

A Juror's Testimony

by Sylvanus Cobb, Jr.

I know there are some of my readers who will remember very well the leading circumstances of the story I am about to tell.— I allude to the trial of Ezra Larrabee for theft. But I doubt if there are many who understand the influence that was brought to bear upon the jury in making up of their verdict. The chief actor in the scene has passed away, honored and respected by all who were admitted to his friendship; and I deem it no impropriety now to make public those circumstances which, to most people, have thus far been only a matter of gossip and speculation.

At the September Term of our Supreme Judicial Court, in the year 1849, I chanced to be a member of the first petit jury, and on the third day of the session, after we had disposed of two or three cases of ordinary importance, we were called to sit upon the case of the Commonwealth against Ezra Larrabee. And this was by far the most exciting case that had been presented for trial for a long time. The circumstances, as understood by the public, were as follows:

Ezra Larrabee was one of the most respectable and honored men of our town. He was about five-and-forty years of age; a stout, fair-faced, warm-hearted, impulsive man; and was by occupation a draughtsman. He had a wife and three children; and if he had a real fault that society could put its finger upon, it was that he did not exhibit a proper energy in providing for his family. He had once been very dissipated—so much so that he was at one time fairly in the gutter; and what made his dissipation worse, he had contracted a fondness for gambling. He did not seem to gamble for the purpose of gain, but simply from the impulse of a blind passion induced by drink.

At length the great Washingtonian wave swept our way, and among the first of the redeemed ones was Ezra Larrabee. He not only signed the pledge and became a sober and respectable citizen, but he became a real worker in the Temperance Cause; and it was this that led him to be sometimes unmindful of the wants of his family. When the Order of the Sons of Temperance became organized, he seized upon that instrumentality, and was at the head of a division instituted in his own town. With this organization at his back he pushed the movement of reform to the prosecution of the rumsellers; and for some years his whole time was given to the work. Of course he gained many enemies; and when the political parties divided upon the temperance question he continued to make enemies of nearly all who opposed the legal phase of the reformatory movement. And yet, at heart, he never meant ill to any man. He told me once, in private conversation, that he was obliged to keep the harness on. He feared, if he should slacken up, and lose his interest, that the old appetite might betray him to the enemy.

And now we come to the case at hand. One wet, rainy, disagreeable day, during the second week in August, Mr. Lucius Powers, who kept the largest store in the town, had one thousand dollars stolen from his safe. The money was in two packages, of five hundred dollars each, and was mostly in notes of Albany banks. The safe was situated under the desk, in the counting room, and had been left open several times during the day. Mr. Powers did not discover his loss until late in the evening, and there could consequently be but little search before the next day. Among those

whom Powers professed to suspect was Ezra Larrabee. Powers had once sold rum, and Larrabee had been the means of having him prosecuted; so the store keeper hated the reformer, and stood on the watch to strike him if he could. On the day of the loss of the money, Larrabee had been in the store several times. He was in just before dark, and his behavior was such at that time as to attract the attention of several who saw him. He seemed nervous and excited, and evidently tried to avoid his friends. This was marked, and made a strong feature in the evidence against him at the trial.

On the next day Mr. Powers found a ten dollar bill at the apothecary's which he recognized as having come from one of the packages he had lost. He knew it by the number. The apothecary said he had received it from Ezra Larrabee not an hour before. Larrabee had come in looking pale and sick, and had purchased a pint of paregoric, and that ten dollar bill had been tendered in payment. Powers at once procured a search-warrant, and when with an officer to the hose of the suspected man. Larrabee was found abed, and appeared to be quite sick. He had a wet napkin about his head, and he had been vomiting quite freely. When the officer told him what he had come for he flatly denied all knowledge of the money; but that did not prevent the search. A coat, which Larrabee had worn the day before, and which now lay across the foot of the bed, was first examined, and the whole of the missing money, save one ten-dollar bill, was found in the breast pocket; and there was over a hundred dollars besides, some in gold and some in bank-notes.

Of course Larrabee was arrested, and I leave it for the reader to picture to himself the grief and pain of the stricken family. At the preliminary examination, and at the presentation before the grand jury, he had but one story to tell. He said that he had not stolen a penny of the money that had been found in his possession. A man whom he did not know had given it to him to keep. Said he:

"I never saw the man before, and I know not whence he came, nor whither he has gone. He gave that money into my hands, and I meant to hold it for him. That is true, so help me God!"

"And yet you spent some of it," suggested the examining counsel.

"No more than I could have repaid," answered Larrabee. "The returning of the money to the man who left it with me was entirely at the option of my own judgment and honor."

