

## *Who Stole the Money?* by An Old Contributor

I have learned, in the course of my legal experience, that circumstantial evidence *alone*, is a dangerous theory upon which to base conviction in criminal causes. I have known several cases in which the innocent have been grossly wronged through this means; a very plausible instance, I remember, being in substance as follows:

A pale, scared boy, some fourteen years old, was brought in to Municipal Court, in a neighboring city, one morning, evidently in great tribulation, who was arraigned upon a charge of theft in his employer's store.

"What's your name?" asked the Judge quietly.

"Johnny Biggs," said the boy humbly.

"Where do you live?"

"Down't North End, sir."

"Now, Mr. Clerk, what is the case?" said the Judge, with some interest.

"The old story, your Honor," replied the Clerk, rather familiarly. "Thieving. He's stolen a pocket-book, and won't give any account of it."

"Where are the witnesses?"

"Here, your Honor. The loser of the money, and the boy's late employer."

"Has he no counsel?—no friends in court?"

"I haven't seen any, your Honor; and he don't *look* as if he were overburdened in that way," replied the Clerk sarcastically.

"Proceed with the evidence."

The child's employer took the stand first, and stated the case. He was a well-dressed man, but had hard features—a worldly-minded, selfish appearing person—and thus testified:

"A stranger came into my store, your Honor, to make a purchase. He paid me thirty dollars, ordered his goods sent home, and went out; but returned in a short time for his pocket-book, which he missed directly, and was certain he had left it on the counter carelessly. This boy, Johnny yonder, had been with me but a few weeks, and I noticed that he hurried away out of the shop immediately, and I did not see him for three days afterward. There was nobody in the store at the time but Johnny and me. The money was gone and *I* didn't steal it. He has been able to give no account of it, or rather refused to do so, and there can be no doubt he is the thief. I took

him out of the street, and set him to work, out of charity, and this is the return he makes me. He was a poor vagrant, and has deceived me.”

“Is that all, sir?”

“Yes, your Honor.”

The owner of the lost money then stated that the merchant’s testimony was correct. He had lost seventy dollars in the manner described—that he saw no one in the store but this boy and his master, and the lad had disappeared on his immediate return to the store, upon discovering his loss. He was very positive he had *not* taken his wallet with him, but remembered just where he had left it upon the counter, near where this Johnny was engaged, putting up the goods. He had no shadow of doubt that he had purloined it, and got away with it during his brief absence; for he had not been seen about his business for three days afterward by anybody, and he noticed that the boy seemed uneasy and restless during his stay there. He could not afford to lose this money, and thought such young rogues should be made an example of.

“Now, boy,” said the Judge, “have you anything to say? You have heard the testimony of your former employer, and this person who lost his money, and the case is very much against you. Do you wish to say anything, or to explain—eh?”

The little fellow was so much alarmed at the apparent severity of his Honor, though he was just a man and a good Judge, and did not intend to intimidate the culprit at all, as I knew from a long acquaintance with his grave but sterling character—the boy was so confused that he said:

“No sir—I can’t.”

“It is a kind of case,” said his Honor, “that is getting lamentably common among us, and we must do our duty, in the endeavor to check the growth of this evil. Mr. Clerk, I shall commit this boy to the House of Correction for a year.”

And the Judge rose to adjourn his court.

“May it please your Honor,” I said, respectfully, “will you allow me, before this sentence is officially recorded, to address the Court briefly?”

“Certainly, Mr. S—,” replied his Honor pleasantly. “Do you know anything of this case?”

“No, your Honor. I have never seen any of these parties until this hour. But this lad doesn’t *look* like a thief, to my vision, and he has no friend to say a word for him here. I have listened to the testimony, and with the utmost deference to your Honor’s judgment in the case, I respectfully suggest that the evidence against the boy, though very plausible and connected, is but circumstantial.”

“Very damagingly so!” suggested the Court civilly.

“I admit that, your Honor,” I said frankly. “And, though it is hardly within the ordinary rule of Courts, at this late stage of the business, I pray the Court to allow me, on this trembling, frightened boy’s behalf, to ask the last witness a few brief questions.”

“Certainly, there is no objection, sir.”

And I had the loser of the money upon the stand again directly.

“You say you *missed* your pocket-book, after leaving the store, sir?” I inquired.

“Yes, sir—with seventy dollars in it.”

“You are *sure* you didn’t take it out, when you went?”

“No, sir; I did not.”

“You *might* have done so?”

“But I didn’t, sir.”

“You couldn’t have dropped it, then, in your hurry as you went?”

“I didn’t *have* it. I left it on the counter, near where this boy was putting up goods. And I’ve no question that he took it.”

