

The Insistence of Fleming

by Joseph Alexander Altsheler, 1862-1919

Published: 1907

in »The Monthly Story Blue Book Magazine«

Re-published: 2016

Richard M. Woodward



Judge Braxton eased his collar and began to ply his palm leaf fan with more industry. It was warm, it was unusually warm, when the summer term of the circuit court was held at Groveton, but the Judge loved the sunshine, and he was thinking of his client, not of the temperature. He was sitting in a cane bottomed chair on the porch of the old court house in the central square of the town. Groveton was a thriving little place, and the judge could tell the age and family history of nearly every man, not only in the town, but in the county as well.

He would pause now and then in his thoughts, to hail with stentorian voice some old friend, whom he saw passing on the other side of the square, but in the main, his mind remained with his client, Jim Fleming.

The Judge, as he was universally known in a dozen counties, although he had served only one judicial term, and that on the county bench in his young days,

was a smoothly shaven, large man of sixty. His features were of the fine, classic type that one often sees in Kentucky, and his head was crowned by a mass of thick, beautiful silver gray hair. The blue eyes were very keen and kindly.

The Judge was not by nature a judge; he was essentially a pleader, and for the defense. He had no heart for the prosecution. In his opinion no man was wholly bad; crime was usually due to circumstances, and this opinion was a constitutional part of him. He had practiced law forty years in a region that furnishes many deeds of violence, but he had never yet lost a client by the rope.

But the Judge had a case of a new kind, one that troubled him sorely. He was to save a man from himself. He must secure the acquittal of Jim Fleming who had already confessed to the murder of John Goodson, and although he had taken men's necks right out of the noose, he did not see a way now to clear his client. Yet it seemed a pity, a great pity. Fleming was a good man, one of the best that he had ever known, and his had been a hard life; luck was always against him.

The junior counsel for the defense, Mr. Mansfield, a young man of thirty, came out of the county clerk's office, and took a chair beside the Judge. Noting the troubled look on his senior's face, he kept silent, and Judge Braxton was the first to speak.

"Well, son," he said at last—he addressed nearly every young man whom he knew well by the title of "son", "what do you think we'd better do?"

Mr. Mansfield hesitated a little. He had great respect for the Judge's opinion and he did not like to take the lead. But as his senior was waiting for an answer he replied slowly:

"Fleming has confessed; we can't get around that. It seems to me that there is nothing left for us but to throw ourselves on the mercy of the jury. Everybody knows Fleming's story. He's been in love with Goodson's wife twenty-five years—years before she was married, and every year since."

The Judge nodded, but said nothing.

"Everybody thinks that Goodson met his death in a row over his wife," continued Mr. Mansfield, "and that Fleming says it was a land quarrel in order to protect her name. More than half of them think Goodson good riddance, but the law is the law."

The Judge threw down his fan indignantly.

"Son," he exclaimed, "you know what kind of a man Jim Fleming is! Jim is no fashion plate, but he is as pure in act and mind as anybody that ever breathed. He wouldn't let himself get into any quarrel over Mary Goodson; he would never go near her. He just loved her in silence and helped her in every way he could. Why, I've heard, that when Goodson was in town here drinking, and his crops were going to ruin, Jim Fleming would often slip out at night and do the work for him, that Mary Goodson and her boy might have food and a roof."

Mr. Mansfield nodded.

"It's true," he said. "I've heard it from more than one source."

"Now you answer me! Are murderers made from material like that?"

The Judge spoke with a fierce energy that showed how all his nature was stirred. The junior counsel looked sympathetic, but shook his head.

"Nobody thinks that Fleming is like other murderers," he said. "Nor is it fair either to call him a murderer, but the very fact of his worship of Mrs. Goodson is

what makes the case against him most convincing. Goodson knows of it—he gets jealous at last, although there is no cause; they meet, Fleming is angry, too, because of the long neglect and ill treatment of the woman he loves, and the result seems almost according to nature: Fleming confesses; he refuses to hire counsel; we are hired by his friends, you know, and we are defending him in spite of himself.”

A sad little smile passed over the fine features of the old Judge.

“What you say is sound logic,” he said, “but a man learns in time, especially if he’s a lawyer, that people are not always ruled by logic. The most probable things are the most improbable sometimes, and I think we’ve struck one of that kind now. I can’t believe Jim did it; it wasn’t in him.”

