

NEWLYN
CHARGE OF CONCEALMENT OF BIRTH

On Friday last, D. P. Le Grice, Esq., and W. Bolitho, jun., Esq., sat at the Guildhall, Penzance, to investigate a charge of the above nature, most of the details of which are wholly unfit for publication, and even a complete précis of the case for the prosecution, shorn of indelicacies, cannot be present.

Mr. E. S. Boyns defended the prisoner, Mrs Margaret Toman, 32, the wife of Mr. Richard Vingoe Toman, a carpenter, of Newlyn.

The first witness, whose examination and cross-examination lasted some hours, was Alice Mann, a single woman, now resident at Whitby, in Yorkshire, but formerly in Mrs. Toman's service.

Mann first went into the prisoner's service in the month of April. She could not remember the year, but she said she knew it was five months before Mr. Toman left for Australia. She went away for twelve months and then returned to her service again, and remained about two years. Mann was questioned as to the dates, and her replies were such that Mr. Le Grice declared that he could make nothing of her. At length, with some assistance in the way of reckoning, the girl was enabled to state that in April, 1867, she was with Mrs. Toman. When the house was full the prisoner would sometimes sleep with Mann, and occasionally with her own sister, Florence Wright. Mann, when sleeping with the prisoner, missed her occasionally at night. Some lodgers, Mann said, slept two in a bed. Mr. Wren, a fishbuyer, had a room to himself. When all the other places were occupied Mrs. Toman and herself laid down in the parlour upstairs. Mr. Wren's bedroom was on the same floor and opposite the parlour. In March, 1867, the prisoner complained of being unwell, and in the night while witness was sleeping with Florence Wright she was disturbed of being unwell, and in the night while witness was sleeping with Florence Wright she was disturbed by hearing the prisoner call from her bedroom. "Alice, I want a cup of tea. I believe I am dying." She at once said to Florence, "That is Mrs. Toman calling," and Wright replied, "Margaret is always in want of something." The prisoner shouted a second time, "Do some person come to me," and then Florence said "Don't you go, Alice. I will go myself; perhaps I may get a little rest to-morrow, when you can't." Witness soon after fell asleep, and awoke and went down stairs about half-past six o'clock in the morning, and there found Florence, and Nicholas Mann, and John Doring, lodgers, and the prisoner's little boy, about four years old. About breakfast time she went into the prisoner's bedroom, and Mrs. Toman desired her to go down and make some gruel, and to put in it a little gin, which she would find in a bottle on the back room mantelpiece. Florence then told her not to let anyone see it, or else those who had stated that Margaret was enceinte would say that she had had it. She went down to fetch the gruel and found Elizabeth Curnow Johns in the kitchen. Afterwards she was engaged in taking up milk from a person named Roberts, and she asked Johns to take up the gruel to Mrs. Toman. Johns did so, and came down soon after and asked for a pail of water, with some soap, to carry up to the prisoner. This was given to her, and she went up stairs. On coming down again, and after staying an hour, Johns was directed by Florence to go up for the pail. She obeyed. Witness described appearances in the water which aroused her suspicions. Saw Johns again the next day, and was shewn one white and three red petticoats, which were hanging to a nail. The water running from them was discoloured. The prisoner at that time was still in bed. Afterwards the prisoner went downstairs; she looked very ill. The next day she did not appear any better. On the Sunday the prisoner's mother-in-law came to see

her, and on going into her bedroom told her that she was looking very bad. Mrs. Toman replied that she had had the quinsey. The mother-in-law recommended that if she were not better by the morrow she should have a doctor. On the Friday afterwards Mrs. Toman asked witness to bring down some clothes. She did so, and some of them were stained. There was a spare bedroom, which witness visited after they had washed, and she observed under the bed a blanket greatly stained. She noticed the prisoner was very stout before was taken ill, and subsequently was a good deal thinner. Had heard the prisoner say her husband was in Australia.

In reply to the Bench, Mann said she had seen Mrs. Toman go to Mr. Wren's room when he was in bed at night. –

Mr. Le Grice: Was she dressed?

A: Yes?

Q: Then you never saw her undressed in his bedroom?

A: I have seen her dressing in his bedroom.

Q: She must have been undressed?

A: Yes, certainly.

Q: When she was dressing in his bedroom where was Mr. Wren?

