

CASE OF ALLEGED IGNORANCE AND MALPRAXIS.

For the following report and subjoined remarks we are indebted to Dr. Thos. Rolph, of Ancaster, Gore District, Upper Canada. The case was tried at the recent assizes held at Hamilton, in that district, and the report is taken from shorthand notes. It is one—as Dr. Rolph remarks—which is of importance in medical jurisprudence; and hence we publish it in detail.

THE QUEEN v. FLINT L. KEYES.

This was an action brought against the defendant for having unskilfully used improper instruments during the labour of a Mrs. Lydia Miller, by which grievous injury was inflicted on her child. The case on the part of the prosecution was ably stated by the Hon. W. H. Draper, Solicitor General. He stated that he had preferred bringing the defendant before them for a misdemeanour, caused by ignorance, negligence, and unskilfulness in his profession, rather than for the higher and more serious charge of infanticide, of which crime there might be doubts. He should call on some of the women who were present during this labour, and also on the medical gentlemen who examined the child, and if the jury were fully satisfied that unnecessary rashness and violence had been resorted to during the progress of this labour, by which damage and injury had been inflicted on the child by improper instruments, they would then convict the defendant; if any doubt, however, existed on their mind, it was certainly then their duty to give the defendant the benefit of their verdict.

Susannah Pepper, examined.—Was present with Mrs. Lydia Miller both during and at her delivery on the 18th of Sept., 1835. She was first seized with pains in the evening of the 17th, about sunset. Dr. Keyes was sent for from Brantford, and arrived between nine and ten o'clock. The labour was completed the following morning, about an hour and a half after sunrise. It did not exceed altogether thirteen hours from its commencement to its termination. Came before Dr. Keyes. About midnight, or more towards morning, Dr. Keyes attempted to deliver Mrs. Miller with a pair of forceps, but did not succeed; he then asked for a pair of common house scissors, which were handed to him—they were then clean. Saw him place them under the bed-clothes in the direction of the woman. After using them some time on the woman, took them out and flung them on the ground—they were then covered with blood. Mrs. Miller had had several living children before this. Was there when Dr. Rolph came. The child was born two hours after he arrived—it was dead.

Cross-examined.—Did not observe much flooding—was not aware of any. Was altogether much alarmed, never having seen the use of such an instrument before.

Martha Stroubridge, examined.—Was present with Mrs. Miller during her labour and at her delivery. Mrs. Miller was at her house all the afternoon of the seventeenth, and walked home. She was taken bad at night. Sent for Dr. Keyes, from Brantford, who arrived between nine and ten o'clock. Mrs. Miller was the mother of seven living children. During the night she was in great distress. Dr. Keyes said it was necessary to use the instruments. He tried to apply the forceps, but he did not succeed. Some time after that he asked for a pair of scissors; they were handed to him. Saw him take them into his hand and introduce them under the coverlid in the direction of Mrs. Miller; after using them for some time he dropped them from his hand on the floor; they were then bloody. From what passed at the time she is quite sure that Dr. Keyes meant to deliver the woman immediately by using the scissors on the head of the child. The woman called on Dr. Keyes to break the child's skull. Did not observe much flowing.

Cross-examined.—There was some flowing, not a great deal. Dr. Keyes asked for cloths, which were handed to him. He applied them to Mrs. Miller. Did not think the flooding was alarming. Did not perceive that she was faint; she was in great pain. Dr. Keyes could not use the forceps. Heard something about Dr. Mullen having applied them formerly to Mrs. Miller, but was since informed by Mrs. Miller that no instruments had ever been used in any of her former deliveries.

Mrs. Henry Odell, another female who was present during the labour, was not called by the officer for the crown, nor by the defendant's counsel, although one of the latter held a long conversation with her during the examination of the witnesses.

