



WOULD YOU CONVICT ON CIRCUMSTANTIAL EVIDENCE?

RED HANDED

A TRUE STORY

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ABRAHAM GUTTER, one of the best known lawyers in New York, says: "The human being should be convicted on circumstantial evidence alone. Human nature and passions as well as human loves enter the witness box. Besides that there are fallacies yet up jobs. Circumstantial evidence is akin to metaphysical discussions of right and wrong, religious tendencies and all speculative things.

"During thirty years I have known many famous men to be accused by circumstantial evidence. Recently I was in Albany and wrote out a check with a New York head. I suppose years hence it would be very difficult to show that I was not in New York on that day.

"It might be many things done daily, in secret to themselves, which to some speculative and imaginative jurymen would be positive proof of crime.

"It is better that ninety-nine guilty men should escape than that one innocent man should suffer. This is old rock bottom motto and law. It is better for justice and truth that no human being should be found guilty of crime on circumstantial evidence, no matter how seemingly honorable the source of it."

DISCUSSION ranged high and the group about the bar of the little roadside hotel became more animated under the lash of partisan feeling. Affairs in the county had grown into a sharp local issue and there was talk of a kind that would have served for matters of much greater moment.

Several times the landlord had protested at the extravagance of the disputants and finally he thought it wise to refuse further refreshment until the present tone of conversation had been lowered. In this he was taking a bold step, for those he entertained were persons of consequence, wealthy farmers, country politicians and residents of the nearby village. His attempt to check the voracious turbulence was effective except with two of the men, who continued their interchange of invectives with violent gestures and heated language.

One of these was John Wickliffe, owner of a large property in the neighborhood, leader of one faction in the township, unpopular with the prosperous element and a bitter foe of the vicelike nature and political power of Harry Blake. He carried some forty-five years with vigor and his frame was wiry and knobby with muscles. His face was clean shaven, and as he talked, his teeth gleamed like a shark's.

Harry Blake, who confronted Wickliffe with flushed face and hostile eye, was the son of a wealthy storekeeper and landowner of the village. He was just in from a hunting trip. A handsome, well proportioned young fellow, generous, frank, quick tempered and fond of good company, he had followed his father into political affairs on a small scale and recently had given promise of ability in this line. His interests were opposed to those of Wickliffe, and he was just in from a hunting trip. A handsome, well proportioned young fellow, generous, frank, quick tempered and fond of good company, he had followed his father into political affairs on a small scale and recently had given promise of ability in this line. His interests were opposed to those of Wickliffe, and he was just in from a hunting trip.

Grayson, a magistrate, watched the two uneasily for some minutes after the rattling fire of argument had been abandoned by common consent among the rest of the party. Grayson did not like Wickliffe and he was fond of Harry and it was not to his mind to stand by while the young man became involved with one of ill repute and violent ways. He stepped forward finally and took a hand in the dispute.

"See here, Wickliffe, you're not gaining anything by this bickering. That fact alone ought to serve to make you save your breath for another and more promising subject. In addition, I say stop it."

Wickliffe turned on him with his lips lifted. "What's bothering you, old man Grayson? Isn't the boy old enough to hold his side of a fight? If he isn't he'd better keep out of politics. He's old enough to vote, anyway, and he's put on a show of having opinions. And if his opinions don't suit me I'm going to quarrel with them, for all you may say or do."

Grayson held a steady eye upon him throughout the pause that followed these words. The situation became strained and Blake, unwilling to drag another into his own difficulty, cut the thread of tension himself.

The Bitter Quarrel.

"Why, I didn't mean to quarrel," he said, shifting with the readiness that his personality allowed him from lowering brows to smiling countenance. "I'm afraid I got a little too heated about this thing. It really doesn't matter much. I'm sure I'm quite ready to call it quits, although," he added, with a shade of pomposity, "I, of course, am not ready to abandon the position I took in the discussion."

Grayson nodded approval and Blake stepped from Wickliffe's side to the group of watchers. One of them spoke to him as he stood with his back to his late antagonist and conversation in a lighter vein was soon running from one to another.

