened to it with deep attention. Twice only did I perceive that it produced in him the slightest emotion. When the disappearance of his housekeeper was mentioned, a smile of scorn passed over his lip; and the notice of the discovery of the stopper obviously excited an interest, and, I thought, an apprehension; but it quickly subsided. I need not detail the evidence that was given for the prosecution; it amounted, in substance, to that which the counsel stated, nor did it vary in any particular. The stopper was produced, and proved to have been found in the house; but no attempt was made to trace it to the prisoner's possession, or even knowledge.

When the case was closed, the learned judge, addressing the counsel for the prosecution, said he thought there was hardly sufficient evidence to call upon the prisoner for his defense; and, if the jury were of the same opinion, they would at once stop the case. Upon this observation from the judge, the jury turned round for a moment, and then intimated their acquiescence in his honor's view of the evidence. The counsel folded up their briefs, and a verdict of acquittal was about to be taken, when the prisoner addressed the court. He stated that, having been accused of so foul a crime as murder, and having had his character assailed by suspicions of the most afflicting nature, that character could never be cleared by his acquittal upon the ground that the evidence against him was inconclusive, without giving him an opportunity of stating his own case, and calling a witness to counteract the impressions that had been raised against him, by explaining those circumstances which at present appeared doubtful. He urged the learned judge to permit

him to state his case to the jury, and to call his housekeeper, with so much earnestness, and was so strongly seconded by his counsel, that the court, though very much against its inclination, and contrary to its usual habit, gave way, and yielded to the request.

The prisoner then addressed the jury, and entreated their patience for a short time. He repeated to them that he never could feel satisfied to be acquitted merely because the evidence was not conclusive, and pledged himself, in a very short time, by the few observations he should make, and the witness whom he should call, to obtain their verdict on much higher grounds, upon the impossibility of his being guilty of the dreadful crime. With respect to the insinuations which had been thrown out against him, he thought one observation would dispose of them. Assuming it to be true that the deceased died from the effect of a poison, of which he called God to witness that he had never even heard either the name or the existence until this day, was not every probability in favor of his innocence? Here was a perfect stranger, not known to have in his possession a single article of value, who might either have lost or been robbed of that property which he was said to have had at H—. What so probable as that he should, in a moment of despair at his loss, have destroyed himself? The fatal drug was stated to have been familiar in those countries in which Mr. Thompson had travelled, while to himself was utterly unknown. Above all, he implored the jury to remember that, although the eye of malice had watched every proceeding of his since the fatal accident, and though the most minute search had been made into every part of his premises, no vestige had been discovered of the most trifling article belonging to the deceased, nor had even a rumor been circulated that poison of any kind had been ever in his possession. Of the stopper which had been found he disowned all knowledge. He declared, most solemnly, that he had never seen it before it was produced in court, and he asked, could the facts of its being found in his house only a few days ago, when hundreds of people had been there, produce upon an impartial mind even a momentary prejudice against him? One fact, and one only had been proved, to which it was possible for him to give an answer, the fact of his having gone to the bedroom of his housekeeper on the night in question. He had been subject, for many years of his life, to sudden fits of illness; he had been seized with one on that occasion, and had gone to her to procure her assistance in lighting a fire. She had returned with him to his room for that purpose, he having waited for a minute in the passage whilst she put on her clothes, which would account for the momentary disappearance of the light; and after she had remained in his room a few minutes, finding himself better, he had dismissed her, and retired again to bed, from which he had not risen when he was informed of the death of his guest. It has been said that, after his committal to prison, his housekeeper had disappeared. He avowed that, finding his enemies determined, if possible, to accomplish his ruin, he had thought it probable they might tamper with his servant. He had therefore kept her out of their way; but for what purpose? Not to prevent her testimony being given, for she was now under the care of his counsel, and would instantly appear for the purpose of confirming, as far as she was concerned, the statement which he had just made.

Such was the prisoner's address, which produced a very powerful effect. It was produced in a firm and impressive manner, and its simplicity and artlessness gave it an appearance of truth. The housekeeper was then put into the box, and examined by the counsel for the prisoner.

