

TRIALS.

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THE following accounts of trials are intended to display the practical working of the institutions, rules, and principles described in earlier parts of the work, and in particular to enable the reader to compare the practical results of the system adopted in England, and in countries which derive their laws from England, with those of the system adopted in France and in many other parts of the continent of Europe.

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¹ THE CASE OF JOHN DONELLAN.

John Donellan was tried at Warwick Assizes on the 30th March, 1781, before Mr. Justice Buller, for the murder by poison of his brother-in-law, Sir Theodosius Edward Allesley Boughton.

² Sir Theodosius Boughton was a young man of twenty, who, on attaining his majority, would have come into the possession of an estate of about £2,000 a year. In August, 1780, he was living with his mother, Lady Boughton, at

¹ The references are to "The Proceedings at large in the Trial of John Donellan, Esq., for the wilful Murder (by Poison) of Sir The. Edward Allesley Boughton, Bart., late of Lawford Hall, in the County of Warwick. Tried before Mr. Justice Buller, at the Assizes at Warwick, on Friday, the 30th day of March, 1781, taken in Short-hand by the permission of the Judge, by W. Blanchard." London. There is also a folio report by Gurney which I have compared.

² P. 33.

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Lawford Hall, in Warwickshire. ¹ His brother-in-law, Captain Donellan, and his sister, Mrs. Donellan—who had been married in 1777—also formed part of the family. ² They had lived in the house from about the month of June, 1778. ³ Sir Theodosius Boughton had returned to his mother's, from the house of a tutor (Mr. Jones) about Michaelmas in the same year. ⁴ In the event of his death, unmarried and without issue, the greater part of his fortune would descend to Mrs. Donellan; ⁵ but it was stated by the prisoner in his defence that he, on his marriage, entered into articles for the immediate settling of her whole fortune on herself and children, and deprived himself of the possibility of enjoying even a life-estate in case of her death; and that this settlement extended not only to the fortune, but to expectancies. It does not appear that the articles themselves were put in.

⁶ Whilst Sir Theodosius Boughton was at Mr. Jones's, he appears to have had an important complaint, for which he was attended by Mr. Kerr, of Northampton. He was under treatment for a disorder of the same kind in the summer of 1780. In all other respects, he appeared perfectly well to his mother, to his apothecary, and to other witnesses. Donellan, however, had for some time before been speaking of his health as bad. ⁷ Lady Boughton said, "Several times before the deceased's death Mr. Donellan mentioned to me, when I wished him to go to the country, that I did not know what might happen in the family, and made several observations on the bad state of his health. . . . When I was talking about going to Bath, he said, 'Don't think of leaving Lawford; something or other may happen before you come back, for he is in a very bad state of health.' I thought he might mean something of his being very venturesome in his going a hunting, or going into the water,

¹ P. 123.² P. 34.³ P. 34.⁴ P. 33.⁵ P. 123.⁶ P. 60.⁷ P. 34.

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"which might occasion his death." ¹ It appeared, on cross-examination, that Lady Boughton went to Bath on the 1st of November, 1778; and that, when she was at Bath, she wrote to the Donellans to say that she was afraid her son was in a bad way, and that his fine complexion was gone. ² A clergyman, Mr. Piers Newsam, proved that he had a conversation with Donellan about Sir Theodosius Boughton's health on the 26th August, the Saturday before his death. "On that occasion," said Mr. Newsam, "he (Donellan) informed me that Sir Theodosius Boughton was in a very ill state of health, that he had never got rid of the disorder he had brought with him from school, and had been continually adding to it; that he had made such frequent use of mercury outwardly that his blood was a mass of mercury and corruption." He added some other particulars, which led Mr. Newsam to say that, "If that was the case, I did not apprehend his life was worth two years' purchase; he replied, 'Not one.'" At this time the deceased looked very well to Mr. Newsam, though not so florid as formerly.

³ On Tuesday, the 29th of August, 1780, Mr. Powell, an apothecary of Rugby, sent him a draught composed of jalap, lavender water, nutmeg water, syrup of saffron, and plain water. He had sent him a similar draught on the preceding Sunday. With the exception of the complaint under which he suffered, and which was slight, he was "in very good health and great spirits." ⁴ The draught was delivered to Sir Theodosius Boughton himself, by a servant named Samuel Frost, about five or six on the Tuesday evening, and he took it up stairs with him. ⁵ He went out fishing after the medicine had been delivered to him; and Frost, who delivered it, joined him about seven, and stayed with him till he returned home about nine in the evening. He was on

¹ P. 47.² P. 58.³ Pp. 28-29.⁴ Pp. 101-102.⁵ Pp. 102-107.

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horseback all the time (the fishing was probably with nets), and had on a pair of boots; nor did he, during the whole time he was fishing, get his feet wet. Donellan was not there while the fishing was going on. ¹The family dined early that afternoon; and after dinner Lady Boughton and Mrs. Donellan went to take a walk in the garden: about seven the prisoner joined them, and said Sir Theodosius should have his physic, and that he had been to see them fishing, and he had endeavoured to persuade Sir Theodosius to come in—he was afraid he should catch cold—which appeared from the other evidence to be untrue. Sir Theodosius came in a little after nine, had his supper, and went to bed. His servant Frost went to his room at six next morning to ask for some straps for a net, which he was to take to Dunchurch, and Sir Theodosius got out of bed and gave them to him. He then appeared quite well. ²On the preceding evening he had arranged with Lady Boughton to come to him at seven in the morning and give him his medicine. Some time before his death he used to keep it locked up in an inner room, and he had forgotten to take one dose. ³Donellan said, “Why don’t you set it in the outer room, then you will not so soon forget it.” After this the bottles were put on a shelf in the outer room, where, it would seem, any one would have access to them.

⁴At seven on the Wednesday morning, Lady Boughton accordingly came to give the medicine. She took particular notice of the bottle, shook it at her son’s request, and, on his complaining that it was very nauseous, smelt it. She said, “I smelt it, and I observed it was very like the taste of bitter almonds. Says I, ‘Don’t mind the taste of it,’ and he upon that drank the whole of it up.” On smelling a bottle prepared with similar ingredients, but mixed with laurel water for the purpose of the trial, Lady Boughton said

¹ P. 37.² P. 37.³ P. 35.⁴ Pp. 38–39.

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that the smell was very like that of the medicine which her son had taken. After taking the draught, Sir Theodosius said he thought he should not be able to keep it on his stomach, and washed out his mouth. In “about two minutes, or less,” he struggled violently, appeared convulsed, “and made a prodigious rattling in his throat and stomach, and a gurgling, and seemed to me” (Lady Boughton) “to make very great efforts to keep it down.” This went on for about ten minutes, when he became quiet, and seemed disposed to sleep; and his mother went out to complete her dress, ¹intending to go with Donellan to a place called Newnham Wells. In about five minutes she returned to her son’s room, and found him lying with his eyes fixed, his teeth clenched, and froth running out of his mouth. She immediately sent for the doctor; and on Donellan’s coming in, shortly after, said, ²“Here is a terrible affair! I have been giving my son something wrong instead of what the apothecary should have sent. I said it was an unaccountable thing in the doctor to have sent such a medicine; for if it had been taken by a dog, it would have killed him.” On this Donellan asked where the physic bottle was, and, on its being pointed out, took it and held it up, and poured some water into it; he shook it and emptied it out into some dirty water in the wash-hand basin. Lady Boughton said, “Good God! what are you about? You should not have meddled with the bottle.” He then put some water in the other bottle (probably the bottle sent on the Sunday), and put his finger to it to taste it. Lady Boughton said again, “What are you about? you ought not to meddle with the bottle.” He said he did it to taste it.

After this, two servants, Sarah Blundell (who died before the trial) and Catherine Amos, came in. Donellan ordered Blundell to take away the bottles and the basin, and put the

¹ P. 100.² P. 40.

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bottles into her hand. Lady Boughton took them away, and bid her let them alone. Donellan then told her to take away the clothes, so that the room might be cleared, and a moment after Lady Boughton, whose back had been turned for a minute, saw Blundell with the bottles in her hand, and saw her take them away. At the time when this happened Sir Theodosius was in the act of dying. While the things were being put away, ¹ Donellan said to the maid, "Take his stockings, they have been wet; he has caught cold, to be sure, and that may have occasioned his death." Lady Boughton upon this examined the stockings, and there was no mark or appearance of their having been wet.

Some time in the morning—and it would seem shortly after Sir Theodosius's death—² Donellan went to the gardener and told him to get two pigeons directly to put to his master's feet, as "he lies in sad agonies now with that nasty distemper; it will be the death of him." ³ In the afternoon of the same day he told his wife, in Lady Boughton's presence, that she (Lady Boughton) had been pleased to take notice of his washing the bottles out; and he did not know what he should have done if he had not thought of putting in the water, and putting his finger to it to taste. He afterwards called up the coachman, and having reminded him that he had seen him go out that morning about seven, observed that was the first time of his going out; and he had never been on the other side of the house that morning, and having insisted on this, said, "You are my evidence?" to which the man replied, "Yes, sir." ⁴ In the evening he said to the gardener, Francis Amos, "Now, gardener, you shall live at your ease and work at your ease; it shall not be as it was in Sir Theodosius's days; I wanted before to be master. I have got master now, and I shall be master."

On the day of Sir Theodosius Boughton's death, Donellan

¹ P. 45.² P. 108.³ P. 43.⁴ P. 107.

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announced it to his guardian, Sir William Wheler, in a letter which mentioned none of the circumstances, but observed merely that he had been for some time past under the care of Mr. Powell for a complaint similar to that which he had at Eton, and had died that morning. Sir William Wheler returned a civil answer; but on the following Sunday he saw Mr. Newsam, and in consequence of what he heard from him, he wrote to Donellan on the 4th September, saying that there was a report that the death was very sudden, that there was great reason to believe the physic was improper, and might be the cause of the death; that he had inquired of Mr. Powell, whose reputation was at stake, and that it would be a great satisfaction to Mr. Powell to have the body opened. The letter proceeded to say:—"Though it is very late to do it now, yet it will appear from the stomach whether there is anything corrosive in it. As a friend to you, I must say that it will be a great satisfaction to me, and I am sure it must be so to you, Lady Boughton, and Mrs. Donellan, when I assure you it is reported all over the country that he was killed either by medicine or by poison. The country will never be convinced to the contrary unless the body is opened, and we shall all be very much blamed; therefore I must request it of you and the family that the body may be immediately opened by Mr. Wilmer of Coventry, or Mr. Snow of Southam, in the presence of Dr. Rattray, or any other physician that you and the family may think proper." ¹ Donellan answered this on the same day by a note, in which he said, "We most cheerfully wish to have the body of Sir Theodosius opened for the general satisfaction, and the sooner it is done the better; therefore I wish you could be here at the time." To this Sir William Wheler replied, "I am very happy to find that Lady Boughton, Mrs. Donellan, and yourself approve of having the body

¹ Pp. 113-115.

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"opened." He went on to say that it would not be proper for him to attend, or any one else, except the doctors.

In consequence of these letters, Dr. Rattray and Mr. Wilmer were sent for, and came to Lawford Hall about eight o'clock the same evening. ¹ Donellan received them, and told them that he wished the body opened for the satisfaction of the family, producing to them Sir William Wheler's second letter—not the one about the suspicion of poison, but the one which contained a mere general expression of satisfaction at the willingness of the family to have the body opened, and excused himself from attending. He said nothing of any suspicion of poison. The body was found in a high state of putrefaction, and the two medical men, disgusted at the business, and not knowing of any special reason for inquiry, said that they thought at so late a period nothing could be discovered, declined to open the body, and left the house.

On the following morning (Tuesday, September 5) Donellan wrote to Sir W. Wheler a letter in which he said that Dr. Rattray and Mr. Wilmer and another medical man had been at the house, and that Mr. Powell had met them there. He then proceeded:—² "Upon the receipt of your last letter I gave it them to peruse, and act as it directed; the four gentlemen proceeded accordingly, and I am happy to inform you they fully satisfied us, and I wish you would hear from them the state they found the body in, as it would be an additional satisfaction to me that you should hear the account from themselves."

These expressions naturally led Sir W. Wheler to believe that the body had actually been opened, though in fact this was not the case.

On the same day ³ Mr. Bucknill, a surgeon at Rugby, came and offered to open the body, but Donellan said that as Dr. Rattray and Mr. Wilmer had declined, it would

¹ Pp. 63-64.² P. 115.³ P. 97.

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be disrespectful to them to allow any one else to take their place.

On the next day, the 6th September, ¹ Sir William Wheler heard that the body had not been opened, and heard also of Bucknill's offer. He accordingly wrote again to Donellan, saying, that from his last letter he had inferred that the body had been opened, but now found that the doctors had not thought it safe, and that Bucknill's offer to do so had been refused. He added that if Bucknill and Mr. Snow would do it they ought by all means to be allowed. ² Donellan replied by a letter on the day of the funeral, in which he offered to have the funeral put off, if Sir W. Wheler wished, till after he (Sir W. Wheler) had seen Dr. Rattray and Mr. Wilmer. ³ He did not offer to have the body opened. In the meantime Sir W. Wheler had sent to Bucknill and Snow to go over to open the body, and Bucknill went for the purpose, and arrived at the house about two in the afternoon of Thursday, the 6th September, the day of the funeral. Snow had not then arrived. Bucknill was sent for to a patient who was supposed to be dying, and went away, saying he should be back in an hour or an hour and a half. He came back in an hour, and ⁴ Donellan said "he was gone, and he had given his orders what to do, and they were proceeding according to those orders; and I am sorry you should have given yourself this trouble." ⁵ Bucknill then left, and the body was buried without being opened.

These incidents prove that Donellan did all he could to destroy all evidence as to the cause of the death of the deceased. After Lady Boughton had said she thought there

¹ P. 118.² P. 21. This letter was read in the opening speech of Mr. Howarth, the counsel for the Crown. It does not appear in the report of the evidence.³ P. 93.⁴ It appears from the summing up that he meant Snow.⁵ Pp. 99-100.

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was something wrong about the draught, he threw it away. After Sir William Wheler said there was a report of poisoning, he kept the doctors in ignorance of it, and so prevented their opening the body. He then ingeniously contrived to lead Sir William Wheler into the belief that they had opened it, and also parried and put aside Bucknill's offer to do so.

The suspicions of poisoning which prevailed were so strong that the body was taken up and opened by Mr. Bucknill in the presence of Dr. Rattray, Mr. Wilmer, Mr. Powell, and Mr. Snow. It was in an advanced state of decomposition, and none of the appearances which presented themselves required to be explained by any other cause. There was, however, one exception, and it is remarkable that this piece of evidence was not given on the examination of the witness in chief, but was got out of Dr. Rattray—injudiciously and needlessly, it would seem—by questions asked by the prisoner's counsel in cross-examination. It was as follows:—

¹“ Q. Did you ever smell at that liquor that was in the stomach? A. Ay, smell; I could not avoid smelling. Q. Was it the same offensive smell? A. It in general had; one could not expect any smell but partaking of that general putrefaction of the body; but I had a particular taste in my mouth at that time, a kind of biting acrimony upon my tongue. And I have, in all the experiments I have made with laurel-water, always had the same taste from breathing over the water, a biting upon my tongue, and sometimes a bitter taste upon the upper part of the fauces.”

Having got out this evidence against his client whilst feeling his way towards the suggestion that putrefaction accounted for the whole, the counsel could not let it alone, but pursued his questions, and made matters worse.

¹ P. 83.

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“ Q. Did you impute it to that cause, then? A. No; I imputed it to the volatile salts escaping the body.”

If the questions had stopped here, it would have left Dr. Rattray in the wrong, but, apparently encouraged by this advantage, the prisoner's counsel went a step further.

“ Q. Were not the volatile salts likely to occasion that? A. No. I complained to Mr. Wilmer, ‘I have a very odd ‘taste in my mouth—my gums bleed.’ Q. You attributed it to the volatility of the salts? A. At that time I could not account for it; but, in my experiments afterwards with the laurel-water, the effluvia of it constantly and uniformly produced the same kind of taste; there is a very volatile oil in it, I am persuaded.”

The *post-mortem* examination was followed by an inquest. At the inquest,¹ Lady Boughton gave an account of Donellan's washing the bottle. When she did so,² he laid hold of her arm and gave her a twitch, and on their return home (said Lady Boughton), “he said to his wife, before me, that I had no occasion to have told of the circumstance of his washing the bottle. I was only to answer such questions as had been put to me, and that question had not been asked me.” At or after the inquest,³ Donellan wrote a letter to the coroner and jury, of which the following passage was the most important part:—“During the time Sir Theodosius was here, great part of it was spent in procuring things to kill rats, with which this house swarms remarkably; he used to have arsenic by the pound weight at a time, and laid the same in and about the house in various places, and in as many forms. We often expostulated with him about the continued careless manner in which he acted respecting himself and the family in general. His answer to us was, that the men-servants knew where he laid the arsenic, and for us, we had no business with it. At table, we

¹ P. 45.² P. 109.³ P. 24.

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" have not knowingly eaten anything for many months past
 " which we perceived him to touch, as we well knew his
 " extreme inattention to the bad effects of the various things
 " he frequently used to send for for the above purposes, as
 " well as for making up horse-medicines." ¹ It was true that
 Sir Theodosius had bought a pound of arsenic for the purpose
 of poisoning fish and rats, as appeared on the cross-examination
 of his mother.

² Besides these circumstances, it was shown that Donellan
 had a still, in which he distilled roses. He kept the still in
 a room which he called his own, and in which he slept when
 Mrs. Donellan was confined. ³ Two or three days after Sir
 Theodosius's death, he brought out the still to the gardener
 to clean. It was full of lime, and the lime was wet. He
 said he used the lime to kill the fleas. ⁴ About a fortnight
 after the death, he brought the still to Catherine Amos, the
 cook, and asked her to put it in the oven and dry it, that it
 might not rust. It was dry, but had been washed. The
 cook said it would unsolder the tin to put it in the oven. ⁵ It
 was suggested by the prosecution that the object of this might
 be to take off the smell of laurel water.

⁶ After Donellan was in custody, he had many conversations

¹ P. 51.

² P. 106.

³ P. 107.

⁴ P. 57.

⁵ In the observations on Donellan's case contained in Mr. Townsend's Life of Justice Buller (*Lives of English Judges*, p. 14), the following statement is made:—"In his [Donellan's] library there happened to be a single number of "the *Philosophical Transactions*: and of this single number the leaves had "been cut only in one place, and this place happened to contain an account "of the making of laurel water by distillation." Nothing is said of this in the reports of the trial. It is something like the evidence in Palmer's case (*post*, p. 253) about the note on strychnine in the book, though much stronger.

⁶ The following anecdote forms a curious addition to the evidence given at the trial:—My grandfather, well known as one of the leading members of the Anti-Slavery Society, took great interest in Donellan's case, and wrote a pamphlet against the verdict, which attracted much notice at the time. He was thus introduced to Donellan's attorney, who told him that he always believed in his client's innocence, till one day he (the attorney) proposed to Donellan to retain Mr. Dunning specially to defend him. Donellan agreed,

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on the subject of the charge with a man named Darbyshire, a debtor. In these conversations, he frequently expressed his opinion that his brother-in-law had been poisoned. He said, "It was done amongst themselves,—himself" (the deceased), "Lady Boughton, the footman, and the apothecary." He also said that Lady Boughton was very covetous; that she had received an anonymous letter the day after Sir Theodosius's death, charging her plump with the poisoning of Sir Theodosius, that she called him, and told it to him, and trembled.

The medical evidence given against the prisoner was that of Dr. Rattray, Mr. Wilmer, Dr. Ash, and Professor Parsons, Professor of Anatomy at Oxford. They substantially agreed in their opinions; but the way in which they were allowed to give them differed much from what would be permitted in the present day, as their answers embodied their view of the evidence, with their opinion of the nature of the symptoms described. In the present day great pains are taken to prevent this, and to oblige skilled witnesses to give scientific opinions only, leaving the evidence to the jury.

Dr. Rattray said, ¹ "Independent of the appearances of the "body, I am of opinion that draught, in consequence of the "symptoms which followed the swallowing of it, as described "by Lady Boughton, was poison, and the immediate cause of "his death."

and referred the attorney to Mrs. Donellan for authority to incur the necessary expense. Mrs. Donellan said she thought it needless to pay so high a fee. When the attorney reported this to Donellan, he burst into a rage, and cried out passionately,—"And who got it for her!" Then, seeing he had committed himself, he suddenly stopped. I have heard this story related by two of my grandfather's children, in nearly the same form, with the addition, that he was fond of telling it. At the time of the trial, Dunning was still in practice. He was raised to the peerage in the following year. The story itself is hearsay at the fifth remove as to a conversation more than 100 years ago. I, in 1889, say that my uncle and an aunt told me that my grandfather told them that an attorney told him that Donellan said, &c., in 1781.

¹ P. 67.

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Dr. Ash was asked, ¹ "What is your opinion of the death of Sir Theodosius Boughton ?"

"A.—I answer, he died in consequence of taking that draught administered to him in the morning. He died in so extraordinary a manner. It does not appear, from any part of the evidence that has been this day given, that Sir Theodosius had any disease upon him of a nature, either likely or in any degree sufficient, to produce those violent consequences which happened to him in the morning, when he was seized in that extraordinary manner, nor do I know of any medicine, properly so called, administered in any dose or form, which could produce the same effects. I know nothing but a poison, immediate in its operation, that could be attended with such terrible consequences." He then went on to say that the *post-mortem* appearances in some degree resembled those of animals poisoned by vegetable poisons.

Dr. Parsons said, ² "I have no difficulty in declaring it to be my opinion, that he died in consequence of taking that draught, instead of the medicine of jalap and rhubarb. The nature of that poison appears sufficiently described by Lady Boughton, in the account she gives of the smell of the medicine when she poured it out in order to give it to her son."

³ Donellan, according to the practice of that time, delivered a written defence to the officer of the court, by whom it was read. It affords a good illustration of the fact that when counsel are refused to a prisoner every statement made by the prosecution amounts to an indirect interrogation of the prisoner. He does not attempt to explain the washing of the bottles. He does attempt to explain the transactions about the doctors; but, in doing so, he contradicts the witnesses. He says, "These gentlemen arrived about nine o'clock at night,

¹ P. 92.² P. 95.³ Pp. 123-126.

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"when I produced to them Sir William's letter, and desired they would pursue his instructions." The letter he produced was the second letter, not the first. In the preceding part of his defence, he mentioned only one letter from Sir William Wheler. In reference to Bucknill's visit on the day of the funeral, he said that after Bucknill was called away, Snow came and waited for Bucknill a considerable time; and, on making inquiry of the plumber and others as to the state of the body, said he would not be concerned in opening it for Sir Theodosius's estate, and went away; after which the body was buried, "but not by my directions or desire." It is remarkable that Snow was not called on either side. According to our modern practice, he ought to have been called by the Crown, unless there were strong reasons to the contrary.

On the whole, it appears that the defence contains one false suggestion, and one unproved suggestion which, if true, could have been proved; and that, on all the other parts of the prisoner's behaviour, it maintains a most significant silence. This is most important, as, being in writing, it must have been prepared before the trial.

Evidence for the prisoner was given ¹ which showed that in June, 1778, two years before the alleged murder, he acted in such a way as to prevent his brother-in-law from fighting a duel, ² and that, about a year afterwards, he was sent for as second on another occasion, though the quarrel was arranged before he arrived. This went to show that, if he was guilty, his design was not formed in 1778.

He also called the famous John Hunter to contradict the medical evidence for the prosecution.

In Palmer's case, the witnesses were confined in the closest way to speaking of the symptoms in general terms, and were not permitted to give any sort of opinion as to the means by which they were produced. So far was this

¹ Pp. 47, 137.² P. 128.

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1 " Q. Do you consider yourself as called upon by such appearances to impute the death of the subject to poison ?

" A. Certainly not. I should rather suspect it to be an apoplexy, and I wish the head had been opened. It might have removed all doubts.

" Q. From the appearances of the body . . . no inference can be drawn for me to say he died of poison ?

" A. Certainly not ; it does not give the least suspicion."

He was then cross-examined.

" Q. Having heard before to-day that a person, apparently in health, had swallowed a draught which had produced the symptoms described—I ask you whether any reasonable man can entertain a doubt that that draught, whatever it was produced those appearances ?

" A. I don't know well what answer to make to that question.

" Q. I will therefore ask your opinion. Having heard the account given of the health of this young gentleman, previous to the taking of the draught that morning, and the symptoms that were produced immediately upon taking the draught—I ask your opinion, as a man of judgment,

¹ P. 131.

² Pp. 131-132. The phraseology is very ungrammatical ; but it always is so in shorthand reports. The meaning is plain enough. Gurney's report is less incorrect as to language, but hardly so vivid.

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" A. With regard to the first part of the question, his being in health, that explains nothing. Some healthy people, and generally healthy people, die suddenly, and therefore I shall lay no stress upon that. As to the circumstances, I own there are suspicions. Every man is as good a judge as I am.

1 " *Court.*—You are to give your opinion upon the symptoms only, not upon any other evidence given.

" Q. Upon the symptoms immediately produced upon the swallowing of the draught, I ask your judgment and opinion, whether that draught did not occasion his death ?

" *Prisoner's Counsel.*—I object to that question, if it is put in that form ; if it is put ' after the swallowing it,' I have no objection." (Probably the objection was that the words " produced upon" implied causation.)

" Q. Then ' after' swallowing it. What is your opinion, allowing he had swallowed it ?

" A. I can only say that is a circumstance in favour of such opinion.

" *Court.*—That the draught was the occasion of his death ?

" A. No : because the symptoms afterwards are those of a man dying, who was before in perfect health ; a man dying of an epilepsy or apoplexy. The symptoms would give one those general ideas.

" *Court.*—It is the general idea you are asked about now ; from the symptoms which appeared upon Sir Theodosius Boughton immediately after he took the draught, followed by his death so very soon after—whether, upon that part of the case, you are of opinion that the draught was the cause of his death ?

¹ *Sic* in Gurney's report.

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"A. If I knew the draught was poison, I should say, most probably, that the symptoms arose from that; but when I don't know that that draught was poison, when I consider that a number of other things might occasion his death, I can't answer positively to it."

Here more questioning followed, the most important part of which was an inquiry whether laurel-water, if taken, would not have produced the symptoms; to which the answer was, "I suppose it would." At last, the judge asked the following question:—

"Q. I wish you would be so good as to give me your opinion, in the best manner you can, one way or the other, whether, upon the whole—you have heard of the symptoms described—it is your opinion the death proceeded from that medicine or from any other cause?"

"A. That question is distressing. I don't mean to equivocate when I tell the sentiments of my own mind—what I feel at the time. I can give nothing decisive."

Upon this evidence, the judge observed as follows:—

"For the prisoner you have had one gentleman called who is likewise of the faculty, and a very able man. One can hardly say what his opinion is; he does not seem to form any opinion at all of the matter; he at first said he could not form an opinion whether the death was occasioned by that poison or not, because he could conceive it might be ascribed to other causes. I wished very much to have got another answer from Mr. Hunter if I could,—What, upon the whole, was the result of his attention to this case? what his present opinion was? But he says he can say nothing decisive. So that, on this point, if you are determining in the case upon the evidence of the gentlemen who are skilled in the faculty, why, you have a very positive opinion of four or five gentlemen of the faculty, on the one

¹ P. 139.

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"side, that the deceased did die of poison; and, upon the other side, what I really cannot myself call more than the doubt of another—that is, Mr. Hunter."

The rest of the summing up was equally unfavourable to the prisoner. After observing that the two questions were, whether the deceased was poisoned, and, if so, by whom—and after concluding the consideration of the first question by the remarks just quoted—the judge went through every particular of the prisoner's conduct, showing how they suggested that he was the poisoner. Describing Donellan's false statement that the deceased had taken cold, he asked, "Is that truth? . . . What was there that called upon the prisoner, unnecessarily, to tell such a story? If you can find an answer to that that does not impute guilt to the prisoner, you will adopt it; but on this fact, and many others that I must point out to your attention, I can only say, that unnecessary, strange, and contradictory declarations cannot be accounted for otherwise than by such fatality, which only portends guilt." He then went through the other circumstances with a dexterity to which an abstract cannot do justice, here and there qualifying the points against the prisoner by suggestions in his favour. For instance, after remarking on the keeping back of Sir W. Wheler's letter, he says, "It is possible the prisoner might suppose Sir W. Wheler's ideas were sufficiently communicated to the physicians and surgeons by the last letter, and therefore unnecessary to show the first." On the whole, however, every observation made the other way.

Upon this evidence and summing up, Donellan was almost immediately convicted, and was afterwards hung.

Few cases have given rise to more discussion. Both the conduct of the judge and the verdict of the jury were warmly censured at the time.

In the present day, I doubt whether the prisoner would

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have been convicted, because the medical evidence certainly is far less strong than it might have been. John Hunter's evidence obviously comes to this. Epilepsy or apoplexy or poison are equally probable solutions of the facts proved if we look only at the symptoms, and there is in the nature of things no reason why a man apparently in perfect health should not have a fatal attack of epilepsy or apoplexy a few minutes after drinking a glass of medicine as well as at any other time. On the other hand, the symptoms were precisely those which would be caused by poisoning with laurel-water. The evidence as to the smell of the medicine, and as to the smell perceived by the doctors who examined the body, points directly to the conclusion that laurel-water was used. Every incident in Donellan's conduct pointed to his guilt. He took every step which a guilty man would naturally take. Before the death he did all he could to prevent surprise at its occurrence and to lead people to expect it. After the death he did his best to destroy all evidence as to its cause and to prevent the examination of the body. He also prepared means by which he obtained an opportunity for committing the crime, and he had the means by which he might prepare the poison supposed to have been used if he were so disposed. Moreover, he entirely failed to give any plausible explanation of the course which he was proved to have taken. To my mind, all this taken together raises so strong a probability of his guilt, that I think the jury were right in rejecting the possibility that the death might have been caused by apoplexy or epilepsy happening to follow close upon the administration of the medicine. No doubt the case is near the indeterminate and indeterminable line at which reasonable doubt would begin. It forms a curious contrast to the case of Belany, tried and acquitted for the murder of his wife, on evidence which was rather stronger, in 1844.

¹ THE CASE OF WILLIAM PALMER.

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ON the 14th May, 1856, William Palmer was tried at the Old Bailey, under the powers conferred on the Court of Queen's Bench by 19 Vict. c. 16, for the murder of John Parsons Cook at Rugeley, in Staffordshire. The trial lasted for twelve days, and ended on the 27th May, when the prisoner was convicted, and received sentence of death, on which he was afterwards executed at Stafford.

Palmer was a general medical practitioner at Rugeley, much engaged in sporting transactions. Cook, his intimate friend, also a sporting man, after attending Shrewsbury races with Palmer on the 13th November, 1855, returned in his company to Rugeley, and died at the Talbot Arms Hotel, at that place, soon after midnight, on the 21st November, 1855, under circumstances which raised a suspicion that he had been poisoned by Palmer. The case against Palmer was, that he had a strong motive to murder his friend, and that his conduct before, at the time of, and after his death, coupled with the circumstances of the death itself, left no reasonable doubt that he did murder him, by poisoning him with antimony and strychnine.

The evidence stood as follows. At the time of Cook's death, Palmer was involved in bill transactions, which appear to have begun in the year 1853. ² His wife died in September,

¹ The authority referred to is "A Verbatim Report of the Trial of William Palmer, &c., transcribed from the Shorthand Notes of W. Angelo Bennett." London: Allen. 1856.

² A true bill for her murder was returned against the prisoner; but as he was convicted in Cook's case, it was not proceeded with.

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1854, and on her death he received £13,000 on policies on her life, nearly the whole of which was applied to the discharge of his liabilities. In the course of the year 1855 he raised other large sums, amounting in all to £13,500, on what purported to be acceptances of his mother's. The bills were renewed from time to time at enormous interest (usually sixty per cent. per annum) by a money-lender named Pratt, who, at the time of Cook's death, held eight bills—four on his own account and four on account of his client; two already overdue and six others falling due—some in November and others in January. About £1,000 had been paid off in the course of the year so that the total amount then due, or shortly to fall due, to Pratt, was £12,500. The only means which Palmer had by which these bills could be provided for was a policy on the life of his brother, Walter Palmer, for £13,000. ¹ Walter Palmer died in August, 1855, and William Palmer had instructed Pratt to recover the amount from the insurance office, but the office refused to pay. ² In consequence of this difficulty, Pratt earnestly pressed Palmer to pay something in order to keep down the interest or diminish the principal due on the bills. He issued writs against him and his mother on the 6th November, and informed him in substance that they would be served at once, unless he would pay something on account. Shortly before the Shrewsbury races he had accordingly paid three sums, amounting in all to £800, of which £600 went in reduction of the principal, and £200 was deducted for interest. It was understood that more money was to be raised as early as possible.

³ Besides the money due to Pratt, Mr. Wright, of Birmingham, held bills for £10,400. Part of these, amounting to £6,500, purported to be accepted by Mrs. Palmer; part were

¹ A bill for his murder also was returned against William Palmer; but, in consequence of his conviction, was not proceeded with.

² Pratt, 165-166.

³ Wright, 169-170.

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collaterally secured by a bill of sale of the whole of William Palmer's property. These bills would fall due in the first or second week of November. Mr. Padwick also held a bill of the same kind for £2,000, on which £1,000 remained unpaid, and which was twelve months overdue on the 6th October, 1855. ¹ Palmer, on the 12th November, had given Espin a cheque antedated on the 28th November, for the other £1,000. ² Mrs. Sarah Palmer's acceptance was on nearly all these bills, and in every instance was forged.

