A REVIEW

OF

THE TRIAL OF ANDREW HILL,

FOR MURDER,

BEFORE THE HON. EDWARD SHORT, J. S. C., AT THE TERM OF THE COURT OF QUEEN'S BENCH, HELD AT SHERBROOKE, P.Q., IN MARCH, 1871.

BY EDWARD D. WORTHINGTON, A.M., M.D.,

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"Absurdum est ut alios regat, qui seipsum regere nescit."

Law Maxim.

"O, it is excellent
To have a giant's strength; but it is tyrannous
To use it like a giant."

Measure for Measure.

SHERBROOKE,

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It is with great reluctance—yet with a firm conviction that it is due to my professional reputation—that I make the following comments upon the charge recently delivered by the Honorable Mr. Justice Short, in the case of Andrew Hill, accused of the murder of his wife.

In that charge Judge Short did me the honor of making me the subject of a most unjustifiable attack; representing me as uneducated, untruthful, " positive, decided and dogmatic " in my opinions, and as having conducted the examination of the body of Mrs. Hill with " extreme carelessness."

I would not in any way notice this eccentric judicial display were it not for the fact that a report of the charge has found its way into two public journals of large circulation, for which publicity I am most sincerely sorry. It was painful enough to know that the Judge had singled me out as the subject of invective—in which I must admit he is an able master—but, in the Court room, there was this consolation, that every person there present knew the why and wherefore of the attack. Far different is it with the general readers of our local newspapers, and, being different, I must, in my own justification, set myself right with the Public.

I have lived in Sherbrooke for twenty-eight years, and, with all my faults and failings, I cannot and will not allow any one to impeach my professional character. While I know that many of my friends expect a reply from me, I confidently believe that they are willing to judge of me by their own experience rather than by hasty words, uttered in a moment of forgetfulness, and to be remembered only—as I trust—with some feeling of regret.

It is a little difficult to assign a sufficient motive for this most extraordinary charge. I cannot believe it was prompted by any personal feeling against me, being assured that I, of all men living, have never given Judge Short cause to say one unkind word of me.

Perhaps, however, it was only mere forgetfulness on the part of the Judge. Perhaps he went back some twenty years to a time when he was practicing at the Bar, and fancied that he had a right most mercilessly to lash every witness who did not testify in the interests of "the prisoner at the bar." But what is allowable in the Advocate is unbecoming in a Judge. According to time honored usage the Advocate is permitted to fight to the last extremity in the cause of the accused. But a Judge is held responsible for maintaining the purity and integrity of the Law, in the interests of public justice. It is not for the interest of public justice that a Judge on the Bench should, in his zeal for a prisoner at the bar, do an injustice to a witness in the witness box.

It is most sincerely to be regretted that a gentleman so highly educated as is Judge Short, so eloquent, so learned in the Law, and withal of such a kindly disposition, should have so far forgotten what was due to his early reputation and to his present position upon the Bench.

This is the more to be regretted as there was no necessity for any unusual effort. The prisoner certainly did not require it, and imagination is left to fix upon the real object of his sympathy.

The prisoner had to be tried, and the bounden duty of every witness is to give his evidence, either on matters of fact or of opinion, conscientiously and fearlessly.

According to Judge Short's idea—as expressed at that particular moment—"want of education is a barrier to the acquirement of medical knowledge, and length of practice is of secondary consideration." I am sorry that my education has been so sadly neglected; but, not having been "born with a silver spoon in my mouth," I have been obliged to content myself with such advantages as came within my limited means. What I have, either in education or experience, I have had to work for, and my acquirements, such as they are, are entitled to a proportionate degree of respect.

I think myself, that it is quite possible for even an uneducated and ignorant man to recognise the solemn obligation of an oath.

Judge Short appears to have labored under the amiable delusion that I was brought up in the country—" a mere country practitioner of twenty-eight years' standing " ! and, therefore, below par, as compared with one medical gentleman, who had lived—or practiced in Montreal—or Lachine for three years ;—and another who had with his own eyes really seen a Thrombus !

