

Name: James Mills
Occupation: Hatter
Home: N/K
Date: 4 October 1819
Source: Lees Inquest 233 – 241
Summary: Called by the authorities to suggest that Lees' drinking at Middleton Wakes shows that he was not too seriously wounded, but accidentally reveals that 'out witnesses' have been coached. Much argument ensues in the court over what is admissible as evidence.
Done by: CW

JAMES MILLS called in, sworn, and examined by the CORONER.

Q. Where do you live?

A. At Oldham.

Mr. Ashworth (*to the Witness*)—I would just ask you before you begin—

The Coroner—(*to Mr. Ashworth*)—Stop, Sir, if you please, let me examine him first.

Mr. Ashworth—Very well, Sir.

Examination of the WITNESS resumed by the CORONER.

Q. What trade are you?

A. I am a hatter.

Q. What do you know relative to the death of John Lees?

A. I have been in his company once since the 16th of August.

Q. Where was that, at Manchester?

A. No.

Q. Where then was it?

A. At Thomas Fletcher's, at West-ward Inn.

Q. When was that?

A. On the 22nd of August.

Q. What time was it?

A. About twelve o'clock.

Q. Do you mean twelve o'clock at noon?

A. No; twelve o'clock at night.

Q. What was he doing there?

A. He was in there; I had been to meet him, and I met him there.

Q. What was he doing there?

A. He was with his company there, drinking.

Q. How long did he remain there?

A. I was not there more than a quarter of an hour, from going in there [sic] to coming out.

Q. Did you leave him there?

A. Yes.

Q. Did you see any thing amiss with him there?
A. He complained very much of his wounds.
Q. What wounds?
A. A wound on his elbow, he told me.
Q. Did you notice any other injury on him?
A. He said, he had received a stab on his shoulder, which had cut his coat and his waistcoat, but had not cut his shirt.
Q. Did he say on which shoulder that was?
A. I understood it was on his left shoulder.
Q. How was he? Was he in liquor—was he drunk or was he sober?
A. He was not drunk. He was freshish; but he was sober.
Q. How did he behave whilst he was there?
A. I was not long in his company.
Q. Well, then, you can't tell; but was that all he said about his wounds at that time?
A. Yes. He offered to show me his wound, but I objected to see it.
Q. Did he appear ill?
A. He appeared much as usual, as I have seen him before. He complained much of his wounds.
Q. Do you mean, when you say he appeared much as usual, that he appeared the same as when you formerly knew him?
Q. How long had you known him?
A. About six or seven years.
Q. Is that all you know about him?
A. He told me he had been to Manchester, and how he had received his wound.
Mr. Harmer—Without knowing, Sir, what the witness is going to state, I submit, that what the deceased said to him is not evidence.
The Coroner—I will take it so. I will examine him no more; but I took it from the girl, on Saturday.
Mr. Harmer —And I protested against it.
Mr. Ashworth—As the deceased was not apprehensive of death, what he said at the time was not evidence.
Mr. Harmer—If it was the interest of the learned Counsel to contend the contrary to this proposition, I have no doubt he would do it; and I recollect, Sir, when the witness was examined on Saturday, as to something that the deceased had said, I objected to it, on the ground that I now object to this witness's evidence to the same thing; but you stated that as it was evidence against the deceased, it was admissible.
The Coroner—Yes; I said that any evidence which would be evidence against him would be admissible; but, on Saturday, I received this from the girl.
Mr. Ashworth—Will Mr. Harmer say that it is evidence?
Mr. Harmer—No, Sir; I don't wish it to be received, because I consider it inadmissible.
Mr. Ashworth (*to the Coroner*)—I understand the principle upon which you go, Sir, to be, that what a man says under apprehension of death, is evidence; but as he may say what he likes if he has a hope of recovery, that is not evidence, unless as against himself.
The Coroner—Yes; that is what I say.

The WITNESS examined by Mr. ASHWORTH.

Q. Has any body been to you, and if there has, mention them by name, if you can, talking to you about the evidence which you were to give on this occasion?
A. Been to me?
Q. Yes; has any body been talking to you about the evidence that you were to give on this occasion?
A. No, not to me in particular. There was a person came to the Swan, on Wednesday

last, and called two or three, and told them not to say any thing concerning the 15th Hussars.

Q. Was that in your presence?

A. No; it was not to me.

Mr. Harmer—Then it is not evidence.

