CELEBRATED TRIALS

CHAPTER I

CUNNINGHAM-BURDELL MURDER CASE

Discovery, January 31, 1857, of the Murder of Dr. Harvey Burdell, at 31 Bond Street, New York City.—Proceedings at the Coroner's Inquest.

Dr. Harvey Burdell, a regularly educated physician, forty-six years of age, who since he graduated had devoted most of his life to dentistry, and had attained great eminence as a dentist—a man of intelligence and culture—was, on the night of the 30th of January, 1857, foully murdered in his office, in a house owned by him and in which he resided, known as 31 Bond Street, in the City of New York. His office-boy, when he arrived at about half-past eight o'clock the next morning, upon entering the doctor's office, found him, surrounded with blood, lying on his face close to the door. Greatly frightened, he informed the inmates of the house, and Dr. Francis, Dr. Main, and Dr. Roberts were sent for. Coroner Edward Downes Connery was at once notified, so that he could hold an inquest. At first it was thought that Dr. Burdell had committed suicide, but it was soon ascertained that he had been assassinated. There had
been inflicted upon him, by a dirk or sharp instrument, fifteen or more wounds, almost any one of which would have been fatal. He was stabbed through the heart, and the carotid artery was severed. The inmates of the house were: Mrs. Emma Augusta Cunningham, supposed to be a widow; her daughters Augusta and Helen, about eighteen and sixteen years of age respectively, and her two sons, ten and nine years old; George V. Snodgrass, a young man of about twenty years, a son of the Rev. Dr. Snodgrass, a Presbyterian clergyman of note; Hon. Daniel Ullmann, a lawyer, who had recently been a candidate for Governor of the State of New York, and came very near being elected; John J. Eckel, a lodger in the house, who was in the employ of Smith Ely, Jr., afterwards State Senator, member of Congress, and Mayor of the City of New York; and two servant-girls.

Although the murder must have occurred after the inmates of the house retired for the night, they knew nothing of it until it was discovered by the office-boy next morning. That the probably fierce contest of the assassin and his victim, and the shrieks of the latter, should not have been heard by any one in that house seemed almost incredible. The Coroner, on the same day the murder was discovered, commenced his inquest, and examined John J. Burchell, the office-boy; Allen T. Smith, Dr. W. B. Roberts, John J. Eckel, Hannah Conlan, the cook; Dr. J. W. Francis, and Mrs. Cunningham. The witness Smith, who had business relations with the deceased, and Hannah, the cook, testified that they had heard angry words between Dr. Burdell and Mrs. Cunningham in relation to some papers, including promissory notes of considerable amount. Dr. Burdell charged her with having stolen them, which she denied. In her testimony before the Coroner, Mrs. Cunningham gave the following account of the quarrel:
"Dr. Burdell had a judgment against his brother, William Burdell; that judgment he took from a Mr. Pierrepoint, in Wall Street. Dr. Burdell assigned the judgment to me, and I held it. A short time after that he told me that he wished me to give him a note for the amount of the judgment at twelve months after date. I gave him the note and held the judgment. * * * Last September, Dr. Burdell accused me of stealing the note I gave him. I told him I knew nothing about it."

Mrs. Cunningham testified that at the time of the quarrel in September about the note she accused Dr. Burdell of not fulfilling his promise to marry her, and she also charged him with having brought females into the house for improper purposes. She admitted that she was jealous of him. She testified that she was married to him by a clergyman at the residence of the latter; and she produced a marriage certificate stating that she was married to the deceased on the 28th day of October, 1856, by the Rev. Uriah Marvine, of the Dutch Reformed Church in Bleecker Street, New York City.

Early the day after the discovery of the murder Mrs. Cunningham retained Mr. Clinton as her leading and principal Counsel. He at once went to 31 Bond Street, and had a brief interview with her. Afterwards he attended the proceedings before the Coroner. The next day the Rev. Mr. Marvine was examined, and testified that he performed the marriage ceremony between a man who called himself Harvey Burdell and a woman, who brought with her a witness who she said was her daughter. After viewing the corpse he gave no opinion in his evidence as to whether it was that of the man whom he had married. Upon being shown Mrs. Cunningham he said he could not recognize her as the woman he married to the man calling himself Burdell. He also testified that he did not believe, if he should see her, that he could identify the witness whom the
woman brought with her; but upon being taken into the room where the daughter (Augusta) was, he did recognize her as the one who had witnessed the marriage ceremony.

