

POOR DOCUMENT M C 2 0 3 4

ST. JOHN, N. D.



WOULD YOU CONVICT ON CIRCUMSTANTIAL EVIDENCE? A SCAFFOLD CONFESSION A TRUE STORY

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JOEL ADAMS, formerly District Attorney of New Orleans, and one of the most successful criminal lawyers in the South, says:

"If the circumstantial proof be of such character as to fulfill the requirements of the law of evidence then I would unhesitatingly and unequivocally recommend it."

"It must be remembered that this species of testimony is not admitted out of consideration of policy or necessity."

"On the contrary, there is scarcely any cause imaginable triable in a court of justice the determination of which is not more or less dependent upon circumstances. It is a class of proof universally recognized as being capable of bringing to the mind the most absolute sense of certainty."

"It reckons with the human frailty and human fallibility for the precept that it is better that ten guilty men should escape than that one innocent man should suffer, and finds expression in the cardinal rule that 'to justify the inference of legal guilt from circumstantial evidence the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.'"

"See what is essential—"

"First—The circumstances from which the conclusion is drawn must be fully established."

"Second—All the facts must be consistent with the hypothesis of guilt."

"Third—The circumstances must be of a conclusive nature and tendency."

"Fourth—The circumstances must to a moral certainty actually exclude every hypothesis except the one proposed to be proved."

"With these safeguards an unlawful conviction seems practically impossible."

"During an active and extensive practice in the criminal courts of New Orleans, covering thirty years, I have never known or heard of a case in which it was even suspected that an innocent defendant had been convicted on circumstantial evidence."

"This species of proof lessens the danger of reaching an erroneous conclusion either from the honest mistake or the wilful falsification of a witness. It multiplies the number of the facts to be proven and of witnesses by whom they are to be established. It lessens the danger of fabrication by reason of the varying circumstances required to complete the chain. When justly considered and properly applied it furnishes the most satisfactory, reliable and conclusive of all proof dependent upon human testimony."

"I am not of my religion," said James Barwell coldly, "and I forbid you to pay further advances to my daughter. You need not mistake me. I left England and took up my residence here in Gibraltar years ago to escape the dominant faith of my country. Since then I have avoided all personal contact with those who believe as you do, and it is not likely I should give my daughter to one of them. Elsie is to make her choice of a husband only as I approve."

"To spare myself and sorrow," answered the young man, whose hand did not relinquish that of the striking handsome girl beside him, "Elsie has been brought up among the persons who are eligible according to your views and she cares nothing for any of them. She loves me as I do her, and you have no right to come between us in a matter vital to both of us."

Barwell flushed. He was not a man used to being thwarted. One of the most important and prosperous merchants of the place, he had ever been able to name his own prejudices and eccentricities as he saw fit.

"Stand aside from my daughter, William Katt, if that is your name," he answered sharply. "Who are you to judge of what I have a right to do? I say you shall not have her. Nor shall you even see her again. Now leave before I call the servants."

The girl, whose part in the situation had changed from that of a timid, modest listener to that of an angry, determined supporter of her lover, stepped forward and confronted her father boldly.

A warmer blood of the South flowed in her, an inheritance, with her black hair, dark eyes and full figure, from the Spanish gentleman who had been James Barwell's wife. For three years she had been the accepted beauty of the town, and many had been the admirers to seek her favor. Her father's care, his forbidding manner and a certain degree of reserve which she had from him had brought her scathless and heart whole through to her nineteenth year, and it was an ardent first affection which she had returned to that of William Katt. The difficulties in the way of their meetings had led the young couple to decide upon an appeal to Barwell, although they had known each other scarce two weeks.

If the quiet, stern merchant was not accustomed to have his opinions in anything turned aside, she was the less so in having her fancy checked. Since the early death of her mother she had ruled in all affairs with one significant exception, of which, however, she had never been conscious. In matters of religion Barwell was little short of a fanatic. The relations of father and daughter had been smooth because if he had never crossed her in her small desires she had never failed to yield the observance to religion that he demanded. This, then, was the first question upon which they had differed. Her wishes ran directly against his strongest views, both were firm willed and the issue was squarely joined.

Perhaps I may be allowed to put in a word as to the disposition to be made of me," she said, with flashing eye. "You have brought me up in your faith, father, and I have no thought of wavering from it. But my happiness demands that I marry William Katt. You have never taught me to play double, and I would rather come to you with this than deceive you. We intend to do as we please, with or without your consent."

