

# The Maimed Hand

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## A TALE OF CIRCUMSTANTIAL EVIDENCE.

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Evidence in a criminal law court is divided into two classes—the direct and circumstantial.

These are very different. Direct evidence is that of a person who says, “I am so-and-so,” and it becomes valuable when a second person corroborates the first exactly, or almost exactly.

Circumstantial evidence is where circumstances prove the case against a man, while there is no direct evidence.

For instance, in the event of death through violence, if three men give evidence they saw the prisoner commit the crime, that is direct evidence. Now suppose no-body saw the deed perpetrated, but that while one observed the prisoner going toward’s the deceased man’s house with a cocked gun, another saw him leave hurriedly after the report of fire arms, a third swore he had heard the prisoner vow vengeance against the dead man, and a fourth (a doctor) found hairs grasped in the dead man’s right hand, corresponding with the prisoner’s beard, whence a handful of hair had been recently torn. Then all these statements would be circumstantial evidence.

Judges (and juries under their directions) give great credence to circumstantial evidence, in contradiction to direct evidence, because circumstances cannot lie, and men may. There could be no disputing the existence of the hair in the dead man’s hand, but it is open to question whether a man is telling the truth or not.

And to such an extent do judges apply this rule that, in cases of direct evidence, they prefer that the witnesses shall vary in unimportant points.

Judges look with considerable suspicion on witnesses who swear alike to the very minutest particulars, and are apt to put juries on their guard against such evidence.

The following tale will be found to be a remarkable example of the sinuosities of circumstantial evidence.

Two cousins, David and Josiah Thomas, had been equally the nephews of old Farmer Thomas, the unmarried brother of their fathers.

In dying, he had bequeathed his hundred or so acres of land equally to his nephews, with the proviso that while they remained unmarried they were to work the land for their own mutual benefit; while, if one or both married, the eldest (David, by about a month) was to take the old farm house and one-half the land designated; and the younger (Josiah) was to have a house built for him on his designated acres, and which was to cost £300, this sum to come equally out of the profits of all the land.

The cousins had received the land when they were 22 years of age, and had farmed it in all peace and prosperity for six years when the following events occurred:

They were looked upon as equally good, honest, straight-forward men, as honorable neighbors and pleasant companions.

One clause of the uncle's will should, however, be borne well in mind. In the event of the death of either, unmarried, the land was to go to the survivor. This condition was by no means inconvenient, for they had positively no relations in the world, and, therefore, each was naturally the successor of the other.

They lived in perfect peace; and the servants, men and women, found them perfectly just and contented.

Things were in this position when it became known in the village that David was engaged to the only daughter of Francis Hartly, at Silverton.

People said it was a very good match; declared it was time David—and Josiah, too for that matter—was settled in life; and the people of the village had become accustomed to see the young farmer and Ruth Hartly at Silverton church together when the circumstance occurred which set Silverton and Brotherip Barton talking.

Farmer Hartly was the guardian of the son of an old friend, who came of an age on a particular Monday, when he was to receive from the farmer the sum of three hundred pounds.

On the Saturday, Hartly, being in the next market town, brought the sum home with him ready for delivery on the Monday.

On the intervening Sunday the cousins and this ward were at the house to dinner, and the farmer did, over his pipe, go to his oak chest before them, open it, and produce the roll of notes, and display them. Then he rolled them up, and fastened them with wax, which he stamped with an old fashioned engraved seal, dangling from his silver watch chain, saying it would look better to hand the lawyer the notes in a sealed packet.

The family passed the day very pleasantly, the cousins left about ten, the ward remaining at the farm, he being on a visit from the neighboring town, where he had just completed his apprenticeship.

Next day, when the farmer went to the oak-chest, it was unfastened; the packet of notes was gone.

The lawyer, who had arrived to negotiate the cessation of Farmer Hartly's guardianship, had but one course of duty to pursue. He informed the farmer the money must be paid, and intimated the farmer himself must bear the loss.

The local constable, a keen-witted old policeman, who had once been in the metropolitan force, was consulted.

He directly instituted a minute examination of the premises.

He found boot marks in the flowerbeds behind the house; marks of opening a window from without, which lit the room wherein the oak chest stood, and a fancy waistcoat button, which lay positively on the window sill.

The boot marks and that fancy button secured the clue to the thief.

The farmer having only brought home the money on the Saturday, it was clear to the meanest comprehension that the thief must have been aware of the existence of the notes in the chest.

Who was acquainted with the fact? Five persons only, Farmer Hartly, his daughter, David Thomas, Josiah Thomas, and the ward, one William Pallister.

Of those five, it was absurd to accuse the farmer, because no man can rob himself; while it was equally impossible to suspect young Pallister of stealing the money he was about to receive the following morning—the more especially as he was so shocked he begged nothing might be done, and expressed a desire to let the whole matter rest until it was explained by some extraordinary means.

