

## *A Fortunate Robbery*

AN ATTORNEY'S STORY

by Sylvanus Cobb, Jr.

At the time of which I am going to tell you, there had been difficulty in finding a competent man who would accept the office and perform the duties of Prosecuting Attorney of Calaveras County, California. as you are aware, who have been there, the rugged spurs of the Nevada Mountains cover a great part of the county, and amid their wild fastnesses are many haunts where bold bad men can establish themselves in such a manner that a mere handful can hold at bay a small army. The surface gold-diggings were being wonderfully developed, and there were places where the upper soil was capable of yielding a fortune to the lucky claimant in a short space of time. Miners were coming and going continually and by and by it came that travelling with gold about one's person, save in good, well-armed company, was dangerous. It seemed as though all the robbers in California—all the desperate, throat-cutting ones—had made their way to Calaveras county. Several of the rascals had been apprehended, and had been brought to trial, with evidence enough against them to convict them off-hand; but they had been suffered to go free simply because the members of the court had been made to believe that every man who appeared against the robbers, either as witness, juryman, or prosecuting attorney, would be surely put to death. I had removed to Mokelumne Hills, the county seat, and opened a law office, and when the people had become acquainted with me they came in a body and begged that I would serve them as a prosecuting attorney of the county.

I was not timid, nor do I think that I lacked courage; but the simple fact was present that the man who should accept that office, and perform its duties, would be a marked and doomed man. I had no particular desire to offer myself as a willing sacrifice, and I kept out of it.

Of course the robbers of the Nevadas had a chief. There was one man at whose call every member of the band came on the instant, and at whose command they were all ready to move even to the death. He was known throughout that region by the quaintly euphonious name of "Topsy Pops." His real name was not then known, but the *alias* from which this whimsical *nom de guerre* had been evolved was Theophilus Hopkins. He had come to California from the Mississippi, but before that it was generally believed he had come from New England.

Topsy Pops was a desperate villain, and so long had he been at the head of his well-trained band, and so successful had they been in all their predatory undertakings, that the thought of personal danger did not now occur to him. Over his immediate followers he held the gift of life or death, — only a sign from him—the waving of a hand, or the nodding of the head—and the head of the doomed man fell, though he might have been a trusted compatriot an hour before.

One bright morning the good people of Mokelumne Hills were startled to an unusual degree by news from the Big Tree Grove, up between the Calaveras and Stanislaus Ranges. A party of miners, ten in number, on their return from the placer diggings of the Stanislaus, had been set upon by these miscreants, and every man of them murdered and robbed. And that was not all. Pinned to the breast of the man who had been leader among the robbers was a paper which was brought to me by the coroner. It was a piece of an old account-book, and the writing upon it, done in red ink, and in a bold, defiant hand, was as follows:

“The man, be he one, one or be he many, who seeks to disturb those who took toll of these travellers, dies as surely as he does it! Take but a single step against me, or against any member of my band, and your life is not yours for twelve hours beyond. We swear it!

“Signed: THEOPHILUS HOPKINS  
“Otherwise known as— TOPPY POPPS.”

As the coroner handed the paper to me his look and manner very plainly asked if I was man enough to help my fellows meet the emergency thus thrust upon us. I knew his thought as plainly as though he had spoken it. And I knew the danger, too, for I had estimated it more than once. I knew that the man who had written that threat meant exactly what his word implied, and I knew that he had at least a score of hardened, desperate villains at his back, who would follow wherever he might lead. My commission as county attorney was at that moment in the hands of the sheriff, or, such was my belief, and I had only to go and get it, and take the oath of office, to be clothed with full powers.

It was not a pleasant position. The prosecuting officer would be at once the especial object of vengeance. My fame as a lawyer was widely spread, and it was said of me that I never lost a case which I once seriously undertook. I asked the coroner to sit down and wait for me a little while, and then I went into my inner office, and there reflected.

Clearly, if I now turned the cold shoulder to my fellow-citizens in this hour of great need, I should be thought a coward and a craven. And would it not be with reason? By and by I went back into the front office, where I found the coroner making minutes on a piece of paper. He was a Maine man, his name was Leonard Ripley.

