

Chapters From the Note-Book of a Deceased Lawyer

No. I.

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, the 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 any one 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 those verdicts have been founded. Every man must have seen, and must be able to bear testimony to, some case, in which the result has been unsatisfactory to his own mind; nor can there be many who have retired home to meditate on the scenes they have witnessed, who have not felt some emotion of regret at the success of guilt, or some pang of horror at the conviction of innocence: but few, very few, save only those who are most familiar with our courts of justice, can form any just idea how frequently both these cases really occur. It has been my lot to have attended, for many years of my life, no matter in what capacity, in most of the courts in this kingdom. I have witnessed, and been personally concerned in, cases so singular in their nature, so unexpected in their termination, so totally at variance with all that could have been predicted of them, that, though in the silent lapse of time they have passed by and are forgotten, I am persuaded that they can never be read without interest, or reflected upon without instruction. It may happen that some, at least, of the parties to the circumstances that I shall relate are living,—at all events, their friends or relations may be affected by the recollection of them,—I shall therefore make use of fictitious names. The facts have now become matter of history; but the revival of them may open wounds which the lenient hand of Time has long closed—that is unavoidable. Experience can only communicate her stores of knowledge, so as to make them useful, by the recital of acts that have really occurred. The sufferings and misfortunes of those who have gone before us are beacons to warn those who are navigating the same ocean of life: they therefore become public property for the benefit of all; but it is a needless violation of individual comfort and individual happiness, to point out the unfortunate and the sufferers.

One of the most extraordinary and most interesting trials of which I find any account in my note-book, took place on the Northern Circuit, very little less than fifty 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 matter of deep meditation and reflection. To those who think more lightly upon such subjects,—to those whom philosophy or indifference has taught to regard the passing current of events as gliding on in a smooth and unruffled channel, varied only by the leaves which the chance winds may blow into the stream,—it will offer food for grave contemplation. However they may smile at the thought of Divine interposition, they will recognize in this story another proof of the wisdom of the sage of old, who said, that when the Gods had determined to destroy a man, they began by depriving him of his senses,—that is, by making him act as if he had lost them. To the inexperienced in my own profession it will teach a lesson of prudence, more forcible than ten thousand arguments could make it: they will learn that

of which they stand deeply in need, and which scarce anything but dear-bought experience can enforce—to rest satisfied with success, without examining too nicely how it has been obtained, and never to hazard a defeat by pushing a victory too far. “*Leave well alone*” is a maxim which a wise man in every situation of life will do well to observe; but if a barrister hopes to rise to eminence and distinction, let him have it deeply engraven upon the tablet of his memory.

In the year 17—, John Smith was indicted for the willful murder of Henry Thomson. The case was one of a most extraordinary nature, and the interest excited by it was one almost unparalleled. The accused was a gentleman of considerable property, residing upon his own estate, in an unfrequented part of —— shire. 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 neighbouring village about an hour before he reached the house where his existence was so mysteriously terminated, but could be traced no farther. Beyond this, all was conjecture.

To those whose memory carries them back no farther than the last few years, during which, by means of the public press, information is so surely and so speedily circulated through every part of the kingdom, this may seem incredible; but to those who are old enough to remember the state of the country at the time of which I am writing, it will not afford matter even for surprise. The county newspaper, if, indeed, there were one, published once a week, found its way, if at all, at long and varying intervals, into the remote parts of the district. To show how uncertain even this means of information was, I may mention that, so late as the year 1790, an act of parliament was passed relating to works of immense local, and I may almost say national, importance; the commissioners under which were directed from time to time to meet: in which there was a clause enacting that notice of such meetings should be inserted in the county newspaper, *if there should happen to be one*; and, if not, in the “London Gazette.”

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 here 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 meantime rumour 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 being not over-scrupulous as to the mode of obtaining those supplies of money of which he was continually in want, and which he seemed somewhat inexplicably to procure.

“And he had left in youth his father-land;
But from the hour he wav’d his parting hand,
Each trace wax’d fainter of his course, till all
Had nearly ceased his memory to recall.
His sire was dust; his vassals could declare,
‘Twas all they knew, that Lara was not there:
Nor sent, nor came he, till conjecture grew
Cold in the many, anxious in the few.

“He came at last in sudden loneliness,
And whence they knew not, why they need not guess;
They more might marvel, when the greeting’s o’er,
Not that he came, but came not long before.
Years had roll’d on, and fast they speed away
To those that wander, as to those that stay.
He came; nor yet is past his manhood’s prime,
Though sear’d by toil, and something touched by time.”

Ten years and more had elapsed since his return; and the events of his youth had been forgotten by many, and to many were entirely unknown: but, on this occasion, they were revived, and, probably, with considerable additions.