Wickliffe hung upon the bar by himself where Blake had left him, mumbling and hearing his teeth to snarl purposes. The superior scorn implied in Blake's abandonment of the quarrel and the fact

that he now had no auditor for his bitter remarks, together with what he had drunk, accentuated the naturally evil disposition of the man. With his glass lifted in sudden bravado he made a remark that, coming through the light banter of the group, struck each hearer dumb with indignation. He had passed the unmentionable reproach, the word that means retaliation from any man with as much as a red corpuscle in his veins. Blake had not heard distinctly, but the white faces of his companions told him that Wickliffe had said or done something out of the ordinary.

Several of the men turned to Wickliffe with cries of "Shame! Shame!" Wickliffe glowered back at them defiantly. Blake, sensitive to the pervading sentiment, felt instinctively that some serious insult had been offered to him. He thrust up to Wickliffe and looked into the hideous face fearlessly.

"I don't know what you said, Wickliffe," he remarked, "but if it was anything reflecting on me and you dare repeat it this will be the sorriest day of your life."

The courage of the young fellow and the challenging note in his voice held the elder man silent for a breath. He passed the threat off with a sneer, however, finding his reputation for overbearing contrivance of his own actions attained by such a remark. With a shrug he repeated his previous remark in words not so sharp, but still insulting and clear enough.

Blake, thrusting aside Grayson's friendly and detaining arm, sprang full at Wickliffe, struck him in the face and hurled him to the ground. The aggressor, overcome by his own rush, lost his footing and the two rolled together. Before either of the combatants could renew hostilities after the fall the other members of the group had swarmed upon them and pulled them apart, the landlord beseeching them to check the scandal that had come upon his house. Each fought to wrench loose from the hand laid upon him, but the affray had sobered the company and Grayson, sternly taking command, ordered that Wickliffe be ejected. The suggestion was carried out almost too gently.

Helpless in the face of universal enmity, his face drawn into his ugliest snarl, Wickliffe gave over thought of immediate reprisal. With vicious oaths and words of defiance, which Blake, still struggling at his restraining fingers, returned in good measure, he mounted his horse and rode away.

"You can get a fit for a coffin now," was Wickliffe's final word. "You'll need it after this."

Fifteen minutes had passed before the cautious Grayson, certain that the other had proceeded too far to allow of pursuit, gave Blake permission to go. The young fellow had leaped into hard mounted silence following Wickliffe's departure. Grayson accompanied him down the steps.

Blake Rides Away

"Keep away from him, Harry. That's my advice. He's dangerous, and he has a lot of good for nothing followers. He's too powerful for you to go against and he's too worthless to deserve any decent person's attention. Ignore him and forget what he said. There are some men that it is the part of wisdom to overlook in their nastiness, and this is one of them."

Blake made no reply, seemingly had not heard the kindly meant remarks of Grayson, who was his father's friend. He mounted his horse, cut the animal over the flank with his riding whip and vanished down the road in a cloud of dust. His way led straight to the village. Wickliffe lived on the same highway, but at the other side of the town, some mile or so beyond.

After Blake's departure the company was ill at ease, finding no further interest in discussion or in friendly anecdote. Shortly it began to break up, this and that man riding off singly or holding back until joined by some companion. Grayson went over the incident with Walton, an elderly man and a close friend of his.

"I don't like it, Walton," said the Magistrate. "There never was good feeling between Wickliffe and old Blake, as you know. I believe the fox led the boy on and worked up his own bile until he had the bitterness to pass an insult. There's nothing Wickliffe likes so well as to be on bad terms with as many persons as possible, and Harry Blake would be a welcome recruit to his list of private enemies."

"I have heard there was a row between them before over the Dowell girl," added the other. "Wickliffe was pestering her last year and Harry stopped him one day and told him to quit. I guess her father put in a heap more effective argument, for he let up. But if I know the skunk he's probably been nursing his grudge ever since."

After further comment of the kind Grayson and Walton untethered their horses and started slowly toward the town.

It was late of a summer afternoon. The sun was within half an hour of setting, barring the road with long shadows from the fence rails and titling fields and trees with russet. The highway was empty ahead of them to the next turn, a quarter of a mile away. A pleasant breeze was stirring the foliage and tall grasses. The two men rode in silence, taking quiet note of the colorful stretches of landscape and content to forget the disturbing scene in which they had just taken part.

