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#1962

COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY AND COUNTY OF NEW YORK, PART V.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK:

-against-

MICHAEL V. DEVINE, impleaded with  
ARTHUR A. RONAN.  
-----X

New York, May 17th, 1910.

Indicted for Grand Larceny in the Second Degree.

Indictment filed February 15th, 1909.

A P P E A R A N C E S.

For the People,

ASSISTANT DISTRICT ATTORNEYS BUCKNER and McCORMICK.

For the Defendant,

ABRAHAM LEVY, ESQ., and H. D. McCORMICK, ESQ.

The defendant, having pleaded guilty, is arraigned  
before HON. THOMAS C. O'SULLIVAN, J., for sentence.

James E. Lynch,  
Official Stenographer.

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MR. LEVY: May it please your Honor, the very sad spectacle is presented here of a man of the maturity of this defendant pleading guilty to a felony. I have been this man's counsel in this matter, selected by my learned brother and associate, Mr. McCormick, who had represented the defendant's interests in the beginning of this matter, and careful examination of the case and a careful consideration of the interests of the defendant, prompted me to advise the tendering of this plea of guilty to the crime of grand larceny in the second degree, and I appreciate, if your Honor please, that by the tender and the making of that plea, that the defendant brands himself as a felon. But he has been guilty of wrongdoing. Whether the inception of the wrongdoing was prompted by a desire for monetary gain or not, the circumstances as will be narrated to your Honor will enlighten you. All that I do know is this, that the defendant was engaged in the merchant tailoring business in this city, on Nassau street. He was associated in business with a man by the name of Arthur A. Ronan. They had a circle of acquaintances, an enviable circle of acquaintances, and for a little time they seemed to thrive, but business grew bad and they found themselves, as thousands of others do in this great community of ours, handicapped by reason of a lack of capital, and they en-

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deavored to support their failing business by the representation of the possession of more assets than they really had.

They needed that, for the reason that if they did not secure a rating in the commercial agencies, and they did not make statements with regard to the possession of a certain amount of assets, that their credit would cease immediately, and the business that they had ambition in, and in the ambition to build up, would be entirely destroyed, so that they went to the firm of G. W. Bernstein & Company, Philadelphia, and they bought goods from them. They had owed Mr. Bernstein prior to their failure quite a considerable sum of money, eight or nine hundred dollars -- the exact figures I do not know, but around the month of August of 1908, Mr. Bernstein required from them a written statement as to their actual financial condition. They were threatened with suit by Mr. Bernstein for the accumulated debt, the antecedent debt, and in the hope that they might tide over their condition and prevent themselves from being made the subjects of a suit for the recovery of the amount, which would have closed up their business, they did make a written statement of what purported to be their financial condition on that date, the 14th of August, 1908.

As a matter of fact, your Honor, that was not a true

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statement. They misrepresented their actual financial condition. They greatly inflated the amount of their assets, and they omitted to state in their statement the fact that they were indebted to different persons in various sums of money for money borrowed; in other words, your Honor, I found myself when I came to examine this case, that the condition presented to me was that the statement in almost its entirety was false.

Of course, the question of an intent at the time of making that statement was a matter which, of course, might have been presented for the determination of a jury. That is to say, as to whether or not there was any criminal intention when they made that statement to procure additional goods from the firm of Bernstein & Company.

As a matter of fact, after the 14th of August, 1908, the firm of Bernstein & Company did ship to the defendants an invoice of goods amounting to about \$439 and some odd cents, which goods they retained in their possession, and as I believe, retained almost intact, and if I am informed correctly, almost in their original packages, until about the month of October of the same year, when they found themselves hemmed and pressed in on all sides, and unable to go on with their business, and they were put into involuntary bankruptcy.

After the filing of the petition in bankruptcy an

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investigation was made as to their situation and it was found that instead of having close on to \$11,000 worth of assets, as was said in that statement, that their assets really represented only about \$4,000.

