

THE CASE of JIM DISMUKES

A CIRCUMSTANTIAL EVIDENCE STORY

I HAVE attempted to vary these stories of circumstantial evidence," said Judge Sturgis at the weekly meeting of the Calf Skin club, "by putting in my little contribution to this symposium in the style of fiction. The facts, however, are drawn from my own experience. As it is my first attempt at anything outside the paths of legal literature I crave the indulgence of you all. With your permission I will read my story." The judge then read the following narrative in a manner that showed he had not, during his years on the bench, forgotten his early skill before a jury.

Jim Dismukes sat in mute resignation and stared into the face of the judge; that stern yet sometimes kindly old face that meant so much to Jim. He wondered in his simple way why there should be so much of trouble and so much of solemnity about so unimportant a member of the community as himself. He wondered more than all why that terrible, unknown thing called the law had seen fit to drag him from his little log home and keep him through those long months shut up behind the barred windows of the modest county jail while, except for the doubtful attention of "Bill," his half-grown boy, the little ten-acre patch might be growing up in ragweed and cocklebur.

Of course Jim knew that one dark and forbidding night a traveler tramping homeward along the little frequented highway that ran into the timber just beyond his place had stumbled over the body of young Arthur Ballard. Jim knew people said Ballard had been murdered. He knew when he went with the crowd to look at the body by the dim, early morning light, he had seen that reeking, horrible gunshot wound in his breast, and he had trembled and grown pale. He knew he was charged with firing the shot that made that wound. And Jim also knew, deep down in his own heart, whether or not this charge was true. Jim knew, and this knowledge it was now the duty of a judge, twelve men and a state's attorney to drag forth.

As Jim sat before these terrible inquisitors and watched the changing play upon the countenance of the judge a tow-headed, stubby-nosed baby slid from his mother's lap, negotiated the distance to Jim upon all fours, and began the perilous ascent of his long and awkward legs. Jim bent over and patted the little head, but Sally Ann grabbed the child to her lap again with the whispered injunction:

"There now, Buddy mustn't bother pappy. Pappy's busy."

"Pappy" was indeed busy. The last man of the panel had just been accepted by both sides.

"I wish I had 11 more just like him," thought Clay Sheppard, the young and ambitious state's attorney, as he passed the veniremen over to the defense.

"I can trust him at least to give Jim a square deal," thought old Tom Robinson who had volunteered to save Jim, if possible, simply because he couldn't help doing kind deeds any more than he could help lying.