The result is that, about the time of the Shrewsbury races, Palmer was being pressed for payment on forged acceptances to the amount of nearly £20,000, and that his only resources were a certain amount of personal property over which Wright held a bill of sale, and a policy for £13,000, the payment of which was refused by the office. Should he succeed in obtaining payment, he might no doubt struggle through his difficulties, but there still remained the £1,000 antedated cheque given to Espin, which it was necessary to provide for at once by some means or other. That he had no funds of his own was proved by the fact that ³ his balance at the bank on the 19th November was £9 6s., ⁴ and that he had to borrow £25 of a farmer, named Wallbank, to go to Shrewsbury races. It follows that he was under the most pressing necessity to obtain a considerable sum of money, as even a short delay in obtaining it might involve him not only in insolvency, but in a prosecution for uttering forged acceptances.

⁵ Besides the embarrassment arising from the bills in the hands of Pratt, Wright, and Padwick, Palmer was involved in a transaction with Cook, which had a bearing on the rest of the case. Cook and he were parties to a bill for £500, which Pratt had discounted, giving £375 in cash, and a wine warrant for £65, and charging £60 for discount and expenses.

¹ Espin, 164.

² Strawbridge, 104, 169-170.

³ Strawbridge, 160.

⁴ Wallbank, 169.

⁵ Pratt, 167.

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He also required an assignment of two racehorses of Cook's—Polestar and Sirius—as a collateral security. By Palmer's request, the £375, in the shape of a cheque payable to Cook's order, and the wine warrant, were sent by post to Palmer at Doncaster. Palmer wrote Cook's indorsement on the cheque, and paid the amount to his own credit at the bank at Rugeley. On the part of the prosecution it was said that this transaction afforded a reason why Palmer should desire to be rid of Cook, inasmuch as it amounted to a forgery by which Cook was defrauded of £375. It appeared, however, on the other side, that there were £300 worth of notes, relating to some other transaction, in the letter which inclosed the cheque; and as it did not appear that Cook had complained of getting no consideration for his acceptance, it was suggested that he had authorized Palmer to write his name on the back of the cheque, and had taken the notes himself. This arrangement seems not improbable, as it would otherwise be hard to explain why Cook acquiesced in receiving nothing for his acceptance, and there was evidence that he meant to provide for the bill when it became due. ¹ It also appeared late in the case that there was another bill for £500, in which Cook and Palmer were jointly interested.

² Such was Palmer's position when he went to Shrewsbury races, on Monday, the 12th November, 1855. Cook was there also; and on Tuesday, the 13th, his mare Polestar won the Shrewsbury Handicap, by which he became entitled to the stakes, worth about £380, and bets to the amount of nearly £2,000. Of these bets he received £700 or £800 on the course at Shrewsbury. The rest was to be paid at Tattersall's on the following Monday, the 19th November. After the race Cook invited some of his friends to dinner at the Raven Hotel, and on that occasion and on the following day

¹ Pp. 307, 310.

² Fisher, 25-26. Read, 30. Gilson, 31. Thos. Jones, 29.

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he was both sober and well. On the Wednesday night, a man named Ishmael Fisher came into the sitting-room which Palmer shared with Cook, and found them in company with some other men drinking brandy-and-water. Cook complained that the brandy "burned his throat dreadfully," and put down his glass with a small quantity remaining in it. Palmer drank up what was left, and, handing the glass to Read, asked him if he thought there was anything in it; to which Read replied, "What's the use of handing me the glass "when it's empty?" Cook shortly afterwards left the room, called out Fisher, and told him that he had been very sick, and "he thought that damned Palmer had dosed him." He also handed over to Fisher £700 or £800 in notes to keep for him. He then became sick again, and was ill all night, and had to be attended by a doctor. He told the doctor, Mr. Gibson, that he thought he had been poisoned, and he was treated on that supposition. Next day, Palmer told Fisher that Cook had said that he (Palmer) had been putting something into his brandy. He added that he did not play such tricks with people, and that Cook had been drunk the night before—which appeared not to be the case. Fisher did not expressly say that he returned the money to Cook, but from the course of the evidence it seems that he did, for Cook asked him to pay Pratt £200 at once, and to repay himself on the following Monday out of the bets which he would receive on Cook's account at the settling at Tattersall's.

¹ About half-past ten on the Wednesday, and apparently shortly before Cook drank the brandy-and-water which he complained of, Palmer was seen by a Mrs. Brooks in the passage, looking at a glass lamp through a tumbler which contained some clear fluid like water, and which he was shaking and turning in his hand. There appears, however, to have been no secrecy in this, as he spoke to Mrs. Brooks,

¹ P. 52.

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and continued to hold and shake the tumbler as he did so. ¹George Myatt was called to contradict this for the prisoner. He said that he was in the room when Palmer and Cook came in; that Cook made a remark about the brandy, though he gave a different version of it from Fisher and Read; that he did not see anything put in it, and that if anything had been put in it he should have seen. He also swore that Palmer never left the room from the time he came in till Cook went to bed. He also put the time later than Fisher and Read. All this, however, came to very little. It was the sort of difference which always arises in the details of evidence. As Myatt was a friend of Palmer's, he probably remembered the matter (perhaps honestly enough) in a way more favourable to him than the other witnesses.

It appeared from the evidence of Mrs. Brooks, and also from that of a man named Herring, that other persons besides Cook were taken ill at Shrewsbury, on the evening in question, with similar symptoms. ³Mrs. Brooks said, "We made an observation we thought the water might have been poisoned in Shrewsbury." ⁴Palmer himself vomited on his way back to Rugeley, according to Myatt.

The evidence as to what passed at Shrewsbury clearly proves that, Palmer being then in great want of money, Cook was to his knowledge in possession of £700 or £800 in bank-notes, and was also entitled to receive on the following Monday about £1,400 more. It also shows that Palmer may have given him a dose of antimony, though the weight of the evidence to this effect is weakened by the proof that diarrhoea and vomiting were prevalent in Shrewsbury at the time. It is, however, important in connection with subsequent events.

On Thursday, November 15th, Palmer and Cook returned

¹ G. Myatt, 264.

² Brooks, 51.

³ Herring, 105.

⁴ Myatt, 264.

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together to Rugeley, which they reached about ten at night. Cook went to the Talbot Arms, and Palmer to his own house immediately opposite. Cook still complained of being unwell. On the Friday he dined with Palmer, in company with an attorney, Mr. Jeremiah Smith, and returned perfectly sober about ten in the evening. At eight on the following morning (November 17th) Palmer came over, and ordered a cup of coffee for him. The coffee was given to Cook by Mills the chambermaid, in Palmer's presence. When she next went to his room, an hour or two afterwards, it had been vomited. ¹In the course of the day, and apparently about the middle of the day, Palmer sent a charwoman, named Rowley, to get some broth for Cook at an inn called the Albion. She brought it to Palmer's house, put it by the fire to warm, and left the room. Soon after, Palmer brought it out, poured it into a cup, and sent it to the Talbot Arms with a message that it came from Mr. Jeremiah Smith. ²The broth was given to Cook, who at first refused to take it. Palmer, however, came in, and said he must have it. ⁴The chambermaid brought back the broth, which she had taken down stairs, and left it in the room. It also was thrown up. ⁵In the course of the afternoon, Palmer called in Mr. Bamford, a surgeon eighty years of age, to see Cook, and told him that when Cook dined at his (Palmer's) house he had taken too much champagne. Mr. Bamford, however, found no bilious symptoms about him, and he said he had drunk only two glasses. On the Saturday night, Mr. Jeremiah Smith slept in Cook's room, as he was still ill. ⁶On the Sunday, between twelve and one, Palmer sent over his gardener, Hawley, with some more broth for Cook. ⁷Elizabeth Mills, the servant at the Talbot Arms, tasted it, taking two or three spoonfuls. She became

¹ Mills, 32-33.

⁴ Mills, 34.

⁶ Hawley, 50.

² Rowley, 59.

⁵ Bamford, Dep. 114. Evidence, 164.

⁷ Mills, 34. Barnes, 54.

³ G. T. Barnes, 54. Mills, 34.

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exceedingly sick about half an hour afterwards, and vomited till five o'clock in the afternoon. She was so ill that she had to go to bed. ¹This broth also was taken to Cook, and the cup afterwards returned to Palmer. It appears to have been taken and vomited, though the evidence is not quite explicit on that point. ²By the Sunday's post Palmer wrote to Mr. Jones, an apothecary, and Cook's most intimate friend, to come and see him. He said that Cook was "confined to his bed with a severe bilious attack, combined with diarrhoea." ³The servant Mills said there was no diarrhoea. It was observed on the part of the defence that this letter was strong proof of innocence. ⁴The prosecution suggested that it was "part of a deep design, and was meant to make evidence in the prisoner's favour." The fair conclusion seems to be, that it was an ambiguous act which ought to weigh neither way, though the falsehood about Cook's symptoms is suspicious as far as it goes.

⁵ On the night between Sunday and Monday, Cook had some sort of attack. When the servant Mills went into his room on the Monday, he said, "I was just mad for two minutes." She said, "Why did you not ring the bell?" He said, "I thought that you would be all fast asleep, and not hear it." He also said he was disturbed by a quarrel in the street. It might have waked and disturbed him, but he was not sure. This incident was not mentioned at first by Barnes and Mills, but was brought out on their being recalled at the request of Serjeant Shee. It was considered important for the defence, as proving that Cook had had an attack of some kind before it was suggested that any strychnine was administered; and the principal medical witness for the defence, ⁶ Mr. Nunneley, referred to it with this view.

¹ Barnes, 54. Mills, 34.

² W. H. Jones, 61-62.

³ Mills, 35.

⁴ Compare Smethurst's calling in Dr. Todd, *post*, p. 445.

⁵ Barnes, 70. Mills, 70.

⁶ P. 217.

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¹ On the Monday, about a quarter-past or half-past seven, Palmer again visited Cook; but as he was in London about half-past two, he must have gone to town by an early train. During the whole of the Monday Cook was much better. He dressed himself, saw a jockey and his trainer, and the sickness ceased.

In the meantime Palmer was in London. ² He met by appointment a man named Herring, who was connected with the turf. Palmer told him he wished to settle Cook's account, and read to him from a list, which Herring copied as Palmer read it, the particulars of the bets which he was to receive. They amounted to £984 clear. Of this sum Palmer instructed Herring to pay £450 to Pratt and £350 to Padwick. The nature of the debt to Padwick was not proved in evidence, as Padwick himself was not called. Palmer told Herring the £450 was to settle the bill for which Cook had assigned his horses. ³ He wrote Pratt on the same day a letter in these words: "Dear Sir,—You will place the £50 I have just paid you and the £450 you will receive from Mr. Herring, together £500, and the £200 you received on Saturday" (from Fisher) "towards payment of my mother's acceptance for £2,000 due 25th October."

Herring received upwards of £800, and paid part of it away according to Palmer's directions. ⁴ Pratt gave Palmer credit for the £450; but the £350 was not paid to Padwick, according to Palmer's directions, as part was retained by Mr. Herring for some debts due from Cook to him, and Herring received less than he expected. ⁵ In his reply, the Attorney-General said that the £350 intended to be paid to Padwick was on account of a bet, and suggested that the motive was to keep Padwick quiet as to the antedated cheque for £1,000 given to Espin on Padwick's account. There was no evidence of

¹ Mills, 35.

² Herring, 131-132.

³ Read by Serjeant Shee, p. 150.

⁴ Pratt, 167; Herring, 104.

⁵ Pp. 300-301.

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this, and it is not of much importance. It was clearly intended to be paid to Padwick on account, not of Cook (except possibly as to a small part), but of Palmer. Palmer thus disposed, or attempted to dispose, in the course of Monday, November 19th, of the whole of Cook's winnings for his own advantage.

This is a convenient place to mention the final result of the transaction relating to the bill for £500, in which Cook and Palmer were jointly interested. ¹ On the Friday when Cook and Palmer dined together (November 16), Cook wrote to Fisher (his agent) in these words: "It is of very great importance to both Palmer and myself that the sum of £500 should be paid to a Mr. Pratt, of 5 Queen Street, Mayfair; £300 has been sent up to-night, and if you would be kind enough to pay the other £200 to-morrow, on the receipt of this, you will greatly oblige me. I will settle it on Monday at Tattersall's." ² Fisher did pay the £200, expecting, as he said, to settle Cook's account on the Monday, and repay himself. ³ On the Saturday, November 17th (the day after the date of the letter), "a person," said Pratt, "whose name I did not know, called on me with a cheque, and paid me £300 on account of *the prisoner*; that" [apparently the cheque, not the £300] "was a cheque of Mr. Fisher's." ⁴ When Pratt heard of Cook's death, he wrote to Palmer, saying, "The death of Mr. Cook will now compel you to look about as to the payment of the bill for £500 due the 2nd of December."

Great use was made of these letters by the defence. It was argued that they proved that Cook was helping Palmer, and was eager to relieve him from the pressure put on him by Pratt; that in consequence of this he not only took up the £500 bill, but authorized Palmer to apply the £800 to similar purposes, and to get the amount settled by Herring, instead

¹ Fisher, 29. ² Fisher, 27. ³ P. 166. ⁴ Read by Serjeant Shee, p. 181.

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of Fisher, so that Fisher might not stop out of it the £200 which he had advanced to Pratt. It was asked how it could be Palmer's interest, on this supposition, that Cook should die, especially as the first consequence of his death was Pratt's application for the money due on the £500 bill.

These arguments were, no doubt, plausible; and the fact that Cook's death compelled Pratt to look to Palmer for the payment of the £500 lends them weight; but it may be asked, on the other hand, why should Cook give away the whole of his winnings to Palmer? Why should Cook allow Palmer to appropriate to the diminution of his own liabilities the £200 which Fisher had advanced to the credit of the bill on which both were liable? Why should he join with Palmer in a plan for defrauding Fisher of his security for this advance? No answer to any of these questions was suggested. As to the £300, Cook's letter to Fisher says, "£300 has been sent up this evening." There was evidence that Pratt never received it, for he applied to Palmer for the money on Cook's death. Moreover, ¹ Pratt said that, on the Saturday, he did receive £300 on account of *Palmer*, which he placed to the account of the forged acceptance for £2,000. Where did Palmer get the money? The suggestion of the prosecution was, that Cook gave it him to pay to Pratt on account of their joint bill, and that he paid it on his own account. This was probably the true view of the case. The observation that Pratt, on hearing of Cook's death, applied to Palmer to pay the £500 bill is met by the reflection that that bill was genuine, and collaterally secured by the assignment of the racehorses, and that the other bill bore a forged acceptance, and must be satisfied at all hazards. The result is, that on the Monday evening, Palmer had the most imperious interest in Cook's death, for he had robbed him of all he had in the world, except the equity of redemption in his two horses.

¹ Pratt, 186.

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¹ On Monday evening (November 19th), Palmer returned to Rugeley, and went to the shop of Mr. Salt, a surgeon there, about 9 P.M. He saw Newton, Salt's assistant, and asked him for three grains of strychnine, which were accordingly given to him. Newton never mentioned this transaction till a day or two before his examination as a witness in London, though he was examined on the inquest. He explained this by saying that there had been a quarrel between Palmer and Salt, his (Newton's) master, and that he thought Salt would be displeased with him for having given Palmer anything. No doubt, the concealment was improper, but nothing appeared on cross-examination to suggest that the witness was wilfully perjured.

² Cook had been much better throughout Monday, and on Monday evening, ³ Mr. Bamford, who was attending him, brought some pills for him, which he left at the hotel. They contained neither antimony nor strychnine. ⁴ They were taken up in the box in which they came to Cook's room by the chambermaid, and were left there on the dressing-table, about eight o'clock. ⁵ Palmer came (according to Barnes, the waitress) between eight and nine, and ⁶ Mills said she saw him sitting by the fire between nine and ten.

If this evidence were believed, he would have had an opportunity of substituting poisoned pills for those sent by Mr. Bamford, just after he had, according to Newton, procured strychnine. The evidence, however, ⁷ was contradicted by a witness called for the prisoner, Jeremiah Smith, the attorney. He said that on the Monday evening, about ten minutes past ten, he saw Palmer coming in a car from the direction of Stafford; that they then went up to Cook's room together, stayed two or three minutes, and went with Smith to the house of old Mrs. Palmer, his mother. Cook said, "Bamford

¹ Newton, 71-72.² Mills, 35.³ Bamford, 165.⁴ Mills, 35-36.⁵ Barnes, 55.⁶ Mills, 36.⁷ J. Smith, 271.

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"had sent him some pills, and he had taken them, and Palmer was late, intimating that he should not have taken them if he had thought Palmer would have called in before." If this evidence were believed, it would, of course, have proved that Cook took the pills which Bamford sent as he sent them. ¹ Smith, however, was cross-examined by the Attorney-General at great length. He admitted, with the greatest reluctance, that he had witnessed the assignment of a policy for £13,000 by Walter to William Palmer; that he wrote to an office to effect an insurance for £10,000 on the life of Bates, who was Palmer's groom at £1 a week; that he tried, after Walter Palmer's death, to get his widow to give up her claim on the policy; that he was applied to to attest other proposals for insurances on Walter Palmer's life for similar amounts; and that he had got a cheque for £5 for attesting the assignment.

² Lord Campbell said of this witness, in summing up, "Can you believe a man who so disgraces himself in the witness-box? It is for you to say what faith you can place in a witness who, by his own admission, engaged in such fraudulent proceedings."

It is curious that, though the credit of this witness was so much shaken in cross-examination, and though he was contradicted both by Mills and Newton, he must have been right, and they wrong, as to the time when Palmer came down to Rugeley that evening. ³ Mr. Matthews, the inspector of police at the Euston Station, proved that the only train by which Palmer could have left London after half-past two (⁴ when he met Herring) started at five, and reached Stafford on the night

¹ Smith, 275-277. No abbreviation can give the effect of this cross-examination. The witness's efforts to gain time, and his distress as the various answers were extorted from him by degrees, may be faintly traced in the report. The witness's face was covered with sweat, and the papers put into his hands shook and rustled.

² P. 323.³ P. 263.⁴ Herring, 102.

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in question at a quarter to nine. It is about ten miles from Stafford to Rugeley, so that he could not have got across by the road in much less than an hour; yet Newton said he saw him "about nine," and Mills saw him "between nine and ten." Nothing, however, is more difficult than to speak accurately as to time; on the other hand, if Smith spoke the truth, Newton could not have seen him at all that night, and Mills, if at all, must have seen him for a moment only in Smith's company. Mills never mentioned Smith, and Smith would not venture to swear she or anyone else saw him at the Talbot Arms. It was a suspicious circumstance that Serjeant Shee did not open Smith's evidence to the jury. An opportunity for perjury was afforded by the mistake made by the witnesses as to the time, which the defence were able to prove by the evidence of the police inspector. If Smith were disposed to tell an untruth, the knowledge of this fact would enable him to do so with an appearance of plausibility.

Whatever view is taken as to the effect of this evidence,¹ it was clearly proved that, about the middle of the night between Monday and Tuesday, Cook had a violent attack of some sort. About twelve, or a little before, his bell rang; he screamed violently. When Mills, the servant, came in, he was sitting up in bed, and asked that Palmer might be fetched at once. He was beating the bedclothes; he said he should suffocate if he lay down. His head and neck and his whole body jumped and jerked. He had great difficulty in breathing, and his eyes protruded. His hand was stiff, and he asked to have it rubbed. Palmer came in, and gave him a draught and some pills. He snapped at the glass, and got both it and the spoon between his teeth. He had also great difficulty in swallowing the pills. After this he got more easy, and Palmer stayed by him some time, sleeping in an easy-chair.

² Great efforts were made, in cross-examination, to shake

¹ Mills, 37. Barnes, 55.

² Pp. 41-45.

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the evidence of Mills by showing that she had altered the evidence which she gave before the coroner, so as to make her description of the symptoms tally with those of poisoning by strychnine, and also by showing that she had been drilled as to the evidence which she was to give by persons connected with the prosecution. She denied most of the suggestions conveyed by the questions asked her, and explained others. As to the differences between her evidence before the coroner and at the trial, a witness (¹ Mr. Gardner, an attorney) was called to show that the depositions were not properly taken at the inquest.

On the following day, Tuesday, the 20th, Cook was a good deal better. ² In the middle of the day, he sent the boots to ask Palmer if he might have a cup of coffee. Palmer said he might, and came over, tasted a cup made by the servant, and took it from her hands to give it to Cook. This coffee was afterwards thrown up.

³ A little before or after this, the exact hour is not important, Palmer went to the shop of Hawkins, a druggist at Rugeley, and was there served by his apprentice, Roberts, with two drachms of prussic acid, six grains of strychnine, and two drachms of Batley's sedative. Whilst he was making the purchase, Newton, from whom he had obtained the other strychnine the night before, came in: Palmer took him to the door, saying he wished to speak to him, and when he was there asked him a question about the farm of a Mr. Edwin Salt—a matter with which he had nothing at all to do. Whilst they were there, a third person came up and spoke to Newton, on which Palmer went back into Hawkins's shop and took away the things, Newton not seeing what he took. The obvious suggestion upon this is that Palmer wanted to prevent Newton from seeing what he was about. No attempt even was made to shake, or in any way discredit, Roberts the apprentice.

¹ P. 50. As to the coroner's conduct, see below.

² Mills, 39.

³ Roberts, 76; Newton, 72.

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¹ At about four P.M., Mr. Jones, the friend to whom Palmer had written, arrived from Lutterworth. He examined Cook in Palmer's presence, and remarked that he had not the tongue of a bilious patient, to which Palmer replied, "You should have seen it before." Cook appeared to be better during the Tuesday, and was in good spirits. At about seven P.M., Mr. Bamford came in, and Cook told him in Palmer's presence that he objected to the pills as they had made him ill the night before. The three medical men then had a private consultation. Palmer proposed that Bamford should make up the pills as on the night before, and that Jones should not tell Cook what they were made of, as he objected to the morphine which they contained. ² Bamford agreed, and Palmer went up to his house with him and got the pills, and was present whilst they were made up, put into a pill-box, and directed. He took them away with him between seven and eight. Cook was well and comfortable all the evening; he had no bilious symptoms, no vomiting, and no diarrhoea.

³ Towards eleven, Palmer came with a box of pills directed in Bamford's hand. He called Jones's attention to the goodness of the handwriting for a man of eighty. It was suggested by the prosecution that the reason for this was to impress Jones with the fact that the pills had been made up by Bamford. With reference to Smith's evidence, it is remarkable that Bamford on the second night sent the pills, not "between nine and ten," but at eleven. ³ Palmer pressed Cook to take the pills, which at first he refused to do, as they had made him so ill the night before. At last he did so, and immediately afterwards vomited. Jones and Palmer both examined to see whether the pills had been thrown up, and they found that they had not. This was about eleven. Jones then had his supper, and went to bed in Cook's room about twelve. When he had been in bed a short time, perhaps ten

¹ W. H. Jones, 62-63. ² Bamford, 164-165. ³ W. H. Jones, 63-64.

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minutes, Cook started up, and called out, "Doctor, get up; I am going to be ill; ring the bell for Mr. Palmer." He also said, "Rub my neck." The back of his neck was stiff and hard. ¹ Mills ran across the road to Palmer's, and rang the bell. Palmer immediately came to the bedroom window, and said he would come at once. Two minutes afterwards he was in Cook's room, and said he had never dressed so quickly in his life. He was dressed as usual. The suggestion upon this was that he had been sitting up expecting to be called.

² By the time of Palmer's arrival Cook was very ill. Jones, Elizabeth Mills, and Palmer were in the room, and ³ Barnes stood at the door. The muscles of his neck were stiff; he screamed loudly. Palmer gave him what he said were two ammonia pills. Immediately afterwards—too soon for the pills to have any effect—he was dreadfully convulsed. ⁴ He said, when he began to be convulsed, "Raise me up, or I shall be suffocated." Palmer and Jones tried to do so, but could not, as the limbs were rigid. He then asked to be turned over, which was done. His heart began to beat weakly. Jones asked Palmer to get some ammonia to try to stimulate it. He fetched a bottle, and was absent about a minute for the purpose. When he came back, Cook was almost dead, and he died in a few minutes, quite quietly. The whole attack lasted about ten minutes. The body was twisted back into the shape of a bow, and would have rested on the head and heels, had it been laid on its back. ⁵ When the body was laid out it was very stiff. The arms could not be kept down by the sides till they were tied behind the back with tape. The feet also had to be tied, and the fingers of one hand were very stiff, the hand being clenched. This was about one A.M., half or three-quarters of an hour after the death.

Deferring for the present the inferences drawn by the

¹ Mills, 40.

² W. H. Jones, 64.

³ Barnes, 56.

⁴ W. H. Jones, 64-65.

⁵ Keeling, 84-85.

TRIALS. medical men from these symptoms, I proceed to describe the subsequent occurrences. As soon as Cook was dead, ¹ Jones went out to speak to the housekeeper, leaving Palmer alone with the body. When Jones left the room, he sent the servant ² Mills in, and she saw Palmer searching the pockets of Cook's coat, and searching also under the pillow and bolster. ³ Jones shortly afterwards returned, and Palmer told him that, as Cook's nearest friend, he (Jones) ought to take possession of his property. He accordingly took possession of his watch and purse, containing five sovereigns and five shillings. He found no other money. Palmer said, "Mr. Cook's death is a bad thing for me, as I am responsible for £3,000 or £4,000; and I hope Mr. Cook's friends will not let me lose it. If they do not assist me, all my horses will be seized." The betting-book was mentioned. Palmer said, "It will be no use to anyone," and added that it would probably be found.

⁴ On Wednesday, 21st November, Mr. Wetherby, the London racing agent, who kept a sort of bank for sporting men, received from Palmer a letter inclosing a cheque for £350 against the amount of the Shrewsbury stakes (£381), which Wetherby was to receive for him. This cheque had been drawn on the Tuesday, about seven o'clock in the evening, under peculiar circumstances. ⁵ Palmer sent for Mr. Cheshire, the postmaster at Rugeley, telling him to bring a receipt-stamp, and when he arrived asked him to write out, from a copy which he produced, a cheque by Cook on Wetherby. He said it was for money which Cook owed him, and that he was going to take it over for Cook to sign. Cheshire wrote out the body of the cheque, and Palmer took it away. ⁶ When Mr. Wetherby received the cheque, the stakes had not been paid to Cook's credit. He accordingly returned the

¹ W. H. Jones, 66.² Mills, 41-42.³ W. H. Jones, 65-66.⁴ Wetherby, 96.⁵ Cheshire, 95-96.⁶ Wetherby, 96.

TRIAL. cheque to Palmer, ¹ to whom the prosecution gave notice to produce it at the trial. ² It was called for, but not produced. This was one of the strongest facts against Palmer in the whole of the case. If he had produced the cheque, and if it had appeared to have been really signed by Cook, it would have shown that Cook, for some reason or other, had made over his stakes to Palmer, and this would have destroyed the strong presumption arising from Palmer's appropriation of the bets to his own purposes. In fact, it would have greatly weakened and almost upset the case as to motive. On the other hand, the non-production of the cheque amounted to an admission that it was a forgery; and, if that were so, Palmer was forging his friend's name for the purpose of stealing his stakes at the time when there was every prospect of his speedy recovery, which must result in the detection of the fraud. If he knew that Cook would die that night, this was natural. On any other supposition, it was inconceivable rashness.

³ Either on Thursday, 22nd, or Friday, 23rd, Palmer sent for Cheshire again, and produced a paper which he said Cook had given to him some days before. The paper purported to be an acknowledgment that certain bills—the particulars of which were stated—were all for Cook's benefit, and not for Palmer's. The amount was considerable, as at least one item was for £1,000 and another for £500. This document purported to be signed by Cook, and Palmer wished Cheshire to attest Cook's execution of it, which he refused to do. This document was called for at the trial, and not produced. The same observations apply to it as to the cheque.

⁴ Evidence was further given to show that Palmer, who, shortly before, had but £9 6s. at the bank, and had borrowed £25 to go to Shrewsbury, paid away large sums of money

¹ Boycott, 96.² 97.³ Cheshire, 97-98.⁴ Strawbridge, 163.

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soon after Cook's death. ¹ He paid Pratt £100 on the 24th; ² he paid a farmer named Spilsbury £46 2s. with a Bank of England note for £50 on the 22nd; ³ and Bown, a draper, a sum of £60 or thereabouts, in two £50 notes, on the 20th. The general result of these money transactions is that Palmer appropriated to his own use all Cook's bets; that he tried to appropriate his stakes; and that, shortly before or just after his death, he was in possession of between £500 and £600, of which he paid Pratt £400, though very shortly before he was being pressed for money.

⁴ On Wednesday, November 21st, Mr. Jones went up to London, and informed Mr. Stephens, Cook's stepfather, of his stepson's death. Mr. Stephens went to Lutterworth, found a will by which Cook appointed him his executor, and then went on to Rugeley, where he arrived about the middle of the day on Thursday. He asked Palmer for information about Cook's affairs, and he replied, "There are £4,000 worth of bills out of his, and I am sorry to say my name is to them; but I have got a paper drawn up by a lawyer and signed by Mr. Cook to show that I never had any benefit from them." Mr. Stephens said that at all events he must be buried. Palmer offered to do so himself, and said that the body ought to be fastened up as soon as possible. The conversation then ended for the time. Palmer went out, and, without authority from Mr. Stephens, ordered a shell and a strong oak coffin.

⁵ In the afternoon, Mr. Stephens, Palmer, Jones, and Mr. Bradford, Cook's brother-in-law, dined together; and after dinner Mr. Stephens desired Mr. Jones to fetch Cook's betting-book. Jones went to look for it, but was unable to find it. The betting-book had last been seen by the chambermaid Mills, who gave it to Cook in bed on the Monday night, when he took a stamp from a pocket at the end of it. ⁶ On hearing

¹ Pratt, 167.² Spilsbury, 169.³ Arnshaw, 168.⁴ Stephens, 78-80.⁵ Mills, 41.⁶ Stephens, 81.

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that the book could not be found, Palmer said it was of no manner of use. Mr. Stephens said he understood Cook had won a great deal of money at Shrewsbury, to which Palmer replied, "It's no use, I assure you; when a man dies, his bets "are done with." He did not mention the fact that Cook's bets had been paid to Herring on the Monday. Mr. Stephens then said that the book must be found, and Palmer answered that no doubt it would be. Before leaving the inn, Mr. Stephens went to look at the body, before the coffin was fastened, and observed that both hands were clenched. He returned at once to town, and went to his attorney. He returned to Rugeley on Saturday, the 24th, and informed Palmer of his intention to have a *post-mortem* examination, which took place on Monday, the 26th.

¹ The *post-mortem* examination was conducted in the presence of Palmer by Dr. Harland, ² Mr. Devonshire, a medical student assisting Dr. Monkton, and Mr. Newton. The heart was contracted and empty. There were numerous small yellowish white spots, about the size of mustard-seed, at the larger end of the stomach. The upper part of the spinal cord was in its natural state; the lower part was not examined till the 25th of January, when certain granules were found. There were many follicles on the tongue, apparently of long standing. The lungs appeared healthy to Dr. Harland, but Mr. Devonshire thought that there was some congestion. Some points in Palmer's behaviour, both before and after the *post-mortem* examination, attracted notice. ³ Newton said that on the Sunday night he sent for him, and asked what dose of strychnine would kill a dog; Newton said a grain. He asked whether it would be found in the stomach, and what would be the appearance of the stomach after death. Newton said there would be no inflammation, and he did not think it would

¹ Harland, 85-86.² Devonshire, 92.³ Newton, 73.

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be found. Newton thought he replied, "It's all right," as if speaking to himself, and added that he snapped his fingers. ¹ Whilst Devonshire was opening the stomach, Palmer pushed against him and part of the contents of the stomach was spilt. Nothing particular being found in the stomach, Palmer observed to Bamford, "They will not hang us yet." As they were all crowding together to see what passed, the push might have been an accident; and, as Mr. Stephens's suspicions were well known, the remark was natural, though coarse. ² After the examination was completed, the intestines, &c., were put into a jar, over the top of which were tied two bladders. Palmer removed the jar from the table to a place near the door, and when it was missed said he thought it would be more convenient. When replaced, it was found that a slit had been cut through both the bladders.

³ After the examination, Mr. Stephens and an attorney's clerk took the jars containing the viscera, &c., in a fly to Stafford. ⁴ Palmer asked the postboy if he was going to drive them to Stafford. The postboy said, "I believe I am." Palmer said, "Is it Mr. Stephens you are going to take?" He said, "I believe it is." Palmer said, "I suppose you are going to take the jars?" He said, "I am." Palmer asked if he would upset them? He said, "I shall not." Palmer said if he would there was a £10 note for him. He also said something about its being "a humbugging concern." Some confusion was introduced into this evidence by the cross-examination, which tended to show that Palmer's object was to upset Mr. Stephens and not the jars, but at last the post-boy (J. Myatt) repeated it as given above. Indeed, it makes little difference whether Palmer wished to upset Stephens or the jars, as they were all in one fly, and must be upset together if at all.

¹ Harland, 88. Devonshire, 92.³ Beycott, 97.² Harland, 88.⁴ J. Myatt, 94.

