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A FAMILY PAPER FOR TOWN AND COUNTRY... BY WM. M. BRELLER.

Falsely Accused.

A Criminal Trial in Nurnberg, 1790.

No body can forget Nurnberg who has ever, for a few hours, rambled through its medieval streets... It remains a living type of the vanished past.

While the change whatever has come over the spirit of the architect there has, happily, a profound change come over the spirit of criminal law in Nurnberg; and if the lover of medieval institutions wants an illustration of those times which will make him join with the lover of progress in blessing the results of the wiser laws which in our day regulate society, therefore, and in many respects still barbarous, as these are, let him attend to the narrative of the following trial, which occurred in Nurnberg at the very close of the last century. Among criminal trials it has an exceptional interest, which is, however, more psychological than legal, and the mystery is even yet not cleared up.

On the 30th June 1790, at five in the morning, the merchant Johann Marcus Sterbenk was awakened by his maid-servant, with the unpleasant news that the doors of the house, and the counting-house, stood open, and that from the latter the iron cash-box had been stolen. As this cash-box contained two thousand gulden in silver, by one standard, but really a much larger sum in those days, the indignation of Sterbenk may be conceived. He hastened to the counting-house with his clerks and servants, found that a pane of glass had been removed from the window, which looked from the counting-house on to the staircase, and that the door was wide open. The maid said that she had bolted the house-door overnight. The reader must remember that in Continental houses the house-door or porte cochere, is the entrance to all the stairwells contained in one pile of buildings; and, unlike our English houses, merely admits to the vestibule. The separate doors have been unlocked after entrance has been effected through the house door. In this case the house-door had no lock; nothing but a bolt, which the maid declared she had pushed into its staple. She had heard no sound whatever during the night, such as the opening of this door would occasion; but on descending in the morning to take in the milk when the milk-woman rang, she was surprised to find this milk-woman inside the house, the door having yielded to her agency. Alarmed, she looked into the counting-house door, and found that also open. She looked in, and found the iron cash-box missing.

It was at once evident that the robbery must have been committed by some one perfectly acquainted with the localities. This was very clear, as the pane of glass which had been removed was the same that, ten days before Sterbenk had ordered to be taken out when one of the clerks, and it was necessary to open the door from within, which could be effected by a man's thrusting his arm through the opening, and thus reaching to the lock. A messenger, named Schonleben, remarked that he was very suspicious. But whom to suspect? At present there was not a clue, and gossip on the door-steps and in beer-shops freely vented their hypothetical suspicions, as is usual in such cases. A shopkeeper swore that on the night in question about two o'clock he had been in the street, and saw two suspicious-looking fellows in the neighborhood of the house-market; a barber also swore that he saw two men that night near the house, and had asked them the time; a maid-servant declared that she had seen a young man this day before standing opposite the house, considering it attentively. Suddenly suspicion settled on Schonleben, the messenger, who had found the history of the pane of glass so suspicious. It grew and grew, till it became very like conviction. He happened to say to one of the shopkeepers that he could only be certain the cash-box had been carried across the street-market, as reported said, he would easily trace out the

rest. This remark, surely not very compromising, seems to have excited attention. It was remembered that his life had not been blameless; and the busy imaginations of men instantly built up a thousand probabilities to convict him. The very day after the robbery, his brother, a peasant living in a neighboring village, had called upon him at the Sterbenk house, had spoken with him in a garden, and then had quitted the town with his dog-cart. Of course, carrying along the cash-box in this cart, as quick imaginations readily divined. It was further remembered that some days before the robbery, Schonleben had twice made his appearance at the counting-house and had later than usual, for which he could only give very unsatisfactory excuses, and the day after the robbery he had been forced to justify himself. On such indications was this man arrested.

It was clear that Schonleben could not alone have accomplished the crime. His accomplice was soon fixed on. It was Bautner, a poor spangle-maker. The indications against him were these: he was poor; he had assisted Schonleben to carry a load of wood into the Sterbenk house, and in doing so passed up the stairs leading to the counting-house; arrived at the top stair, he was said to have passed there some minutes, looking intently into the counting-house, fascinated by the sound of the money he heard chinking there. This was asserted by more than one witness, although resolutely denied by him. It could only be from a desire to make himself familiar with the locality previous to his criminal attempt. He also was arrested.

