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The Trial of a Lady on the Suspicion of Theft, who was Confined Thirty-three Days in the Suffolk Jail

J. R. Caldwell

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Dr. Taylor

THE
TRIAL

OF
A LADY

ON THE
SUSPICION OF THEFT,

Who was Confined Thirty-three Days

IN THE
SUFFOLK JAIL.

BOSTON :

PUBLISHED BY J. R. CALDWELL.

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1829.

CARR & PAGE, Printers, 30, CORNHILL.

AN

AFFECTING CAUSE.

MUNICIPAL COURT—DEC. TERM, 1829.—BOSTON.

Commonwealth vs. ————

THE name of the young lady defendant, is intentionally omitted on the account of herself and friends—the reason will appear more fully in the developement of the facts, wherein an amiable educated and virtuous girl has been subjected to a punishment too severe to be read without tears—viz. the punishment of imprisonment until the trial day arrived in the snail-like chronometer of the law.

A Mr. Emery, a clerk in the English Goods store of Messrs. Mellen and Sanger of this city, was addressed by the defendant in a late hour in the afternoon of November 10th with the question of whether he would exchange a pair of kid *mits* for gloves, to which he assented, and forthwith he exhibited to her a bundle of gloves, the price of which was 4s. per pair, and the *mits* offered by her were *marked* 3s. 9d., which she said she had purchased of her friend for 2s. 3d. After his shewing his own or rather the gloves of Mellen and Sanger, to the

lady, he stepped (as he swore) to another part of the counter, and while he was at a distance from her, he saw her deliberately select a pair of gloves from his assortment and place them in her handkerchief or bundle—then, by his own story, he returned and observed to her that a pair of gloves had dropped, and looked over where she stood, as if he expected to find them; she denied that any had dropped on that side—he then pretended to look on his own side, and found none there—he next took up her bundle, and produced the gloves from it, which he said she denied having in her possession, and used language of reprehension towards him for accusing her of stealing, by calling him an impudent puppy for the accusation—an altercation ensued, which ended in his retaining possession of the gloves and mits in question, the one as the property of Messrs. Mellen and Sanger, and the other as suspected to be stolen, inasmuch as that the mits were marked 3s. 9d., when she said she gave 2s. 3d. for them. This was the substance of Mr. Emery's testimony.

The indictment which was framed upon the testimony aforesaid, alleged that the defendant stole the gloves aforesaid, valued at sixty-six cents *from the store* of said Mellen and Sanger. It appeared in evidence in the Municipal Court, that after the transaction as above sworn to by said Emery, the defendant, leaving said store was pursued by some one with a constable, and while on her way to the packet in which she was to take passage to another state, on board of which were her things, baggage, &c. and which packet was immediately to sail, the defendant was arrested, carried about dark to the Police Court, at which she gave a name, but not her true one, as was afterwards shewn, and sent to jail to take her trial for the alleged offence on the first Monday of December next. The packet sailed without her, after waiting sometime, ignorant of the cause of her delay, and none of her friends knowing of her situation in respect to the charge brought against her, she was com

mitted for trial for want of surety. Before the Grand Jury, this Mr. Emery, a lad of about 19 appeared, the bill was found, and the day of arraignment came, when she was to listen to the complaint for the offence above set forth. Immediately after her commitment to the walls of the prison, she was, from the agitation of the scene through which she had passed, thrown into dangerous fits of the most appalling nature, and from thence she was removed to the Hospital of the House of Correction Department under the charge of the humane and skilful care and science of Dr. Flint, its attendant physician—she still continued from day to day to suffer under these dangerous attacks, being thrown into them by the slightest excitement, such as naming her parents or alluding to the degrading charge with which she was accused. Under these circumstances, the sympathy of Mr. Edmund Parsons one of the overseers of the House of Correction, was excited, and with parental watchfulness, tenderness and care, he drew forth from her in the hours of her calmness, the true situation and circumstances in which she unfortunately was involved. He employed counsel, saw her friends, soothed her afflictions and made preparations for her defence. At length it was considered to be safe to allow her companions of youth to visit her—the meeting, notwithstanding she had mustered all her fortitude, and had notice of their approach, was too much—a relapse instantly occurred—the lax strings of a broken heart gave way, and a scene of convulsions forbade for awhile the visits of any one. By degrees she became able to see one after another of those who felt a deep interest in her cause. She promised, and believed she could fulfil that promise, to be still and firm, when she was arraigned at the bar for trial. The day came, and a female (the defendent) was seen conducted by her protector and her friends, with slow and tottering steps to the tribunal of justice—she was young, but the mere shadow of that joyous girl which she was but scarce one month since. Yet she was

