THE TUPLIN TRAGEDY.

Trial of William Millman.

MR. HODGSON'S ADDRESS

On Behalf of the Prisoner.

A BRILLIANT EFFORT.

THE COURT ROOM CROWDED.

Intense Interest in the Proceedings.

(Stenographic Report by Mr. Oxenham.)

THURSDAY, Feb. 2.

DURING the delivery of Mr. Hodgson's address in defence of Millman, the court-room was literally packed with spectators, and intense interest and sympathy were aroused by the eloquence of the counsel. At the conclusion of the appeal, the air was rent with the applause of the audience. We have space to-day for only the first section of the address:

MAY IT PLEASE YOUR LORDSHIP AND GENTLEMEN OF THE JURY:—Three days ago I addressed a few words to you in opening the case for the prisoner, but my remarks upon that occasion were short, as I laid a restriction upon myself that I would in no way comment upon the case in its various aspects, but would confine myself to a bare recital of the facts I intended to prove, and that in closing the case I would enter more fully into the whole matter. The time to redeem that promise has now come. The hour of the day for my address proves somewhat inconvenient, as I shall be compelled to divide that address into two portions on account of the recess. I will try, however, to stop at such a portion of it that when I resume in the afternoon I shall be placed at no disadvantage. Here I may say that there is no man to whom this time has come with greater pleasure than the prisoner at the bar. For over six months he has been incarcerated in his cell,

CHARGED WITH THE CRIME OF MURDER,

and now claims an acquittal at your hands. Rumor has been busy with its tongue, and scandal has been busy with many exaggerations in the press, on the street and on the roadside. You, in your present position, will, of course, forget all this, and in the language of the oath you have taken, will try the prisoner, not according to the aspersions sought to be cast upon him, but according to the evidence brought before you, and that alone. In the management of this case I freely admit that the crown law officers have not unduly pressed, by act or statement, against the prisoner at the bar, and the latter has no fault to find with them. Of course we have had our contests, having to cross swords and fight with intellectual rapiers. That must necessarily be the case. But the whole case has been managed without any undue pressure. We have had a fair and impartial trial, and my client looks forward with great confidence to an

ACQUITTAL AT YOUR HANDS.

He comes in here expecting from you that justice to which he is entitled. The law does not permit him to say one word or, by his own evidence, to explain a single matter, or to throw light upon a single point however important to him it may be. He is compelled to remain silent from first to last. He may hear people swearing against him, and making statements which he knows and feels to be false, while he, the most interested person in court, can say nothing. Such is the law, and we must deal with the case as we find it. Nobody else can have any proper conception of the position of the prisoner at the bar except himself,—the man most concerned in the case before the court. I stand between him and you, just as you stand between him and his life and death. When you were sworn in as jurymen, each of you were directed to look upon the prisoner at the bar, and he to look upon each of you. You were then told that you had to

STAND BETWEEN HIM AND HIS LIFE AND DEATH.

So I now stand between him and you. On my efforts depend the illustration of all the facts and circumstances bearing upon the case against the prisoner, and any forgetfulness on my part may bring disastrous consequences to him. No man, except one in the position of my client, knows what it is to be compelled to be continually in the custody of the officers of the law. He can do nothing and say nothing, except in their presence. Great as is the responsibility which rests upon me, what is it when compared with that which rests upon you as jurymen? God has given to each of us life, and He has the power to take it away. Civilized society has, in the present case, committed to you this prerogative of the Almighty to take away human life—the prisoner's life has been placed in your hands. You have the power to say the word which, being interpreted, means that this man shall die. You have been sworn in the most solemn manner to do him justice, and you have been precluded from any communication with others which may influence you in any direction. It is expected that you shall bring to bear upon this case all the prudence and judgment you possess in coming to a decision as to whether this man shall live or die. I know that you will feel this great responsibility. In nine cases out of ten any injury done to another person can be rectified; but if you make a mistake in dealing with the prisoner at the bar, your mistake is *irrevocable*, for you cannot go to his grave and recall him to life—you cannot place him once more in his mother's arms. Your work will have been done, and that forever. There will, in such a case, be no hope that the

