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ENIGMAS OF JUSTICE.

Paul Feval, in one of his subtle and sensational romances, in which the intricate web woven by a 'docto in crime' is traced beneath an apparently simple tragic event, arraigns French justice and judge as too much absorbed in system and theology. The courts are the slaves of appearance; the "instruction" or preliminary examination of a crime moves in the narrow grooves to which it has been confined by tradition. The motto of Feval's remarkable novel, "Le Dernier Vivant," as to show how easily, under the French system, a masterly conjurer in crime can divert the eyes of justice from the real criminal.

Indeed, the history of English and American, as well as of French justice, is almose as notable for its miscarriages as for its triumpht. It is true that in these days justice seldom errs in hanging or imprisoning the wrong man. Such cases as that of Bourne, in Vermont, who was condemned to death for the murder of a man who opportunely turned up alive and well on the eve of the execution of his supposed assassin, are exceedingly rare. If justice arrests and tries an innocent person, the restrictions of the law are commonly sufficient to protect him by at least giving him the benefit of a doubt.—The failures of justice more often consist in letting criminals free for want of evidence. Men of whose guilt the outer world have no moral doubt, escape by the inadmissibility of evidence which would convict them, by the fine-spun reasonings and artificial theories of crafty counsel, and sometimes, doubtless, by the pity, the excessive timidty, and even the prejudices or corruption of juries.

Justice is human, and therefore prone to err. It would be treating justice unjustly were we not to recognize the various intricate, bewildering difficulties by which, especially in cases of grave crimes it is surrounded. While insisting that justice should do wise and thorough work, we must not forget that the struggle between the blind goddess with the even scales and crime is always an uneven one. Crime is dark, tortuous and crafty. It often chooses its own ground. It has ample opportunity, before it strikes, for concealment and defence. It is easier to propound a puzzle of which you have the key than to guess it out. It is easier for a man to hide a utensil—a pistol or a knife—than for forty men to find it.—Before a criminal is taken he knows that he is suspected; he is aware, to some degree at least, of the steps that are being taking for his detection. He is more watchful than the skillful detective, for, if the detective is laboring to sustain a reputation, the criminal is defending life, or at least liberty.

So justice is almost always in presence of a puzzle, which criminal ingenuity, sharpened in proportion to the stake at issue, makes as complicated as possible.—Almost every mysterious case of crime is to be solved by what is called "circumstantial evidence." That is, it is a crime which no eye except those of the criminal and his victim has seen committed, the guilt of which must be fastened by references from the proof of surrounding and accusing circumstances. In such cases the liability of justice to err is almost indefinite, the prospect of certainty is more or less dim, experience shows that often accusing circumstances envelop and close around an innocent man.

Yet, the collection and array of circumstantial evidence have become, in process of time, a science. Not only authorities strictly technical and legal, but writers of learning outside the limits of the legal profession, have arranged and classified the methods of solving the commission of a crime and the identify of its perpetrator. Greatest, perhaps, among these was Jeremy Bentham, whose "Rationale of Judicial Evidence" is an admirable analysis of this species of proof. The crimes which are committed "far from any human eye, ear, or dwelling place, in the darkness of the night, in the solitude of the forest or the ocean, or in the misty recesses of the impenetrable past," must be discovered and brought home by proof of a chain of facts, the conclusion from which is irresistable, a conclusion to which every discovered fact must point, and with which every such fact must be consistent. According to Bentham, every crime witnessed must include some or all of the following circumstauces, and no others: They must be proved by reference to a disposition or character of the accused indicating a motive; to preparations for the crime; to opportunities to commit it; to instruments for the work; to the violation of some person or thing; to the possession of the fruits of the crime; to concealment of it; to the fear of discovery and, finally, to confessions made of its commission.

It is our purpose to narrate some of the more remarkable cases which have occupied the attention of justice, and wherein circumstontial evidence has been employed to secure conviction. Some show the errors into which justice may fall in following the path indicated by this kind of proof; others demonstrate the overwhelming force with which a single thread of circumstantial evidence sometimes crushes an accused person otherwise shielded, by his own running or by fortunate accidents, from the detection of his deed. Of the former sort was a case of mistaken identity which occurred many years ago in Paris. It may be here said that the failures of justice have often resulted from a fatal mistake in persons. An old woman kept a small shop in a square on the left side of the Seine. It was thought that she had hoarded money in the course [illegible] in a room be[illegible]

quite alone; but she employed a boy who lived in the fourth story of the building where the shop was. This boy kept the shop, which he regularly locked every night. One morning the shop door was observed to be open before the customary hour.