“Mr. Ripley,” I said, very quietly and calmly—I was certainly myself surprised at the coolness I felt, —“I have resolved upon the course I will pursue in this matter. I will go and find my commission as county attorney.”

“You won’t have far to go,” he said, with a smile. “Here it is.” And he took it from his pocket.

“And you can administer the oath, and affix your seal?” I hinted. I knew he as a Notary Public.

Yes,—he could do all that remained to be done, and with that commission filled, the machine of justice for Calaveras county would be in perfect running order. I could see that a single thought was in both our minds: The machine might be in order for now, but how long should it remain so? However we did not speak it.

My clerk was called in as a witness, and when I had received the commission, and put it into my pocket, I arose and took two or three turns across my office. My thoughts were soon in clear working order:

“You have made up your verdict?” I said, to the coroner.

“Not fully,” he replied. “I didn’t care to make a verdict which could only bring reproach upon old Calaveras. But I’ll make it up now, and have it signed in an hour. We shall find that the said Matthew Lamprey and his companions were shot to death by pistols in the hands of Theophilus Hopkins and his crew. We shall make it simple and direct.”

“And the sheriff?” I queried.

“Just give him the legal documents, and he will make the arrest.”

“Aye,” said I, a little bitterly; “because the rascals do not propose to resist the sheriff. They have a fancy to see if any lawyer in California will dare to appear against them in public!”

Ripley nodded assent. It was true as I had said. The robbers had become so self-confident that they could set the law at defiance with impunity. However, I did not propose to go back now. I bade the coroner to do his part as quickly as he could, and to send his finding to me by the sheriff.

In less than an hour from that time the sheriff was in my office, with the verdict of the coroner filled out and signed in due and ample form.

By the law then in operation I had authority to issue a writ for the arrest of the accused parties; to have them brought before me at once, for immediate trial and sentence; and, under extraordinary circumstances, the sentence, even of death, if the finding had been by a legally impanelled jury, could be executed without delay.

I gave the sheriff his papers, and asked him if he thought he could capture the robbers. This sheriff was a powerful man, bold and fearless in the performance of duty, and an adept at the art of rogue-catching. He was a New York man and his name, John Ormsby.

He took out his watch. It was not quite noon. Said he:

“Squire, I shall have the game in hand before tomorrow night, and on the morning of the day after tomorrow they’ll be ready for you.” He stood a few moments after he had put the papers into his pocket, and finally he added, with a change in his tone and manner:

“I don’t know, Mr. Dinsmore, that there’s any need of my telling you to be careful. You are aware that Popp has made his boasts, very loudly, that there isn’t a man in California dares to stand before a jury and make a plea against him. You are the man that he will spot. He won’t care for me; in fact, I believe he really likes the idea of being arrested. He has a longing for the notoriety it will give him to be arrested, with nobody bold enough to proceed against him. Yes,—he will spit his vengeance out upon you. Look to your pistols, and don’t venture out alone.”

I thanked the sheriff for his kind thought of me, and shortly afterwards he went away. I saw him an hour later, when he was mounted and ready to set forth. He had a following of fifteen strong,

resolute men, and every man in addition to his pistols and knife, carried, strapped to his back, a breech-loading carbine. It was a strong force, and would be likely to accomplish its object.

On my way back to my office I saw very plainly that I was the observed of all observers. The news had gone abroad that I had given myself to the work of ridding the land of the miscreants who had so long cursed it, and that I would push the villains to the bitter end. And the thinking, intelligent ones of the citizens knew the fearful risk I had thus voluntarily assumed, and those who knew told it to those who did not know.

That evening I was made proud and grateful. Two of the most influential citizens—one of them a merchant, and the other the keeper of the principal hotel in the place—called upon me, and informed me that there had been a compact entered into by the citizens for my benefit. They had not ventured to call a public meeting, or a meeting of any kind, as that might excite suspicion; but every man of any note and standing had been waited upon, and they had all agreed to stand by me in case of need. Should I find myself in danger, or should I suspect danger, I had but to notify one of the managing committee of the league, and he would have a posse at my back instantly. And they gave to me a paper on which were the names of twelve men who constituted the committee mentioned. If I gave but a hint to either one of these twelve men all the assistance I could require should be at my disposal without delay.