Now, without boasting, I may say that I have been in a City myself, and that I was for seven years the private pupil of Dr. James Douglas, in his day one of the most eminent Surgeons on this continent.

I dissected under him for six winters, and have been in the habit of seeing wounds of all descriptions, both in private practice and in large Hospitals, in this and in the old country, ever since I was fourteen years of age. I have given a good deal of attention to the subject of Medical Jurisprudence, and believe I can form a tolerably correct opinion on many of its intricate difficulties. I can, I think, at any rate—notwithstanding my educational deficiencies—distinguish between a wound, the result of violence, and one caused by the bursting of a varix !

I may be pardoned for adding here that I was awarded the silver medal in Medical Jurisprudence in Edinburgh nearly thirty years ago, by men much better acquainted with medico-legal questions than many country Judges, even if of many years' experience.

In the beginning of his charge to the Jury, the Judge, without any qualification, broadly stated, with reference to the Medical evidence on behalf of the Crown : " *I have no confidence in it.* " Neither Dr. Austin's " modesty and reserve, " nor my " positive, decided, and dogmatic " style, can convince him. " Dr. Austin," he says, " does not agree with Dr. Worthington. " But in what does the difference consist ? Certainly not in the evidence as given but in the evidence as taken. Judge Short declared that Dr. Austin had testified that the first described wound, was an *inch and a half in length*, and the second one—the mortal one—*two inches in length ;* while I had sworn that *both* were of *equal length*. Now this arose from no discrepancy in our evidence, but from a misunderstanding on the part of the Judge, who in his notes on Dr. Austin's evidence, wrote down " two inches in *length*," instead of two inches in *depth*. " I noticed this at the time, and my attention was also

called to it by two gentlemen who sat near me at the trial. The examination of the body of Mrs. Hill was made by Dr. Austin and myself. Our report before the Coroner's Inquest was a joint one, it embodied one statement of facts; it was signed by us both, and the following is an extract from the original of that report:

"Separating the labia, we discovered on the inside of the right labium a wound of about an inch and a half in length, and a quarter of an inch in the deepest part, that deepest part being in its centre, the end of the wound extending only through the mucous membrane.

The mucous membrane round this wound presented a livid appearance. An inch from the last described wound, and still further within the labia, being just at the entrance of the vagina proper, we observed a second wound, also on the right side, of about an inch and a half in length, and two inches in depth. This wound extended from its margin, passing internally between the right wall of the vagina and the descending ramus of the pubes, but not communicating with the vagina. The wound was full of blood. The finger could be passed readily to the bottom of this wound, which internally presented a pouch-shaped cavity of considerable extent. Whatever instrument inflicted this wound appeared to have struck with considerable force against the edge of the descending ramus of the pubes, laying the bone bare for a distance of nearly half an inch, then glancing off, and passing within the pelvis.

We are of opinion that the deceased, Matilda Watson (Mrs. Hill), came to her death in consequence of hœmorrhage from this last described wound, and from no other cause; and we are further confirmed in this opinion by an examination of the bed and clothing of the deceased, which were saturated with blood only where they would naturally be exposed to bleeding from a wound in that situation."

(Signed,) FRED. J. AUSTIN, M.D.
E. D. WORTHINGTON, M.D.

The evidence for the prosecution was strictly in accordance with the above report. In the error above alluded to on the part of Judge Short, and in that alone, consisted his authority for asserting that Dr. Austin and I disagreed in our evidence. There assuredly was no disagreement of fact. If there was any difference of

opinion as to the consequence of the fact, in a Medico-legal point of view, I did not hear it; and, if there had been, individual opinion is a matter of individual right.

But if Judge Short had "no confidence" in the medical evidence for the prosecution, with what wonderful elasticity of approval does he rely upon the medical evidence for the defence. I have no desire to engage in a "medical duel" and have no intention or wish to express any opinion upon the character of that evidence, more than is necessary in support of my own, but I may, I hope, without offence state, that while one of the medical witnesses said that in all probability the wounds were caused by falling against the corner of the table, or the corner or rocker of the cradle; the other was of opinion that they were caused by the bursting of a varix.