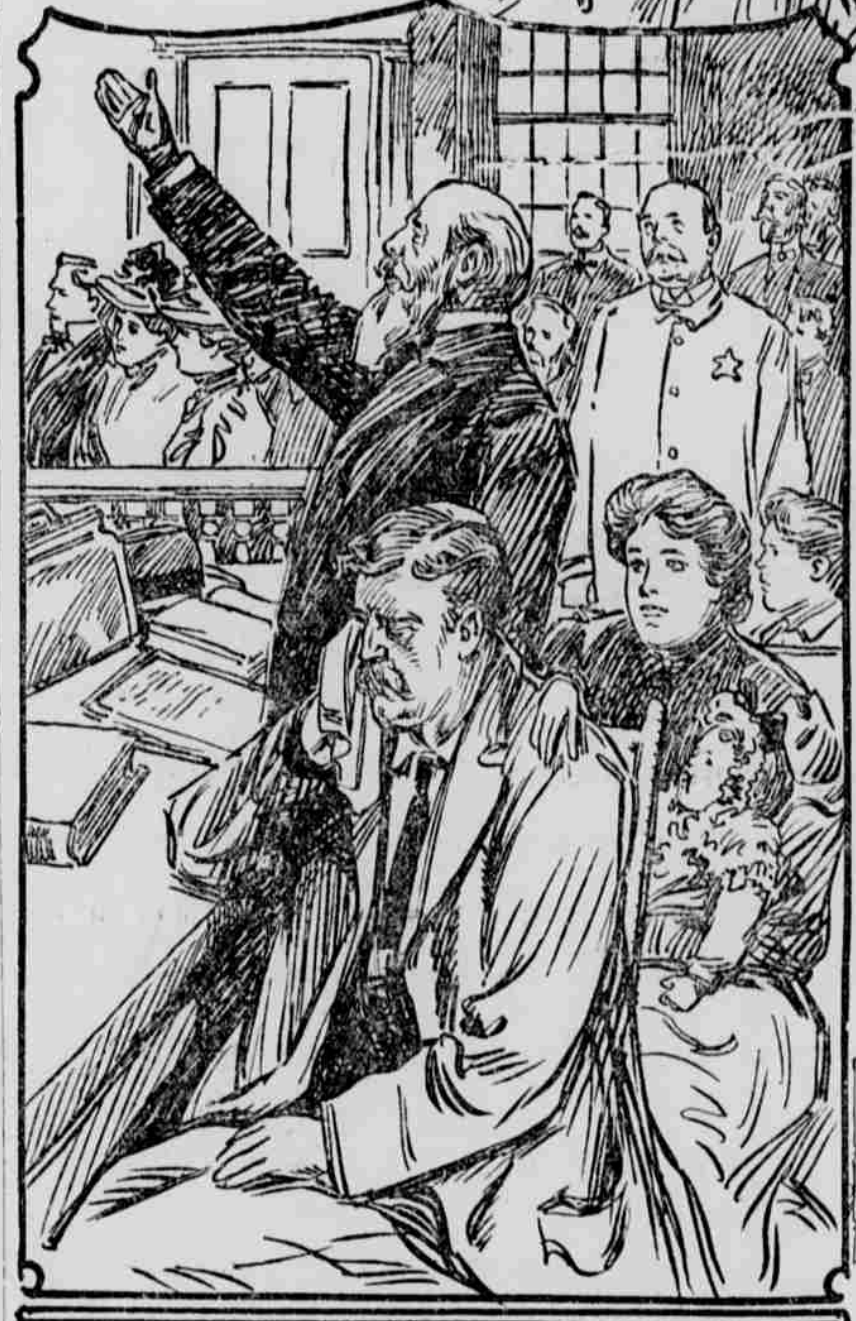
The twelfth man truly was an ideal jurymen. In a small community the questioning of a venireman is largely a matter of form. Either the state or the defense can tell long before the trial by looking over the list of veniremen what men they would like to have on the jury. Amos Watson was one of those who would have been picked in advance by both sides. A farmer of expansive acres, which lay in the high priced prairie beyond the timber of which Jim's place was a clearing, he was identified with all that was progressive in the community. He was a deacon in the church, a director in the bank, an officer in the county fair association, and, in fact, held most of those honors which, beyond the city, are the capstones of success. He was indeed an ideal jurymen. In the city he would have been challenged for cause, for, with all the rest of his good qualities, he was intelligent.

The attorney for the state then arose for his opening. As he described with the minutest detail Jim's movements upon the fatal night, Jim writhed and would have given all the world, yes, even his precious ten acres, to have escaped the stares that seemed to burn into the back of his wrinkled neck. At the same time he vaguely wondered how the state's attorney knew things about him that he didn't know himself.

Then old Tom Robinson brought tears to Jim's eyes as he referred casually to Jim's "devoted wife, his honest faced boy, soon to grow into manhood and the little innocent babe that prattled at its father's knee." Older and sterner eyes than Jim's would be

bathed in tears when Old Tom Robinson returned to this motif in his closing appeal.

And the evidence began to pile up that sent Jim farther and farther away from the little log home and the ten acre patch. Circumstantial all of it, but each link forged and polished into a perfect chain that it would take a stronger hand than Jim's to break. There was the quarrel over the sucking pig that young Ballard killed while driving over the big prairie farm in his light top buggy to hit it up with the boys in town. There was the story of Jim's way-laying him, as with a companion, he dashed back again late in the night, and much the worse for his evening's



"fun," of Jim's catching his horse's bridle and demanding payment for the worthless runt; and then of the cruel, stinging back-handed cut across the face with Ballard's buggy whip and Jim's sullen threat "to git even with the damned stuck-up of he had to fill him full of buckshot."

And there was the evidence of Ballard's often walking home past Jim's house and through the timber, when, with the open-heartedness that was one of his many weaknesses, he had loaned the mare and buggy to some one of his cherished town companions; of the finding of the body just beyond the Dismukes fence corner; yes, even the marks of feet that Jim's boots fitted so exactly.

