

A Case of Mistaken Identity by Edward Gould Buffum

DURING a residence of eleven years in California, dating from the year 1846 to 1857, I had some strange and rude experiences, and was the witness of some remarkable scenes. Not the least extraordinary of these dramas of real life, was one in which an innocent man narrowly escaped execution upon the gallows, simply because he had the misfortune to closely resemble a guilty man.

In the early Spring of 1851, the city of San Francisco was thrown into a great state of excitement, one morning, upon its residents reading the detailed account of a bold robbery which had been committed, with the accompaniment of a brutal assault, on the previous evening. About six o'clock in the evening, when his clerks had gone to dinner, Charles Jansen, the proprietor of a wholesale "dry goods" establishment, on Montgomery street, was alone in his counting-room, when two men entered the door. Addressing him some common-place remark, one approached him, and, with a bar of iron, felled him to the floor, while the other proceeded to open the safe; and in a few minutes both had escaped, carrying with them several thousand dollars in coin and gold dust. Upon the return of his clerks, Jansen was found lying senseless and bleeding on the floor. He was removed to his residence, and the next morning had so far rallied as to be able to make a tolerably clear statement of the occurrence, and to give a description of the two men who had attacked him; and upon the strength of this latter, two men, supposed to be the guilty parties, were arrested on the following day, just as they were stepping on a steamboat bound up the Sacramento.

The occurrence created a great excitement in San Francisco. Robberies and murders were, at that time, by no means unfrequent, and it was known that an organized gang, composed in great part of escaped Australian convicts, was burrowed among the sand-hills of the neighborhood, and most of the nightly burglaries and outrages were attributed to its members. This gang was under the leadership of one James Stuart, a desperate scoundrel, whose name was a terror throughout the entire State; and many crimes had been fixed upon him, and, among others, the murder of the sheriff of Yuba County. By his great skill and *finesse*, however, Stuart had always succeeded in eluding the search of both the regularly-constituted police, and the sharper, more lynx-eyed detectives of the Vigilance Committee.

The description given by Jansen of the man who struck him down was immediately recognized by the police authorities as a plain and accurate portrait of James Stuart. The police fearing the formation of a "Committee of Vigilance," determined to use every effort to arrest the guilty parties, and at four o'clock in the afternoon following the night of the assault, they were satisfied that they held in custody the redoubtable Jim Stuart, and his companion, Jo Wildred, the undoubted perpetrators of the assault and robbery in Jansen's shop.

I was at that time the local reporter upon the leading morning journal in San Francisco, and as such had every facility of following up, through its different stages

to its most unexpected termination, this remarkable case. Greater than ever was the excitement when the journals announced in the morning that Stuart and his companion had been arrested. Crowds began to gather at an early hour on the plaza, and the citizens rather freely expressed their opinion that, unless the authorities acted with unusual promptitude in this case, they would save the authorities the trouble of acting at all, and "do for" Stuart and Wildred themselves.

At eleven o'clock in the morning, I was informed that a preliminary examination of the two men would take place that afternoon before a magistrate. Jansen, it appeared, had become worse and it was feared that he would die. It was, therefore, highly important that the men should be confronted with him as speedily as possible, and his testimony taken. This was done. Soon after noon the men were privately conveyed to Jansen's apartment, and, in the presence only of the examining magistrate and his clerk, Jansen's medical attendant, another witness, two policemen, and myself, Jansen's testimony was taken, with the warning from his physician that he might be upon the verge of the grave. When the men were introduced, Jansen looked carefully at both of them, scanning thoroughly their features, and then unhesitatingly stated that he recognized the smaller (known as Jim Stuart) as the man who felled him with the bar of iron; of this he could have no doubt; but was positive that he was the man. As to the other, he was not so sure; but about him his doubts were light. He fully and firmly believed, in short, that the two men who had committed the crime were then before him; and from Jansen's room, with Jansen's testimony, then supposed to be that of a dying man, they were taken before the examining magistrate, whose office was in the plaza, in what was then known as the "Adobe Building."

The plaza was filled with an excited populace, and it was evident that trouble was brewing. The prejudice in San Francisco at that time, against all persons who had come to California from Australia, was very strong. Some very bad men had undoubtedly arrived from there, and much of the crime committed in the State might legitimately be charged upon them. All the immigrants from Australia were classed under the general title of "Sydney Ducks," and were regarded with great suspicion; and many, indeed, and, among them some very respectable people, had been warned away, and obliged to leave California.