The examination of the WITNESS resumed by Mr. ASHWORTH.

Q. Was there a man named Cleggs came to you?

A. No; he did not come to me.

Q. Did he say any thing to you?

A. No; he did not.

Mr. Harmer—Then I object to this evidence altogether.

Mr. Ashworth—But he might be employed to go and do it, Sir.

Mr. Harmer—That is entirely a matter of inference for the Jury to draw.

Mr. Ashworth—Why, Sir, it is constantly given in evidence, in Courts of Justice. If a person, who is named, has gone to a witness to talk to him about what evidence he is to give, that is evidence and it is for the Jury, to consider whether they will not infer whether there was not an agency.

Mr. Harmer —But, I say, Sir, that what any person said to this witness, or to any others, is not evidence.

Mr. Ashworth—Why, Sir, it is constantly admitted; and I am really surprised that the learned gentleman disputes it.

Mr. Harmer —I challenge the learned Counsel to produce any instance in which such evidence has been admitted.

Mr. Ashworth—I know it to have been admitted on one side.

Mr. Harmer—I hope we are all on one side here.

Mr. Ashworth—I say, that as evidence of inculpation, it is admissible.

The Coroner—A witness may be examined as to whether any person has said any thing to him, as to the evidence he is to give.

Mr. Harmer—I venture to say, Sir, that it is not legal evidence.

Mr. Ashworth—Well, the Coroner will decide it.

The Coroner—I have frequently known it put to witnesses, both by Counsel and by Judges, whether any body has been tampering with them, or telling them what evidence they must give.

Mr. Harmer—But I will venture to say, Sir, that such conversations as the learned Counsel has been alluding to, never were admitted in a Court of Justice; and I challenge him to produce any instance of it.

The examination of the WITNESS resumed by Mr. ASHWORTH.

Q. Has any body been with you about the evidence which you were to give upon this inquiry?

A. No.

Q. Has any body said any thing to you respecting the evidence you were to give?

A. No, nothing to me; nor in my presence.

Mr. Harmer (*to the Coroner*)—I must take leave here to remark, that a most shameful insinuation has been thrown out by Mr. Ashworth, against a person of the name of Cleggs, who is not here to defend himself, and I submit that such unfounded attacks upon the witnesses ought not to be suffered.

The Witness —Somebody called out some of our witnesses from the Swan; but what he said I don't know.

Mr. Ashworth—What does he mean by *our* witnesses?

Mr Harmer—Why, Sir, I presume he means the witnesses who were collected by the Constable of Oldham.—(*To the Witness*)— Is that so?

A. Yes.

The examination of the WITNESS resumed by Mr. ASHWORTH.

Q. But what passed when these persons were called out, you know not?

A. No.

Q. What time of night was it that you met John Lees at this public-house you have been talking of?

A. It was near twelve o'clock. I was not there above a quarter of an hour, and I met him there.

Q. Did you know any thing of where he had been that day?

A. He told me he had been to Middleton.

Mr. Harmer (*To the Coroner*)—Now, Sir, as it may be said that John Lees was guilty of indiscretion by drinking, which accelerated his death, I am prepared with a case to shew, that though that might be so, still if he died in consequence of the injuries which were inflicted upon him, it is equally murder.

Mr. Ashworth—This is all comment.

The Coroner made no answer.

The examination of the WITNESS resumed by Mr. ASHWORTH.

Q. Now in what state was the deceased when you saw him that night?

A. He was freshish.

Q. What do you mean by "freshish?" Was he in liquor?

A. Yes, he was in liquor; but he was not to call drunk.

Q. Did you observe (and now what he did is certainly evidence), did you observe, I say, any thing that he did to another person of the name of Moses?

A. They had some conversation together.

Mr. Harmer—No conversation is evidence.

The Coroner—What did he *do*, is what you are asked.

Mr. Ashworth (*to the Witness*)—Did he say he would do any thing?

Mr. Harmer—I object to that.

Mr. Ashworth—I submit, Sir, that it is part of the *res gestalt*, and the state of health and deportment of the man all relate to the *res gesta*; how he conducts himself is evidence to shew whether he was in good health, or in bad health, or whether his wound was serious. That is part of his conduct. Nothing that he said about his wound, or about who gave it, is evidence; but all he did afterwards, and all he said he would do, which shews the effect of the wound upon him, is evidence.