“At any rate he won’t hang,” said the younger man; “no jury would ever send him to the gallows. I think, Judge, that you will have to make one of your most moving appeals. Tell ’em how Jim Fleming watched over Mary Goodson all the twenty years of her married life; how his mind rebelled at the cruelty with which he saw her treated; how by chance he met Goodson and he couldn’t stand it any longer. There’s a chance for one of your greatest speeches, Judge, and it’s safe to say that they won’t give him more than two years.”

“He ought not to have even two years,” said the Judge moodily. “Jim says he did it, and I suppose I should believe him, but I can’t.”

“Let’s go see him again,” said Mr. Mansfield, “and you put him through another cross examination. If he’s telling what isn’t true, we should be able to trip him.”

“It isn’t a bad idea, son,” said the Judge, “and, in any event, we’ll lose nothing by it.”

The two walked through the courthouse yard, the freshest and greenest spot in the town, well shaded by forest trees, and then into the sun-burnt streets. Judge Braxton nodded to people as he passed; and always he was saluted respectfully as “The Judge”.

The jail, a gray stone structure, old and mouldy, was on the low ground in the southern part of the town. In one of the cells on the ground floor, James Fleming, accused of the murder of John Goodson, was confined. Small boys, even then, were gazing with awe at the window of his cell, hoping that his face would appear there.

The jailer at once led the way to Fleming. An accused man always has the right to see his counsel.

“It isn’t hardly worth while to guard him,” said Jailer Walters, who was fat and good natured, “I never saw a milder fellow. I don’t think he’d try to escape even if I was to set every door of the jail wide open an’ go away. He must have been mighty stirred up to kill John Goodson.”

Then he glanced at the Judge and said in haste:

“Excuse me, Judge Braxton, I forgot just then that you was defendin’ him. I merely was savin’ what people all over the town are sayin’.”

“It’s all right, Tom,” said the Judge kindly to Walters; “I know the gossip.”

The jailer threw open the door and let them into Fleming’s cell. Then he quickly withdrew, closing the door behind him. He had given to Fleming the largest and lightest cell in what was known as Murderer’s Row, and he had even gone so far as

to leave a pitcher of ice water for the prisoner, an act of kindness that the Judge did not fail to note.

Fleming, a man of forty-five with a thin, worn face, was sitting by the window, where he might inhale the puffs of fresh air that came between the closed iron bars.

He looked the ordinary farmer in dress and bearing, but there shone in his eyes a quality that separated him from his kind, and which may he called by so strong a word as spiritual. It was a compound of resignation, gentleness, and sympathy and the keen-eyed Judge, who had known Fleming all his life, knew, too, that the look had been there since childhood. It contained no suggestion of weakness: rather the look of one who was willing to suffer, because he was strong enough to do so. He glanced up at the sound of footsteps, and welcomed his counsel with a quiet smile.

"It's good of you, Judge, and Mr. Mansfield, to come to see me here," he said. "I know I've got friends, an' no matter what I've done it braces me up for anything that may happen."

The rough, worn face was transformed again by a slow smile of singular sweetness.

"Yes, you've got friends, even if you don't want 'em, Jim Fleming," said the Judge somewhat sternly. "I never thought the time would come when I'd have to defend you in spite of yourself."

"It ain't any use, Judge," said Fleming earnestly. "What's done is done an' all the powers of earth can't undo it."

"You wouldn't say that if you were acquainted with the law," replied the Judge with sarcasm; "at any rate, Charlie, here, and I want another talk with you. We are your counsel and you must answer our questions even if we do hurt your feelings a little now and then."

The look of resignation deepened on Fleming's face, but he regarded both the senior counsel and the junior counsel with sympathy and appreciation. Certainly he was the least anxious of the three.

"We want you to tell us again just how it occurred," said the Judge gently. "I know, Jim, it's a hard thing for you to have to go over it again, but it's necessary."

Fleming glanced through the bars, towards the white walls and roofs of the town, but when he looked back his face was quite calm, and his eyes met those of the the Judge firmly.

"There ain't much to tell; mighty little in fact," he said in steady tones. "You see, my farm and Goodson's lay alongside each other, an' he set up a claim that one o' my fences run over on his land two or three yards. It wasn't true, but we met when nobody else was around and there was a quarrel about it. Maybe he wouldn't have said anythin', but I guess he'd had two or three drinks an' we went at it. Then drinkin' men aint ever sound about the heart, you know, Judge, an' when I hit him once, good an' hard, he fell down an' lay awful still. Then I got scared over what I'd done an' run away. But I had to confess, Judge. I just couldn't stand it with the killin' of a man on my mind an' nobody else knowin' a thing about it."

