

LITERATURE, &c.

The British Magazines.

From Chambers's Edinburgh Journal.

EXPERIENCES OF A BARRISTER.

THE MARCH ASSIZE.

I AM not going to inflict on the reader a detailed account of this remarkable trial, which turned, as barristers would say, on a beautiful point of circumstantial evidence. Along with the attorney, a sharp enough person in his way, I examined various parties at the hotel, and made myself acquainted with the nature of the premises. The more we investigated, however, the more dark and mysterious—always supposing Harvey's innocence—did the whole appear. There was not one redeeming trait in the affair, except Harvey's previous good character; and good character, by the law of England, goes for nothing in opposition to facts proved to the satisfaction of a jury. It was likewise most unfortunate that A—— was to be the presiding judge. This man possessed great forensic acquirements, and was of spotless private character; but, like the lawyers of that day—when it was no extraordinary thing to hang twenty men in a morning at Newgate—he was a staunch stickler for the gallows as the only effectual reformer and safeguard of the social state. At this time he was but partially recovered from a long and severe indisposition, and the traces of recent suffering were distinctly apparent on his pale and passionless features.

Harvey was arraigned in due form; the evidence was gone carefully through; and everything, so far as I was concerned, was done that man could do. But at the time to which I refer, counsel was not allowed to address the court on behalf of the prisoner—a practice since introduced from Scotland—and consequently I was allowed no opportunity to draw the attention of the jury to the total want of any direct evidence of the prisoner's guilt. Harvey himself tried to point out the unlikelihood of his being guilty; but he was not a man gifted with dialectic qualities, and his harangue fell pointlessly on the understandings of the twelve common-place individuals who sat in the jury-box. The Judge finally proceeded to sum the evidence, and this he did emphatically against the prisoner—dwelling with much force on the suspicious circumstance of a needy man taking up his abode at an expensive fashionable hotel; his furtive descent from his apartments by the back stairs; the undoubted fact of the watch being found in his trunk; the improbability of any one putting it there but himself; and the extreme likelihood that the robbery was effected in a few moments of time by the culprit just as he passed from the bar of the hotel to the room which he had occupied. 'If,' said he to the jury, in concluding his address, 'you can, after all these circumstances, believe the prisoner to be innocent of the crime laid to his charge, it is more than I can do. The thing seems as clear to me as the sun at noon day. The evidence in short is irresistible; and if the just and necessary provisions of the law are not enforced in such very plain cases, then society will be dissolved, and security for property there will be none.—Gentlemen retire and make up your verdict.'

The Jury were not disposed to retire. After communicating a few minutes together, one of them stood up and delivered the verdict: it was GUILTY! The Judge assumed the crowning badge of the judicial potentate—the black cap; at the clerk of arraigns asked the prisoner at the bar, in the usual form, if he had anything to urge why the sentence of death should not be passed upon him.

Poor Harvey, I durst scarcely look at him. As the sonorous words fell on his ear, he was grasping nervously with shaking hands at the front of the dock. He appeared stunned, bewildered, as a man but half awakened from a hideous dream might be supposed to look. He had comprehended, though he had scarcely heard, the verdict; for on the instant, the voice which but a few years before, sang to him by the brook side, was ringing through his brain, and he could recognise the little pattering feet of his children, as, sobbing, and clinging to their shrieking mother's dress, she and they were hurried out of the court. The clerk, after a painful pause, repeated the solemn formula. By a strong effort the doomed man mastered his agitation; his pale countenance lighted up with indignant fire, and firm and self-possessed, he thus replied to the fearful interrogatory:—

'Much could I say in the name, not of mercy, but of justice, why the sentence about to be passed on me should not be pronounced; but nothing, alas! that will avail me with you, pride-blinded ministers of death. You fashion to yourselves—out of your own vain conceits do you fashion—modes and instruments, by the aid of which you fondly imagine to invest yourselves with attributes which belong only to Omniscience; and now I warn you—and it is a voice from the tomb, in whose shadow I already stand, which addresses you—that you are about to commit a most cruel and deliberate murder.'

He paused, and the jury looked into each other's eyes for the courage they could not find in their own hearts. The voice of conscience spoke, but was only for a few moments audible. The suggestions that what grave parliaments, learned judges, and all classes of 'respectability' sanctioned, could not be wrong, much less murderous or cruel, silenced the 'still, small' tones, and tranquillised the startled jurors.