Two months after the death of the stranger, a gentleman arrived at the place, impressed with a belief that he was his brother, and seeking for information either to confirm or refute his suspicious. The horse and the clothes of the unfortunate man still remained, and were instantly recognized: one other test there was, though it was uncertain whether that would lead to any positive conclusion; —the exhumation of the body. This test was tried: and although decomposition had gone on rapidly, yet enough remained to identify the body, which the brother did most satisfactorily. As soon as it was known that there was a person authorized by relationship to the deceased to inquire into the cause of his death, and, if it should appear to have been otherwise than natural, to take steps for bringing to justice those who had been concerned in it, the reports which had been previously floating idly about, and circulated without having any distinct object, were collected into one channel, and poured into his ear. What those reports were, and what they amounted to, it is not necessary here to mention: suffice it to say, that the brother laid before the magistrates of the district such evidence as induced them to commit Mr. Smith to gaol, to take his trial for the willful murder of Henry Thomson. As it was deemed essential to the attainment of justice, to keep secret the examination of the witnesses who were produced before

the magistrates, all the information of which the public were in possession before the trial took place, was that which I have here narrated.

Such was the state of things upon 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 personal character of the presiding judge was not without its weight, in influencing opinions as to the probability of conviction or acquittal. That judge was a man whom, living, I so sincerely loved, and whose memory I now so truly venerate, that I dare not, even at this distance of time, trust myself to speak of him as I feel, lest I should be suspected of partiality. He was the late Lord Mansfield; —a man who, in addition to the other eminent judicial qualities which belonged to him, possessed some which peculiarly fitted him for investigating such a case, as well as some which were thought to bear against his fitness. Before his elevation to the judicial bench, he had been for some years not only one of the most eloquent debaters, but one of the most powerful reasoners, in the House of Commons; and had acquired the reputation, which he richly deserved, of possessing a power of discriminating between truth and falsehood rarely attained by any individual. But, at the same time, he was more than suspected of being deficient in that firmness of purpose, that moral courage, essential to the efficient discharge of his high functions in a case where doubtful and difficult questions were almost certain to arise, which a timid man, fearful of committing himself, would rather avoid than decide upon. The recollection of Lord George Gordon's riots, then fresh in the mind of every man, tended very much in the breast of the common people to strengthen this opinion. The belief was general, and I confess that even my affection cannot lead me to doubt its accuracy, that, in a great measure at least, the scenes of that fearful time were to be attributed to the timidity and indecision of this otherwise great man. The King had publicly declared that the magistrates had failed in their duty; and this reproach applied with peculiar force to the Lord Chief Justice of England. Had he but employed those powers with which the constitution had armed him, for the early suppression of the riots, the metropolis would not have been given up for a week to the uncontrolled dominion of a lawless mob, nor that melodramatic jumble of tragedy and comedy been enacted which cannot now be thought of without amazement, and which has no parallel in modern history.

Lord Mansfield's charge to the grand jury upon the subject of this murder had 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 offence; whereas, if they found a true Bill, and, from deficiency of proof, he was no acquitted on his trial, he could never again be molested, even though the testimony against him should be morally as clear as light. The grand jury after, as was supposed, very considerable discussion among themselves, and, as was rumoured, by a majority of only *one*, returned a *true Bill*. After the charge I have mentioned, 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. As if to show, however, how uncertain all conjecture must be by those who are mere spectators of what is going on, the next morning a different current was given to the tide of popular opinion. At the sitting of the court an application was made by the

counsel for the Crown to postpone the trial to the next assizes, on the ground that a clue had just been obtained to evidence of a most important nature, which could not be procured in time for the present assizes, and without which those who conducted the prosecution thought it would not be safe to proceed to trial. The application was of course strenuously opposed by the counsel for the prisoner. It was urged in his behalf, that as this was a case in which no bail could be taken, the granting it would have the effect of keeping him in gaol many months, when he was ready to take his trial: and it was said that this was not a common case, where the committal of the offender was in pursuance of a finding by coroner's jury, and therefore where the prosecutor was compelled to come prepared with the best evidence he could procure; but that the prosecutor had, without interference, and without compulsion, selected his own time for the apprehension of the prisoner, and the statement of the charge; and that he was bound, therefore, to be furnished with proofs in support of the accusation he had made. These arguments were not without their weight; and Lord Mansfield refused to postpone the trial. As the application avowedly had proceeded upon the insufficiency of the evidence at present in the prosecutor's possession to substantiate the offence, expectations of his acquittal were confidently and unreservedly expressed during the short period that intervened before the trial, which was fixed for the following morning, and which, without anything material occurring on the one side or the other, took place at the appointed time.