As to Ruth Hartly, it was felt she could have no motive in robbing her own father; and, therefore, suspicion could alone, and with any degree of rationality, fall upon the two cousins.

But here, again, the question arose, what could be the motive of either of those prosperous men to commit a burglary?—while, on the other hand, they both knew that the farmer, having been robbed many years before, always kept loaded firearms in the house.

But there was the boot marks and the button, and upon these the old constable based his investigation.

An hour after he had left the farm, he returned to it, bringing with him a pair of boots and a waistcoat. The latter had David Thomas' name written in it, one of the fancy buttons was missing, and that found on the farm window ledge perfectly agreed with those on the waistcoat. As to the boots, they fitted the impressions in the garden ground near the window to a hair's breadth, and they also fitted other marks on a side bed in a garden in front of the farm, where David had gone on the previous day to pick up a young blackbird, which had fluttered under the laurels on its first flight from some neighboring nest.

When the police constable told all these to the farmer, neither knew Ruth was listening. Poor child, she had recognized the buttons in a moment. It was one of the set she herself had given David.

But she never for a moment believed him guilty. There was some mystery, and beyond that she would not go. She neither fainted nor lost her presence of mind. She knew it was no time for sentiment. Her conscience told her she must be up and doing.

“Let us go to him,” she heard her father say. “Perhaps he has done it for a joke, Summers. We will suppose he did it in fun; and, if he gives us the notes back, no harm will be done. Let us go to him.”

Summers nodded; and after putting the waistcoat and the boots in a cupboard, the two men started for the cousin’s farm.

There was no time to be lost—that Ruth knew. She went to the cupboard, took out the accusing articles of clothing, and pondered.

Now this is certain—that in habits of watchfulness of small things women are far more acute than men.

In a moment Ruth Hartly thought, as she examined the waistcoat, “If the button was torn off when the thief was climbing in at the window, how did it happen that it came from almost under the collar of the waistcoat?”

She examined the thread that had fastened the button to the cloth, and she found that it had not loosened, but that the different stitches had all been broken through, so that great force must have been used. It had not dropped off, it had been torn away, and yet the waistcoat showed no sign of having been injured. Then she went out and compared the footprints in the front and back garden.

She saw that the distance between the footsteps in the front garden was greater than that between the marks in the ground at the back of the house, while the prints farthest apart were deepest.

So she reached the conclusion:—“There is no doubt that the same boots made the marks in both the front and back garden, but they must have been worn by different persons. He who made the marks in the background” (those effected by the burglar) “being the lighter man, so the less depression of the ground; and the shorter man, hence the shorter distance between the footsteps in the background.”

In a moment she knew she had a clew—his cousin Josiah, who was both lighter in weight, and shorter than David.

In a mere second she was morally convinced that Josiah Thomas had torn the button from the waistcoat in question, to clench the accusation of the boot marks.

But what could be his motive? He was evidently attached to his relative, and while nothing was to be gained by the act of treachery, much was to be lost, while his own name would be involved in shame.

How could she accuse him? He was equally respected with the other cousin and it was against the elder the condemnatory proofs were to be found.

His motive—what could be his motive?

Again, how bring his guilt home by signs as palpable as those which menaced the other?

It is astonishing how a woman will hanker after the hidden when it affects her happiness. She could only breathe easily when she stood at the open window, by means of which entrance to the house had been effected.

Pondering, watching, listening, manœuvring—and suddenly success.

There was, in the window a box of mignonette—her planting—and which she had made the more pretty by tipping, between the sprigs of sweet scented flowers, with a layer of yellow powdering bog turf, much used in that district as fuel.

Then, in a moment she found more condemnatory proofs against the youngest cousin than had, so far, been brought against the elder.

There was the mark of a resting open hand upon the yielding layer of powdered turf—a left hand, and of which the third finger was absent. There were in the distinct indented impressions of the thumb, index, and long second finger, and then there was a space between that finger and the little one.

She knew that Josiah Thomas had lost the third finger in question down to the second joint, and that, therefore, the mark of the hand was not so much circumstantial as direct evidence. He had printed the proofs of his guilt on the surface of the box of mignonette growing in the very windowsill where had thrown the button down.

It was clear to her as daylight—he had rested his left hand on the box while his right was engaged in forcing the window.

But his motive—his motive?

What should she do?

She was still apparently inactive; and yet her busy brain was planning, and her only action had been to cover the mark of the hand with a plate, as she had seen the policeman do in connection with the marks in the grounds, when Josiah Thomas, filled with consternation, rushed into the house.

“Ruth, Ruth,” he cried in veritable terror—“they have taken David into custody for stealing £300 from the farmer here! He would not do it—he is too good a fellow! I shall go mad if they put David in prison!”

She neither knew what to do or to say.

“I was listening,” she said, “when Mr. Summers came here, and I know all until they went away. What has happened since?[]”]

“No sooner had your father told him about the robbery, and that he was suspected of it, than—you know how passionate he is—he flung your father down; whereupon the farmer, in his rage, gave him into custody, and has been taken up before Sir Robert.”