I may state here that a varix is a distended vein and is identical with the swollen state of the veins of the legs, so commonly seen, and known as varicose veins.

It was proved that deceased must have been dressed at the time she received the wounds, the dress consisting of a long winsey gown, thick flannel petticoat, &c., and a strong pair of home-made flannel drawers. No part of the dress was torn or cut in any way or place. When first seen by Dr. Austin she was lying on her back, in bed, dead. "Her clothes around her hips, and the bed under her hips, were saturated with blood." There was blood, too, under the bed. Dr. Austin saw the body about an hour after death. He saw no blood on the floor except under or close to the bed, and though the prisoner, Hill, told him that there was blood on the floor in the kitchen, but that the floor had been mopped, the Doctor saw no evidence of washing whatever, the floor being perfectly dry.

The case for the prosecution at the trial was that the deceased died from hœmorrhage, in consequence of a certain wound; that this wound was the result of a blow or stab from an iron instrument, used as a poker, or from some similar weapon; that it could not have been inflicted by accident, or with a suicidal intent, and that the deceased did die from the effects of this wound, and from no other cause.

Two medical men testified in corroboration of the medical facts of the above case, after two examinations of the body, one on the

Sunday afternoon, twenty hours after death, and the other on the Monday forenoon, before the Coroner's Inquest.

The "theory" of the defence was that the mortal wound was caused either by the bursting of a varix or by accident. Two medical gentlemen testified in full support of the medical lines of defense, and as there were two lines, one defended the "bursting" and the other the "accident" theory.

There always is and always will be a difference of opinion as to the cause, character and effects of certain wounds between those who have seen the wounds, and those who have not. One judges by actual examination; the other by description. I hold that any two medical men, of competent anatomical knowledge and medical experience, can of necessity give a more correct opinion as to the cause and effects of certain wounds, having examined them, than can any other two medical men, even if of the same experience, who have not examined them. I think it may be taken for granted that any man of ordinary intelligence, seeing cuts or wounds, could distinguish between them and openings caused by the bursting of a distended vein. Now it is a little singular, that in a most intelligent Coroner's Jury—such as sat in this case—every one of whom saw the wounds, more than one of them being in the habit of seeing wounds, not one of their number should for one moment have doubted as to the nature of the wounds in question. There was, I am told, a difference of opinion on the question of accident or design, but nothing more.

I may here relate the account given to Dr. Austin, the first medical man who saw the body, and what was stated at the inquest:

About 5.30 p.m., Hill being outside splitting wood, and Grace with him, Eliza Hill, aged 9 years, went out to carry in the wood, when Mary Hill, aged 13 years, called to her father to come in, saying "my mother was sitting on the cradle (in the kitchen) with baby in her lap. She got up and pitched forward against the bench (which is 25 inches in height) and then fell backwards, on the floor behind the cradle." About 7 p.m., Grace having to walk nearly two miles, called upon Dr. Austin, who, taking Grace in his sleigh, drove at once to Hill's house. The doctor found Mrs. Hill dead; the body lying in bed and cold.

The Doctor was told of the fall, and that the fall had caused

flooding of which she died. No neighbours had been called in, although one family lived 200 yards off, and another, relations of the dead woman's, at a distance of about 400 yards. The doctor was told that deceased had said "Lord have mercy upon me," and "go for a doctor," and had even tried to put on her jacket, to start for the doctor herself. Not one word was said at that time about cutting herself. Merely this, that the shock of falling had caused flooding.

The next day, about 3 p.m., I went to make the autopsy, accompanied by Dr. Austin, Mr. Loomis, the High Constable, and Lt. Col. Ibbotson. The same account wasgiven to us, and still not one syllable was said about Mrs. Hill's having cut herself when she fell.