By this time public interest in the case was intense. The quarrels between the deceased and Mrs. Cunningham; the alleged secret marriage; the fact that the officiating clergyman did not identify either of the parties to the marriage, but recognized only the daughter, inflamed the public mind to the highest pitch against Mrs. Cunningham. It was assumed that she procured some one to simulate Dr. Burdell at the marriage ceremony; that she was guilty of the murder, which she had been months in planning; and that her motive was, upon his death, as widow, to obtain his property, which was thought to be large. In other words, the public jumped to the conclusion that Mrs. Cunningham was guilty of a cold-blooded, deliberate, long-premeditated, fiendish murder, in order to gratify an insatiate greed for money. The Coroner appeared to imbibe the same belief, and from the beginning to the end of the inquest the object of all his proceedings seemed to be to prove Mrs. Cunningham and one or more of the inmates of the house guilty of murder. The Coroner's inquest proceeded from day to day for about two weeks, and over a hundred witnesses were examined. The testimony took a wide range, and but very little of it was at all relevant or tended in any way to show who committed the murder. In no instance, in this country or elsewhere, has any other inquest been conducted as was this. One or two instances will illustrate the mode of the Coroner in examining witnesses. While the Rev. Mr. Marvine was testifying in respect to the marriage, the Coroner, in alluding to Mrs. Cunningham's appearance at the time of the ceremony, said:
Question. "Did she have any virgin, angel blushes? Was she like a virtuous woman, or a woman of easy virtue?"

Answer. "You must remember that she described herself as a widow."

The following is an extract from the testimony of Mary Donohue, the servant-girl:

Question (by the Coroner). "Did you ever hear any threat yourself? Or were you ever told of any by any of the domestics in the house, as having been used by Mrs. Cunningham towards Dr. Burdell?"

Answer. "I never heard any directly say so; but she said it was time that he was out of the world, for he was not fit to live in it, or something like that. Her eldest daughter, Augusta, said the same; she said he was a bad man."

Coroner. "I knew, Mary—I knew that you carried your tail behind you, by gracious!"

Dr. Burdell, for some months before his death, took his meals at the Metropolitan Hotel. During Friday, the last day of his life, he attended to his dentistry business as usual at his house, 31 Bond Street. The Rev. Dr. Cox, Dimis Hubbard, a cousin of Dr. Burdell, Mrs. Stansbury, who was to take the house 31 Bond Street on the first of the ensuing May, Mr. Blaisdell, and Mrs. Mary Jane Miller testified to having seen Dr. Burdell during the day at his house. Some of them saw him upon dentistry business, and some upon other matters. The last seen of the deceased at his house was about the time he left for dinner at the Metropolitan Hotel, near five o'clock that afternoon. Dr. Cox called on Dr. Burdell about one o'clock on Friday. He returned at five o'clock that afternoon, and was told by Mrs. Cunningham that Dr. Burdell had gone to dinner. Mrs.
Miller testified that she saw him that afternoon, between four and half-past four o'clock; that he told her that after dining he should go to Brooklyn, and would not be back to his house before going there, and that it would be late before he returned. And yet Mr. Blaisdell, who had been for three years in partial partnership with him in business, on the corner of Broadway and Franklin Street, and who had been on intimate and confidential terms with him ever since, testified that he and Dr. Burdell, on that Friday, agreed to meet that evening at 31 Bond Street at seven o'clock, Dr. Burdell stating that he desired Mr. Blaisdell to spend the evening with him, and stay all night if possible, the latter, although promising to be there at seven o'clock, stating that he could not spend the night there. Robert A. Tobey testified that on Friday night, the night of the murder, between nine and half-past nine o'clock, he saw Dr. Burdell (whom he knew) on the northeast corner of Bond Street and the Bowery, apparently waiting for some one. Between this time and when he left the house for dinner, near five o'clock, no witness spoke of having seen him. Nothing appeared in the evidence as to his whereabouts after this time until the discovery of the murder next morning.

