

*A Nearly Successful Stratagem*  
by Judge Clark

Of all classes of witnesses the most dangerous is the volunteer, as any old lawyer can cite you instances to prove. Let me give one from my own experience.

My client, John Boley, was a man on whose word I would have staked a fortune. His reputation for fair-dealing was of the highest. His neighbors stood ready to vouch for his honesty against all comers. It created no small wonder, therefore, when Mr. Boley suffered himself to be sued by Zimri Catterlin on a note of five thousand dollars given for borrowed money.

It is true, Mr. Boley asserted that he had paid the amount when there was no one present but himself and Mr. Catterlin; and that the latter, alleging that he had lost the note, gave a receipt against it, which had in turn been lost.

This statement Zimri Catterlin stoutly denied. His standing was by no means equal to that of John Boley; but the most that was said against him was that he would bear watching in a bargain. In his view business was business, and the golden rule had nothing to do with it.

Had the controversy depended solely on the word of the parties, there would hardly have been two opinions about it. But Mr. Catterlin backed up his claim by producing the note, which, there was no denying, was a strong point in his favor.

People began to take sides, as they always do in disputes with which they have no concern, and ere long the community was pretty equally divided on the merits of the case.

“What’s to be done about it, Mr. Moxley?” said Boley, after placing in my hands the summons served upon him.

“What can you prove?” I asked.

“I can swear I paid the money,” he replied, “and took a receipt, which I afterwards lost.”

“The trouble is,” I replied, “that you cannot be a witness.”

“Why?”

“Because you are an interested party.”

“That doesn’t seem like justice, though. It seems to me that the court and jury should hear both sides, and then decide between them.”

The law has since come round to Mr. Boley’s way of thinking; but, at that day, the mouths of all having a cent’s interest in the controversy were sealed.

“You say Catterlin has the note?” I resumed.

“Yes; and no doubt he lied when he said it was lost.”

“I’m afraid we have up-hill work,” I said. “Possession of the note makes a *prima facie* case, and the burden of proof is on us.”

Further conversation elicited a few facts which left the case not altogether hopeless, though the prospect of a successful defence was far from cheering.

“I can prove,” said Mr. Boley, “that I drew the money from the bank the very day the note fell due. My wife saw me have it, and heard me say, when I started over to pay Catterlin, what I was going for. Caleb Brown was also present; but I suppose what *I* said isn’t evidence.”

“There you are mistaken,” I returned; “when declarations accompany and explain an act, they are admissible as part of the act itself. Therefore, what you said in connection with the act of leaving your house, and explanatory of its object, the law will permit to be proven.”

“The law doesn’t seem to know its own mind, then,” said Boley, to whom the mysteries of “*res gestæ*” had never been unfolded, “if it won’t let me *swear* to what I know, and then turns plump round and lets in what I only *said* to Polly.”

“I didn’t say so,” I replied. “Your wife cannot be a witness; but you have just said Caleb Brown was present—”

“As if Polly’s word wasn’t as good as his any day!” interrupted Boley. “Why shouldn’t a man’s wife be allowed her say in court?”

Here again the law has since adopted Mr. Boley’s views, but then it was of a different opinion.

Assuring my client that I would do my best, I sent him away more puzzled than encouraged, I fear.

The evening before the day fixed for the trial I remained late at my office. My hopes of success were far from sanguine, and the loss of the case would be a serious blow to my client, who could ill afford to pay five thousand dollars twice.

A tap at the door, to which I answered “Come in,” was followed by the entrance of a stranger.

“Mr. Moxley, I presume?” he said, inquiringly.

I bowed, and pointing to a chair, inquired his business. He was a decently clad, serious-faced person, far too good for this world, if he was half as good as he looked.

“You are the defendant’s attorney in the case of Catterlin against Boley, I learn?”

I bowed again, curious to learn what was coming.