The examination of the body was then commenced in the bedroom, a sheet being hung up to cover the open door-way, the family and Grace remaining in the kitchen.

It was only after the body had been carefully examined externally, and the examination of the abdomen completed that the wounds were discovered. When they were, and wondering what could possibly have caused them, I remembered having seen a flat piece of iron, lying beside the stove as I entered. I asked the High Constable to bring this quietly into the room, and finding its rounded extremity to fit exactly to both wounds, we were satisfied that that instrument, or one precisely similar, and no other, could have inflicted them. I then went into the kitchen, long and searchingly questioning the family, with this result: That when Mrs. Hill fell she struck her *side* against the bench; that she had her clothes on; and that when she fell upon the floor, no wood or chip or anything else was near, and further that the poker was on the stove hearth when she fell, and was not disturbed by the fall. But, said I, more than once, surely she must have complained of *cutting* herself? No, nothing of the kind!

I would ask then, is it possible that the deceased, in falling, could have received wounds of such a fearful character as to cause death, retaining consciousness enough to know that she stood in need of God's mercy, and of medical aid, and yet remain ignorant of the existence of those wounds, believing only that she was bleeding to death from "flooding"?

At that time nothing was said about the discovery of wounds.

The next question is, could a fall upon the *side*, against a bench and then on to the floor, she having her clothes on, cause the wounds described;—the mortal wound was an inch and a half in length, with clean cut edges, and two inches in depth, being as wide at the bottom as at its orifice—be caused by striking her person against an angle, or side of the bench, an angle or side of the cradle, or an end of a rocker of the cradle? It appears to me that any body being a right angle, to cause a wound two inches in depth, *must* make an orifice externally of at least *four* inches in length. And that the rockers of the cradle presenting as they did a blunt surface of an inch square, and increasing in size, could not inflict such wounds. Then again had the bench or cradle made the wounds, the *left labium must have been injured.* No other than a flat instrument could possibly find its way within the labia without more or less wounding both.

For the above reasons, which I still adhere to, I believe it to be utterly impossible to account for the wounds upon the theory of accident, and in the manner described by the defence.

The possibility of accident is of course always to be carefully considered, but in this case—in my opinion—that "possibility" amounts to an impossibility; that is, that it is impossible to demonstrate pratically the possibility of the wounds inflicted upon the body of Mrs. Hill by any theory or circumstance of accident.

Accident would, in all human probability, have made external wounds; those wounds were internal. What instrument other than a flat one, introduced parallel to the line of the labia which were parallel to the line of the wounds, could inflict those wounds without injuring both labia externally? The iron instrument in question is flat, with a rounded extremity, and is an inch and a half in width. Besides, the direction of the wound being at an angle of 80 degrees with the body, when in the horizontal position, and inclining transversely to the right side, is quite suggestive as to the position of the deceased, at the moment she received the wounds. She was on her back, with her knees extended, or, as Judge Short insisted, *distended!*

I was under the impression at that moment that it was I, and

not Judge Short, who was giving evidence ; and being under that impression wished to give my evidence in my own words.

This is not the only instance of the Judge's unwillingness to take down evidence in the exact words of a witness, or of his perverting a witness's evidence. I did not draw any inference from the position of the body of the deceased. And yet, Judge Short said "Gentlemen of the Jury, Dr. Worthington tells you the woman must have been in the act of infidelity." I did not say anything of the kind, nor did I say one word that could bear any such interpretation.

It may here be remarked that the Judge commenced his charge by stating to the Jury that the theory of the prosecution was that the deceased had been caught by Hill, in the act of infidelity with the other prisoner, Grace, and that it was under these circumstances that the wounds were inflicted by Hill. Having created this supposed theory, he then proceeded with infinite pains, and great apparent satisfaction to himself, to demolish it. It is not a little remarkable that no such theory was ever advanced, or even suggested—either by the Crown Counsel or the medical witnesses—or was in any way mentioned during the whole course of the trial ; and it would appear to have originated in the fertile brain of the Judge himself.

Now what of the varix or varices ?