Considerable evidence was given in respect to the relations existing between Dr. Burdell and Mrs. Cunningham. That they had serious differences in September, 1856, was an undisputed fact. With regard to the charge he made against her of stealing a promissory note, the version she gave of it in her evidence was unquestionably correct. Nothing appeared throughout the entire testimony to shake her statement. Three police officers, John Little, Hector Moore, and Edgar Davis, testified to the circumstances of the charge of theft of the note, all of whom were at the house, 31 Bond Street, at the time. Officer Little said that
when Burdell charged her with stealing the note, she stated in his presence and hearing that "she was his wife by every tie that could be." To this Dr. Burdell made no answer. In her excitement she raised her hand and struck him, at the same time stating that he had deeply wronged her. Officer Moore's evidence was to the same effect. Officer Davis testified that Dr. Burdell told him that while he was asleep Mrs. Cunningham took the key of his safe from his trousers pocket, and then stole the note; that while the doctor was stating these things Mrs. Cunningham, in a tremendous rage, rushed in upon them, and told him not to believe a word the doctor had said—that he had ruined her and her family. He testified that Mrs. Cunningham said "she would have satisfaction—that she would have his heart's blood, or something to that effect." The police officers told Dr. Burdell they could do nothing in the matter, and that he and Mrs. Cunningham had better adjust their difficulties themselves. If not, the doctor could apply to a police magistrate for a warrant. Mrs. Cunningham, enraged and indignant at the insults and ignominy thus heaped upon her, commenced two suits in the New York Superior Court against Dr. Burdell—one for breach of promise of marriage, and the other for slander in charging her with the theft of the note. In each of these suits Dr. Burdell was arrested, and held to bail in the sum of six thousand dollars.

Dr. W. B. Roberts testified that after these suits were settled Dr. Burdell called at the office of the witness, and brought the bond he had given on his arrest. This bond was dated the 14th of October, showing that he had been arrested as early as that date. It was taken up on the 22d of October. Dr. Roberts testified as follows in respect to the interview with Dr. Burdell:

"After he [Dr. Burdell] had settled the affair, he brought
the bond up to my office, and said the thing was all settled; that he had no doubt he had done wrong, and she had too; he said she ought not to have brought this suit, and that she would not have done it if he had not accused her of stealing the note."

"* * * * * * * *

"'It is all settled now,' said he, 'and I am going to be her friend and that of her family, and she is going to give me a paper releasing me.'"

Among Dr. Burdell's papers found by the Coroner was the following, in Dr. Burdell's handwriting:

"In consequence of the settling of the two suits now pending between Emma August Cunningham and myself I agree as follows:

1. I extend to herself and family my friendship through life.

2. I agree never to do or act in any manner to the disadvantage of Mrs. Emma A. Cunningham.

* * * * * * *

"Harvey Burdell."

On the 28th day of October, six days after he was discharged from arrest in the suits brought against him by Mrs. Cunningham, he was married to her, if her testimony and that of her daughter were true, and the marriage certificate of Rev. Mr. Marvine was correct. Considerable evidence was given with a view to show that Dr. Burdell was not married to Mrs. Cunningham, but that some one personated him in the performance of the marriage ceremony. Mr. Blaisdell testified that on Friday, the last day of Dr. Burdell's life, he said he was not married, and that he would not marry the best woman living. He testified that Dr. Burdell had a great deal of conversation with him, and it turned, as it almost always did, "about people who were getting married and married life—what a curse it was." Rev. Dr. Cox testified
that on the same day Dr. Burdell told him that he had never been married, and that he never intended to marry, stating that "women are so artful." Dr. Burdell said "that was the reason he had no confidence in the sex." He said "he had known so much of the sex; that a woman when artful could circumvent a man when she pleased to set about it." Mrs. Stansbury testified that in her interview with Dr. Burdell, on that Friday, he told her that Mrs. Cunningham "thought he was an old bachelor worth about one hundred thousand dollars, and that he did not know what he could do with it himself, and that she was determined she would marry him, and he was determined he would not marry her." Cyrenious Stephens, who had known Dr. Burdell eight years, and who had been his patient, testified that in January, 1857, shortly before the murder, Dr. Burdell, in speaking to him about Mrs. Cunningham, said: "That woman has wanted me to marry her. I would not have her to save all my money and my life."