Dr. Rolph, of Ancaster, examined.—Was called from his bed on the morning of the 18th of Sept., 1835, between four and five o'clock, to hasten to a Mrs. Miller in her accouchement, in the fifth concession of Ancaster, distant seven miles from the village of same name. The messenger who came for him, represented the case to be one of extreme urgency, the woman being supposed in imminent peril of her life; requesting him to bring along with him all his midwifery instruments. On arriving at the fence, situate about twenty yards from the house, he was met and accosted by Dr. Keyes, who informed him that he had been some time in attendance, that the case he apprehended was a desperate one, and that the mother could not be saved without the sacrifice of the child. He replied to Dr. Keyes that he should be a better judge of that necessity, after having seen and examined the patient. Finding the pulse and the countenance good, he proceeded to make a manual examination, and discovering that the labour was then only in course of progress, and the presentation natural, he recommended patience. After waiting about half an hour, and finding a degree of inertness about the

labour, the pains not being powerful, although the womb was nearly fully dilated, he administered a preparation of ergot of rye, a medicine frequently given to accelerate the pains when the powers of the womb are sluggish; first also having learnt from Mrs. Miller that she had had several living children previously, and that her former labours had always terminated well, although always somewhat protracted. The pains becoming brisker, the head of the child was soon forced down and expelled. As soon as expelled, he observed a wound on the scalp of the child about an inch in length, which, some of the women present informed him, had been inflicted, during the course of parturition, by Dr. Keyes; and knowing that there was an evident distinction in law, between the destruction of the child while yet in the womb, or the destruction of the child fresh born, or during labour, the one termed fœticide, the other infanticide, he resolved to make as accurate an examination of the infant as possible. Whether the child breathed or not, after its expulsion, cannot remember—thinks if it had that he should not have forgotten it—but as there was sufficient evidence of existing mortal injuries, which it was morally impossible could have been the consequence of accident, but must have been caused by violence, was induced to inspect the child very carefully. It was a male child, full grown, the ossification was as complete as it could be at birth, and the testes were in the scrotum. The child being perfectly developed, rendered the probability much greater of its being born alive, and which he firmly believes it would, had it not been for the puncture with the scissors. Had the growth of the child been stunted, or its appearance immature, it might have been stillborn from natural causes. He requested his friend Dr. Craigie to accompany him to an examination of the child's head, after he had got an order from the magistrates, to whom he had communicated the entire transaction on his return home from the case. There was a wound of an inch in length on the left parietal bone, beneath which was a firm coagulum of blood, amounting to at least two ounces; and a bruised appearance extending from the wound to the neck. The pericranium was much lacerated, and the bone of the skull considerably indented. On a review of the whole case he gave it as his decided opinion that there existed no necessity for any instruments at all—that craniotomy was out of the question—that it was proved so, as the labour had terminated naturally, favourably, and as well as all her previous labours had done—that a common pair of scissors could not possibly perform such an operation even if required—that the period in the labour had not arrived when it could be either safely or properly performed—that an operation involving the life of a child should not be attempted, although to save the life of its parent, except in the presence of a second medical man whenever he could, by possibility, be procured—and that he firmly believed that the death of the child, in this instance, was solely owing to the injury inflicted on it by an improper instrument, and in unskilful hands. The labour was strictly a natural one in every respect, having terminated by the contractions of the womb alone, and in a moderate period of time. Dr. Blundell, his preceptor, recommends to his pupils not to use instruments until between thirty and forty hours after the rupture of the membranes.

Cross-examined.—Does not believe that there had been any flooding—certainly none to cause alarm—saw no indication of any whatever, either on the floor or on the person of the patient, or about the bed or bed-clothes—saw no bloody clothes—there were none in the room. Was not informed and did not hear of her having been removed to another bed before he came. The pulse of the patient was firm and good—her countenance natural, neither flushed nor pallid—opium undoubtedly might have produced that state of tranquillity—its operation is not uniform, it will sometimes quicken, as well as check, the velocity of the pulse. Dr. Keyes did meet witness at the fence but said nothing more to him than that it was his impression that craniotomy must be performed—did not inform him of any flooding—it was not mentioned either by him or the women present—did not say that he had attempted the use of the forceps, nor that he had used any scissors. Witness

