

violence for accounting for her death, if it took place by direct asphyxia. Pressure on the mouth and nose, and a weight on the chest, would bring on direct asphyxia. A weight on the chest alone, if sufficiently great, would cause direct asphyxia. If there had been determination of blood to the head that would increase the operation of the violence in producing direct asphyxia. Convulsions might have taken place before the woman's death. They form usually a part of the train of symptoms in direct asphyxia. I saw no reason to believe that in this case there had been convulsions from natural causes. There was no wound, properly so called, within Smith's private parts. If sexual intercourse had taken place there was nothing to have hindered it from being complete. Assuming connection to have happened, the flow of blood from Smith's genitals would likely have been gradual. It would have required something equally large with a man's private part to have caused the genital appearances. The mark on the man's private part was such as might have been caused by intercourse.

Cross-examined.—I did not find any marks on the lower part of Robb's shirt. There was organic disease of Smith's heart.—Such disease would have predisposed the party to sudden death. The heart was morbidly thickened on one side and morbidly thinned on the other. The brain was unusually firm, but I do not say that it was morbidly firm.

Re-interrogated.—The appearances of the heart in Smith's case were scarcely such in themselves as to show that the disease had been fatal. This state of the heart would have made any violent attack on her the more dangerous. Agitation would have been bad for her. The abrasions on Robb's face would have readily been caused by a person's nails.

James Jamieson, physician in Aberdeen, examined.—I inspected the body of Mary Smith along with Drs. Ogston and Davidson (see report.) From the appearance of the private parts penetration was apparent from some body about the size of a man's private part. I did not see any appearance that the woman had died from natural convulsions. The fluid in the belly afforded a slight corroboration of the other appearances. A weight on the chest or belly might have produced asphyxia. The fluid in the chest and belly was merely an accompaniment of asphyxia. A hand on the woman's mouth, and the weight of the body of a man on her chest, would have accelerated asphyxia rather than any one of these singly.

Cross-examined.—The countenance of the woman was natural. Even if a struggle had taken place we might have found her features placid. There was nothing in her countenance which was inconsistent with death by violence. I consider Beck's opinion sound. Death by strangulation is caused by asphyxia.

Re-interrogated.—Smith had been dead about thirty hours when I saw her. If her features had been distorted at death they would have remained distorted. I think she had died from violence.—There had been a struggle previous to her death.

As reporters were excluded from the court during the trial, I have no means of giving, without injustice, even the shortest outline of the able pleadings of the advocate depute (E. F. Maitland, Esq.) on the crown side, and of the counsel for the prisoner (C. F. Shand, Esq.) on the other, or of the summing up by the eminent judge (Lord Cockburn) who tried the case. Suffice it to say that both the public prosecutor and the bench considered that Smith had died from suffocation, as set forth in the indictment.

The jury, after consultation, returned a verdict of Guilty against Robb on both counts, as libelled; coupled, however, with a recommendation to mercy, "as they did not think that he had any intention of committing the crime of murder."

REMARKS.—Such is a pretty full outline of the whole history of this important trial, presenting, as it does, not only circumstances of unusual atrocity, but also several points of peculiar interest to the medical profession; to a few of which I would here take leave to advert.

As to the first charge against the culprit, or the crime of rape, little need be said. The proof of this offence in Scotland has of late been very much simplified, it being only required to constitute it, that there has been "penetration," to however small an extent, even in adult females. Such was the legal decision laid down in

very distinct terms in the Court by Lord Cockburn, on the day previous to Robb's trial on the occasion of a rape case then before him. In regard to the position of the medical witness in such an instance as the one we are considering, where "the female is found dead," and he "is required to determine whether her person has or has not been violated before death," there is little or no room for difference of opinion. "He can seldom do more," says Dr. Taylor, "than express a conjectural opinion from the discovery of marks of violence on the person, and about the genital organs.—Even," he adds, "if spermatozoa were detected in the liquid of the vagina, this would merely prove that there had been intercourse; whether violent or not must depend on circumstantial evidence." (Op. cit. 642.)

In the case before us the evidence was wanting which the discovery of spermatic matter sometimes affords, as well as other proofs frequently available on occasions of forcible violation; such as seminal and blood stains on the linen of one or both of the parties, and marks of blows on the breasts or limbs of the female. Yet, notwithstanding this, the person of this woman presented indications of a forced connection before death sufficient to meet the requirements of the law of this country. The position was precisely such as the body would have retained had complete insensibility come on while a male was in the act of making entry within her body. The abrasion of the fourchette, the bruising of the caruncle myrtiformes, and the flow of blood from the vulva, were all such occurrences as would have followed the entrance to at least a certain extent of some such body as the male penis within the vagina. In addition to this we have the scratches on Robb's face, and these all on the left side of it, where they would most likely have been, if produced by a woman's nails in her resistance to violence of this sort; and also such an abrasion on the inside of his prepuce, as would have been readily caused in his attempting to effect an unwilling connection. All these circumstances, together, certainly point to a forced sexual intercourse, as the explanation which would naturally present itself to most minds on considering their direct bearing; and though not in themselves absolutely demonstrative of such an occurrence, or otherwise inexplicable, they are perhaps to be regarded as being as strongly corroborative of the weighty proof from other circumstantial evidence laid before the jury in this instance, as any that could have been expected to be furnished from purely medical sources.

Taking leave, therefore, of the first charge as being clearly proven, the second charge, or that of murder, appears to me to demand a fuller consideration. The point which on medical grounds seems to me to be *not unassailable*, regards the conclusion come to by the bench and the public prosecutor, as to the *immediate cause* of the woman's death. Assuming, as they were fully entitled to do from the evidence before them, that she had died under circumstances of violence, it is not by any means so clear that her death was undoubtedly caused by suffocation.\* Even now that the whole of the circumstances of the case are before us, we are still met with the same difficulties which the inspection of the body set in array against the formation of *an unqualified and perfectly satisfactory opinion* on the subject in discussion.—It still appears to me to be a question open to consideration whether the asphyxia which was indicated by the appearances in the body had in this particular instance been *direct* or *indirect*, primary or secondary; *i. e.* whether the conclusion justified by the premises is, that the victim of Robb perished from violent and direct interference with her breathing, or that her struggles had induced such a comatose state of the brain from inter-cranial congestion as to have produced indirect arrest of the respiration.—Neither of these suppositions is, it is conceived, inconsistent with the facts of the case considered either morally or medically, nor does there appear to be such a preponderance of evidence in favor of the one as to negative the possibility of the other, or to authorize an unqualified decision in either direction.

\* In the remarks which follow it is not intended to interfere with the legal merits of the decision of the Court or Jury, while it is as little intended to argue that they were not entitled to act on the more probable opinion in regard to the cause of death.—The question is meant to be taken up and argued merely as a *medical one*, on which a hasty and dogmatic opinion is calculated to lead to injurious consequences on medico-legal science.