An attempt was made to show that Dr. Burdell was not in New York City on the 28th of October, the day of the marriage, but was in Saratoga. Allen T. Smith testified that he believed Dr. Burdell was in Saratoga at that time.

From this evidence the public jumped to the conclusion that the marriage of Mrs. Cunningham was a fraud, and that she had procured some one to personate Dr. Burdell. Among the head-lines to the reports in the newspapers next day, of the proceedings before the Coroner, were the following:

"DARKER FOR THE SUSPECTED PARTIES"
"Dr. Burdell was Probably at Saratoga on the Day of the Alleged Marriage."

This, with the other testimony, confirmed the belief, which was from the start impressed upon the public
mind, that the marriage was fraudulent. But worse testimony, in public estimation, followed. Some days afterwards Levi S. Chatfield and B. C. Thayer, who, in the suits of Mrs. Cunningham against Dr. Burdell for breach of promise of marriage and slander, had acted in their professional capacity as her lawyers, testified before the Coroner and his jury. Mr. Chatfield, after stating about the commencement and discontinuance of these suits, testified in respect to the breach-of-promise case as follows:

Judge Capron. "Now we want to get at the fact whether there was a subsequent disposition on her (Mrs. Cunningham's) part to revive that."

Mr. Chatfield. "Mr. Thayer could tell you much better than I can about that. I know this, that in the neighborhood of a month after the discontinuance—that is, after the 22nd of October—I had a conversation with Mr. Thayer in my office in which this matter was spoken of. Of course I felt some little interest in the case, although I never saw the parties, and I understood from him, if it is competent to say what he said, that the lady had been to his office the day before to renew the suits—to commence the suits over again—because the doctor had refused to perform his promise."

This testimony of Mr. Chatfield was amazing. If he understood correctly (which, probably, he did not) what Mr. Thayer said, he had no legal nor moral right to disclose one word of it, even in private conversation, much less in public, where it was sure to be caught up by the newspapers and published throughout the civilized world. The conversation with Mr. Thayer was privileged. If Mrs. Cunningham consulted her Counsel (Mr. Thayer) in relation to reviving the breach-of-promise case, it was her right that such consultation should forever remain a secret, unless she consented to its disclosure. It was right that Mr. Thayer should consult
with Mr. Chatfield; he was associate Counsel with him in the matter. If clients believed that their secrets upon consultation with lawyers would be disclosed by them in private or public, they would shun such lawyers as they would a pestilence. Mr. Chatfield having been Counsel for Mrs. Cunningham in the original suits, if they were to be revived, or new suits commenced, still occupied the relation of Counsel to her in respect to the subject-matter of those suits, and that relation would continue until she notified him of her wish to terminate it. If neither Mr. Chatfield nor Mr. Thayer had been Counsel for Mrs. Cunningham at this time, the statement of Mr. Thayer would have been merely hearsay and inadmissible as evidence. Mr. Chatfield was an able lawyer. He had been Attorney-General of the State of New York, and had figured conspicuously and largely in the public and political affairs of the State. It cannot be assumed that he had such a slender knowledge of law as not to know that his testimony above cited was inadmissible, illegal, and outrageous. In prefacing his statement of the conversation with Mr. Thayer, he said, "I understood from him, if it is competent to say what he said." He did not wait to have it decided by the Coroner whether it was competent to disclose professional conversation with his associate Counsel. He should have taken and firmly stood upon the ground that the conversation was privileged, and refused to disclose it even if the Coroner held it to be competent.