But when they asked him why the man had left the money with him, he refused to answer. He said the transaction was made under circumstances which concerned no one beside themselves, and he did not choose to reveal them.

In fact, it was a curious case, and as the time of trial approached the excitement became quite intense. Larrabee had his warm friends and his bitter enemies. Those who knew him well, who had been shoulder to shoulder with him in the work of reform, and who knew how entirely free from selfishness and cupidity he was, could not be made to believe that he had been guilty of the crime imputed to him, while those whom he had troubled by his legal movements in the way of the suppression of the rum-traffic, were down upon him with their whole force, and were glad to see him under so dark a cloud.

The case came up for trial, and as I have stated, I was on the jury. I was a little sorry when I found that the first jury would have the case, that Aaron Goff was of our number. This Goff was an inn-keeper of our town, was a notorious rum-seller, and as he had been several times arrested and fined through Larrabee's instrumentality, I had reason to fear that the prisoner would find little mercy at his hands. But there was no help for it. Goff was upon the jury, and I must admit that he was a man of better judgment and more sound practical sense than were the majority of those who served as jurymen at that term.

Up to the time of Ezra Larrabee's appearance before us in the prisoner's dock, he had made no explanation of the circumstances that appeared against him further than that given on the day of his arrest. After the indictment had been read he declared himself innocent, and then sat back and listened to the evidence given in against him, but he did not listen as listens one who hopes to break down the testimony that bears upon him. He listened rather as one who has simply made up his mind to be prepared for the worst, and to face it without flinching. The testimony of the prosecution was about as has already been stated. It was proved that Larrabee had been into Powers's store several times during the day of the robbery, and that he had behaved very strangely while in there the last time—so strangely that several observers spoke of it. Then the finding of the money upon him was proved, altogether with his previous denial of any knowledge of said money.

In defense, the prisoner pled that a stranger had placed the money in his hands, that he had no knowledge that a penny of it had been stolen, and that he intended to have returned the money when he saw the stranger again. But, as before, he offered no explanation. He said that he was not at liberty to disclose the secrets that existed between him and the man of whom he had received the money. Of course this was very strange, and staggered even his best friends.

There came a number of witnesses who testified to the prisoner's good character and standing in society, and upon this point his counsel made his principal plea. But the government attorney, when he came to close, fell back upon the character which the prisoner had sustained years before, claiming that, in an evil hour, the reformed might have fallen, as, in short, it was very evident he must have done. During this part of the argument Ezra Larrabee was affected most powerfully, and at one time I thought he would go into spasms.

During the trial thus far there had been an expression upon the prisoner's face that puzzled me—an expression of pain, of agony, and yet of resignation. But when I watched him as the government attorney closed, I fancied that I had gained the truth. The poor man HAD FALLEN, and had taken the money from the safe without really knowing what he did.

When the judge came to give his charge to the jury, we could plainly see that his sympathies were with the prisoner, for the two had labored together, hand in hand and shoulder to shoulder, in the temperance cause, but he did not attempt to weaken the weight of the evidence. He said but very little, leaving it for us to weigh the testimony for ourselves. The law was very simple and plain, and we could not well go astray.

The jury retired, and as I was foreman, I asked for an expression of opinion. Even now, with all the weight of evidence bearing against him, I had my doubts concerning the prisoner's guilt.

Finally Aaron Goff spoke, and I imagined that he would go for a verdict of guilty without debate; but I was mistaken.

“What’s the odds?” said he. “Powers has got all his money back, and now what’s the use of lugging poor Larrabee off to prison? Let’s let him go.”

But other members of the jury were not so minded; and even I, a warm friend of the prisoner, could not so lightly set aside my oath. I stated that we were only there to decide upon the simple fact of whether the charge set forth in the indictment was true or false; and by and by nine of the jury expressed a belief in the man’s guilt. At length Aaron Goff, who had become quite nervous, spoke:

“Gentlemen,” said he, “this is a queer place for the introduction of important evidence; but I have evidence in my possession, and I am going to give it to you, and you may not only do what you please with it, but I shall leave it with you to expose as little or as much of it to the public as he wishes.”

We told him that we should like to hear what he had to say, and that we would keep such part or parts of the story to ourselves as might be properly so kept.