The idea of arresting, imprisoning, and examining two men on such evidence as this will astound the reader; but he will be still more astounded on learning that the possibility of their being innocent was never entertained. They were assumed to be criminals; and all that remained was to extort, or entrap, a confession of their guilt.

While the cumbersome procedure of those days was being carried out against these men, a new clue seemed to have been discovered, of far greater importance than any yet detected. A barber, named Kirckmeier, upon whom let the reader's attention be fixed, called on Sterbenk, and under the seal of secrecy as regarded himself, declared that, unless he was mistaken, he had a copy of the cash-box, closely resembling that which was advertised in the papers as the one stolen in the room of the gentleman who lived in the same house with Schonleben. Kirckmeier called a day or two after the 30th of June, and the cash-box was no longer there, and the cash-box was a citi-zen of Nurnberg, the father of a large family, well-to-do in the world, bearing the character of an upright, religious man. His testimony was considered unimpeachable; a fatal credulity was the result. On the unsupported testimony of this man, human beings were not only imprisoned, but tortured and destroyed.

Mauert, the accused, was married, the father of two sons aged ten and fifteen, very poor, but hitherto of blameless reputation. He was arrested, and examined. He denied that he had ever had any such cash-box, painted or gilded, in his possession. He knew Schonleben, knew that he was Sterbenk's messenger, but knew nothing of his private affairs. Mauert's wife also denied that any such box had been in their house. Kirckmeier, confronted with the accused Mauert, declared that, on the 30th June, at eight in the morning, he had entered Mauert's room, to shave him, he saw under the table, near the oven, an iron box with green stripes, the top painted with flowers, the lock ornamented with four painted oak-leaves, which he perfectly well remembered, and could describe. He never saw that box afterwards.

Kirckmeier was so honored a citizen, and his statement was so explicit, and so firmly insisted on by him, that inasmuch as he seemed free from all possible motive in the matter, not bearing any malice towards the Mauerts, but, on the contrary, testifying to their being, as far as he knew, honest, truthful people, the idea of doubting his declaration never entered the heads of the Nurnbergers, assuredly not of the executive, which at once cast Mauert into a dark solitary cell, and his wife into a cell with condemned women.

Mauert's lodgings were searched. Neither cash-box, nor trace of any burglarious instrument, could be found, but—and this was thought important—in a lumber-room one of the planks showed traces of having been lately raised, and with unexpected hands restored to its place. After this, nothing was needed but the full confession of the crime. Schonleben firmly denied any knowledge of the crime or the criminals; nor could he name any one on whom his suspicions fell, although he would say that Bautner, on the occasion of helping him with the load of wood, did ask where the counting-house was, and whether all the people in the house slept above. He knew nothing of Bautner's having stood looking into the counting-house, as he had been asserted. He denied every thing that was alleged against him, or explained it away. There is one point in his evidence which is not noticeable, and was much noticed, namely, that he described the cash-box in precisely the same terms as those employed by Kirck-

meier in reference to the box seen in Mauert's room.—This gave additional weight to the barber's testimony; for, it was argued, how could Kirckmeier, who had never been in Sterbenk's house, and consequently not seen the cash-box there, accurately describe it unless he had actually seen it? He described it precisely as the messenger who saw it daily, and what he described was so averred, under the table in Mauert's room. Now Mauert and his wife distinctly denied ever having had any cash-box whatever in their rooms.

Bautner, the spangle-maker, on being questioned respecting his dialogue with Schonleben, admitted the truth, but said he was in liquor at the time, and knew not much what he had talked about. Of the crime, or the criminals, he knew absolutely nothing, and as proof that he was not concerned in the robbery either as principal or assistant, he offered to prove an alibi. Unhappily for him, this proof was far from satisfactory. The witnesses he called did not admit that he was with them drinking till two in the morning; but on the contrary, declared they had accompanied him home at eleven. Now if he reached home by eleven, there was abundance of time for him to have committed the robbery.