After the close of Mr. Chatfield's evidence, Mr. Thayer, who, with Mr. Clinton, was present as Counsel for Mrs. Cunningham, was called as a witness and sworn. Mr. Thayer was taken by surprise, and for the time seemed to have parted company with the coolness and self-possession which a lawyer ought ever to maintain. Mr. Chatfield—in years and experience at the Bar by far his senior, whom he looked up to with respect and
reverence, upon whom in important litigation he had relied as his leader—had given extraordinary testimony violating the sacredness of professional consultations. Mr. Clinton would have advised Mr. Thayer under no circumstances to testify to a word of professional consultation he ever had with his client, Mrs. Cunningham, but was prevented doing so, as will be seen by the following extract from the proceedings, as reported in the New York *Daily Times* of February 9, 1857:

"EVIDENCE OF B. C. THAYER"

"The Coroner asked if Mr. Thayer was in the room. It was answered that he had been in the room a few minutes before, and it was supposed he was then up-stairs. He was sent for and brought down. A hurried conversation was carried on for a few seconds between him and Mr. Clinton; he was then sworn by the Recorder. In taking the witness seat he made an effort to speak with Mr. Clinton, who was standing by his side. He was frustrated, however, by the Recorder, who very promptly interposed and said: 'I object to any conversation with Counsel after the witness is sworn.'"

"Judge Capron informed the witness that he was about to be questioned as to certain facts relating to Mrs. Cunningham's suits against Dr. Burdell. The questions would refer mainly to a point of time.

"The Recorder said it was a settled rule that upon a merely collateral matter the witness could not refuse to answer.

"Mr. Thayer. 'Gentlemen, I am perfectly willing to tell everything that I can consistently with my situation.'"

"Coroner. 'Gentlemen, I decidedly must stand up here and say that any man who refuses to answer a reasonable question, and I decidedly, for one, say the law will protect me in committing him to prison.'"

"Judge Capron. 'Well, Mr. Thayer knows he will be acting on his own conscientious belief.'"
"Question (by Judge Capron). 'What is Mrs. Cunningham's name?'
"A. 'Emma.'
"Q. 'Do you know Mrs. Emma Cunningham?'
"A. 'I know the lady you speak of.'
"Q. 'The one Mr. Chatfield has been speaking of?'
"A. 'I have not heard his testimony.'
"Recorder. 'Well, we will state Mr. Chatfield's testimony. Mr. Chatfield states that you called upon him about a month after the 22d of October last, and stated to him that on the day previous Mrs. Cunningham had been to you to commence or revive suits which had been discontinued against the doctor for breach of promise of marriage. That is the substance of it.'
"Mr. Clinton. 'Mr. Chatfield stated he thought that was so.'
"Judge Capron. 'I don't want to ask you anything between your client and yourself. I don't raise that question. I want to ask you simply as to that time. That is not a question which you can, as we think, claim to refuse to answer.'
"Recorder. 'Neither is the other, it being collateral and not pertaining to the matter.'
"Judge. 'I think that it is so. Still, I would not raise that unnecessarily.'
"Recorder. 'Counsel is not protected if the matter inquired of be collateral.'
"Judge. 'I want to ask you on what time it was that this lady came to you either to recommence those suits that you commenced for her previously, or to revive them, whichever was the case?'
"Witness. 'In the first place, the suits that were commenced were simply discontinued in October—I think it was the twenty-second.'
"Q. 'How long was it after that before she came to you to revive them—that is all we wish of you?'
"Witness (after considerable hesitation). 'I cannot tell.'
"Judge. 'Give us about.'
"Witness (after renewed hesitation). 'I cannot tell the particular date, but my impression is that she said she did not know but she would have to revive them. I don't recollect any date.'

"Q. 'About how long?'

"A. 'Well, it was some time afterward.'

"Q. 'Three or four weeks?'

"A. 'In the neighborhood of that, perhaps.'

"[This admission created the greatest sensation throughout the entire audience.]

"Judge Capron. 'That is all.'

"Q. 'One of these suits was for breach of promise of marriage?'

"A. 'One was for breach of promise of marriage; the other was for slander, for charging her with taking this note.'

"Witness went forward to sign the deposition, and on looking it over said: 'I don't say there was any suit ever commenced again.'

