

For the North American & United States Gazette,
Dr. Webster's Trial and Defence.

The trial of Professor Webster has attracted more notice than any similar case ever adjudicated in the United States, not merely from the extraordinary details of the occurrence, but also from the extraordinary manner in which the trial was conducted. The question of his guilt is one referable only to the local tribunal, and it is not my purpose to discuss that; nor the more prominent one of the sufficiency of the evidence upon which his guilt has been found; but I propose to notice the manner of his defence, and of his sacrifice by those to whom he had entrusted his all in this world, and to whose culpable inefficiency or cowardice, or both, are owing the destruction of his hopes, and the happiness of a respected and innocent family. A casuist may scoff at the profession of the law; gibes and jeers may be cast by wits upon the honesty of lawyers; but of their fidelity to their duty and to their client, there seldom occurs question; while their connivance, either intentional or indirect, with the other side, in the conviction of one they had engaged to defend, is a thing until now unheard of in this country, though the annals of a corrupt judiciary give instances of such in Great Britain. Yet even these fail to show a case in which human life was sold or given away by those bound by every obligation, moral and human, to protect and preserve it. The counsel of Dr. Webster have *hitherto* enjoyed a high character, the junior as a professional man of undoubted talent and knowledge, the senior as a shining star in the professional firmament. The character of the one and the lustre of the other have been in no manner increased by their last effort; and it is to be hoped that some explanation may be made by them of a course, so much at variance with ordinary professional rules, and so injurious to the cause of public justice. Whether they were assigned by the Court or chosen by Professor W., can make no difference; having undertaken the task, in either aspect, their duty was the same, and that duty was to stand by the prisoner, to defend him with all fidelity and truth, and then, no matter what the consequences, a satisfied conscience and an approving community would have upheld their course. Was the evidence so direct and conclusive as to baffle argument, and to carry conviction home to every man? No one dares to answer yes; though we find these learned gentlemen, from the beginning to the end, participating in the morbid prejudice which surrounded the case, and shrinking from the proper performance of a duty, high and honorable in itself, when faithfully and honorably performed, and discreditable only when the lawyer manifests his own sense of shame in its performance. If these counsellors had but accepted their client with the true spirit of a faithful lawyer—if they had undertaken his defence determined, as lawyers are here sworn, "to use all fidelity towards the Court, and towards their client,"—if they had exercised a little of their reasoning faculties, as under other influences they would have done, who can tell whether they might not at this time be receiving the blessings of a relieved and anxious family, and the plaudits of a community for their honorable exertions?

Their course was plain; they made it tortuous, and have involved themselves in a labyrinth of suspicion, from which even time may fail to extricate them. They should have counselled Dr. Webster upon his legal rights, instructed him in the details of trial, called for such evidence as he could adduce; and if he could not satisfactorily answer their call, they should have elected their position either of defending him honestly and zealously, or of giving place to less squeamish successors. From the first, their efforts seem to have been to swim with the current, not having the courage to stem it. The discovery of the remains and the arrest of Dr. Webster appear to have confounded them, as they did the Doctor himself; and important as it was to the Doctor to know the testimony which was to be brought against him, they waived the primary hearing, admitting reasonable suspicion of guilt, affording to their able antagonists (giants, who played against dwarfs) an argument, upon which the chances were plentifully rung; that the Professor well knew his guilt, and had waived his right to a hearing, because he was conscious of all that could be brought against him. Such a thing was unheard of. In England, even a prisoner has the benefit of an examination; and in this case it was vitally important to know what was the testimony the prisoner must expect to encounter, so that the defence might not, at trial, be surprised at any features either of novelty or great strength. It did look like a declaration of Dr. W.'s

counsel that he was guilty, and therefore did not desire to hear the evidence that would be brought against him, and which, being guilty, he was well apprized of. Of the preliminaries for trial we have no report; and we cannot tell how these zealous gentlemen acquitted themselves there; but the trial had scarcely begun, when their incapacity or unwillingness (let them choose which) manifested itself. Conversations, in the absence of Doctor Webster, were repeated by witness after witness, without even an objection, and their witnesses were suffered to corroborate each other by hearsay statements, made without oath. Now, that I may not be supposed to make a sweeping charge without proof, I will give a few instances: Mr. Shaw related two or three conversations with Dr. Parkman about the indebtedness of Dr. Webster. Marshal Tukey related conversations with Dr. Bigelow and Littlefield. The two Fullers gave quite a long talk with Littlefield, so as to corroborate him in advance on his examination; while Littlefield, the atlas of the prosecution, and his wife were permitted to detail some of their domestic (and probably bedchamber) conversations, and to describe the looks assumed by either, as corroborative of one who had not at that time been in any manner assailed. These are but a few specimens; the name of similar blunders is "Legion;" and knowing, as every one does, that the law of Massachusetts is like our own on the subject of evidence, the conduct of these men is appalling in the extreme. Professor Greenleaf, of that State, has given to the world the best treatise on evidence now extant; and it is to be regretted that these counsel had not thought it necessary to look into it on an occasion when a timely reference to its terse and emphatic texts might have produced such different results. Throughout the case of the prosecution, the same disregard of the prisoner's rights was manifested by his chosen defenders, and allowed by the judge, perhaps because the prisoner nominally (though not really) had counsel. But these things fade into insignificance, compared with the opening address of the junior counsel, Mr. Sohler, whose speech created the universal remark that the defence was abandoned. There was in it an affected desire to believe Dr. W. innocent, mingled with hints of improbability of his guilt; but the burden of it was, to obtain a conviction for manslaughter; (which could not very well be,) and which was an entire concession of the *corpus delicti*, and of the prisoner's participation in it. Hours were wasted in discussion of law, minutes merely on facts; and while the whole theory of the prosecution was, that Dr. Parkman never left the College after 2 P. M. of Nov. 23d, the prisoner's counsel, knowing that there were five intelligent and honest witnesses who would unhesitatingly swear to having seen him at a much later hour that day, contented themselves with indistinctly stating to the jury that they hoped to prove such facts, which, though they would not disprove the remains to be those of Dr. P., might go against the allegation of Dr. W.'s killing him. Here was an entire concession of the case; the really important point of the case was the identity of the remains, and to it the other was but subsidiary. If these were not proved, the case was ended; if proved, the rest of the work of the prosecution was but play, and easy of performance. Yet this fact, on which hinged the life of a man, as eminent in his profession as themselves in their own, as well as the happiness in this world of innocent women, was given up; and then it was that every one felt that all hope of acquittal was gone. How, too, was the case argued? Was the character of the evidence examined? Were the pecuniary inducements under which some witnesses acted and testified brought to notice? Were doubts urged on either branch of the case? If any one of these things were done, (and report does not say so,) it was so feebly as to manifest the speaker's alarm at his own temerity.

It may be that Dr. Webster committed the homicide charged upon him. I think he did so; but, under the constitution and the laws of the land, he should have had a fair trial, where he could be properly heard by himself and his counsel; while I hold it to be the duty of the court to see that the prisoner has these advantages. Take, too, the miserable sequel. The ink is scarcely dry that records the verdict before the prisoner is consigned to the scaffold, his counsel not even moving for a new trial in arrest of judgment, though much gaseous learning was displayed in the opening speech to show that the indictment was not good in itself, and had not been sustained. And, (the learned Chief Justice Shaw to the contrary notwithstanding,) I undertake to say that no precedent can be found for a capital conviction for murder by means unknown. The question is cer-

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