The examination of the Mauerts now occupied the court. It was determined to put in force the rigor of the law to extort a confession. Kirckmeier reiterated, and even added to his former statements, and declared himself ready, if necessary, to affirm them on oath. In those days the criminal law did not absolutely require witnesses to be sworn; only in extreme cases was the oath administered, and the punishment of perjury was very severe. The oath was a last step, when the evidence was otherwise imperfect. Now as the two Mauert boys, on being interrogated, and solemnly warned to speak the truth, persisted in unwavering denial of having ever seen a box; and suggested that what the barber saw must have been a painted box filled with plaster cast-medallions, which indeed was under the table, but not behind or near the door; this steady denial forced the court to administer the oath.

Kirckmeier again declared his readiness to take the oath, which he did, and he was quite clear with himself as to whether the box seen by him was really such a box as the one stolen; the severe punishment of perjury was rehearsed to him, and the oath was slowly read aloud to him. He remained unshaken. The despairing Mauerts on their knees implored him to have pity; adjured him by all that he held sacred not to ruin them; pointed to their children in hopes of moving him. Kirckmeier was immovable. In calm and solemn tones he took the oath. Nothing that was said made him swerve in his statement that he had seen the green-painted cash box with green wooden legs, in the room of the man who is now kneeling imploringly before me. I cannot help it. I am quite convinced that in this I am not mistaken. His blood be on my head!

It was done. The oath had been taken. God had heard it, and would avenge it, if false. The excitement was not confined to Nurnberg and Franconia; all Germany stirred in it. Pamphlets, pictures, and discussions made it the talk of the day. The court, after Kirckmeier's solemn testimony, saw in the obstinate sinners, but hardened and obtinate sinners, the public share the feeling against all. So high ran the feeling against the accused on account of Schonleben's testimony, that the youngest child was killed in its mother's arms by a stone.

Kirckmeier, the demon of this story, after fresh indications of Mauert's criminality, which, of course, helped to confirm the prejudice against the unhappy man. He stated that some days after he had seen the box in Mauert's room, he had called on him and narrated how he had just seen Schonleben's wife carried through the crowd by the public, accused of having with her husband stolen Sterbenk's cash-box; whereupon Mauert said, "And what compensation will these poor people get if they are innocent?" Surely a very natural and humane question; but Mauert apparently for general apprehension, then, since it was interpreted as a sign of guilt, by a foggy process not unexampled in public reasonings. A week later, the barber again called on Mauert, and showed him the newspaper in which a reward was offered for the detection of the criminals. Mauert remarked, "How could Sterbenk imagine that the robber would be discovered merely if poor people were observed to have or spend more money than usual? He, Mauert, happened to be in possession of more money than usual; but he did not suppose that suspicion could fall on him on that account."

It cannot escape the reader as something peculiarly removed from modern jurisprudence, that not only should such implicit reliance have been placed on the barber's assertions, unsupported as they were, but that such a suspicion seems to have been awakened at his remarkable deni-

mal from all inculpation of Mauert till after Schonleben and Bautner had been examined. He declares that the very day of the robbery he saw the cash-box in Mauert's room. But he said nothing. When Schonleben was arrested, he called on Mauert, in continuance of friendly relations with the man whom he must have suspected to be a thief. A week afterwards, he called again, and although all Nurnberg was discussing the question, "Who is the thief?" and every one is freely suggesting suspicions, the barber, still as to Mauert, "Of this no thought seems to have been taken." Had the accused employed an advocate, it would have been duty insisted on.

A confession, if a court would have added Mauert's obstinate refusal to confess, he is ordered to be flogged. The flogging extorted nothing but groans and denials. He was flogged again, but as the judicial report peremptorily remands, "although he showed an extreme susceptibility to the stripes, he was not to be brought to confess; on the contrary stoutly maintained his innocence, but begged that a full investigation of his whole life might be made, which would show he had always lived honestly and above suspicion." Nothing of the kind was undertaken. In those days—the close of the "enlightened" eighteenth century—it did not occur to men to ask, "What compensation will the innocent receive if their innocence is proved?"

After this a second search was made in Mauert's dwelling; but nothing was found which in any way bore on the robbery. Schonleben's dwelling was also searched with equally fruitless result. What was to be done? It was clear that these men were guilty; but their obstinate set justice at defiance. How extort a confession? Appeals to their terrors had been tried, and failed. Examination and cross-examination had been tried, and failed. Floggings had been tried and failed. There remained only two resources: first, the Priest, and next, the Rack.