When the two men were brought before the magistrate, they gave their names as Thomas Berdue and Joseph Wildred. Berdue, named in the complaint "Stuart, *alias* Berdue," was a man of about forty years of age, of medium size, with a peculiar sharp face, black piercing eye, and a heavy, bushy black beard. He stated that he had been in the mines; had only arrived in San Francisco a few days before, in company with Wildred, who had been his "chum" in the mining camp; that he knew nothing of the robbery of Jansen, and that he had never been known by the name of "Stuart." At least half a dozen witnesses were called, however, who swore positively to his identity with Stuart; and one of them said in his evidence that he had lived for months with him in the same camp, and knew him well, and that he had always there been known as "Jim Stuart." This evidence, taken in connection with that of Jansen, could leave no doubt in the mind of the examining

magistrate, whose plain duty it was to send the men before the city recorder, who, if he should be equally well satisfied of their guilt, would be obliged to commit them for trial.

The recorder was at that hour holding court in the building at the corner of Jackson and Kearny streets, which then served for court-house, police office, and jail. In order to escape the crowd, which was now becoming impatient, the prisoners were taken out by a back way from the magistrate's office, and, being placed in a close carriage, were driven as rapidly as possible by side streets to the court-house. But the excited crowd, which had now swelled in numbers to several thousands, soon learned what had been done, and, moved by one common impulse, surged like sea waves through Kearny street, and reached the court-house just after the two men had been taken into the recorder's court-room.

Law at that time in San Francisco was very doubtful, and unreliable in its operation. Notorious murderers, thieves, robbers, and burglars, it was well known, had, by some corrupt means, succeeded in continually escaping through its meshes, until the people began to feel that the committal of a presumed criminal upon his preliminary examination was equivalent to his final escape. As the excited crowd reached the court-house, and learned that Stuart and Wildred had just been taken in, a rush was made for the door, the railing, inside of which the prisoners sat, trembling like aspen, was broken down, and a dozen pioneers, leading the rest, leaped over toward the prisoner's box, ready to seize and bear out to the populace the two frightened wretches. It so happened that that afternoon a volunteer company of soldiers, whose drilling room adjoined the recorder's office, were at that very time engaged there in drill. As the crowd broke down the railing which enclosed the sacred space where justice was supposed to rule, a happy thought struck the recorder: opening a door communicating with the drill-room, there came pouring through it in a second, twenty of the volunteers, with fixed bayonets, who charged upon the crowd, driving it before them like sheep. In a moment the court-room was cleared, and in another the prisoners, more nearly dead than alive, were hustled for safety into cells in the basement of the building.

The American blood, which, up to the time of the civil war, boiled at the sight of the bayonet, was running through the veins of the populace at fever heat. All that afternoon and evening thousands of people remained about the building, shouting for the prisoners, demanding that they should be brought out and instantly executed. Harangues were made, in which the story of the robbery was told over and over again; the tardy course of justice complained of; and the probable escape of the prisoners, if left to be tried by the instituted authorities, predicted. The imagination of the multitude was excited by glowing pictures of San Francisco in flames, while murder, robbery, and rapine were being committed by the gangs of "Sydney Ducks" which infested the city. The invariable conclusion of all these speeches was that the prisoners should be immediately brought out and hung. In the jail now, however, were fifty men with bayonets and loaded muskets, and not a single one of the loud-mouthed orators felt inclined or manifested the slightest disposition to lead his hearers to an assault, which, although it might be successful, might also cost him his life. Toward night wiser counsels prevailed, and, although a

considerable number of persons remained about the jail till morning, no demonstrations of a hostile character were made upon it.

During the night a compromise was effected between a self-constituted committee of commercial men and the judicial authorities. It was agreed that on the following day the two prisoners should be given up to the citizens, not to be directly executed, but to be tried by a Lynch Court. The rumor of this arrangement spread through the town at an early hour, and by noon nearly all the male adult population was gathered about the court-house. All were quiet and orderly, however, and seemed disposed to patiently await whatever was to come. A little before two o'clock, a young and well-known lawyer addressed the people, advising them of the decision which had been arrived at, and submitting to their consideration a number of names of proposed members of the impromptu court. These were voted upon, and the court, in a few minutes, consisting of two lawyers and three merchants, was constituted. A merchant, who afterward became quite prominent as the President of the Vigilance Committee, of 1856, was appointed prosecuting attorney, and an old and conscientious lawyer was chosen to defend the prisoners.