"Recorder. 'She said for the purpose of recommencing them?'

"Witness. 'She never called for the purpose of recommencing them; she never called for that express purpose.'

"Judge. 'That is no matter; if she incidentally said it it would answer just as well. All that we want is whether she spoke of recommencing them.'

"Whilst the witness was reading the Coroner's notes of his testimony and procuring some alterations to be made, Mr. Clinton bent forward to speak to the Recorder. The crowd, supposing he was endeavoring to whisper something to Mr. Thayer, shouted out, indignantly: 'No interference! No interference!'

"Mr. Thayer, in reading over his testimony, when he came to the sentence underlined, hesitated as if the statement had not been recorded precisely as he wanted. 'She did not,' he said, and hesitated—'she did not know but she would have to revive them.' [Great laughter and confusion.]

"Coroner. 'Order, immediately, or I will have the officers clear the room.'"
Mr. Thayer desired to put himself upon his professional privilege and decline to answer. He proceeded so far as to say, "I am perfectly willing to tell everything that I can consistently with my situation." How far the tactics of intimidation were successful appears in the evidence of Mr. Thayer. The Coroner at once said that if "any man" refused to answer "a reasonable question"—that is, a question which he (the Coroner) considered "reasonable"—the law would protect him (the Coroner) "in committing him (the witness) to prison." As though the threat to send Mr. Thayer to prison was not sufficient, the batteries of Recorder Smith and Judge Capron were turned upon him. Both of these gentlemen, who were assisting the Coroner by conducting the examination of witnesses, were at the time Judges of the New York Court of General Sessions, which Court had jurisdiction in capital cases; and, in the ordinary course of proceedings, either of them might thereafter preside upon the trial of Mrs. Cunningham for her life in that Court. Both of these gentlemen solemnly and deliberately (at any rate, with apparent sincerity) took the ground that the consultation of Mrs. Cunningham in respect to reviving the breach-of-promise case—or commencing a new suit—was not privileged. Recorder Smith declared that it was a collateral matter, and, therefore, not privileged. To this doctrine Judge Capron assented, although his favorite ground was that the testimony merely related to a point of time, and therefore was not privileged. Both assumed that it had been legally proved that Mrs. Cunningham expressed to Mr. Thayer a desire to revive the breach-of-promise suit. They assumed that this was an established and undisputed fact—as much so as if the suit had been revived, tried in court, and a judgment entered of record; whereas there had been no proof, legal or otherwise, that Mrs. Cunningham ever expressed a desire to have the breach-
of-promise suit revived. There was simply evidence that Mr. Thayer had said so. They did not ask Mr. Thayer whether it was true that he had thus stated. The only thing established was what Mr. Thayer had said. There was not a word shown as to what Mrs. Cunningham had said. In answer to a leading and monstrously uncandid question—not as to what Mr. Thayer had said, but as to what Mrs. Cunningham had stated—the witness answered that his impression was Mrs. Cunningham had said "she did not know but that she would have to revive them" (the suits).

It was most extraordinary that the Recorder and Judge Capron should hold that the declarations of Mrs. Cunningham to one of her Counsel, and what was said by this Counsel in consultation with his associate Counsel, under the circumstances, appearing in evidence, was not privileged. Never before nor since has there been such a specimen of legal legerdemain exhibited by Judges who were performing for the time being as amateur lawyers. Their adroitness, added to the grim majesty of the Coroner threatening to send the witness to prison if he did not answer any "reasonable" question, had the effect of so confusing Mr. Thayer that his answers to a series of leading and misleading questions became very much mixed. The idea of reviving the breach-of-promise case never entered the head of Mrs. Cunningham. Nor did she—nor could she—have ever expressed or conveyed, or intended to convey, any such idea to Mr. Thayer. That she was married on the 28th of the preceding October to a person who claimed to be Dr. Harvey Burdell was a fact undisputed. If some one personated Burdell, certainly she after that could never have thought of reviving the breach-of-promise case against him, and thus bring before the public the fraudulent marriage. If she was so keen that according to the opinion of Dr. Burdell, as testified to by one of
the witnesses, "she could outwit the devil," surely she would not suddenly turn idiot, and commence a breach-of-promise suit against him after the 28th of October.