The power of the priest in extorting confession, even from the most hardened criminals, had often successfully been employed; accordingly, two celebrated Nurnberg theologians and preachers, Schonner, and Fuchs, were commissioned to try their powers. The public expectation was raised by the news of this trial. It was determined to extort, and justice would at length be satisfied.

Alas, even this failed. The priest reported that the two sons, no less than Mauert and his wife, repeated that they knew nothing whatever of the cash-box, that Kirckmeier had perjured himself, and that God would punish him, and that God would punish Mauert's wife, if she judged Mauert's wife of that judgment which awaited her in another world, which none could escape how- ever they might escape the judgment in this world; when I pointed in glowing terms the terrors of eternal damnation, the immovable justice of the Lord, and the awful power of his decrees, she interrupted me with the exclamation, "To Him I appeal!" When I argued with her on the sad consequences which would ensue unless she confessed, not only that her imprisonment would continue, but that even harder measures would be adopted towards herself and family, she replied, "And if they fog me in death, what is it? I want nothing more from this world, and care not to enter it again!"

In this manner she encountered every exhortation, every argument, every reference to temporal or eternal justice. She was innocent; her husband and children were innocent; she could say nothing else. The state of opinion was so inconceivably fixed against them, that no doubt whether any presumptive evidence would at that moment have had much weight, otherwise it is probable—but only probable—that this steadfast reiteration of innocence on the part of the whole family, under such severe trials of their firmness, would have suggested a doubt in their favour. It was true that the barber's evidence was explicit, but there was no other evidence; and that of itself might fairly be set against the whole family, two of them young boys, who never answered in their statements. There was one awkward circumstance, it is true; the barber swore he saw a cash-box; whereas the whole family steadily denied that any cash-box had been in their room. It was impossible to doubt the barber's statement. The priest's denial looked like sheer obstinacy. Nevertheless this denial, which innocences of sincerity which innocences must have made on the priests, at least, accustomed to hear confessions and to interrogate criminals, would have had its weight. A very common error's wife committed to which we are liable, and which daily experience seems incapable of eradicating, namely, that of attributing motives to the acts of others. "Whatever is done, especially when it is in any way injurious to us, we insist on assigning to its true motive. Now the motive which really actuated a human being, is almost never actually hidden from us; we never altogether know it, we are not often thoroughly aware of our own motives; yet in this state of blindness, we guess at what the motive may probably be, and sooner in that guess seem to have a tolerable ground for it, than the circum-

stances known to us, than we at once give it entire faith and treat it as an established fact. "It must be so," we say; and we proceed to act as if it were so. In the present case the motive which may have actuated Kirckmeier are numerous; but could not be known to another. Had Mauert's wife contented herself with saying, "Kirckmeier has sworn falsely. Why? I do not know; how should I know why?" her assertion would have been forcible; but unfortunately she could not rest satisfied with only guessing at his motives, and stated that what she said was the fact: Kirckmeier, she said, had sworn against her, because Mauert owed him some money for shaving; and had not made him a new year's present. To an irritated and feeble female intellect, this doubtless seemed an adequate motive; at any rate it was the motive she guessed, and having guessed it, she believed it. On the public mind this accusation produced no effect save that of strengthening the prejudice against her family.

In a clear form the concluding words of the priest's report, that a misguided had entered his mind respecting the guilt of this family—"My heart beats sorely," he says, "at the obstinacy of these people (who otherwise seem to have lived honestly though in poor circumstances), if they are guilty; but still more at their fate if they are innocent.—If Kirckmeier has been mistaken, or if, like other men, he has been capable of having been led astray."

Up to this time a plausible explanation had been propounded, and of course unhesitatingly accepted, as to the mode in which the cash-box had been taken from Schonleben's dwelling to that of Mauert's. As we do not sufficiently understand the localities to form a correct idea of this explanation, we shall not trouble the reader with it. Enough that at this juncture it was proved by professional witnesses that the cash box could not have been so transferred. Moreover, the plank which had been found recently taken up and laid down again in Schonleben's dwelling, and which was one of the indications against him, now turned out to have been removed by his predecessor in that dwelling, who testified thereto.