Irritated as he had been by the straightforward antagonism of the young man, Barwell lost control of himself at the first actual opposition he had ever encountered in his daughter.

Nettled by Opposition.

"What now?" he cried. "You are with him to that point, are you? He has led you to outface your father, to forget your plainest duties, has he? Is this your piety?"

"In nothing else, have I set myself contrary to your slightest wish," replied the young woman with composure. "But I must object when you seek to interfere in something which concerns only me and

count of the heavy door, but it did seem as if some one, and a woman at that, was being beaten. It lasted maybe five minutes, and the noise getting fainter. Then it stopped and we heard nothing more."

Outside the Cage.

"We wanted to find out about it at the house, but nobody seemed to be at home, and we thought it wasn't any of our business anyway. That was before we heard about the quarrel they'd had—I mean old Barwell and the girl. But she hasn't been seen since, and we thought, like, that we'd better tell what we knew."

The news brought by these informants was considered and inquiries were made in the neighborhood. The statements of the two men were corroborated by others who had been of the group outside the cage that afternoon. While Barwell was not one to whom official attention would be freely attracted by him as to a crime, it was felt that the affair was too serious to be passed over. Barwell had reported

points, confident that the body, even if weighted, would be washed ashore by the action of the tides. About two weeks had passed in this way without visible effect upon Barwell, who had sunk into a condition of stupefied indifference, occasionally broken by periods of frenzy in which he raved about his faith and his daughter, a party of fishermen along the Spanish coast above La Linea one day came upon a floating body of a woman, much disfigured. It was brought ashore and offered for identification.

Although the features were no longer recognizable, there was no difficulty in obtaining witnesses who were willing to swear positively that the body was that of Elsie Barwell. It was the proper height, the hair was black and the remnants of clothes were identified as garments worn by Elsie and missing since her disappearance. About the waist of the body were some shredded strands of rope. From this it was supposed that a rope attempt had been made to sink it with stones or other clumsy weights which had worked loose.



"NOW LEAVE BEFORE I CALL THE SERVANTS!"

the man of my choice. I am free to dispose of myself as I choose whether or not your ideas agree with my own. You did not impugn upon me a respect for the Spanish family system. I am not a chattel. I am an Englishwoman."

Barwell turned upon her, raging.

"Does that give you license to cast aside all respect for your father? If I cared to bandy words I might remind you that I have never failed to humor you until this minute and in this most important matter. And here is proper reward for my fond belief in your regard for me. I have lavished every care upon you, counting safely that you would never think to stifle me in what I hold nearest. But enough of argument. You are still my daughter and beneath my roof and I charge you, leave the man instantly and go to your room."

The girl exchanged a glance with Katt and started slowly toward the door. She paused at the threshold and looked defiantly at her father.

"It will do no good," she said. "I have your blood in me and you will see I can be as obstinate. Nothing can keep me from marrying the man I love."

Katt had moved to the street door. He heard one last passionate outburst from Barwell as the merchant followed his daughter.

"And again I say you shall not. I will see you in your grave before I will allow you to marry any one of that religion."

A week later strange rumors were afloat and folks began to look askance at Barwell as he passed in the street, wearing an anxious and preoccupied air. He had never been popular in the community on account of his austerity and severity. It was known that he had been in consultation with the police recently. People called him a crafty old fox, and whispered that he was thus attempting to cover himself from a certain grave suspicion. Feeling against him increased, and one day came two Scotch artisans, neighbors of the wealthy merchant, who desired to lay information before the authorities. They sought an interview with the chief of police.

"It's about Barwell's daughter, Elsie," said the older of the men, in preface. The chief nodded.

"She's been gone eight days now, no word nor sight of her, and there are things should be known. Barwell had trouble with the girl and a young man who's been courting her. About religion, we heard. However, that may be, we can take our oaths on a creepy thing we heard on the second day after the quarrel."

Hamilton's theory was that the body had been left in the cave until after midnight and had then been taken to the sea. He believed it likely that Barwell had put out a short distance in a boat and thrown it over. As to the motive, enough was learned of Barwell's character to establish that he carried religious enthusiasm to extremes. Katt was questioned and described the quarrel in detail, ending with the significant remark from Barwell which had closed it. The young man said that he had not seen Elsie after their attempt to gain her father's consent to their marriage.