“You came back—how soon?”

“Within five minutes, or so.”

“And the boy was gone?”

“Yes, sir, *and* the pocket-book,” added the witness sharply.

“That’s all, sir,” I remarked.

And the gentleman sat down.

I had not made much progress as yet, but I next asked the lad to stand up; when I spoke to him kindly, and said:

“Johnny, why did you hurry out that night as soon as this gentleman left, as he says you did?”

“‘Cause mother was dreadful sick,” he said, tearfully; “and me an’ my little brother Neddy was all’t she had to take care of her. An’ I went straight home, and didn’t know nothin’ about no money of that man’s, no way.”

“You went home because your mother was sick. How long has she been ill?”

“A good while, sir.”

“But why didn’t you return to your work? Why were you absent three days just then?”

“Mother’s dead, sir,” said the boy sadly.

“When did she die?”

“That night, sir. An’ I staid away, ’cause I had to go to her funeral with Neddy, and he is all alone now, sir.”

“And you know nothing of this lost pocket-book?”

“I never have seen it in all my life, sir; an’ I don’t steal nothin’—never; for poor mother allers said I must be honest, ef I starved; and God would know it, ef nobody else found it out; an’ ’at wicked boys, go to the bad place, sir. I never stole nothin’, sir—*never*.”

And here the little fellow burst into tears, and could say no more.

While—I confess it—I was wiping my own eyes briefly, I observed that his Honor was actually engaged in the same occupation. But the courtroom was close, and it was a warm day. Perhaps it was perspiration.

“Your Honor,” I said, after a moment of silence and clearing of the throat, “the prosecution here have surely no case for conviction. I don’t believe this boy knows any more of this lost money than you or I do. It has not been found in his possession; he has had no chance to spend it; nobody testifies that he ever had it, save on suspicion; and I cannot think your Honor will imprison this child, who has so touchingly though innocently explained himself, upon what is, at the most, but *circumstantial* evidence.

“He says he is parentless, and I think your Honor will not doubt this assertion. The dead mother, whose form he has just seen laid under the sod, was plainly a good, true woman; and Johnny has not been taught at home to be a thief, evidently. I crave the leniency of the Court in this lad’s behalf, and I ask that Johnny may be *discharged*, since there is no direct evidence here against him.”

“You can go, Johnny,” said the Clerk, with unusual pleasantness, for *him*, a moment afterward, as the Judge said something briefly to his subordinate, and immediately adjourned the court, to the evident astonishment of the boy’s accusers.

I shook the poor fellow’s hand, took him out of the courtroom with me, told him who I was, at his own request, and saw him running down the street as fast as his little legs could carry him, soon after this reversed decision of his Honor.

The result of my voluntary effort in this little affair was very gratifying to me, for I felt assured the boy was innocent. But the most agreeable part of this “case” was yet in reserve for me.

About a month afterward, a poorly dressed lad entered my law office one cold, raw morning, cap in hand, whom I quickly recognized as “Johnny,” who said:

“Good-mornin’, Mr. S—. You was kind enough to help me out, in court, t’ other day, sir.”

“Yes,” I said; “I remember you. Come to the fire, Johnny.”

“Thank you, sir. It’s pooty cold, sir.”

“Very. Where’s your overcoat?”

“A what, sir?”

“Your coat—outside jacket?”

“Bless you, sir, I ha’n’t got none. But I don’t mind it. I’m used to it, sir. I on’y come to thank you, sir—an’ to say that it’s all right about the pocket-book. *The man’s found it!*”

“Where? How?” I asked, with deep interest.

“Well, I did it up, in my hurry to get off that night, in one of his big bundles that he bought. He didn’t find it for a week, cos he didn’t open the parcel at home ’at it got worked into somehow, *I* don’t know how. But he went and told my old master about it—who turned me off, you know, for stealing’ it, when I didn’t know nothin’ about it—and one o’ the shop-boys told me of it yesterday.”

I congratulated the lad, and then induced him to give me his history.

He was now an orphan; an intelligent but uneducated boy, and one who had been bred in poverty, but honestly.

His good mother’s counsels and teachings had had a salutary effect upon his mind, and an influence which was lasting, I conceived.

He was out of work, and wanted employment. I recommended him to a neighbor, and secured him a good place subsequently.

He was always very grateful to me for the service I had so accidentally rendered him in court, and he proved a thoroughly honest and good servant in the years that followed that little incident.

This event is one which confirms me in my opinion that it is unsafe to convict upon circumstantial evidence *only*, however strong that evidence may be.

*New York Ledger*, April 29, 1871