came immediately after the delivery and gave information to the magistrates—also drew up a statement for the medical board. Having taken these steps at the time, he felt, as it regarded himself, relieved from any further responsibility. Should not have brought it forward at this time, but was induced by Dr. Digby, who had appeared before the grand jury, and stated to them this case and other cases of malpractice on the part of Dr. Keyes. Witness gave Mrs. Miller the ergot of rye owing to the sluggish state of the uterus. The os uteri was not fully dilated at the time, but Dr. Keyes had hours before that tried to use the forceps. The hand could readily reach the ear. Gave the decoction of the ergot of rye in three divided doses—making use of one dram for the three. Is not aware that there is great difference amongst medical men when to administer this auxiliary to labour—thinks it may be given advantageously after a moderate dilatation of the os uteri if the pains were infrequent and dull—before that time thinks it would not be advisable to give it. Witness was most decidedly of opinion that craniotomy, the reduction of the diameter of the head, could not have been effected by a pair of common house scissors—will not positively say that it might not, but is firmly of opinion that it could not. Was not aware that the umbilical cord was so entangled round the child's neck as to choke it—never yet knew of a child being choked until it had breathed—will positively swear that had there been such an entanglement of the cord he would have soon extricated it—is clear that that did not occasion the child's death. It is not absolutely necessary that the child should respire immediately—sufficient time would exist to allow of the disentanglement and division of the cord. Thinks he held no conversation whatever with Dr. Keyes in the house. He informed Dr. Marter of Brantford, by letter, of this transaction, in order that Dr. Marter might communicate it to Dr. Digby, against whom an action for slander was pending at the suit of Dr. Keyes. Preferred giving the information in writing, and through a third person, in order that it might not be deemed a confidential communication. Is certainly quite unconscious of coagula of blood being common during labour, under the scalp, when instruments have not been used—never met with any such instance—never heard of one. Has frequently seen and met with a tumefied and puffy state of the scalp induced by severe and protracted labour—had no cause for supposing it an effusion of blood—this case by no means did he view as a difficult labour—it certainly was not. In cases only of tedious or unnecessarily protracted labour would it have been prudent to give ergot of rye. In this case the pains were far between and feeble, perhaps from the administration of opium. Has performed the operation of craniotomy on the same individual three times in the province, once in the presence of the late Dr. Willison, once with Dr. Craigie, and lastly, during this last summer, in presence of Dr. Gun—in neither case until forty hours had elapsed after the rupture of the membranes. Would not consider himself justified in destroying a child's life except in presence and with the concurrence of another medical man if he could possibly be procured. Thinks the average duration of labour—shorter in this province than in England—climate might occasion some difference.

Dr. Craigie, examined.—At the request of Dr. Rolph went with him and examined the head of the child of a Mrs. Miller. The child was disinterred by the brother of a Mrs. Miller and another man, and identified. Had the appearance of a child at the full period of gestation—was well formed and plump, although very pale,—putrefaction had not commenced. On the left side of the head the cap was much stained, as if by bloody serum. Over the left parietal bone was a considerable tumour, about three inches in diameter, of a bluish colour; a streak of the same colour extended downwards behind the ear to the side of the neck, and was rounded at the extremity as if caused by the edge and end of a forceps blade—there was a similar appearance on the opposite side, but narrower and less distinct. On the middle of the tumour and over the centre of the left parietal bone was an irregular ragged wound, about an inch in length, penetrating to the bone,

which was much indented and scratched. The tumour was found to consist of a firm coagulum of blood—upwards of two ounces between the skin and pericranium and near the site of the wound, also under the pericranium, a considerable portion of which was detached from the bone. There was also very considerable sanguineous effusion along the tract of the discoloured mark on the side of the head and neck continuous with the lower part of the tumour. Considering the above amply sufficient to prove that unwarrantable injury had been done to the child some time previous to and probably causing its death, it was considered unnecessary to prosecute the dissection under the circumstances, which were particularly unfavourable for careful or protracted dissection. Should not have recollected all these particulars if it had not been for the notes which he made at the time. Was shown a large pair of house scissors at Mrs. Miller's house by Mrs. Miller herself, who informed him that they were the pair used; they were very blunt.