Never shall I forget the appearance of anxiety exhibited upon every countenance on the entrance of the judge into court. In an instant the most profound silence prevailed; and interest, intense and impassioned, though subdued, seemed to wait upon every word and every look, as if divided between expectation and doubt, whether something might not even yet interfere to prevent the extraordinary trial from taking place. Nothing, however, occurred; and the stillness was broken by the mellow and silvery voice of Lord Mansfield—“*Let John Smith be placed at the bar.*” The order was obeyed; and as the prisoner entered the dock, he met on every side the eager and anxious eyes of a countless multitude bent in piercing scrutiny upon his face. And well did he endure that scrutiny. A momentary suffusion covered his cheeks; but it was only momentary, and less than might have been expected from an indifferent person, who found himself on a sudden “the observed of all observers.” He bowed respectfully to the court; and then folding his arms, seemed to wait until he should be called upon to commence his part in that drama in which he was to perform so conspicuous a character. I find it difficult to describe the effect produced on my mind by his personal appearance; yet his features were most remarkable, and are indelibly impressed on my memory. He was apparently between forty and fifty years of age; his hair, grown grey either from toil, or care, or age, indicated an approach to the latter period; while the strength and uprightness of his figure, the haughty coldness of his look, and an eye that spoke of fire, and pride, and passion, ill concealed, would have led conjecture to fix on the former. His countenance, at the first glance, appeared to be that which we are accustomed to associate with deeds of high and noble daring; but a second and more attentive examination of the face and brow was less satisfactory. There was, indeed, strongly marked, the intellect to conceive and devise schemes of high import; but I fancied that I could trace, in addition to it, caution to conceal the deep design, a power to penetrate the motives of others, and to personate a character at variance with his own, and a cunning that indicated constant watchfulness and circumspection. Firmness there was, to persevere to the last; but that was equivocal: and I could not help persuading myself that it was not of that character which would prompt to deeds of virtuous enterprise, or to “seek the bubble reputation at the cannon's mouth;” but that it was rather allied

to that quality which would “let no compunctions of Nature shake his fell purpose,” whatever it might be. The result of this investigation into his character, such as it was, was obviously unfavourable; and yet there were moments when I thought I had meted out to him a hard measure of justice, and when I was tempted to accuse myself of prejudice in the opinion I had formed of him; and particularly when he was asked by the clerk of the arraigns the usual question, “*Are you guilty, or not guilty?*” as he drew his form up to its fullest height, and the fetter clanked upon his legs, as he answered with unfaltering tongue and unblushing cheek, “*Not guilty,*” my heart smote me for having involuntarily interpreted against him every sign that was doubtful.

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 so foul a 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 candour, 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 judicial investigation. The deceased Henry Thomson was a jeweler, residing in London, wealthy, and in considerable business; as, as was the custom of his time, in the habit of personally conducting his principal transactions with the foreign merchants with whom he traded. He had travelled much in the course of his business in Germany and Holland; and it was to meet at Hull a trader of the latter nation, of whom he was to make a large purchase, that he had left London a month before his death. It would be proved by the landlord of the inn where he had resided, that he and his correspondent had been there; and a wealthy jeweler of the town, well acquainted with both parties, had seen Mr. Thomson after the departure of the Dutchman; and could speak positively to there being then in his possession jewels of large value, and gold, and certain bills of exchange, the parties to which he could describe. This was on the morning of Thomson’s departure from Hull, on his return to London, and was on 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 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 the robbers by whom the remote parts of the country were greatly infested. He had not been seen from the time of his leaving Hull till he reached the village next adjoining Smith’s house, and through which he passed, without even a momentary halt. He was seen to alight at Smith’s gate, and the next morning was discovered 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 other nations of 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 its 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 who 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 out-house adjoining the stable, and did so on the night of Thomson'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 happened to be passing by 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 Thomson's room he could not see, as the window of that 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 it no more.

Such was the evidence upon which the magistrates had 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 it, was acted over again; but it was utterly impossible, from the cause above mentioned, to ascertain, when the light disappeared, whether the parties had gone into Thomson'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 persons 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 not of English manufacture, and was described, by the 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 it 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, as 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 was it varied in any particular. The stopper was produced, and proved to be 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 defence; 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 lordship'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 seconded so strongly by his counsel, that Lord Mansfield, though very much against his inclination, and contrary to his usual habit, gave way, and yielded to the fatal request.

“Evertere domos totas, optantibus ipsis,
Dii faciles—torrens dicendi copia multis
Et sua mortifera est facundia.”

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 upon 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 favour 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 Hall. 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. Thomson has travelled, while to himself it 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 rumour 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 fact 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 bed-room 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 while 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 had 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 probably 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 solicitor, 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 delivered in a firm and impressive manner, and its simplicity and artlessness gave to 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 or 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 that he 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 traveller'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. Rmith 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 to 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 colour; he appeared a living image of death. She no sooner saw him than she shrieked and fainted. The consequences 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. A medical man was immediately directed to attend to her; and during the interval occasioned by this interruption to the proceedings, the solicitor for the prosecution left the court. In a short time the gentleman who had attended the witness returned

into court, and stated that it was impossible that she could at present resume her place in the box; and suggested that it would be much better to allow her to wait for an hour or two. It was now 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. Thomson's death.

At this moment the solicitor for the prosecution entered the court, bringing with him, upon a tray, a watch, two money-bags, a jewel-case, a pocket-book, and a bottle of the same manufacture as the stopper, and having a cork in it; some other articles there were in 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 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 solicitor, 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. Thomson was found there, amounting, in value, to some thousand pounds; 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 Thomson. The result is too obvious to need explanation.

The case presents the, perhaps, unparalleled instance of a man accused of 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*.

The New Monthly Magazine, 1834
Southern Literary Messenger, 1834

This story was reprinted with various changes throughout the story as
“The Trial for Murder” in
Strange Stories of a Detective by William Russell, 1863.