She was afraid to answer him then and there, for there was no one there to help her. Again, she was much confused by his evident grief.

“Let us go up to the Hall,” she said.

During their walk he never ceased speaking in praise of his cousin, whom, apparently, he had ruined remorselessly by means of an infamous and monstrous act.

They reached the Hall as Sir Robert Maddenham, the justice of the peace before whom David Thomas had been taken, had decided to remand the case until next day, he refusing to admit the accused to bail, but at the same time declining to send him to prison.

It was understood that the constable was not to leave him, and that the investigation was to be resumed on the following morning.

Next morning, the post-mistress found a thick letter for farmer Hartly, which had been dropped in the box during the night.

The lawyer engaged for the farmer’s ward, the ward himself, and Ruth (still silent, but determined to speak before the justice), were present when the servant brought in the unstamped packet.

The farmer opened it, and found it contained the packet of notes, still sealed as he had left it on the Sunday evening.—The thief had actually returned them without even opening the wrapper in which they were enclosed.

“Oh!” said the lawyer, “there is something more in this than is at first sight apparent. There has been no theft here for the sake of theft; and either David Thomas has an accomplice or he is a victim. If the former, how is it this accomplice did not make away yesterday with the sum?”

“I’m main sorry I gave the lad into custody; and let me tell you, lawyer, I like him all the better for knocking me down, though I am his Ruth’s father, when I accused him of stealing the notes.”

“I know who stole the money, father!” interposed Ruth.

“You, child?”

She pointed to Josiah Thomas, now wildly coming towards the house, and looking the picture of despair.

“Farmer,” he said, “you won’t say a word against Dave, will you? I’ll pay double the sum, and here’s the money!—Dave couldn’t do no harm, and if harm comes to him, it will be bad for him and me!”

“I’ve got my ward’s money back,” said the farmer, “and I shall not go up to the hall, except to say thy brother is innocent, as I believe him to be.”

“He is!” said Josiah Thomas, earnestly.

“And who is the thief?” asked Ruth.

“Who?” he answered, awkwardly.

She took him by the left hand, pointed to the maimed finger, dragging the half fainting man to the window, took up the plate, and showed him the mark of the hand, less the third finger, in the turf.

“I did it,” he said, falling on the ground.

When they had restored the poor wretch, Ruth, with the unerring instinct of woman, said, “you love him; and you have always loved him; why seek to ruin him?”

“Oh,” replied the unfortunate man, “we had been so happy at the farm, that I wanted no change. I thought that by doing what I did, I should break off the marriage between you two and then he and I might have once more been happy at the farm. But I know now it never could have been, I am ready to receive punishment.”

“But a woman can always forgive one who injures one she loves, out of very love for him.”

“His own confession would send him to Portland for five years,” observed the lawyer, gravely.

“You must save him!” she said with determination.

The lawyer scratched his wise, square old head for a time, and then he resolved what to do.

“Farmer, you must say you have found the notes, and that there has been no burglary; that will set David free. But the postmistress will guess what the packet contained, and, therefore, the neighbors would talk, and one or other cousin would lose his character! [”]

“Let me suffer!” said the repentant man.

“You must go away, and write the truth to Sir Robert after you are beyond the reach of the law.”

“I will give up my part of the land by deed of gift to my cousin, and never return to England!”

“I promise for David,” said Ruth, “that the value of your land shall be sent to you yearly.”

“No—half,” he said humbly.

“He would not touch a farthing of it I know,” said Ruth, gravely.

“Because I am a criminal!” moaned the unhappy man.

“And at law, by my faith!” said the lawyer, “we are all criminals, for we are aiding and abetting the escape of a malefactor, and the less we say about this the better.”

It will be seen that this is told. It will readily be understood that the particulars of Josiah’s motives were only made public when he was safe from pursuit.

He has not returned to England, and, in all probability, he never will.

It is said he lives upon very little, and gives away the greater part of the considerable income he receives from his cousin to the poor of the place in which he lives.

His great dread is that he should ever be seen by his cousin or either of Dave’s children. Dave and his wife have many times entreated to see him, but he will never yield. He says his exile and his isolation are his proper and lasting punishment.

This tale has been told as affording an example of the fact that circumstantial evidence is not always to be relied on.—Many and many a man has been condemned upon less strong circumstantial evidence than which appeared to condemn David Thomas.

However, as the years move on, greater wisdom and wider tolerance are shown by the law; and it is to be hoped that in our days—at all events, in those of the generation who will immediately succeed us—that circumstantial evidence will be reduced to rules as certain as those of mathematics.

We do widely to look towards the future; to feel that, taken for all in all, to-day is wiser than yesterday, and to leave the gloomy past to look after itself.

*York [PA] Gazette*, February 4, 1879, 1/4  
*Allen County Democrat*, February 27, 1879, 1/4