The testimony of Mr. Chatfield and Mr. Thayer took Mr. Clinton by surprise. As soon as practicable he inquired into the facts, and found them to be substantially as follows: The breach-of-promise and slander suits were settled, not through the lawyers, but by the parties themselves, Dr. Burdell and Mrs. Cunningham, on condition that they should be married, and that for a certain time the marriage should be kept secret. Dr. Burdell insisted—and it was agreed—that it should not only be kept secret from the whole world, but from Mr. Thayer in particular. Until the murder of Dr. Burdell, Mr. Thayer knew nothing of the marriage. After the marriage Dr. Burdell desired that the judgment against his brother, William Burdell, which had been assigned to Mrs. Cunningham, should be by her assigned to him. She consulted with Mr. Thayer, and put to him the hypothetical question: "Suppose a lady is married, can she make an assignment of a judgment, or any assignment, using her former instead of her married name?" He told her that the proper way was to use the married name; but if there were no doubt about the identity of the person, if the former name were used, the assignment would be valid. She accordingly assigned the judgment to Dr. Burdell, using the name of Emma A. Cunningham. It was in reference to this she consulted Mr. Thayer at the time, and not in regard to the breach-of-promise case. Mr. Thayer may have suspected that the marriage followed soon after the discontinuance of the suit; and had he interrogated her on the subject she would have been likely to divert his attention by some remark which assumed that there had been no marriage. Much other evidence was given showing or tending to show that Dr. Burdell talked and acted as if
he were not married. This was not strange in view of the fact that it was agreed between him and Mrs. Cunningham that the marriage should be kept secret until the summer of 1857.

But whether they were or were not married, the subject whether the relations existing between them were friendly or hostile was important. Considerable evidence was given for the purpose of showing that they were hostile. This testimony consisted mainly of declarations of Dr. Burdell in the absence of Mrs. Cunningham. This was hearsay, and would not be admissible upon a criminal trial. Witnesses were permitted to state not only what Dr. Burdell had stated, but what they had heard other people had said. As there was no one to cross-examine witnesses or to object to evidence, and as there was no attempt to apply and enforce the rules of evidence, the widest latitude prevailed. While Mr. Clinton attended the inquest from beginning to end, he determined from the start to take no part in the proceedings, as he did not desire that he or his clients should be in any way responsible for anything that was done there. In view of the peculiarities of Dr. Burdell, it was remarkable that there was not more evidence of his hostile declarations in respect to Mrs. Cunningham. On the subject of Dr. Burdell's peculiarities Mr. Blaisdell testified as follows:

"Dr. Burdell is a peculiar man; he will have a quarrel, say, at this hour, and the next hour be pleasant; he was very passionate, and quick over it, and very friendly, which accounts probably for the many settlements with Mrs. Cunningham; he had many quarrels with her, as he stated to me, and afterwards settled them."

The witness said that Dr. Burdell, in speaking of his difficulties with Mrs. Cunningham, talked in the hall loud enough for any one to overhear. The witness add-
ed: "Dr. Burdell, let me tell you, whatever he had to say, talked right out; it made no difference to him whether a thousand were present." Rev. Dr. Cox, in speaking of Dr. Burdell's peculiarities, said: "I should characterize him as an amiable man, subject to peevish fits that subsided immediately."

Mr. Blaisdell, in his testimony, said:

"Dr. Burdell had a great many enemies. * * * Nearly all the difficulties he has had have grown out of money matters; he was one of the most extremely penurious men that ever lived. A penny looked bigger in his eyes than a twenty-dollar gold piece to some people."