I may be a trifle inaccurate with regard to the figures, but I am very close to them. Both of the bankrupts, Mr. Ronan and Mr. Devine were subjected to the most rigorous and searching examination at the hands of Mr. Julius Henry Cohen, who represents the interests of the Creditors' Association, a very praiseworthy and commendable institution, organized for the purpose of protecting the interests of the merchants in this city, and whose purpose was and is to endeavor to build up a proper appreciation of commercial honor. However, this society, represented by this learned gentleman, made an investigation, and their investigation resulted in the complete admission before the referee in bankruptcy on the part of both of these bankrupts, and before the committee of creditors -- first before the committee of creditors and subsequently before the referee in bankruptcy -- it resulted in their making a complete confession with regard to what the statements were, and their falsity. They concealed nothing. They made no effort to conceal anything at all, and they gave to the committee and to the referee

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in bankruptcy and to the counsel, all the information they could possibly give with regard to the matter, and that examination disclosed the fact that this statement which had been made to the firm of E. W. Bernstein & Company was upon its face false.

Then followed this indictment, and then it was that I was called into the case through the intercession of my friend Mr. McCormick here.

Now, if your Honor please, there have been cases presented in this court --

THE COURT: (Interposing) Just a moment. What was that indictment found under, one of the sections following 528, 544?

MR. LEVY: Yes, sir.

Now, if your Honor please, this was the only written statement which the firm of Devine & Ronan had <sup>ever</sup> given to any creditor. It differs from cases, hundreds of which I have handled, wherein they, for the purpose of procuring credit, generally made general statements to numerous creditors. It is the only written statement that is in existence, and upon which any goods were parted with, showing that it was not the intention of the defendants at that time to enter into a general scheme to defraud; but by reason of the hardship of the situation and the necessity of tiding over their emergency at that time,

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this statement was made.

As I say to your Honor, this indictment followed. A few weeks ago, if your Honor please, knowing under our present calendar system that this case would shortly be reached for trial, I notified the two defendants, Mr. Devine and Mr. Ronan, that this case would shortly be reached, and requested their attendance at my office for the purpose of making necessary preparations for the trial.

This is perhaps one of the saddest chapters in the history of this case, and perhaps one of the saddest events that has come to me in my experience at the bar. Within ten days of this case being called for trial, the defendant Ronan, an estimable young man, of good family and of good character, an upright boy, worrying so much by reason of the shame and the disgrace that is brought upon his family, and by reason of the fact that this indictment was pending against him, and that he would be compelled to face a jury upon the charge of having defrauded his creditors, and upon the charge of having been guilty of grand larceny, went to a secluded hotel and killed himself. So that the judgment that will be rendered against Arthur A. Ronan will be rendered by the Supreme Tribunal, as to whether or not he was guilty of any intent to do wrong.

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I have looked over the situation in this case, and I concluded, your Honor, that I cannot deny the falsity of this statement. I will not add perjury to that which has already been done, and so have advised my client, knowing your Honor's merciful heart as I do and the goodness of your nature, and the goodness and sweetness of your soul, I have advised him to plead guilty and to throw himself at your Honor's feet and for your mercy.

He is a man well on in years. He can start in no new enterprise now. The record of conviction against him means a life long shame. What would be an insignificant punishment to another person, to him means eternal ruin. What would be an insignificant bit of penalty to another, would mean to him a constant regret, because of the agony that has been brought into his family circle, a good, upright, pure, sweet-minded family, and I have gotten at last the intercession of my able, distinguished and good-hearted friend, Mr. Cohen, to join with me in appealing to your Honor for the extension of clemency.

I have also succeeded, and I am thankful that I have been able to succeed, in securing the co-operation of Mr. Bernard, who is now in court, and who represents the National Association of Woolens and Trimmings Men, who also will join with me in appealing to your Honor to extend clemency.

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They have a certain fixed idea in their minds that attached to the obloquy of a plea of guilty there should be some prison punishment. Now, they feel that they want to go back to their association, which is powerful and which is influential, and report that some prison punishment has been visited upon this man. But, after all, it is with you. After all, you can determine whether the present impoverished condition of this man, his plea of guilty, his branding of himself as a felon, is not punishment enough.