It was on a Sunday afternoon, about three o'clock, when Berdue and Wildred were brought trembling into the same room where, the day before, their lives had been saved by the prompt action of the volunteers. In the glance, however, which each of them, involuntarily, as he took his seat, cast around upon the multitude assembled in the courtroom, he saw written upon their faces anything but hope for him. The prosecuting attorney opened his case in a few calm words, and the evidence was proceeded with. Jansen, in spite of his weak condition, was brought down, and gave his testimony clearly, distinctly, and with evident conviction of the truth. As to the man Berdue, he again swore positively, while, as to Wildred, he expressed but little doubt. A circumstance had, however, come to light, while Wildred was in jail, which told heavily against him. Upon the right elbow of his coat was found a dried clot of what looked very much like, and was assumed to be, blood; and upon a piece of goods in Jansen's store was found a corresponding blood mark. A clerk testified that this piece of goods was on a counter near the door, and in just such a position, at just such a height, that Wildred in escaping might have left the mark upon it as he brushed it with his elbow. The theory of the prosecuting attorney, of course, was, that this was Jansen's blood. A number of witnesses testified again, positively, to the identity of Wildred's companion with Jim Stuart. No witnesses were found for the defense, and no evidence given; the constables who had been sent out in search of the witnesses, whose names had been given by Berdue, returning upon the subpoenas the statement that they could not be found; and it is altogether probable, that, fearful that they too might be compromised by giving testimony in behalf of two such unpopular men, they had left the city to avoid it. At seven o'clock in the evening, the prosecuting attorney made his appeal to the jury, demanding the conviction of the prisoners; and he was followed by their counsel. This latter had, during the afternoon, been in conversation with Berdue and Wildred, and seemed evidently convinced of their innocence, and satisfied that in the case of Berdue there was a great error, and that he was neither the man who aided in the robbery of Jansen's store nor the redoubtable Jim Stuart. His plea was one for mercy; for time to investigate more thoroughly the whole matter; for

an opportunity to be given to these men, when the passions of the populace should have subsided, to produce, as he assured the jury that they could produce, ample evidence of their innocence. The old man grew eloquent, and evidently was affecting the jury and the crowd, which had waited patiently in the room during the entire proceedings; and, as he closed, a round of applause greeted his effort. The jury, after a charge from the presiding judge, retired into an adjoining room, and during the two hours between ten o'clock and midnight, Berdue and Wildred, remaining in the court-room, surrounded by a citizen police force selected for the occasion, tremblingly awaited the verdict of life or death. Near midnight, the outside throng began to grow impatient, and they were harangued by several of their number. At one time a rush was made into the court-room with the evident intention of seizing the prisoners, but the firmness of the citizen guard foiled the attempt. Soon after, quite a dramatic scene occurred. A woman, young and by no means ill-looking, bearing in her arms an infant, forced her way into the courtroom, as she had forced it through that vast throng about it. Her baby, and her woman's weakness, were her passports through that assemblage of rough, excited men waiting and hoping for her husband's execution. She was Berdue's wife, and, arrived in the courtroom, she threw her babe into his arms, and fell exhausted on the floor at his feet, where she lay speechless and sobbing, until removed to an adjoining room. This little episode, however, had its effect in softening the crowd gathered immediately about the prisoners.

A little past midnight, the jury sent in a communication to the court, stating that it was impossible for them to agree upon a verdict. A ray of hope shot across the faces of the prisoners, as this announcement was made; but it was changed to a look of dread and horror when the report having reached the outside throng, it was received by them with the general shout of "hang them, hang them!" In order to allay the excitement, the presiding judge requested the prosecuting attorney to address the crowd. This he did, and reminded them that, having placed the matter in the hands of a court of their own choosing, they were bound in honor to abide by that court's decision. His personal popularity, rather than his argument, had the effect to lower the temperature of their passions; and when he returned to the court all was quiet. It was now one o'clock, and the jury again communicated with the judge, stating that they could not agree. The court consulted together a moment in silence, and then, ordering the citizen guard to convey the prisoners back to their cells, the jury was called in and discharged; and the court adjourned to meet at the call of the president. The crowd, wearied with excitement and want of food and sleep, retired rapidly; but several hundred persons remained about the court-room till daylight. The mayor of the city addressed these and recommended them to retire. He assured them that justice should be done, that the prisoners should have a speedy trial by the regular judicial authorities, and begged them to leave the matter in their hands. The morning journals contained articles recommending this course, and on Monday, although knots of stragglers remained all day about the court-house, no demonstration was made; and it was generally understood and agreed upon, that, as the grand jury was then in session, the prisoners should be taken immediately before it. "If" was the argument used, "the judicial authorities fail to punish them, then we will take them in hand and execute them ourselves without judge or jury."

The grand jury, in the course of the day, found a "true bill," and two weeks afterward the men were tried before the criminal court. The same evidence given upon the lynch trial

was reproduced here, and Jansen, now rapidly recovering, appeared in person, and gave in his evidence clearly, distinctly, and positively. Additional witnesses were introduced to prove the identity of Berdue with Jim Stuart. Wildred's coat was passed over to a professed chemist, who reported the clot upon the elbow to be blood. The trial lasted but a few hours; and resulted in the conviction of both the men upon the crime charged in the indictment—robbery and both were sentenced to undergo the extreme penalty of the law, fourteen years confinement in the penitentiary of the State.