BROKEN HEARTS OF HIS PARENTS AND BROTHERS AND SISTERS

can be healed or made whole. Great is the power which has been committed to you. But when the silver cord is loosed and the golden bowl is broken they never can be mended again. By the Gospel of God which was pressed in your hands, and which was pressed to your lips, you swore to declare your verdict "according to the evidence"; and upon that oath of yours I rest with great confidence, believing, as I do, that it is the strong, bright chain which binds the integrity of man to the Throne of Eternal Justice. I know that in the examination of this case we shall have the most minute examination of all the evidence submitted, and that you will listen to every suggestion, every plea, and every consideration in behalf of the prisoner; and that before being called upon to send forth your fiat, you will take into consideration the liability of man to errors and mistaken conclusions. These few remarks will present to your minds, to a certain extent, the position we occupy in the present case. A few minutes more and my voice will become silent, no more to be heard in behalf of my client. After you have heard the address of the Attorney General, the whole of the responsibility will rest upon your shoulders,—a responsibility from which most men would shrink. I freely admit, what no man of sense will deny, namely,

THAT A VERY FOUL MURDER HAS BEEN COMMITTED,

and that, under the most revolting circumstances; a human life has been taken, and a soul sent to its God with all its sins upon it. I do not seek to cover up any of the enormity of this crime, and I am sure there is nobody in this Court who has not felt deep sympathy with those who have been bereaved, and whose trial has been so heavy and so great. I earnestly hope that nothing I have said, or that I may say, may seem unfeeling or unkind to the father and mother of the girl who is dead. Nothing that has been said or done can prevent me from feeling the deepest sympathy for them, for the great sorrow in which they have been placed. But we must take care that a victim must not be chosen merely because he is found placed under what may be deemed to be suspicious circumstances. We must put aside all personal considerations and coolly and calmly inquire into this matter. We must deal with it just as a surgeon would with a wound or sore, in order to find out all the facts, so far as the prisoner is concerned. We must put aside all sympathy for the family of the prisoner and for the family of the murdered girl, and must not allow anything to come between our vision and the facts placed before us. I must place before you this matter at some length, in order to lay down some principles to which I must invite your consideration. I shall lay before you the line of argument which will lead to one and

ONLY ONE CONCLUSION.

We are here not to ascertain who murdered Mary Tuplin, but to find whether or not the prisoner at the bar did so. Does the evidence produced exclude the possibility of his innocence? When counsel addresses you, perhaps you may think he is only endeavoring to shield his client; but when I lay down any principle of law, I shall take care that I state it correctly, and that it will be by you respected accordingly. To mislead in such a case would be unpardonable on my part. When I speak of any principle of law, I will not use my own words, but will use the cool, calm words of judges sitting on the Bench, with their robes of office upon them. I will place these before you as the guide of your conduct, as the rule by which you must measure this case. I cannot do better than use the words of Mr. Justice Peters, uttered a few days ago, when a case was being tried. The jury were told that as the penalty was a heavy one, they

MUST FEEL QUITE SURE OF THE GUILT OF THE PARTIES,

and that before they could convict on circumstantial evidence, that evidence must be so clear as to leave no reasonable doubt as to the prisoner's guilt. Suspicions, however strong, will not be sufficient to warrant a conviction. There must be no "ifs" and "ands" in the question. That was the language of Lord Denman, one of the most eminent judges in England, now deceased, and is always quoted in trials of this kind. I will now read a quotation from Phillips, on evidence. It is as follows:

"I beg here to dwell, a little more minutely, on the hardship of requiring a prisoner to controvert a train of circumstantial evidence. For, how can a prisoner, altogether innocent of the charge, controvert circumstances, or an account of events, with which he is unacquainted. A man, charged with the commission of a crime, at a period long anterior to the trial, if innocent, and at a distance from the place at the time of its occurrence, can only establish his innocence by one of two methods:—first, by showing a contradiction in the circumstances of the proof itself; or, secondly, by establishing an *alibi*,—that is, by showing that he was at a different place at the time. In regard to the first mode of refuting the charge: if he is ignorant of the facts, if he is unaccustomed to the nature of legal argument, he may not easily confute the chain of circumstances. A premeditated story is always made up so as to bear the appearance of consistency. Men will believe a probable falsehood rather than a singular truth; and, in regard to the proof of an *alibi*, if the prisoner does not happen to recollect the day, or cannot, perhaps, recall to mind where he chanced to be on that day, he is left without a defence. The proof of a negative is always difficult, often impossible."