Cross-examined.—Certainly thinks the injury inflicted the most probable cause of death. Did not examine the brain. Cannot say what mischief, or if any, was done to that organ by the depression or indentation of the bone. Does not believe it practicable to perform the operation of craniotomy with a common pair of scissors. Would never attempt that operation alone if another medical man could possibly be procured. If any flooding existed, rendering interference necessary "*would pursue a totally different course from that which was pursued.*" The wound, in his opinion, must have been inflicted a considerable time before the death of the child. Believes the coagulum of blood to have been produced by the wound—it could not have occurred from the pressure on the child's head during a natural delivery.

By one of the Jury.—Had no hand whatever either directly or indirectly in the institution of these proceedings. Knows nothing of how they originated.

For the Defence. Mrs. Stroubridge recalled.—Remembers that Mrs. Miller was removed from one bed to another. There was but one room in the house. She flowed considerable. Some blood had run upon the ground. She did not faint. The pains were very severe.

Dr. Jabez Kellogg, examined.—Would sometimes in cases of violent flooding resort to the perforation of the child's head, but never until every other means had been tried to arrest it, such as rest, horizontal position, wet cold applications,—would only resort to such operation to save the mother. Has frequently seen coagulated blood on the heads of children born alive, owing to great pressure in a very severe and long protracted labour—has found it necessary to puncture the scalp to permit the escape of the coagulum. In the case of Mrs. Miller's child the wound inflicted by the scissors might or might not have produced death—thinks it would be very difficult to pronounce—is of opinion that the hemorrhage causing the coagulum might have taken place in the child's scalp after its birth, even though it had been born dead. In a case of perforation of a child's head, if he had not succeeded in penetrating the skull, where the operation was performed, in consequence of flooding, and the flooding had ceased, he would certainly desist from the operation and not make further efforts to break the head down.

Cross-examined by the Hon. W. H. Draper.—Now, sir, you have heard the whole of this case, would you have acted as Dr. Keyes did?

I certainly should not.

Hon. W. H. Draper.—I have not another question to ask you.

Dr. Oliver Tiffany, examined.—Is of opinion that a wound made some time before the death of a child, on its head, might produce a coagulum of blood, from the circumstance that the head was being propelled outwardly by an inward force. Thinks one or two ounces of coagulated blood on the skull of children very common. Is of opinion that ergot of rye very frequently destroys children, particularly if given before a full dilatation of the

os uteri. Would himself have no hesitation in using a common pair of house scissors for the perforation of the head in a case when he could not readily procure a perforator. The scissors he apprehended would make no difference to the mother and cause but little more pain to the child—they would be cumbersome and unhandy to the operator, but thinks the operation of craniotomy might effectually be performed by them. Believes it must have taken at least four ounces of liquid blood to have formed a coagulum of two. The coagulum is always found on the presenting part. Thinks that pressure on the umbilical cord was more likely to have caused this child's death than the wound inflicted on its scalp, the indentation of the skull, and laceration of the pericranium. Does not believe that a wound on the scalp, even accompanied with a large coagulum of blood, would alone cause a child's death—should certainly look for and refer it to other causes than that, more especially from pressure on the umbilical cord. Had seen an instance of death occurring in his own practice by entanglement of the cord round the child's neck, the strait of the pelvis being narrow and retarding the expulsion of the head, the pains being at the same time severe and continued; after a lengthened effort to resuscitate, one or two feeble respirations were induced, but the child died.

Cross-examined.—Forgets the proportions of the blood, but thinks it would not take more than four ounces of liquid blood to produce a firm coagulum of two. The perforator is used for breaking down the brain, not the skull. After the brain escapes the skull will yield to the force of the pains, and the diameter will become consequently reduced. Does not believe that scissors which were so dull as not to be able to perforate the skull after repeated attempts, could sufficiently indent or depress it as to produce compression of the brain, or extravasation of blood. Is certainly of opinion that the contractions of the womb became so violent and continuous from giving ergot of rye as to endanger the child's life—it is not generally given in England, France, or the United States—has never administered any himself—never seen any one else do so—has never read any work treating of its powers—does not find it recommended by Burns—has seen no great medical authority advising its use. Heard every particular of Mrs. Miller's case—would not have acted like Dr. Keyes.