The curious neighbors peered in; seeing nobody stirring, they finally penetrated to the old woman's bedroom. There they found her lying dead in her bed.—She had been stabbed several times, and a bloody knife lay on the floor in the shop. This knife, it was easily proved, belonged to the hired boy. Not only that, but in one of the dead woman's hand was clasped a lock of hair and in the other a necktie. The tie was also fully proved to belong to the boy; the hair, as far as could be judged, was exactly like his. It was found, moreover, that the front door had not been broken open, but quietly unlocked. Now the boy, and he alone as far as anybody knew, had a key that fitted the lock. He suffered the penalty of death. Not long after a boy who was employed in a neighboring shop fell ill. Being told that he was on his death-bed, he declared that he murdured the woman for her money. He had been in the habit of dressing the hair of the boy who was executed; had collected locks of it as he had an opportunity; had put the hair and the cravat into the dead woman's hands; had taken a wax impression of the lock, and thus procured another key: and, having got possession of the boy's knife, had with it inflicted the fatal wounds.

In this case there seems, indeed, to have been a complete chain of circumstantial evidence, sufficient to indentiy the hired boy as the assassin. Motive was present in the boy's supposition that his mistress had hoarded money. Opportunity was present in the fact that he held the key of the shop. An instrument belonging to him, which had undoubtedly been used for the crime was at hand. Yet justice was deluded, and the innocent suffered.

A very singular case of judicial error, in which there was a fabrication of evidence similar to that just described, occurred in England about a century ago. It was in the romantic but dangerous days of masked highwaymen, when many a high road leading from English towns, was infested by these marauding gentry. A gentleman was traveling to Hull.—Within a few miles of the town he was stopped by a man in a mask, and politely but firmily deprived of a bag of twenty guineas which he was carrying with him Receiving no other injury from the encounter, he proceeded on his way, and in due time safely reached a cosy inn outside of the town. He loitered in the kitchen while his supper was being prepared, and there related to a group of curious listeners the story of his adventure, adding that he had, for precaution's sake, taken care to put upon each guinea a peculiar mark. Supper was soon ready, and he sat down to it with a relish. While he was satisfiing his hunger, the landlord came into the dining-room, and began to make rather eager inquiries about the robbery. On learning the facts, and especially that the guineas were marked, the landlord at once declared that he could give a clew to the robber.

"I have a waiter, one John Jennings," said he, "who has latterly been very flush of money and recklessly extravagant in his expenditures. This evening about dusk I sent him out to change a guinea for me. He had only just returned and says he could not get it changed. On returning me the guinea I observed with surprise a mark upon it which was not upon that which I entrusted him. I should have thought no more of it, however, had I not been told of the circumstances of your robbery and your marked guinea pieces. Unluckily, before hearing of it, I paid away the guinea to a man who lives at a distance."

The landlord had sent Jennings, who was drunk, off to bed. It was now agreed between him and his guest that the man's room should be searched. In his pocket was found a purse with exactly nineteen guineas, which the guest recognized as those of which he had been robbed. Jennings was, of course, arrested and accused of the crime. Denial was useless; every fact fitted to the charge against him. Tried at the assizes, the jury found him guilty without leaving their seats, and he was executed.

Yet Jennings was as innocent of the robbery as a baby. A year had not elapsed before the landlord was arrested for a robbery committed on a guest at the inn. The proof in this case, at least, was too clear for doubt. The landlord was convicted and sentenced. While awaiting the doom of death, he confessed that he himself had committed the robbery for which Jenninns had suffered. He had hurried home after getting the guineas, had heard soon after with alarm of the arrival of his victim. He had been forced to part with one of the guineas to pay a bill; so he invented the story of sending Jennings to get a guinea changed, and had availed himself of the man's intoxication to conceal the rest of the money in the poor fellow's pocket.