In this case, there were *two* wounds, one at some distance from the other. Were there *two* dilated veins; and did they both burst simultaneously ? One wound, where there was the greater amount of discoloration of the mucous membrane, was a superficial wound. The other, where there was very slight discoloration, being two inches in depth, admitting the introduction of two fingers, baring the bone to the extent of half an inch, and passing on—in its work of destruction—into the body.

Two wounds may be received at the same moment by either accident or design. Two wounds can hardly occur at the same instant as the result of diseased action or as the bursting of two distended veins. Such a supposition would involve a double coincidence never yet witnessed.

Surely if death was caused by bleeding from a distended vein, that vein would have been seen. But Judge Short said, "No; when the vein was emptied of its blood, it would be impossible to

see it"! Wonderful anatomical shrewdness! Upon the same principle I presume, as, after emptying a sack of potatoes, it would be impossible to see the sack!.

Whatever force caused the mortal wound, *laying bare the bone and tearing from it its periosteum*, or covering, must have been excessive. To cause a wound by the bursting of a varix, the force must be applied either from within or without. As varices are always superficial, external force would burst them laterally, and internal force externally. In both cases the greater evidence of force would be on the surface. How then is it that the greater evidence of force was at the bottom of this mortal wound? One would hardly expect a ball to go through the breech of a gun, instead of through the muzzle; yet this is precisely what must have happened, if that mortal wound was caused by the bursting of a varix. The varix must have been charged with nitro-glycerine, or some other highly explosive material, and have burst in a most eccentric and unusual manner!

I have consulted a number of my confrères, both in the Townships and in Montreal—gentlemen of education, Graduates of Universities, and engaged in practice—as to their personal experience on the subject of varices, occurring in that situation, and I have not met with one who is not in the same unfortunate position as myself. One medical gentleman who has been some years longer in practice than I have, and whose medical education and experience are of the highest order, assured me that he never saw one there. And he gave me a most conclusive reason for their infrequency in that situation, viz.: The parts being erectile tissue, there is, necessarily, such free anastomoses or communication between the vessels that the circulation, if interrupted in one, is carried on without appreciable difference by the others. I have to add another reason, viz.: That as the blood-vessels in this erectile tissue are for the greater part of the time nearly empty, there is not that opportunity for such interruption of the circulation in them as occurs in blood-vessels in other situations; and that the period of rest would allow of time for nature to act in removing the cause of the obstruction.

A medical friend of mine, an old fellow-student, now one of the Professors at McGill University, a regular visiting surgeon at the

Montreal General Hospital, and one of the most distinguished surgeons in Montreal, told me the other day that he had never seen a case of varix in the labia. I hope I may not be understood as stating that they never occur in that situation. All I claim is that varix in the labia is of remarkably rare occurrence. About as rare as the appearance of those wonderful heavenly bodies called comets. Indeed, in my own personal experience, even more rare, for I have seen a comet, and, in a practice of twenty-eight years "*in the country*," I have never seen a varix of the labia, never!

I make this last statement now, in fear and trembling. I made it once before, at this remarkable trial, and, in his charge to the Jury, the learned and impartial Judge said: "Dr. Worthington tells you, gentlemen, that in a practice of twenty-eight years he never saw a varix. On the other hand, here is a medical gentleman who tells you that they are of frequent occurrence; that he has seen them in his own practice repeatedly. This, gentlemen, is another proof of how necessary education is, in the acquirement of medical knowledge; and how one man, being educated, may learn more in three years in a city, than another man in twenty-eight years in the country!" Bless my soul, twenty-eight years and never saw a varix! What ignorance!

"But then, gentlemen of the Jury, Dr. Worthington is, after all, a mere country practitioner."

Really, one hears most wonderful things, in the Court House, in criminal trials, even from the Bench. Such new ideas! So contrary to the ordinary, yet generally received, medical opinions of the day. The most trivial subjects being treated with an importance that is truly edifying, I had almost said instructive.