The Judge studied Fleming's face. He had a natural gift in reading the hearts of men, and it had been cultivated by forty years of arduous practice, but he saw no expression, save resignation, in the eyes of the accused.

"Where did you hit him. when you gave him this fatal blow?" he asked at last.

Fleming hesitated a little.

"I couldn't rightly say," he replied. "We was all mixed up in the scuffle, but I think it was on the temple or thereabouts."

"He had no mark on his temple or on his face such as a heavy blow would certainly have made."

"Wa'al now, that's curious, for I surely did hit him hard," said Fleming innocently.

The Judge regarded the prisoner with a puzzled expression. There was a soft place in his heart for Jim Fleming. He knew the man's worth, and how hard and bare his life had been. The Judge had the gifts of imagination, insight, and sympathy, three qualities that always made him a flaming sword for the defense. But then and there he took a resolution not to spare Fleming's feelings for the present.

"Jim," he said very gently, "do you know that nobody believes your story—that is, the part about a quarrel over a fence—not even the prosecuting attorney believes it. The whole town and the country, too, says that this man attacked you because all your life you've been in love with his wife, Mary, and a good woman, too, God bless her, who should have been your wife instead of John Goodson's."

A deep flush overspread the tan of Jim Fleming's weather-beaten face, and he trembled violently.

"Judge," he exclaimed, "I hope to God that nobody is goin' to drag Mary's—Mrs. Goodson's name into this! Can't they spare a poor woman that's already suffered so much?"

"The people have no words of blame for either Mary or you," said Judge Braxton in his gentlest tones. "Jim, it's no secret from anybody how you stood by her. They know that you've protected her; they know how in the night you've done the farm work that John Goodson did'nt do in order that Mary and her son might have food and shelter."

Fleming raised his hands in vain protest.

"It ain't so," he stammered.

"O yes it is so," exclaimed the Judge, bearing him down with the rush of words. "Don't waste your time trying to deny it! Now, Jim, Charlie and I are your friends as well as your counsel. Tell us the whole truth! I can guess the story! No, it's no guess, either! I can fairly see it! Tell us how that drunken wretch got mad at you because you had loved his wife, loved her at a distance with a love that you couldn't help, and that's a credit to you! How he attacked you, how he pushed a fight on you, and when you struck him a blow that you had to strike he just crumpled up and died, because his heart action was already ruined by whiskey. With your story, Jim, we can make an appeal to the jury that will draw water to the eyes of every man on it. They'll acquit you by acclamation."

Water was already in the Judge's own eyes. His sympathetic heart was deeply moved, and he did not doubt that he had constructed the right story of the tragedy.

But Fleming shook his head and smiled sadly,

"You're mighty good to me, Judge," he said, "but, I've been tellin' you gospel truth. I'm goin' to swear to it on the stand, an' I know what a sacred thing an oath

is. An' I want to say again, that I hope nobody will drag in Mary's name, not even for the best purpose in the world: I just couldn't stand it. Judge, to have it hacked about in the court."

The Judge looked at him, helplessly and hopelessly. He still felt a certain amount of incredulity, but he did not know how to reach this man who seemed to expect nothing and who asked nothing.

"Of course, Jim, if you want to stick to that story," he said at last, "we can't make you change it."

"No, you can't make me change it, because it's true." said Fleming, smiling his gentle smile. "An' I tell you again, Judge, it's powerful good of you and Mr. Mansfield to work so hard for me, but I guess the law will have to take its course. I've thought it over lots of times now, an' I'm reconciled. I've already passed over the worst of it."

There was nothing more to be said and the two lawyers left the jail. The twilight was coming, and from many windows of the pretty town lights twinkled through the dusk. Judge Braxton was vexed and silent and the junior counsel did not interrupt him for some time, as they walked on together.

"Well, Judge," Mr. Mansfield finally said, "what do you think of it now? It seems to me that Fleming is telling the truth."

"I don't believe it! I don't believe it!" exclaimed the Judge vehemently, but he added sadly: "We've no way of disproving it, and I suppose we'll have to throw ourselves on the mercy of the court, tell what a good man Fleming is, which everybody knows, and what a bad man Goodson was, which everybody also knows."

