

THE STRANGE CASE OF MAX CURRY

In Lincoln county, West Virginia, a girl grew up by the name of Mattie Curry. She was the daughter of one of the old families of that county. She was an apt scholar and tried for and got a teacher's certificate. She went to Mingo county and taught school and afterwards opened a store at Dingess, a little village of that county. The store was burned and she soon after moved from that county.

About this time she went to Cincinnati and an operation was performed and thereafter Miss Mattie Curry became Mr. Max Curry. He soon after wooed and won a most estimable lady of Grayson, Kentucky, and they came to Pocahontas county to live.

They opened a store at Clover Lick and met with success there, but the fine business opportunities of Cass caused Curry to move there where he built a large store building and commenced merchandising on a large scale.

He is a man of powerful build with a head on him like a lion. He was never particularly popular but he had many friends and was a hard working, sober and careful business man. On his face there is little or no trace of beard, and his voice is more like a woman's than man's.

On February 13, 1913, he carried about seventeen thousand dollars worth of insurance on his stock and the building and in the dark hours after midnight on that day fire broke out in a hotel joining him and both buildings were totally destroyed. Fire has swept over this part of Cass so often that a farmer remarked that it seemed to spring out of the ground.

From this fire Curry collected about twelve thousand dollars. He rebuilt his store and bought and built some dwelling houses and built up his credit until there was no limit apparently to what he could buy or obtain. His standing was good with the fire insurance companies.

He made a bad move for himself and others when he imported to this county the young fellow Kitchen from Portsmouth, Ohio. Curry had two good business houses in Cass and he represented that he had made a deal with an experienced merchant of Ohio who would buy one of his stores and install a business of more than ordinary importance. Cass was on a boom last fall, and this young fellow Kitchen arrived the first of December. He looked rather young and inexperienced when he came but no one seemed to have suspected that he was nothing but a boy, with out any successes in business, brought here by Curry and introduced into that neighborhood as an important business man. It develops now that Curry had written to him to come and take a position and had signed himself "your brother," there being some connection through adoption. In this letter which was produced at the trial Curry showed that he knew that Kitchen was married and it was further discovered that Kitchen's young wife had to advance the few dollars necessary to buy a ticket from the railroad.

Kitchen allowed on the witness stand that his idea of the reason that Curry wanted him to come to Pocahontas was that he, Curry, had heard about a charge of forging checks. Curry introduced this tough youth to the business men as a merchant, whereas the young fellow has never had any business experience.

The youngster got some big orders for goods shipped to him on Curry's recommendation. Curry executed and had recorded a sale contract showing that Kitchen had bought one of the stores and paid \$2000 cash. No cash was passed between them and this transaction rose up to haunt Curry after he was indicted.

Though Kitchen had come to the county on a railroad ticket bought by his young wife from her scanty funds, he paid court to Miss Maud Jackson, a daughter of one of our most respected families. She was a pretty young girl of a splendid disposition and who has a lot of friends. Kitchen posed as an unmarried man ready to settle down and take a wife. Curry allowed the courtship to progress though it is doubtful whether he knew that a marriage was impending. Miss Jackson clerked for Curry and she showed caution in that she asked Curry about Kitchen. Curry seems to have tried to discourage the match but he was not willing to tell this young lady who came to him for this vital information that Kitchen was a married man and a connection of his. He contented himself with telling her that Kitchen was unmarried but that he was engaged and warned the girl not to trust him too far as he was a stranger. The upshot of the whole matter

was that on the 10th of January the marriage took place and in a week or two Kitchen was in jail on the charge of bigamy. Kitchen confessed before the justice but after a visit from Curry and a lawyer, it was announced that he would plead not guilty, and at the term of the court at which he was indicted he did plead not guilty but changed his plea last court and was sentenced to five years penal servitude.

February 24th, the Curry and Kitchen stores were burned to the ground in the afternoon. Curry was in Marlinton at the time. This made three fires that Curry had had. Events began to happen rapidly after that. Arch Dilley, a weak erring young man, who might have been impressed with the awfulness of these recurring fires in a town, or because he had not been paid for his job, or because he could not keep a secret very well, or on account of that fond, fantastic thing men call conscience, confessed that he had set the fire of 1913, and that he had been hired to do so by Max Curry. That he was to have been paid \$700 but had only received \$65.00.

Curry heard of it and became very indignant. He phoned for the prosecuting attorney to come to Cass at once on important business. After repeated messages the attorney did go to Cass to learn that Curry had been accused of a felony and that he wanted the prosecuting attorney to bring a suit for slander against his defamers for no less a sum than \$50,000. The prosecuting attorney had not been Curry's counsel prior to that time and this silly action on the part of Curry was one of the many things that convinced the jury of his guilt.