They had reached the turn when from beyond a small grove of fruit trees that fringed the road to the right came a man's wailing cry of agony, borne past them on the wind. The startled riders drew rein and stared at each other.

"Something wrong here," said Grayson, sharply. "I made out a cry for help. Did you hear a name?"

"No."

"I did, and it was Harry. Do you suppose that boy—"

He had set his horse at the fence and driven home the spurs and the next moment his sentence was lost as he animal took the jump. Walton was after him instantly and together they rode around the edge of the little orchard. As they circled the copse they were confronted by a wild growth of bushes, the tops of which partly screened a slight slope rising beyond. Through the film of the natural curtain, however, they could see the open amphitheatre of field.

Not twenty yards from them a man lay outstretched upon the grass and motionless. Over him, with his hand still grasping a knife planted in the victim's breast, was a younger and a slighter one. The riders had burst through the hedge and were upon this scene before the second of the two figures was aware of their approach. He started up, bringing the knife with him, his hand and the weapon dripping. It was Harry Blake.

"Harry, Harry, what have you done? Don't strike again for God's sake!"

He Denies the Murder.

Grayson leaped from his horse and thrust Blake back. The man on the ground was John Wickliffe, stiffening in death. The magistrate bent over him, thrusting a hand under his coat, but even as he perceived

that the fact that no arms had been found on the body of Wickliffe, not even a knife. It seemed likely that Blake had delayed his journey and waited for Blake along the road, but the natural supposition was that his intention in this had been only to renew the quarrel with words and threats, or, at most, to submit their differences to an encounter with fists. This would account for the fact the two men had left the road as they would have done if in search of a spot where they might be free from interruption. The theory was that Blake, finding his enemy without adequate means of defence, had taken advantage of his helplessness to kill him. But the haste with which he left the inn, the impatience to follow Wickliffe and the raw welt of insult from which he suffered all pointed to a determination to murder at the first opportunity.

At his trial Blake told a story of having heard a cry while riding along the road and of riding behind the orchard to find Wickliffe on the ground with the knife in the wound. He had not started out with the intention of overtaking Wickliffe, he said. He declared that he did not see any one near Wickliffe or in the vicinity until Grayson and Walton rode up. As to the knife, he could not attempt to explain the loss of his own, but counsel for the defence took the position that the one found in his hand was not the one he had carried. Attempts to shake the identification, however, were unavailing, and no other knife was produced. In fact, the case was so free from doubt as to place little responsibility upon the jury. There was but one possible view of the circumstances. The testimony of Grayson and Walton amounted to direct evidence, so strong was it; no single fact was incompatible with guilt, nor was any other construction than guilt possible when all facts were taken together. The prosecutor cleverly worked out his theory of a premeditated crime, and as no claim of self-defence or sudden anger was advanced the verdict of guilty in the first degree was returned.

Blake's imprisonment affected him mentally and physically and his execution hastened an end that apparently was inevitable within a few months.

The judge who had presided at the trial of Blake received a communication from the county jail one day about a year after the execution of the young man. He was requested to visit a murderer then resting under sentence of death who, according to the message from the head jailer, had matters of importance to confess. The judge, albeit sceptical concerning the information imparted by condemned criminals, consented to visit the man within an hour. When he arrived he found Grayson and Walton, to whom similar messages had been despatched that morning. There was as yet no inkling of the case which the murderer, Deemes, wished to throw light upon.

The three were conducted to the death cell. The prisoner rose to meet them. He was a tall man, with hollow cheeks and sharp, narrow eyes.

"You are the judge who passed sentence on Harry Blake for the murder of Wickliffe?" he asked.

The judge nodded.

"And you gentlemen were the two important witnesses against him?"

Grayson and Walton signified their assent.

Why He Killed Wickliffe.

"Then you sent an innocent man to his death, and you others were the means of so sending him," said Deemes. "I killed Wickliffe. I know perfectly well that you think this is another case of a criminal seeking to take the crimes of another on himself, a familiar peculiarity, you will say. But this is the truth.