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¹ Shortly after the *post-mortem* examination, an inquest was held before Mr. Ward, the coroner. It began on the 29th of November and ended on the 5th of December. On Sunday, 3rd December, Palmer asked Cheshire, the postmaster, "if he had anything fresh?" Cheshire replied that he could not open a letter. Afterwards, however, he did open a letter from Dr. Alfred Taylor, who had analyzed the contents of the stomach, &c., to Mr. Gardiner, the attorney for the prosecution, and informed Palmer that Dr. Taylor said in that letter that no traces of strychnia were found. Palmer said he knew they would not, and he was quite innocent. Soon afterwards Palmer wrote to Mr. Ward, suggesting various questions to be put to witnesses at the inquest, and saying that he knew Dr. Taylor had told Mr. Gardiner there were no traces of strychnia, prussic acid, or opium. A few days before this, on the 1st of December, Palmer had sent Mr. Ward, as a present, a cod-fish, a barrel of oysters, a brace of pheasants, and a turkey. These circumstances certainly prove improper and even criminal conduct. Cheshire was imprisoned for his offence, and Lord Campbell spoke in severe terms of the conduct of the coroner; but a bad and unscrupulous man, as Palmer evidently was, might act in the manner described even though he was innocent of the particular offence charged.

² A medical book found in Palmer's possession had in it some manuscript notes on the subject of strychnine, one of which was, "It kills by causing tetanic contraction of the respiratory muscles." It was not suggested that this memorandum was made for any particular purpose. It was used merely to show that Palmer was acquainted with the properties and effects of strychnine.

This completes the evidence as to Palmer's behaviour before, at, and after the death of Cook. It proves beyond all ques-

¹ Cheshire, 97-98. Hatton, 98-99. As to the presents, Hawkes, 100. Stack, 106.² Bergen, 100.

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tion that, having the strongest possible motive to obtain at once a considerable sum of money, he robbed his friend of the whole of the bets paid to Herring on the Monday by a series of ingenious devices, and that he tried to rob him of the stakes; it raises the strongest presumption that he robbed Cook of the £300 which, as Cook supposed, were sent up to Pratt on the 16th, and that he stole the money which he had on his person, and had received at Shrewsbury; it proves that he forged his name the night before he died, and that he tried to procure a fraudulent attestation to another forged document relating to his affairs the day after he died. It also proves that he had every opportunity of administering poison to Cook, that he told repeated lies about his state of health, and that he purchased deadly poison, for which he had no lawful occasion, on two separate occasions, shortly before two paroxysms of a similar character to each other, the second of which deprived him of life.

The rest of the evidence was directed to prove that the symptoms of which Cook died were those of poisoning by strychnine, and that antimony, which was never prescribed for him, was found in his body. Evidence was also given in the course of the trial as to the state of Cook's health. It may be conveniently introduced here.

¹ At the time of his death, Cook was about twenty-eight years of age. Both his father and mother died young, and his sister and half-brother were not robust. He inherited from his father about £12,000, and was articled to a solicitor. Instead of following up that profession, he betook himself to sporting pursuits, and appears to have led a dissipated life. He suffered from syphilis, and was in the habit of occasionally consulting Dr. Savage on the state of his health. ² Dr. Savage saw him in November, 1854, in May, in June, towards the end of October, and again early in November, 1855, about a

¹ Stephens, 78.² Savage, 70-71.

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fortnight before his death, so that he had ample means of giving satisfactory evidence on the subject, especially as he examined him carefully whenever he came. Dr. Savage said that he had two shallow ulcers on the tongue, corresponding to bad teeth, that he had also a sore throat, one of his tonsils being very large, red, and tender, and the other very small. Cook himself was afraid that these symptoms were syphilitic, but Dr. Savage thought decidedly that they were not. He also noticed "an indication of pulmonary affection under the "left lung." Wishing to get him away from his turf associates, Dr. Savage recommended him to go abroad for the winter. His general health Dr. Savage considered good for a man who was not robust. ¹ Mr. Stephens said that when he last saw him alive he was looking better than he had looked for some time, and on his remarking, "You do not look anything of an invalid now," Cook struck himself on the breast, and said he was quite well. ² His friend, Mr. Jones, also said that his health was generally good, though he was not very robust, and that he both hunted and played at cricket.

On the other hand, witnesses were called for the prisoner who gave a different account of his health. ³ A Mr. Sargent said he was with him at Liverpool, a week before the Shrewsbury races, that he called his attention to the state of his mouth and throat, and the back part of his tongue was in a complete state of ulcer. "I said," added the witness, "I was surprised he could eat and drink in the state his mouth was "in. He said he had been in that state for weeks and months, "and now he did not take notice of it." This was certainly not consistent with Dr. Savage's evidence.

Such being the state of health of Cook at the time of his death, the next question was as to its cause. The prosecution contended that the symptoms which attended it proved that

¹ Stephens, 78.² W. H. Jones, 62.³ Sargent, 269.

TRIALS. he was poisoned by strychnia. Several eminent physicians and surgeons—Mr. Curling, Dr. Todd, Sir Benjamin Brodie, Mr. Daniel, and Mr. Solly—gave an account of the general character and causes of the disease of tetanus. ¹ Mr. Curling said that tetanus consists of spasmodic affection of the voluntary muscles of the body which at last end in death, produced either by suffocation caused by the closing of the windpipe or by the wearing effect of the severe and painful struggles which the muscular spasms produce. Of this disease there are three forms: idiopathic tetanus, which is produced without any assignable external cause; traumatic tetanus, which results from wounds; and the tetanus which is produced by the administration of strychnia, bruchsia, and nux vomica, all of which are different forms of the same poison. Idiopathic tetanus is a very rare disease in this country. ² Sir Benjamin Brodie had seen only one doubtful case of it. ³ Mr. Daniel who for twenty-eight years was surgeon to the Bristol Hospital, saw only two. ⁴ Mr. Nunneley, Professor of Surgery at Leeds, had seen four. In India, however, it is comparatively common: ⁵ Mr. Jackson, in twenty-five years' practice there, saw about forty cases. It was agreed on all hands that though the exciting cause of the two diseases is different their symptoms are the same. They were described in similar terms by several of the witnesses. ⁶ Dr. Todd said the disease begins with stiffness about the jaw, the symptoms then extend themselves to the other muscles of the trunk and body. They gradually develop themselves. When once the disease has begun, there are remissions of severity, but not complete intermissions of the symptoms. In acute cases the disease terminates in three or four days. In chronic cases it will go on for as much as three weeks. There was some question as to what was the shortest case upon record. In a case mentioned

¹ Curling, 110-111. ² Brodie, 120. ³ Daniel, 121. ⁴ Nunneley, 215.

⁵ Jackson, 161. ⁶ Todd, 113. Compare Sir B. Brodie, 119-120.

TRIALS. by one of the prisoner's witnesses, ¹ Mr. Ross, the patient was said to have been attacked in the morning, either at eleven or some hours earlier, it did not clearly appear which, and to have died at half-past seven in the evening. This was the shortest case specified on either side, though its duration was not accurately determined. As a rule, however, tetanus, whether traumatic or idiopathic, was said to be a matter, not of minutes or even of hours, but of days.

Such being the nature of tetanus, traumatic and idiopathic, four questions arose. Did Cook die of tetanus? Did he die of traumatic tetanus? Did he die of idiopathic tetanus? Did he die of the tetanus produced by strychnia? The case for the prosecution upon these questions was, first, that he did die of tetanus. ² Mr. Curling said no doubt there was spasmodic action of the muscles (which was his definition of tetanus) in Cook's case; and even ³ Mr. Nunneley, the principal witness for the prisoner, who contended that the death of Cook was caused neither by tetanus in its ordinary forms nor by the tetanus of strychnia, admitted that the paroxysm described by Mr. Jones was "very like" the paroxysm of tetanus. The close general resemblance of the symptoms to those of tetanus was indeed assumed by all the witnesses on both sides, as was proved by the various distinctions which were stated on the side of the Crown between Cook's symptoms and those of traumatic and idiopathic tetanus, and on the side of the prisoner between Cook's symptoms and the symptoms of the tetanus of strychnia. It might, therefore, be considered to be established that he died of tetanus in some form or other.

The next point asserted by the prosecution was, that he did not die of traumatic or idiopathic tetanus, because there was no wound on his body, and also because the course of the symptoms was different. They further asserted that the

¹ Ross, 239.

² Curling, 109-111.

³ Nunneley, 227.

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symptoms were those of poison by strychnia. Upon these points the evidence was as follows:—¹ Mr. Curling was asked, "Q. Were the symptoms consistent with any form of traumatic tetanus which has ever come under your knowledge or observation?" He answered "No."

"Q. What distinguished them from the cases of traumatic tetanus which you have described? A. There was the sudden onset of the fatal symptoms. In all cases that have fallen under my notice the disease has been preceded by the milder symptoms of tetanus. Q. Gradually progressing to their complete development, and completion, and death? A. Yes." He also mentioned "the sudden onset and rapid subsidence of the spasms" as inconsistent with the theory of either traumatic or idiopathic tetanus; and he said he had never known a case of tetanus which ran its course in less than eight or ten hours. In the one case which occupied so short a time, the true period could not be ascertained. In general, the time required was from one to several days. ² Sir Benjamin Brodie was asked, "In your opinion, are the symptoms those of traumatic tetanus or not?" He replied, "As far as the spasmodic contraction of the muscles goes, the symptoms resemble those of traumatic tetanus; as to the course which the symptoms took, that was entirely different." He added, "The symptoms of traumatic tetanus always begin, as far as I have seen, very gradually, the stiffness of the lower jaw being, I believe, the symptom first complained of—at least, so it has been in my experience; then the contraction of the muscles of the back is always a later symptom, generally much later; the muscles of the extremities are affected in a much less degree than those of the neck and trunk, except in some cases where the injury has been in a limb and an early symptom has been a contraction of the muscles of that limb. I do not

¹ Curling, 110-111.

Brodie, 119-120

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"myself recollect a case in which in ordinary tetanus there was that contraction of the muscles of the hand which I understand was stated to have existed in this instance. The ordinary tetanus rarely runs its course in less than two or three days, and often is protracted to a much longer period; I know one case only in which the disease was said to have terminated in twelve hours." He said, in conclusion, "I never saw a case in which the symptoms described arose from any disease; when I say that, of course I refer not to the particular symptoms, but to the general course which the symptoms took." ¹ Mr. Daniel, being asked whether the symptoms of Cook could be referred to idiopathic or traumatic tetanus, said, "In my judgment they could not." He also said that he should repeat Sir Benjamin Brodie's words if he were to enumerate the distinctions. ² Mr. Solly said that the symptoms were not referable to any disease he ever witnessed, and ³ Dr. Todd said, "I think the symptoms were those of strychnia." The same opinion was expressed with equal confidence by ⁴ Dr. Alfred Taylor, ⁵ Dr. Rees, and ⁶ Mr. Christison.

In order to support this general evidence, witnesses were called who gave accounts of three fatal cases of poisoning by strychnia, and of one case in which the patient recovered. ⁷ The first of the fatal cases was that of Agnes French, or Senet, who was accidentally poisoned at Glasgow Infirmary, in 1845, by some pills which she took, and which were intended for a paralytic patient. According to the nurse, the girl was taken ill three-quarters of an hour, according to one of the physicians (who, however, was not present) twenty minutes, after she swallowed the pills. She fell suddenly back on the floor; when her clothes were cut off she was stiff,

¹ Daniel, 121.² Solly, 123.³ Todd, 116.⁴ Taylor, 110.⁵ Rees, 155.⁶ Christison, 159.⁷ Dr. Corbett, 124. Dr. Watson, 125. Dr. Patterson, 126. Mary Kell (nurse), 126.

TRIALS. "just like a poker," her arms were stretched out, her hands clenched; she vomited slightly; she had no lockjaw; there was a retraction of the mouth and face, the head was bent back, the spine curved. She went into severe paroxysms every few seconds, and died about an hour after the symptoms began. She was perfectly conscious. The heart was found empty on examination.

¹ The second case described was that of Mrs. Serjeantson Smyth, who was accidentally poisoned at Romsey in 1848, by strychnine put into a dose of ordinary medicine instead of salicine. She took the dose about five or ten minutes after seven; in five or ten minutes more the servant was alarmed by a violent ringing of the bell. She found her mistress leaning on a chair, went out to send for a doctor, and on her return found her on the floor. She screamed loudly. She asked to have her legs pulled straight and to have water thrown over her. A few minutes before she died she said, "Turn me over;" she was turned over, and died very quietly almost immediately. The fit lasted about an hour. The hands were clenched, the feet contracted, and on a *post-mortem* examination the heart was found empty.

² The third case was that of Mrs. Dove, who was poisoned at Leeds by her husband (³ for which he was afterwards hung), in February, 1856. She had five attacks on the Monday, Wednesday, Thursday, Friday, and Saturday of the week beginning February 24th. She had prickings in the legs and twitchings in the hands; she asked her husband to rub her arms and legs before the spasms came on, but when they were strong she could not bear her legs to be touched. The fatal attack in her case lasted two hours and a half. The hands were semi-bent, the feet strongly arched. The lungs

¹ Caroline Hickson, 127. W. F. Taylor (surgeon), 128. R. Broxam (chemist), 129.

² J. Williams, 129. Mr. Morley, 130.

³ See the next case for an account of his trial.

TRIALS. were congested, the spinal cord was also much congested. The head being opened first, a good deal of blood flowed out, part of which might flow from the heart.

¹ The case in which the patient recovered was that of a paralytic patient of Mr. Moore's. He took an overdose of strychnia, and in about three-quarters of an hour Mr. Moore found him stiffened in every limb. His head was drawn back; he was screaming and "frequently requesting that we should turn him, move him, rub him." His spine was drawn back. He snapped at a spoon with which an attempt was made to administer medicine, and was perfectly conscious during the whole time.

² Dr. Taylor and Dr. Owen Rees examined Cook's body. They found no strychnia, but they found antimony in the liver, the left kidney, the spleen, and also in the blood.

The case for the prosecution upon this evidence was that the symptoms were those of tetanus, and of tetanus produced by strychnia. The case for the prisoner was, first, that several of the symptoms observed were inconsistent with strychnia; and, secondly, that all of them might be explained on other hypotheses. Their evidence was given in part by their own witnesses and in part by the witnesses for the Crown in cross-examination. The replies suggested by the Crown were founded partly on the evidence of their own witnesses given by way of anticipation, and partly by the evidence elicited from the witnesses for the prisoner on cross-examination.

The first and most conspicuous argument on behalf of the prisoner was that the fact that no strychnia was discovered by Dr. Taylor and Dr. Rees was inconsistent with the theory that any had been administered. The material part of Dr. Taylor's evidence upon this point was that he had examined the stomach and intestines of Cook for a variety of poisons,

¹ Mr. Moore, 133.

² A. S. Taylor, 138-139. Rees, 154-155.

TRIALS. strychnia among others, without success. The contents of the stomach were gone, though the contents of the intestines remained, and the stomach itself had been cut open from end to end, and turned inside out, and the mucous surface, on which poison, if present, would have been found, was rubbing against the surface of the intestines. ¹ This Dr. Taylor considered a most unfavourable condition for the discovery of poison, ² and Mr. Christison agreed with him. Several of the prisoner's witnesses, on the contrary—³ Mr. Nunneley, ⁴ Dr. Letheby, and ⁵ Mr. Rogers—thought that it would only increase the difficulty of the operation and not destroy its chance of success.

Apart from this, Dr. Taylor expressed his opinion that, from the way in which strychnia acts, it might be impossible to discover it even if the circumstances were favourable. The mode of testing its presence in the stomach is to treat the stomach in various ways, until at last a residue is obtained which, upon the application of certain chemical ingredients, changes its colour if strychnia is present. All the witnesses agreed that strychnia acts by absorption—that is, it is taken up from the stomach by the absorbents, thence it passes into the blood, thence into the solid part of the body, and at some stage of its progress causes death by its action on the nerves and muscles. Its noxious effects do not begin till it has left the stomach. From this Dr. Taylor argued that, if a minimum dose were administered, none would be left in the stomach at the time of death, and therefore none could be discovered there. He also said that, if the strychnia got into the blood before examination, it would be diffused over the whole mass, and so no more than an extremely minute portion would be present in any given quantity. If the dose were half a grain, and there were twenty-five pounds

¹ A. S. Taylor, 139. ² Christison, 159. ³ Nunneley, 222.

⁴ Letheby, 235.

⁵ Rogers, 233.

TRIALS. of blood in the body, each pound of blood would contain only one-fiftieth of a grain. He was also of opinion that the strychnia undergoes some chemical change by reason of which its presence in small quantities in the tissues cannot be detected. In short, the result of his evidence was, that if a minimum dose were administered, it was uncertain whether strychnia would be present in the stomach after death, and that if it was not in the stomach, there was no certainty that it could be found at all. ¹ He added, that he considered the colour test fallacious, because the colours might be produced by other substances.

² Dr. Taylor further detailed some experiments which he had tried upon animals jointly with Dr. Rees, for the purpose of ascertaining whether strychnia could always be detected. He poisoned four rabbits with strychnia, and applied the tests for strychnia to their bodies. In one case, where two grains had been administered at intervals, he obtained proof of the presence of strychnia both by a bitter taste and by the colour. In a case where one grain was administered, he obtained the taste but not the colour. In the other two cases, where he administered one grain and half a grain respectively, he obtained no indications at all of the presence of strychnia. These experiments proved to demonstration that the fact that *he* did not discover strychnia did not prove that no strychnia was present in Cook's body; and as this was the only way in which the non-discovery of strychnia was material to the case, great part of the evidence given on behalf of the prisoner became superfluous. It ought, however, to be noticed, as it formed a very prominent feature in the case.

³ Mr. Nunneley, ⁴ Mr. Herapath, ⁵ Mr. Rogers, ⁶ Dr. Letheby, and ⁷ Mr. Wrightson, contradicted Dr. Taylor and Dr. Rees

¹ A. S. Taylor, 138-9. ² A. S. Taylor, 138; Rees, 154.

³ Nunneley, 222.

⁴ Herapath, 230-231.

⁵ Rogers, 532.

⁶ Letheby, 233-234.

⁷ Wrightson, 241.

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upon this part of their evidence. They denied the theory that strychnine undergoes any change in the blood, and they professed their own ability to discover its presence even in most minute quantities in any body into which it had been introduced, and their belief that the colour tests were satisfactory. Mr. Herapath said that he had found strychnine in the blood and in a small part of the liver of a dog poisoned by it; and he also said that he could detect the fifty-thousandth part of a grain if it were unmixed with organic matter. Mr. Wrightson (who was highly complimented by Lord Campbell for the way in which he gave his evidence) also said that he should expect to find strychnia if it were present, and that he had found it in the tissues of an animal poisoned by it.

Here, no doubt, there was a considerable conflict of evidence upon a point of which it was very difficult for unscientific persons to pretend to have any opinion. The controversy, however, was foreign to the merits of the case, inasmuch as the evidence given for the prisoner tended to prove, not that there was no strychnia in Cook's body, but that Dr. Taylor ought to have found it if there was. In other words, it was relevant not so much to the guilt or innocence of the prisoner, as to the question whether Mr. Nunneley and Mr. Herapath were or were not better analytical chemists than Dr. Taylor. The evidence could not even be considered relevant as shaking Dr. Taylor's credit, for no part of the case rested on his evidence except the discovery of the antimony, as to which he was corroborated by Mr. Brande, and was not contradicted by prisoner's witnesses. His opinion as to the nature of Cook's symptoms was shared by many other medical witnesses of the highest eminence, whose credit was altogether unimpeached. The prisoner's counsel were placed in a curious difficulty by this state of the question. They had to attack and did attack Dr. Taylor's credit vigorously, for the purpose of rebutting his conclusion that Cook

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might have been poisoned by strychnine; yet they had also to maintain his credit as a skilful analytical chemist, for, if they destroyed it, the fact that he did not find strychnine went for nothing. This dilemma was fatal. To admit his skill was to admit their client's guilt. To deny it was to destroy the value of nearly all their own evidence, which, in reality, was for the most part irrelevant. The only possible course was to admit his skill and deny his good faith, but this, too, was useless, for the reason just mentioned.

Another argument used on behalf of the prisoner was, that some of the symptoms of Cook's death were inconsistent with poisoning by strychnine. ¹ Mr. Nunneley and ² Dr. Letheby thought that the facts that Cook sat up in bed when the attack came on, that he moved his hands, and swallowed, and asked to be rubbed and moved, showed more power of voluntary motion than was consistent with poisoning by strychnia. But Mrs. Serjeantson Smyth got out of bed and rang the bell, and both she, Mrs. Dove, and Mr. Moore's patient begged to be rubbed and moved before the spasms came on. Cook's movements were before the paroxysm set in, and the first paroxysm ended his life.

³ Mr. Nunneley referred to the fact that the heart was empty, and said that, in his experiments, he always found that the right side of the heart of the poisoned animals was full. Both in Mrs. Smyth's case, however, and in that of the girl Senet, the heart was found empty; ⁴ and in Mrs. Smyth's case the chest and abdomen were opened first, so that the heart was not emptied by the opening of the head. ⁵ Mr. Christison said that if a man died of spasms of the heart, the heart would be emptied by them, and would be found empty after death; so that the presence or absence of the blood proved nothing.

¹ Nunneley, 221.² Letheby, 234.³ Nunneley, 220.⁴ F. Taylor, 128-129.⁵ Christison, 159.

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¹ Mr. Nunneley and ² Dr. Letheby also referred to the length of time before the symptoms appeared as inconsistent with poisoning by strychnine. The time between the administration of the pills and the paroxysm was not accurately measured; it might have been an hour, or a little less or more; but the poison, if present at all, was administered in pills, which would not begin to operate till they were broken up, and the rapidity with which they would be broken up would depend upon the materials of which they were made. Mr. Christison said that if the pills were made up with resinous materials, such as are within the knowledge of every medical man, their operation would be delayed. He added,

“I do not think we can fix, with our present knowledge, the precise time for the poison beginning to operate.” ⁴ According to the account of one witness in Agnes French's case, the poison did not operate for three-quarters of an hour, though, probably, her recollection of the time was not very accurate after ten years. ⁵ Dr. Taylor also referred (in cross-examination) to cases in which an hour and a half, or even two hours, elapsed, before the symptoms showed themselves.

These were the principal points, in Cook's symptoms, said to be inconsistent with the administration of strychnia. All of them appear to have been satisfactorily answered. Indeed, the inconsistency of the symptoms with strychnia was faintly maintained. The defence turned rather on the possibility of showing that they were consistent with some other disease.

In order to make out this point, various suggestions were made in the cross-examination of the different witnesses for the Crown. It was frequently suggested that the case was one of traumatic tetanus, caused by syphilitic sores; but to this there were three fatal objections. In the first place, there were no syphilitic sores; in the second place, no witness for

¹ Nunneley, 219.² Letheby, 233.³ Christison, 158.⁴ Mary Kelly, 126.⁵ A. S. Taylor, 150.

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the prisoner said that he thought that it was a case of traumatic tetanus; and, in the third place, several doctors of great experience in respect of syphilis—especially ¹ Dr. Lee, the physician to the Lock Hospital—declared that they never heard of syphilitic sores producing tetanus. ² Two witnesses for the prisoner were called to show that a man died of tetanus who had sores on his elbows and elsewhere which were possibly syphilitic; but it did not appear whether he had rubbed or hurt them, and Cook had no symptoms of the sort.

Another theory was, that the death was caused by general convulsions. This was advanced by ³ Mr. Nunneley; but he was unable to mention any case in which general convulsions had produced death without destroying consciousness. ⁴ He said vaguely he had heard of such cases, but had never met with one. ⁵ Dr. McDonald, of Garnkirk, near Glasgow, said that he considered the case to be one of “epileptic convulsions with tetanic complications.” But he also failed to mention an instance in which epilepsy did not destroy consciousness. This witness assigned the most extraordinary reasons for supposing that it was a case of this form of epilepsy. He said that the fit might have been caused by sexual excitement, though the man was ill at Rugeley for nearly a week before his death; ⁶ and that it was within the range of possibility that sexual intercourse might produce a convulsion fit after an interval of a fortnight.

Both Mr. Nunneley and Dr. McDonald were cross-examined with great closeness. Each of them was taken separately through all the various symptoms of the case, and asked to point out how they differed from those of poisoning by strychnia, and what were the reasons why they should be supposed to arise from anything else. After a great deal of trouble, Mr. Nunneley was forced to admit that the symptoms

¹ Lee, 124. ² Dr. Corbett, 239. Mr. Mantell, 241. ³ Nunneley, 227.⁴ Nunneley, 217-218. ⁵ McDonald, 252-253. ⁶ McDonald, 253-254.

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of the paroxysm were "very like" those of strychnia, and that the various predisposing causes which he mentioned as likely to bring on convulsions could not be shown to have existed. He said, for instance, that excitement and depression of spirits might predispose to convulsions; but the only excitement under which Cook had laboured was on winning the race a week before; and as for depression of spirits, he was laughing and joking with Mr. Jones a few hours before his death. Dr. McDonald was equally unable to give a satisfactory explanation of these difficulties. It is impossible, by any abridgment, to convey the full effect which these cross-examinations produced. They deserve to be carefully studied by anyone who cares to understand the full effect of this great instrument for the manifestation not merely of truth, but of accuracy and fairness.

Of the other witnesses for the prisoner, ¹ Mr. Herapath admitted that he had said that he thought that there was strychnine in the body, but that Dr. Taylor did not know how to find it. He added that he got this impression from newspaper reports; but it did not appear that they differed from the evidence given at the trial. ² Dr. Letheby said that the symptoms of Cook were irreconcilable with everything that he was acquainted with—strychnia poison included. He admitted, however, that they were not inconsistent with what he had heard of the symptoms of Mrs. Serjeantson Smyth, who was undoubtedly poisoned by strychnine. ³ Mr. Partridge was called to show that the case might be one of arachnitis, or inflammation of one of the membranes of the spinal cord, caused by two granules discovered there. In cross-examination he instantly admitted, with perfect frankness, that he did not think the case one of arachnitis, as the symptoms were not the same. Moreover, on being asked whether the symptoms described by Mr. Jones were consistent

¹ Herapath, 231.² Letheby 237.³ Partridge, 244-245.

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with poisoning by strychnia, he said, "Quite"; and he concluded by saying that, in the whole course of his experience and knowledge, he had never seen such a death proceed from natural causes. ¹ Dr. Robinson, from Newcastle, was called to show that tetanic convulsions preceded by epilepsy were the cause of death. He, however, expressly admitted in cross-examination that the symptoms were consistent with strychnia, and that some of them were inconsistent with epilepsy. He said that, in the absence of any other cause, if he "put aside" the hypothesis of strychnia, he would ascribe it to epilepsy; and that he thought the granules in the spinal cord might have produced epilepsy. The degree of importance attached to these granules by different witnesses varied. Several of the witnesses for the Crown considered them unimportant. ² The last of the prisoner's witnesses was Dr. Richardson, who said the disease might have been angina pectoris. He said, however, that the symptoms of angina pectoris were so like those of strychnine that he should have great difficulty in distinguishing them from each other.

The fact that antimony was found was never seriously disputed, nor could it be denied that its administration would account for all the symptoms of sickness, &c., which occurred during the week before Cook's death. No one but the prisoner could have administered it.

I was present throughout the greater part of this celebrated trial, and it made an impression on my mind which the experience of thirty-four subsequent years, during which I have witnessed, studied, and taken part, both as counsel and as judge, in many important cases, has rather strengthened than weakened. It is impossible to give an adequate idea of the manner in which it exhibited in its very best and strongest light the good side of English criminal procedure. No more horrible villain than Palmer ever stood in a dock. The pre-

¹ Robinson, 255-259.² Richardson, 249-250.

TRIALS. justice against him was so strong that it was considered necessary to pass an Act of Parliament to authorize his trial in London. He was actually indicted for the murder of his wife, and for that of his brother, and it was commonly reported at the time that he had murdered in the same way many other persons. Under the French system, the *acte d'accusation* would have paraded these, with all the other discreditable incidents of his life, before the eyes of the jury. He would have been questioned by the president, probably for days, about them; and it would have been practically impossible for the jury to consider, calmly and impartially, whether the fact that he had murdered Cook was properly proved. As it was, no one of these matters was introduced or referred to, except so far as it directly bore upon the case of Cook. Thus, Mrs. Palmer's death, and the way in which he disposed of the £13,000 for which he had insured her life, were referred to only in order to show his money position at the time of Cook's death. The suggestion that he had murdered his wife (as he most unquestionably had) was never made or hinted at. So the fact that on Walter Palmer's death the policy for which Palmer had insured his life was disputed by the office was referred to only for the same purpose, and the same remark applies to the forged acceptances of his mother's which Palmer had uttered. The evidence on all these matters was confined to what was absolutely necessary for the purpose of showing motive.

Not less remarkable than the careful way in which all topics of prejudice were avoided was the extreme fullness and completeness of the evidence as to facts which were really relevant to the case. Nothing was omitted which the jury could properly want to know, nor anything which the prisoner could possibly wish to say. No case could set in a clearer light the advantage of two characteristic features of English criminal law—namely, its essentially litigious

TRIALS. character, and the way in which it deals with scientific evidence. A study of the case will show, first, that evidence could not be more condensed, more complete, more closely directed to the very point at issue; secondly, that the subjection of all witnesses, and especially of all skilled witnesses, to the most rigorous cross-examination is absolutely essential to the trustworthiness of their evidence. The closeness and the skill with which the various witnesses, especially those for the defence, were cross-examined, and compelled to admit that they could not really distinguish the symptoms of Cook from those of poisoning by strychnine, were such an illustration of the efficiency of cross-examination as is rarely indeed afforded.

The defence was by far the least impressive part of the trial, but that was mainly because there was in reality nothing to say. It was impossible to suggest any innocent explanation of Palmer's conduct. It was proved to demonstration that he was in dire need of money in order to avoid a prosecution for forgery, that he robbed his friend of all he had by a series of devices which he must instantly have discovered if he had lived, that he provided himself with the means of committing the murder just before Cook's death, and that he could neither produce the poison he had bought nor suggest any innocent reason for buying it. There must have been some mystery in the case which was never discovered. Palmer, at and before his execution, was repeatedly pressed to say whether he was guilty or not, and was told that everyone would believe him to admit his guilt if he did not emphatically deny it. He would say only, "He was not poisoned by strychnine;" and I have reason to know that he was anxious that Dr. Herapath should examine the body for strychnine, though aware that he said he could detect the fifty-thousandth part of a grain. He may have discovered some way of administering it which would render

TRIALS. discovery impossible, but it is difficult to doubt that he used it, for, if not, why did he buy it?

The best points for the defence were that the descriptions given by the maid-servants of Cook's symptoms were coloured by what they afterwards read in the newspapers about the symptoms of Mrs. Dove and could not be trusted, and that the evidence as to the purchase of the strychnine was unsatisfactory. To some extent this no doubt weakened the evidence, but not so much as to raise a reasonable doubt as to what it proved.

I am tempted to make one other observation on Palmer's case. His career supplied one of the proofs of a fact which many kind-hearted people seem to doubt—namely, the fact that such a thing as atrocious wickedness is consistent with good education, perfect sanity, and everything, in a word, which deprives men of all excuse for crime. Palmer was respectably brought up; apart from his extravagance and vice, he might have lived comfortably enough. He was a model of physical health and strength, and was courageous, determined, and energetic. No one ever suggested that there was even a disposition towards madness in him; yet he was as cruel, as treacherous, as greedy of money and pleasure, as brutally hard-hearted and sensual a wretch as it is possible even to imagine. If he had been the lowest and most ignorant ruffian that ever sprung from a long line of criminal ancestors, he could not have been worse than he was. He was by no means unlike Rush, Thurtell, and many other persons whom I have known. The fact that the world contains an appreciable number of wretches, who ought to be exterminated without mercy when an opportunity occurs, is not quite so generally understood as it ought to be, and many common ways of thinking and feeling virtually deny it.

THE CASE OF WILLIAM DOVE.

ON the 16th of July, 1856, William Dove was indicted at York for the murder of his wife, Harriet Dove, and, after a trial before Baron Bramwell which occupied four days, was convicted. His case is remarkable as an illustration of the practical application of the principles of law relating to the criminal responsibility of madmen discussed in a preceding chapter.

Dove was a man of about thirty, and had been married to his wife, at the time of her death, between four and five years. He had about £100 a year of his own, and lived with his wife at various places. At the time of her death (Saturday, March 1, 1856), they had been living at Leeds since a few days before the previous Christmas. A servant, Elizabeth Fisher, who lived with them for about a year before Mrs. Dove's death, proved that for some time they had lived very unhappily. He was often drunk and violent, and they had quarrels in consequence. On one occasion, he was so violent that the servant went out for help, and he threw a bottle at her on her return. Another time, the servant saw him holding Mrs. Dove with one hand and threatening to kill her with a knife which he had in the other. Afterwards, when she asked for a part of some money which he had got, he said "he would rather give it to anyone than her, and he would give her a pill that

¹ This account is taken from the notes of Lord Bramwell, who was so kind as to lend them to me for the purpose. I have followed throughout their very words, though the form in which they are taken is of course at times elliptical, and though there are one or two obvious slips of the pen.

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" would do for her." This made so much impression on Mrs. Dove, that she told the servant (in Dove's presence) that he had said so; and also said to her, on the morning when she left their service, "Elizabeth, if I should die and you are away at the time, it is my wish that you tell my friends to have my body examined." Elizabeth Fisher went home on Tuesday, February 19th, and on the following Saturday (the 23rd) her mother, Anne Fisher, came to take her place. On the Monday, before breakfast, Mrs. Dove was quite well. After breakfast, she went upstairs to make the beds, and complained of feeling very strange. In a short time, symptoms came on which, no doubt, were those of poisoning by strychnine. The attack went off, but she remained in bed, and was attended by Mr. Morley, who was fetched for the purpose by Dove.