“Of course, gentlemen,” said I, with deep emotion, “this cannot cause me to put forth any new effort towards the apprehending and punishment of the villains, but it will give me cheer and strength, and I can work with more heart and zeal. I will certainly call upon you if I am in need.”

I little thought then, nor could they have thought, how opportune their compact was to prove. But, as may be supposed, it made me feel better and stronger, and gave me more stomach for the work. At all events, I was resolved to go ahead, and push matters to the full extremity of the law, which, of course, must mean hanging for Mr. Topsy Popp, unless, indeed he should get in ahead of me.

The sheriff had not been wasting opportunities during the last few weeks. Anticipating the time when he might have the necessary orders to enable him to make a legal descent, he had not only kept himself informed of the robbers' movements, but also of their haunts and hiding-places. In one of the wildest and most rugged of the jagged piles of the towering Nevadas Hopkins had his favorite rendezvous, in a deep, broad cavern, where he never could have been captured by direct and open assault. Ormsby knew of the cavern; he had known it and used it before Hopkins appeared in Calaveras county; and a few of us, who were obliged, in the very nature of things, to trust each other, were knowing to the fact that our present sheriff had been once himself a man against whom the hand of every sheriff in the State was turned. But that had been in other years, and he had done an immense deal of good since. We shall say that his capture of Topsy Popp and fifteen of his gang was not of itself more than sufficient to counterbalance all the evil of his life? —for John Ormsby could truthfully say that he had never taken a human life during his ranging as a freebooter.

Aye, the capture was made. Ormsby was sure he should find his game in the old cave, and he did; and, what was far more to his purpose, he found the whole gang about as drunk as they

could be. He struck them about midnight, in the midst of whiskey and cards, without a sentinel on post, or a lookout of any kind to warn them of approaching danger, and before they could gather sense to realize their situation they were bound hand and foot.

The chief, Topsy Poppo, was the soberest of the crew; or, it might be better said, he was the least intoxicated, and his senses came to him very quickly. It was an hour past midnight when the sheriff set forth with his prisoners. The distance to Mokelumne Hills was twenty miles, which place he reached at four o'clock, and half an hour later he came and aroused me. After telling me of the capture he said:

“The rascal has a plan on foot to escape in which he places implicit trust. He has betrayed that much, but no more. When I told him that you had been sworn in as county attorney, and that you would go on and perform the duties of the office, he said he had expected it; *he had been prepared for such a move on your part*; and as he said that he looked at me in a way that I can't describe. He's got something on his mind, that's certain.”

“Well,” said I, “much of his power to operate will depend upon when we bring him to trial.”

“We can't do that before tomorrow,” said Ormsby. “The prisoners have an undoubted right, since they are in jail, to a proper defence, and Poppo demands the privilege of sending to Yankee Camp for a lawyer. We shall send off as soon as it is daylight, and the lawyer will be here this evening.”

That was all we could do then. I did not like the delay in the trial, but I could see no help for it. Four-and-twenty hours would give the robbers much opportunity for mischief, for I knew they could not be prevented from corresponding with the outer world. However, I would go down to the jail and see what could be done in the way of keeping an eye upon the movements of the prisoners.

I was eating my solitary breakfast when my housekeeper came in and told me that a man wished to see me. She described him as “a dreadful looking man,” and she thought I had better call in somebody before I admitted him; but I resolved to see the man at once. A man meaning mischief would not have come at that hour, and in that manner. I told her to admit him.

When the woman had gone I tool out my revolver, and cocked it and laid it upon the table by the side of my plate; very shortly afterwards my visitor entered. He was, truly, a tough-looking subject, but not dangerous, and I recognized him as a man I had seen hanging around gaming-dens and drinking-places, most of the time like a man “on his last legs.” His movements were cool and collected. He tried the door by which the housekeeper had departed, to see that it was closed, and then he looked to the one other door. Then he advanced and stood facing me, upon the opposite side of the table; and I could see that he sniffed the aroma of the fried ham and the coffee longingly. Pretty soon he spoke:

“Look 'e 'Squire,—I've got sum'at for ye—sum'at'll do ye good ef ye git it. Now say— 'f I'll give it up, will ye give me yer word, sollum an' ter keep forever an' ever, 'at ye'll never go back on me?”