The court felt that its case was becoming weaker. Nevertheless it refused to become the victim of great importance. He stated that on the 30th of June—the day the robbery was discovered—Kirckmeier had informed him of the robbery at Sterbenk's adding that he had seen a cash-box somewhere. On being asked where, and in whose house he had seen it, Kirckmeier could give no satisfactory answer. Nevertheless, ten days afterwards, Kirckmeier privately informed him that he had seen the cash-box in Mauert's house on the 30th June; but since then had not set eyes on it. Holzel urged him to communicate this to Sterbenk, which for the first time he then did.

This was all confirmed by Kirckmeier. "He distinctly remembered every circumstance, and remembered moreover that Mauert, on his entrance, seemed somewhat confused, had moved rapidly away from the table, while his wife managed to keep the barber at the door till the cash-box was hidden. He also distinctly remembered that the cash-box was such as the one described; a box with plaster cast medallions he does not remember to have seen."

Meanwhile the medical report respecting the capability of Frau Mauert to support a flogging was registered. It was stated that she was quite capable of bearing some stripes; and there can be no doubt that this cruelty and indignity would have been suffered by her, as she would have been given an epidemic denial to the medical evidence, by carrying her off. On the 28th September, after an imprisonment of more than three months, death beneficently put an end to her sufferings. She died in great agony, bodily and mental. The priest who alone stood beside her during the last hours, declared that in the whole of his fifteen years' experience he had never known a sadder case. The cell in which she was imprisoned was underground, shut off from the light of the sun and the breath of heaven; as she herself was shut off from the embraces of her children, and the anxious love of her husband, he also sat alone in darkness, with the knowledge of his innocence, and the knowledge that all men believed him to be guilty. The priest in gentle persuasion accented urged the dying woman to free her soul from its load by confession; her constant reply was that she had nothing to confess; she and her family were innocent. "God will bring our innocence to light; you see that one day." And so being prepared for her end, and being made, she said, "God has been with me, and called to me; Fear not; I am beside thee; I go joyfully." Him, for I go at once to heaven." The priest took his leave, and shortly afterwards all was over for her in this world.

As a criminal she had died, as a criminal she was buried. In silence and darkness she was laid in the earth without rites of sepulture. At any rate she was free now from all torments of mind or body. Now we have seen how the case was cleared up. Three victims still remained. Nothing had as yet been pronounced as to their fate. They had even-tingly been later come to light, and on

that conviction he relied with confidence. As if to strengthen this statement, and if no sooner was one clue caught up than the next moment it was to be broken, the very day after Bautner's examination, a smith, in whose service lived one of the witnesses called to prove Bautner's alibi, informed the court that "this workman had confessed to him, the smith, that he had concealed the truth on his examination; that in reality Bautner did not go home on the night of the 29th 30th at eleven o'clock, but at two in the morning, at which hour the workmen accompanied him. Why had he concealed this, and stated what he knew to be false? Because he was afraid of the punishment which would have fallen on him for having been drinking in the beer-shop past the hour permitted by the police! Hereupon all Bautner's witnesses had been previously examined, and they were once more examined, and they all and all confessed that it was two o'clock, not eleven, when Bautner and they left the beer shop; they all confessed that it was only fear of the police regulations being enforced against them, which had made them conceal the fact on their first examination. There was not an unusual suspicion excited that these witnesses had told the truth at first, and that Bautner had found some means of corrupting them, so as to induce this retraction; but they persisted in this second statement, and were not only unanimous, but spoke out with the greatest precision and confidence as to the fact. Nobody believed them, and the strictest inquiry was made into every conceivable circumstance that could possibly throw light on their testimony; but the upshot was that the strongest point against Bautner—namely, his supposed presence near the spot at the assumed period when the robbery was committed—was, reluctantly, but inevitably, allowed to sink into utter obscurity.

The locksmith, Holzel, who for years had been employed by Sterbenk, was now interrogated. Holzel had three years before repaired the cash-box in question, and he deposed that, according to his recollection, it weighed one hundred and twenty pounds, was striped with green, painted with white flowers, and had the lock ornamented as the barber Kirckmeier had described. He stated that he had seen the cash-box in Mauert's house on the 30th June; but since then had not set eyes on it. Holzel urged him to communicate this to Sterbenk, which for the first time he then did.