She had similar attacks on the Wednesday, the Thursday, and a very bad one on the Friday night. Through the early part of Saturday (March 1) she was better, but, about half-past eight in the evening, another attack came on, and she died at about twenty minutes to eleven. A *post-mortem* examination made by Mr. Morley and Mr. Nunneley proved, beyond all doubt, that she had died of strychnine. Substances extracted from the body poisoned several animals, which died from symptoms identical with those which were produced in other animals poisoned with strychnine procured for the purpose elsewhere.

It was equally clear that the poison was administered with the intention of destroying life, with premeditation, and with precautions intended to conceal it. Mrs. Dove had been unwell, though not seriously, for some time before her death, and had been attended by Mr. Morley for about three months. Dove used to go to his surgery for medicines. "He came" (said Elletson, a pupil of Mr. Morley's) "a month before her death. We talked about ¹ Palmer's trial. He said Palmer

¹ See last case.

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" had poisoned his wife by repeated doses of antimony. It was mentioned Cook had been poisoned by strychnine. Dove said strychnine could not be detected after death. I said it could. I mentioned nitric acid as a test. I showed him the amount in Pereira's *Materia Medica*. He took it in his hand and read it, page 903, &c. He said his house was infested with wild cats, which he wished to destroy. He said he thought laying poison would be the best way. I said I thought it would. He asked me for some strychnine. I gave him some, about ten grains, wrapped as a powder in a piece of foolscap paper. I wrote 'poison' on it." He afterwards got from three to five grains more in the same manner, and he was seen by Mr. Morley's coachman in the surgery when no one was there. As he had observed, in the course of his conversation with Elletson, the place where the strychnine bottle was kept, he had, on this occasion, an opportunity of obtaining a further supply if he chose. He did poison two cats with the strychnine thus obtained, and also a mouse, thus giving colour to his possession of the poison.

Besides the circumstances which showed that Dove lived on bad terms with his wife and had threatened her, evidence was given to show that he had formed designs upon her life. During her illness, he told Mrs. Thornhill, a widow, that he had been to the witchman, who said Mrs. Dove had not long to live. He added that, as soon as she died, he would make an offer to the lady next door. In the course of her illness, he repeatedly told Mr. Morley, the surgeon, that he thought she would not recover, notwithstanding Mr. Morley's opinion to the contrary. He also told a woman named Hicks that she would not get over the disease, and that he should most likely marry again, as no one could expect him, a young man, to remain single. He told the same witness, on the day of Mrs. Dove's death, that Mrs. Dove would not have another attack till half-past ten or eleven; and on being asked whether

TRIALS. the attacks came on periodically made no answer. Lastly, on the evening of her death, he gave her a dose of medicine. She complained of the taste being very hot, and in about a quarter of an hour was seized with all the symptoms of strychnine poisoning, which continued till her death.

Some other evidence upon the subject was given, but it is needless to go into it. It is enough to say that it was proved beyond the possibility of doubt on the part of the prosecution, whilst it was hardly denied on the part of the prisoner, that he caused her death by the repeated administration of doses of strychnine, which he had procured for that purpose under false pretences, and which he administered in order to destroy her life, partly because he was on bad terms with her, partly because he wished to marry again.

The substantial defence which gives the case its interest was, that the act was either not wilful or not malicious; and the evidence of this was, that Dove was insane, and was thus either prevented by mental disease from knowing that the act was wrong, or constrained by an irresistible impulse to do it. The evidence as to the state of his mind was given partly by the witnesses for the prosecution, and partly by the witnesses called by his own counsel. The most convenient way of describing its effect will be to throw it into the shape of a continuous account of his life, from the sixth year of his age down to the time of his trial.

The first witness upon the subject was his nurse, who had known him from the sixth to about the twentieth year of his age. She said, "I never thought him right in his mind." The proof of this seemed to consist principally in his habit of playing exceedingly mischievous and ill-natured tricks. For example, he tried to set the bed-curtains on fire; he chased his sisters with a red-hot poker; he cut open a wound on his arm which had healed, saying it had healed false. The nurse added: "His father and family were very pious and regular

TRIALS. "Wesleyans. Great pains were taken to instruct the child. "He could not regularly be taught his lessons and duties. "That is one reason for thinking he was not in his right "mind." Mr. Charles Harrison, who had been usher at a school where Dove was from ten to thirteen years of age, spoke of him as follows: "I regarded him as a youth of a very low "order of intellect. I never remember to have met with a "similar case—great imbecility of mind and great want of "moral power,¹ evil and vicious propensities." He added, that once Dove got a pistol, and told the boys that he meant to shoot his father with it. The father was told of it, and said he should flog him. In cross-examination, Mr. Harrison said: "He was a dull boy and a bad boy. I then thought "him insane. I did not feel myself in a position to object "to him being flogged. I never sent him from my class to "be flogged. He was frequently flogged for incapacity." Mr. Highley, the schoolmaster, spoke strongly of his bad conduct, and said: "His reasoning powers were extremely limited. "He appeared to have no idea of any consequences. He "appeared to be deprived of reason. I am satisfied he was "labouring under an aberration of intellect." These strong expressions, however, were not supported by any specific proof worth repeating. Mr. Highley admitted that he used to flog him, but he added: "I flogged him till I was satisfied there "was a want of reason, but not after." He admitted, however that he flogged him slightly ("perhaps a stroke or two") the day before he left.

Dove having been expelled from Mr. Highley's school, his father took the opinion of Mr. Lord, who was also a schoolmaster, as to what was to be done with him. Mr. Lord said: "I, at his father's request, invited him into my study, to give "him religious instruction. I made myself acquainted with "the character of his mind. I could make no impression on

¹ *Sic* in the notes.

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“his heart or his head. He would not at all appreciate what I said. He listened, but I could make no impression—get no rational answer. His father consulted me as to what provision¹ I should make for him. I advised him. He was not then capable of disposing of property to any amount rationally. I never forbade him my house. I did not invite him in consequence of his deficiency and perverseness. I should say he was not of sound mind.” In cross-examination, Mr. Lord said that, when he heard of Dove's engagement, he told his future wife's brother that inquiry ought to be made about Dove, “on account of his unaccountable irrational conduct.” In answer to further questions, he repeated several times his strong conviction of his being “irrational” in conversation and behaviour, though he could give no particular instance of it.

In consequence, apparently, or at any rate soon after his reference to Mr. Lord, Dove's father sent him to a Mr. Frankish to learn farming. He stayed with Mr. Frankish for five years and a half. Mr. Frankish said: “I think there were certain seasons when he was not of sound mind. That was frequent. He never could learn farming.” He also mentioned a number of instances of the sort of conduct on which this opinion was founded. Thus, he put vitriol on the tails of some cows. He at first denied, but afterwards confessed it, and was sorry for what he had done. He also burnt two half-grown kittens with vitriol. He put vitriol into the horse-trough, and set fire to the gorse on the farm, doing considerable damage. After leaving Frankish, he went for a year as a pupil to a Mr. Gibson, also a farmer. Gibson's account of him was as follows: “I did not consider him one of the brightest and most powerful minds. I tried to teach him practically, as far as farming went, as stock and the rotation of crops. I was not as successful as I should like.”

¹ *Sic.* Obviously it should be “he.”

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After this he seems to have gone to America, for what purpose does not appear. He went alone, and he seems not to have stayed there long; and he told wild stories about his adventures there on his return. He was next established on a farm taken for him at a place called Whitwell. It was about this time that he married. James Shaw, Mary Peck, and Robert and William Tomlinson, Emma Spence, and Emma and Fanny Wilson, who had been in his service, all gave evidence of his extravagant behaviour whilst he held the farm. He used to point loaded fire-arms at his servants, and threaten to shoot people who had given him no offence. He told strange stories about his having been attacked or followed by robbers. He cut a maid-servant's cap to pieces. He and his wife often quarrelled, and sometimes played like children. Some of the servants spoke of having seen him crying, wandering about his fields without an object. Shaw said: “I many times used to think he did things different from what a man would do if he had his right mind.” Tomlinson said: “I do not think he was a sound-minded man at all times.” Several other witnesses—two schoolmasters, a postman, a Wesleyan preacher, who had lodged at his father's, and a friend of his wife's—all deposed to a variety of extravagant acts and conversations somewhat similar to those already stated. They spoke of his conversation as being unusually incoherent, “flying about from one subject to another,”—of his lying on the ground and crying without a cause, of his complaining of noises in his house, and of his reaping part of his own corn while it was green because, he said, others had reaped theirs and he would not be later than they, and of his telling wild stories about his adventures in America, as if he believed them. In addition to this, whilst he was in gaol, he wrote in his own blood a letter to the devil. It was suggested that this might be for the purpose of making evidence of his insanity.

In addition to the evidence as to facts, three medical wit-

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nesses were called, who had been physicians to lunatic asylums or otherwise specially occupied with the subject of madness for many years. They all agreed in describing Dove as of unsound mind. Two of them, Dr. Pyeman Smith, proprietor of a lunatic asylum at Leeds, and Dr. Kitchen, of York, at once admitted, on cross-examination, that they thought he knew right from wrong during the week which he passed in poisoning his wife. Dr. Pyeman Smith added that many mad people do know right from wrong; that a madman having that knowledge might be regardless of consequences, and might be wholly unable to refrain from doing what was wrong. He then said, "I cannot say that of the prisoner during that week; circumstances might have made him refrain. Other circumstances. Not the greater chance of detection. His not possessing the poison. Slight circumstances might have [?] made] him defer it to another time. In my opinion possessing [?] the means] he was regardless of the consequences." Mr. Kitchen said: "I think it probable that he had some knowledge of the difference between right and wrong during the fatal week. If he did it, I have no doubt he knew he was committing murder, and that if found out he would be likely to be punished for it." On re-examination, he added, "I consider his conduct that week the natural consequence of what had gone before. All his previous life justified the expectation. I believe he has been insane all his life. When I say he knew if he did it he was committing murder, I mean he knew he was killing his wife. I do not mean he knew he was doing wrong. I think he would know that in proportion as he knew the difference between right and wrong."

Dr. Williams, who had been medical attendant of a lunatic asylum at York for thirty years, gave evidence on the subject at great length. The most important parts of his evidence are as follows. After stating his conviction that Dove's

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letter to the devil was genuine, and that he believed himself to be under supernatural influences, he said: "During the fatal week, from all I have heard, I should say that, while impelled by a propensity to injure or take life, his mind was probably influenced by his notions regarding supernatural agency, and therefore he was the subject of delusion. A person labouring under such delusion might retain his power of judging in adopting means to an end, and as to consequences as regards the object he had in view. Under those delusions he could not have the power of resisting any impulse." On cross-examination, Dr. Williams said: "I know of no case of a man" (obviously meaning a man under the influence of madness) "giving poison in small and repeated doses. Insanity to take away life by poison is rare. If poison were administered six or seven times running, I should not call it an impulse; I should call it an uncontrollable propensity to destroy, give pain, or take life. The propensity might continue as a permanent condition of the mind. It might select a special object and not injure any body or thing else. I think such a person would not know he was doing wrong. He might fear the consequences of punishment. He would probably know that he was breaking the law. He would not know at the time he did it he would be hanged for murder. I found that opinion on the occupation of the mind by the insane propensity. It is uncertain if he would know it before he did it. He might afterwards."

After several questions pointing to the conclusion that vice as well as insanity might be the cause of crime in men so constituted, Dr. Williams was asked the following question: "If a person lived with his wife and hated her, and determined to and did kill her, what is the difference between that determination which is vice and the propensity which is insanity?" He answered: "The prisoner's previous his-

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"tory would be required to determine whether it was vice
"or insanity." He then proceeded, in answer to other ques-
"tions: "A man by nourishing an idea may become diseased
"in his mind, and then he cannot control it. This is moral
"insanity. It does apply to other cases: it might apply to
"rape; as, if a man nourished the desire to possess a particular
"woman till the desire became uncontrollable, and then he
"committed the rape, that would be moral insanity. So of
"theft. If a man permits himself to contemplate the grati-
"fication of any passion or desire till it becomes uncontrol-
"lable, that is moral insanity." On re-examination, he gave
the following evidence:—"Q. Suppose the man had from his
"childhood been excitable, used fire-arms when no danger,
"threatened to shoot his father and mother, complained of
"sounds in his house, and the other things proved by wit-
"nesses yesterday, treating his wife kindly and weeping?
"A. I have no doubt that man is insane, and not fit to be
"trusted abroad. I would have certified him a lunatic before
"the fatal week."

The jury returned the following verdict:—"Guilty, but we
"recommend him to mercy on the ground of his defective-
"intellect." He was sentenced to death, and executed at
York in pursuance of his sentence.

I have entered minutely into the details of this case, be-
cause it furnishes a perfect illustration of the state of mind
which Erskine² alluded to, though it was unnecessary for
him to discuss it minutely, in his celebrated speech on the

¹ Verbatim from the notes.

² "You will have to decide whether you attribute it wholly to mischief
"and malice, or wholly to insanity or to the one mixing itself with the other.
" . . . If you consider it as conscious malice and mischief mixing itself with
"insanity, I leave him in the hands of the court to say how he is to be dealt
"with. It is a question too difficult for me."—27 *State Trials*, 1328. This
remark is characteristic of Erskine. The great logical capacity, which was one of
the principal characteristics of his mind, led him to say that malice and insanity
might mix. His excessive caution as an advocate admonished him to point

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trial of Hadfield. It is impossible to resist the conclusion,
which the evidence given above suggests, that Dove was not
a sane man. It is equally impossible to doubt that he wil-
fully, maliciously, and of his malice aforethought, in the full
and proper sense of those words, murdered his wife. The
result of the whole history appears to be, that he was from
infancy predisposed (to say the least) to madness; that
symptoms indicating that disease displayed themselves at
frequent intervals through the whole course of his life, but
that they never reached such a pitch as to induce those about
him to treat him as a madman. He was allowed to go by
himself to America, to occupy and manage a farm, to marry,
though his wife's brother was warned of his character, to live
on his means without interference at Leeds, and generally to
conduct himself as a sane person. This being so, he appears
to have allowed his mind to dwell with a horrible prurience
on the prospect of his wife's death and of his own marriage
to another person, to have formed the design of putting her
to death, and to have carried out that design with every mark
of deliberate contrivance and precaution. In this state of
things, can he be said to have known, in the wider sense of
the words, that his act was wrong? He obviously knew that
the act was wrong in the sense that people in general would
so consider it; but was he capable of thinking like an ordinary
man of the reasons why murder is wrong, and of applying
those reasons to his conduct?

Undoubtedly there was evidence both ways. Looking at
the whole account of his life, it cannot be denied that his
language and conduct appear at times to have been incon-
secutive, capricious, and not capable of being accounted for
on any common principles of action. His lying down on the

to the difficulty and leave it on one side, but I know of nothing in his speeches
or writings to lead to the supposition that he could have done much towards
solving it had he tried.

TRIALS. ground to cry, his wandering in the fields, the noises he supposed himself to hear, are all strong illustrations. On the other hand, this was only an occasional state of things. He appears to have acted, as a rule, rationally enough, and to have transacted all the common affairs of life. Did, then, this killing of his wife belong to the rational or to the irrational part of his conduct? Every circumstance connected with it referred it to the former. Its circumstances presented every conceivable mark of motive and design. It was a continued series of deliberate and repeated attempts, fully accomplished at last.

The suggestion of Dr. Williams, that Dove had allowed his mind to dwell on his wife's death till at last he became the victim of an uncontrollable propensity to kill her, if correct, would not prove that his act was not voluntary. It is the setting and keeping the mind in motion towards an object plainly conceived that constitutes the mental part of an act. Every act becomes irrevocable by the agent before it is consummated. If a man, for example, strikes another, he may repent while his arm is actually falling, but there is a point at which he can no more deprive his arm of the impetus with which he has animated it than he can divert from its course a bullet which he has fired from a rifle. Suppose he deals with his mind in this manner at an earlier stage of the proceeding, and so fills himself with a passionate, intense longing for the forbidden object, or result, that he becomes as it were a mere machine in his own hands. Is not the case precisely similar, and does not the action continue to be voluntary and wilful, although the act of volition which made it irrevocable preceded its completion by a longer interval than usual?

It must, however, be remembered that the proof that Dove's propensity was uncontrollable is very defective. An uncontrollable propensity which accidental difficulties, or the

TRIALS. fear of detection, constantly control and divert for a time, is an inconceivable state of mind. Is there the smallest reason to suppose that, if Mrs. Dove had met with a fatal accident, and had been lying in bed dying before her husband gave her any poison at all, his uncontrollable propensity to kill her would have induced him to administer the poison nevertheless? If not, the propensity was like any other wicked feeling. It was certainly uncontrolled, and may probably have been strong, but that is different from being uncontrollable.

It is easy, no doubt, to imagine circumstances which would have justified the jury in returning a different verdict. If Dove had always treated his wife kindly, and lived on good terms with her, and if he had killed her in a sudden, unaccountable fury, the evidence as to the state of his mind would, no doubt, have suggested the conclusion that the act was not part of the regular and ordinary course of his life; that it was not planned, settled, and executed as rational men carry out their purposes, but that it was one of those occurrences which rebut the presumption of will or malice on the part of the agent, and was, therefore, not within the province of the criminal law. This conclusion might have been rendered more or less probable by an infinite variety of collateral circumstances. Concealment, for example, would have diminished its probability. Openness would have increased it, and so would independent traces of excitement.

¹ THE CASE OF THOMAS SMETHURST.

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THOMAS SMETHURST was indicted for the wilful murder of Isabella Bankes at the Old Bailey Sessions, on the 7th of July, 1859. After the case had proceeded for a considerable time, one of the jury was taken ill, and the court adjourned till Monday, the 15th of August. A trial, which occupied four days, before the Lord Chief Baron of the Exchequer, then took place; the prisoner was convicted and sentenced to death, but he subsequently received a free pardon on the ground that his guilt had not been sufficiently proved.

Smethurst, who had been for many years married to a person much older than himself, was living with his wife, in November, 1858, at a boarding-house in Bayswater, where he became acquainted with Miss Bankes, the deceased. On the 9th of December he went through the ceremony of marriage with her, and they went to live together at Richmond, Smethurst's real wife being left at the boarding-house at Bayswater. There he visited her once or twice after he left, and he also transmitted money on her account to the mistress of the house. There was no evidence to show that Mrs. Smethurst was aware of the relations between her husband and Miss Bankes, though it is hardly possible that her suspi-

¹ This account is founded on the notes of Lord Chief Baron Pollock, who was kind enough to lend them to me for that purpose, and also to give me a copy of his communication to Sir G. C. Lewis on the subject. The quotations of the evidence are taken from the Lord Chief Baron's notes. I have compared the Report in the 50th Volume of the Old Bailey Sessions Papers, and the references are to the pages of that volume.

cions should not have been roused by their leaving the house within a fortnight of each other, ¹ especially as Miss Bankes's departure was caused by the representations of the landlady as to the impropriety of her conduct.

After the sham marriage, the prisoner and the deceased went to live at Richmond, where they stayed for four months. ² From the 4th February to the 15th April they lodged at Old Palace Gardens. From the 15th April to Miss Bankes's death, on the 3rd May, they lodged at 10 Alma Villas; Miss Bankes was taken ill towards the end of March, or beginning of April, and grew rapidly worse. ³ Dr. Julius, of Richmond, was called in on the 3rd of April, by the direction of the prisoner, on the recommendation of the landlady of the first set of lodgings. ⁴ In the midst of her illness Miss Bankes was removed to another lodging at 10 Alma Villas, the motive of the change being the raising of the rent of the first lodgings. ⁵ Dr. Bird, the partner of Dr. Julius, attended her from the 18th April, and by the prisoner's desire she was visited by Dr. Todd, on the 28th. ⁶ On Sunday, the 1st May, a will was made for Miss Bankes by a Richmond solicitor, named Senior, who was applied to on the subject by Dr. Smethurst, and by this will the whole of her property, with the exception of a brooch, was left to him absolutely. The property consisted of £1,740 lent on mortgage. ⁷ The deceased had, also, a life interest in £5,000, the dividend on which she had just received and handed to the prisoner. ⁸ On May 1st, being Sunday, the will was executed, and on May 2nd the prisoner was brought before the Richmond magistrates on a charge of administering poison to the deceased. ⁹ He was liberated on his own recognizances the same evening, and Miss Bankes died on the morning of the

¹ P. 504.² P. 505.³ P. 505.⁴ P. 530.⁵ P. 524.⁶ Pp. 520-521.⁷ Pp. 522, 547, 513.⁸ P. 545.⁹ P. 513-517.

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3rd. ¹ Her sister, Miss Louisa Bankes, had visited her on the 19th April. She also visited her on the 30th, and attended her from the time of Dr. Smethurst's liberation to her death. On the *post-mortem* examination, it appeared that the deceased was between five and seven weeks advanced in pregnancy. On the prisoner's second apprehension, which took place immediately after the death of Miss Bankes, a letter was found upon him addressed to his real wife.

The first question suggested by these facts was whether they disclosed any motive on the part of the prisoner for the murder of the deceased.

The consequences of the death of Miss Bankes to Smethurst, measured in money, would be a gain of £1,740 lent on mortgage, and a loss of the chance of receiving the dividend to accrue on the principal sum of £5,000 during her life. His chance of receiving the dividend depended entirely on the continuance of their connection and of his influence over her. Now, the connection was one which involved not merely immorality, but crime. If Mrs. Smethurst had become aware of its character, she might at any moment have punished her husband's desertion and neglect by imprisonment; and, so long as the connection continued, his liberty and character were at the mercy of anyone who might discover the circumstances bearing on it. There was also the chance that he himself might become tired of his mistress, or that she, from motives which might readily arise, might wish to leave him. His hold over her dividends would terminate in any of these cases, and was thus uncertain. Besides this, it must be remembered that the dividends, whilst he received them, would have to be applied to their joint support. He could not apply them to his own purposes and turn her out of doors, for, if he had done so, she would have retained them for herself. ² A precarious hold over £150 a year, for the

¹ P. 532.

² The dividend was £71 5s., probably for a half-year.

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life of a person who was to be supported as a lady out of that sum, and who was likely to become a mother, was certainly not worth the right to receive a gross amount of £1,740, unfettered by any condition whatever. It thus seems clear that Smethurst had a money interest in the death of Miss Bankes; but there is nothing to show that he was in pressing want of money, whilst there is some evidence to show that he was not. In Palmer's case the possession of a large sum of money at the very time of Cook's death was a matter of vital importance; but ¹ Smethurst had a considerable balance at his banker's at the time in question, and appears to have lived upon his means at Richmond without any visible mode of earning a living.

A consideration which weighed more heavily, in respect to the existence of a motive for murder, arose out of the nature of the connection between the prisoner and the deceased. It is sometimes said that there is no need to look further for a motive when the parties are man and wife. The harshness of the expression ought not to be allowed to conceal the truth which it contains. Married people usually treat each other with external decency, good humour, and cordiality, but what lies under that veil is known only to themselves; and the relation may produce hatred, bitter in proportion to the intimacy which it involves. In the particular case in question, the relation which existed between the parties was one which could hardly fail to abound in sources of dislike and discomfort. Both were doing wrong; both (if Miss Bankes knew of Smethurst's first marriage) had committed a legal as well as a moral offence; and at the very period when the illness of the deceased commenced she had become pregnant.

To a man in Smethurst's position, that circumstance (if he were aware of it) would in itself furnish some motive for the

¹ P. 547.

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crime with which he was charged, for the birth of a child could hardly have failed to increase the difficulties and embarrassments incidental to the position in which he had placed himself.

Some expressions occurred in a conversation between Miss Bankes and her sister, Miss Louisa Bankes, which have an important bearing on this part of the subject. Miss Louisa Bankes saw her sister for the first time after the ceremony of December 9th at Richmond, on the 19th April. Her evidence as to what passed was as follows: ¹“I was taken into the deceased's bedroom. She was rather agitated. She said, ‘if I would be quiet it would be all right. He said, ‘Yes, ‘it would be all right.’” These expressions suggest a doubt whether Miss Bankes was fully aware of the true nature of her connection with Dr. Smethurst, and whether she may not have supposed that she was his lawful wife, though there was another person passing by the same name.

²If Smethurst had deceived her on this point, and if he was aware of her pregnancy, his position would be most distressing, and would explain a wish on his part to be freed from it at all hazards.

In opposition to this it must be observed that the will was executed in her maiden name, which implies a knowledge on her part that she was not married, though, as there is nothing to show that she had any particular acquaintance with business, and as the will was executed only forty-eight hours before she died of exhaustion, too much weight must not be attached to this. The letter found in Smethurst's pocket on his second arrest, and addressed to his wife, is deserving of attention in reference to this part of the subject. It was as follows:—

¹ P. 513.

² This suggestion was negatived by subsequent proceedings (see note, *post*).

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“K. W. C.
“Monday, May 2, 1859.

“MY DEAREST MARY,—I have not been able to leave for town as I expected, in consequence of my medical aid being required in a case of illness. I shall, however, see you as soon as possible; and should any unforeseen event prevent my leaving for town before the 11th, I will send you a cheque for Smith's money and extras. I will send £5. I am quite well, and sincerely hope you are the same, and that I shall find you so when I see you, which I trust will not be long first. Present my kind regards to the Smiths and all old friends in the house. I heard from James the other day; he said he had called on you, but that you had gone out for a walk. With love,

“Believe me,

“Yours most affectionately,

“T. SMETHURST.”

This letter contains several expressions which raise a doubt whether Mrs. Smethurst was aware of her husband's relations with Miss Bankes. Though the writer was staying at Richmond, the letter is dated, “K. W. C.,” as if it had been written at some place, the name of which began with a K., in the West Central district. It also appears as if Smethurst had arranged with his wife to “leave for town” before the 11th, and was intending to return to her; and there is an indistinctness and an incompleteness about the letter which looks as if it were one of a series, and as if Mrs. Smethurst had had reason to believe that her husband was absent from her only for a time, and was shortly intending to return. If she had known of his connection with Miss Bankes, it is hardly conceivable that some explicit mention of her state should not have been made in the letter, as she died on the following day, and Smethurst had procured her will to be made on the Sunday (the day before), lest Monday should be too late. If

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Mrs. Smethurst was in correspondence with her husband, but did not know of his position, and had reason to expect his return, his relations with Miss Bankes would be most painful. This, however, is little more than conjecture.

The result of the inquiry into the question of motive would thus seem to be that Smethurst had a money interest in Miss Bankes's death, but that he was not proved to be in any particular want of money; that their relation was one which may probably have caused enmity in various ways. There is no proof, but there are not unreasonable grounds for conjecturing, that it did so in point of fact.

Two points were urged against Smethurst at his trial arising out of his conduct. They were, that he had allowed no one to see Miss Bankes during her illness except himself and the medical men, and in particular that he prevented her sister from seeing her; and that he acted in a suspicious manner in relation to the preparation of her will. The evidence upon these points was as follows:—¹At the first set of lodgings, Miss Bankes was waited on by the landlady and her daughter; Smethurst went repeatedly to town, and Dr. Julius saw Miss Bankes in his absence; but this was not so at the second set of lodgings, where the deceased passed the last three weeks of her life. ² During this period Smethurst waited on Miss Bankes himself, declining to employ a sick-nurse on the ground that he could not afford it, though he had in his hands about £70, the amount of the dividend handed over to him by her. This in itself is remarkable, for the offices which it was necessary that he should render to her were not such as a man ought to discharge for a woman, if it is possible that they should be discharged by one of her own sex. His conduct towards Miss Louisa Bankes, it was argued, was of the same character. ³ He invited her to see her sister twice, but on neither occasion did he voluntarily leave

¹ Pp. 506-507.² P. 509.³ P. 513.

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them alone together, and he wrote four letters in the interval, in two of which he dissuaded her from repeating her visit on the ground that the doctors had prohibited it on account of the excitement produced by the first visit. ¹ Dr. Julius said, "I never gave directions she should not see her sister. I never heard the subject alluded to." ² Dr. Bird said, "To the best of my belief the prisoner mentioned the visit of Miss Louisa Bankes on the 19th. He told me the patient had been excited by the visit of her sister, and it had done her a great deal of harm. On which I said, 'Perhaps she had better not come again.'"

The circumstances which attended the execution of the will were detailed by Mr. Senior, an attorney at Richmond. ³ His evidence was that Smethurst, who was a complete stranger, came to him on the Saturday and asked whether he would make a will for Miss Bankes on the Sunday, which Mr. Senior with some reluctance agreed to do. Smethurst said, "This is what the will would be," and produced a draft will in his own favour, saying that the draft had been prepared by a barrister in London, a statement which, if true, might easily have been proved, but which was not proved. He also gratuitously informed Mr. Senior of the state of his relations with the deceased, and endeavoured to persuade him to allow a witness to attest the execution of the document under a false impression as to its nature. It is true that the will was as much the act of the deceased as his own; but it is also true that its execution was, according to Mr. Senior's evidence, attended with falsehood on his part, and with a want of decency which showed a temper very greedy after the property to be disposed of.

These are the suspicious parts of the prisoner's conduct towards the deceased. ⁴ His having written for Miss Louisa Bankes to come down on the Sunday, and his suggestion that

¹ P. 525.² P. 532.³ P. 529.⁴ P. 516.

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¹ Bird, p. 532.² P. 516.³ P. 516.⁴ P. 517.⁵ P. 512.⁶ P. 532.

TRIALS. would probably have had no other effect than that of inducing him to obtain what he required by other means. Indeed, Dr. Bird, ¹ with an artifice which under the circumstances was natural and probably justifiable, gave a false account of the purpose for which he wanted it. This point, therefore, may be left out of the case.

No poison was traced to the prisoner's possession, and this is usually one of the facts relied on in trials for poisoning. It must, however, be remembered that, as a medical man, Smethurst could have no difficulty in getting poison; and he would appear to have been left at liberty in his lodgings for some time after his arrest. It does not, however, clearly appear from the Lord Chief Baron's notes of the evidence what opportunities he had during this interval of making away with poison unobserved. Dr. Bird said, "He was taken into custody about 5 P.M., and admitted to bail on his own recognizance. I returned to his house with McIntyre" (the superintendent of police) "and prisoner, all three together. McIntyre took possession of all" [² the bottles and vessels about the deceased's room]. "They were handed out to McIntyre, who stood at the door." McIntyre says, "He" (Smethurst) "was allowed to go at large on his own recognizances. I returned with him and Bird to Alma Villas. They handed out bottles and vials; I handed them to Dr. Taylor. ³ I saw the secretary." (This was a secretary belonging to the landlord of the house, which stood outside Miss Bankes's room, and of which Smethurst had been allowed to make use and to keep the keys.) "The whole of the evening he was at liberty, and till eleven o'clock" (11 A.M., May 3rd), "when, hearing of Miss Bankes's death, I took him into custody." If the meaning of this is that Smethurst was alone in the house all night, and at liberty,

¹ P. 533.² These words are omitted in the Judge's note.³ "Examined the secretary." *See* *Pep.* 546.

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the non-discovery of poison proves nothing. If he was watched by McIntyre, and if McIntyre's evidence means that he not only saw the secretary, but saw what was in it, the fact that no poison was found would be in his favour.¹

The fair conclusions upon the whole of this part of the evidence would seem to be that Smethurst would gain in respect of money, and might in other respects derive advantage from the death of Miss Bankes, and that his conduct towards her was suspicious in several material particulars, and that he was the only person who had the opportunity of poisoning her, if she was poisoned at all.

The next division of the evidence was the medical testimony, and this again divided itself into two parts—the evidence of the medical men who actually attended the deceased, and the opinions pronounced by others as to the cause to which the symptoms reported by them were to be referred. ²In considering this part of the case, it must be remembered that Smethurst himself acted as a medical man throughout Miss Bankes's illness. He constantly administered food and medicine to her, and repeatedly discussed with the other physicians about the course to be taken, and they appear to have relied principally on his reports as to the symptoms of the disease.

The course of the symptoms and treatment was as follows:—

³ Dr. Julius was called in on the 3rd of April, and was told by Smethurst that Miss Bankes was suffering from diarrhœa and vomiting; on the 5th he said she was bilious, and that there was much bile to come away. The vomiting and purging continued, the colour of the vomit being grass-green. She began to pass blood on the 8th, and the symptoms con-

¹ The Report in the *Sessions Papers* seems to show that the secretary was examined, but does not show whether the prisoner had the control of the lodgings at night. McIntyre found bottles on a second search which he had not seen the first time.

² P. 531.

³ Pp. 522-523.

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tinued to increase. She complained of heat and burning in the throat and through the bowels. ¹When Dr. Todd examined her he observed "a remarkable hardness and rigidity of the abdomen, suggesting great irritation, and a very "peculiar expression of countenance, as if she was under "some influence or terror which did not result from any "disease." He prescribed opium and sulphate of copper. ²Smethurst afterwards, according to Dr. Bird and Dr. Julius, stated to them that these pills produced "violent palpitations, "as if her heart were jumping out of her body, and intense "burning in the throat, constant vomiting, and fifteen bloody "motions." He said (³said Dr. Julius), "the burning was "throughout the whole canal. His expression was "from the "mouth to the anus," an effect which, ⁴according to Dr. Julius, Dr. Bird, and Dr. Todd, could not have been so produced. ⁵During the last day and a half of life she twice vomited medicine, and was purged three times before twelve on the Monday night; after that she retained both food and medicine, and died of exhaustion on the Tuesday, at 10.55 A.M.