'Prisoner at the bar,' said the judge with his cold calm voice of destiny, 'I cannot listen to such observations: you have been found guilty of a heinous offence by a jury of your countrymen after a patient trial. With that finding I need scarcely say I entirely agree. I am as satisfied of your guilt as if I had seen you commit the act with my own bodily eyes. The circumstance of your being a person who, from habits and education, should have been above committing so base a crime, only aggravates your guilt. However, no matter who or what you have been, you must expiate your offence on the scaffold. The law has very properly, for the safety of society, decreed the punishment of death for such crimes: our only and plain duty is to execute that law.'

The prisoner did not reply: he was leaning with his elbows on the dock, his bowed face covered with his outspread hands; and the judge passed sentence of death in the accustomed form. The court then rose, and a turnkey placed his hand upon the prisoner's arm, to lead him away. Suddenly he uncovered his face, drew himself up to his full height—he was a remarkably tall man—and glared fiercely round upon the audience like a wild animal at bay. 'My lord,' he cried, or rather shouted, in an excited tone. The judge motioned impatiently to the jailer, and strong hands impelled the prisoner from the front of the dock. Bursting from them, he again sprang forward, and his arms outstretched, whilst his glittering eye seemed to hold the judge spell-bound, exclaimed, 'My lord, before another month has passed away, you will appear at the bar of another world, to answer for the life, the innocent life, which God bestowed upon me, but which you have impiously cast away as a thing of naught and scorn!' He ceased and was at once borne off. The court, in some confusion, hastily departed. It was thought at the time that the judge's evidently failing health had suggested the prophecy to the prisoner. It only excited a few days' wonder, and was forgotten.

The position of a barrister in such circumstances is always painful. I need hardly say that my own feelings were of a very distressing kind. Conscious that if the unfortunate man really was guilty, he was at least not deserving of capital punishment, I exerted myself to procure a reprieve. In the first place I waited privately on the judge, but he would listen to no proposals for a respite. Along with a number of individuals—chiefly of the society of Friends—I petitioned the crown for a commutation of the sentence. But being unaccompanied with a recommendation from the judge, the prayer of our petition was of course disregarded; the law, it was said, must take its course. How much cruelty has been exercised under the shelter of that remorseless expression.

I would willingly pass over the succeeding events. Unable to save his life, I endeavoured to soothe the few remaining hours of the doomed convict, and frequently visited him in his condemned cell. The more I saw of him the deeper grew my sympathy in his case, which was that of no vulgar felon. 'I have been a most unfortunate man,' said he to me one day. 'A destiny towards ruin in fortune and in life has followed me. I feel as if deserted by God and man; yet I know or at least would persuade myself, that heaven will one day vindicate my innocence of this foul charge. To think of being hanged like a dog for a crime at which my soul revolts! Great is the crime of those imbecile jurors and that false and hard-hearted judge, who thus, by an irreversible decree, consign a fellow mortal to a death of violence and disgrace. Oh God help me—help me to sustain that bitter, bitter hour!' And then the poor man would throw himself on his bed and weep.

But the parting with his wife and children. What pen can describe that terrible interview! They knelt in prayer, their wo-begone countenances suffused in tears, and with hands clasped convulsively together. The scene was too harrowing and sacred for the eye of strangers. I rushed from the cell, and buried myself in my lodgings, whence I did not remove till all was over. Next day James Harvey, a victim of circumstantial evidence, and of a barbarous criminal code, perished on the scaffold.

Three weeks afterwards, the court arrived at a populous town in the west of England. It had in the interval visited another assize town, and there judge A—— had left three for execution. At the trials of these men, however, I did not attend. So shocked had been my feelings with the mournful event which had taken place at——, that I had gone into Wales for the sake of change of scene. After roaming about for a fortnight amidst the wild solitudes of Caernarvonshire, I took the stage for the city which I knew the court was to visit, and arrived on the day previous to the opening of the assizes.

'Well, are we to have a heavy calendar?' I inquired next morning of a brother barrister on entering the court.

'Rather light for a March assize,' replied the impatient counsel as he bustled onward. 'There's Cartwright's case—highway robbery—in which I am for the prosecution. He'll swing for it, and perhaps four or five others.'

'A good hanging judge is A——,' said the under-sheriff, who at this moment joined us, rubbing his hands as if pleased with the prospect of a few executions. 'No chance of the prophecy yonder, coming to pass, I suppose?'

'Not in the least,' replied the bustling counsel. 'He never looked better. His illness has gone completely off. And this day's work will brighten him up.'