Then the state's attorney sprang the star witness, a mute one but with a story so plain that duller jurymen than these 12 could have read it from afar. It was but a circular bit of newspaper probed by the doctor from the wound in Arthur Ballard's breast. Alone it meant nothing. Fitted into the newspaper found under the Dismukes family bed, with every indenture interlacing with a nicety that could never have been accidental, it was as damning as the warrant of death itself. Then there was the muzzle loading shotgun behind the door, freshly fired, according to the firm opinion of well qualified experts in the person of local sportsmen and the village gunsmith.

What had Jim Dismukes to offer to all this crushing weight of evidence? What mattered it though he declared in an aggrieved tone to the judge, whom he persisted in addressing instead of the jury:

"Judge, I found that paper the mornin' I went to look at the corpse. I fetched it home fer Bill's jest learnin' I read an' I thought as how he mought spell out some o' the news 't me an' his ma. I jest shoved it under the bed an' fergot all about it. As fer shootin' the gun, I reckon that part's kerrect. I shot her ena-most every day, an' we hed rabbit that evenin' by reason of me shootin' it. But I ain't never kilt nothin' but critters an' varmints 'th that gun. Honest, I ain't jedee."

Of what avail was the evidence of young Bill that on the night in question his father had not left the house but had sat up nearly all the night blowing tobacco smoke into young

Bill's ear for the ear ache. But then what match was young Bill for an astute and ambitious state's attorney. It might have been some other night that young Bill had the ear ache. He had it many times, and young Bill wasn't very strong on the calendar, anyway. The evidence of Sally Ann might have corroborated that of her first born, but a wise and beneficent law holds such evidence prejudicial to the minds of jurymen, and a wife cannot come to her husband's aid in such a dire extremity.

The usual character witnesses, the last ditch of a tottering cause, put in the usual evidence that Jim Dismukes had always borne a good reputation in his neighborhood for peaceableness and quiet, and this evidence was duly torn to pieces under the cross fire of the prosecution.

When the arguments came at last Jim again sank down as far as possible in his cane-bottomed chair and stared in wonder and admiration at the ambitious young state's attorney as he writhed and perspired in a burst of oratory that painted Jim Dismukes a terrible, blood-sucking monster going up and down the earth seeking whom he might devour; as he threw back his long black hair and raised his trembling hands to the cracked ceiling and called down the vengeance of high heaven upon the foul murderer of Arthur Ballard.

Jim wondered if God could see the state's attorney through the cracks in the plaster. Sally Ann hugged Buddy to her breast and wept softly. Old Tom Robinson hoped the jury saw her.

And then everybody wept when old Tom rose and got his foot on the soft pedal. Even the judge buried his head in the record before him and blew his nose tunelessly. The state's attorney began to wonder if being the stern avenger of an outraged law was such an honor, after all.

Jim listened intently to the judge's instructions, but could make neither head nor tail of them. Something about mallets, he thought, but he couldn't remember anything about mallets, and he had understood all along it was a shotgun. But the judge knew better than he did, perhaps.

When the jury fled off into the little room back of the judge's rostrum, the tension broke and the court

room hummed like a hive of bees. Above the hum could be heard the scratch, scratch, scratch of the judge's pen as he wrote up the chancery record.

Jim felt like a shipwrecked sailor who had a breathing spell in his fight for life during a lull in the storm. He played with the crowing and strenuous Buddy and when he thought nobody was looking seized and pressed Sally Ann's work-worn hand.

"It's all right, Sally," he whispered. "Mr. Robinson, he fetched 'em, I reckon."

The minutes dragged into hours, and the jury had not returned. The judge fidgeted and finally sent a bailiff to inquire if the jury wished any further explanation of the law. As the shadows through the small paned windows lengthened into evening the word came that the 12 were in hopeless disagreement. Something at the judge's waistband reminded him that his supper was getting cold and he ordered the jury in. The whisper went round that they stood 11 for conviction and one for acquittal. Only mental telepathy can explain how news like this flies through a crowded court room.