Dr. Dickinson, examined.—Has heard the description of the wound inflicted on Mrs. Miller's child's head. Thinks it possible that an indentation of the skull might be made without producing mischief beneath. Does not think that the pressure caused by making an unsuccessful effort to perforate could be so strong and long continued as to destroy the child. Thinks that a complete perforation would be necessary to produce the death of the child. Does not think the mere pushing of the instrument against the skull could injure the child. Is decidedly of opinion that the child's death did not ensue from violence, as the perforation was not accomplished. Would be very sorry to say that the death of the child had been caused by the wound—however, will not say that it was not. Had he even seen and examined the wound, could not have known that it had been either the cause of or instrumental to death without making a thorough examination of the child. The brain ought to have been examined. Is of opinion that a pair of blunt house scissors, such as described, could not effect much more injury than the hand. Thinks that in cases of difficulty and emergency a physician should act on his own responsibility. Thinks a case might arise where he might prefer using a common pair of scissors in preference to waiting two hours for a more proper instrument. If pulsation had been arrested by any pressure on the umbilical cord it would cause death. Entanglement of the cord is not uncommon, but is readily rectified. Coagula are not uncommon—was attending a case of severe labour, where he knew the head was the presenting part, but the pressure was so great as to produce two apparent tumours on the head; that when Dr. Jewett came to the case he mistook the presentation for that of the breech. Ergot of rye produces powerful action of the womb—has known of its administration—thinks it

was as properly given in this case as in any that has come within his notice.

Cross-examined.—Certainly he should not have acted as the defendant had done under the circumstances of the case. If he was in attendance in a case, however, where flooding was very violent, he should resort to immediate delivery “*by perforation of the head!*” Is certainly inclined to think that the defendant did not take a proper course. It is, however, difficult to determine what might be done under extraordinary circumstances. It is impossible to pronounce an opinion of rashness from being obliged to take violent measures in a sudden and pressing emergency. Could really see no valid or substantial objection to the use of ordinary scissors for piercing the skull if that measure was deemed desirable. Certainly as the case turned out it was to be regretted that the attempt at perforation was made. Would have used the forceps himself. Thinks that four ounces of blood would not be missed by the fœtus in utero as it would be soon supplied with more. Would himself refer the death of the child to some unknown or non-apparent cause than to the various injuries which had taken place.

Mr. O'Reilly then addressed the jury for the defendant, commenting on the great lapse of time which had intervened since the alleged misconduct of Dr. Keyes in this case, and the present prosecution. It was very clear that from the steps which Dr. Rolph felt warranted to take at the time, by giving information to the magistrates, and drawing up the statement for the medical board, and no prosecution having resulted from these measures, that it was properly considered to be no case for prosecution. That Dr. Keyes having acted to the best of judgment in a case of difficulty, and possessing the confidence of his patient, it was properly viewed as a case where a prosecution could not be sustained. The matter was wisely allowed to drop, nor would it now or ever have been brought before a jury but for the professional jealousy of a rival physician, who envied the increasing fame and celebrity of his client. It seemed evident, from the concurrent testimony of all the medical witnesses, that Dr. Keyes had acted somewhat rashly and precipitately; he had no wish to deny that, but it was an error in judgment, under very trying circumstances, and ought not to subject him to the severe penalty and degradation which a conviction for the offence imputed must necessarily involve. There was no proof whatever of any malice or wilful negligence. The case as related to him by Dr. Keyes he would state to the jury, who would see how far it was borne out by evidence, and they would then form their own conclusions. Dr. Keyes was in attendance on Mrs. Miller, who being in severe pain and great distress, accompanied with much flooding, and expressing herself in great apprehension of her life, and entreating of him to deliver her, he tried to do so with the forceps, but finding all his efforts ineffectual, he thought it was necessary to deliver the mother at the expense of her child. Being unprovided with the customary instruments, and fearing that delay might be fatal, he requested a pair of scissors, which, after various attempts, he found incompetent for the task; he then consented for counsel, and Dr. Rolph was sent for. The flooding having ceased he desisted from further use of the scissors, and waited the arrival of Dr. Rolph. Before that gentleman came, Mrs. Miller was removed to another bed, which accounts for his having discovered no symptoms of flooding. As the labour had terminated as it had done, it was certainly deeply to be regretted that the steps described were taken, but being only an error of judgment, and evidently acting under a powerful sense of the necessity for immediate action, the defendant could not be viewed as guilty, nor could be justly convicted of any criminal intention or offence. He felt satisfied that the jury would place the most favourable construction on the defendant's conduct, and give him, without hesitation, the benefit of their verdict.