We doubt if there ever happened a more melancholy instance of what is termed "judicial murder" than the famous case of Eliza Fenning. The tragic history of that unhappy young woman, though well remembered by old Londoers, is probably forgotten, or at least but little known in the United States. Eliza Fenning was a fair girl of twenty-two, of more than usual intelligence for one of her class; bright, coquetish, but self-disposed and amiable. The daughter of a poor couple who dwelt in High Holborn, on the very spot where Day & Martin's blacking establishment now stands, she was employed as a cook in the family of a Mr. Turner, a law stationer in Chancery lane. The family consisted of the Turners, man and wife, two apprentices named Gadsden and King; Sarah Peer, a housemaid, and Eliza Fenning, the cook. One day the father of Mr. Turner went to his son's house to dinner, and Mrs. Turner ordered Eliza to make some yeast dumplings. When dinner time came the three Turners sat down at the table, and began to discuss the savory dish. The dumplings had scarcely been tasted however, when all three were seized with sharp and agonizing pains. The dish was taken out into the kitchen, and there Gudsden, one of the apprentices, partook of it, and also fell violently ill. Eliza herself next ate of the dish, and was attacked by the same strange symptoms. The apprentice, King, and Sarah the maid, who had dined earlier, did not taste the dumplings, and were not ill.

The physician who was called declared the symptoms of the sufferers to be that of poisoning by arsenic. Then every component part of the dish of dumplings was examined. It was clear that the poison was not in the sauce, of which the elder Turner partaken. Neither was it in the flour, for a pie crust made of the same flour had been eaten by King and Peer with impunity. Some dough of which the dumplings were made was examined, and poison discovered therein.—It appears that Turner used arsenic for killing rats, and was in the habit of leaving it carelessly in an open drawer.

Suspicion fell at once upon Eliza Fenning, and she was arrested and arraigned on a charge of attempting to poison the Turners. From the first she earnestly protested her innocence. It was proved that she and she alone had mixed and made the dumplings; the circumstantial evidence went to show that no one else could have had access to them until they were served upon the table. She had been in the kitchen all the time they were there, and most of the time alone. Here, then was proved opportunity. It was shown that when the apprentice Gadsden was on point of eating some of the dumplings, Eliza urged him not to do so, saying they were cold and heavy.

It was in evidence that Eliza had not taken the poisoned food until she had observed its effect upon others, and it was thence inferred that she either took it to conceal the crime, or with a suicidal design. It moreover appeared that Eliza's statements about the matter were inconsistent, contradictory, and in some instances untrue. She declared that the poison must be in the milk and not in the dumplings. Now, the milk had been fetched by Sarah Peer. It was thence inferred that Eliza was trying to divert suspicion from herself to her fellow servant. The analysis proved conclusively that the arsenic was in the dumplings and not in the milk. To further disprove the presumption of innocence raised by her eating herself of the poisoned food, it was shown that she had shortly before had a hearty meal off a beef-steak pie, and therefore was not likely to have eaten the "cold and heavy" dumplings, as she described them to Gadsden, because she was hungry. Having tried in vain to persuade people that the poison was in the milk, she turned around and declared that it was in the yeast. The yeast was proved by analsis to be perfectly pure.

Here, then, was a group of important circumstantial elements. Opportunity was proved; so was an instrument (the arsenic) at hand in a drawer to which she had free access, and a desire betrayed to conceal the crime by diverting suspicion to another and by telling untruths. Upon the evidence as we have sketched it Eliza Fenning was convicted by the jury and sentenced to death. The case, however, created so wide-spread an agitation in the public mind that justice hesitated to execute its fatal decree. The utter absence of a conceivable motive was a serious blow in the case. Why should this light-hearted, amiable young girl, whose only known fault was her coquetry with the apprentices, poison a whole family? The great Irish advocate Curran, then in the height of his fame, exclaimed in burning eloquence against the horrible cruelty of her fate.

She was reprieved for three months, in hope that new evidence would transpire to save her. None was forthcoming. She was executed amid the greatest excitement throughout the metropolis; and on a warm July day she was borne, amid the sorrowing faces of 10,000 spectators, and her pall upheld by six young girls robed in white, from her humble home to the graveyard of the foundling hospital. One who lived amid those scenes wrote, long after:

"Poor Eliza Fenning! Cut down in the morning, with all life's brightness only in its dawn! Little did it profit thee that a city mourned over thy early grave, and that the most eloquent of men did justice to thy memory."

For more than a half a century the guilt or innocence of Eliza Fenning was a disputed point. Then the confession of the real murderer came out, and her innocence was established beyond a doubt.

We need not emphazise the many examples in which the identity of an accused person has been mistaken by positive and honest witnesses. Those who are old enough to remember the trial of Webster for the murder of Dr. Parkman will recall that several witnesses of the most perfect good faith swore very positive that they saw Dr. Parkman on Washington street, in Boston, at 3 o'clock or thereabouts on Saturday afternoon, when it was proved and appeared, afterward by Webster's confession, that Dr. Parkman had

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