Such was the course of the symptoms. The opinions formed on them by the medical men were as follows:—

Dr. Julius first, and Dr. Bird afterwards, came independently to the conclusion that, whatever was the complaint of Miss Bankes, the natural effect of the medicines which they administered was perverted by the administration of some irritant poison. Dr. Julius's words are, ⁶"I tried a variety "of remedies; whatever was given, the result was the same. "No medicine produced any of the effects I expected in "arresting the disease. The symptoms continued the same "after every medicine. On the 18th" (of April), "I had "formed an opinion as to the reason of the sufferings. I

¹ P. 543.

² P. 532.

³ P. 521.

⁴ Pp. 524, 532, 543.

⁵ Pp. 533, 519.

⁶ P. 523.

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“ thought there was something being administered which had
 “ a tendency to keep up the irritation in the stomach and
 “ bowels, and now I am unable to account in any other way
 “ for the continued irritation. In consequence of this opinion,
 “ I requested my partner, Mr. Bird, to see her, and I left him
 “ to form an unbiased opinion.” Mr. Bird said, ¹ “ I formed an
 “ opinion that some irritant was being administered that coun-
 “ teracted the effect of the medicines we were giving. I had
 “ a conversation with Dr. Julius about it three days after I
 “ began to attend, about the 21st of April. He asked me my
 “ opinion of the case before he told me his own.” Dr. Todd
 said, ² “ I inquired of Dr. Julius the symptoms of the treat-
 “ ment,” and after describing the peculiar expression of
 countenance already referred to, he added, “ I was very
 “ strongly impressed with the opinion that she was suffering
 “ from some irritant poison. It was by my desire that part
 “ of a motion ” (which was afterwards analyzed by Dr. Taylor)
 “ was obtained. I suggested sulphate of copper and opium.”
 Thus, the medical evidence begins with this fact, that three
 medical men who saw the deceased whilst living came inde-
 pendently to the conclusion that she was then being
 poisoned. ³ So strongly were the two Richmond doctors
 impressed with this, that they thought it their duty to go
 before a magistrate, whilst Dr. Todd suggested the chemical
 examination of the evacuation.

After the death of Miss Bankes, her body was examined by
 Mr. Barwell, who found a large black patch of blood near the
 cardiac, or upper end of the stomach, redness in the small
 intestines in several places; and in the cæcum, or first division
 of the large intestine, appearances indicating serious disease
 —namely, inflammation, sloughing, ulceration, suppuration.
 In the rectum there were three ulcerations. Of these, and
 some other *post-mortem* appearances, and of the symptoms

¹ P. 532.² P. 543.³ P. 525.

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presented during life, ¹ Mr. Barwell said, “ They are not
 “ reconcilable with any natural disease with which I am
 “ acquainted; ” and he added, “ The conclusion that I drew
 “ is that the symptoms have resulted from the administration
 “ of some irritant poison frequently during life.” ² Dr. Wilkes
 said, “ I should ascribe her death to an irritant. I am not
 “ familiar with any form of disease which would account for
 “ the symptoms and appearances.” ³ Dr. Babington, ⁴ Dr.
 Bowerbank, ⁵ Dr. Taylor, and ⁶ Dr. Copland, all expressed the
 same opinion.

In opposition to this evidence, it was contended on the part
 of the prisoner that the symptoms were not those of slow
 poisoning; and the evidence in support of this opinion con-
 sisted, first, of proof of inconsistencies between the symptoms
 observed and those of slow poisoning by arsenic or antimony;
 and, secondly, of explanations of the symptoms on the theory
 that they were due to some other disease. The evidence to
 show that the symptoms were inconsistent with arsenical
 poisoning was that several symptoms were absent which
 might have been expected on that hypothesis.

The most important of these, according to Dr. Richardson,
 were nervous symptoms, especially convulsions and tremor of
 the whole of the limbs; also inflammation of the membrane
 of the eye, soreness of the nostrils and other mucous orifices,
 and an eruption on the skin peculiar to arsenical poisoning.
 It appeared, however, that none of the witnesses, either for
 the Crown or for the prisoner, had ever seen a case of slow
 poisoning by arsenic. ⁷ Their opinions were formed partly
 from experiments on animals, and it also seemed clear that
 the symptoms of arsenical poisoning varied considerably in
 different cases. ⁸ Dr. Taylor said, “ We never find two cases
 “ alike in all particulars; ” and ⁹ Dr. Richardson said that

¹ Pp. 539-540.² P. 542.³ P. 540.⁴ P. 550.⁵ P. 558.⁶ P. 551.⁷ P. 563.⁸ P. 560.⁹ P. 563.

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he should not expect to find all the symptoms to which he referred in any one case, though he did not think it possible they should all be absent.

The evidence that antimonial poisoning was not the cause of death was fainter than the evidence against arsenical poisoning. ¹ Dr. Richardson, one of the prisoner's witnesses, said that he should have expected to find congestion of the lungs and a cold sweat, if death had been caused by antimonial poisoning. Mr. Rogers (who, however, said that he knew little of pathology, having attended principally to chemistry) added, he should have expected in addition softening of the liver, and Dr. Thudichum agreed with them. Dr. Richardson, however, admitted that he knew very little about antimonial poisoning, and his evidence upon the subject was cautious and qualified. ² He said, "The symptoms in Miss Bankes's case are not altogether reconcilable with slow poisoning by antimony. With respect to the effect of antimony on the human liver, there are no data. The evidence is very scanty."

This is the principal part of the evidence as to whether or no the symptoms were those of slow poisoning. It is obvious that the evidence for the prisoner did not exactly meet the evidence for the Crown. The witnesses for the Crown all spoke indefinitely of "some irritant." The medical witnesses for the prisoner did not negative the general resemblance between the symptoms and those of poisoning by an irritant poison, but testified to the absence of some of the symptoms which might be expected to arise from two specific poisons—namely, arsenic and antimony. That there was a general resemblance between the symptoms and those of some irritant seems to have been proved beyond all reasonable doubt, not only by the fact that the three doctors who saw the deceased during her life formed that opinion independently

¹ P. 566.² P. 566.

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of each other, but by the evidence of the seven other medical witnesses for the prosecution, and by a statement made by Dr. Tyler Smith, who was called for the prisoner. ³ He said that if a pregnant woman were affected with diarrhoea it might degenerate into dysentery, and that he had known a case of the kind which was supposed to be a case of poisoning. The medical witnesses for the prisoner attributed Miss Bankes's death to dysentery, aggravated by pregnancy; and it thus appears, from Dr. Tyler Smith's evidence, that they attributed it to a disease which may closely resemble the symptoms produced by the administration of irritant poisons.

The prisoner opposed the theory of the prosecution, not only by denying that the symptoms were those of slow poisoning, but by asserting that they were those of dysentery. ⁴ All the medical witnesses whom he called swore to their belief that all the symptoms were consistent with this theory. On the other hand (⁵ with one exception), they all agreed with the witnesses for the prosecution that dysentery was a very rare disease in this country, and their experience of it was in no case great. Dr. Richardson said, ⁶ "The word is used very loosely;" and he added, "I have seen a few cases of dysentery—two or three in this country; I have suffered from it myself." ⁷ Dr. Thudichum had seen two cases in London of what he called diphtheritic dysentery, to which he attributed the death of the deceased. ⁸ Dr. Girdwood said, "Dysentery is not very common;" and he added, "The dysentery I allude to is one which I know to exist in this country." ⁹ Dr. Webbe, on the contrary, said, "Dysentery is a very common disease in this country." Both he and Dr. Girdwood appear, however,

³ P. 586.⁴ Richardson, 565-571. Thudichum, 574. Webbe, 578. Girdwood, 582. Edmunds, 583. Tyler Smith, 585-586. Mr. Rogers was a chemist and not a practising physician.⁵ Richardson, 567.⁶ P. 567.⁷ P. 575.⁸ P. 583.⁹ P. 578.

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to have been speaking of a form of the disease differing in various particulars from that which in hot countries is described as dysentery.

The experience of some of the witnesses for the prosecution as to dysentery proper was much more extensive. ¹ Dr. Bird had seen many cases of it in the Crimea. ² Dr. Bowerbank was twenty-three years in practice in Jamaica, where acute dysentery is a common disease. He said, "The symptoms, mode of treatment, and appearances *post-mortem*, are not reconcilable with any form of dysentery." ³ Dr. Copland saw many cases in 1815 and 1816, and in Africa in 1817. He said, "Her death is not referable to acute dysentery." ⁴ Dr. Babington saw six or eight epidemic cases in Chelsea, and two more in Hammersmith. He said, "I have heard the symptoms and remedies, and also the *post-mortem* examination; taking all those circumstances, I do not think she died of acute dysentery."

⁵ On the other hand, Dr. Todd, after giving his opinion that slow poisoning was the cause of death, said, "Acute dysentery alone would account for the worst symptoms." It appeared, however, that he had never seen a case of that disease. Two of the prisoner's witnesses, whose evidence in the event was very important, described cases similar in many particulars to Miss Bankes's, in which women had died of dysentery combined with pregnancy. ⁶ Mr. Edmunds had a patient who miscarried at the seventh month of her pregnancy, and ultimately died of dysentery; and ⁷ Dr. Tyler Smith said he had known cases in which the sickness often incidental to preg-

¹ P. 534.² P. 550.³ P. 551.⁴ P. 549.

⁵ The emphasis lies on *acute* and *alone*. In the *Sessions Papers* the answer is, "The only form of dysentery that would account for any portion of these grave symptoms would be what is called acute dysentery."—P. 545.

⁶ P. 534.

⁷ P. 586. He referred in particular to the case of Mrs. Nicholls, the authoress of *Jane Eyre*, &c.

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nancy, especially during its early stages, had caused death; and he added that this sickness "might be accompanied by diarrhoea, and that might degenerate into dysentery." ¹ It appeared that two years before Miss Bankes had had a complaint of the womb, which, in Dr. Tyler Smith's opinion, would aggravate the sickness consequent on pregnancy. There was also some evidence that she was bilious, which would have a similar effect.

Dr. Tyler Smith and Mr. Edmunds were called after the rest of the prisoner's witnesses, and till they were called the question as to the effect of pregnancy was passed over somewhat lightly on both sides. Most of the witnesses deposed to the well-known fact that sickness is very common in the early stages of pregnancy, and some of them added that they had known the sickness to be attended with diarrhoea, though they all spoke of that as an uncommon circumstance. Of the witnesses for the prosecution, ² Dr. Julius and ³ Dr. Bird said that the opinion which they had formed of the case was not altered by the fact of pregnancy. ⁴ Dr. Todd thought that pregnancy would not account for the extensive ulceration of the bowels; and ⁵ Dr. Babington, whose experience in midwifery was large, said, "I do not consider her death in any way to have been occasioned by incipient pregnancy. I do not remember any case in the early stage (of pregnancy) where the life of the mother has been saved by abortion." The case of abortion referred to by Mr. Edmunds was in the seventh month.

The general result of the medical evidence appears to be—

First.—As to the connection of the symptoms of Miss Bankes's illness with poisoning—

That the symptoms which preceded Miss Bankes's death so much resembled those of slow poisoning by some irritant,

¹ Pp. 517-518.² P. 528.³ P. 534.⁴ P. 543.⁵ P. 549.

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that the three doctors who saw her during her life independently arrived at the conclusion that they must be attributed to that cause; that two of them acted upon this impression by going before a magistrate; and that eight other doctors, who judged from the accounts which they heard of the symptoms, treatment, and *post-mortem* appearances, came to the same conclusion. On the other hand, some of the symptoms which might have been expected in slow poisoning by arsenic or antimony were wanting, but there was evidence that these symptoms are not invariable.

Secondly.—As to the connection of the symptoms with dysentery—

That there is much general resemblance between the symptoms of dysentery and those of poisoning; that dysentery proper is an extremely rare disease in this country; that there was a difference of opinion between the witnesses for the Crown and those for the prisoner on the question whether dysentery alone would produce the symptoms observed, but that the witnesses for the Crown had had much greater experience of the disease.

Thirdly.—As to the pregnancy of the deceased—

That there was some evidence that it was possible that the symptoms which occurred in Miss Bankes's case might be produced by a complication of pregnancy and dysentery.

Taking all these three conclusions together, the medical evidence seems to establish that Miss Bankes's symptoms were not only consistent with slow poisoning by some irritant, but that they actually convinced the doctors who attended her that they were caused by that means.

This is the proper place to notice a circumstance respecting the pregnancy of Miss Bankes which assumed more importance after the prisoner's conviction than it had at the trial, though it was even then important. ¹ Dr. Julius said, "Early

¹ P. 529.

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"in the visits I inquired about her being in the family way. " Dr. Smethurst said she was unwell ("usual period on her). "It was within five or six days of my first attendance"—*i.e.* about the 10th of April. As she was in the fifth or seventh week of her pregnancy at the time of her death (May 3rd), it was highly improbable that this should have been the case. ² Dr. Tyler Smith said, "In some cases, the periods occur after pregnancy, once in a hundred times—certainly as often as "that." A medical man would hardly have made the assertion which Dr. Julius swore that Smethurst made without knowledge as to its truth; and Dr. Tyler Smith's evidence shows that, apart from the value of his assertion, there was (at the time of the trial) a chance—perhaps not less than a hundred to one—that it was untrue. Therefore (at the trial) the evidence, if believed, showed that Smethurst had made a statement which, if false, was probably false to his knowledge, and the chance of the falsehood of which (apart from the value of his assertion) was as a hundred to one.

The third and last division of the evidence is the chemical evidence. ³ Dr. Taylor deposed that he had discovered arsenic in an evacuation procured for the purpose by Dr. Bird on the 1st of May, three days before the death of Miss Bankes; and antimony in two places in the small intestine, in the cæcum or upper division of the large intestine, in one of the kidneys, in the blood from the heart, and in the liquor which had drained from part of the viscera into the jar which contained them. He calculated that four ounces of the evacuation contained less than one-fourth of a grain of arsenic. As to the antimony, Dr. Taylor was corroborated by ⁴ Dr. Odling, who assisted in the examination of those parts of the body in which it was alleged to be found.

This evidence was opposed, first, by an attack on Dr. Taylor's credit. The first objection made to his evidence related to the

¹ *Sic* in judge's notes.

² P. 585.

³ Pp. 553-554.

⁴ P. 561.

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arsenic. ¹ It appeared that amongst other things he examined for arsenic a bottle containing chlorate of potass, a mixture which the prisoner had been recommended by Mr. Pedley, a dentist, to use for foulness of breath. In testing it, Dr. Taylor used copper gauze, which was dissolved by the chlorate of potass, and on the dissolution of which a certain quantity of arsenic which it contained was set free. After exhausting the chlorate of potass by dissolving the copper gauze, he introduced other copper, and upon this crystals of arsenic were deposited. He thus extracted from the liquid arsenic which he had himself introduced into it. The inference drawn from this was that Dr. Taylor's evidence generally, and especially as to the arsenic in the evacuation, could not be relied on.

As to its bearing on the general value of his evidence, Mr. Brande, a very eminent chemist, said that he should have fallen into the same error: ² "The fact," he said, "is new to the chemical world." As to the bearing of the mistake upon the discovery of arsenic specially, two observations occur. In the examination both of the draught and of the evacuation, Reinsch's test was employed, and it was also employed in more than seventy other experiments, and is a well-known and established process for separating arsenic and some other minerals from matter in which they are contained. Copper gauze is introduced into the liquid to be tested, and by chemical means the metal is deposited on it in a crystalline form. In the case of the draught, the arsenic deposited on the gauze may, no doubt, have been that which was contained in the other gauze which had been previously dissolved. ³ Altogether there were seventy-seven experiments conducted by the same process. In

¹ P. 587.

² Somewhat less strongly in the *Sessions Paper*: "The matter that has appeared since is to a certain extent new to the chemical world."—P. 562.

³ P. 557. It is not quite clear whether there were seventy-seven or seventy-eight, nor is it material.

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one, copper was dissolved, and arsenic found. In seventy-four, no copper was dissolved, and no arsenic was found; in two, (on the evacuation), no copper was dissolved, and arsenic was found. The first experiment confirms the general doctrine that the test will detect arsenic, as it extracted arsenic from a liquid into which arsenic had been introduced. The seventy-four cases in which arsenic was not found showed that the process was not so conducted as of itself to produce arsenic; and both the first experiment and the other seventy-four taken together confirm the impression that the two remaining experiments proved both that there was arsenic in the evacuation and that it was not put there by Dr. Taylor.

The second argument against Dr. Taylor's evidence as to arsenic was brought forward by the three chemical witnesses for the prisoner—Dr. Richardson, Mr. Rogers, and Dr. Thudichum. Dr. Richardson said, "It is quite impossible that a person should die of arsenical poisoning without some being found in the tissues. It makes no difference in ¹ what-ever way or under whatever combination the arsenic was introduced." He also referred to the case of three dogs which he had poisoned by repeated small doses of arsenic and antimony. To one of them he administered eighteen grains in sixteen days, and killed him twelve hours after the last meal. He found some arsenic in his liver, lungs, and heart, and a trace in the spleen and kidneys,—the greater part by far in the liver. He said, "I cannot now say how much arsenic I found altogether. I will not venture to say I found half a grain or a grain. ² I think," he afterwards added, "I could venture to say I found a quarter of a grain."

This evidence was hardly opposed to the theory of the

¹ *I.e.* by the mouth or by injection.—P. 564.

² P. 565. A word or two have dropped out of the judge's note in the answer quoted.

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prosecution. The account of the matter appears to be this. Arsenic on administration passes into the stomach; it is there taken up into the circulation; thence it passes with the blood through the organs which separate the various fluids secreted from the blood—in the same manner it passes into the flesh—and it finally leaves the body by the skin, or by the ordinary channels. When the patient dies, all vital functions being arrested, the poison will be found at that point of the process which it happened to have reached at the moment of death. The poison, however, is continually passing through the body, and this goes on to such an extent that Dr. Richardson could not venture to say he found more than a quarter of a grain of arsenic in the dog to which he had administered eighteen grains; but as, in order to try the effects of chlorate of potass in eliminating the arsenic, a large quantity of that substance was administered, this was a peculiar case. If the dog had been left to die from the effects of the poison, it is not improbable that a smaller quantity, or even none at all, might have been discovered. The evidence of Dr. Richardson seems to prove that, upon the supposition of poisoning by arsenic, arsenic must have been present in various parts of Miss Bankes's body at the time when the arsenic discovered by Dr. Taylor passed from her, rather than that it must have been present after her death. It might have passed away in the interval; and thus the absence of arsenic in the tissues after death would go to prove, not that no arsenic had been administered during life, but that none had been administered during the last two or three days of life.

Indeed, Dr. Richardson's experiments do not support the strong opinion he gave as to the impossibility of death by arsenic without arsenic being found in the tissues, unless it be restricted to the direct as distinguished from the secondary effects of arsenic. It was agreed on all hands

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that the proximate cause of Miss Bankes's death was exhaustion.

With regard to the antimony, the only evidence offered in opposition to Dr. Taylor was that of Dr. Richardson and Mr. Rogers. ¹ Dr. Richardson said he should have expected to find antimony in the liver, but he spoke with hesitation upon the subject. Mr. Rogers's evidence was to the same effect, but he said, ² "My speciality is chemistry and not pathology." Upon this evidence, it must be observed that there is the direct assertion of a fact on the one side, against an expression of opinion on the other. Dr. Taylor said, "I found antimony in the intestines." Dr. Richardson and Mr. Rogers replied, "It should have been in the liver." Dr. Taylor was not cross-examined, nor was any substantive evidence offered to show that there was any fallacy in the tests by which he alleged that he had discovered antimony in Miss Bankes's intestines.

With respect to the antimony, it should be mentioned that, after Smethurst had been committed, it appears from the evidence that he wrote three letters to Dr. Julius, asking him for copies of the prescriptions dispensed by him for Miss Bankes. The first letter, dated May 5th, was as follows: "Dr. Smethurst will feel much obliged by forwarding as above, by return of post, prescriptions of the following medicines, prescribed and dispensed by the firm of Dr. Julius and Mr. Bird, required for defence—the sulphate of copper and opium pills (Dr. Todd); 2nd, the nitrate of silver pills; 3rd, the bismuth mixture." On the 6th he wrote to the same effect, stating the medicine as follows: "Acetate of lead and opium, the nitrate of silver pills, the bismuth mixture, the pills with sulphate of copper." On the 9th he wrote a third time, heading his letter "Second application," in these words, ³ "Sir, I made application for the acetate of lead pre-

¹ Pp. 525-526.² P. 554.³ P. 506.

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"scription, prescribed by you or Mr. Bird, with date; also the "dates of prescriptions sent, which were wanting—*namely*, 1st, "*antimony*; 2nd, sulphate of copper; 3rd, nitrate of silver." Antimony was never prescribed nor mentioned till this third letter.¹ It does not appear, from Dr. Taylor's evidence, that at that time he had found any antimony.

An attempt was made to account for the presence of the antimony and arsenic alleged to be discovered by Dr. Taylor by the suggestion that it might have been contained in the medicines administered to Miss Bankes during her life. Arsenic is generally found in bismuth, and ² for three or four days doses of bismuth, containing five or six grains, were administered to Miss Bankes. ³ Dr. Richardson put the proportion of arsenic in bismuth at half a grain in an ounce, and, as an ounce contains 480 grains, each dose would have contained about $\frac{1}{144}$ of a grain of arsenic. If, therefore, Miss Banks took twelve doses of bismuth, she would have taken between one-eleventh and one-twelfth of a grain of arsenic in four days. This seems (for it is not perfectly clear), from Dr. Bird's evidence, to have been more than a week before the day on which he obtained the evacuation analyzed by Dr. Taylor, and in four ounces of which he said he found nearly one-fourth of a grain.

⁴ Upon the question of the credit due to the chemical witnesses for the defence, it was brought out on cross-examination that all of them, as well as Dr. Webbe, were connected with the Grosvenor School of Medicine; and that two, Dr. Richardson and Mr. Rogers, had given evidence for the prisoner in Palmer's trial,—the object of Dr. Richardson's evidence being to show that Cook's symptoms were those of

¹ P. 572.² P. 535.³ P. 567. "The quantity varies very materially. The largest quantity "that I am acquainted with is very nearly half a grain in one ounce."⁴ Dr. Richardson, 563; Mr. Rogers, 574. His connection with the school had ceased at the time of the trial. Dr. Thudichum, 575.

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angina pectoris, and the object of Mr. Rogers's being to show that, if he died of strychnine, it ought to have been found in his body.

The result of the chemical evidence seems to be that there was evidence to go to the jury, both that arsenic passed from Miss Bankes, and that antimony was found in her body after death; the evidence as to the antimony being the stronger of the two. There was also evidence for their consideration affecting the credit of Dr. Taylor as an analyst, and suggesting the presence of a professional *esprit de corps* amongst the witnesses for the prisoner, which, if it existed, might affect their impartiality.

Combining the inferences deducible from each separate division of the evidence, which, of course, strengthen each other, there can be little doubt that, if the jury believed that poison was found in Miss Bankes's body, they were bound to convict the prisoner. Even if the whole of the chemical evidence on both sides were struck out, there was evidence on which, if it satisfied them of his guilt, they might have convicted him, though such a conviction would have proceeded on weaker grounds than juries of the present day usually require in cases which attract great public attention and involve capital punishment. As it was they convicted him, and he received sentence of death.

The trial at any time would have excited great public attention; and as it took place in the latter part of August, after Parliament had risen, it excited a degree of attention almost unexampled. The newspapers were filled with letters upon the subject, and one or two papers constituted themselves amateur champions of the convict, claiming openly the right of what they called popular instinct to overrule the verdict of the jury. Petitions were presented on the subject, and communications of all kinds relating to it were addressed to Sir George Lewis, Secretary of State for the Home Depart-

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ment. All these were forwarded to the Lord Chief Baron for his opinion, and were considered by him in an elaborate report to the Home Secretary. Some of the letters were of great importance; but the majority were nothing more than clamorous expressions of opinion, founded upon no real study of the case; for which, indeed, those who took their notions of it exclusively from newspaper reports had not sufficient materials. A considerable number of the communications were simply imbecile. One man, for example, wrote in pencil, from the Post Office, Putney, in favour of the execution of the sentence; another, "a lover of justice," thought that, if the voice of the nation was not attended to, by respiting the convict, we had better be under the sway of a despot. Many other letters, equally childish and absurd, were received, and all appear to have been considered. I refer to them merely as illustrations of the ignorance, folly, and presumption, with which people often interfere with the administration of public affairs. The same sort of thing happened in August 1889, on the conviction for murder of a woman named Maybrick before me at Liverpool.

Upon a full examination of the various points submitted to him, including in particular a notice of an important, though somewhat hastily prepared, communication from Dr. Baly and Dr. Jenner, and after commenting on the medical evidence given at the trial, the Lord Chief Baron said:—

"The medical communications which have since reached you put the matter in a very different light, and tend very strongly to show that the medical part of the inquiry did not go to the jury in so favourable a way as it might, and indeed ought to have done, and in two respects—

"1. That more weight was due to the pregnant condition of Miss Bankes (a fact admitting, after the *post-mortem*, of no doubt) than was ascribed to it by the medical witnesses for the prosecution.

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"2. That, in the opinion of a considerable number of medical men of eminence and experience, the symptoms of the *post-mortem* appearances were ambiguous, and might be referred either to natural causes or to poison. Many also have gone so far as to say that the symptoms and appearances were inconsistent and incompatible with poison."

On the other hand, the Lord Chief Baron referred to "disclosures made since the trial," which, in his opinion, "confirmed the prisoner's guilt." These were, first, a statement in a memorial from Smethurst to the Prince Consort, stating that "a lady friend of deceased was a witness" to her knowledge of the fact that he was married already, and that she (Miss Bankes) wished the ceremony to be gone through. This lady "was to have been called, but Mr. Parry deemed it unnecessary." Upon this the Chief Baron observes: "I do not believe Mr. Serjeant Parry gave any such advice; but, if it be true that any such evidence was ready, why is not the lady friend named, and why is not her statement or declaration now offered and laid before you? Such evidence would, in my opinion, much alter the complexion of the case."

¹ Secondly, the report refers to certain entries in a diary said to be the prisoner's, of which no notice was taken at the trial. These entries appeared to the Lord Chief Baron to show that one of Smethurst's statements as to Miss Bankes's symptoms was wilfully false. This would, of course, be a most import-

¹ After Dr. Smethurst's pardon, he was convicted for bigamy, and sentenced to a year's imprisonment. On the expiration of his imprisonment, he commenced proceedings in the Court of Probate to have the will executed by Miss Bankes established. It was contested by her family; and one of the points raised was, that it was obtained by fraud, as she was under a mistake as to her true position, and supposed herself to be Smethurst's true wife at the time of the execution of the will. The question whether this was so was specifically left to the jury, and found by them in Smethurst's favour. This would, of course, strengthen the conclusion that further inquiry was necessary, and weaken the case against Smethurst.

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ant fact; but the report does not show how Smethurst was connected with the diary, when it was discovered, or why it was not given in evidence at the trial.

The report concluded in the following words:—"I think " there is no communication before you in all or any of the " papers I have seen upon which you can rely and act. That " from Dr. Baly and Dr. Jenner seemed to me to be the most " trustworthy and respectable; but there is an unaccountable " but undoubted mistake in it which must be rectified before " it can be taken as the basis of any decision. If you have " been favourably impressed by any of the documents, so as " to entertain the proposition of granting a pardon, or of " commuting the sentence to a short period of penal servi- " tude, I think it ought to be founded upon the judgment " of medical and scientific persons selected by yourself for " the purpose of considering the effect of the symptoms and " appearances, and the result of the analysis, and I think, " for the prisoner's sake, you ought to have the points " arising out of Herapath's letter further inquired into and " considered. I forbear to speculate upon facts not ascer- " tained; but, if Dr. Taylor had been cross-examined to this, " and had given no satisfactory explanation, the result of the " trial might have been quite different."

The meaning of the allusion to a mistake in the communi- cation of Dr. Baly and Dr. Jenner is that their letter contained this passage: "We would further remark, with regard to the " symptoms present, that Dr. Julius appeared to have been " in attendance on Isabella Bankes five days before he heard " of vomiting as a symptom; this absence of vomiting at " the commencement is quite inconsistent with the belief " that an irritant poison was the original cause of the illness." This was completely opposed to Dr. Julius's evidence, who spoke of "*diarrhoea and vomiting*" as present from his very first visit throughout the whole course of the illness.

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The "points arising out of Herapath's letter" were these:— Mr. Herapath addressed a letter to the *Times*, in which he asserted that Dr. Taylor had extracted from the draught containing chlorate of potass a larger quantity of arsenic than could have been set free by the copper gauze which he dissolved in it. If this had been substantiated, it would have no doubt diminished the weight of Dr. Taylor's evidence; but, on the other hand, it would have led to the conclusion that the draught contained arsenic which Dr. Taylor had not put there—an inference which, if true, would have been fatal to the prisoner.

Upon receiving this report, Sir George Lewis took steps which he described in a letter to the Lord Chief Baron, a copy of which was communicated to the *Times*, and published on the 17th of November, 1859. After referring to the Lord Chief Baron's recommendation, Sir George Lewis says:—

"I have sent the evidence, your Lordship's report, and all " the papers bearing upon the medical points of the case, to Sir " Benjamin Brodie, from whom I have received a letter, of " which I inclose a copy, and who is of opinion that, although " the facts are full of suspicion against Smethurst, there is " not absolute and complete evidence of his guilt.

"After a very careful and anxious consideration of all the " facts of this very peculiar case, I have come to the con- " clusion that there is sufficient doubt of the prisoner's guilt " to render it my duty to advise the grant to him of a free " pardon. . . . The necessity which I have felt for advising " Her Majesty to grant a free pardon in this case has not, as " it appears to me, risen from any defect in the constitution or " proceedings of our criminal tribunals; it has risen from the " imperfection of medical science, and from fallibility of judg- " ment, in an obscure malady, even of skilful and experienced " practitioners."

Sir Benjamin Brodie's letter, founded on a consideration

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of the whole of the materials submitted to him, consists of six reasons for believing that Smethurst was guilty, and eight reasons for doubting his guilt; and it concludes in these words: "Taking into consideration all that I have now stated, I own that the impression on my mind is that there is not absolute and complete evidence of Smethurst's guilt." The reasons given are by no means confined to the medical points of the case, but range over every part of it, including inferences from the behaviour and moral character of the prisoner; and, indeed, of the six reasons against the prisoner, two only, and of the eight reasons in his favour, four only, proceed upon medical and chemical points. These opinions are expressed with a cautious moderation which, however creditable to the understanding and candour of the writer, excite regret at the absence of that opportunity which cross-examination would have afforded of testing his opinions fully, and of ascertaining the extent of his special acquaintance with the subjects on which his opinion was requested.

The great interest of this trial lies in its bearing on the question of new trials in criminal cases. The jury convicted Smethurst on the evidence as it stood, and if it had remained unaltered their verdict would undoubtedly have been justified. After the trial it appeared that, on the points mentioned by the Lord Chief Baron, further information appeared to be requisite. The Secretary of State thereupon asks a very eminent surgeon what he thinks of the whole case, and receives from him an opinion that, "although the facts are full of suspicion against Smethurst, there is not absolute and complete evidence of his guilt." Sharing this view, the Secretary of State advises the grant of a free pardon. It is difficult to imagine anything less satisfactory than this course of procedure. It put all the parties concerned—the Secretary of State, Sir Benjamin Brodie, and the Lord Chief Baron—in a false position. Virtually they had to re-try the man with-

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out the proper facilities for that purpose. The result was substantially that Smethurst, after being convicted of a most cruel and treacherous murder by the verdict of a jury after an elaborate trial, was pardoned, because Sir Benjamin Brodie had some doubts as to his guilt after reading the evidence and other papers, one of which was a report from the judge expressing his opinion that, owing to circumstances, the evidence had not been left to the jury as favourably for the prisoner as it ought to have been. The responsibility of the decision was thus shifted from those on whom it properly rested on to a man who, however skilful and learned as a surgeon, was neither a juryman nor a judge. It appears to me that, whatever would have been the proper course, nothing but specific medical questions should have been referred to Sir Benjamin Brodie. The final question ought to have been determined by Sir George Lewis himself. He might perfectly well have directed the execution of Smethurst or have advised his pardon, or might even have commuted his sentence if he thought it wrong to take his life on account of the doubts thrown on his guilt, thus reserving an opportunity for remitting his sentence if his innocence had been proved.

THE CASE OF THE MONK LÉOTADE.