Wildred was immediately conveyed there; but for Berdue, a requisition was in waiting demanding him for trial as Jim Stuart, the murderer of the sheriff of Yuba. The night of his conviction he was taken to Marysville, where the grand jury had already found a bill against him for murder; and in a few days he was tried as Jim Stuart; sworn to for Jim Stuart by at least a dozen witnesses, some of whom testified to having lived for months in the same mining camp with him; convicted as Jim Stuart; and, as Jim Stuart, sentenced to be hung in three weeks from the time of his conviction.

Meantime, the San Francisco Committee of Vigilance had become a permanent organization. Already some of its members had, by a union of *ruse* and force, taken two notorious thieves and robbers out of jail, one Sunday afternoon, when the prisoners were attending religious service; and thirty minutes after the two men, Whittaker and Mackensie, were swinging from impromptu gibbets extended from the committee rooms. They were, in reality, a committee of "vigilance," and their argus eyes discovered much crime and many criminals.

One evening, about a week before the time set for the execution of Berdue, some of the detectives of the committee were out upon a scout among the sand-hills which then stretched between San Francisco and the Mission Dolores. Suddenly and accidentally one of their number stumbled upon a man lying upon the ground, partially covered with branches of the "scrub oak," which grew in rich profusion in that vicinity. What was their surprise, on holding to his face a lantern, at recognizing him as Jim Stuart, the man, as they supposed, who had just been sentenced to be hung at Marysville. He was taken to the committee rooms, and an agent was immediately dispatched to Marysville. He was even more surprised upon his arrival at learning that Jim Stuart, *alias* Berdue, was still there safe in custody, and was to be duly and legally hanged on the following Friday. He had an interview with the condemned man; and returned to San Francisco, satisfied that he held the key to all this mystery and that Berdue was innocent. Ere his return, however, all had been explained, and the mystery unraveled. Stuart—the real Stuart, in the hands of the San Francisco Vigilance Committee—had made a full confession. He acknowledged the murder of the sheriff of Yuba, and the robbery of Jansen's store, and acquitted Wildred of any participation in connection with him. The Governor of the State happening to be in San Francisco at the time, after an interview with Stuart, in presence of members of the committee, immediately forwarded a full pardon to Berdue. It arrived two days before the time fixed for his execution; and, immediately upon receiving it, he took the boat and came to San Francisco.

The real Jim Stuart was hanged by the Vigilance Committee on the day which had been set for the execution of the man to whom his name and crimes had been attributed. Berdue, who was to have been hung that day in his place, was present at the execution. The hanging took place upon California street wharf; and the gallows was a derrick, erected there for hoisting merchandise in and out of vessels; to which, at a given signal, in the presence of several thousand people, the wretched man was "run up," and strangled. After hanging half an hour, the body was cut down, and dropped from the derrick into a boat, into which the "committee" surgeon, the coroner, and myself, and the oarsmen were the only persons permitted to enter. We rowed over to an engine house near by, where we deposited the body, and where the coroner, with an eye to his fee, proposed holding an inquest. Upon our arrival two more surgeons were admitted; and a medical examination of the body made. The neck was not broken; and, upon lancing a vein, the blood flowed freely; and the physicians were agreed that, with a good galvanic battery, they could have restored Stuart to life.

I am fond of dramatic situations, and proposed that we should send for Berdue. This was done, and in half an hour he stood in the presence of his dead rival; standing by the table on which Stuart was lying, and gazing upon his fixed features. It was like a man looking at his own corpse. I never before or since saw such a resemblance. Stuart was, perhaps, a trifle the stouter; but, having seen either one, I think I should have unhesitatingly, at any time thereafter, been willing to swear to the other as that one. It scarcely seems possible that the men could have so perfectly resembled each other.

Next day the coroner held his inquest; and the jury returned a verdict that, "the deceased came to his death by strangulation at the hands of some person or persons unknown." The coroner received from the county a fee of thirty dollars for this; and liberally "treated" the jury to beer and cheese at the corner grocery. A purse, to which Jansen liberally contributed, was raised for Burdue and Wildred, who had also been pardoned; and neither of them willing to run the risk of another such adventure, both returned to Australia.

Was it "chance" alone which directed the steps of the Vigilance detectives to Jim Stuart's burrow, among the sand-hills? Was not the life of an innocent man, even of one so poor and humble as Berdue, worth more than that of "many sparrow;" and are we not assured that the Guide, and Governor, and Orderer of all things, suffers not one of these to fall to the ground without His notice?

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