A: He was leaving the room. – On being asked to explain, the witness said: On a Sunday night the prisoner slept with me in the parlour. I laid on the hearth rug and Mrs. Toman on the sofa. After I had been there a good while I heard a slight noise, and I rose up. I saw it was the prisoner opening Mr. Wren's door, and I watched her until she went into his bedroom. I barred my door, and laid down on the sofa and went to sleep. About half-past six o'clock in the morning I came down. Afterwards some one entered the shop, and I was told by Florence to go up and call the prisoner. I searched all the bedrooms, and I could not find her. Mr. Wren had not got up, and I knocked at his door and told him his breakfast was ready. He replied "All right." I waited on the landing until he came out, and then I went in and told Mrs. Toman there was a merchant down stairs waiting for her. She was in Mr. Wren's room dressing then.

Mr. Le Grice: Did you frequently see this?

A: I never saw her but this once dressing in the room.

Q: Did you ever see anything improper take place between Mr. Wren and the prisoner?

A: No, sir.

The witness was subject to a long cross-examination, in the course of which she said she slept in several rooms in the prisoner's house. Could not say that she took Mrs. Toman's boy from her bed the morning she was taken ill. He was in the kitchen when she came down-stairs, as were Nicholas Mann and John Doring. Never mentioned the transactions of that night to anyone, on the following day. Believed she mentioned it to some one, but could not say to whom, before she left Newlyn for Whitby. Remembered sleeping on the hearth rug. That was the same night she saw the prisoner dressing in Mr. Wren's room in the morning. Believed it was in the mackerel season, 1866. When she discovered the blanket in the spare room she did not say anything about it, because she thought the prisoner had been confined, and she did not like to pass any remark about it. The closet was open to all the inmates.

Elizabeth Curnow Johns proved having taken up to the prisoner first gruel, then a pail of water, and afterwards a cup of tea. When she went to fetch the pail she found it on the landing. She brought it down stairs and emptied the contents. She then described the appearance of the water and other things, as stated by the girl Mann, and

added that when she took up the tea to the prisoner she saw a cloth on the floor stained. She did not say anything about it to Mrs. Toman.

The Court, after sitting eight hours, adjourned until Saturday morning ten o'clock.

The inquiry was resumed on Saturday, before the same magistrates; Mr. E. S. Boyns again watching the case for the prisoner.

Emma Mann, a single woman, deposed that on Friday, the 8th March, 1867, her cousin, Mrs. Toman, was in bed and complained of quinsey. She looked very ill, and, from what she saw in the bedroom, and from prisoner's appearance for weeks previous to that time and a week afterwards, witness made up her mind that she had been confined.

Johanna Roberts proved that Mr. Toman left home for Australia about five years since. Two years since she saw Alice Mann attempt to hide away a basin of gruel in Mrs. Toman's house, and asked her the reason for the attempted concealment. She smiled and said nothing, nor did witness, who suspected a confinement, from Mrs. Toman's stoutness, then her sudden thinness and appearance of illness.

Jane Glasson proved a division of opinion among Newlyn people as to whether Mrs. Toman was in the family way or not.

Sophia Couch, a married woman, thought prisoner in the family-way about Christmas, 1866, and then saw her looking very pale and ill. In March, 1867, Alice Mann directed her attention to some under-linen she was hanging out to dry, and said, "As sure as you have had a baby Mrs. Toman has had one."

Elizabeth Toman, prisoner's mother-in-law, proved that her son (prisoner's husband) went to Australia about five years ago, and returned in August or September last. On a Sunday in March, two years ago, she called on prisoner, and found her in bed. She complained of illness (quinsey), as she had in Penzance on the previous Thursday. For twelve months previously her appearance was just as usual. She never thought her in the family-way, or believed the report that she had had a child.

Jane Harvey washed for the prisoner the Monday week after the Friday it was suspected she had been confined, and found the clothes soaped in hot water. Alice Mann and witness washed, and one observed to the other that the clothes looked as if they belonged to a woman who had been confined. Prisoner looked very weak and delicate then, but previously was very stout.

Margaret Berryman, a widow and sempstress, who occasionally worked for Mrs. Toman, said she heard a rumour as to her employer's condition, and requested Alice Mann not to call her if anything unusual happened. She considered Mrs. Toman in the family-way, and, for the reason that she would have nothing to say about the matter, purposely absented herself from the house. Mrs. Toman generally looked pale and delicate, and, when she revisited her, she saw nothing to indicate a confinement. Mr. Toman returned the latter part of last summer. A fortnight afterwards Mrs. Toman left her home, telling witness she and her husband had had words, and that he turned her to doors.

Phillis Mann, prisoner's aunt, a widow, worked as a charwoman for her, from March to Midsummer, 1866, and identified a seal-skin jacket produced as very like one prisoner was in the habit of wearing. It was cut in at the waist, and she never saw another like it.