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LOUIS BONAFOUS, known in his convent as Brother Léotade, was tried at Toulouse, in 1848, for rape and murder committed on the 15th April, 1847, on a girl of fourteen, named Cecile Combettes. The trial lasted from the 7th till the 26th February, 1848, when it was adjourned in consequence of the revolution. It was resumed on the 16th March, before a different jury, and ended on the 4th April. The case was as follows:—

Cecil Combettes, a girl in her fifteenth year, was apprenticed to a bookbinder named Conte, who was much employed by the monks known as the *Frères de la Doctrine Chrétienne*, at Toulouse. On the 15th April, at about nine, Conte set out to carry to the monastery some books which the monks wanted to have bound. He put them in two baskets, of which the apprentice carried the smaller, and he and a woman called Marion, the larger. When he was let into the convent he saw, as he declared, two monks in the passage. One, Jubrien, wore a hat, the other, Léotade, who faced him, wore a hood. Conte wished Jubrien good day, left his umbrella by the porter's lodge, laid down the baskets, and sent home the servant Marion with the sheepskins in which they had been covered. He went upstairs to take the books to the

¹ The authority referred to in this case is entitled, *Procès du Frère Léotade, accusé du double crime de viol et d'assassinat sur la personne de Cecile Combettes*. (Leipzig, 1851.) The report of the first trial is full, though not so full as English reports usually are. The report of the second trial is a mere outline, but the two appear to have been substantially the same. The same witnesses were called, and the same evidence given.

director, and the porter went with him. He left Cecile to take care of his umbrella and to help to bring back the baskets. He stayed for three-quarters of an hour with the director, and then returned. Cecile was gone, but the umbrella was standing against the wall. Conte asked the porter for Cecile. He said he did not know where she was; she might be gone, or might be at the *pensionnat*. The establishment consisted of two buildings, the *pensionnat* and the *noviciat*. They stood on different sides of a street, and communicated by a tunnel which passed under it. Behind the *noviciat* was a large garden.

Not finding Cecile, Conte went to see his uncle. ¹ He afterwards bargained for a pair of wheels, went to a place called Auch, where he slept, and returned next day to Toulouse. As Cecile was not heard of in the course of the day, various inquiries were made for her. ² Her aunt, Mme. Baylac, inquired for her at the convent, but in vain. Her parents applied to the police, and they searched for her unsuccessfully. She was never seen alive again.

Early on the following morning a grave-digger, named Raspaud, had occasion to go to a cemetery bounded on two sides by the wall of the garden of the monastery, and on a third (its figure was irregular) by a wall of its own, which divided it from a street called the Rue Riquet. The two walls met at right angles. On the ground in the corner formed by their meeting, Raspaud found the body of the girl. It was lying on the knees and the extremity of the feet. Its feet were directed towards the garden of the monks, its head in the opposite direction. ³ Over the place where the body lay and on the wall of the Rue Riquet, was a handkerchief suspended on a peg. When the commissary of police (M. Lamarle) arrived, several persons, attracted by curiosity, had come up and were standing round the body, and they

¹ Pp. 171-174.

² P. 183.

³ Pp. 105-106.

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were in the act of getting over the wall by a breach at the corner. They had made footmarks all about, so that it was impossible to say whether or not there were other footmarks before they came. The commissary sent for the soldiers and had the public turned out, after which he walked round the cemetery inside. ¹ There were no marks of scaling the walls or of footsteps. At eight the judge of instruction arrived. ² He was called as a witness at the trial, but on his appearance the president said, "It is well understood, sir, that you have obeyed the citation served on you only because you thought proper," and he replied, "To begin with, and as a general principle, I refer to my *procès-verbaux*, and to all that I have registered in the procedure."

³ The *procès-verbaux* are not printed in the trial, but the *acte d'accusation* professes to state their purport. According to this document, the judge of instruction found on the side of the monastery wall next to the cemetery a place from which a sort of damp mossy crust had lately been knocked off. This might, from its position, have been done by the rubbing of the branches of certain cypresses which overhung the wall of the Rue Riquet and touched the wall of the monastery garden. In the hair of the dead body were particles of earth of the same kind. On the top of the monastery wall were some plants of groundsel a little faded, also a wild geranium, one of the flowers of which had lost all its petals. In the hair of the dead body was one petal which the experts declared was a petal of the same kind. There was also a thread of tow which might have come from a cord, and there was a similar thread on the cypress branches. There were no marks on the wall of the Rue Riquet except that near the junction of the two walls, and about one foot eight inches (fifty centimetres) from the top, there was a tuft of groundsel which looked as if it had been pulled by a hand.

¹ P. 107.

P. 263.

³ P. 268.

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Near the junction of the two walls was a small plant nearly rooted up, and on the point of the junction at the top was a small branch of cypress lately broken off. The wall between the Rue Riquet itself and the monastery garden was undisturbed, though there were plants upon it, and especially a peg of fir loosely inserted which would probably have been disturbed if a body had been passed along it. The left cheek of the body and the left side of its dress were covered with dirt. As the head was away from the monastery wall, and the wall of the Rue Riquet was on the left hand of the body as it lay, the dirt would have been on the right if the body had fallen over the wall of the Rue Riquet.

From these circumstances, the *acte d'accusation* infers that the body could not have come into the cemetery over the wall of the Rue Riquet, and that it did come over the wall of the monastery garden. ¹ To clench this argument the *acte* adds: "Lastly the impossibilities which we have pointed out are increased" (the energy of this phrase as against the accused is highly characteristic) "by the existence of a lamp on the wall of the orangery of the monks which throws its light against the surface of the wall of the Rue Riquet, precisely at the place where the murderer would have had to place himself to throw the body of Cecile into the cemetery. Let us add, that at a short distance from this lamp are the Lignières barracks, and in front of them a sentinel." It adds that these circumstances made it very unlikely that the body should have been thrown over at this point. ² It does not add, though it appeared in the evidence of Lamarle, the commissary of police, that it was very rainy during the night before, and that the judge of instruction himself remarked, or at least that the remark was made in his presence (*il fut dit*, it does not appear by whom) that if the corpse had been thrown

¹ P. 30.² P. 108.

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over from the Rue Riquet the sentinel would have seen it, because he must have been in his box owing to the rain. The *acte* also contradicts the evidence in another particular to the disadvantage of the prisoner. ¹It says of the breach in the corner of the wall, "the breach, already" (*i.e.* when the judge of instruction arrived) "enlarged by the inquisitive " persons who got over, or leant on it, cannot favour the notion " that the body of Cecile may have traversed it to be transported to the place where it was found. The ground at the " foot of the wall, covered with damp herbs, is free from the " footmarks which must have been remarked if the murderer " had passed over and trodden on this part of the ground." ² M. Lamarle said that when he fetched the troops the crowd had got over the breach, come within two or three feet of the body, and made footmarks.

These inconsistencies give good grounds for suspicion that if the commissary and the judge of instruction had been properly cross-examined by the prisoner's counsel, the effect of much of this evidence might have been entirely removed. As it stands, it fails to supply conclusive proof that the body came over the monastery wall. The earth might have been knocked off by the scraping of the boughs against the wall as the wind shook them, or it might have fallen off of itself, as such a crust naturally would when it became damp beyond a certain degree. That a geranium should lose its petals in a rainy night is nothing extraordinary; and it is perfectly natural that one of them should fall on the hair of a dead body lying close under it. The other circumstances—the threads of tow, the broken twig, the faded groundsel—certainly tend to support the conclusion of the *acte* as far as they go, but they are very slight circumstances, and if a single man had really thrown the body of a girl of fourteen from the top of a wall covered with plants and carthy matter, it would

¹ P. 25.² P. 108.

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be natural to expect to find unequivocal marks of his having done so. It would indeed be a remarkable feat of strength.

These indications, slight as they were, naturally and properly led the authorities to make further investigations in the monastery itself. ¹Accordingly, Coumes, a brigadier of *gendarmérie*, went to examine the garden. Two monks went with him. He found footmarks leading before the orangery and near to the wall before which was the body. The marks were fresh. Some conversation took place between the monks and the brigadier on the subject, as to the nature of which there was a great conflict of evidence, to be noticed hereafter.

The *post-mortem* examination of the body showed that death had been caused by great violence to the head, which was bruised in various parts so seriously that the brain had received injuries which must have caused death almost immediately. ²This appears from the extracts given in the *acte d'accusation* from the report of the medical experts. ³The injuries to the head appear to have been inflicted by a broad blunt instrument, and might have been caused by knocking the head against the wall or against a pavement. There were marks on the person showing a violent attempt to ravish, which had not succeeded (the girl had not reached maturity). The underclothing was covered with fecal matter, and from the contents of the stomach it appeared that death must have taken place one or two hours after the last meal. The feces contained some grains of figs. On the folds of the underclothing was a stalk of fodder, a piece of barley-straw, other bits of straw, and a feather. The stalks of fodder appeared, on being examined, to be clover grass (*trèfle*).

These facts suggested the thought that the state of the linen of the monks might throw some light on the commission of the crime. There were about ⁴200 inmates altogether in the monastery, which was divided into two

¹ P. 120.² P. 40.³ P. 115.⁴ So stated, *Proc.-Gen.*, 327

TRIALS. parts, the *pensionnat* and the *noviciat*. The linen of each establishment was used in common by the members of that establishment. The shirts of the *noviciat* were numbered; the shirts of the *pensionnat* were marked F + P (*frères du pensionnat*). The division, however, was not kept up strictly, some of the shirts properly belonging to each division being occasionally used in the other. The shirts were changed every Saturday. On making a search a shirt was found numbered 562, and consequently belonging to the *noviciat*. It was very dirty, having many spots of faecal matter in different places, especially on the sleeves, on the outside of the back part and inside of the front. On the inside of the tail of the shirt were certain grains which the experts first took for the seed of clover-grass, but which, on more careful examination, they declared to be the grains of figs. A careful comparison was made between these grains and those which were found on the clothing of the dead body: the experts declared that they corresponded; and one of them, ¹M. Noulet (called for the first time at the second trial), declared the resemblance was so close between the two sets of fig-grains that, though he had made 200 different experiments on figs bought for the purpose, he had not found any such resemblance elsewhere. M. Fillol, a professor of chemistry, was less positive. Being asked whether he could say that the figs were of absolutely the same quality, he replied that to say so would be a mere conjecture. ²M. Fillol examined all the other dirty shirts in the monastery (about 200), and found no fig-grains on them.

³It is asserted in the *acte d'accusation*, though no other evidence of the assertion appears in the report of the trial, that the judge of instruction separately and individually examined all the persons present in the monastery at the time as to the state of their linen, and particularly as to the

¹ P. 299.² Pp. 117-119.³ Pp. 67-68.

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Whether or not the shirt had been worn by the murderer was an irrelevant question, unless it was shown to have been worn by Léotade. The proof of this consisted entirely of his answers when under interrogation. ¹It does not appear from the report when he was arrested, nor when the shirt was seized; but, according to the *acte d'accusation*, he said, before it was shown to him, that he had not changed his shirt on Sunday, the 18th, and that he had returned the clean shirt served out to him to the monk who managed the linen. His reason for keeping the dirty shirt was that he had on his arm a blister, and that the sleeve of the dirty shirt was wider, and so more commodious than the sleeve of the clean one. If this were false there would be a motive for the falsehood, as, if believed, it would have exempted Léotade from the necessity of owning one of the shirts. On the other hand, it

¹ P. 68.

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was unlikely that he should tell a lie which exposed him to contradiction by the monk who managed the linen, who is said to have declared that he had no recollection of the fact mentioned by Léotade. The *acte d'accusation* adds, that Léotade "wishing to give colour to the explanation which he "had invented," asked, when in prison, and after he had seen the shirt seized, for shirts with wider sleeves than those supplied to him, and that the monk who managed the linen deposed that he had never made any such application before. All this is consistent with the notion of a timid man losing his presence of mind when in solitary confinement under pressure, and inventing false excuses in mere terror.

The only other circumstance directly connected with the commission of the crime was that the garden of the monastery contained several outhouses, in some of which were contained a considerable quantity of hay, straw, and other fodder of the same kind as the few straws found on the body. Léotade had access to these places, and it was suggested that he enticed the girl into one of them, and there committed the crime. ¹ No marks were found to show that this had been done, though the *acte d'accusation* observes: "These barns "appear predestined for a crime committed under the "conditions of that of April 15th."

² It was also mentioned as a matter of suspicion, that, after the murder was committed, the judge of instruction asked Léotade to show him where he slept. Léotade took him to a room behind one of the large dormitories. This room was so situated that the judge of instruction thought that he could not possibly have got out at night for the purpose of disposing of the body. The judge of instruction afterwards asked where he had slept on the night in question, and Léotade showed him at once a room on the first floor. From this room, which Léotade occupied alone, he might have got

¹ P. 63.² P. 64.

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out and reached the garden by opening two doors which had the same lock. It is said in the *acte d'accusation* that a key found in his possession would open these doors. He had thus an opportunity of getting to the garden if he pleased. The change of bed was made on the 17th, two days after the murder; and inquiry was made into the reasons for it. Another monk, called Brother Luke, was moved into the room into which Léotade was moved on the 17th. ¹ It would appear that the two had previously slept each in a room by himself, but the reason given for their being removed into the room behind the dormitory was that Brother Luke was frightened at the crime, and did not wish to sleep alone. It was, indeed, an irregularity to allow a monk to do so. Upon this the *acte d'accusation* remarks that it is difficult to see how a man of Brother Luke's age could be alarmed by such a crime as the one committed on Cecile Combettes, and it adds:—"The futility of these reasons "suggests the existence of more serious ones, which the "director hides from justice. We must see in this (*il faut* "*y voir*) a measure of internal discipline, destined to isolate "from the other members of the community a brother stained "with a double crime." One objection to this is that the measure consisted in removing the person supposed to be a criminal from a room where he slept alone in an isolated situation, to a room where he slept with another person, close to the principal dormitory of the establishment. The suggestion was, therefore, not only very harsh, but absurd and contradictory.

This was the case against Léotade, as it was established by other evidence than his own statements on interrogation: the principal items added to it by that process consisted of differences between the accounts which he gave at different

¹ Cf. *acte d'accusation*, p. 65; evidence of Irlide, p. 199; evidence of Luc, p. 244.

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times of the way in which he had spent his time on the morning in question. The exact date of his apprehension does not appear, but it appears to have taken place some time in April, and from that time till his trial in the following February he appears to have been constantly examined, cross-examined, and re-examined, and confronted with other witnesses, always in secret. ¹ At the trial, after the *acte d'accusation* had been read, and the President had pointed out to him the manner in which it bore upon him, he was again cross-examined at great length, and the argument for the prosecution was that he must be guilty because his answers on different occasions were in some degree inconsistent, and because on one or two points he was contradicted by other witnesses. The chief inconsistencies in his answers related to the way in which he disposed of his time on the day in question. His final account of the matter was that he went to mass on getting up, and came out at eight or a quarter-past eight; after mass he went to the *pensionnat*, and thence to another part of the monastery. He stayed there from nine to half-past nine, and then breakfasted. After this he gave the pupils some things which they wanted, and he then finished a *lettre de conscience* to his superior at Paris. He gave the letter to the director of the establishment at about a quarter-past ten, and then went through various other occupations, which he enumerated at length. A great point made against the prisoner was that he did not mention his *lettre de conscience*, the writing of which took up half an hour, from a quarter to ten to a quarter-past ten, when he was first examined on the subject, and that in all his numerous examinations he mentioned it only once before his trial. ² A commission was sent to Paris to examine the superior to whom the letter was addressed, and it appeared from his evidence, and also from that of the clerks at the diligence office, that a parcel was sent on the 15th April from

¹ Pp. 81-195.² P. 243.

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Toulouse to the superior at Paris, that the superior received it in due course, and that it contained a letter from Léotade. To an ordinary understanding this would appear, as far as it went, to corroborate Léotade's account. The corroboration would, indeed, be of little importance, because it would prove nothing as to the time when the letter was written, which was the important point; but the President cross-examined the prisoner upon it with great severity, suggesting that, notwithstanding the solitary confinement (*le secret*) in which he had been placed, he had contrived to learn this fact from the monks, and had altered his evidence accordingly. ¹ It would seem, however, that the concert between them, if there was one, was not complete; for the director of the establishment, Brother Irlide, said that Léotade gave him his *lettre de conscience* about nine, after which he sent him to the infirmary to wait upon a boy who had the scarlet fever. It must be observed that Léotade was not contradicted on this matter. As far as the evidence went it confirmed his story. The argument for the prosecution would seem to have been that the statement must be false, because it was not made at once, and that, if false, the motive for the falsehood must have been to conceal the fact that the time was really passed in committing the murder.

Another point in his interrogatory related to his shirt. The President read over the interrogatory of the 15th of May. The effect of it was that he had not changed his shirt on the Saturday; that he had given the clean shirt to the monk who managed the infirmary, and that he had pointed out to the doctor who examined him on the 18th that his shirt was dirty. ² The *acte d'accusation* declares that on all these points he was contradicted, but there was only one contradiction. ³ The doctor said he had remarked that the shirt was not dirty, but he remembered nothing about the conversation; and

¹ P. 207.² P. 17.³ P. 114.

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the infirmary monk declared only that he did not remember receiving back the shirt.

¹Another alleged contradiction extracted by the interrogatory was, that Léotade said on one occasion that a pair of drawers he had worn would be found in his breeches, when, in fact, he had them on. He explained this by saying that he was confused at the accusation.

²Léotade was also interrogated at great length as to whether he had been with Jubrien in the passage at the time mentioned by Conte. He positively denied it. When first he was questioned on the subject, he said he did not recollect having been there; but when Conte described their position, dress, &c., circumstantially, both Léotade and Jubrien declared that it was not so; and Léotade added that he had not been in the *noviciat* during the whole day.

³Lastly, on being asked whether he had told the brigadier of *gendarmérie* that he had made certain footmarks in the monastery garden, he said he had not. He was somewhat roughly cross-examined about this; but he was right, and the President wrong. ⁴The *acte d'accusation* charges such a conversation, not with the brigadier, but with one of the doctors, Estevenet, who said in his evidence: "On seeing the footmarks, Léotade said, Probably some of our monks, with the gardener, have made the footprints." Léotade admitted that he might have said this, though on a different day from that mentioned at first by the witness, and the witness owned that he might be mistaken as to the day. This shows at once the harshness and inaccuracy both of the judge and of the *acte d'accusation*.

These were the principal points in the case against Léotade. There were several others, for some sort of issue was raised or inference suggested upon almost every word that he said, and upon every trifling discrepancy that could be detected between

¹ P. 92.² P. 97.³ P. 101.⁴ P. 33.

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his answers in any of his numerous interrogatories. Assuming that Conte spoke the truth, and taking every item of the evidence to be proved in a manner most unfavourable to him, it appears to me that there was barely a case of suspicion against him. The fact that he saw the girl in the passage proves no more than a possibility that he might have committed the crime. The marks and the fig-seeds on the shirt are the strongest evidence in the case; but the proof that he wore the shirt is altogether unsatisfactory. The inconsistencies in his accounts of the way in which his time was passed are trifling in the extreme. The only wonder is that, when kept in solitary confinement for many months, and interrogated every day, he did not fall into many more. Two of his observations on this subject are very remarkable. On being closely pressed to give a reason why he did not mention his *lettre de conscience* earlier, he said, "It is because the judge of instruction and the *Procureur-Général* treated me as a man who could not be innocent—they browbeat me (*violentaient*), they tortured me; it was not till I came to this prison that I found a judge and a father. You, M. le Président—yes! you alone—have not tormented me. ¹The others treated me as a poor wretch already condemned to death." ²At the close of the proceedings, on being asked whether he wished to add anything to his defence, Léotade observed, "I declare that I have not lied before justice. There is nothing but sincerity in my words. If there are some contradictions in my deposition, it is owing to the solitary confinement (*le secret*) which I have undergone. Ah! gentlemen, if you knew what solitary confinement is! Yesterday I saw a scene which pained me. I saw a man who was being brought out of solitary confinement to hear the mass—it was terrible!—he was as thin as a skeleton. How he must have suffered!"

¹ P. 87.² P. 359.

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The President ridiculed the notion of these tortures, but his own conduct showed that they were both possible and probable. His interrogatory is full of rebukes and sneers which, to a man on trial for his life, are most indecent. ¹ For instance, he asked Léotade if he ever saw workwomen at Conte's. "*Léotade.* Not as far as I remember. *President.* Stay. You already employ an expression which indicates "reticence." So, again: "I pass to your interrogatory of the 3rd of May, and there I find a series of contradictions and "reticences." ² So, "Brother Irlide will be examined directly. He will remember, he will admit, that you have had several "communications with the establishment, and especially "with him." (When Irlide was called he was never questioned on the subject.) "You would do better, perhaps, to "confess the truth." ³ Again, Léotade explained a mistake by saying that he was troubled at the accusation. The President said: "This time, at all events, your trouble is not referred to "the pretended violence of which you say you were the victim. "That is better."

As for the judge of instruction, his own account of his proceedings supersedes all criticism. ⁴ After a long examination, the President said: "I will now profit by your presence here to ask you whether you do not think it proper to tell us, in order to throw as much light as possible on this debate, those facts which are not introduced into "*procès-verbaux*, but which are not unimportant to judges?" "*Judge of Instruction.* You mean the impressions which "have resulted from my unofficial" (*en dehors de mes fonctions*) "conversations with the accused? I often went to see the "accused, to persuade him to submit patiently to his long "detention, and also to try to inspire him, as is my duty, "with the thought of making sincere and complete con- "fessions. I generally found Brother Léotade kneeling in

¹ P. 81.² P. 89.³ P. 92.⁴ P. 266.

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"prayer in his chamber, and appearing so much absorbed in "his meditations that he did not perceive my arrival, and "that I was obliged to speak first to get a word from him. "He got up, and then long conversations between us began. "I made every effort to make him see that, in a religious "point of view, the way to expiate his crime was to tell the "whole truth to justice. One day he said to me, 'Yes, I "understand; and accordingly, if I had been guilty, I should "have already thrown myself at your feet.' 'My God!' said "I, 'you must not exaggerate your crime; it is, no doubt, "enormous; but human justice takes everything into account. "'Perhaps they will think that you acted in one of those "'movements of accidental fortuitous passion when reason "'yields and the will almost disappears. God, who appreciates "all, will inspire your judges, and they will measure equitably "'the proportions of your crime.' He listened with great "attention, and looking at me fixedly, said, 'Admit for a "'moment . . . but death.' 'Well,' said I, 'who knows that "'the perpetrator of the first crime was the perpetrator of the "'second? The girl may have thrown herself down. The "'death may have been accidental.' He reflected, and then "said, 'No; I am not guilty.' However, if I must say all I "think, I thought, and I still think, Léotade was on the point "of making a confession."

"*President.* What sense did you attach to the words, 'but "death'?"

"'Oh, my God!' I thought he meant to say, 'if they "excuse the first crime, will not they be inexorable for the "second!'"

Upon this, says the report, "Léotade energetically protests "against the sense put on his words."

To a mind accustomed to English notions of justice, these artful attempts to entice the prisoner into a confession, mixed as they are with suggestions which are palpably

TRIALS. false—like that about the girl having caused her own death—are unworthy, not merely of an officer of justice, but of any man who has honour enough to refuse the functions of the vilest prison-spy. It is viewed differently in France. ¹The advocate of the *partie civile* used this incident as follows, without reproof: “Will you appeal, Léotade, to your demeanour—to your demeanour before Dr. Estevenet, who remarked your trouble and your incoherent words, or before the judge of instruction, when, pushed by remorse, you were on the point of confessing? Well, I demand that confession from you now. I adjure you in the name of all that is most sacred; I adjure you in the name of this family, in tears, for whom I speak; I adjure you in the name of this wretched girl, on whom the tomb is closed; I adjure you in the name of religion, of which you are one of the representatives, speak, confess. . . .! He is silent. He is the criminal. Human justice is about to condemn him, as a prelude to the sentence of “Divine justice.” What would he have said if Léotade had confessed?

Léotade was found guilty, with extenuating circumstances, and sentenced to the galleys for life; he died there after two or three years' confinement. It is obvious that, if guilty at all, he was guilty of one of the most cruel and treacherous crimes on record; and it is difficult not to believe that the extenuation was rather in the evidence than in the guilt.

I have attempted to extract the pith of this case from the long, intricate, and yet imperfect report of it; but in order to do so I have passed over a vast mass of evidence by which the case was swollen to unmanageable and almost unintelligible proportions. It will, however, be necessary to give a general description of its character in order to show the practical result of doing without rules of evidence, and

¹ P. 314.

TRIALS. investigating to the bottom every collateral issue which has any relation, however remote, to the question to be tried.

The case affords numerous illustrations of this, which it would be tedious and useless to describe in detail. A few may be referred to for the sake of illustration. The *acte d'accusation* is divided into two main parts; one intended to show that the crime was committed in the monastery, and the other intended to show that it was committed by Léotade. The first point was dwelt upon much more fully than the second. The monks were of course anxious to free themselves from the charge that their establishment had been the scene of rape and murder, and tried to find evidence by which it might be shown that the crime was committed elsewhere. With this object they made inquiries amongst the other persons who had been in the corridor when Conte and his two servants arrived. ¹It appeared that some young men were at that very time in the parlour which opened out of the corridor; and shortly after the arrest of Léotade “a deposition,” says the *acte d'accusation*, “which tended to give a different direction to the procedure had been announced through the newspapers.” It was said in effect that a lad of the name of Vidal, who was one of the party, had seen the girl going towards the door to go out. This was a mere newspaper paragraph. It did not even appear that the monks were in any way connected with it, but “the judge of instruction prepared to receive this deposition and to provide means for checking it.”

Vidal and Rudel were accordingly examined, and it appeared from their account that they had been sent for by the director of the monastery, to see whether they could prove that the girl had left it. Both of them said at first that they had not seen the girl go out; but on a second visit to the monastery, and on being shown the place, Vidal “thought that

¹ Pp. 45-46.

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" he could remember that he seemed to have seen the girl pass behind him, though he could not say he had seen her go out, as at the moment he had his back towards the street."

¹Rudel, three novices, Navarre, Laphien, and Janissien, and the porter, who were all with Vidal at the time, are said in the *acte d'accusation* to have said that they had not seen the girl. The *acte d'accusation* accordingly declares that "the Court has not hesitated to declare that Vidal's deposition is unworthy of credit." Instead of leaving it to the prisoner to call him if he thought fit, he was called by the prosecution for the purpose apparently of being contradicted. ²His first observation on giving his evidence was: "When I was called before the judge of instruction I said that I thought I had seen this young girl in the neighbourhood, but some days afterwards I saw and was persuaded that that was impossible." This of course destroyed any value which his evidence might have had in favour of the prisoner, but this was far from satisfying the prosecution. They went at length into the question how he came to say that he thought he had seen the girl. He then said that the monks had succeeded in persuading him that he had really seen her, and that they held a sort of rehearsal in which the persons who had been present were put in the positions which they had occupied in the corridor, and discussed the evidence which they were to give. They afterwards went upstairs into another part of the convent, and there consulted on it further. Vidal declared that he allowed himself at these conferences to be persuaded into saying that he thought he had seen the girl go out, though he also stated that he said he *thought* he had seen her in the first instance, and before any persuasion at all.

This was represented on the part of the prosecution as organized perjury, and every effort was made to make Vidal's

¹ P. 47.² P. 186.

TRIALS.

evidence go to that length. ¹For instance, the President said: "Did not they reason like this—did not they say. 'The girl must have passed at this instant, and you will say that you saw her slip out as the chaplain entered;' and did not they add, 'that will agree perfectly with the deposition of Madeleine Sabatier, who will say that she met the girl near la Moulinade'?"

" *Vidal.* No, sir; Madeleine Sabatier was not mentioned.

" *President.* Well, but as to the rest, did not they reason in this way?"

" *Vidal.* They asked me if I had seen the girl go out, and I said it seemed so to me.

" *President.* That is, to please them (*par complaisance*) you said you would say that it seemed so?"

" *Vidal.* No. I had already said that it did seem so to me."

The two directors, Irlide and Floride, were also examined upon this point. ²They both admitted that they had talked over the matter with Vidal, but declared that Vidal positively asserted that he had seen the girl go out, and that they told him to tell the truth. ³There was, however, a contradiction between Vidal and Floride as to the place where the conversation took place; Vidal said it was in a place called the *Procure*. Floride at first denied it, but another monk confirming Vidal, he admitted that it might have been so.

The other persons present in the corridor said that the chaplain came in while they were talking, and in this the chaplain to some extent confirmed them, and three of them swore that they saw something or some one pass by the door as the chaplain came in. ⁴The porter said that after Conte came in, he let out the servant Marion, and he then went up with Conte to the director, that on coming down again he saw several monks in the passage, but he did not observe whether or not the girl was there, and that he afterwards opened the door

¹ P. 253.² Pp. 200-207.³ P. 206.⁴ P. 156-160.

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for the chaplain. From the way in which his evidence was given it is difficult to state shortly its effect, but the general result of it was that he wished to show that the girl might have left the convent without his seeing her, whilst the President cross-examined him with great strictness and asperity to show that he must have seen her if she had left it. Jubrien, whom Conte said he saw with Léotade, was examined at great length and with frequent rebukes. He asserted that he was not with Léotade at the time and place mentioned, but he appears to have replied to almost every other question on the subject, that he did not remember or could not tell. The report is considerably abridged, but it indicates that Jubrien's deposition ran into a sort of argument between himself, the prisoner, the President, and the *Procureur-Général*, of which it is difficult to form any distinct notion.

From the way in which the whole of this evidence was taken it was put before the jury in an inverted order, and a great part of it was utterly irrelevant. The question was, whether Léotade had murdered the girl in the convent. If Vidal could prove that she left it, the case was at an end. His first answer showed that he could not prove that, and it also showed that he was either too weak or too false to be trusted at all, because it contradicted his previous deposition. To show that he had been tampered with was altogether unimportant even if it were true, for Léotade was in prison and could not tamper with him, and he could not be responsible for the indiscretion or even for the dishonesty of unwise partisans. There was, however, no evidence of any subornation except Vidal's own statement, and as the case for the prosecution was that he was weak and dishonest, his statement was worth nothing. It was contradictory to say that when it made against the prisoner it was valid, and when it made in his favour it was worthless. The other witnesses, no doubt, gave their evidence in an unsatisfactory way; and

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if they had been called by the prisoner to prove his innocence by establishing the fact that the girl had left the convent, the degree of credit to which they would have been entitled would have been very questionable; but to argue that their disingenuous way of affirming that the girl did leave the convent amounted to proof that she did not leave it, was equivalent to affirming that if the partisans of an accused person are indiscreet or fraudulent, he must be guilty. The fair result of the whole controversy seems to be, that it was not proved on the one hand that the girl did leave the convent, and that it was not proved on the other that she could not have left it unnoticed, though it does not seem probable that she could.

The intricacy and clumsiness of the way in which the evidence was given is indescribable. Vidal was recalled seven times, and was constantly confronted with the other witnesses, when warm disputes and contradictions took place. Every sort of gossip was introduced into the evidence. For instance, a witness, Evrard, said that Vidal had told him that he had seen the girl talking to two monks. Vidal, on being asked, said, he had not seen anything of the sort, nor had he said so. ¹ Evrard maintained that he had. Vidal declared that Evrard had retracted his statement on another occasion. Evrard owned that he had retracted because one Lambert had threatened him, but declared that, notwithstanding this, it was true, and that Vidal had told the same story to the *Procureur du Roi* at Lavaur. Hereupon the *Procureur du Roi* of Lavaur ² was sent for. He said that Evrard had told him that Vidal had said that he had seen the girl speak to two monks, and one of them make a sign to her; that Evrard came back next day, and said that his evidence was all false; that he returned in the evening and said it was true, and the retraction false, and that Lambert had

¹ P. 212.² P. 213.

TRIALS. threatened him. Hereupon the *Procureur* sent for Lambert, who said Evrard was a liar. Lastly, upon being asked whether or not he thought Vidal had said what Evrard said he said, the *Procureur* answered, "I do not know what to think," on which the President answered, "No more do I." This is a good instance of the labyrinths of contradictions and nonsense which have to be explored if every question is discussed which is in any way connected with the main point at issue.

I will mention one more illustration of the same thing. Conte, upon whose assertion that he had seen Léotade in the passage all this mass of evidence was founded, was himself suspected, and the prosecution at once "explored his whole life with the greatest care." ¹ They found out that seven years before he had seduced his wife's sister, and a bookseller named Alazar, ² to whom she was engaged, was called to prove that he had broken off the engagement in consequence, and to produce a letter from her (she had been dead six years), excusing her conduct. Hereupon Conte wished to give his version of the affair, but the President at last interfered. "*Mon Dieu!*" he exclaimed; "*où cela nous mena-t-il?*" The question should have been asked long before.

The evidence of Madeleine Sabatier, already alluded to, was another instance of one of these incidents, as the French call them. Early in the proceedings, and long before the trial, she declared that on a day in April—she could not say which day, but she thought the 8th or 9th (*i.e.* a week before the murder)—she had seen the deceased standing at a window in a house not far from the cemetery. "It might be questioned," says the *acte d'accusation*, "whether the day when Sabatier said 'she saw Cecile was the 15th,' which is certainly true, as she said herself she thought it was the 9th; 'but other facts,

¹ P. 71.² P. 260.

TRIALS. "still more peremptory, demonstrate the lie of the witness." There is a wonderful refinement of harshness in arguing that a witness must have been suborned to commit perjury, because something which she did not say might have been of use to the prisoner, and would have been a lie if she had said it. ¹ The *acte* then proceeds to prove that Sabatier's story was altogether false, if it asserted that the girl had been seen at the place mentioned on the 15th, and in a particular dress, &c. Under these circumstances the natural course would have been to leave this woman and her story out of the case, or to allow the prisoner to call her if he thought proper; but it appears to have been considered that, if she were called for the purpose of being contradicted, the exposure of her falsehood would raise a presumption that she had been suborned by persons who were aware of Léotade's guilt. She was called accordingly, and repeated her deposition, which was then contradicted by six other witnesses, some of whom got into supplementary contradictions amongst themselves. Sabatier was committed on the spot for perjury.

