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THE TOPPING TRAGEDY AND JURISPRUDENCE.

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A farmer by the name of Topping, living in the County of Oxford, murdered his wife and four children with an axe, on the 21st of last December. He endeavoured to murder a fifth one, but was prevented by two elder sons, who disarmed the father. At the same time, and immediately after the murder, he attempted to commit suicide by cutting his throat with an axe. The murder was committed in the early morn when all were asleep, and so stealthily, that, with the exception of an exclamation from the mother, the sons heard no unusual sounds, although they slept in the loft of a small log house, in which all resided. The father had been a school teacher in early life. Had been an auctioneer, and township assessor for a number of years. He got somewhat embarrassed in financial circumstances, but had a great deal more property than would pay all liabilities. He became desponding and seemed to take a gloomy view of his worldly position, but never, before this time, showed any disposition towards murder or suicide. Although all his lifetime somewhat eccentric and lax in his religious views, yet, in all business matters, he showed the usual caution, care and shrewdness. Immediately after the murder he became as usual, and remains so still. He was always kind to his wife and children, and states positively that he intended to spare the two oldest boys, as they were old enough to take care of themselves. He was tried and a verdict given of "wilful murder, with a recommendation to mercy." The question arises, was he sane or not? The subject seemed to perplex Judge Wilson, and although the lawyers

were expected to give *ex parte* advice to the jury, yet, they seemed "at sea" in the matter. It will, therefore, be seen that the Topping murder has an interest in it besides the tragic nature its of horrible details. The verdict now being given, it is instructive to look at its consequence to jurisprudence, if the arguments *pro* and *con* are to be taken as precedents. In the first place the verdict was a peculiar one. In "wilful murder" we mean murder *wilfully* committed by a *sane* man. It includes malice aforethought in a superlative degree, and cannot in its nature have extenuating or palliating circumstances, seeing that includes moral responsibility. The verdict was "wilful murder, with a recommendation to mercy." The question might naturally be asked, if mercy is to be extended to "wilful murder" under such circumstances, what cases can be adduced sufficiently vicious which should have no such recommendation? The jury supposed Topping sane else no such verdict of wilfulness could be rationally given. If so, a merciful consideration under the circumstances, (if hanging is not a by-play,) implies a contradiction of terms in the jurors' minds, which surely ought to have brought forth a verdict of acquittal on the ground of insanity. In other words, were he sane, execution must surely follow (except through executive clemency.) Were he insane, so far as to make him irresponsible, then was the verdict unjust in every word. There were no palliating circumstances for the criminal, if in his right mind. There could be no condemnation and no appeal to clemency if he wot not what he did. Under either aspect the verdict was peculiar, and seemed to be a mixing up of a supposition of *non compos mentis* and of a positive assurance of murderous guilt, with extenuating circumstances. One important fact seems to have been forgotten by both the judge and counsel in addressing the jury: there are certain kinds of insanity which include moral guilt. Eccentricity is a low form of insanity, and often allied with genius, but its possession cannot shield the guilty. Paroxysms of rage lead to murder, and such an ungovernable temper may be hereditary; yet the mad-actor is held accountable. Fits of despondency may lead to suicide, or murder. These can be shaken off by weak minds. Is every desponding man crazy? Can he do of his own good or bad pleasure and