Mr. Harmer—I submit that all the deceased said is either evidence or not. You cannot ask what the deceased said for your own purpose, and then exclude what he said if it answers any other purpose; and, I say, that what he said is not evidence, unless he said it under apprehensions of death.

Mr. Ashworth—What a man does, or wherever he has been, which shews the effect of the wound upon him, is admissible evidence; and if it has been ascertained from him where he has been, and what he has done, all that is evidence.

The Coroner—Yes, every thing that he did to shew the state of his health, would be evidence.

Mr. Ashworth—Yes, Sir; and what he said to any person, as to where he had been and what he did, is evidence.

The Coroner—Yes, as against himself, I say it would be evidence.

Mr. Harmer—I admit, certainly, that if he stated who had inflicted the blow, that is evidence, if he was at that time under the apprehension of death; and I shall insist upon the witness being called who can prove what he said on that subject.

The Coroner—You may insist as you please, and I shall decide as I please.

Mr. Ashworth—What he said as to who was the cause of his death, was not said under the obligation of an oath.

Mr. Harmer—Well, Sir; if you will allow me, I will read a section from your own book,

if you will be good enough to lend it to me.
Mr. Ashworth —Yes, certainly.

[Here Mr. Ashworth handed to Mr. Harmer, East's Pleas of the Crown, and Mr. Harmer read as follows:]

“As to what shall be deemed sufficient evidence of the death having happened from any prior injury, it is observable, that though the stroke were not so mortal in itself, but that with good care, and under favourable circumstances, the party might have recovered; yet, if it were such from whence danger might ensue, and the party neglected it, or applied inefficacious medicines, whereby the wound, which at first was not mortal in itself, turned to a gangrene, or produced a fever, whereof he died, the party striking shall answer for it, being the mediate cause of the death.” Now, Sir, this case, I submit, is a complete answer to the attempt made to insinuate, that the deceased died from the bad treatment of his injuries. Mr. Cox was called for the purpose of proving that the deceased might have recovered if he had been properly treated.

The Coroner—He was called for no such purpose.

Mr. Harmer—Then I should be glad to know what he was called for.

The Coroner—Well, I don't care; I have admitted any thing to be told us which John Lees said, which made against him, and I have said that would be evidence; but any thing that was favourable, I did not admit, and I have watched the answers for that purpose.

Mr. Harmer—And I have always objected to what he said, being received.

The Coroner—You did not object to it.

Mr. Harmer —Perhaps not, Sir, since you laid down this rule.

The Coroner—You did not object to it, I say; and you attempted to impose evidence upon me of what he said. I said that if it was evidence against him I would receive it, and you never objected to that.

Mr. Harmer—Certainly, Sir, when you expressed your decision so firmly, I said I must submit to it; but certainly I submitted very reluctantly.

Mr. Ashworth—I will state, Sir, what I conceive to be the ground on which it is evidence. It is part of his conduct, to shew the state of his health; and it will shew that his conduct and health were such, that it is inconsistent to suppose the wound was the cause of the death which afterwards ensued; and what is the effect of that wound, I submit to you is clearly evidence. Then is not what he said with respect to where he had been, evidence to shew that his conduct was inconsistent with the supposition of the wound being of such a nature as to cause his death? Any thing that took place, or that he said as to what took place, during the whole interval that elapses, between the reception of the wound, and the time the death takes place, to shew the nature and intent of that wound, I submit to you is evidence fit to be given to the Jury, and I am confining myself, in my opinion, strictly within the rules of evidence.

The Coroner—I cannot exactly go the length to say, that any thing which the deceased said as to where he had been is evidence.

Mr. Ashworth—I submit, Sir, that what he said he did, is evidence, if it be inconsistent with the wound being likely to produce death.

The Coroner—You can give evidence to shew that he did things which were inconsistent with the wound being a mortal wound; but we never have had it proved yet, who did give him this wound in his arm.

Mr. Ashworth—Now, Sir, suppose I put this extreme case. Suppose he had been to a dozen wakes, day after day, before he died, would not that be admissible evidence to shew, that the wound was not a mortal wound?

The Coroner—What he did, is certainly admissible evidence to shew that the wound was not of the kind and nature which has been represented; and the Jury may judge

whether his acts are consistent with his being mortally wounded; but I don't know whether his declarations are evidence. They are evidence against himself, certainly. Mr. Ashworth—You see, Sir, if you exclude this, it goes to the full extent of excluding from the Jury any account he gave of his own conduct, which was inconsistent with his being mortally wounded.