"I was one of Wickliffe's right hand men some years ago. It does not matter how I came to be, but I did his dirty work for him, as you can find out if you take the trouble to investigate. I'm not trying to make a grand stand play, but I've been used to better things and finally we quarrelled. I left him. He wasn't willing to let it drop there. One of the ways of that slimy snake was to keep his grudges in storage and find a means of settling them sooner or later. He followed me out of the county to Albany, where I was trying to be decent, and took me off the only straight job I'd had for years and told me there wasn't a place in the State he couldn't find me. He was afraid of me because I knew too much about him and he was trying to get me out of his territory."

"I told him all I wanted was to be let alone, but he wouldn't. So I came down here to even up with him. I let him think my game was to blackmail him first, and perhaps I should have for a while. I was coming along the road that day and met him riding. He wanted to pass, but I told him I was through with letting him take the upper hand and that he'd find it to his advantage to have a talk with me. So he rode off behind the orchard and dismounted and we started to talk."

"He got mad, the way he always did when he was crossed, and words led to blows. He struck me in the face and when we grappled my hand fell on a knife stuck in his belt. I stabbed him with it and left him dying. I rode away on his horse just as young Blake was coming through the orchard in answer to his cries."

"I kept in hiding till it was all over, but I followed the case. You two witnesses came up just after Blake and saw him stooping over Wickliffe. He probably was just as glad the man was dead as I was, but he had nothing to do with it."

Grayson, pale with horror at these revelations, still clung to a final chance that the prisoner's statement was untrue.

"But the knife?" he gasped. "It was Harry's own knife."

"I know," nodded Deemes, with a sneer. "You never thought of that scuffle they had, did you? It's perfectly plain. All the gentlemen who were at the inn that afternoon testified to a fight between Wickliffe and Blake. But nobody stopped to think that Wickliffe might have pulled Blake's knife out of his sheath in the mixup, or that it might have fallen promptly, though you would have known it, for Wickliffe would have tried to kill Blake on the spot. If I knew anything of the temper of the man—"

A careful investigation of this confession showed it to be true in all parts that could be tested. A re-examination of the members of the party at the inn showed that Deemes' suggestion concerning the knife probably was correct. Several of them recalled that Wickliffe, when dragged aside, had held one arm stiffly at his side, with the hand doubled under the cuff.

Blake's delay along the road to account for the fact that Grayson and Walton had nearly caught up with him when he heard Wickliffe's first cry remained the only unexplained point. This was cleared up by the related testimony of a farmer boy, who said he had seen Wickliffe ride behind the orchard with a man on foot and later had seen Blake stop and pick some apples from an overhanging branch.

Blake's horse, covered with dust and lather, had returned to its owner's stable the next morning. Two pistols, still charged, were found in the holsters.

Easy to Convict.

The prosecutor found the only question in the degree of murder involved, and felt assured that he could establish a premeditated crime. This view was borne

out by the fact that no arms had been found on the body of Wickliffe, not even a knife. It seemed likely that Blake had delayed his journey and waited for Blake along the road, but the natural supposition was that his intention in this had been only to renew the quarrel with words and threats, or, at most, to submit their differences to an encounter with fists. This would account for the fact the two men had left the road as they would have done if in search of a spot where they might be free from interruption. The theory was that Blake, finding his enemy without adequate means of defence, had taken advantage of his helplessness to kill him. But the haste with which he left the inn, the impatience to follow Wickliffe and the raw welt of insult from which he suffered all pointed to a determination to murder at the first opportunity.

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"Wait," he added a moment later, with some bitterness. "If I can't rely on your friendship I shall have to begin contriving my defence in spite of you, I suppose. Do you mind helping me to search the vicinity for the man who did this thing?"

Grayson looked at him in surprise.

"For what man? Are you going to try to deny this thing in spite of what I have told you?"

"Do you think I am going to accept it meekly," the young fellow flared back at him. "You won't aid me and you're the very one I would have looked to for aid. In that case I'll have to do what I can without it. Wickliffe was too much everybody's enemy to make such a fuss about, it seems to me, but if you're on his side now he's dead why all right, that's your lookout."

Walton, who had listened to the dialogue without comment, but had been observing Blake closely, interrupted at this point. He had hunted among the grass where the knife had been tossed and he now held the

knife in his hand. "That's your lookout," he said, holding it up. "That's your lookout."

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