cheerful and was confident that she could submit to the ordeal, even of arraignment for crime. She tottered into the bar, and with apparent comparative composure took her seat, and the gaze of all was fixed upon her. The Clerk began to read his indictment with his customary impressiveness and solemnity, while she remained standing to listen to the charges it contained—in a few moments a faltering and sinking was seen in the person of the defendant, and when the words “did steal, take and carry away” were uttered, the prisoner was senseless on the floor of the bar, and there was a rush of the bystanders to sustain this wasted being, and to bear her away to her prison. There was a visible shudder which ran through the crowd around her, and the conviction of her innocence was written, as it were by the finger of God, upon the hearts of the multitude. In a few days she had so far recovered as to say “not guilty” to the indictment, and these were used in preparation by her friends to impress her with fortitude, to calmly abide and endure the trial which awaited her. Her two boarding-school friends the Misses —— became the partners of her prison—they assisted her with the consolation of friendship and religion—they made cheerful the grated cell and gloomy walls, and with more than sisterly kindness, endeavoured to raise up this crushed flower and bid it blossom anew. Nor were they alone in their angelic acts—others pitied, admired and assisted the ill fated one and her afflicted copartners in grief, and the tide of feeling ran at first gently and then strong in favour of this stranger to our city, and her affectionate school-mates who had comforted her in her lonely prison. At length, the trial day came, when her companions, together with the first one who had taken an interest in her cause, accompanied her into Court—the Court humanely suffered her to sit with them, and not in the criminal bar. Every indulgence was allowed by the Judge and County Attorney—the indictment was read to the Jury, and Mr. Emery was introduced on the part of

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the Government as a witness—so far she had remained collected and between her devoted friends; the witness had not proceeded far in his statement, before related, and was going on to state that the defendant denied that they were in her possession, when a spasmodic affection came over the defendant, every feature and limb was distorted as if a bolt of heaven had stricken her—again was she carried from the Court in a state seemingly of senseless, yet indiscrible agony.

Here her Counsel besought of the Court that the trial might proceed, notwithstanding the absence of the prisoner—he should waive all exceptions—every technical illegality—he implored a verdict, be it on whichever side it might be, before she was called to answer to a higher tribunal for the deeds done in the body. The excitement of feeling throughout the spectators was great. The trial went on and the witness (Mr. Emery) then stated that he, at the time of the taking of the gloves, believed that the prisoner intended to steal them, as also related the facts relative to his keeping the gloves taken, and his giving up the *mits* to the officer under the suspicion that they were stolen, because she said she gave 2s. 3d. when the mark on them was 3s. 9d. The Government here closed. The defendant's witnesses were then sworn—they consisted of the two Misses —, Benjamin Smith, Jotham Clark, Dr. Flint, John Holmes, &c. The last witness came in immediately after the other witnesses had been examined, made his way toward the stand, a stranger in the city, whose vessel had just arrived at the wharf, and who had not twenty minutes before his appearance, known of the accusation against the defendant. He knew her parents and herself, the latter from her infancy, and on his arrival and knowledge of the trial, had hastened to the Court House to testify, unknown to her Counsel or friends.—From all, the following facts were abundantly proved—that the defendant was a daughter of respectable and formerly affluent parents, in the state of ———, and had re-

ceived the first education (which was not entirely completed at the failure of her father,) which any of the daughters of that county had enjoyed. On learning his misfortunes she hastened home, and to prevent being a burthen to him in his calamity, she came to this city to learn the art of millinery: not being successful in obtaining immediately a situation, she went to service in the family of Mr. Benjamin Smith. The testimony of Mr. Smith, was truly interesting as to her virtue, intelligence, honesty, education and purity; in reply to a question from her Counsel, "should this Jury either convict or acquit the prisoner, would you in either case trust her as you have done?" his reply was, while the tear stood in his eye, "most assuredly, with untold gold." He expressed his deepest conviction that she was not capable of doing or had not done any act, intentionally dishonest. The reason why she had left him was, that her health was not strong enough to fulfil the duties which devolved upon her, though to the time when she went Clark's she always discharged them with the utmost fidelity and cheerfulness, according to the best of her ability. Mr. Clark testified as to her conduct from the time of her leaving Mr. Smith until the 10th of November, when she was arrested, (according to the indictment); and in this he was most full and unequivocal, and, that she had charge of the most valuable things in his house, such as plate, money, &c. and that she was to him almost invaluable from her carefulness, honesty ability and integrity—that he parted from her with the greatest reluctance; and that the reason of her going was the reception of a letter from her parents wishing her return. On the afternoon of the 10th, he sent her things on board of the packet, and she went out to purchase some articles to carry home to her native place, Not hearing from her again, though she promised to return previous to sailing if she could, he concluded that the packet could not wait, and that she had gone home—and was not undeceived until afterwards. Mr. Smith

and Mr. Clark remarked that at times she was absent in mind, frequently making mistakes in the discharge of of some little errand or duty, which might arise from not being accustomed to the station assigned her, or from having her attention withdrawn by some new object. Mr. Clark thought that she was unusually gay and absent on the afternoon in question, caused probably by the idea of returning, after an absence of some ten or twelve months, to her home and parents. The Misses —— vouched for her good character from her youth to the present time, both while at home, at school with them, and here.