As the authorities worked on the case from the information given by Dilley, they found that J. Henry Rider, "Pegleg," whose orbit often impinges on court circles, but who generally avoids punishment by the breadth of a hair, knew important matters and that he was willing to talk. He said that Curry had offered him the job and that he had first tried to get Howard Ray to do it and then had sent Dilley on to do the work. The officers found out about a run down stock of goods, over insurance, many suits against the merchant at that time, and over and through it all ran the Kitchen affair and the duplicity practiced by Curry in introducing this whippersnapper into the county and the cruel deception practiced upon one of the county's most lovable young girls.

Kitchen was lying in jail and presently he got in a mood to tell everything and he said that Curry had told him that he had caused the store to be burned in 1913, and asked him to do the 1915 job. In all the circumstances wound themselves tightly around the chief defendant and Curry was in jail. His trial came on at the last court and we gave some of the evidence last week in these columns. He had four lawyers and they thundered about the enormity of sending a leading merchant to the pen on the evidence of confessed criminals, but it gradually dawned on the intelligence of the observers that a man bent upon such mischief would not choose his helpers from the elect and this main point reacted in a measure.

After supper on the third day, the jury filed out to consider their verdict. It is noted that when an ordinary waif or stray goes to the pen that there is scarcely a ripple on the surface of the crowd, but when a man of property, and position and business affiliations is threatened then the human animals become excited. The evidence of the witnesses, the argument of the counsel, the instructions of the judge had been put before the jury in an orderly, masterful and painstaking way, but all these things go for naught if the jury so decide. The fatal work of shutting a man away from the sunshine devolves wholly upon the jury. The jury can extend mercy or condemn. The execution of the law against criminals is ultimately in its hands in all cases where the course is not plain to be followed. Their right to acquit a man is absolute and supreme and is not to be questioned. This puts an awful responsibility on the jury. In the Curry case the jury was out a couple of hours though it is an open secret that there was no division of opinion from the first. These twelve men had been kept together three days and marched to their meals and to their hotel in company and no man could talk to them. When the jury assembled for their verdict, they took the time in reviewing the case and comparing notes as to memory and seeing if each had heard the same things in the same way. The result of the conference was that the defendant was guilty of procuring his store burned in 1913 for the purpose of defraud-

ing the insurance companies.

At ten o'clock at night court adjourned over to the next day and the fourth day of the trial was taken up in hearing a motion to set aside the verdict and grant a new trial on the grounds the verdict being contrary to the law and evidence. The attorney for the defendant spoke long and earnestly but it was plain that he was not in a hopeful frame of mind.

He advanced five points. The first was that the indictment was bad because though it alleged that the principal Dilley burned the building with the intent to defraud the insurance companies and that Curry procured him to burn the building, that the words with intent to defraud were not in that part of the indictment relating to Curry as accessory though the words "in the manner and form aforesaid," were. The court held the indictment good.

That the evidence of the witness Ray that "Pegleg" had tried to get him to burn the building was improper because the defendant was not present or bound by any such conversation. This evidence was held to be proper because it tended to show that the fire was of incendiary origin; admissible to support the evidence of a witness when witnesses were introduced to impeach him; and evidence of a conspiracy to burn.

That the court had erred in rejecting evidence to show that E. D. Burner's motive was not good in working up the case. Held to be improper because Burner did not go on the stand against prisoner. No error to employ skilled man to ferret out crime.

That the court erred in allowing two witnesses to testify for the State after it had rested its case and the defense had introduced some of its witnesses. Held no error because the evidence was introduced as soon as discovered which fact was thoroughly sifted by the court.

That one instruction omitted the words "beyond a reasonable doubt" after the words "if the jury believe." Held no error because the other instructions were full of information as to "reasonable doubt," and because this instruction related to the law as to guilt of an accessory before the fact even though he was not present, and there was no attempt to show that he was present.

This drama in real life reached its height at this time when the two men most concerned stood up to be sentenced. At this grave moment the court gave each of the prisoners his title. Mr. Dilley had the indictment read to him and he said that he was guilty. The court said that he gave him credit for confessing without inducement or hope of leniency. That he believed the statement of the prisoner that he had confessed to ease a guilty conscience. The court said that he believed that the lashing of conscience and the knowledge that others hold a club over the guilty one will bring about a state of mind where he will be willing to pay a great penalty to get rid of an intolerable condition. That the motive of the crime was sordid and base and that money was the root of all evil, but that he was not so much to be censured as the procurer of the crime who would not even pay the guilty wage.

At this point the court turned to Mr. Curry and the judge's voice broke and tears streamed down his face. The long mental strain and the memory of other days overcame him. "The whole of the great audience was similarly affected. From the prisoner's wife there came a great burst of sobs and weeping, and we wanted to get up and go away from that place. The court said in effect that he had no personal prejudice against the prisoner but that on the contrary that "whenever our paths have crossed you have been my friend, but no public official can pay the debts of friendship when it interferes with his public duty. You are more guilty in the eyes of God and man than this boy. I therefore sentence you Mr. Curry to six years, and you Mr. Dilley to three years in the penitentiary of this State, there to be dealt with according to the usages and customs of that institution." And the big trial was over.

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