The judge was angry. He had two powerful motives for anger, his

spilled and sodden supper and the double cost to the county in another trial. He mentioned only one of these, however, in his scathing rebuke to the 12 men that stood before him. He reminded them that they had failed in their sworn duty and were unworthy to bear the name of citizen.

Then stood forth Amos Watson, the ideal jurymen.

"May I have the permission of the court to say a few words," he began. "Eleven men on this jury are not deserving of this rebuke. One man deserves it all and more. I am that man. I have held out in this case for acquittal and as my fellow jurymen labored with me to bring me to their way of thinking I have fought out a battle with myself and my maker. It has been a fight that has extended beyond this court room back six months to the time of the death of young Arthur Ballard. It has been with me waking and sleeping. But now, thank God, I have won the victory and I am ready to tell this court why I could not consent to the conviction of Jim Dismukes for murder. It is only because he is innocent. I killed Arthur Ballard!"

There was a hush, and then a murmur and then a roar which took the combined rappings of the sheriff and all his deputies to quell.

"Go on, Mr. Watson, tell what you have to tell," sternly commanded the judge, as the "ideal jurymen" stood and moped his brow.

"Yes, judge, I will tell it all. I



THE ONLOOKER
WILBUR D. NESSBIT

THE ANNUAL SIEGE



In the spring a woman's fancy lightly turns to cleaning house.
In the spring the soapy water she will vigorously do.
On the window-glass and mirrors, while her husband hies away,
To some dingy spot of refuge, to escape the dreful day.

In the spring a newer polish tints the burnished kitchen stove.
In the spring your coats and trousers o'er the alley fence are hoisted—
(Maybe "love" is wrong to use here, but it surely fits the case).
In the spring a smudge of cubswets decorates the housewife's face.

In the spring you come home weary and as through the wreck you creep.
You discover there's no dinner and you've not a place to sleep.
And when gently you remark that there might be a safer plan
For house-cleaning, shrills a chorus: "Hi! Well, that's just like a man!"



How to Entertain.
If you want to have the jolliest kind of an evening party, have one of the new ones called an "Entertaining Entertainment."

The way to do it is to buy or borrow a book on "How to Entertain." Invite a congenial coterie of friends—

(Excuse us, we seem to be quoting from some such a book. Anyhow, get some people in to spend the evening.) Now when you have them all seated in a chatty, sociable way—(There we go again, as if this were from the book. Tell them to sit down.)

When they are all looking at you and wondering what to do next, pull the book on "How to Entertain" from its place of concealment and say to them that they will be entertained according to Hoyle, or whoever is the author of the manual on being a host or hostess.

You may thus spend an entire evening citing authorities to prove that by doing thus and so they ought to have a good time.

Ten to one this will make a hit.
P. S. The above is meant seriously. Try it.

Carrying It to Extremes.
Once postcarditis gets its fingers on a man it never lets go. Instead, its clutch grows stronger and stronger, until in the end it is insidiously masterful over him as any other habit. Take the case of Rudford Blinkum as an example.

One year ago he began by mailing a postcard to a friend. Within a week he was seeking excuses to send post cards. He ordered his clothing, his coal, his office supplies by postcard.

As the habit became fixed, he abandoned his vacation trip, and mailed postcards every day to the people he would have visited.

And now he has stopped going to church. Instead, he mails a postcard, with a special delivery stamp on it, to his minister, so as to reach him Sunday morning.

The final manifestation of the habit is to mail postcards to yourself. Mr. Blinkum's family and friends are pricing strait jackets and getting rates of board by the month from sanatoria.

Labor Statistic.
"What trade does your husband follow, madam?" asks the census taker, holding his pen poised over the proper blank.

"I hardly know," she answers. "Surely you know what his occupation is."

"He—he is employed in a ladies' tailoring establishment, where he makes the pads—that fill out the places that ought to be filled out in the gowns."

"Yes'm. He's an upholsterer," decides the census man, promptly.

What is Needed.
"Under the modern cold-storage system," said the man with the deep-set eyes, "it is possible to keep food for interminable periods."

"So I have read," said the man with the ingrowing face.
"Meats are kept in such perfect condition that it is possible to have a fresh meat at any time and in any place. So with fruits and vegetables—under the modern scientific system we may keep apples and berries and potatoes for years. The same with eggs, and—"

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