According to the custom, at that time almost universal, of excluding witnesses from court until their testimony was required, she had been kept at a house near at hand, and had not heard a single word of the trial. There was nothing remarkable in her manner and appearance; she might

be about thirty-five, or a little more; with regular though not agreeable features, and an air perfectly free from embarrassment. She repeated, almost in the prisoner's own words, the story he had told of his having called her up, and her having accompanied him to his room, adding that, after leaving him, she had retired to her own room, and been awakened by the man-servant in the morning, with an account of the traveler's death. She had now to undergo a cross-examination, and I may as well state here that which though not known to me till afterwards, will assist the reader in understanding the following scene. The counsel for the prosecution had, in his own mind, attached considerable importance to the circumstance mentioned by the witness who saw the light, that while the prisoner and the housekeeper were in the room of the former, something like a door had intervened between the candle and the window, which was totally irreconcilable with the appearance of the room when examined; and he had half persuaded himself that there must be a secret closet which had escaped the search of the officers of justice, the opening of which would account for the appearance alluded to, and the existence of which might discover the property which had so mysteriously disappeared. His object, therefore, was to obtain from the housekeeper (the only person except the prisoner who could give any clue to this) such information as he could get, without alarming her by any direct inquiry on the subject, which, as she could not help seeing its importance, would have [led] her at once to a positive denial. He knew, moreover, that as she had not been in court, she could not know how much or how little the inquiry had already brought to light; and by himself treating the matter as immaterial, he might lead her to consider it so also, and by that means draw forth all that she knew. After some few unimportant questions, he asked her, in a tone and manner calculated rather to awaken confidence than to excite distrust:

"During the time you were in Mr. Smith's room, you stated that the candle stood on the table, in the centre of the room?"

"Yes."

"Was the closet, or cupboard, or whatever you call it, opened once, or twice, while it stood there?" A pause, no answer.

"I will call it to your recollection; after Mr. Smith had taken the medicine out of the closet, did he shut the door, or did it remain open?"

"He shut it." "Then it was opened again for the purpose of replacing the bottle, was it?" "It was." "Do you recollect how long it was open the last time?" "Not above a minute."

"The door, when open, would be exactly between the light and the window, would it not?" "It would?" "I forget whether you said the closet was on the right or left hand side of the window?" "The left."

"Would the door of the closet make any noise in opening?" "None."

"Can you speak positively on that fact? Have you ever opened it yourself, or only seen Mr. Smith open it?"

"I never opened it myself." "Did you never keep the key?" "Never." "Who did?" "Mr. Smith, always."

At this moment, the witness chanced to turn her eyes towards the spot where the prisoner stood, and the effect was almost electrical. A cold damp sweat stood upon his brow, and his face had lost all its color; he appeared a living image of death. She no sooner saw him than she shrieked, and fainted.

The consequence of her answers flashed across her mind. She had been so thoroughly deceived by the manner of the advocate, and by the little importance he had seemed to attach to her statements, that she had been led on, by one question to another, till she had told him all that he wanted to know. During the interval (occasioned by her illness) to the proceedings, the counsel for the prosecution left the court.

It was between four and five o'clock when the judge resumed his seat upon the bench, the prisoner his station at the bar, and the housekeeper hers in the witness-box; the court, in the interval, had remained crowded with the spectators, scarce one of whom had left his place, lest, during his absence it should be seized by someone else.

The cross-examining counsel then addressed the witness:

“I have very few more questions to ask of you; but beware that you answer them truly, for your own life hangs upon a thread. Do you know this stopper?”

“I do.” “To whom does it belong?” “To Mr. Smith.” “When did you see it last?” “On the night of Mr. Thompson’s death.”

At this moment the counsel for the prosecution entered the court, bringing with him upon a tray a watch, two money-bags, a jewel-case, a pocketbook, and a bottle of the same manufacture as the stopper, and having a cork in it; some other articles there were on it, not material to my story. The tray was placed on the table in sight of the prisoner and the witness; and from that moment not a doubt remained in the mind of any man present of the guilt of the prisoner.

A few words will bring my tale to its close. The house where the murder had been committed was between nine and ten miles distant.

The counsel, as soon as the cross examination of the housekeeper had discovered the existence of the closet and its situation, had set off on horseback, with two sheriff’s officers, and after pulling down part of the wall of the house, had detected this important place of concealment. Their search was well rewarded; the whole of the property belonging to Mr. Thompson was found there, amounting in value to some thousands of dollars, and to leave no room for doubt, a bottle was discovered, which the medical men instantly pronounced to contain the very identical poison which had caused the death of the unfortunate Thompson. The result is obvious.

The case presents the perhaps unparalleled instance of a man accused for murder, the evidence against whom was so slight as to induce the judge and jury to concur in a verdict of acquittal, but who, persisting in calling a witness to prove his innocence, was, upon the testimony of that very witness, *convicted and executed!*

*Strange Stories of a Detective; or, Curiosities of Crime.* New York: Dick and Fitzgerald, 1863.  
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This is a shorter and altered version of “Chapters from the Note-Book of a Deceased Lawyer”  
(*The New Monthly Magazine*, 1834).