The Hon. W. H. Draper replied in a most able, eloquent, and perspicuous manner. He said that until a few days since he had heard nothing of this matter, but that he considered that Dr. Rolph had acted most properly in giving immediate information of it to the proper authorities, and it was

much to be deplored that the matter had not undergone a full and entire investigation at that time. The remembrance of the witnesses would have been much more vivid, and they would have been more competent to have given minuter details and more satisfactory and perfect evidence. It was these reasons operating powerfully on his mind that had induced him to forego a prosecution for infanticide, and confine himself to one strictly of misdemeanour. So that his learned friend had altogether misapprehended him; he did not accuse the defendant of wilfulness or malice in causing the child's death: not one word of any such accusation could be found in the indictment. But he did accuse him of unskilful and unprofessional treatment; that was the offence. The attempted perforation, the actual wounding, and that with the instrument and under the circumstances described, was the offence; the death of the child had nothing to do with it, although he believed it was the consequence. Not one single medical gentleman had justified the treatment, although some had endeavoured to palliate it, and divest it of its harshest colours. How, even had the case of flooding been borne out, on which so much and such great stress had been laid, could such a circumstance have been so effectually concealed? The very circumstance on which an attempted justification of the practice has been sought to be established. The only witness who has spoken of it was Mrs. Stroubridge, who, in her evidence on the part of the prosecution, most distinctly averred that it was not alarming. Let it be remembered that it was on this account the attempt by delivery with the forceps was made, and yet it appeared that it was some time afterwards before the scissors were tried. But the strongest circumstance against the defendant, unquestionably, was, that at and after Dr. Rolph's arrival the defendant did not inform him of any flooding—said nothing of the forceps or the sheers, but merely contented himself with expressing an apprehension that the destruction of the child was inevitable and indispensable; hoping, doubtless, that he would complete, having all his midwifery instruments with him, what the defendant had so rashly and unwarrantably begun. It was far from his wish to press for conviction, but he should not have discharged his duty without pointing out these matters. In the hands of the jury he left the full consideration of the case, trusting most implicitly to their knowledge and discretion; convinced that if there was a doubt the defendant would receive the benefit of it; if not, that the prosecution would be sustained. The learned judge summed up very ably and impartially, merely observing to the jury that although great stress had been laid by several witnesses that the death of the child could not have been the result of the attempted perforation, yet that they must bear in mind that there was no other result to be gained by the perforation but the destruction of the child—that its death was therefore intended if not accomplished. The jury retired, and after being absent some time, returned a verdict of not guilty.

Remarks.—Dr. Collins, the head master of the Dublin Lying-in Hospital, and one of the best authorities of the day, says, "the powers of the constitution fail but seldom in expelling the fœtus, where there is no material defect in the formation of the pelvis." Again, "Generally speaking, so long as the pulse remains good, the bowels and bladder act well, the soft parts remain free from severe pressure, and uterine action continues, so as to cause the descending part to *descend ever so slowly*, the patient having no pain in the abdomen on pressure, or local distress, the child at the same time being alive, as indicated by the stethoscope, I am satisfied no attempt should be made to deliver with instruments, and that he who does so wantonly exposes both mother and child to danger. A prudent use of instruments in the practice of midwifery is of great importance, but the necessity alone of freeing our patient from impending or present danger, should induce us to resort to them." In opposition to the profound Dr. Dickinson, Dr. Collins further states, "In every instance, where practicable, previous to using instruments, it is desirable a second physician should be consulted in order to satisfy both the friends of the patient and ourselves that we are

doing what is essential for her safety. Some practitioners never think of taking this precaution, nor do they ever attend a patient *without a forceps in their pocket*; such conduct I look upon as unjustifiable in the extreme, and am happy to think *it is the practice of those only who have little character to lose.*"