The fact that these very goods that are mentioned in this indictment, if your Honor please, have been recovered by the creditor, under reclamation proceedings in the Bankruptcy Court, and the fact that he gave all possible information to make it possible to reclaim these goods, and the fact that he stands before you a broken-hearted man, begging you to extend the hand of mercy, your Honor, and give him a chance to uplift himself -- you cannot make a mistake on the side of mercy. I would never be afraid, if I sat upon the bench, of any one saying to me "Why, you are too merciful as a Judge". God knows that in this age, where everything seems to drift to the sordid and the mercenary, it is like the breath of a beautiful spring morning, it is like the beautiful zephyrs that come out of the Heavens, it is like the beautiful perfume

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that comes from the flower, to find a merciful Judge  
and a merciful dispensation.

THE COURT: I will now hear Mr. Cohen.

MR. JULIUS HENRY COHEN: (Addressing the Court)

If your Honor please, I occupy no official relationship to this matter, but, at your Honor's suggestion, I make this statement on behalf of my client, the National Association of Woolens and Trimmings Men. That association embraces in its membership the largest woolen jobbing houses and trimmings houses in the country. It is not merely a local organization, but it embraces houses all over the country. The attention of that association was directed to this case by several of the members of the association, who were interested as creditors, and I was retained as counsel both to prepare the case for the District Attorney and to advise the association as to whether or not a crime had been committed.

I think it is only fair to state to your Honor, in order that you may understand the spirit of this prosecution, that it is one of the rules of the association that any dividends derived out of bankruptcy proceedings in a case that the association prosecutes, must be turned over by the creditors to the association, and that no settlement can possibly be effected after the association starts a prosecution in the District Attorney's office. So your

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Honor starts the consideration of this case with the known fact that it has not been any effort to use the Court as a collection agency. Nothing of that sort would have been tolerated by the officers of the association.

I took the pains to send Mr. Levy, early in the history of this case, a copy of the bankruptcy minutes, in which these defendants admitted that they had made a false statement in writing.

I think possibly ten or fifteen years ago, or earlier, when Mr. Levy came to the bar, these commercial cases were not regarded with seriousness. It was thought perhaps, because of the conflict of motives that lay behind these prosecutions, that they were not to be treated as rape, assault and ordinary larceny, but, as Mr. Bernard said today to the District Attorney, if a man comes into his house and steals his silverware, the man takes the chance of being shot, but when a man steals his merchandise by misrepresenting his condition, then he is helpless, and he must rely upon the truth of the statements; and the purpose of this association, like that of a number of associations for whom it has been my honor to be the representative, has been to raise the standards of commercial integrity, so that business men generally will realize that they must deal honestly by their fellows, and must not falsify their assets or their liabilities

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so as to deceive the men who trust them.

Now, that situation is the one that was presented to the District Attorney's office. It resulted in the indictment of these two defendants.

It is true, as Mr. Levy says, that this case does not possess any of those sensational features that have characterized some of the cases where Mr. Levy has been for the defense, and I have been assisting the prosecution. There has been no great disappearance of assets here, no general swindle, no perjury in the Bankruptcy Court, which is such a shocking scandal. These men did come right to the front, perhaps not realizing half what they had done, and did admit that their statement was untrue, that they had made the statement with intent that it should be relied upon, and themselves furnished us with the evidence of their own guilt. So that, as Mr. Levy says, there was no escape for them.

Now, one of them has committed suicide. It is a shocking thing. It is a greater punishment than he deserved, even if he had been convicted. It appeals to the heart of any man on the prosecution side. It is dramatic; it is tragic; it has affected us, perhaps, in our judgment, sir, in this situation.

These men have admitted their guilt. Now, your Honor knows that however merciful you may feel, that the

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purpose of prosecution is to retard crime and stop its recurrence, and the purpose of this prosecution, my own engagement, sir, as counsel, has been to assist in that general policy, to teach business men, whether foreigners or Americans or intelligent or ignorant men, that this practice of getting merchandise by falsification of accounts must stop. The community cannot go on and do business with that, and so when Mr. Levy appealed to me to appeal to my clients to recommend a suspension of sentence, they felt as I did, that that was impossible; that if, after Mr. Bernstein and practically his entire staff had been brought here from Philadelphia to prove this case, if, after the several years of preparation, the diligent work on the part of the District Attorney and the work that our office has done, of assisting him, that it should go out to the world that these men had gone with a suspended sentence, or that one of them had gone with a suspended sentence, that nothing practical would be accomplished, although this defendant himself might feel keenly the shame and the humiliation of a conviction; so that we feel, sir, that there ought to be some punishment, and that punishment we leave in your hands.