Joseph Pollard, of Newlyn, was employed by Mr. John Toman, to empty a privy in prisoner's house on 26th of September last. It was nine feet deep, and took John Toman and him two hours to clear out. Witness found a seal-skin jacket in the pit, in three parts, each separated from the other by several buckets-full of dirt. In nearly the last bucket he sent up was a lump of something, but, as he was working by candle-

light, he did not observe what it was until he came up, and John Toman showed it to him. He had trampled on it in the pit. It was a bundle wrapped up very securely in black merino, and in it was the body of a child, two legs of a child, no head but arms, and three bones. There was blood and matter on the inside of each piece of the seal-skin jacket. The soil in the pit was liquid, and a cart-load of sand was thrown in first; then the bucket was sunk in it by a pole, and some of the contents drawn off before he descended.

John Toman, prisoner's father-in-law, said in March, 1864, his son Richard (prisoner's husband) went to Australia, and returned in August last. Prisoner left her home (which was a house the property of witness) on the 14th of September, and on the 26th the cess-pit was cleansed for the first time, prisoner having been the only tenant of the house since it was built and the pit sunk, up to that time. The pit was not cleaned on account of any suspicion, but because there was a complaint of bad smells, and new tenants were coming in. Witness corroborated Pollard as to the finding of the pieces of seal-skin, and the bundle containing a lump of decayed flesh. There were two bones in the soil about the length of his finger.

P.C. Merrifield produced the seal-skin jacket and merino. He arrested prisoner January 10th, in Penzance.

Mr. Francis Boase, of Penzance, surgeon, was at Newlyn on the 26th of September, and at P.C. Merrifield's request, examined a substance lying on a dark-looking skirt, and found it to be greasy and soapy, indeed, decomposed flesh. The small bones found by Pollard were portions of the ribs and bones of child's arm. There was the shape of a child's foot on the black cloth, and the remains of the bones of one of a child's legs. In a lighter place witness found one or two spinal bones, but no trace of any portion of a head. He thought these remains were those of a child come to maturity. He considered these remains had been in the pit twelve months, but not three years.

The recording of the depositions of these witnesses, of which the above is the barest outline, occupied the whole day, and the bench adjourned till Monday, to hear Mr. Boyns for the defence.

On Monday the same magistrates sat again.

Alice Mann was re-called, and said she did not know whether there was any fire in the house at the time she went to bed on the Friday of the alleged birth, but they cooked a supper that Friday morning there might have been some in the slab.

Mr. E. S. Boyns thanked the Bench for their patient hearing of the case, and said he would not have troubled them further by any speech, but for the confidence he felt that there were such discrepancies, improbabilities, and contradictions, (as he could shew by an analysis of the evidence) that it would be better to go into the defence now than have the trouble of doing so at the Assizes. But, first taking a broad ground, he quoted Archbold "The denial of the birth only is not sufficient to convict her: she must be proved to have done some act of disposal of the body after the child was dead;" and asked the Bench if there was a tittle of evidence to connect prisoner with the disposal of the body? Indeed, was there any confinement whatever, as far as Mrs. Toman was concerned? This brought him at once to the credibility of Alice Mann, who he denounced as either a teller of untruths, or utterly incapable of remembering the plainest facts, or mischievously capable of twisting ordinary circumstances into mystery or crime. Take one fact. She had told a story of awaking in the night and hearing footsteps – of missing Florence Wright, and not seeing her again, &c. All this was the most direct untruth or the result of the most wonderful imagination; for he should call Florence Wright to prove that she was never out of bed for the night. Mr