Another large division of the evidence had reference to certain footmarks discovered by the brigadier of the *gendarmerie* in the monastery garden. A monk, called Laurien, the gardener, said he had made them; and the brigadier and he contradicted each other as to the circumstances of a conversation between them on the subject. As Léotade had nothing whatever to do with the conversation, and as no attempt was made to connect him with the footmarks (except to the extent already mentioned), this was altogether irrelevant. It might have some tendency to show that one of the monks wanted to make evidence in favour of his convent, but it had no tendency to show the prisoner's guilt. Laurien, however, was committed to prison for perjury, and strong remarks were made on him. It

¹ Pp. 154 155.

TRIALS. is impossible not to see that the arrest of two witnesses favourable to the prisoner on the ground of perjury, simply because their evidence was contradicted by other witnesses, must have prejudiced the case for the prisoner fearfully, and terrified every witness whose evidence was favourable to him. The effect of this was obvious in Vidal's case. Whenever he seemed disposed to say that he thought the girl had left the convent he was threatened with arrest, and when so threatened he immediately became confused and indistinct.

A single illustration will show the brutal ferocity with which witnesses are liable to be used if their evidence is unwelcome to the authorities. A man named Lassus,¹ having given evidence to prove an *alibi* for Léotade, the *Procureur-Général* made the following observation on him: "To complete your edification, gentlemen of the jury, as to this witness, we think we ought to read you a letter from his father, which will enable you to judge of his morality. The presence of this witness at the trial is the height of immorality: it proves that not merely have they abused religion, but they have gone so far as to practise with vice. To produce such evidence is the last degree of depravity and baseness." This appears to have roused at last the counsel for the prisoner, who began: "If such anathemas as these are kept for all the prisoner's witnesses—" The President, however, interrupting him, observed: "In conscience, this witness deserves what he has got."

A third series of witnesses was produced to rebut the possible suggestion that Conte had committed the crime, by establishing an *alibi* on his part. There appears to have been no reason to suppose he did commit it, except the suspicion which crossed the mind of the authorities in the first instance.

¹ P. 272.

TRIALS. Many other witnesses were called to give an account of all sorts of rumours, conjectures, and incidents, which appear to have no connection with the subject. For instance, ¹Bazergue, a trunk-maker, declared that, when he heard that the girl was missing in the convent, he told his informant that if Cecile had entered the monastery, she would not leave it alive. "I had," he said, "a sort of presentiment; and I added that, if she had remained, their interest alone would be enough to prevent her from being allowed to leave it alive." "This," said the President, "may be called a rather prophetic appreciation if the fact is true." ²Muraive, a painter, said that on the 20th April a man bought some rose-coloured paint of him, burned his face with a lucifer match, and rubbed the paint on it, so as to disguise himself. "*J'ai mon idée*," said the witness, "he was a monk in disguise." ³M. Guilbert, who had kept a journal for twenty-nine years of everything that occurred in Toulouse, produced it in court, and read an entry to the effect that the body of a young girl had been found, and that there were many rumours on the subject. ⁴Another witness saw some cabbages trampled on in a garden.

A number of witnesses for the defence were called, of whom some proved an *alibi* on behalf of Léotade, and others on behalf of Jubrien. The evidence as to Léotade was that he was engaged elsewhere in the convent at the time when Conte said he saw him in the corridor. The evidence as to Jubrien was, that he went from the corridor to the stable to sell a horse to a man named Bouhours, who was accompanied by Saligner. ⁵Bouhours declaring that he had seen Vidal and Rudel, who declaring that they had not seen him, he was immediately arrested. This part of the evidence is given in such an unsatisfactory manner in the report that it is difficult to make much out of it. ⁶It appears, however, that Jubrien

¹ P. 182.

² P. 285.

³ P. 284.

⁴ P. 285.

⁵ P. 269.

⁶ P. 281.

TRIALS. himself never mentioned the sale of the horse, and that he had declared that he had never been in the stable at all.

I do not pretend to have stated the whole of the evidence in this case. It would be almost impossible, and altogether unimportant to do so; but this account of the trial seems to be correct, as far as it goes, and is sufficiently complete to give some notion of the practical working of the French system of criminal procedure.

¹THE AFFAIR OF ST. CYR.

TRIALS. IN June, 1860, Jean Joanon, Antoine Dechamps, and Jean François Chretien, were tried at Lyons for the murder of Marie Desfarges; the murder and rape of her daughter-in-law, Jeánné Marie Gayet, and her granddaughter, Pierrette Gayet; and the robbery of the house in which the murders and rapes were committed. The wives of Dechamps and Chretien were tried at the same time for receiving the goods stolen from the house. The trial began on the 7th of June, and on the 12th it was adjourned till the following session, which began on the 10th of July. On the 15th of July, it ended in the conviction of Joanon, Dechamps, and Chretien, all of whom were condemned to death, and executed in pursuance of their sentence. Chretien's wife was convicted of receiving, and sentenced to six years' *reclusion*, and Dechamps's wife was acquitted. The circumstances were as follows:—

² Marie Desfarges, an old woman of seventy, lived with her daughter-in-law, Madame Gayet, aged thirty-eight, and her granddaughter, Pierrette Gayet, aged thirteen years and three months, in a house belonging to Madame Gayet, at St. Cyr-au-Mont-d'Or, near Lyons. The family owned property worth upwards of 64,000 francs, besides jewellery and ready money. They lived alone, and had no domestic servant, employing labourers to cultivate their land. On the 15th of October, 1859,

¹ The authority quoted is a report of the trials published at Lyons in 1860, and apparently edited by M. Grand, an advocate. It is in two parts, separately paged, referred to as I. and II.

² *Acte d'accusation*. I. 14.

TRIALS.

their house was shut up all day. On the 16th, it was still shut, and Benet, a neighbour, being alarmed, looked in at the bedroom window. The beds were made, but the boxes were open, and the room in great disorder. On going downstairs, the three women were found lying dead on the kitchen floor. The grandmother had contused wounds on her head which had broken the skull, and one of which formed a hole through which a person could put his finger into the brain: besides this, her throat had been chopped, apparently with a hatchet. The mother was stabbed to the heart, and had a second stab on the right breast. She had also an injury which had parted the temporal artery in front of the right ear, and bruises on the arm. On her throat were marks of strangulation, such as might have been made by a knee. The daughter had a contused wound on her thumb, and a stab to the heart, which might have been produced by the same instrument as that which had been used against her mother. The bodies of the mother and daughter showed marks of rape. There were two wooden vessels near the bodies which contained bloody water, as if the murderers had washed their hands. The house had been plundered.

Of the three prisoners, Dechamps and Chretien were relations of the murdered women. Chretien's mother-in-law was the paternal aunt of Madame Gayet, and Chretien acted as her agent and trustee (*mandataire*). Dechamps is stated to have claimed an interest in the inheritance; it does not appear in what capacity. ¹ Joanon was no relation to any of them, but he had been in the employment of Madame Gayet as a labourer, and had some years before made her an offer of marriage. Madame Bouchard, who made the offer for him, said that Madame Gayet refused, "saying that she did not wish to unite herself with the family of Joanon, and that she

¹ II. 54.

TRIALS

"thought Joanon himself idle, drunken, and gluttonous." It appears, however, that Madame Bouchard did not consider the refusal final, as she told Joanon that the marriage might come about after all. ¹ It also appeared that he continued in the service of Madame Gayet, as his advocate stated, for as much as two years. ² The *acte d'accusation* says that, after the refusal, his mistresses sought an opportunity of discharging him; but this is not intelligible, for they might have done so at any moment without giving a reason.

A good deal of evidence was given to prove that, in consequence of Madame Gayet's refusal, Joanon had expressed ill-will towards her, that she and her daughter had expressed terror of him, and that his general character was bad. None of it, however, was very pointed. The principal evidence as to Joanon's expressions was, ³ that he said to a woman named Lhopital, "These women make a god of their money; but no one knows what may happen to women living alone." This was seven months before the crime. ⁴ He told a man named Bernard, about eighteen months before the crime, that he had taken liberties with Madame Gayet, of whom he used a coarse expression, ⁵ but that she resisted him; ⁶ and he said something of the same sort to Madame Lauras. ⁷ He also said to Berthaud, "I made an offer of marriage to the widow Gayet: she refused; but she shall repent it," using an oath. ⁸ A woman named Delorme came into Madame Gayet's house four years before the crime. She found her crying, and her cap in some disorder. She made a sign for her to stay when she was about to leave. All this comes to next to nothing. ⁹ The evidence that the Gayets went in fear of Joanon is thus described in the *acte d'accusation*: "The Gayets were under no illusion as to the bad disposition of Joanon towards them. Timid, and knowing that the man was capable of

¹ II. 120.² I. 17.³ I. 65.⁴ I. 74.⁵ II. 55.⁶ I. 76.⁷ I. 78.⁸ I. 78.⁹ I. 17.

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“everything, they hardly dared to allow their most intimate friends to have a glimpse of their suspicions. Pierrette, being less reserved, mentioned them to several persons.” It was hard on the prisoner to make even the silence of the murdered women evidence against him by this ingenious suggestion.

There was little evidence that Madame Gayet ever complained of him. ¹One witness, Ducharme, said that, eight days before the crime, she told him of her vexations at Joanon's nocturnal visits and annoyances, and added, that he advised her to apply to the mayor or the police. ²The President also said, in Joanon's interrogatory, that Madame Gayet had complained to the mayor of the *commune* of his annoying her. ³The mayor himself, however, said that when she was at his office on other business she was going to talk about Joanon, but had said only *Il m'ennuie*, when the conversation was interrupted. The girl Pierrette had made some complaints. She told one witness that Joanon climbed over their walls and frightened them all, except her mother. It so happened that this witness was for once asked a question in the nature of cross-examination: ⁴“Was it a serious alarm, or merely something vague, that Pierrette expressed?” “Not precisely” (*i.e.* not precisely serious); “she said, only that they feared to be assassinated some day, without referring these fears to Joanon. However, they were afraid of him.” This shows the real value of gossip of this sort. ⁵Pierrette told another witness, Dupont, that they were afraid of being murdered. ⁶A girl called Marie Vignat, who was intimate with Pierrette, said that Pierrette told her also that she was afraid of being assassinated. “The evening before the crime, I said to her, ‘Good-bye till to-morrow.’ She answered, ‘We cannot answer for to-morrow. You sometimes come to see us in the evening, but you had better come in the morning—at least, you would give the

¹ II. 59. ² II. 36. ³ I. 47. ⁴ I. 64. ⁵ I. 66. ⁶ I. 68.

TRIALS.

“alarm if we were murdered.” She does not appear to have said that she feared Joanon would murder them; but she spoke strongly against him to Marie Vignat. ¹She said: “It is said you are going to marry Joanon. You had better jump into the Saône with a stone round your neck. He is a man to be feared. My mother and I are afraid of him, and we would not for all the world meet him in a road.”

None of this evidence could have been given in an English court: but it would, perhaps, be going too far to say that it ought to have no weight at all. The fact that people are on bad terms may be proved quite as well, and generally better, by what each says of the other in his absence, than by what they say in each other's presence. It goes, however, a very little way towards showing the probability that a crime will be committed. It was clear that Pierrette Gayet disliked and feared Joanon; but it does not follow that he had given her reasonable grounds for fear. If she disliked him, and knew that he wanted to marry her mother, her language would be natural enough. Her fears of assassination in general prove little more than timidity, not unnatural in a girl living alone with her mother and grandmother.

The consequence of these circumstances is thus described in the *acte d'accusation*: ²“After the 16th of October” (the date of the discovery of the bodies), “public opinion pronounced violently against Joanon. He had fixed himself at St. Cyr for some years. His house is hardly two hundred paces from that of the Gayets. Though the eldest son of a family in easy circumstances, Joanon seems to have been, so to speak, repudiated by his relations. His maternal grandfather, in excluding him from the inheritance by his holograph will, dated February 21, 1857, inflicted on him a sort of curse, in these words: ‘I give and I leave to my

¹ I. 68.

² II. 58.

TRIALS.

“ ‘grandson Joanny Joanon, the eldest boy, the sum of ten francs for the whole of his legacy, because he has behaved very ill.’ Signalized by the witnesses as a man without morality, of a sombre, false, and wicked character, Joanon lived in isolation.” The principal witnesses to this effect were the mayor and the *juge de paix*. ²The mayor said at the first hearing, Joanon “was feared, and little liked. . . .” “I never, however, heard that he was debauched.” At the adjourned hearing, however, he spoke very differently. ³“Pr. “Give us some information as to Joanon’s morality? A. It was very bad at St. Cyr. Twice I heard of follies (*niaiserie*) which ended before the *juge de paix*. He went with “idiot girls and women of bad character.” The *juge de paix* gave him a very bad character. He owed five francs to the *garde champêtre*, and refused to pay them; he stole luzern, either from avarice, or cupidity, or bad faith; he contested a debt of fifty francs to his baker. I know he was debauched, and reputed to be connected with “women of bad character.” He also referred to the idiot girls. When Joanon was asked what he said to this, he replied, ⁴“The *juge de paix* has listened to the scandal (*les mauvaises langues*) of St. Cyr”—a sensible remark.

I have given this part of the evidence in detail, because it shows what sort of matter is excluded by the operation of our own rules of evidence.

On the 19th of October, Joanon was called as a witness, and examined as to where he had been at the time of the crime, “like many others.” ⁵He said first that he had come to his own house at 8.30 P.M., and that he had then gone to a baker’s. He went next day to the baker, Pionchon, and asked him to say that he had bought his bread that evening, and had passed the evening with him. This was Pionchon’s account at the trial, which differed to some extent from what

¹ I. 17. ² J. 59. ³ II. 47. ⁴ I. 95. ⁵ I. 77.

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he had said previously. Joanon said in explanation: “I told him I had made a mistake before the judge of instruction but I did not mean to ask for false evidence.” He had, in fact, been at Pionchon’s the day before. At his next examination (October 20), he said he might be mistaken as to the baker, but that he had been at Vignat’s, and had come home at 7.30. On the 21st, he said he had stayed at Vignat’s till 7.30, and then gone home. Madame Vignat and her daughter both said he had left about 4. He added, that three persons, Mandaroux, Lauras, and Lenoir, must have seen him. ¹Mandaroux said he saw him about 5; ²H. Lauras had heard a voice in his house at 7 or 7.15; ³and two women, Noir and Dury, met him thirty or forty yards from the house of the Gayets at about 7.30. One of them, Dury, heard the clock strike as she passed the house of a neighbour. Joanon declared at the trial that it was 6.30 and not 7.30 when he met them. His advocate said that it appeared from the evidence of J. L. Lauras that the two women, Noir and Dury, left his house, at which they had been washing, at 5.45, and that it was 1,748 metres, or less than one mile and a quarter, from that house to the place where they met Joanon; whence ⁴he argued that Joanon must have been right as to the time. The difficulty of fixing time accurately is notorious; nor did it in this case make much difference. The murder was probably committed between 6.30 and 7.30. Joanon’s house was only 200 yards from the house of the Gayets. Hence, whether he returned home at 6.30 or 7.30, he was close by the spot at the time.

In his interrogatory at the trial, he said he had been at a piece of land belonging to him, had returned at nightfall, and not gone out again. Hereupon the President said: ⁵“You gave a number of versions during the instruction; you make new ones to-day. A. They said so many things to me—they

¹ I. 75. ² I. 76. ³ I. 77. ⁴ I. 122. ⁵ I. 44.

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“bothered me so dreadfully (*ils m'ont si péniblement retourné*) “that I do not know what I said. . . .” The general result seems to have been that, though he did not establish an *alibi*, he did not attempt to do so, for his conversation with Pionchon would account for part only of the evening; and that, on the one hand, he was close to the place where the crime was committed at the time, though, on the other hand, he naturally would be there, as it was his home. To me, the fact that he gave different accounts when he was re-examined five or six times over, seems to prove nothing at all. A weak or confused memory, that amount of severity in the magistrate which would provoke the exercise of petty and short-sighted cunning and falsehood, fright at being the object of suspicion, would account for such confusion as well as guilt: indeed, they would account for it better. A guilty man would hardly have mentioned the persons who saw him, and would, probably, have seen the necessity of inventing one story and sticking to it. This is a good instance of the perplexity which may be produced by putting too great a stress on a man's memory. It is more difficult to say what was the precise amount of discrepancy between Joanon's different statements, and what is the fair inference to be drawn from those discrepancies, under all the circumstances, than to form an opinion of his innocence or guilt apart from his statements on this subject. Evidence treated thus is like handwriting scratched out and altered so often as to become, at last, one unintelligible mass of blots and scratches. It shows that too much inquiry may produce darkness instead of light.

Notwithstanding the suspicion thus excited against Joanon, he was not arrested, and no further information on the subject of the crime was obtained for several months. At last, on the 14th of February, four months after the murder, Joanon was drinking with the *garde champêtre* of St. Cyr at a cabaret.

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The *garde* asked him to pay five francs which he owed him. Joanon said, ¹ “I will give you them, but I must first have an “apology.” I answered, “Everyone in the neighbourhood “accuses you.” I pressed him, saying, “You ought at least to “have spared the girl.” He answered, “I did my best; I “could not prevent it; but I will not sign.”

It is in relation to evidence of this sort that cross-examination is most important. It is quite possible that, on proper cross-examination, a very different turn might have been given to this expression from the one attached to it by a man who was obviously fishing for a confession. The report (like most reports of French trials) is not full, and no cross-examination is given. Another witness, Bizayon, heard the same words, and reported them quite differently. “You would “like to make me talk, but I won't sign.” Two others, Gerard and Clement, made it a little stronger. Gerard said it was, “I tried to prevent the crime;” Clement, “I tried to prevent “the crime of the Gayet family.” Clement also complained that Joanon had tried to cheat him of fifty francs by a false receipt. ² Gerard added, that Joanon was pressed with questions as to the part he had taken in the crime, and that he spoke on the faith of a declaration that the prosecution against him had been abandoned. ³ Joanon himself said that he said what he did to get rid of the *garde*, who was plaguing him with questions. However this may be, he was immediately arrested, and when before the mayor he observed that he had better have broken his leg than have said what he did. Joanon denied having said this, but it proved nothing against him. Whether he was innocent or guilty, the remark was perfectly true.

This was the whole of the evidence against Joanon, with the exception of the confessions of the other two prisoners, obtained under the following circumstances. On the 16th of

¹ I. 61.² I. 79.³ I. 82.

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February, two days after Joanon's arrest, Chretien offered for sale, at Lyons, two old gold watches. The watchmaker found spots on them, which he thought were blood, and took them to the commissary of police. Upon examination it appeared that the spots were not blood, but that the watches had belonged to the Gayets. Hereupon Chretien was arrested. He said at first that he had stolen the watches, when the property was removed after the sale, having found them on the top of a piece of furniture. This, however, was contradicted by persons to whom he referred, and his house was searched. On the first search there were found 670f., for the possession of which he accounted; but on a further search a purse was discovered, containing 1,380f. in gold, in a purse set with pearls, and various small articles, which were identified as the property of the Gayets. Chretien declared that he knew nothing of the money, and that it belonged to his wife.

¹ She said that at her marriage she had 600f., which she had concealed from her husband; that for twelve years past she had had a lover (who said he gave her about 120f. a year—a sum which the President described as enormous), and that she saved on the poultry. She said that as soon as she got a piece of gold she put it into this purse, and never took any out. She had been married twenty years. On examining the dates of the coins, it appeared that 220f. only were earlier than 1839, when she said she had 600f., 200f. between 1839 and 1852, and 960f. between 1852 and 1859. ² This ingenious argument silenced her. ³ Chretien had a difficulty in accounting for his time. He was seen coming home at eight, and he left his work at half-past five.

As Chretien was supposed to have committed the murder

¹ "Dans la situation pécuniaire où vous êtes à raison de vos dettes cette somme de 120f. était énorme."—I. 89.

² *Acte d'accusation*, I. 22, 23.

³ I. 90.

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for the sake of the inheritance, Dechamps was arrested also as a party interested in the same way. ¹ Some articles are said in the *acte d'accusation* to have been found in his house, and his father was seen digging in a field, for the purpose, as he afterwards said, of hiding a cock and some copper articles given him by his son. He also was arrested, but, on the cock being found, was set at liberty, and immediately drowned himself. ² Dechamps had the same sort of difficulty in proving an *alibi* as Chretien and Joanon, and his wife asked a neighbour to say she had seen her between five and eight. ³ On searching a well at Dechamps's house, a hatchet, such as is used for vine-dressing, was found. The handle was cut off, the end of the handle was charred, and the head had been in the fire; and Dechamps's wife tried to bribe the persons who made the search not to find it. This hatchet had belonged to the Gayets, and might have been used to make the wounds on the throat of the grandmother and granddaughter. It had been seen in the house after the murder hidden behind some faggots in the cellar, and had afterwards disappeared. It was, no doubt, the height of folly in Dechamps to meddle with it; but it was just the sort of folly which criminals often commit, and his wife's conduct left no doubt that it was purposely concealed in the well. This is a case in which the English rules would have excluded material evidence. Her statements in his absence would not have been admissible against him, but they were clearly important.

Chretien and Dechamps being both arrested, and taken to Lyons, Chretien, on the 3rd of April, sent for the judge of instruction, and made a full confession to him. The substance of it was that the murder was planned by Joanon, out of revenge because Madame Gayet had refused him. That he suggested to Dechamps to take part in the crime, on the

¹ I. 24.

² I. 25.

³ I. 82.

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On being confronted with Dechamps and Joanon, Dechamps contradicted Chretien; as for Joanon, a remarkable scene took place. ² The *acte d'accusation* says: "As to Joanon, to give an account" (*pour faire connaître*) "of his attitude and strange words during this confrontation, it would be necessary to transcribe verbatim the *procès-verbal* of the judge of instruction." (If the jury were to form an opinion it would have been just as well to take this amount of trouble.) "After their first confrontation he pretends that he has not seen Chretien, and demands to be again brought into his presence. Chretien was brought before him several times. Sometimes Joanon declared that he did not know the man; that he was then speaking to him for the first time; then he begs to be left alone with him for an hour, that he would soon confess him and make him change his language; sometimes he tries to seduce

¹ I. 27.² I. 28.

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"Chretien does not allow himself to be shaken; he recalls to his accomplice, one by one, all the circumstances of their crime; then Joanon insults him, calls him a hypocrite and a man possessed, and accuses him of dissembling his crime, of hiding his true accomplices to save his friends, his relations, and his son; then abruptly changing his tone, he becomes again soft and coaxing; he tells Chretien that he takes an interest in him, that he does not think him malicious, and he begs him to be reasonable. He talks, also, of the money of which he himself can dispose; of the services he can render his wife and children, if on his part he will make the confessions he ought to make, whereas if he causes his (Joanon's) death he will be able to do nothing for him."

The way in which Joanon behaved on hearing Chretien's statement was, no doubt, important evidence either for or against him. According to English notions it would be the only part of the evidence which in strictness would be admissible against him. The degree in which the French system of procedure takes the case out of the hands of the jury, and commits it to the authorities, is well illustrated by the fact, that as far as this most important evidence was concerned they had in this instance to be guided entirely by the impression of the *Procureur-Général* who drew up the *acte d'accusation* as to the purport of the *procès-verbal* of the judge of instruction. It is as if an English jury were asked to act upon the impression made on the mind of the counsel for the Crown by reading the depositions.

At a later stage of the case, the *Procureur-Général* thought fit to read the *procès-verbal* in full. It is so characteristic

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and curious that I translate verbatim that part of it which describes the confrontation of Chretien and Joanon.

"Judge of Instruction to Chretien. Do you persist in maintaining that you have no further revelations to make to justice?"

"A. No, sir, I have no more to say. I adhere to my confessions, which are the expression of the truth.

"We, judge of instruction, caused the prisoner Joanon to be brought from the house of detention to our office. Chretien renewed his confessions in his presence, to which Joanon answered only: 'What! Chretien, can you accuse me of sharing in this crime?' To which Chretien answered, with energy, 'YES, YES, Joanon, I accuse you because you are guilty, and it is you who led us into the crime.'

"The same day, at four o'clock, Joanon, having asked to speak to us, we had him brought from the house of detention to our cabinet, when he said only, 'I am innocent; I am innocent.'

"Q. Yet you have been in the presence of Chretien, who recalled to you all the circumstances of the crime of which you were the instigator? A. I certainly heard Chretien accuse me, but I did not see him. I was troubled.

"Q. Your trouble cannot have prevented you from seeing Chretien. He was only four paces from you in my office. A. Still my trouble did prevent me from seeing him.

"Q. You saw him well enough to speak to him. A. I own I spoke to him, but I did not see him.

"We, the judge of instruction, had Chretien brought into our office again.

"Q. (to Joanon). You see Chretien now. Do you recognize him? A. I have never seen that man.

"Chretien (of his own accord). Scoundrel! (*canaille*). You saw me well enough in the mulberry garden, and I saw you

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"too, unluckily. You did it all, and but for you I should not be here.

"Joanon. I never spoke to you till to-day.

"Chretien. I have not seen you often, but I saw you only too well, and spoke to you too much, the 14th October last, in the mulberry garden, in the evening about seven o'clock."

These answers are very important, and their effect is not given in the abstract contained in the *acte d'accusation*. They are an admission by Chretien that he was a stranger to the man, on a mere message from whom he was willing as he said to commit a horrible murder on his own relations.

"Joanon. Sir, you will search the criminals and you will find them.

"Q. (to Chretien). In what place in the mulberry garden was Joanon? A. In front of the little window outside the drain of the kitchen, by which you can see what goes on in that room. Joanon told us that the two widows, Desfarges and Gayet, were at supper, and pointed out to each his victim.

"Q. What do you say to that, Joanon? A. This man wants to make his confession better and more complete; put us together in the same cell for an hour, and I answer for it that he will say something else.

"Q. Why do you want to see Chretien alone? A. Because when I have confessed (*confessé*) Chretien, he won't accuse me. That man does not know all the services that I can do to him and his children; he does not know that my family is rich, poor fellow; he does not know how I attach myself to him like a brother; I will do him all sorts of services, grant me what I ask to throw light on this affair.

"Q. (to Chretien). You hear what he says. A. I hear and stand to my confession, because it is true. There were three of us, Joanon, Dechamps, and I. Joanon said that we must

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“present ourselves to these women as if to ask shelter from the storm” [there was a violent storm at the time], “and that at the word ‘*Allons*’ which he, Joanon, would give, each should take his victim.

“*Joanon* (interrupting). I did not say so. (After a short pause) I was at home.

“*Chretien* (in continuation). Joanon, addressing himself to Dechamps said, ‘You will kill Pierrette; Chretien, widow Desfarges; and I take charge of widow Gayet.’

“*Joanon* (interrupting). Allow me, sir, to take an hour with him. I will make him retract. (To Chretien) My lad, you think you are improving your position, but you are mistaken. We can only die once. Reflect; this man wants to save his son, who, no doubt, is his accomplice.

“*Chretien*. My son has been absent from St. Cyr for three years, and on the 14th October was one hundred and sixty leagues off. (This has been verified by the instruction, and is true.)

“*Joanon*. I hope Dechamps will make a better confession.

“*Q*. Then you know that Dechamps is guilty?” (The eagerness to catch at an admission is very characteristic.)

“*A*. I said that Dechamps will confess if he is guilty.

“*Q*. (to Chretien). Continue your account of the events of the evening of the 14th October? *A*. After receiving Joanon’s instructions we scaled together the boundary wall which separates the court from the mulberry garden, and when we came to the kitchen door, Joanon entered first.

“*Joanon* (interrupting). You always put me first!

“*Chretien*. Dechamps entered second, and I third. As we entered Joanon said that we came to ask shelter from the storm. The women were at supper; they rose and offered us their chairs. They received us well, poor women.

“*Joanon*. This is all a lie. I was at home.

“*Q*. (to Joanon). You have heard all these details, what

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“do you say to them? *A*. I take an interest in Chretien, he is not a bad fellow, no more am I: he will be reasonable, and I will take care of his wife and children if he makes such confessions as he ought to make.

“*Chretien*. Scoundrel! my wife and children don’t want you for that.

“*Q*. If you are innocent, why does Chretien accuse you at the expense of accusing himself? *A*. I don’t know; perhaps he hopes to screen a friend (*un des siens*); poor fellow, he thinks he is freeing himself, but he is making his position worse.

“*Q*. Chretien, go on with your story. *A*. After a few moments, during which we talked about the storm, Joanon got up, saying, ‘*Allons*’; at this signal we each threw ourselves on our victims, as we had agreed in the mulberry garden. I killed widow Desfarges with the stone; the poor woman fell at my feet. Joanon and Dechamps, armed with a knife, threw themselves on the widow Gayet and her daughter Pierrette. The widow Gayet, trying to save herself from Joanon, took from the cupboard the hatchet which you have shown me, to use it. Dechamps, seeing this, came to the assistance of Joanon and disarmed the widow Gayet.” The women were then stabbed and ravished. “Dechamps and Joanon washed their hands; they then went with me into the next room, where I took from the wardrobe the two watches which I afterwards came to Lyons to sell. Joanon and Dechamps took the jewellery, which I believe they afterwards shared at Joanon’s house; as for me, I went straight home, as I have already told you.

“*Q*. Well, Joanon, you have heard Chretien; what do you say to these precise details? *A*. Chretien can say what he likes; I am innocent. Oh, Mr. Judge, leave me alone an hour with Chretien—I will clear it all up for you over a bottle of wine; he knows that my family is rich; there is

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"no want of money; my relations must have left some for me at the prison. Pray leave us alone an hour, I want to enlighten justice." Then he said, "Let Chretien say how I was dressed."

"Chretien. ¹ I can't say, I took no notice."

This last question is very remarkable. It looks like a gleam of common-sense and presence of mind in the midst of mad and abject terror; and, the instant that Chretien found himself upon a subject where he might be contradicted, his memory failed. Confrontation is in French procedure a substitute for our cross-examination. The one is as appropriate to the inquisitorial as the other to the litigious theory of criminal procedure. It is obvious that to a student who examines criminals in the spirit of a scientific inquirer, confrontation is likely to be most instructive, but for the purposes of attack and defence it is far less efficient than cross-examination.

At the trial Chretien was brought up first, the other prisoners being removed from the court after answering formal questions as to their age and residence. Chretien repeated, in answer to the President's questions, the story he had already told in prison. ² He maintained, however, that the purse of 1,380f. was not part of the plunder. Joanon was then introduced, and taken through all the circumstances of the case. He contradicted nearly every assertion of every witness, constantly repeating that he was as innocent as a new-born child, at which the audience repeatedly laughed. ³ Judging merely from the report, it would seem that his behaviour throughout, though no doubt consistent with guilt, and to some extent suggestive of it, was also consistent with the bewilderment and terror of a man who had utterly lost his presence of mind and self-command by a long imprisonment, repeated interrogations, and the pressure of

¹ I. 110-112.² I. 39.³ I. 42.

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odium and suspicion. He was treated with the harshness habitual to French judges. ¹ For instance, in his second trial, he said, "I am the victim of two wretches. I swear before God that I am innocent." The President replied, "Don't add blasphemy" (*un outrage*) "to your abominable crimes." ² Dechamps in the same way, though with more calmness and gravity, denied all that was laid to his charge. He could not explain the presence of the hatchet in his well, or of the property in his house. On the night between the fourth and fifth days' trial, Dechamps tried to hang himself in prison. The turnkey found him in bed with a cord round his neck. ³ The advocates then addressed the jury; after which Chretien was again examined. He then said that the whole of his previous statement was false; that he knew nothing of the murder; that he had made up his circumstantial account of it from what he saw and heard at St. Cyr. He was, however, unable to give any satisfactory, or even intelligible, account of his reasons for confessing, or of his acquaintance with the details of the offence. Upon this the *Procureur-Général* said that, as there was a mystery in the case, he wished for a "supplementary instruction" to clear it up, and requested the court to adjourn the case till the next session. This was accordingly done.

⁴ During the adjournment, each of the prisoners underwent several interrogatories by the President of the *Cour d'Assises*. Chretien at once withdrew his retractation, and repeated the confession which he had originally made, saying that Dechamps had first mentioned the matter to him, that he mentioned it once only, and that he had never had any communication on the subject with Joanon on that, or as it would appear on any other, subject, either before or after

¹ II. 38.² I. 47. For the sake of brevity, I omit the case against the two women.³ I. 12.⁴ II. 71.

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the crime. Dechamps, on his second interrogatory, began to confess. He said that Joanon had suggested the crime to him months before it was executed, that he at the time took no notice of the suggestion; that Chretien mentioned it to him about a fortnight before the crime, and that on the evening when it was committed he came to him again and said that the time was come, and that he had made arrangements with Joanon. Dechamps at first refused, but, Chretien insisting, "in a moment of madness" he agreed to go. They found Joanon in the mulberry garden, entered the house, and committed the crime. ¹ Dechamps murdered the grandmother with a flint-stone, Chretien the girl, and Joanon the mother. A disgusting controversy arose between Chretien and Dechamps on this subject, each wishing to throw upon the other the imputation of having murdered the girl and committed the rape. Dechamps had the advantage in it, as the state of his health rendered it unlikely that he should have been guilty of the most disgusting part of the offence. ² In one of his interrogatories, Chretien admitted that this was so. Dechamps declared that Chretien took the money and Joanon the jewels, that he got nothing except 15*l.* 8*s.*, and that when he asked Chretien to divide the plunder with him the next day, Chretien refused, saying that he might sue him for it if he pleased. Chretien, on the other hand, declared that Joanon took the money. Each declared that the other cut the women's throats with the hatchet.