We do feel, in fairness to the defendant and to Mr. Levy, who so ably represents him, that we should say to

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your Honor that this case is not one of those general fraudulent conspiracies that we have so often before us; that the man shows a sense of repentance for his wrongdoing; that he has pleaded guilty, and that so much punishment as your Honor thinks is necessary to furnish a salutary lesson to the community, would meet the situation, and in that recommendation my clients join.

THE COURT: Mr. Cohen, what do you know of any previous transactions of the kind by members of that firm?

MR. COHEN: They never were before convicted of crime so far as I know. I think I ought to tell your Honor that in Troy we have found a record in a civil case where Devine had been arrested under civil process for obtaining goods on a false representation as to his assets. That case was settled and withdrawn from the court.

MR. LEVY: That was a civil action.

MR. H. D. McCORMICK: If your Honor please, I had some connection with that case and I do not think it is quite fair --

THE COURT: (Interposing) Well, it is fair when the Court inquires about it.

MR. McCORMICK: But I wanted to say that it was not quite fair to have Mr. Cohen's statement go on the record

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without some explanation on the other side.

THE COURT: Well, you may make whatever explanation you desire.

MR. COHEN: I hope it will be made, in fairness to the defendant. Your Honor asked me the question and I felt in honor bound to answer it frankly. I did want to supplement that by saying that they had neither of them, as far as we could ascertain, been guilty of any other wrongdoing. I had to state, your Honor, what I knew. Of course I do not know the other side to that case.

MR. LEVY: It is quite proper that I should supplement my statement by saying that the men were domesticated, religious men, devoted to their families, without a blemish against them, moral men in every sense of the word.

MR. McCORMICK: In regard to that Troy case, if your Honor please, it was before the bankruptcy act.

MR. COHEN: May I supplement, your Honor? It is true, as Mr. Levy says, that this was the only written statement that was made, but the similar statement as to financial condition was made to other creditors who relied upon it. Your Honor is of course familiar with the provision in Section 544, but the Appellate Division has held in one of the cases that have gone out, in the Levine case, that that is a rule of evidence, like the Statute

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of Frauds; it must be in writing, so that they did make false representations in connection, at the same time, to other people.

MR. McCORMICK: I desire to say to your Honor, with regard to that Troy case --

THE COURT: Whom do you represent in the case?

MR. LEVY: Mr. McCormick, if your Honor please, was civil counsel in the matter originally, not of record, but through Mr. McCormick I was called into this case.

THE COURT: Yes, I just wanted that for the record. Proceed.

MR. McCORMICK: In that case, if your Honor please, they procured an order of arrest for Devine in a civil action. They were not entitled to their order of arrest, but there was no question about the fact that he owed the money, and they simply settled it right then and there, and that was all there was about it, and he was advised by counsel at that time that it was not politic or it was not reasonable for him to prosecute that, when settlement could be made by his simply paying the debt. That was all there was of it. There was not any bankruptcy proceeding. It was before the bankruptcy act was passed.

One word in regard to this. Mr. Levy has spoken and said I was civil counsel in the case. I know and I feel in my heart, and I have differed with him about this, but

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I have deferred to his experience and wisdom here in the trial of this case, but I cannot believe and I do not believe, if your Honor please, that there was any criminal intent whatever on the part of either one of these men.

THE COURT: Does the gentleman representing any other person commercially interested wish to make any remarks to the Court?

MR. LEVY: Let it be noted upon the record, if your Honor please, that Mr. Bernard is here in court, represented by Mr. Cohen. Mr. Bernard is one of the directors of that association referred to by Mr. Cohen.