Boyns then drew a vivid picture of village gossip, with a particular sketch of the chat over the washing-tray, and shewed how a mass of untruths would gradually accumulate throughout a place where ill-natured chat prevailed. The gruel, openly made for quincy, made an excuse for the alleged appearance of a child; the fetching of a pail of water, in itself no harm, but most positively denied by the prisoner and her friends; the appearances described by witnesses, all of the most natural and usual kind and not denied, but attributed to extraordinary causes when they could be accounted for by events constantly occurring in medical practice; the open conduct of Mrs. Toman, when she might have concealed scores of facts now distorted to her prejudice; the impossibility of a confinement, and the disappearance of its main incidents, within the brief space of three hours and a half, were the topics he mostly expatiated on. He said many of the witnesses had a distinct object in view in driving Mrs. Toman out of Newlyn, and strongly complained of the unfairness of mixing up the name of a lodger in Mrs. Toman's house – a lodger who was a respectable man, but who was absent, and who denied, in the most positive way, any connection with this case – as if this were a proceeding in a divorce court, instead of a charge of concealment of birth. As far as this name was concerned, Mr. Boyns pointed out the inconsistency of the statements affecting it and Mrs. Toman, as made by Alice Mann. He next sifted the evidence as to the identity of the sealskin jacket, and contended if it were Mrs. Toman's jacket, that such a thing as a missed garment, to be found afterwards under suspicious circumstances, might be discovered, without bringing guilt to the owner of it. As to Newlyn suspicions of a woman in the family way, he should call a witness to prove that a married lady believed herself to be so, engaged her doctor and nurse, provided baby linen, and believed herself (as her friends believed her) to be enceinte; yet it was not so, and no child had been seen to the present day. Could anyone fail to sympathize with Mrs. Toman? Her husband had left her, and for five years she did not receive a penny from him. She took a grocer's shop, gave unlimited credit, could not succeed in business without the aid of lodgers, when she stayed credit because she could give it on longer was changed by gossips from an angel to a very wicked woman, and this mischievous and unfounded tittle-tattle led eventually to words between her and her returned husband, to estrangement and a separation, until, away in London, this scandal reached her ears, and she came voluntarily to Penzance, knowing a warrant had been issued, to face the charge and either be convicted of it or discharged from it, which latter alternative would cause her to be received with open arms – if not in the house where she would be succoured but for this miserable scandal (her husband's) then in the house of her parents, who had never doubted the innocence of their child.

Loud applause greeted an address which lasted nearly three hours.

Being formally charged, as Margaret Harvey Toman, with concealment of birth, prisoner said "I am not guilty; I know nothing of the case."

The first witness for the defence was John Doring, of Stonehaven, Scotland, agent to a fishbuyer, who has attended four mackerel seasons at Newlyn and who first lodged with Mrs. Toman in the spring of 1865, at the old house, and changed with her into a new house (the place where the alleged offence was committed). The inmates were Mrs. Toman, Florence Wright, (her sister), Mrs. Toman's little boy (Richard), and Alice Mann (a servant). The lodgers were Mr. Wren, Mr. Fitzgerald, and himself, afterwards a Mr. Trew also became a lodger, and Mrs. Brown and her family. The family were ever so many youngsters, but he could not say how many. Occasionally Mr Brown came in from trawling, and then all the Browns slept in one bedroom. In 1865 he remained 16 weeks at Mrs. Toman's house, and returned in 1866 for the

mackerel season when he found the inmates of the house the same. He came on the 5th or 6th of March (the first week in March, at the end of the week), and left on the 2nd of July. Wren, Dean, and himself were the lodgers then. In 1867 he arrived in Newlyn, on the 7th of March, from Anstruther, in Scotland, which he left at 4 o'clock on the afternoon of the 6th, after working all day. Arriving in Penzance about 9 o'clock he looked after his luggage, had some refreshment, and walked to Newlyn, which he reached about half past 10. Coming without any notice they were surprised to see him. He shook hands all round, and chatted with Mrs. Toman. She said she had been to Penzance market (it was very bad weather, snow all through England down to Bodmin) and taken cold. Mrs. Toman cooked ham and eggs for him, and he had them for supper about 11 o'clock. Prisoner fetched his bedclothes and aired them while he supped, and he went to bed about half-past eleven. He followed Mrs. Toman closely, being tired, and saw her making the bed. He rose the next morning at half-past 10 or 11, found it was late, recollected perfectly well that the day was stormy and next day but one (Sunday) a vessel went ashore at the back of Penzance pier, and was quite certain Mrs. Toman dined with them, that Friday, in the back parlour. Prisoner had her throat tied up, complained of a bad cold, which she said she caught at Penzance, but otherwise differed in no way from her ordinary appearance. Up to tea-time he observed nothing unusual, nor did Alice Mann say anything to him. The Thursday night he slept soundly, and was never disturbed during the whole of the night. On the day following his arrival (Friday) Mrs. Margaret Berryman called and conversed with Mrs. Toman in the back parlour, about 2 o'clock. About that time observed nothing suspicious in Mrs. Toman's Appearance. Any one who said he was in the kitchen at half-past six that Friday morning had sworn falsely. He never slept two in a bed in the season of 1866 and 1867, but in 1865, in the old house, he slept a week with young Fitzgerald, and in 1868 for a short period with Mr. Benjamin's buyer. In '66 and '67 he never slept with any one. In '66 there were rooms to spare, and he never heard or knew of Mrs. Toman or Alice Mann sleeping on a sofa or a hearthrug. – By the court:- I have been in Mr. Wren's service, at weekly wages, since 1864.

