

ON THE LEGAL RESPONSIBILITIES OF MEDICAL MEN IN ATTENDANCE UPON DUELS.

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THE question being frequently asked, in reference to the late unfortunate duel at Portsmouth, whether life might not have been preserved, or at least a subsequent operation rendered less dangerous, or perhaps unnecessary, had a surgeon been on the spot at the moment, it may be replied, that few medical men will run the risk of such attendance, while subjected, as they now are, to serious legal responsibilities for doing so. Why this should be the case has always appeared to me one of those singularities in our jurisprudence more frequent than intelligible. Entertaining this opinion, I drew up the following paper, excepting only a few lines in the last paragraph, about two years ago, when another unfortunate hostile meeting had excited unusual general interest; and being as strongly applicable now, and bearing upon a matter of more importance to the public at large than merely to the surgical profession, it may thence find a place in your influential journal.

It required no particular gift of medical prophecy to foresee the case which has actually occurred—namely, the wounding of a considerable bloodvessel, and either consequent loss of life, or the most serious injury from hæmorrhage, in consequence of there being no professional person at hand to secure it. By the statement of Mr. Liston, it appears, in fact, that one of the difficulties of the case arose from the previous loss of blood. Few accustomed to active naval or military life but have seen such instances; and, as being not unacquainted with them, a few remarks on the restrictions thrown in the way of having sufficient surgical aid on the spot, in civil life at least, may not be misplaced.

AMONG the anomalies of English juridical dispensations, which, however well designed, seem sometimes difficult to understand, if not actually at war with good sense, I venture to class that practice which goes to punish criminally a surgeon who is called to attend upon parties engaged in a duel. The object aimed at no doubt is, that no person shall participate in an offence considered by the law one of the most serious description. And were it the case that the surgeon has taken an active part in aiding, abetting, or pushing forward to completion such a crime, there is no reason,

of course, why he should not pay the penalty of transgression, like others in similar circumstances.

But the fact is rarely or never so. The usual course of such appointments is this:—He is called upon, and told that his professional assistance may be required at a particular time and place. He inquires for what cause? and may not be told, and in fact seldom is told, the exact reason, although circumstances may create in his mind the strongest suspicions of its real character. He may, or may not, know the parties. He may be even particularly anxious, from humane motives, to prevent such an occurrence taking place, but has no means at hand of doing so, from no details being given him; and a sense of professional confidence and honour, which, even when mistaken, it is not always prudent to punish, might restrain him from communicating with a police office, were he even more fully informed upon the matter.

Whether he accedes to the request, or refuses, the duel goes on; he has no power or influence to stop it. If he refuses to attend, it seems to me that he relinquishes the express duties of his calling, which are, to obviate human suffering, and to save, if possible, human life, from whatever cause produced or endangered. If he complies with the summons, it is possible he may be of use, by the exertion of moral influence, as well as by rendering medical aid. But perhaps in the very act of saving life, or of assisting the wounded, he is seized upon by the law, and accused of being a participator in a criminal act, over which he has had no control whatever. He may be committed to prison for a time, or if enlarged, held to heavy and vexatious bail; he may be brought to trial: he incurs in either case a most serious expense, in addition to wounded feelings; and, as far as the law can inflict it, has his reputation branded with a species of odium wholly undeserved. Nay, he may be, in the final result, imprisoned, for endeavouring, by his presence, to save that life which the same judge and jury punish the principal and seconds for destroying!

In this there certainly appears to be some confusion, either in the principles or practice of what we consider to be justice. It seems the oddest of all things, that two distinct parties, who have little or no connexion with each other, and of directly opposite views and actions, should be punished or punishable, the one for doing evil, the other for exerting all his ability to prevent the consequences of that evil. A fiction of law, indeed, assumes that the surgeon is aiding and abetting the crime. Common sense and the most superficial observation teach us, however, that he does no such thing. He has no passion, nor prejudice, nor animosity in the matter; on the contrary, without claiming for him more than is due to other men, we may believe him seriously pained and grieved to be required on such an occasion, and that he only assents to follow the parties in the hope of assisting in what the law professes to have pre-eminently in view, the preservation of life. His presence, therefore, may do good, but in no way is it likely to promote evil; he is merely a passive instrument on the occasion; not more criminal or more fairly open to punishment than the hackney-coachman who conveys the combatants to the ground, or the manufacturer who constructs the pistols.