MR. BUCKNER: The attitude of the District Attorney's office in this case is simply this: My associate, Mr. McCormick, who expected to try this case, ~~has~~ has investigated it thoroughly, and, as has been said, it is not one of those cases which reek with commercial dishonesty as a great many do that go into bankruptcy, and we have taken an independent attitude, though we have consulted with the private parties who are interested in the matter, as I think we should do. The final proposition which we made to Mr. Levy was that the District Attorney's office, if the Court requested it, would make a recommendation that he throw himself upon the mercy of the Court, and when he pleads guilty, that the Court may impose a much greater sentence than the District Attorney cared to re-

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commend, or may impose no sentence whatever, but that he was entitled to a recommendation, providing the Court asked for it, and I understand the Court wishes a recommendation from the District Attorney's office?

THE COURT: Yes, the District Attorney is at liberty to, and this especially would be the desire of the Court, that if he has any recommendation to make, he make it.

MR. BUCKNER: I only wish to pause about a minute to state that of course, it is obvious in a commercial case that the obloquy of the sentence, and the obloquy of even a short term of imprisonment, to such a defendant, is tantamount to a long term in the case of a professional criminal, because a business man who has arrived at a certain age before he has had any difficulty with the criminal law, is the sort of man to feel very keenly any punishment. However, the District Attorney feels that the exemplary effect of the punishment is really the important thing, and that there should be some punishment, however short, and whatever the Court in its wisdom may feel may feel should be done in this case, the office is prepared to recommend that the defendant be sentenced for a period of thirty days.

THE COURT: The Court has rarely had a case in which sentence was to be imposed, where the character of the

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accused was more highly established in the community than this one. Of course, the Court has to rely upon statements made by reliable persons, and in this particular case, they are made by persons in commercial life who knew the defendant at the bar. Many communications have reached the Court, which would seem to indicate that previous to this irregularity in the business habits of this defendant, he was a man of good standing in the community, without a doubt. But he has pleaded guilty to this charge.

Whatever may be said of the obloquy and the humiliation or the disgrace of a sentence, it is personal to the defendant, and while there are various elements to be considered in the sentence which the State pronounces, that of pain or punishment to the offender is by no means the dominant element in the punishment pronounced by the Court. It is some consideration, and I have no doubt, if this man's feelings were the only thing to consider, that the disgrace of a conviction, the record of crime which this man now has against him, would suggest the propriety of doing nothing more than suspending sentence in his case, and letting him go out into the world to bear that punishment which a man of former good reputation must necessarily feel, in such circumstances as his at present. But there is that other element, the

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exemplary element. It has sometimes been said by writers, doctors of law, philosophers and Judges on the bench, that it is unjust to a defendant that he should suffer exemplary punishment; he should suffer punishment meted out for his offense alone, and for his punishment, but that he should be the victim of exemplary punishment is sometimes called unjust. Rather let us call it not exemplary punishment, but a punishment which will deter others inclined to the same practice from committing a like offence. It is difficult to distinguish between a deterrent punishment and an exemplary punishment, but it strikes me that, in a community like New York, the great commercial centre of America, transactions between people engaged in the commerce of New York should be of the highest standard, and that, as commerce is the life of our community, commercial integrity in New York should be established and the world should be impressed that it is so established. The people at large are protected by laws that are enacted for their benefit. This commercial community is in this case entitled to the protection of a sentence against this defendant which may deter others, who are so inclined, from the repetition of this prisoner's offence.

That is the reason why the Court cannot listen to

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the request to suspend sentence. That is the reason why the Court is going to impose a sentence upon this man. It will be one which takes into consideration the fact that there was no great disparity of assets, as stated by the gentleman representing the commercial association; that, in the bankruptcy proceeding, there was no perjury, and that, throughout the proceeding, there always seemed to be, on the part of the defendant, a willingness to admit his guilt, as shown by his plea, and, as stated by the gentleman representing the commercial association, an apparent sincerity of sorrow for the offence committed by this man.

A great deal of time has been devoted to this one case. When we compare the business of the Court with this particular charge, it would seem that we have devoted too much time to the consideration of this case; but I wish to repeat that the commercial life of New York, its business interests, its reputation as a commercial centre, demand that the courts of this city should strive to uphold its repute for commercial integrity and fair dealing. For that reason, the Court imposes a sentence of thirty days in the City Prison of New York, as suggested by the District Attorney.

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