Florence Wright (prisoner's sister) deposed that she was 20 last May, and lived with prisoner at Newlyn for the last five years, both in the new and old houses, indeed just after her husband left for Australia, and assisted to serve in the shop. In both houses prisoner let lodgings. Alice Mann was the servant. Remembered Doring's coming to lodge in the early part of March, on a Thursday, in 1867. Witness served two days a week in Powne and Blight's, Penzance, and had just arrived home that Thursday night when Doring came. Mrs. Toman, Alice Mann, Nicholas Mann, and herself were in the kitchen when Doring came, and shop was closed. Her sister prepared Scoty's bed ("Scoty" being a nickname for Doring) by fetching the bedclothes, airing them, and taking them upstairs again. It was between 3 and 4 in the morning, when they went to bed, because the rooms were not right for the reception of the lodgers, and she and Alice stayed up to clean out the parlour. She slept with Alice Mann in the front bay-window bedroom. Her sister's room was on the same landing, and the doors faced each other. Saw no light in the prisoner's bedroom, nor heard any noise; but, after witness undressed, heard prisoner call for a cup of tea. She said "Is there any fire down that I may have a cup of tea?" Witness answered that it was too late to give tea, for the fire had gone out, and she was very tired and sleepy. Witness continued:- Alice Mann rose before me and called me. I never went into my sister's bedroom, or called to her, or spoke to her, that night or morning, and did not see her until about 12 o'clock, downstairs. On my oath I never requested Elizabeth

Curnow Johns to fetch a pail of water from the landing. If she did such a thing I did not tell her to, and I have no recollection of any such circumstance whatever, nor to take up a pail of hot water. Never told Alice Mann to prepare gruel that morning, and had no conversation whatever about any gruel. My sister was down before dinner time that day, I think about noon; and Mr. Doring, my sister, and myself dined together – prisoner sitting on the sofa and having red flannel round the throat, of which she complained. I was mainly in the shop that morning, and saw nothing unusual, nor was my attention directed to anything. On the Friday night my sister went to bed about nine or half-past nine. If Alice Mann says she found me in the kitchen at half-past six that morning she speaks falsely; nor was Doring down till between 9 and 10. Alice Mann always slept with me, and never on the hearthrug, to my knowledge, nor did my sister sleep on the sofa or give up her bed to a lodger. I may have worn my sister's boots, by accident, for our sizes are the same, but I don't recollect doing so on any particular occasion. My sister never called to me on that Thursday night, and all she has said in her deposition on that point is untrue. Never saw my sister's petticoat hanging to a nail in the landing. [Witness contradicted the witnesses Mann and Johns in several important particulars, but, beyond the fact of this contradiction, her statements threw little more light on the case.] Never suspected prisoner of being in the family way, nor had the least conversation with her, or any one else, on such a subject. She had a stomach complaint sometimes, and about the time of Doring's coming suffered from quinsy and cold.

By the Court: I have seen a jacket in three parts in P.C. Merrifield's possession, and my sister had one very like it, but I never said this was my sister's. I was not in Elizabeth Bond's house about the time a child was found on the premises once occupied by my sister, but was so last Friday week, when I denied I ever said the child might be Alice Mann's and added that I never suspected either of them.

By Mr. Boyns:- My sister was accustomed to have breakfast in bed if she had a cold, but Alice always took it to her. Never saw any improprieties between my sisters and any lodgers; if I had I should not have stayed in the house.

Nicholas Mann:- I am a fisherman and 23. In November, 1866, I went to lodge with Mrs. Toman, and remember Doring coming to lodge in March, 1867, on the same day I returned from Plymouth. About half-past nine I went in for the night and found Mrs. Toman, Florence Wright, Elizabeth C. Johns, John Doring, and Alice Mann there. I put home Johns between 10 and 11. Saw Mrs. Toman preparing Doring's bed, and went to bed myself. Did not get up so early the next morning as usual, and heard and saw nothing unusual. Never saw any impropriety in the house between Mrs. Toman and any lodgers, and was never spoken to about anything unusual by Mann, Johns, or any one else. On the Friday nothing occurred to attract my attention, and it seemed just like any other day, so I remember nothing at all of the occurrences of Friday.

Mr. Le Grice said the Bench had given the case the most deliberate consideration, and the prisoner had received the benefit of a very able defence. It was evident that there was perjury somewhere, and the best thing to do was to let a jury decide between the prisoner and her country. She must be committed to take her trial for concealment of birth at the next Assizes but they would accept reasonable bail.

John Wright, prisoner's uncle, and Barzillai Beckerleg, were bound for her appearance at the next Assizes in £25 each, and she was released.

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