Now, gentlemen, that explains in language very clear what the principle of the law is in reference to such matters as this. Comparatively speaking, I have not much to say respecting most of the evidence produced in this case. There is a vast amount of it which it is not my intention to dispute. Circumstancial evidence is like a chain, made link by link, all fitted together, and the whole must be strong enough to support the claims of the prosecution. There must be no reasonable doubt about any portion of it. I will now quote from the case of Regina *vs.* White, where it is laid down by Baron Martin that,—

"In a criminal case the jury, in order to convict, ought to be satisfied that by the evidence, affirmatively, as a conviction created in their minds beyond all reasonable doubt that the guilt of the prisoner is established, and, if there is only an impression of probability, they ought to acquit him."

But in the case of Belaney, in which Gurney, B. (one of the ablest and most experienced criminal judges who ever sat in our courts), concluded his elaborate and careful summing up in these terms:

"If you think the case *conclusive*, it your duty to pronounce the prisoner guilty. If you think it has left you in doubt, so that you cannot *safely* convict, you will remember that it is better that many guilty men should escape than that one innocent man should perish. Do not fear to give it to him; for remember, at the worst, a guilty man escapes, and *you* are not guilty of a judicial murder, as you will be if you convict an innocent man wrongly; for you have no excuse for so doing; since the law says that the accused is entitled to the benefit of a doubt. So that, if you convict while there is any rational doubt, you act in defiance of a well-known rule of law, and may commit that foulest of all enormities—a murder under color of law; whereas, if you err in an acquittal, the worst that can be said is, that human justice has miscarried—at least it has not committed a crime. In the one case a murder merely passes, for the present, unpunished; in the other the most horrible of murders is *committed*."

This, it is conceived, is at once the *reason* of the rule, and also its only effective and practical *expression*, and to dispute the practical expression of a rule is practically to destroy it. It is closely connected with another view, for which there is also the sanction of the highest authority—that the quantity of proof or degree of *certainty* ought to be higher in cases of felony, especially in cases of *capital* felonies, than in civil cases. In ancient times all felonies were capital; and the rule applied to all.

It is better that ten guilty men should escape than that one innocent man should suffer. Such was the language of Baron Gurney. It means, when applied to a case of this kind, that you must have the highest possible degree of proof. A case bearing on this point was tried not long ago. It was as follows:—

It is not enough to say that all the facts are consistent with the prisoner's guilt. We must ask if they are all consistent with his innocence? The question is not as to whether you think it possible that Millman committed this crime. That is not sufficient. You must consider whether it is within the bounds of reasonable doubt as to whether the prisoner at the bar did the deed? Looking at the time, as given by the various witnesses, is it within the bounds of reasonable doubt? One man gives the time at which the first shot was fired at one hour, and another man at another hour. When you put these conflicting statements together, and even come to a conclusion upon them, the question arises: is it not consistent with the prisoner's innocence that he has no connection whatever with this crime? Your verdict will be in accordance with your oath. If you

PRONOUNCE HIM GUILTY

it must only be because it is not possible to find him innocent of the crime with which he is charged. It is with such considerations in your minds that you must deal with this case. I shall now read to you some dicta of Judges of England, who have been the sages of the profession of the law. In their words I shall put before you the line of conduct which you must adopt, and the principles upon which you must act in coming to a verdict in this case. What are the strongest and most conclusive evidence that a statement given by a witness is a fact? Would they not be that the man who made that statement is a truthful and reliable man. In such a case you have no doubt whatever that the witness is speaking the truth, and that his evidence is entitled to full credence. In dealing with this case you could only find the prisoner guilty on the best and highest kind of evidence you can find. Even circumstantial evidence must create as great a certainty in your minds as if you knew that the man committed the crime. It must be of such a nature as to lead to a certainty on your part, amounting to the exclusion of all reasonable doubt. There is no degree of certainty on the part of a witness as to the testimony which he gives. He must be convinced in his own mind or his evidence is worthless. I will read to you what a learned author says upon this point:—

"On the other hand, a juror ought not to condemn unless the evidence exclude from his mind all reasonable doubt as to the guilt of the accused, and, as has been well observed, unless he be so convinced by the evidence that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest; and in no case, as it seems, ought the force of circumstantial evidence sufficient to warrant a conviction, to be inferior to that which is derived from the testimony of a single witness, the lowest degree of direct evidence."