“Then,” said Goff, with solemn emphasis, “Ezra Larrabee did not take that money from Lucius Powers’s safe! He did not steal a penny of it! You know what Larrabee has been in other years. You know he was a drunkard, and that when under the influence of liquor he used to gamble. On the day before the robbery a stranger came on horseback to my tavern and put up. He was a well-dressed, sociable fellow, and I set him down at once as a sporting character, and at the same time made up my mind that he was a tough customer. On the following day he poked around the village some, and I know that he was in Powers’s store two or three times, and that he bought some little thing at each visit. He put his name down on my register as James Bristol; but I suppose any other name would have answered just as well. That evening, just after dark, Ezra Larrabee came in, and called me into a back room, and asked me to give him a glass of brandy. Says I, ‘Will you drink it if I give it to you?’ He said he would. I got the liquor, and he drank it; and I then noticed that he had been already drinking. At first I was really shocked; but when I remembered he prosecuted me for selling, I didn’t worry. By and by he called for more liquor, and after he had drunk that I found him talkative, and I asked him how he came to fall into the habit again. He made a long story of it but I can give it to you in a very few words. He had a touch of bowel complaint, and the doctor had given him some medicine the principal part of which was old cherry brandy. He had drank enough to awaken the old appetite, and he was overcome. His wife had had some Medford Run in the house for bathing purposes, and he had drank that before coming to my place. He had drank that before going into the store the last time; and that was what made him act so strangely.”

“About nine o’clock Bristol came in, and he and Larrabee drank together two or three times, and fell into a regular jolly conversation. At length the subject of card-playing came up, and Larrabee said he could beat any live man at any game that could be mentioned. There upon Bristol invited him to go to his room, and they took a lamp and went off together. I supposed they would play a few simple games, and then quit, so I made no objections. An hour after that Bristol rang his bell,

and I went up. He wanted a bottle of brandy. I carried the liquor up, and then sat down and watched their game, for they were playing poker, of course for money; and I meant, if I saw Larrabee losing, to interfere. I sat there two hours, and the liquor which Larrabee drank, instead of making him drunk, only seemed to make him keener and keener. He was bold and reckless, playing with dash and decision, handling the cards with the manipulations of a master; and at the end of two hours James Bristol was dead broke, having lost, according to his own account, over a thousand dollars, and Larrabee gave him a hundred dollars back. It was past midnight when Larrabee went away, and I followed him at a distance to see that he went directly home.

“On the following morning, Bristol left very shortly after daylight, and not long afterwards Larrabee came to my house. He was about the most sorrowful looking man I ever saw, and I pitied him from the bottom of my heart. He wanted to see James Bristol. Said he, ‘I want to give him back the money I won from him last night; it burns in my pocket, and I would not keep it for worlds!’ When I told him that Bristol had gone, he made me promise that I would find where he was if I could, so that he might return the money. And then he asked me if I would keep secret what had passed the night before. He said he should be called upon to suffer enough, at best, and he would rather die than have the public get hold of it until he was ready to confess it in his own way. Seeing that I was, myself, so deeply involved, and feeling that I had been guilty of a real crime in feeding the poor man’s deadly appetite, I gave him a solemn pledge, bound by an oath, that I would not divulge a thing. He did not ask me for liquor that morning, but he told me he should go to the apothecary’s to get something to steady his nerves a little.

“An hour after that I heard of the robbery; when I heard that the missing money had been found upon Ezra Larrabee, of course, I knew how it came there. I also knew how James Bristol bore his loss so resignedly, and why he was so anxious to be off early. I saw Larrabee and told him, if he desired, I would give the testimony that would set him free, even though, by so doing, I should bring much blame upon myself; but he would not listen to it. He seemed to be possessed by an insane dread of exposure of his fall, and preferred to run the risk of his trial. In fact, that sad fall gave him a shock from which he has not yet recovered; and I think you will agree with me that his position has been a most perplexing one. You may say that he ought to have confessed his fault at once. I can answer, he intended to have done so as soon as he had fully recovered from its effects; but after the robbery was charged upon him, he allowed himself to fear that a confession then would be regarded as simply forced from him by dread of more weighty implication.

“However, gentlemen, you have my story, and you can give it as much weight on the present occasion as you please; and I think I am not sinning in thus breaking faith with Larrabee. For one, I say, most emphatically, NOT GUILTY!”

And the twelve of us, after some further deliberation, voted unanimously—”NOT GUILTY.”

And so, dear readers—you who knew Ezra Larrabee, and who may have wondered how the jury came to render that verdict—you now know all about it. And you, perhaps, know how Larrabee moved away to a distant State, and how he became not only a valuable citizen, but a useful and eminent public man, and how his habits of improvidence gave place to habits of industry and

thrift, and how he left to his children not only the heritage of a good name, but an abundance of the world's goods, well and honestly earned.

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