“In former days,” the gentleman continued, “I was an intimate friend of Mr. Catterlin, and—I blush to own it—we have engaged in many questionable transactions together. But now I am an altered man; and the object of my visit to this place was to exhort my old companion to lead a better life. To that end I called upon him, but before I had time to inform him of my change of heart, he told me, with much sinful exultation, of the chance he had of making five thousand dollars off John Boley, through the loss of a receipt. He admitted getting the money and giving the receipt, the note being mislaid at the time. Afterwards it turned up, and Mr. Boley having lost the receipt, applied for another, when Catterlin saw his advantage and determined to profit by it.

“I remonstrated with him earnestly,” said the stranger; “but finding him given over to reprobancy of mind, I thought it my *jewty*” (so he pronounced it) “to place my evidence at your disposal.”

I closely sifted the man’s story, but the scrutiny developed no flaw; and warmly thanking Mr. Dodge—that was the name he gave—for his timely information I arranged to have him in court in the morning.

Catterlin’s lawyer was as adroit and cunning as he was unscrupulous. Win your case by any means, fair or foul, was his only rule of faith and practice. His name was Sarpedon Smith, but whether the hero after whom he had been christened fell at Troy or Bunker Hill, Mr. Smither neither knew nor cared.

The case was called, and Mr. Smith put in the note and “rested” with a flourish.

In a few words I opened the defence, and then called Caleb Brown, by whom I proved the facts of which the reader is already apprised.

Now for the grand denouement[.]

“Barabbas Dodge!” I called out.

My visitor of the previous evening advanced and took the stand, looking, if possible, more serious than ever.

A few well directed questions brought out his narrative with telling effect. Several of the jury wiped their eyes as he told the story of his conversion, and how his conscience had compelled him to appear and bear witness against his former companion in iniquity.

“You may cross-examine,” I said, with a crushing look at Smith.

But that gentleman wasn’t at all crushed. Rising deliberately, and eying Mr. Dodge with a sardonic smile, he began:

“Were you ever in State’s prison, Mr. Dodge?”

The good man’s countenance fell, and so, I’m sure, did mine when the answer came:

“I was.”

“For what?” bellowed Smith.

I still hoped Mr. Dodge might reply that he has visited some penal institution in his missionary labors; but he didn't. His answer was:

“*Forgery.*”

“Have you been paid anything for testifying as you have?”

A feeble “yes” was the response.

“By whom?”

Dodge hung his head and was silent.

“Stand down!” thundered the triumphant Smith.

A glance at the jury's faces convinced me that my case was ruined. I declined to sum up. But the way Mr. Smith improved the occasion by denouncing perjurers, suborners of perjurers, and unprincipled lawyers who employed such instruments, was a refreshing spectacle of virtuous indignation. I secretly resolved to thrash the rascal as soon as court adjourned.

“I want to ask the last witness a question or two,” said the judge, “before submitting the case to the jury.”

Mr. Dodge resumed the stand.

“Night before last, if I mistake not, you were in a room at the tavern across the street.”

The witness nodded nervously.

“And that gentleman,” pointing to the plaintiff, “was with you?”

Mr. Dodge hesitated and trembled, but was forced to admit the fact.

“And there,” continued his honor, “the plaintiff made the admissions to which you have testified, and paid you to swear to them after procuring yourself to be called by the defence? Come, you may as well admit the truth. I was in the next room and overheard all through the thin and cracked partition.”

Pious Mr. Dodge saw that lying would be useless as well as dangerous, and owned up to the little plot, contrived, I have no doubt, by Sarpedon Smith, whereby I was to be entrapped into the appearance of seeking to bolster up a bad case by the testimony of an infamous and bribed

witness. Not the least cunning part of it was that the story sworn to being literally true, no risk was run of an indictment for perjury. But the exposure of the trick completely turned the tables.

The verdict I got—no thanks to myself for it—put me in good humor, so I didn't thrash Smith. But of one thing you may be certain: I was very cautious ever after of calling witnesses on short acquaintance.

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