If by refusing to be on or near the scene of contest on such occasions he could prevent its taking place, the matter would be wholly altered; he would fairly fall within the description of participating in the offence. But every one knows, that though a medical man may be requested to give his attendance at such a time, no duel was ever prevented by his declining compliance with the solicitation.

Supposing he strictly fulfils what seems to be the aim of the law, that is, to have nothing whatever to do with the parties, what benefits accrue from this arrangement? They fight without him; a severe wound is sustained; much time may elapse before the sufferer can obtain casual, and possibly unskilful aid, when, but for the penalties held out by the law, the ablest assistance might have been secured at hand. Among other contingencies, take, for instance, the wound of an artery. Without a surgeon in attendance, the patient may speedily bleed to death, while with one present, the vessel may be secured, and no very serious consequences ensue. Many, we know, die in action, from hæmorrhage, because it is necessarily impossible to have a medical officer at hand at the precise moment he may be required for all such cases in a field of battle, or even in a ship. Of this, a striking instance drew general attention during the operations on the coast of Syria, when Lieut. Hockin, Royal Marines, a gallant and promising young officer, had the axillary artery wounded by a musket-shot, and there being no medical officer at hand on shore, he was sent off to his ship, but sunk about the moment of reaching her, from loss of blood, the men in the boat having done all they could to prevent it, and only failing from the want of a very little anatomical knowledge. But surely such accidents should never occur in civil life, where assistance can be had, and is often

anxiously sought, unless the law absurdly interferes and tells the surgeon, as she does in express language, "If you presume to be present in the first instance, I'll punish you. But you may go afterwards, if you think proper; though I admit it may then be too late." Now, is this express or implied threat, which is not at all overstated, consistent with those principles of wisdom and that carefulness of human life which the law claims as its distinguishing attributes?

Let us imagine the case of a valuable public life thus lost or seriously endangered, how loud and how just would be the cry against so absurd a piece of legal incongruity. Take the instance of an illustrious duke, some years ago, in a meeting of this description. Had his noble opponent fired, a considerable bloodvessel been wounded, and a fatal hæmorrhage ensued in consequence of medical assistance being driven from the spot by the annoyances of the law, is there a rational man in the kingdom who would not denounce such a perversion of its powers as being at war with common humanity, common sense, and almost common decency? That valuable lives, as well as, perhaps, sometimes, the more worthless, are often risked in such encounters, we have the instances also of Mr. Pitt, Mr. Fox, Mr. Canning, Lord Castlereagh, Mr. Tierney, and several others.

If a medical man be open to punishment, or at least to serious legal responsibilities, for being present at a duel, there seems no sufficient reason why he should not be equally liable to similar consequences when attending men who voluntarily peril their lives in another way. A person, for instance, as several have done, determines to jump, for a wager or out of bravado, from Westminster-bridge, or from the mast-head of a ship, into the Thames. Conscious of the danger of the attempt, he tries to obviate it, in part, by having a boat and a medical man as near the spot as possible; but these precautions happen to prove unavailing, as many will remember actually proved to be the case more than once, and a fatal result ensues. The law in this case holds the professional attendant very properly harmless; and why it should not do the same in a duel, where the danger is equally voluntary and imminent, I do not clearly comprehend. A lawyer, indeed, will tell me that the latter is a felonious act, and that no person shall be permitted to join in such an act with impunity; but I repeat that this accusation is a legal fiction, for the surgeon does not in reality participate in the offence in any way, and therefore should not be held amenable to punishment. He tries, on the contrary, to render its consequences less calamitous than they otherwise might be; while the law, so far from assisting in so praiseworthy a design, actually exerts its power to make matters worse by forcing him to be absent, under certain pains and penalties. As to the extent of personal danger in the instances mentioned, the leap is a more serious matter than the majority of affairs of honour. I believe there are few of my naval or military friends who would not sooner fight two or three duels, than jump once from off either of the metropolitan bridges.

It may be said that even in the case of a fatal result, a surgeon, though sharply threatened, is seldom or never eventually consigned to actual punishment. Yet in what other light are we to consider his apprehension and committal; his heavy bailings, (5,000*l.*, I believe, in a recent case,) if enlarged; his probable advent at the Old Bailey as a criminal; the further possible prospect of a fine, or of a few months' lodging in the Queen's Bench; added to as much general imputation of misconduct as the law, in a species of indiscriminate fury, can throw upon him? Why, were there no chance of punishment, should he be compelled to fence with the legal questions put to him, be told not to criminate himself; with a variety of other friendly cautions indicative of impending danger? There are, however, examples of serious annoyances, amounting to positive punishment, in the cases of Mr. Heaviside, in the duel between Captain Macnamara and Colonel Montgomery; of Sir James Anderson, in that of Lord Cardigan; of Mr. Gulliver, in that of Colonel Fawcett; and, I believe, in some others.