There varix, and thrombus and ecchymoses, are clothed in such new and elegant attire, and treated with such remarkable distinction, that even the most ancient fathers in medicine would fail to recognize them.

All this is highly suggestive. Every medical man, no matter what his training, acquirements, or length of practice, should be compelled by law to undergo a course of medical instruction, as taught in criminal practice. This good effect would be attained, that medical men would thus be enabled to hear both sides of the question, and to know how little the Medical Jurisprudence of the

most distinguished medical teachers agrees with the Medical Jurisprudence of the learned pundits of the Bench.

If there is one place better suited than another for the attainment of perfection in that peculiar style of education, I can most confidently, yet respectfully, recommend attendance at dissertations on Medical Jurisprudence and its kindred branches before the Honorable Mr. Justice Short.

The varix theory, in defence, is not new; Judge Short, however, has the distinguished honor of making it a precedent in this country. He appears to have borrowed his inspiration from an extremely careless perusal of the pages of the London *Lancet*, and, not having medical experience in digesting medical reports, has fallen into grievous error. The *Lancet*, of August, 1870, reports a case very similar in all its circumstances to that of Mrs. Hill's. The medical evidence for the prosecution was that the wounds were the result of violence; and for the defence, that they were caused by the bursting of a varix. The case excited a good deal of attention, and the editor of the London *Lancet*, one of the ablest medical periodicals in the world, characterised, in an editorial, the medical basis of defence as "a hypothesis that seems to us to be almost wildly extravagant." Two distinguished medical "experts" examined the parts, which had been preserved in alcohol, after the trial; one of them, Dr. Ferrier, Lecturer on Physiology at the Middlesex Medical School, published their united opinions in the September number of the *Lancet*. He says that the idea of the wounds being caused by the bursting of a varix "cannot but be characterised as a hypothesis in the highest degree wild and extravagant."

The *Edinburgh Medical and Surgical Journal* reports two cases of a nearly identical character. The murderer was convicted in one case, and only escaped suffering the extreme penalty of the law by hanging himself in his cell; in the other case the prisoner was not convicted, because a medical witness swore that it was "*possible*, but very *improbable*, that the wound might have been occasioned by falling upon glass, or a sharp body." But Beck—one of the authorities so triumphantly quoted in this case—referring to the above, says, "It is evident, in order to inflict it (the wound), as supposed in the defence, that the female must have sat down upon a piece of glass standing erect, and *her clothes must have been*

out of the way, as they were not cut." He adds, "It is remarkable that in both cases the murderers were the first to call medical aid, probably supposing that the hœmorrhage would be attributed to flooding."

Mr. Watson reports two additional cases; in both the murderers were convicted and executed. Fortunately for society they were not tried before Judge Short. The evidence, apart from the medical testimony, was entirely circumstantial, yet the jury considered the impossibility of the wounds being received in any other way than by intentional violence, as a proof of guilt.

It is very remarkable that in this, as in nearly all the cases reported, the wounds were found upon the *inside* of the labia, generally on the right side, and the direction of the wounds inclining transversely to the right side. I believe only one case is reported where the injury was on the left side, and it was proved on the trial that the accused was left-handed. Taylor says, "this crime appears to have been at one time frequent in Scotland;" and again, referring to wounds of a similar class, he says, their "existence in such a situation at once proves wilful and deliberate malice on the part of the assailant; accident is wholly out of the question, and suicide is improbable, except in cases of confirmed idiocy and lunacy. Such wounds require to be carefully examined, for the proof of the kind of wound, when fatal, may be tantamount to the proof of guilt."