³ Joanon declared on his interrogatory that he had nothing to do with the murder, but that he was passing on his way to his own house, and that he saw Chretien Dechamps, and a man named Champion, go into the house together. He also said that he heard Champion make suspicious remarks to Dechamps afterwards.

At the trial, which took place on the 10th of July, and the

¹ II. 73.² II. 85.³ II. 75.

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following days, the three prisoners substantially adhered to these statements, though in the course of the proceedings Joanon retracted the charges against Champion, whose innocence, it is said in the *acte d'accusation*, was established by a satisfactory *alibi*. Little was added to the case by the numerous witnesses who were examined. Most of them repeated the statements they had made before. The three prisoners were condemned to death, and executed in accordance with their sentence.

There can be no doubt as to the guilt of Chretien and Dechamps, though it must be admitted that under our system they would probably have escaped. The only evidence against them was the possession of part of the property, and the discovery of the hatchet in Dechamps's well. The property, however, might have been stolen after the murder, and, as the hatchet was seen at the house of the Gayets after the crime was committed, the fact that Dechamps stole and concealed it, even if proved, would have been no more than ground for suspicion. No stronger case in favour of interrogating a suspected person can be put than one in which he is proved to be in possession of the goods stolen from a murdered man. So far as they were concerned, there can be no doubt that the result was creditable to French procedure; but with regard to Joanon it was very different. Not only was there nothing against him which an English judge would have left to a jury, but it is surely very doubtful whether he was guilty. To the assertions of such wretches as Chretien and Dechamps, no one who knows what a murderer is would pay the faintest attention. The passion for lying which great criminals display is a strange, though a distorted and inverted, testimony to the virtue of truth. It is difficult to assign any logical connection between lying and murder; but a murderer is always a liar. His very confession almost always contains lies, and he gener-

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ally goes to the gallows with his mouth full of cant and hypocrisy.

Putting aside their evidence, there was really nothing against Joanon, except the expression which he incautiously used to the *garde champêtre*, and his statement about Champion. It would be dangerous to rely upon either of these pieces of evidence. The remark to the *garde champêtre* may have meant anything or nothing. The statement about Champion may have been, and probably was, a mere lie, invented under some foolish notion of saving himself. There are, moreover, considerable improbabilities in the stories of Chretien and Dechamps. ¹ There was nothing to show that Joanon even knew Chretien, and as to Dechamps, the only connection between them stated in the *acte d'accusation* was that in the summer of 1859, some months before the crime, Joanon had threshed corn for him and his father. It was added, however, and this was described as "a fact of the highest importance, "throwing great light on the relations of the two prisoners," that Joanon carried on an adulterous intercourse with Dechamps's wife. It is remarkable that Dechamps and Chretien contradicted each other in their confessions. Each said that the other suggested the crime to him as from Joanon. It seems barely credible that he should have sent a message either to or by a man whom he did not know, by or to a man almost equally unknown, on whose honour he had inflicted a deadly injury, to come to help him to commit a murder from which both of them were to receive advantage, whilst he was to receive none. The motives imputed to him were vengeance and lust. As to the first, he must have waited a long time for his vengeance, for the refusal to marry him had taken place some years before, and he had remained in the woman's service for some time afterwards. It seems, too, that he had got over his disappointment, such as it was. In his inter-

¹ I. 25.

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rogatory on the adjourned trial, the President charged him with various acts of immorality, and then said, "You were "making offers to three young girls at once—Vignat, Benson, "and Tardy. A. There is no harm in making offers of "marriage." He admitted immoral conduct with other women. All this is opposed to the notion that he could have cared much for the widow Gayet's refusal, or have entertained that sort of passion for her which would be likely to produce the crime with which he was charged. Besides, if lust were his motive, it is hardly conceivable that he should beforehand associate others with him in the offence. There is an unnatural and hardly conceivable complication of wickedness and folly, which requires strong proof, in the notion of a man's inducing two others to help him in committing a triple murder, in order that he might have the opportunity of committing a rape.

It must also be remarked that there is no necessity for supposing that more than two persons were concerned in the crime. Two modes of murder only were employed, stabbing and striking with a stone, and the stabs might all have been inflicted with the same knife. Two of the women, indeed, were struck with the hatchet, but the hatchet belonged to the house, and both Chretien and Dechamps admitted that this was done after the rest of the crime. There were two rapes, and the presence of a man not sharing in such an infamy would, it might be supposed, have been some sort of restraint to anyone who had about him any traces of human nature. On the other hand, Dechamps was one of the criminals, and the state of his health made it improbable that he should commit that part of the crime, and this would, to some extent, point to the inference that a third person was engaged.

When the whole matter is impartially weighed, the inference seems to be that as against Dechamps and Chretien the case was proved conclusively, for the confession in each case was

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If it be asked what motive Chretien could have had in the first instance for adding to his other crimes that of murder by false testimony, the answer is supplied by the speech of his advocate, who pressed the jury to find him guilty with extenuating circumstances. After dwelling on the notion that the lives of Joanon, Dechamps, and Dechamps's father, might be set off against those of the three murdered women ; and on the fact that without Chretien's confession it would have been difficult, if not impossible, to convict the others, he said, " If you are without pity, take care lest some day, under similar circumstances, after a similar crime, after suspicions, arrests, and accusing circumstances, some criminal, shaken at first, but confirmed by reflection in his silence, may say, ' I confess ? ¹ I destroy myself deliberately ? ' Remember Chretien, and what he got by it. No, no confessions." The possibility that such arguments might be used in his favour, and that the jury might listen to them, is enough to account for any lie that a murderer might tell, if such a circumstance as his lying required to be accounted for at all.

¹ II. 103.

1 THE CASE OF FRANÇOIS LESNIER.

THE case of François Lesnier is remarkable as an illustration of the provisions of the French *Code d'Instruction Criminelle* as to inconsistent convictions.

In July, 1848, François Lesnier was convicted, with extenuating circumstances, at Bordeaux, of the murder of Claude Gay, and of arson on his house.

On the 16th of March, 1855, Pierre Lespagne was convicted at Bordeaux of the same murder, and Daignaud and Mme. Lespagne of having given false evidence against Lesnier.

These convictions being considered by the Court of Cassation to be contradictory, were both quashed, and a third trial was directed to take place at Toulouse to re-try each of the prisoners on the acts of accusation already found against them.

At the third trial, the act of accusation against Lesnier on the first trial formed part of the proceedings. It constitutes the only record of the evidence on which he was then convicted. Reports of the second and third trials were published at Bordeaux and Toulouse in 1855. In order to give a full account of the proceedings, which, taken as a whole, were extremely curious, I shall translate verbatim the act of accusation of 1848, and describe so much of the trials of 1855 as appears material.

¹ See the " *Affaire Lesnier*," Bordeaux, 1855. It is in two parts, separately paged.

ACT OF ACCUSATION.

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The *Procureur-Général* of the Court of Appeal of Bordeaux states that the Chamber of Accusation of the Court of Appeal, on an information made before the tribunal of first instance sitting at Libourne, by an order dated May 24, 1848, has sent Jean and François Lesnier, father and son, before the Court of Assize of the Department of the Gironde, there to be judged according to law.

In execution of the order above dated, in virtue of Article 241 of the Code of Criminal Procedure, the undersigned draws up this act of accusation, and declares that the following facts result from a new examination of the documents of procedure:—

Claude Gay, an old man of seventy, lived alone in an isolated house in the *commune* of Fieu, in a place called Petit-Massé. In the night between the 15th and 16th of November last, a fire broke out in this house. Some inhabitants of the *commune* of Fieu, having perceived the flames, hurried to the scene of the accident. The door of the house and the outside shutter of the window of the single room of which the house consisted were open. The fire had already almost entirely destroyed a lean-to, or shed, built against the back of Gay's room.

Drouhau junior, trying to enter the house, struck his foot against something, which turned out to be the corpse, still warm, of Pierre Claude Gay. It lay on the back, its feet turned towards the threshold, the arms hanging by the side of the body. A plate, containing food, was on the thighs, a spoon was near the right hand, and not far from this spoon was another empty plate.

The fire was soon confined and put out by pulling down the shed which was the seat of it.

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The authorities arrived: the facts which they collected proved that Gay had been assassinated, and that, to conceal the traces of the assassination, the criminals had set fire to the house. It was also proved that three or four barrels of wine, which were in the burnt shed, had been previously carried off.

Marks which appeared to have been made by a bloody hand were observed on one of the wooden sides of the bed of Claude Gay. A pruning-knife found in Gay's house had a blood-stain on its extremity.

The head of the deceased rested on a cap (*serre-tête*), also marked with blood.

The doctors—Emery and Soulé—were called to examine the body. They found a wound on the back and side of the head, made by a cutting and striking instrument, and were of opinion that death was caused by it.

Three or four barrels and a tub, which Gay's neighbours knew were in his possession, were not to be seen amongst the ruins of the shed. In the place where the barrels stood no remains of burnt casks were seen, and the ground was dry and firm.

A pine-wood almost touched the house of Gay. The witness Dubreuil, remarked that the broom was laid over a width of about a yard to a point outside the wood, where a pine broken at the root was laid in the same direction as the broom, and where a cart seemed to have been lifted. The marks of this cart could be traced towards the village of Fieu, the ground which borders the public road reaching to the track through the wood. Dubreuil perceived by the form of the foot-marks that the cart had been drawn by cows. These circumstances left no doubt that the barrels had been carried off.

Justice at first did not know who were the guilty persons. It afterwards discovered that the terror which they inspired had for some time put down public clamour. It was only

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in the month of December that Lesnier the father and Lesnier the son, each domiciled in the *commune* of Fieu, and at last pointed out to the investigations of justice, were put under arrest.

On the 21st of September, 1847, Lesnier the son had become the purchaser of the landed property of Claude Gay, for a life annuity of 6*l.* 7*s.* a month (5*s.* 7½*d.* a month, or 3*l.* 7*s.* 6*d.* a year).

He had not treated Claude Gay with as much care and attention as he ought. The old man complained bitterly of his proceedings to all the persons to whom he talked about his position. In the course of October, 1847, he said to Barbaron, "I thought I should be happy in my last days. Lesnier ought to take care of me; but instead of trying to prolong my life he would like to take it away. Ay! these people are not men," he added, speaking of the father and son; "they are tigers."

Another day Gay said to the *curé*, "Lesnier the son lets me want bread, and does not come to see me." Indeed, such was Gay's poverty, that to buy bread he sold M. Laboinière agricultural tools. On this occasion he said, "Young Lesnier is a rogue, a wretch; he would like to know I was dead."

On the 9th and 14th of October, Gay said to Pierre Lacoude that he had to do with thorough blackguards (*canaille à pot et à plat*), and that he should like to go to the hospital.

Young Lesnier had asked Barbaron to go and take down Gay's barrels, adding that Gay had given him half his wine on condition that he should pay the expense of the vintage. Barbaron repeated this to Gay, who answered, "I have never given him my wine; you see he wants everything for himself."

It is not out of place to observe, that, on the 12th of

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September, at Petit-Massé, young Lesnier came to Barbaron and asked him if he should know Gay's barrels again.

The complaints of Claude Gay were but too well justified by the murderous language of Lesnier against the unfortunate old man. A few days after the sale of the 21st of September, he [*on*," probably a misprint for "*il*"] said to Jacques Gautey, that when Gay died he would have a debauch. Jacques Gautey observed that Gay would, perhaps, survive him. ¹ "No," he answered, "he is as good as dead; and besides, M. Lamothe, the doctor, has assured me that he will soon die."

He said also to Jacques Magère, "I bet twenty-five francs that he has not six months to live;" and to Guillaume Drouhau junior, "I bet he will be dead in three months."

Leonard Constant heard Lesnier say these words: "I am going to send Gay to the hospital at Bordeaux; I must beg one of my friends, a student, to give him a strong dose; in fifteen days he will be no more. After his death I will have a house built at Petit-Massé, and there I will keep my school."

Afterwards, Jean Bernard, the cartwright, spoke to him of a plan of Gay's to go to the hospital. "He will not go," said young Lesnier; "I think before long you will have to make him a coffin."

In the beginning of November, Lesnier said to Mme. Lespagne, that Gay was ill, and that in eight days he would be no more.

Eight days afterwards Gay was assassinated. During the night of the 15th-16th, Jacques Gautey, the sexton, hearing a cry of fire, got up. He tried to wake young Lesnier, who, it is said, sleeps very lightly, and struck three hard blows at his door at different intervals. Lesnier got up before answering; but, instead of running to the scene of the accident, he

¹ "Il est mort là où il est."

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waited till several of his neighbours joined him. Jacques Gautey, as sexton, was going to ring the alarm-bell; Lesnier told him he had, perhaps, better wait till the mayor ordered him, adding, however, that he could do as he pleased. The *cure* of Fieu, coming up at the moment, told the sexton to go and ring the alarm-bell.

On the scene of the accident Lesnier took no part in the efforts made to put out the fire. He said to the persons who expressed surprise at his indifference, "What do you want of me? I can do no more." He asked a witness if Gay was dead; and on his replying that he was, observed, "All the better; God has been gracious to him." As he went back to the village, Lesnier was in a state of high spirits, which struck everyone who was with him. He played with two girls, Catherine Robin and Séconde Bireau, and made them laugh.

Marguerite Mothe heard him say, "I saw the first fire, but hearing no one give the alarm I went to bed." He also said that he had executed the deed of the 29th of September with Gay; that he was sure to be accused of having assassinated him. He begged the sexton to go and fetch his father. "I want him," he said, "to guide me."

On the morning after the crime, Lesnier the son returned to Petit-Massé. Whilst the *juge de paix* was making investigations, Pierre Reynaud, who was standing by Lesnier, said, on perceiving blood on the chairs, "I think Gay was assassinated. Look, there is blood!" "It is a trifle," said Lesnier. "We are the only people who have seen it, we must say nothing." The same morning, David Viardon, a *gendarme*, remarked footsteps in a field of Gay's; and seeing at the same moment the steps of Lesnier, he was struck with their identity with the first.

On the 16th, Lesnier senior came to the place of the accident with his servant, Jean Frappier, who pointed out

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a bit of rubbish from the fire. His master said, "Touch nothing, and put your tongue in your pocket."

On the 15th, two witnesses, Guillaume Drouhau and Pierre Reynaud, remarked, at Petit-Massé, spots of blood on the breast of the shirt of Lesnier senior. On the same day Lesnier went to Coutras. On his way, he met Joseph Chenaut, a country agent, to whom he said, "A great misfortune has happened. Gay is dead, and his house is burnt. It seems he must have been into his shed to get wine, set it on fire, and died of fright." As he said this, Joseph Chenaut saw spots of blood on his shirt at the place mentioned.

Jean Frappier declared at first before the judge of instruction that Lesnier, his master, had changed his shirt on his return from Petit-Massé, and before he went to Coutras; but he (Lesnier) had advised him to say so if he was questioned on the subject. Besides, Lesnier himself admitted that he had not changed his linen. We must add this important fact, that the three witnesses agree on the number of the marks of blood, on their place on the shirt, and on their extent.

After the burial of Gay, several persons met at young Lesnier's. Lesnier, the father, and Lesnier, the son, talked together in a low voice near the fire. Two witnesses heard the father say to the son, "The great misfortune is that all was not burnt; the trial would be at an end. You did right in putting the money into Gay's chest. You see, my boy, that all has happened as I told you. I know as much of it as these gentlemen." A moment after old Lesnier went out.

Young Lesnier came to Barbaron, and said, "A man has gone to my father, and said this and that to him, and has invited him, on the strength of his investigations, to summons so-and-so. My father has quieted him. I was

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"unwell yesterday; I am well to-day. Do you know this is a matter which might get my head cut off?"

Lesnier senior and junior tried to misdirect the suspicions of justice by turning them upon an honourable man. They already began to point him out, as they have themselves admitted, by the obscure and lying remarks just mentioned.

After the crime, Lesnier senior asked Magère what he thought of the affair of Gay? He kept silent. "It must," said old Lesnier, "be either the Lesniers themselves or else their enemies who have done the job." Lesnier junior at the same time spoke in the same way to Jacques Santez. "Our enemies," he said, "have assassinated Gay and have burnt his house to compromise us."

Lesnier junior also said to Lamothe, "The rascals who killed him knew that I had granted him an annuity: thinking to destroy me they killed him: but I have just come from Libourne, whither I was summoned. They are on the track of the culprits. Ah, the rogues, they will be found out!" On another occasion young Lesnier pointed out clearly the person whom he wished to submit to the action of the law. He told Guillaume Canbroche and Lagarde that, on the evening of Gay's murder, Lespaigne had brought wine to St. Médard, and that it was supposed that this wine belonged to Gay. It is needless to observe that Lesnier senior and junior alone accused Lespaigne, and that all those whose suspicions they tried to rouse vigorously repelled their imprudent accusations.

Lesnier expressed himself thus on the assassination of Gay, in the presence of Mme. Lespaigne: "Bah! if I had killed a man, I should not care a curse. I belong to the Government [he was Government schoolmaster]. I should be pardoned."

Another time, Lesnier said to Michael Lafon that he could kill a man and be pardoned; that the Government to whom he belonged protected him.

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After his arrest he said to the brigadier (Viardon), that in some days the barrels would be brought back empty to Gay's house.

After Gay's assassination, Lesnier senior and junior appeared preoccupied and troubled before several witnesses.

The evidence which we have described was assuredly very weighty. However, a witness of capital importance, Mme. Lespaigne, with whom young Lesnier publicly held criminal relations, had not at first revealed all that she had learnt. Pressed by the mayor of the *commune* of Fieu, and by several persons, to tell the truth without reserve, she presented herself twice before the judge of instruction, and declared the following facts.

Terror had prevented her from speaking. She was not ignorant that the Lesniers were in prison, but she feared their return. One day, profiting by the absence of her husband, young Lesnier forced her to comply with his criminal wishes. Afterwards he ordered her to poison her husband in these terms:—"You must go to an apothecary, you must buy arsenic, and, to avoid your husband's suspicions, you must first eat your own soup, and then put his into your dish, in which you will have put the poison."

Some time after he compelled her to leave her husband's house. He wished to force her to sue for judicial separation, and to make to him (Lesnier) a donation of all she possessed.

One day he was talking with Mme. Lespaigne of what he intended to do for her. She said, "You are much embarrassed; you have many people to support; you will have a bad bargain of Gay's land." "Ah, the rogue!" said Lesnier, "he won't embarrass me long."

In the beginning of November, Mme. Lespaigne was thinking of the misery which threatened her. Lesnier junior, to reassure her, said, "I will have Gay's house rebuilt, and you

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"shall go and live with my father and mother." "What will you do with Gay?" answered Mme. Lespaigne. "Gay? he won't be alive in eight days. I'll teach him to do without bread. I'll make him turn his eyes as he never turned them yet."

There was a report that Gay was selling his furniture. Mme. Lespaigne told Lesnier of it, who said, "Gay is an old rogue! It appears that he won't go to the hospital. He will see what will happen to him." "Well, what will you do with him?" said Mme. Lespaigne. "I will kill him," said Lesnier in a low voice.

He said another time to this woman, "Gay is an old good-for-nothing rascal. My father told me that if he could not get him out one way he would another."

Mme. Lespaigne said, "What do you want to do with the old man?" "He is not strong," said Lesnier; "a good blow with a hammer will soon lay him on the ground." "The man, then, is very much in your way?" said Mme. Lespaigne. "He will see—he will see," said Lesnier, shaking his head.

Mme. Lespaigne had sold bread to Gay to the value of 43f., which he owed her. Gay agreed, on the 16th of November, to give her his wine in payment. Mme. Lespaigne mentioned this to Lesnier junior, who said to her, "Don't count on the wine to pay yourself; it won't stay long where it is. You can scratch that debt out of your book; you will never have anything." He added, as if to console Mme. Lespaigne, "I will make up half a barrel for you."

In fact, on the 14th of November, at four in the afternoon, Mme. Lespaigne was in front of her father's house. Lesnier junior came along the road, and she asked him where he was going, "I am going to Grave-d'Or, to settle with my father about carrying off Gay's wine." She asked what teamster would carry the wine. "I do not want a teamster. Has not my father a cart and cows?" She observed that it would be

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difficult for him to drive the cart near to Gay's house. He added that he and his father would roll the barrels through Chatard's pine wood, and pointed out to her the road which he would follow with the cart. Young Lesnier had already told the same witness several times that his father and he were to carry the wine to Grave-d'Or.

Next day, towards seven in the evening, Mme. Lespaigne again saw young Lesnier on the footpath which goes to Petit-Massé. Mme. Lespaigne was in front of her father's house, which is by the side of the path. In passing by her Lesnier said, "I am very tired! I am waiting for my father, and he does not come." He then went towards Gay's house.

On the morning of the 16th, at six or seven, this witness went to get water at M. Chatard's well. She had to pass before the house of Lesnier junior; she saw him on the threshold. His arms were crossed, and his face was pale and sad. He had *sabots* on his feet, and they were spotted with blood. In the course of the day, Mme. Lespaigne went to Petit-Massé. Lesnier was there; he wore the same *sabots*, but she no longer saw the marks which she had observed some hours before.

The same day, Lesnier junior told Mme. Lespaigne that he had been the first to see the fire, but that, hearing no noise, he had called no one, but gone into his own house and gone to bed.

The same day, again, Mme. Lespaigne asked young Lesnier why neither he nor his father had approached the corpse. "We had no need," said he, "to approach it; we had knocked it about quite enough."

Three days after the crime, young Lesnier met Mme. Lespaigne near her own house. He seemed anxious. She asked him what was the matter. He said, "I have passed two bad nights, but the last has been better, I was afraid

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She remarked that the inquiry was not over. "That be damned," said he. "Let them do what they like. I don't answer for Gay. Besides, they will find no evidence." The day he came to this woman, who had seen him in a ditch near the church of Fieu, he asked her if she was summoned. "Before you give your evidence I want to speak to you. I cannot speak to you here, for we are seen." (In fact, Pellerin, a mason, was at work on the roof of the *cure's* house.) "No one must hear what I have to say." Having a fowl of his son's, old Lesnier said, "Take that fowl and bring it to my house."

Eight or ten days before his arrest, young Lesnier came to Mme. Lespaigne, and giving her a piece of soft cotton-stuff, said, "You will be summoned; and take care not to mention my name, and speak much of your husband."

Lastly, on another occasion young Lesnier expressed in these terms the hope he had to escape the danger of his trial: "I am now comfortable; I shall get out of it." After some other remarks, Lesnier was, for a moment, silent; then he continued: "Don't repeat my confidences. You would repent of it; you don't know what would happen."

Such, shortly, are the most important points in the crushing evidence of Mme. Lespaigne.

Old and young Lesnier denied all the charges made against them. They pretended, before the authorities, that the assassination of Gay and the burning of his house had been committed by enemies who had resolved to destroy them; that the witnesses who deposed against them were bought, or gave their evidence from malice.

Young Lesnier went so far as to deny his relations with Mme. Lespaigne, in the face of public notoriety. The two prisoners are surrounded by a reputation of malice, which makes them feared in the district where they live. This

TRIALS. reputation is justified by the murderous remarks which they have made of the *cure* of the *commune* of Fieu, of Drouhau and Lespaigne, a landowner,—remarks attested by trustworthy witnesses. Daignaud was stopped at night on a public road by two persons. He fully recognized young Lesnier; he only thought he recognized his father.

After the arrest of the two prisoners, the wife of old Lesnier announced that she received letters from her son and her husband every day; that both were going to return; that they knew the witnesses who were examined against them; and that on their return those witnesses would repent of it.

This terror which old and young Lesnier tried to inspire had obviously no other object than to prevent the manifestation of a truth which must be fatal to them.

In consequence, Lesnier the elder and the younger are accused—

(1) Of having, together and in concert, fraudulently carried off from the place called Petit-Massé, in the *commune* of Fieu, on the 15th of November, 1847, a certain quantity of wine, to the prejudice of Claude Gay.

(2) Of having, during the night between the 15th and 16th of November, wilfully set fire to the house inhabited by and belonging to the said Claude Gay.

(3) Of having, under the same circumstances and at the same place, wilfully put to death the said Claude Gay.

Of having committed this *meurtre* with premeditation—the homicide having preceded, accompanied, or followed the crimes of theft and arson qualified as above.

On which the jury will have to decide whether the prisoners are guilty.

Done at the bar (*parquet*) of the Court of Appeal, the 4th of June, 1848.

The *Procureur-Général*,

(Signed) TROPLONG.

I have translated this document in full, both because it is the only report of the trial of 1848, and in order to give a complete specimen of an act of accusation.

The evidence which it states is of the weakest description possible; for, with exceptions too trifling to mention, it consists entirely of reports of conversations, of which all the important ones rested upon the evidence of single witnesses. Not a single fact was proved in the case which it is possible to represent upon any theory as having formed part either of the preparation for or execution of the crime, or as conduct caused by it and connected with it. The whole case rested, in fact, on the evidence of Mme. Lespagne, who was a woman of notoriously bad character, and who never opened her mouth on the subject till Lesnier was in prison. Daignaud's evidence as to the robbery by the two Lesniers—which, according to English law, would have been irrelevant and inadmissible—is introduced at the end of the act of accusation as a sort of make-weight. The act says nothing of the occasion on which either it or the evidence of Mme. Lespagne was given. The vital importance of these circumstances and the iniquity of suppressing all mention of them, appears from the subsequent proceedings.

Lesnier the father was acquitted; Lesnier the son was convicted, with extenuating circumstances—which are to be found in abundance in the evidence, but nowhere else—and sentenced to the galleys for life. His father, dissatisfied with the conviction, made every effort to obtain new information on the subject, and, in the summer of 1854, he succeeded in doing so. The result of his inquiries was, that Lespagne was accused of the murder and arson; Mme. Lespagne and Daignaud of perjury in relation to the Lesniers. Lespagne was also accused of subornation of perjury. The trial lasted for a long time, and a great mass of evidence was produced, which it is not worth while to state. The chief points in the

evidence are enumerated in the act of accusation, which adds to the statements made in the act of accusation against Lesnier several facts of the utmost importance, and which must have been known to the authorities at the time of the first trial, but which they did not think fit to put forward.

The most important of these points related to the manner in which Mme. Lespagne made her revelations. Her first statement was made on the 20th of December, 1847, the next on the 4th of January, 1848, the next on the 1st of February, the next on the 10th. She had been examined before, and had then said nothing important. On each occasion she brought out a little more than the time before, and reserved for the last the strongest of her statements—that Lesnier had said that he and his father had no occasion to approach the body because they had “knocked it about enough already.” It also was stated that, before the trial of Lesnier, Mme. Lespagne was reconciled to her husband. “She had been driven “by her husband from his home,” says the act. “She returned “after the arrest of young Lesnier. Then began the series “of her lying declarations against the Lesniers. ¹ This coincidence alone is worth a whole demonstration.” This remark is perfectly just, but it might and ought to have been made seven years before. If, instead of being in solitary confinement undergoing interrogatories, Lesnier had had an attorney to prepare his defence, and counsel to cross-examine the witnesses on the other side, the infamy of the woman would have been clearly proved. As soon as the least inquiry was made, it appeared that her story about Lesnier's seducing her by violence was ridiculously false. Various eye-witnesses deposed to acts of the greatest indecency and provocation on her part towards him. She admitted, as soon as she was strictly examined on the subject, that all she had said was false; she said that she had been suborned to say what she said by the

¹ I, 40.

curé of the parish, who was charged by Lesnier with courting his sister, and who made up what she was to say, and taught it her like a lesson, and threatened to refuse her the sacrament if she did not do as he wished. She also said that her husband had confessed his guilt to her. Daignaud admitted that his story about being robbed by the Lesniers was altogether false; and he added that his reason for telling it was that he owed Lespaigne fifteen francs, and that Lespaigne forgave him the debt, in consideration of his evidence.

These retractations appear to have been obtained by collecting a variety of remarks, made partly by Mme. Lespaigne, and partly by other persons, implying that Lesnier was innocent and Lespaigne guilty. A young man, in particular, of the name of Malefille, who lived with Lespaigne at the time of the murder, and died before the second trial, was said to have said that Lespaigne and his brother-in-law, Beaumaine, had committed the crime, that Lespaigne was to take Gay's wine for a debt of 45f., that there was a dispute about one of the barrels, that Gay resisted its removal, and that Lespaigne thereupon struck him a fatal blow on the head with a hammer—an account consistent with the position of the wounds and other circumstances. Lespaigne was seen, with his brother-in-law and another man, taking wine along the road on the day after the murder; and evidence was given of a considerable number of broken hints, and more or less suspicious remarks, by his wife and himself. With regard to Daignaud's evidence, several witnesses proved an *alibi* on behalf of each of the Lesniers.

Lespaigne was arrested and charged with the murder. The case against him rested on the evidence of his wife and Daignaud. His wife was an adulteress, a perjured woman, and had attempted to commit murder by perjury. Daignaud, according to his own account, had agreed to swear away another man's life for 15f. The evidence in itself was

utterly worthless. The way in which the prisoner was dealt with gives an instructive illustration of the practical working of the French criminal procedure. He was arrested, and after a time brought to confess. On his trial he retracted his confession, declaring that it had been obtained from him by violence. This was treated as an impossibility, but the account given by the witnesses is as follows:—"On the "fourth day," said M. Nadal, ¹ Commissary of Police, "Lespaigne was interrogated. The *Procureur-Impérial* informed him of the numerous charges against him. He vigorously "denied for more than an hour that he was guilty. At last "disconcerted by the evidence collected against him, he "asked me to go and find his relations, as he would tell all "before them. I went to his house for the purpose, but I "had hardly gone fifty paces before the brigadier of *gendarmérie* ran after me and said it was no use, as he had "confessed everything." After some further evidence, the *Procureur-Général* asked: "Is it true that the *Procureur-Impérial* threatened Lespaigne with the scaffold? A. Altogether untrue. On the contrary, they always tried to coax "him (*prendre par le douceur*). The ² *Procureur-Impérial* "confined himself to begging Lespaigne to tell the truth, and "confess all if he was guilty; he made him understand that "if he kept silence he exposed himself to having his conduct "judged more severely." Another *gendarme*, Bernadou, was asked, "The accused says that he made these confessions "because he was frightened? ³ A. No one threatened him; "on the contrary, they spoke of his family, and told him that "the only way to obtain some indulgence was to tell the whole "truth." The degree of pressure which is considered legitimate under this system is curiously exemplified by these answers, and by the fact that when Lespaigne retracted his

¹ I. 78.² I. 80.³ I. 124.

confessions, his advocate, the *juge de paix*, his brother-in-law, and the President, all in open court begged Lespagne to confess. He refused to do so, but was convicted, and sentenced to twenty years of the galleys.

The result of this conviction was that a third trial took place, which was a repetition of the second. During the interval fresh efforts were made to obtain a confession from Lespagne. They are thus described by the *juge de paix* who made them:—¹“As *juge de paix*, and on account of “the influence which I thought I ought to exert over the “accused, when I saw that he constantly retracted, during “the hearings of the 12th, 13th, and 14th, the confessions “which he had made at the time of his arrest, I thought it “my duty to visit him in prison, to get him to tell the truth. “M. Princeteau, his advocate, who had preceded me, had in “vain tried to bring him to do so. I found him immovable “myself. Soon after, I told his relations to try new efforts “for this purpose, and I went with them and M. Princeteau “again to the prison. Being then pressed very closely, “he at last said, “Well, yes, you will have it; I shall lose “my head; I am forced to own that I was the involuntary “cause of his death. I pushed him, he fell backwards, and “his head must have struck upon some farming tool or other, “which made his wound.”

The degree of terror and prejudice which is produced by the zeal of *gendarmes* and the other local agents of the central power—that is, by the practical working of the inquisitorial theory of criminal law—is well shown by the fact that all the witnesses who proved the perjury of Daignaud, on being asked why they had not come forward at the first trial, answered, that they were afraid because the guilt of Lesnier was the established theory. ² One man,

¹ 11. 33.² 1. 90.

who proved an *alibi* on behalf of old Lesnier, as to the robbery on Daignaud, was asked, “Why did not you speak “of this in 1848? *A.* I was afraid, because I thought I “should be alone.” Another ¹said, “I was afraid because I “was alone, and everyone said that Lesnier was guilty.” The practical application of the system is described with great point and vigour by the *Procureur-Général*, in his summing up to the jury. His language supplies a better vindication of the practical sagacity of many of the rules and principles of English criminal procedure than the most elaborate arguments on the subject. After describing the way in which Lespagne was connected with the mayor, the *cure*, and the other important personages of the *commune*, he says:—

“You understand now, gentlemen of the jury, what passed “in 1847. Justice pursued its usual routine (*ses errements ordinaires*). It did what it inevitably must do when it “informs itself of a crime. As it has not the gift of “divination, it took its first instructions from the local “authorities, influenced by their impressions, and, circum- “vented and abused by them, it has unhappily allowed “itself to be drawn into their ways of thinking. To its eyes “as theirs, the evidence against Lesnier came to light, the “guilt of Lespagne remained in the shade.

“In this state of affairs, and in this state of feeling, there “suddenly appeared two crushing depositions against Lesnier, “received with a sort of acclamation by the factitious opinion “of the country, and, combined with detestable skill, they “easily surprised the confidence of the judge.”

On his second trial, Lespagne was sentenced to the galleys for life. He made other confessions, which appear more trustworthy than those already mentioned, but, on the whole,

¹ 1. 88.

TRIALS. his guilt was not much more satisfactorily proved than that of Lesnier. It would be tedious to enter minutely into the evidence in this case. Its value lies in the illustration which it affords of the spirit of the inquisitorial system of procedure.

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