I told the man he must be a little more explicit.

“Why,” said he, earnestly, “it’s jest here: I’ve got sum’at ’at’ll do ye good. Ef, when ye’ve seed it, ye find it so, and find it wuth keepin’ will ye sw’ar ’at ye’ll never go back on me? That’s all I want.”

The man’s earnestness was a sufficient pledge of his good faith, and without further question I told him to go on—I would keep his secret.

“Well, ’Squire,” he said, with something like a twinkle in his eye, “I’ve got a letter for ye. Whar I got it aint none o’ your business, and you aint to ask me. All I’ve got to say is, the man as writ it went back on me once on the worst way, and I’ve owed him one ever since. Here’s the letter.”

And he handed me the letter, and as I took it his eyes rested upon the fried ham and bread *so* imploringly and wistfully, that I told him to sit down and help himself, and I pushed him over a plate, and knife and fork. I will only say of his eating, that it did me good to see him fall to.

The letter was postmarked with a pen, at “Butler’s Ranch,” and directed to “SMIRK WOLFERTON, *Yankee Camp, Calaveras Co. Cal.*” I knew Smirk Wolverton (I supposed *Wolverton* was the name meant) well by reputation. He was one of the most reckless, law-defying blacklegs and cutthroats in California. I opened the missive, and read—it was written in a cramped, coarse, ugly hand, but plainly—as follows: (It was without date.)

“MY RARE OLD SMIRK: I write this just as I’d load up my pistols agin a raid. I know at Ansel Dinsmore, of Mokelumne Hill, will take the office of county attorney sometime, there aint nobody else, and he can’t keep out of it. And he’ll take it to nab me—to put me under. Now when he takes it I shall know, and I shall put this letter into the post quick, so at you will get it early. So now, old chap, the very first thing you will do, when you get this, is to muster a dozen, or so, of our Yankee Camp boys, and go straight to Mokelumne, and nab that man. Hit him about midnight, or a little after, and put his head into a bag, and carry him to Dad’s cave, on the Cherry Peak. Don’t go nigh the old cavern. Hold him till I come. If you get him safe, and keep him, I shall go clear very soon. Look sharp, and don’t make a botch. I think you know how to do it. Do it up safe and snug, and be sure I’ll do as much for you when there’s need. This from

“TOPPY POPPS”

By the time I had read and digested the letter, my visitor had eaten his breakfast. I asked him what I should give him for the service he had rendered.

“It *is* a service, ’Squire?” said he, interrogatively.

I told him I hoped it would prove so.

“Well,” said he, “I shall hang around and see how it comes out, and if Popps swings, I shall be more ’n paid. He is a bad ’un, ’Squire. I aint one o’ the best men ’at ever was, but there’s some

things 'at I never did. I never went back on a friend, and I never, never, never took a fellow creetur's life. Never mind about the rest."

After the man had gone, I thought the matter over, and resolved upon my course of action. Of course I knew that my *confrere* had been helping to rob the U.S. Mail, and the sight of a letter addressed to the well-known rascal-in-chief of Yankee Camp had excited his curiosity. And well was it for me that it had done so, and also that the mail-robber was inclined to do me a good turn.

Here was an opportunity to put to use the proffered friendship and aid of my fellow citizens. I called upon two of the chief men—the landlord and the merchant—and showed them the letter. All right. It was sent to its destination. During the evening twenty men, well-armed and resolute, and eager for the *denouement*, came to my house, singly and privately, and were hidden away to await further development. And it came. About half an hour after midnight my house was surrounded, and two men came up and knocked at the door. We went out by a rear way, and took them upon both flanks. There were twelve of them, and only one escaped. Master Smirk Wolverton was the first captured.

Well, that, as the reader probably imagines, was the last struggle of Topsy Poppo, otherwise Theophilus Hopkins. On the next day he and eight of his band were tried, and condemned, and within a week were hanged. Smirk Wolverton, and six of his gang, were given seven days in which to leave the State of California, and I think they went to Mexico.

Touching a certain mail robbery that occurred on the very night of the arrest of the robbers of the Nevadas, I did not feel like moving in the matter, and it was suffered to pass without any serious search for the perpetrators.

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