The Judge went on alone to his home in the outskirts of the town, a high red brick house standing in wide, well-shaded grounds. He ate supper in silence, and his family, knowing that he was thinking of the case, did not disturb him. After supper he went to the back porch, where he often sat alone to smoke his pipe and to concentrate his mind upon evidence. Only his young daughter sat with him, and she offered a silent sympathy which was now the best kind to offer.

The dusk thickened into the dark and the coolness of the night came down. A light breeze sang softly among the oaks and the elms, which were invisible at twenty yards, but the Judge sat hour after hour thinking over the case of Jim Fleming and trying to see a way.

His daughter rose at last and went to her room, leaving the Judge alone on the porch. Then a woman came out of the darkness, and there was a sound of some one crying on the steps almost at the Judge's feet.

"Mary Goodson?" he said. He could not see her face, but he knew her voice, and he could picture her face, too, thin and sad, worn like Fleming's, but with the same spiritual beauty.

"Yes. Judge, it is Mary Goodson," she said in a voice singularly soft and melodious, but broken now with spells of crying. "I've come to you for help."

"You want me to save Jim Fleming?"

"Yes, Judge."

"I'm already trying; hut how can I save a man who won't be saved?"

"He didn't do it."

“Ah!”

The Judge sat up straight and stiff in his chair.

“Then who did?”

There was a long silence and the Judge heard the sound of the woman’s low sobbing. But he said nothing. He was a man of wonderful knowledge and wonderful patience, and he knew that she was going to tell what she knew, be it much or little.

Fully ten minutes passed. Then the Judge saw her raise her head in the dusk.

“I don’t know all, Judge,” she said, “but I know a heap an’ I won’t hide any part of it from you. Jim Fleming wouldn’t of a purpose, harm anybody. He’s the best man that ever lived, an’ I, who am not his wife, say so. But I ought to a’ been his wife; I say that to you here, Judge. He’s loved me since I was a little girl, and I’ve loved him, too, but John came: he was bold an’ dashin’ where Jim was only shy an’ gentle. Jim said nothin’ an’ John spoke out. That’s how it was. I’ve never said all this before to a livin’ human bein’, but I’ve just got to say it now.”

She stopped, and again there was the sound of low crying“. Water came in the Judge’s own eyes, and his hand stealing out in the darkness softly touched the head of the woman bent down on the steps of the porch.

“Go on, Mary,” said the Judge at last, but in a tone of the utmost compassion.

“I’ve knowed all these years what Jim was doin’ for me,” she continued, “an’ it’s been a protection to me, like the shadow of a rock in a weary land that the bible tells about. When my boy came, I prayed that he’d grow up like Jim—not like his father, an’ I’ve been down on my knees more than once, thankin’ God because it looked like my prayer was comin’ true. Many a night I’ve looked from our house across the fields and seen the light shinin’ in Jim’s house, so much as to say that he was there, watchin’ over me an’ Harry, an’ would watch over us as long as we lived.”

She stopped again, but the Judge waited in patience and silence. He knew that this was not alone the story of the tragedy in the field, but the story of the tragedy of a woman’s life as well, and in good time she would come to the case itself.

“John never paid any attention to it all.” she resumed, “an’ I suppose he didn’t care. Then he heard in the town about Jim workin’ on our farm at night, an’ a lot of foolish talk besides that wasn’t true. He knew it wasn’t true, but he was drinkin’ a lot an’ he got madder than a hornet. I was in the field huntin’ for a turkey and he come to me there. Oh, Judge, he called me names that no woman can stand, least of all from her husband! He picked up a stick an’ he made at me! He would have killed me, Judge, an’ I’m sorry now he didn’t, but my boy Harry, he’s eighteen, you know, was workin’ in the next field just across the fence, an’ he come arunnin’. He grabs his father, tears the stick out of his hand an’ throws him down on the grass. Harry’s big an’ strong and John hit the ground mighty hard. Then Harry left him there an’ took me in a hurry to the house because I had fainted. When I come to I told Harry that he must go away, an’ go at once. There was no tellin’ what John would do when he come back to the house. I couldn’t have my son raisin’ his hand against his father, even in self defense, an’ I made him go, I gave him some money I had in the house and he started in an hour. He’s with my kinfolks now, way out in one of the valleys of East Tennessee, an’ he don’t know yet that his father’s dead. He’ll never know just how it happened.”