It was remarked that of course neither of the prisoners accused in this case could have considered the matter so deeply as to inflict wounds in that situation, on the supposition that the bleeding would be attributed to natural causes. To this it may be said, that in none of the cases referred to were the accused medically educated, and that the necessary information upon that subject is very general. The remark made by the accused, Andrew Hill—according to Mrs. Shores' evidence—would indicate that that necessary information was in Andrew Hill's possession. A few weeks before the death of Mrs. Hill, Mrs. Shores, who is a sister of the deceased, and Hill, the accused, had some conversation about putting a stop to the dissipated habits of Hill's wife; when, sworn to by Mrs. Shores, Hill remarked "*I will put a stop to her drinking before long, and in a way that won't be found out.*"

This remark was considered so prejudicial to the prisoner that the learned Judge directed the Jury to receive this evidence with great suspicion. Why? Apparently for no other reason than that Mrs. Shores had "pretended emotion" in the witness box, and "great grief for a sister who had been dead two months!" Besides, remarked the Judge, "it must be remembered that this woman has not spoken the truth upon an important point; and it may be the same as to the threat." Now, what is the important point upon which this poor abused woman has not spoken the truth, and upon which the Judge thought himself warranted in openly accusing her of deliberate perjury?

She stated in her evidence that she was "*so come through other*," or, in other words, was so nervous and shocked at her poor sister's death that she had not the heart to assist in laying out the body. She commenced to undress her, and ended by holding the candle while others did the work. On the other hand, another witness testified that Mrs. Shores assisted in laying out the body. "Only this, and nothing more!"

She did not help, but she held the candle!

It would be well for the public to bear in mind, in the future, that any exhibition of grief, in one of Her Majesty's Courts of Justice, is not only unbecoming, but liable to the greatest suspicion. Whatever the sorrows, or emotions, or "theories" of witnesses, they must keep cool and impassive and meek, in the august presence of Justice, backed as he is by the protection of the Lion and the Unicorn! This poor woman evidently did not know what Lions and Unicorns are for. But she cannot be excused on that account. Justice is blind. Blind to all relationships and sorrows, and is not to be imposed upon by the tears of a woman weak enough to cry for a sister, *who had been dead two months.*

Not content with a general declaration of want of confidence in the evidence for the prosecution the Judge further individualizes the object of his peculiar suspicions as follows:—"As to Dr. Worthington's opinion, gentlemen of the Jury, I tell you I have no confidence in it."

The medical history of Judge Short's life, for a few years past, is a living contradiction to that ill-natured statement. Judge Short has confidence in my opinion, and he ought to have.

But why did Judge Short attempt to insinuate anything against my veracity? Where is the proof of my untruthfulness? Who casts a doubt upon my evidence? Only Judge Short! Only the man who, by the most sacred obligations of his high office, is bound to protect a witness; who, if any attempt is made to controvert evidence, should allow it to be done only under oath, and in the regular form; and who should be careful himself not to say anything calculated to injure a witness on the impulse of a momentary prejudice, or an unworthy partiality.

His Honor further stated that I had "conducted the examination of the body with extreme carelessness." For this extremely careless assertion he had the following authority: In my evidence at the trial I said that the *report* handed in by me at the Inquest was written in a hurry, as I wanted to leave Sherbrooke by the evening train, and the Jury did not meet until evening. But this *report* is not to be confounded with the "examination of the body." That examination was conducted with great care, not only on the Sunday afternoon, but on the Monday morning. Had it not been conducted with the greatest care, *the wounds would never have been discovered, as there was no external evidence of their existence.* This slight—error shall I call it—on the part of Judge Short, shows how little sympathy he had with the prosecution when on this, and nothing more, he pronounces his judgment of "extreme carelessness." He was evidently disposed to put down everything that did not suit his very peculiar frame of mind at that particular moment. After allowing most extraordinary questions to be put to me by Mr. Robert Short, the counsel for the prisoner, such as, "Did you not form a theory before you saw the body? Did you not make the circumstances suit the theory? Are you not in the habit of doing so? Did you not find the poker before you found the wounds?" as if I had made the wounds—"Did you not find the poker in the shed, put it under your coat, and carry it into the house, before you ever saw the body?" After allowing such questions as these, he imperatively denied Mr. Brooks, the Crown Prosecutor, the right of insisting upon a straightforward answer to the very first question in the cross-examination of the first medical witness for the defence. The question was: "Do you believe that if *you* had made the examination of the body *you* could have told whether

the wounds were caused by violence, or by the bursting of a varix ?"