The attorney for the defendant (John W. Whitman) then addressed the Court in her defence. But the feelings and judgment of a Boston jury, needed not, in such a cause, an eloquent appeal to their justice or sensibility. The manly tear told the truth, though the lips had not uttered their verdict. The hard-drawn breath and the quivering lip, shewed that fathers, husbands and brothers were on the panel. He turned upon the prosecutor (the clerk of Messrs. Mellen & Sanger) to mete out upon him a little measure of the suffering which he had caused the defendant, and to tell him of the wreck which he had made ; but in this he was stopped by the Court ; the witness was shielded, and properly shielded, perhaps, by them, from the expression of that indignation which the cause on trial had excited. Leaving this, he took a rapid view of the circumstances of the case in which the Government called for a verdict of guilty against the defendant—of that bud of young hope, which such a verdict would blight—of the bright jewel of reputation which it would tarnish and blacken forever—of the dreadful consequences which already had arisen, from the mere charge of the offence stated in the indictment, which, if true, at most was but a venial error in affability, not of crime. He then arrayed the testimony of the defendant, providentially sent, in opposition to the charge of one individual on the part of govern-

ment ; argued that intent was a constituent part of criminal acts—that such intent was to be gathered from the time, place, character of the party, and all the circumstances of the case—that she never intended to steal, and that her whole life reprobated even the suspicion—and that no one had ever brought a character so pure and unsullied into any court house, as the defendant had produced before that pannel. In addition, he argued that the protection of such a character was of more consequence to the public than India's mines ; yet, in addition to having taken away the peace of mind, health, if not life, of the defendant, the prosecutor wished also to break down that, which, to the defendant was dearer than life, her reputation ; and this too for the sum of *three and a half cents*, the difference between the price of the mits left and the gloves to have been taken. He appealed to them by the ties connecting that Jury to those near and dear to them in their kindest relations in life, to acquit the defendant without leaving their seats—to bind up the wounds of a lacerated heart, and to send home to her affectionate parents, who were as yet unconscious of any accusation against her, a daughter who was the pride of her friends in the circle wherein she moved, the object of sympathy, respect and esteem, even with strangers, who *felt* that she was innocent in her calamity ; and not to deprive the authors of her being of the solace of their declining years, by a verdict of guilty—which would be, in effect, a verdict of death. Their acquittance might even now be too late. He impatiently awaited the result.

Col. J. Austin declined to argue the cause on the part of the government. His Honor Judge Thatcher recapitulated the facts, and stated the law of the case, and recommended to the Jury not to act under any feelings of excitement, but deliberately to weigh the testimony, and calmly to decide on the result as the best method of coming to a correct conclusion. In such case, justice would more safely be done ; and if the defendant was

acquitted, it would operate more effectually to her reputation to the high standing which it had previously maintained according to the statement of the witnesses on the stand. The Jury retired, and almost instantly returned a verdict of *NOT GUILTY*.

The above is a correct though brief view of the case as tried at the present Municipal Court in this City. The defendant, long after her acquittal, remained in a state of alarming convulsions and insensibility. She has since been made to understand her acquittal, but the blow has probably been fatal; she now has been removed to the house of Mr. Clark, who, together with Mr. Smith, Mr. Parsons, and others, have exhibited throughout the whole affair, a benevolence "which passeth praise." But the consequences of the accusation and confinement, still each day reproduce the same delirium, with some intervals of calmness and reason. The arrow rankles at the heart, and I fear lest the wounded deer should die before it reaches the covert of its quiet home. She goes away, however, without the suspicion of any stain upon her reputation. "She never stole any thing but the hearts of all who knew her." THE REPORTER.

From the Boston Daily Commercial Gazette.

It may be supposed that a reflection was intended to have been cast upon the firm of Messrs. Mellen and Sanger on account of the arrest and unfortunate imprisonment of the lady reported for your paper the other day. In justice to them for it is my duty to say that *they* never aided or abetted the prosecution—also I must state that Mr. Emery is not 19 but 22, as I am since informed—I believe from their feelings they would have reprobated any prosecution against her.

THE REPORTER.

Boston, Dec. 17, 1829.

The trial ... 1829

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