

## LITERATURE.

### CHAPTER FROM THE NOTE BOOK OF A DECEASED LAWYER.

One of the most interesting trials of which I find an 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 currents of events as gliding on in a smooth and untroubled 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 recognise 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 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 raise to eminence and distinction, let him have it deeply engraven on the tablet of his memory.

In the year 17—, John Smith was indicted for the wilful murder of Henry Thomson. The case was one of a most extraordinary nature, and the interest excited by it was unparalleled. The accused was a gentleman of considerable property, residing upon his own estate, in an unrequented 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 dead in his bed, perfectly dead; and from the appearance of his 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 his life. Great consternation was of course excited by this discovery, and enquiries 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 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.

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 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 mean time 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 to 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 somewhat inexplicably to procure.

Ten years or more 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 suspicions. The horse and the clothes of the unfortunate man still remained, and were instantly recognised: 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 authorised 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 unnecessary 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 wilful 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.

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 now 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.

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 effusion covered his cheeks; but it was only momentary, and less than might have been expected from a different 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 the 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 its 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 was rather allied to that quality which would "let no compunctious visitings 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 clerks of the arraigns the usual question, "Are you guilty or not guilty?" as he drew his form up to his fullest height and the fetters clanked upon his legs, as he answered with unflinching tongue and unblenching cheek, "Not guilty." My heart smote me for having voluntarily interpreted against him every sign that was doubtful.

The Council 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 con-

siderable 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 been either 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 be possibly 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 jeweller, residing in London, wealthy, and in considerable business; and, as was the custom of his time, to 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 jeweller 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 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 in 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 placed, at dark, on the very spot where he had stood on that night, and another was placed with him. The whole scene as he had described it, was

acted over again; but it was utterly impossible, from the causes 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 their 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 liable 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 eagerly 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 lips; 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.

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 being guilty of the dreadful crime. With respect to the insinuations that had been thrown out against him, he thought that 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 he had never heard either the name or the existence until this day, was not every probability in favor of his innocence? He 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 Hull. 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 had 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, for 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 moment 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 probable they might tamper with his servant: he had, therefore, kept her out of the 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 expressive 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 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 had told of his having called her up, and of 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:—

[For Remainder, see Second Page.]

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