No, Mr. Brooks must not expect an answer to that question. There is mischief in it. "The witness need not answer it." Besides, said the Judge, *I will not allow of medical duels!*" What a sudden conversion ! He had been allowing a good deal of irregular firing to go on for a day and a half before, but upon the first shot from the enemy, he cries out, "Let us have peace !"

One might have supposed that after sitting all his judicial life as umpire in legal duels, he might have relished a medical one for a change.

After the Judge had relieved his mind to some extent, and decided that this most fair and proper question could not be put to the witness, the Crown Prosecutor said : "Well, your Honor, if I am not allowed to cross-examine this witness, I shall not ask any more questions." He then sat down, did not cross-examine any of the witnesses, and declined even to address the Jury in reply.

I think that the report of the Judge's charge as published tn the *Sherbrooke Gazette* is slightly incorrect where it refers to the Angel Gabriel. It is made to appear there that "His Honor told him that if the Archangel Gabriel came and told him (the Doctor) that he was wrong, he would not change his opinion." The correct version as related by Judge Short, and applied to me is as follows : "A certain distinguished Judge had stated in Court that he was so positive something he asserted to be true was true, that if the Archangel Gabriel came down from Heaven and told him (the Judge) that he was wrong, he would not change his opinion." It would be highly interesting to know where that most positive Judge resides, and at how long or short a distance from Sherbrooke.

It would be interesting too to know, how often Judges in Canada have compelled gentlemen acting on behalf of the Crown to adopt the course taken by Mr. Brooks in this instance.

I have to state here that I am influenced in writing this, not only in my own justification, but in maintaining the right of medical witnesses to fair and courteous treatment in the witness box. Every man has as much right to his opinion as he has to his purse ; and,

to the Physician, the value of one is exactly the value of the other. I am not so unreasonable as to find fault with confrères for differing with me in opinion, or with a Judge for preferring their opinions to mine, but I must decidedly object to my views being misrepresented, or my professional attainments assailed by any one not qualified for the task.

In conclusion I have just to remark that I am informed on good authority that some of the Judge's rulings on legal questions, during the trial, were, to say the least, unusual, especially so in permitting the prisoners Hill and Grace to sever in their defence—they being charged in the same indictment and for the same offence—and in permitting Grace to be examined as a witness, on behalf of his co-defendant Hill, while the charge against himself was pending, and not disposed of. This last proceeding, I am told, is not only unprecedented, but is contrary to all precedent. These mistakes, however, may be charitably attributed to the fact that Judge Short has been only a "*country practitioner*," and has not had the advantage of that "*city training*" which he so highly appreciates and admires.

I have endeavoured to give a comprehensive account of the main points of evidence in this most remarkably conducted trial, and to place on record some of its most peculiar incidents; they would have formed an exhibition of the most amusing character, if they had only been *judiciously* arranged with a few of the adjuncts so necessary to stage effect. But, as some of the most vital interests of society would be seriously affected by the recurrence of such scenes, it will not, I trust, be improper for me to express the hope that calm deliberation may suggest a way of securing their non-recurrence.

I think I have not been hasty in replying to Judge Short's strictures, but have waited and thought the matter over with calm consideration, and the longer I have waited the more I have been convinced that the task I have undertaken is due not only to myself, but to Society. In referring to that part of the charge that peculiarly affected myself I have only to assure the readers of this "brochure" that I have not noticed one-half of the very ill-natured remarks that were applied to me by the Honorable Mr. Justice Short. I should have noticed this affair more briefly in

the *Sherbrooke Gazette* in which the report of the trial originally appeared, had it not been for the fact that Messrs. Bradford and Morehouse, the editors, being either moved by judicial or other inspiration, or dreading judicial wrath and the supposed penalties to be incurred thereby, after doing me all the injury that lay in their power by the insertion of the charge, have refused me the common justice of the use of their columns for my reply.