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The Last Scene in
the Johnstown Tragedy

1800
words

WANTED—A NEW WORD.

BY JUDGE ALBION W. TOURGEE.

We have reached the last scene in the tragedy of Johnstown. The jury of inquest have made presentment that "the owners of the dam," the insufficiency of which resulted in the death of ten thousand people, are "responsible" for this unparalleled slaughter. That ends it. The dead are dead, and those whose bodies were recovered are buried. Why should there be anything more? The press report very carefully states that even "this verdict was a great surprise." And yet it was a polite verdict—very polite. It used no names; made no reference to overwhelming disaster; hinted at no crime. It merely declared that one woman had died; that the cause of her death was not apparent; that an inquest was necessary, and "the owners were responsible." How "responsible"? Who are the owners? How did they incur responsibility? Were the waste-gates taken out of the dam, or purposely and knowingly obstructed? The grand jurors are altogether too well bred to answer such impertinent questions. Do they mean by "the owners" those holding the fee or the lessees? What silly questions! Does the State own the dam, or did the title pass by gift to the corporation which owns the State—the Pennsylvania Railroad Company? Did the fishing-club contract to keep the dam in repair as lessees, and did they knowingly and willfully obstruct or destroy the waste-gates? Who knows—who cares? Not the polite coroner's jury, certainly. The dead are dead, and "the owners are responsible"! That is all they know or care to find out.

By the way, is it not a little strange that they learned even this much? The calamity was phenomenal. The world's heart was wrung with sorrow for the dead, and sympathy for the surviving. Every day for more than a month the resources of the greatest news-gathering agency of the world have been taxed to the uttermost to satisfy the greed of the American people for knowledge of the calamity. Telegraphers and correspondents by the hundred have been on the spot. The details of the recovery and removal of the bodies and the wreckage have been given with painful minuteness. Yet now that

one comes to look back upon it, there has been a mysterious silence in regard to the cause. Not a single instance of frantic imprecation is reported. The living have looked silently and uncomplainingly on their dead. One of the first dispatches was a detailed defense of the sporting-club who had control of the dam. Beyond that hardly a word has been said by any one in or about Johnstown as to the cause of the disaster. Curious, isn't it?

And the inquest—what has it done? What witnesses did it call? Who represented the Commonwealth of Pennsylvania? Was any search made to find "the owners"? When and by whom were the waste-gates obstructed? How did "the owners" become "responsible"? The American people—the tender and true-hearted of all the world—are interested in these matters. Why was the testimony not reported? The manager of the Associated Press himself was on the spot. He has a scent as keen as a bloodhound's for news. Why did he not give the world the testimony taken before this—the most important inquest ever held? Strange, isn't it? Every reader in the United States would have perused the story with avidity; but no eye outside of the military lines at Johnstown saw it. What could have been the reason for this silence? Was it a Star Chamber proceeding? Were they afraid the guilty parties would escape? How many readers of the Boston, New York or Chicago papers knew that an inquest was being held at all? In the mean time a score of inquests in other cases, where only a single death occurred, have been fully reported; but of this phenomenal inquiry as to the cause of a slaughter unprecedented in the annals of crime or calamity, not one word reached the millions of waiting hearts who were asking the questions: "Who were responsible for the slaughter? What will the law have to say about this holocaust of death?"

Of course the fact that "the owners," whoever they may be, are rich and powerful—that they own railroads and telegraphs and possibly newspapers, too—all this had nothing to do with the strange silence which has brooded over the inquisition as to the cause of the ten thousand deaths in the valley of the Conemaugh. Possibly those who visit the scene of devastation think the public has no interest in the

cause of death where so many perish, or when the murderer's bludgeon, the assassin's dagger, or the poisoner's art, play no part in the mournful tragedy!

Perhaps the jury failed to define the responsibility for lack of a proper term. Our legal nomenclature is shockingly deficient in this respect. There is the old-fashioned word "murder," but it is a terribly coarse and vulgar term to apply to the nameless "owners"! It has an unfortunate way of sticking to one in connection

with whose name it is once used. Even a verdict of "not guilty" will not wash it out. Manslaughter is hardly any better. It also is horribly coarse, and, taken in connection with ten thousand water-soaked forms and blurred, unseeing eyeballs, it has a ghastly suggestiveness that could not but be unpleasant to "the owners'" feelings. Homicide is a nasty, squeaking synonym, which is little better than its Anglo-Saxon namesake—perhaps even worse, for it may include the uglier idea embraced in murder.

It is strange the jury of inquest did not fall back on that beautiful phrase where, with the common law records the fact of sudden and violent death in which the hand of man is not traceable—"the act of God!" The traveler stricken by a thunderbolt is found a stark and blackened corpse by the roadside. The law, inquiring the cause of death, reverently records the fact in the phrase, "Perished by the act of God!" He that gave life mysteriously hath taken it in like manner. Man may not be content; but on the edge of the grave knowledge ends. Why not write this consoling epitaph on the thousands of graves that disfigure the green hillsides that bound the narrow valley of Conemaugh? It was evidently God's act, "a mysterious Providence," "a terrible calamity," a text on which to hang a lesson of life's uncertainty. The rains fell; the waters rose; the dam burst; the dead choked the river's flow, and are hidden in the *débris* of a thousand devastated homes. It was not the dam that killed this hecatomb, but the cloud-burst. This is evidently the real meaning of the dispatch which appeared in every newspaper in the land—"The verdict was a great surprise to every one!"