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to fear; nothing to hope. By one of those coincidences which act powerfully on the public mind, ever prone as the public is to build conjectural romances out of insignificant and unrelated facts, on the very day of Frau Mauert's death the advocate Faulwetter announced that his house had been burglariously entered. It was a small garden house, outside the town, where on account of quiet he was in the habit of working over his briefs. This had been violently entered early in the morning, but nothing was stolen. On his return, he had found the papers lying there, some of which were torn, and several moved from their positions.

Such was the fact. Now for the interpretation. Faulwetter was one of the counsel employed in the Sterbenk case, and, as he had several times had the papers of the proceedings verbal with him to look over,—a fact notorious in Nurnberg—it was clear that some yet undetected participator in the robbery had broken into the house, hoping to carry off papers, and so destroy evidence which might be brought against him, or at any rate throw fresh difficulties in the way of justice. No sooner was this hypothesis started than it gained, of course, instant credit; and it set men speculating as to who the yet undetected accomplice, or accomplices, might be. The power of guessing was illimitable; and we have seen that the worthy Nurnbergers were not backward in suspicion; but with all their efforts they could get at no clue.

Even when the mystery was finally cleared up, the burglary at Faulwetter's remained inexplicable; and not until some time afterwards, when Faulwetter was murdered by one of his exasperated clients, was even a tolerable guess as to the motive of the burglary arrived at.

Thus, day after day, suspicion rose and fell; fresh lights glimmered through the obscurity; but after leading men a strange dance through the mazes, they were all recognized as will-o'-the-wisps; and real steady daylight could nowhere penetrate. Weeks rolled on. Everything had been done to extort a confession, but the hardened obstinacy of the prisoners baffled every effort. Had not one of them died impatient, carrying their wrongs, except that they would yield to the persuasion of the rack—this, as we have seen, had been already threatened, and even resolved on; but with a natural reluctance, it had hitherto been left untried. Although the age had gradually learned a little more humanity—learned that torture was a terrible means of investigation, only to be employed in extreme cases, and therefore the court was slow in proceeding to such extremities—yet the age had not arrived at the conviction that torture was an infamy and a folly.

Fortunately for all concerned, this last inquiry was avoided. On the 30th October, exactly four weeks after the burial of Frau Mauert, a new turn was given to the inquiry. Indeed, before that there had been rumours, and which directed suspicion to quite other persons than the accused. But the court would not be led away from its present course, by following new and uncertain tracks. It was felt that the whole city was implicated—that justice herself was in peril; unless the truth could be made evident. At length rumour became so loud, that one of the judges sent for the locksmith's apprentice, Wagner, and in his private house took down the following deposition—

On Sunday the 17th October, a friend of his told him at the beer-shop that a little while before he, Wagner, arrived there, one of Meister Berger's workmen, named the Berliner, had spoken very abusively of Meister Gossler, the locksmith, and of Bloel, his man; boldly telling the latter that people suspected him of being concerned in the Sterbenk robbery. Bloel had quietly accepted all the reproaches, insults, and vituperation of the Berliner, and, as if dumb, in the presence of him, the antagonist. The suspicion to which the Berliner alluded was founded on the fact that Bloel and Gossler had bought themselves silver watches, were dressed in new suits from top to toe, and seemed to be altogether in much more prosperous circumstances than formerly. Wagner further deposed that on the Monday after that scene, Meister Gossler had come to the beer-shop and endeavoured to clear his man from imputations which had been cast on him, declaring that he had received money from his relations in Saxony, which would account for his prosperous condition.

On further questioning, Wagner deposed that about a week ago a fellow-workman of his had remarked: "Bloel is cutting a figure! He has had a new coat made. He stood next to me in princely style, two bottles of wine at one place, and whenever we have been together he has insisted on paying for both."

Had anything else been observed? Yes, this. Bloel had not been seen in the beer-shop, which, previously, he had always carried. Moreover, Bloel had always seemed very poor, yet came to the beer-shop in a jacket now he was very differently dressed. Wagner would say, and all this, as he said, was very different from what he had seen. He had never seen Bloel so well dressed, and he had never seen him so well paid. He had insisted on paying for both."

As a criminal she had died, as a criminal she was buried. In silence and darkness she was laid in the earth without rites of sepulture. At any rate she was free now from all torments of mind or body. Now we have seen how the case was cleared up. Three victims still remained. Nothing had as yet been pronounced as to their fate. They had even-tingly been later come to light, and on