The Coroner (*after a pause*)—I will receive evidence of that nature. I will receive any account he gave of his conduct, tending to shew that he was not mortally wounded.

Examination of the WITNESS resumed by Mr. ASHWORTH.

Q. What did he say he had been doing the night before?

A. He told me he had been to a wake at Middleton.

Mr. Harmer (*to the Coroner*)—Then, Sir, am I to understand that you have now decided, that any declarations of the deceased, while he was not under apprehensions of death, are evidence?

The Coroner—His declarations will shew what the nature of his wound was, and whether it was or was not of that description from which it was likely that death would ensue.

Mr. Ashworth—Certainly, Sir, evidence has been given to shew that this man lay in bed in consequence of his wound, and therefore it must be competent for me to prove his declarations of what he had done, which shew that the wound was not likely to produce death.

Mr. Harmer (*to the Coroner*)—Very well, Sir, I understand this to be your decision; but I must protest against the reception of any such evidence.

Examination of the WITNESS resumed by Mr. ASHWORTH.

Q. Was there any fighting between John Lees and any one else at the public house that night?

A. No; there were some sharp words between John Lees and another man.

Q. Was that with Moses --- ?

A. He had some sharp words; but it was not to him that he said what you mean about. It was to another man. He said to him, had it not been that his arm was wounded, he should not take what he said to him.

Q. Were his conduct and demeanour, during the whole of the evening, such as would be the conduct of a man who had received a wound of which he thought he was likely to die?

A. Yes, it was.

Q. Now understand my question. Was his conduct like the conduct of a man who had received a wound, which he thought was likely to be the cause of his death?

A. As to that, I have nothing to say. He appeared very well while I was in his company, and we cannot say what a person feels, you know.

Q. But did he complain of any thing?

A. He complained very much of his wounds to me.

The Coroner—You only said "wound" before.

A. Did I not say he had a stab on his shoulder?

The examination of the WITNESS resumed by Mr. ASHWORTH.

Q. From what you saw of him that night, did he appear like a man who was likely to die?

A. No, he did not appear any ways likely for death.

The WITNESS cross-examined by Mr. HARMER.

Q. You say, I think, that it was impossible for you to state what John Lees felt, but he complained a good deal?

A. Yes, he complained, but he did not look much different.

Q. Did he look as well as he did before?

A. He looked much as usual to me.

Q. Did he look as hearty and as strong as he did before?

A. For my part, if he had not spoken about it, I should not have known about his wound by his appearance.

Q. But did he complain?

A. Yes, he complained very much, and he said, if it had not been for his injuries, he should not have taken all the language that was offered to him.

Q. Was ill language used towards him?

A. Only in the way of mentioning his wound, and the person was talking of it, rather forwardish you know, and said as if he wanted to make light of his wounds.

Q. And he taunted him, saying they were not so bad?

A. Yes, saying they were not so bad as he said they were.

Mr. Ashworth—The witness did not use the word “taunt.”

Mr. Harmer—But I have a right to put it to a witness in cross-examination.

Mr. Ashworth—But the witness does not know what you mean.

Mr. Harmer—Does he not, Sir? I should think he did though; and that he has more understanding than you give him credit for.

Mr. Ashworth (*to the Coroner*)—I am now, Sir, about to call Mr. Simmons, a surgeon, from the Infirmary at Manchester, and I believe I may say from my own personal experience, that a more respectable or skilful man docs not belong to his profession.

Mr. Harmer—Really, Mr. Coroner, I am totally at a loss to conceive what these eulogies upon Mr. Simmons have to do with the present investigation, and they are certainly improper.

Mr. Barrow—Why you introduced Mr. Buckley as the nephew of Mr. Norris, the Magistrate.

Mr. Harmer—I beg your pardon, Sir; the Coroner called him Mr. Norris throughout some observations he made; in order to set him right, I told him his name was not Norris, but Mr. William Norris Buckley, and that he took the name of Norris from his uncle, Mr. Norris, the Magistrate; and I beg that I may not be misrepresented.

Mr. Ashworth— There is, however, one thing to which I will pledge myself, which is, that when you called Mr. Robinson, you stated, previously to his examination, that he was a highly respectable manufacturer. I have, therefore, a right to say that which is the truth, that Dr. Simmons is a highly respectable man.