Watch for the Body.

Hamilton caused a watch to be kept along the coast and led searching parties to inaccessible points, confident that the body, even if weighted, would be washed ashore by the action of the tides. About two weeks had passed in this way without visible effect upon Barwell, who had sunk into a condition of stupefied indifference, occasionally broken by periods of frenzy in which he raved about his faith and his daughter, a party of fishermen along the Spanish coast above La Linea one day came upon a floating body of a woman, much disfigured. It was brought ashore and offered for identification.

Although the features were no longer recognizable, there was no difficulty in obtaining witnesses who were willing to swear positively that the body was that of Elsie Barwell. It was the proper height, the hair was black and the remnants of clothes were identified as garments worn by Elsie and missing since her disappearance. About the waist of the body were some shredded strands of rope. From this it was supposed that a rope attempt had been made to sink it with stones or other clumsy weights which had worked loose.

The marks on the floor of the cave were fully proved to have been made by blood, as were those on the axe. While lacking a distinctive shade, the hair was found to offer no contradiction to the belief that it was that of Elsie. One more circumstance advanced by Hamilton gave color to the whole hypothesis. He showed that the cave was constructed so as to form a safe prison. The door leading into the tunnel to the house was solid and braced with iron. It was fitted with a strong lock, and when examined the key was found on the house side of the door. As for the door leading to the street, it would have allowed little sound to pass other than that caused by a violent screaming, such as had been heard with difficulty by the group gathered outside.

The view of the prosecution, then, was that following the scene with Katt, Barwell had imprisoned the girl in the cave, hoping to bring her to his view by severe treatment; that she had remained there for two days, probably on scanty fare and visited frequently with pleading and reproaches by her father; that finally a tempestuous climax to their differences having arisen, he had struck her with the axe, probably without careful premeditation, and that he had been able to remove her body in a boat or through the aid of fishermen employes that night.

There was little or nothing to combat the position taken by the authorities. Barwell recovered somewhat at the beginning of the trial and entered a general denial of the circumstances alleged against him. He admitted that he had refused his daughter to Katt, but declared emphatically that he had not said anything about seeing her in her grave before he would allow her to marry the young man. He was particularly unfortunate in this, for his closing remark, delivered while he was following his daughter from the room, was one of the phrases that had been overheard by the servants. For the rest the case was entirely circumstantial.

On the day on which the murder was supposed to have been committed Barwell, in great agitation, had applied to the police for the discovery of his daughter. The story he had told at that time, according to the written report of the complaint, was that he had awakened to find her room empty, with neither note nor sign of her intention to depart. In attempting to fix the exact time of the events of that day it appeared that the cries from the cave had been heard about ten o'clock in the morning. Barwell's appearance before the police had been noted at eleven o'clock.

Having thus provided the corpus delicti, the authorities proceeded to erect the case. The principal precedent circumstance upon which the prosecution relied was the disagreement of Barwell with Katt and Elsie. To avoid the weakness presented through the fact that Katt himself had supplied this link corroborative testimony was obtained from the two servants. From the rear of the house they had overheard the quarrel and were able to repeat phrases of the words uttered by the merchant which here out Katt's statements perfectly.

A cloud of witnesses were discovered who could aid in establishing the prisoner's religious obsession, which, as it was made to appear, amounted to a mania. He had refused to conduct profitable dealings with firms whose members were not of his persuasion. He had exercised a strict supervision over the religious professions of his servants and had made regular attendance at church a condition to entering and continuing in his service. On several occasions he had high words with disputatious individuals on religious topics, and at these times had exhibited a rabid intolerance and bigotry. While his excessive piety was not at all in variance with the prevailing sentiment of the inhabitants of the place and had done much to counteract the unpopularity incident to his cold and reserved manner with all men it served to show a state of mind which might easily have been aggravated into violence by opposition touching him so closely as that of his daughter.

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The servants had not seen Elsie after the quarrel with Katt. Early on the morning of the day in question Barwell had been moody and distraught, and finally had sent them into the streets, bidding them seek his daughter. They had thus been absent from the house at ten o'clock. Since that day Barwell condition, as they and others described it, was such as might have been induced by a torturing and unrelenting sense of guilt.