Mr. Blaisdell testified that Dr. Burdell began a year before his death to talk with him about his troubles with Mrs. Cunningham. The witness stated that Dr. Burdell informed him that within the last month he had difficulties with her; he said she had taken some of his papers which were of vital importance to him, and asked what he should do, to which the witness replied that he ought to get rid of her. The doctor said he was going to do so. The witness also stated that Dr. Burdell told him on last Friday that his life was threatened by those in the house. This remark referred to Mrs. Cunningham, her daughter, Eckel, and Snodgrass. Dr. Burdell stated that lately they had acted very strangely towards him, and annoyed him in every way; that the doors had been bolted against him, and when he remonstrated "they would abuse him, and tell him that it was nothing more than he deserved—that he ought to have his head broke." The witness testified that he thought Mrs. Cunningham heard Dr. Burdell say that day he was afraid of his life. Mr. Blaisdell testified that in a conversation he had with Dr. Burdell on Friday, the last day of his life, he said to the witness, "I want you should come and stay with me; I want you to come to-night;
I am afraid to stay; I am very melancholy, and I don't know the reason, except these circumstances, and I want you to come."

Dimis Hubbard, a cousin of Dr. Burdell, who had lived in the house, 31 Bond Street, and of whom Mrs. Cunningham was jealous, testified that on the last Friday Dr. Burdell told her that he had trouble with Mrs. Cunningham, and wanted to get rid of her, but she had a lease of the house until the 1st of May; that he showed her a lease of the house to Mrs. Stansbury, which was ready to be signed. The witness testified that two or three weeks before his death Dr. Burdell told her that Mrs. Cunningham threatened to take his life if he told something in regard to her daughter, and that upon being so threatened he said to her that he had already told this to the witness. Mrs. Mary Stansbury testified that in an interview with Dr. Burdell on that last Friday he said that the agreement to lease her the house from the 1st of May was ready, and if she would call the next day it would be signed. She stated that she went all through the house that day and examined the different rooms, and that Dr. Burdell told her that Mrs. Cunningham was a very bad woman and would do anything. Mrs. Mary Crane testified that she had known Dr. Burdell about twelve years, and that on Monday, the week before his death, she had an interview with him at his house, in which he said:

"That he had let his house to a lady, and that she was the most horrible woman he ever met; he said she was very artful, and she was capable of doing anything to accomplish what she undertook; he told me that he suspected foul play, and that he did not like the way they were prowling about the house at night; he mentioned no name to me whatever; he said they were prowling about the house at night, and that he had lost papers; that the key of his safe was gone,
and indeed that nothing was private with him. He said: ‘Thank Heaven! I will get rid of them all on the 1st of May.’ He said also that she would outwit the devil; that he would rather be in the hands of the devil himself than in the hands of a woman like her; he seemed very much annoyed and troubled, and he said he would never make a contract with another woman.”

Rev. Dr. Cox testified that on the last Friday Dr. Burdell told him he had let the house, 31 Bond Street, to Mrs. Stansbury. Mr. Blaisdell testified that on that same Friday Dr. Burdell desired to let the house to him, and urged him to come and live there after the 1st of May. The peculiarities of Dr. Burdell in making contradictory statements of the same facts to different persons was testified to by Dr. W. B. Roberts, who was his confidential friend. Dr. Roberts testified as follows:

**Question.** “He [Dr. Burdell] was frank with a friend?”

**Answer.** “Yes.”

Q. “Then if he had particular domestic relations he would be likely, as a friend, to talk with you on the subject?”

A. “Yes. There were a great many things the doctor would say I never could account for; for instance, in letting his house to Mrs. Cunningham, a few weeks previous to May [1856], I asked him if he had let the house, and he said ‘No’; he said that Mrs. Cunningham wanted the house, and that he would not let her have it; for, said he, ‘Any one I like as a friend I do not want to have as a tenant’; now I see by the papers that the lease was made out to her in March; that he should speak in that way I cannot account for; yet we had that conversation; there are other things of the kind which I cannot account for.”

Cyrenious Stephens testified that in January, just before the murder, Dr. Burdell said to him that he had
worked hard and got a great deal of money, and, said he, "I am actually afraid to stay in my own house." Other witnesses testified to conversations with Dr. Burdell in which he referred to Mrs. Cunningham in terms more or less derogatory, while, according to the evidence of other witnesses, he evinced a great regard for her, and referred to her in terms of respect.