Now, gentlemen, you cannot be asked to bring in a verdict of guilty against the prisoner at the bar unless the evidence comes up to the standard which the law requires. It might be that suspicion so broods over a man that in your heart of hearts you thought he had committed a crime. You must divest yourselves of all suspicion in the case now before you. When you take upon yourselves to use the prerogative of Almighty God in reference to this man's life,

YOU MUST BE GOVERNED ENTIRELY BY THE EVIDENCE

brought before you, more especially that portion of it which you know is of an entirely reliable nature. Unless this man in the dock is declared by you to be innocent of the crime laid to his charge, he will be sent to the executioner, his life will be taken from him, and he will be returned to his family a blackened and lifeless corpse. In dealing with this case you must not bring in a verdict against the prisoner unless you have no doubt in your minds that he has committed the crime with which he has been charged. You must not have any doubt as to whether you are mistaken in your verdict. That is the ground you must take,

ALL DOUBT OF THE PRISONER'S GUILT MUST BE REMOVED

before you can bring in a verdict against him. If you have any doubt you must declare him to be innocent. I will now read a quotation from Taylor in reference to this point:—

"But, admitting that the facts sworn to are satisfactorily proved, a further, and a highly difficult duty still remains for the jury to perform. They must decide, not whether these facts are consistent with the prisoner's guilt, but whether they are inconsistent with any rational conclusion; for it is only on this last hypothesis that they can safely convict the accused."

It has been said that circumstances never lie. This is an expression used by all Judges on the Bench. This principle will doubtless be forced upon you by the prosecution. Taylor says:—

"Much has been said and written respecting the comparative value of direct and circumstantial evidence; but as the controversy seems to have arisen from a misapprehension of the real nature and object of testimony, and can moreover lead to no practical end, it is not here intended to enter into the lists further than to observe, that one argument urged in favor of circumstantial evidence is palpably erroneous. 'Witnesses may lie, but circumstances cannot,' has been more than once repeated from the bench, and is now almost received as a judicial axiom. Yet certainly no proposition can be more false or dangerous than this. If 'circumstances' mean,—and they can have no other meaning,—those facts which lead to the inference of the fact in issue, they not only can, but constantly do lie; or, in other words, the conclusion deduced from them is often false."

When the viper fastened on St. Paul's hand, the barbarians said: "No doubt this man is a murderer." Nevertheless he was perfectly innocent. There never was a greater fallacy in the world than the statement that circumstances never lie. Circumstances seldom point or lead to suspicions in reference to persons who are entirely innocent, and upon which they are convicted. Upon the authorities just quoted I will lay down this principle: First, that the evidence upon which a verdict of guilty is rendered must be of such a nature as to leave no doubt whatever as to the guilt of the prisoner. Although a man wearing this or that kind of coat may have been seen at a certain time in a certain place, and although Cousins' boat may have crossed the river at six or seven o'clock on the 28th June last, it is quite possible that the person then seen

DID NOT COMMIT THIS FOUL ACT.

I am quite positive of this, that there will be no dispute as to the law that I have laid down on this point. I have read to you from the highest authorities on law, and when His Lordship the Judge lays down the law you will find that it will agree with what I have stated. In opening the case Mr. Peters stated that the crime, if not committed in Queen's County, was committed within a mile on the Prince County side of the County line, and that the statute makes provision that in the latter event a case can be tried in either of the counties. Now, I am not going to say one word on this point, and you need not give yourselves any trouble about it. No doubt His Lordship will show you abundant evidence to show you that the crime was committed within one mile of the line between Queen's and Prince Counties, and that the case can, under the statute, be tried in Queen's County. It is therefore only left to you to find whether or not the facts are consistent with the prisoner's guilt or with his innocence. As the hour for recess has now arrived, I would prefer, if His Lordship pleases, to stop at this stage of my address, and conclude in the afternoon.

Court took recess.