But this was rather too much even for the politeness of the coroner's jury. They could not bring themselves to wholly

ignore the human element. There was, indeed, a cloud-burst among the hills; the waters ran down the sharp, bare slopes, denuded by man's greed and carelessness. The dam bars their way—a dam built for the purposes of commerce, maintained for pleasure, a huge barrier seventy feet high and four hundred feet long. Behind it were heaped up millions of tons of power—millions of cubic feet of death-dealing force held in check by the dam—the dam without outlet or waste-gate! It was not God's act, but man's! What man's? That is the question the law asks the jury of inquest. What man's act? Why, "the owners." Ah! Then these heaped-up dead met their fate at the guilty hands of "the owners." "The owners" killed ten thousand people! What! Killed? Guilty? Oh, no! "The owners are responsible"—nothing more!

After all, the jury were considerate. They did not present the ten thousand dead for *felo de se*, or arraign them for "contributory negligence." Therein they showed themselves a great improvement on the "crown's quest," in Hood's poem of "Miss Killmansegg," who declared the heiress, whom the murderer had brained with her golden leg, a suicide, "because her own leg had killed her!"

The Johnstown inquest might at least have divided the responsibility, and not have left the whole upon "the owners." The people who were killed knew that the dam was unsafe—everybody knew it, it seems, except the judges, the prosecuting attorneys, the grand jurors and, probably, "the owners." The people were told that it was likely to burst. Nay, they were warned at high noon, and at five o'clock in the afternoon were yet carelessly loitering around in the narrow rift above which hung sixteen million tons of water. If that be not "contributory negligence," what is? Perhaps the fact that the inquest did not find these dead thousands guilty of criminal carelessness, resulting in their own deaths, is the reason we are told that "the verdict occasioned a great deal of surprise!"

The dilemma in which these "good men and true," who were sworn to make presentment in the premises, were placed, shows the pressing need we have of some new term to designate corporate or collective killing, for which many good and respectable men are "responsible," but of which no poor, discernible, bad man is

"guilty." Usually a scape-goat can be found, to whom the ugly words which the law affixes to him who takes his fellow's life, may be applied; but every now and then we have an instance like this "unfortunate affair" at Johnstown, when politeness compels a jury to strain ambiguity to its utmost limit, or regard for the oath they have taken will lead them to apply to respectable citizens terms which should only be used in connection with the most debased and criminal classes.

Instances of this are numerous. A railroad company economizes in order to make a dividend, and requires its engineers to do double duty. After a man has been at the throttle for fifteen hours, there is a collision. The engineer is killed; so are many passengers. It is believed that the engineer was asleep. So far as he is concerned there is no hesitation in finding that the death of the others was due to criminal carelessness on his part; but as applied to the company such language would never do at all.

There is an accident in a coal mine; forty men are buried in a single shaft. Dangerous? Yes; everybody knew it. Could it have been made safe? Only at considerable cost. The mine boss should have given warning to the men, but did not. Verdict: The buried miners died through the criminal neglect of the subordinate. The owners? They were recommended to employ a more efficient ventilating apparatus.

Gross negligence on the part of the individual is the equivalent of malice. The man who deliberately fires a gun into a crowd is a murderer if a single child is killed. He is guilty of the most atrocious crime known to the law. But respectable gentlemen who hang a watery avalanche above a crowded valley without any safeguard or means of relief—they are not murderers nor man-slayers when ten thousand die by reason of their unintended neglect; they are only "responsible."

The man who leads a riot is a murderer; the man who inaugurates a war, a patriot. He who kills by retail is a criminal; he who slays by wholesale, is, at the worst, only "responsible."

Civilization has changed our relations, and we ought to have new terms to fit our new conditions. "Am I my brother's keeper?" was Cain's resentful answer to the inquiry concerning Abel. It would

have been enough, if he had not killed him. But civilization will not be content with this limitation of responsibility. It has wonderfully extended the area of moral criminality. Science has pointed out the source of peril and the measure of safety. It informed "the owners" exactly how much resistance was needed to hold in check the threatening flood; how large the waste-gates should be to give safety to the valley below; how they might be made to work automatically, and so be always secure. But they would have cost some money. Science is a bad book-keeper, and will not balance its books with the cost of a gravestone.

Besides that, even the term "responsible" is getting to have an uncomfortable significance. The time was—and not so very long ago—when man had no responsibility for his fellow if he only *let him live*; now he is held responsible if he *even let him die*. To kill by preventable ill is not yet a crime, except in a few cases, but it is fast growing into a sin of such enormity that men tremble when it is imputed to them. The parent used to mourn resignedly his smitten offspring, saying, "The Lord gave and the Lord hath taken away!" Now, science drags the red-eyed mourner to the neglected refuse-heap beside the kitchen door, or the defective drainage in the cellar, and hisses "Murderer!" into his ear. There should be some politer term.

A city gives thousands dependent upon its aqueducts, water impregnated with filth and disease. Men, women and children die of typhus and kindred diseases. Science says that not only the mayor and council, but every citizen in whose hand is the baton of sovereignty, is a murderer. But then, science takes no note of parties or political necessity. Yet politics and law, and even business itself, are beginning to feel the force of this new rule of human relation. "Inasmuch as ye did it *not*" is steadily growing into importance in the estimate of human responsibility. Johnstown may not help us to a new word to express this fact, but it is sure to help us to a more realizing sense of its existence. Will it also help us to realize that all the responsibility is not with "the owners"? That there are fathers and husbands mourning their dead today, who, by mere neglect of their duties as citizens, slew their own loved ones?