“How about John?” asked the Judge, “When did you find him?”

“Not till a long time afterward. He didn’t come home that night, an’ I didn’t think anythin’ of it—he often stayed out all night; but when he didn’t come the next mornin’ either, I had a terrible thought, an’ I went out in the field where the scuffle took place. There John was lyin’ flat on his back, stone dead. An’ he’d been dead many hours.”

The woman stopped again and wept silently.

“There wasn’t any sign of a blow on him,” she resumed at last, “an’ I thought it might pass for a sudden attack of heart disease or apoplexy—you know how John drank—but that very afternoon, Jim, who wouldn’t harm a fly up an’ says that he did it.”

“Why do you think Jim Fleming said it?” asked the Judge.

The woman suddenly raised her head, and, dark though the night was, the Judge saw that the movement was one of pride.

“It was to save me and my boy, Judge, you don’t know what it is, you can’t ever know what it is for a woman to be loved as I have been, by a man as good and pure as Jim Fleming. I can guess what happened. Our farm joins Jim’s. He was close by an’ saw all the scuffle. When Harry hurried to the house with me he come up an’ he saw John lyin’ there on the ground dead. The first thing that he thinks of is that Harry will be tried for it and then he thinks of me—of me, Judge! He makes up his mind, don’t I know Jim Fleming? Then he goes away leaving the body where it is, an’ when it’s found he says that he did it. Oh, Judge, how can I let him suffer for what he didn’t do.”

Judge Braxton made no reply, and again the woman asked her agonized question:

“An’ oh, Judge, how can I ever tell the court that Harry, my own boy, was the cause of his father’s death?”

“You can’t do it.” said the Judge decisively. “Besides it isn’t true. It was the man’s debased and evil life coming to the end that he had made for it. I’m Jim Fleming’s lawyer, Mary, but I’m not going to tell in his behalf the tale that you’ve told me tonight. You’d better go home. I will help Jim and you, too.

The woman melted away into the dark, and the Judge sat on the porch far into the morning. When he rose at last he turned his face in the direction in which the jail lay and he raised his hand to his forehead in a gesture of respect.

The senior counsel and the junior counsel visited the accused again the next day.

“Jim,” said the Judge, in his gentlest manner, “I know now how it all happened. You are shielding Harry Goodson, and his mother. You must withdraw your plea of guilty. I can save Harry, too; at the worst, it was but an accident that occurred when he was defending his mother.”

Fleming gazed at the Judge in mild surprise, and when he spoke his tone was reproachful.

“Has Mary been tellin’ you about John’s attack on her?” he asked. “I saw a little of it before I come up, but they separated and Mary and the boy went to the house. I guess that’s what made Goodson so mad an’ when he saw me he just jumped in an’ thought he’d take it out of me.”

That helpless and hopeless look once more came into the eyes of Judge Braxton and he glanced at the junior counsel.

Mr. Mansfield shook his head and his gesture said clearly: "It's no use."

When they were outside again Mr. Mansfield said:

"He's as innocent as you or I, Judge, but he's afraid we can't get the boy clear, and he's afraid, most of all, that the woman he loves will be involved. Besides he's fixed it so cunningly that even Mary Goodson's story wouldn't clear him, so long as he sticks to his own."

"It is true," said the Judge, and after a long time, he added: "Since he swears that he's guilty we can't do anything but ask for the mercy of the court, as you suggested. Perhaps it's the best that things are going as they are; otherwise the world would lose one of the bravest deeds that I've ever heard of. But Jim Fleming is the only man I know who could do it."

Fleming never veered a particle from his original story, but both the junior counsel and the senior counsel made moving pleas for him. Every man on the jury had wet eyes when the Judge made his great speech, telling of the high character of Jim Fleming, though he never once mentioned Mary Goodson and their love.

The jury brought in a verdict of manslaughter in the second degree, and the sentence was for only two years in the penitentiary, which with the usual commutation for good behavior would be reduced to about a year and a half.

Mary Goodson asked for an interview with the condemned before he was sent to the prison in Frankfort, and she stayed with him an hour. When she came out she met Judge Braxton at the corner, and the Judge noticed a wonderful, glorified light in her eyes, that made her positively beautiful.

"Judge," she said, "I've just been to see Jim Fleming, an' I told him I'd marry him the day he come home from the penitentiary."