Cartwright's trial came on. I had never seen the man before, and was not aware that

this was the same person whom Harvey had incidentally told me he had discharged for theft; the truth being, that till the last moment of his existence, that unfortunate man had not known how much he had been a sacrifice to this wretch's malice.

The crime of which the villain now stood accused was that of robbing a farmer of the paltry sum of eight shillings, in the neighborhood of Ilminster. He pleaded not guilty, but put in no defence. A verdict was recorded against him, and in due form A—— sentenced him to be hanged. An expression of fiendish malignity gleamed over the haggard features of the felon as he asked leave to address a few words to the court. It was granted. Leaning forward, and raising his heavy scowling eyes to the Judge, he thus began:—

'There is something on my mind, my lord—a dreadful crime—which, as I am to die for the eight shillings I took from the farmer, may as well confess. You may remember Harvey, my lord whom you hanged the other day at——?'

'What of him?' replied the Judge, his face suddenly flushing crimson.

'Why, my lord, only this—that he was as innocent of the crime for which you hanged him as the child yet unborn! I did the deed! I put the watch in his trunk! And to the utterable horror of the entire court, he related the whole particulars of the transaction, the origin of his grudge against Harvey, and his delight in bringing him to the gallows.'

'Inhuman, execrable villain,' gasped the judge in extreme excitement.

'Cleverly done though! Was it not, my lord?' rejoined the ruffian, with bitter irony. 'The evidence, you know, was irresistible; the crime as clear as the sun at noonday; and if, in such plain cases, the just and necessary law was not enforced, society would be dissolved and there would be no security for property! These were your words, I think. How on that occasion I admired your Lordship's judgment and eloquence! Society would be dissolved if an innocent man were not hanged! Ha! ha! ha! Capital! capital!' shouted the ferocious felon with demonic glee, as he marked the effects of his words on the countenance of the Judge.

'Remove the prisoner,' cried the sheriff. An officer was about to do so, but the judge motioned him to desist. His Lordship's features worked convulsively. He seemed striving to speak, but the words would not come.

'I suppose, my lord,' continued Cartwright, in low and hissing tones, as the shadow of unutterable despair grew and settled on his face—'I suppose you know that his wife destroyed herself. The coroner's jury said she had fallen accidentally into the water. I know better. She drowned herself under the agonies of a broken heart. I saw her corpse, with the dead baby in its arms, and then I felt, knew, that I was lost! Lost, doomed to everlasting perdition. But, my lord,' here the wretch broke into a howl wild and terrific—'we shall go down together—down to where your deserts are known. Ah—h—h, that pinches you, does it? Hound of a judge! legal murderer! coward! I spurn and spit upon thee! The rest of the appalling obprobrium was inarticulate, as the monster, foaming and spluttering, was dragged by an officer from the dock.

Judge A—— had fallen forward on his face, fainting and speechless with the violence of his emotions. The black cap had dropped from his brow. His hands were stretched out across the bench, and various members of the bar rushed to his assistance. The court broke up in frightful confusion.

Two days afterwards the county paper had the following announcement:—

'Died, at the Royal Hotel,——, on the 27th instant, Judge A——, from an excess of fever supervening upon a disorder, from which he had imperfectly recovered.'

The prophecy was fulfilled.'

From Hogg's Instructor.

THE MAN WITH ONE BAD HABIT.

MR UPTON, of Cambridge, was the son of a poor, industrious shoemaker. He learned his father's trade, and, being prudent and steady, he was soon in the way of making a comfortable little property. He married a worthy young woman, who always managed to make their own neat fireside the pleasantest place in the whole world to her hard-working husband. The floor was always nicely sanded, the hearth swept clean, and a plentiful kettle of warm broth or soup was always provided for his return. Things were in this state at the commencement of the American revolutionary war. Then Mr Upton felt it his duty to join the army. It was, no doubt, a sad trial to the honest man to leave the place where he had spent so many happy hours; but his wife and children must be defended—so he buckled on his sword, and, without shedding a tear, he hurried to the camp.

His courage and good conduct were soon noticed by the officers, and he was made one of Washington's life-guard. Like every one else who knew that good and great man, he soon loved him with unbounded attachment and respect. While the general had his headquarters at Cambridge, it was frequently necessary for detachments of the army to make excursions into the neighboring towns. On one of these occasions, Washington and his life-guard were pursued by a company of British soldiers. They retired as rapidly as possible, but the English being close upon their rear, they were often obliged to turn and fight. In the midst of the retreat, an Englishman had just raised his sword above the head of the general, when Mr Upton sprang forward and placed his body be-

tween him and the commander. The uplifted weapon descended upon his thigh, and crippled him for life. After they had safely effected their return to the American barracks, Washington called to inquire concerning the man who had so generously preserved his life at the risk of his own. 'Thanks be to God, my general, that your life is saved!' exclaimed the wounded soldier: 'America could lose such a man as I am, but what could she do without your honor?'

