

Mary Berner

ILLINOIS

MARY BERNER, aged about thirty, was a resident of Cedar Rapids, Iowa, and at one time was private secretary to former Congressman James Good, who, before his death on November 11, 1929, was Secretary of War in President Coolidge's Cabinet. She worked in Chicago after 1924, and had been employed for some time by a well-known insurance company. At the time of her arrest in December, 1928, she was working for Butler Brothers in Chicago as a stenographer.

For more than a year and a half before that time, some sixty banks in and around Chicago had been defrauded by a woman who fitted Mary Berner's description and who, in each instance, presented a spurious check, presumably a pay check and never for more than \$50, which she would cash, withdrawing about 90 per cent of the amount of the check and leaving the rest to start a savings account.

Shortly before the arrest of Mary Berner, the Cicero State Bank was defrauded by this same person; and when the spurious check was returned, it was discovered that it was written on the check blank of a well-known insurance company in Chicago. The cashier of the Cicero State Bank made inquiry and learned that Mary Berner had quit her job with the insurance company just about the time that

many of their checks disappeared and that the insurance company suspected her. An investigation made by the bank disclosed that Mary Berner was then employed by Butler Brothers. The cashier of the bank and an employee who had cashed the check went to Butler Brothers and picked Mary Berner out of a group of about forty girls. She was brought to the Illinois Bankers' Association office, and there the representatives of six department stores positively identified her as the girl who had cashed these several checks. She had a preliminary hearing and was held in jail for the Grand Jury three months until she was tried.

The judge trying her apparently had no doubt of her guilt, because after the jury convicted her, he told her that if she would plead guilty he would put her on probation. This she refused to do in spite of the advice given to her by her father, her uncle, and her lawyer. The judge, however, granted her a new trial and entered for her a plea of guilty. He then placed her on probation.

About April, 1929, a woman who gave the name of Emma Lutz was arrested at the request of the cashier of one of the banks already defrauded. After being held in custody for a day or two, she confessed to the perpetration of all the crimes charged to Mary Berner. All of the persons who identified Mary Berner, except one, positively identified Emma Lutz. Accordingly Emma Lutz was tried, convicted, and sentenced to one year in the House of Correction at Chicago.

THIS case of circumstantial evidence, supported by mistaken identification by the victims of a fraud, does not differ greatly in its general facts from the erroneous convictions in the cases of Andrews (p. 1), Greenwald (p. 80), Lee (p. 136), and Sullivan (p. 257). The fact that Mary Berner happened to leave the employ of the insurance company at the time their blank checks disappeared and the fact that she apparently resembled the real culprit sufficiently to be identified by the victims were enough to fasten the crime upon her. How Emma Lutz got the insurance-company

checks does not appear. Nothing was apparently done to compensate or vindicate Mary Berner.

BIBLIOGRAPHY

Acknowledgment: Mr. Emory J. Smith, Chicago, Ill., for seven and one-half years attorney for the Illinois Bankers' Association, deputized by the Attorney-General as assistant prosecutor of this and other cases. Mr. Smith has narrated other cases in his experience, such as those of Clarence Hiffong, Charles Torracco, Carl Stepina, David Taddeo, Larry Lawrence, and E. H. Stewart, all of whom were tried for, and all but two of whom were convicted of, crimes of which they were later proved—by the convictions of the real culprits—to have been entirely innocent.