In the latter instance, the bail deemed necessary to be required was very high, and to many would have been most inconvenient, perhaps oppressive. Upon naval and military medical officers involved in such affairs, as in his instance, although there may seem to be some professional bias in the matter, I cannot but consider criminal liabilities to press very hard. They are not strangers, selected by accident to attend upon persons whom they do not know; but, on the contrary, companions and friends, and probably sharers in the dangers and privations of service of one or both of the hostile parties. To refuse, therefore, to render, in a moment of peril, such aid as may be requisite to one with whom he has been on the most intimate terms for years, seems so unkind, so cold, so much at variance with that tie felt and acknowledged in the name of brother officer, or, in naval phraseology, "messmate," that I believe few, however serious the penalty, would be deterred from complying with the call. Were

it otherwise, the denial would lead to evils of its own,—to personal alienations and disagreements, not less fatal to private friendships than to the interests and harmony of the public service to which they belong. Far, therefore, from punishing a medical officer for being present, I would encourage him, or encourage half a dozen such, to be on the spot; for I have known their presence and influence do real good, while I have never heard of the remotest probable evil.

If the law must have other victims, in addition to the offending principal, there are the seconds—persons who deserve punishment much more frequently than even those who discharge the pistols. Men will fight without surgeons, but they will not, and dare not, fight without seconds. Upon such auxiliaries, therefore, the real *onus* of such encounters rests; and were it not that they seem most commonly selected for profound folly or stupidity, instead of common sense or discretion, we should see few disagreements proceed to extremities. On all ordinary occasions, one of the principals will be pronounced, by most uninterested lookers-on, as being manifestly in the wrong. This it is plainly the business of the second to see as well as others, and where two such men, with the most moderate pretensions to wisdom, meet, the matter will be arranged; or if the principal prove refractory, and will not conform to his friend's decision, the alternative is to wish him well through it, and take your leave.

A person called upon to act in the character of second should never permit himself to be made a mere partizan. His office is more that of moderator or umpire; one who wishes to see justice done to his friend, without abetting insult, or pain, or injury upon another. He has not the heat, or passion, or prejudice, or obstinacy, of his principal to plead; and if he acts under such influences from mistaken friendship, or an unhappy love for notoriety, to the endangering or taking of human life, he is wholly without excuse, and should pay the heaviest penalty for his misconduct. The transportation of two or three seconds, rather than the principals, would, of all other means yet devised, most effectually suppress duelling. In another place,* I ventured incidentally to comment upon this subject more at large, and after the lapse of several years, see no reason to alter my opinion.

Nothing said here, it is to be hoped, will be construed into an apology for duelling itself; that is quite a different question. It is denounced equally by religion, morality, and law, and yet is too often resorted to by men who reverence all three. We may regret, therefore, what we cannot wholly prevent; for it is to be feared that the feelings in which it has its origin are grounded in human nature, increased, perhaps, by the refinements of civilized life. While there exist in the social community strong men and weak; the fiery and the forbearing; the bully and the gentleman;—the young, the hot-blooded, the arrogant, the irritable, the vindictive, the unprincipled,—there will be personal conflicts. Whether the violent suppression of these in the form of duelling may not lead to other practices, more secret and less fair, may be a question, for there are no doubt many serious injuries for which the law offers no redress. The late melancholy event arose from one of them. The foiled yet unexposed seducer in one case, unpunished by the husband, who must not,—and unpunished by the law, which will not,—take cognizance of the matter, may make a second, or third, or even more experiments in the same way upon his female acquaintance, for there is nothing then to stop his career. If he succeeds, and thus entails certain and incurable misery upon several parties, or even families, the law at length pronounces he shall pay a certain penalty for his offence. Up to this point of the actual commission of crime, therefore, he is protected, however vicious or unprincipled his conduct is known to be. But whether, weighed in the balance of strict moral justice, such a depraved person is worthy of the jealous protection thrown around him by law until his crime be completed, (and the disgrace he inflicts is of course irremediable,) or whether his career of wickedness shall be cut short by the exposure of a duel—often the only mode of exposure that a sensitive and high-minded man can resort to—must be left to the grave consideration of those who sit in judgment upon the particular case.

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