His wound disabled him for battle, but he continued to perform various services to his country until the close of the war. After seeing his country in possession of peace and freedom, he returned to his home. True, it was now almost desolate and comfortless. No one had been left to cultivate his small farm, and what little stock he possessed had been killed for the use of the army. America was then too poor to pay their soldiers for what they had lost and suffered; and Mr Upton was obliged to contend with poverty as he could. His hard-earned bread, however, was sweetened by the respect which was everywhere paid to him. When he swung his axe over his shoulder, and went forth to labour in the woods, he was always welcomed with smiling looks and a cordial shake of the hand from his companions; and the older boys would often call out to their little brothers, 'Off with your hat, Joe, and make a bow, for there is the man who saved the life of General Washington.' The poor soldiers of the revolution had but few of those comforts which now make our firesides so cheerful; but when the long winter evenings came on, dearly did they love to fight their battles over again, and often would they say to Mr Upton, 'The loss of your limb, in such a cause, neighbor, is a greater honor to you than if you had a crown upon your head.' The tears would sometimes trickle down his cheeks, as he replied, 'The Lord make us thankful that it saved his honor's life. It is little we should have done against all Borgey's troops if his wisdom had not been at the helm. I am thinking, friends, that I could depart in peace, if I could once more look George Washington in the face, and say, "God bless your honor!"'

Now, this was in 1784, the year after Great Britain acknowledged the independence of America, and will it be believed, that only four years after, when General Washington desired an interview with Mr Upton, he was ashamed to grant it? Yes! the man whose bravery saved his general—whose integrity won the respect of his neighbors—whose industry had procured a comfortable home, and whose kindness had ensured him an affectionate family, gave way to the sin of intemperance. Once his little ones used to run out eagerly to know his healthy, good-humored countenance; but now he had become so cross and troublesome that his children were afraid of him. His firm hold step had become weak and trembling with intoxication; and his round, handsome face was now red and bloated. When Washington visited New England, he sent a servant to request a visit from his old preserver. The wretched man heard the summons, and wept aloud. 'Heaven knows,' said he, 'that in my best days I would have walked from here to Mississippi, for the honor which Washington now pays me. But I cannot—I cannot carry this shameful face into his presence. Tell General Washington that my love and gratitude will always follow him. Tell him that none but the good have a right to look upon his blessed countenance, and Mr Upton is no longer among that number.'

If ever our young friends should be tempted to persevere in one thing, which they know to be wrong, let them remember that one bad habit changed Mr Upton from a brave soldier and a respected citizen, into a worthless and neglected sot—procured for him the contempt of those who once esteemed him, the fear and distrust of his family, the sorrowful disapprobation of his general, and finally broke his heart with shame and remorse.

From Chambers's Edinburgh Journal.

INTELLIGENCE IN A FISH.

At a recent meeting of the Liverpool Philosophical Society, Doctor Warwick related an extraordinary instance of intelligence in a fish. When he resided at Durham, the seat of the Earl of Stamford and Warrington, he was walking one evening in the park, and came to a pond where fish intended for the table were temporarily kept. He took particular notice of a fine pike, of about six pounds weight, which, when it observed him, darted hastily away. In so doing it struck its head against a tenterhook in a post (of which there were several in the pond, placed there to prevent poaching) and, as it afterwards appeared, fractured its skull, and turned the optic nerve on one side. The agony evinced by the animal appeared most horrible. It rushed to the bottom, and boring its head into the mud, whirled itself round with such velocity that it was almost lost to the sight for a short interval. It then plunged about the pond, and at length threw itself completely out of the water on the bank. He went and examined it, and found that a very small portion of the brain was protruding from the fracture in the skull. He carefully replaced this, and with a small silver toothpick, raised the indented portion of the skull. The fish remained still for a short time, and he then put it again into the water. It appeared at first a good deal relieved; but in a few minutes it again plunged and darted about, until it threw itself out of the water a second time. A second time Dr Warwick did what he could to relieve it, and again put it into the water. It continued for several times to throw itself out of the pond, and