Barwell's behavior in prison was puzzling and supported the view that his act had affected his reason. He remained for the most part in a sullen torpor after his denial at the trial, coming out of it at intervals to exhibit acute religious mania. He aroused himself to some sense of his position when he was convicted, and again, some weeks later, when he was led to the scaffold.

To the jailer who came to conduct him to the guards waiting below he made a rational declaration of his innocence, and, apparently fortified by a more moderate religious enthusiasm than he had yet shown, prepared himself to meet the end. He walked quietly among the troops, intently upon his prayers. In ascending the scaffold he scanned the crowd collected about him and noticed the face of William Katt in the first rank.

Barwell paused and looked at the man whose testimony, more than that of any other, had convicted him, the one, moreover, who had been the moving cause of the entire tragedy. He turned and extended his hand, while the guards, willing to allow the momentary respite to the condemned, though alert for possible retaliation, halted and closed in about him. There was no need for their interference, however.

"My friend," said Barwell, calmly, "in a few minutes I shall enter eternity. I wish to die at peace with all men. Give me your hand. I pardon you freely for the injury your evidence has done me."

Katt, with a hundred pair of eyes upon him, did not refuse the offer, and the men exchanged their last greeting. The younger man was deadly pale and after Barwell had released his hand held it awkwardly before him, gazing stupidly from it to the ascending figure and back again. The meek, chaste, manly, gave himself into the hands of the executioner to undergo death by hanging. The functionary, following ancient local custom, began the preparation for his duties by solemnly crying:—

"Justice is doing. Justice is done."

He then advanced with a long black cap, which he adjusted over Barwell's head. The cap covered the condemned man's head entirely and fell about his shoulders. In another moment the executioner had fired the noose in place and was testing the knot. His next move would be to step off the trap and release it.

The Revelation.

While the crowd watched in strained, breathless silence there came a sharp, agonized voice and a commotion near the steps of the scaffold.

"Stop! Stop! The man is not guilty. I swear it. It is I who should stand there. Let me speak."

The executioner paused at his work and stepped forward to view the source of this strange disturbance. The guards quickly cleared a space, and from the confusion came the figure of William Katt, struggling in the arms of two soldiers. The judge who presided at the trial was present, and after hurried consultation with the commander of the troops ordered Katt forward to explain while the execution proceedings were halted.

The young man, greatly agitated, spoke rapidly and at times incoherently, clearly overcome by the sudden release of some great remorse. But his earnestness and the sincerity with which he told his strange story left no doubt upon the minds of his hearers that he was telling the truth.

"I ran off with Elsie Barwell. She is my wife. In a Spanish town not far from here. She is not dead. I swear it."

They called him and he described his plot in detail. According to an arrangement made with the girl he was to come for her on the second night following if her father would not consent to their marriage. He did come and they escaped to the home of a relative of Katt's, where they were married by a clergyman. He did not tell her of his intentions for revenge upon her father during the rest of the affair was carried on without her knowledge.

He returned to Barwell's house, finding both the merchant and the servants gone. Having supplied himself with a bottle of blood from a lamb and some hair clipped from his bride's head, he went into the cave and manufactured the scene of a crime. A portion of the girl's dress was also part of his setting, as were the stains on the axe. After he completed his task he raised the outcry which was heard in the street. Being something of a mimic he was able to imitate a woman's screams. He left the place without being discovered.

His first intention was to submit Barwell to a fright, but the discovery of a woman's body in the sea put a more serious face upon the matter. After that he was afraid to come forward, though he was on the point of doing so several times. He said that at last he decided to speak at the scaffold and reveal the cruel prank he had played.

When the revelation of the astounding mistake was complete and Katt ceased speaking, standing with bowed head in shame and remorse, the judge turned to Barwell. Unobserved during the time when Katt's story held his hearers spell bound, he had slipped to the planking of the trap on his knees. As the executioners, at a gesture from the judge, removed the noose and the black cap, the merchant fell forward at full length. Attempts to revive him were useless and he died without regaining consciousness. Physicians gave the cause of his death as heart failure, and said that he probably had been stricken just after the executioner adjusted the noose. They did not think it likely that he had heard Katt's confession.

Katt was imprisoned, tried and sentenced to a long term for perjury and mischief leading to a death. Elsie, overcome with horror at the turn of affairs, of which she had remained in ignorance, made what statement she could for her share in it, retired to a convent for life.