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AT THE MURDERER'S TOUCH

WILLIAM RENWICK RIDDELL.^a

"For murder, though it have no tongue, will speak with most miraculous organ."¹

The popular superstition that the blood of a murdered person would flow when the corpse was touched by the murderer was wide spread and is not yet dead.

In an interesting Scottish case, the alleged flow of blood of a dead man was adduced as evidence to procure the conviction of the son of the deceased for Treason and Abetting Murder.

On February 6, 1688, Philip Stansfield was arraigned at Edinburgh before the Earl of Linlithgow, Lord Justice General, and the other Lords Commissioners on a charge of High Treason in that he did "in the Kitchen of New-Milns, as a most Villainous and avowed Traytor, begin a Health to the Confusion of His Majesty (King James VII) his Native Sovereign and cause others . . . to drink the same." He was charged in the same Indictment with "Murder under Trust . . . punishable as Treason," as well as with "Cursing . . . his Father . . . punishable with Death."²

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¹I take this from an interesting old octavo with the Title Page: *Tryals/for/High-Treason/and/Other Crimes/with/Proceedings/on/Bills of Attainder/and/Impeachment/For Three Hundred Years Past/* . . . Part V. London . . . MDCCXX, 8vo. Pp. 494, sqq.

The Report begins with the "N. B. The Scotch begin their Year in January" (the year in England began March 25 at that time). The book was placed at my disposal (through my Brother Grant) by the courtesy of Mr. C. C. Pearce, Jr., of Owen Sound, the owner.

It is quite different in format from the first collection under the name of *State Trials*. This collection was a booksellers' venture beginning in 1719. Many libraries and records were placed under contribution and four folio volumes were issued, with a fifth in 1720.

The present volume purports to be "By the Same Hand that prepared the Folio Edition for the Press," and is of "The Tryals contained in Vol. III, Part II; Vol. IV, Part I." It is one of the abridged series in nine volumes beginning in 1720, edited by Salmon. See Wallace: *The Reporters*, 4th ed. Boston, 1882, p. 68. This particular volume must have been published as early as 1720 as on the front fly leaf is the writing "Thos. Tipping of Yardley, Hertfordshire, 2 April 1920: of London 2 Apr. 1731, & of both (God be praised) 26 Aug. 1742." Differing in this from most old books, there is no other writing on it.

In *Howell's State Trials* the case is more fully reported in Vol. II, pp. 1371 sqq.: the name is there spelled "Standfield."

²The Words of the Act against Cursers of Parents being "*That the Cursers of Parents shall be put to Death without Mercy,*" says His Majesty's Advocate, *arguendo*.

To understand the second of these charges it is to be borne in mind that by a Scottish Statute, Murder of anyone by a person in whose trust or assurance he was—as, e. g., a guest at an Inn in the protection of his host—was punishable as Treason. The prisoner was charged with murdering his father, Sir James Stansfield who, it was contended for the Crown, was in his trust and confidence.

I do not propose to deal with the case as a whole but only with the case against the accused as evidenced by the bleeding of the corpse.

The deceased coming home from Edinburgh, went to rest in his chamber about ten o'clock: a Minister in the house heard during the night, "a great Din and confused noise of several Voices and sometimes of Persons walking": Sir James being missed in the morning, his body was found in "a Water near the House," "a River a little west of the Town," "floating on the water about eight feet from the . . . brink." The body was carried to the house, the prisoner assisting to lift and carry it; and it was not bleeding. It was buried: but suspicion being aroused, it was exhumed: and, on a *post mortem* examination, the surgeons were of opinion that the death was caused by strangulation and not by drowning. The incision was sewed up and new clean linen put on the corpse; then as "James Murehead, Surgeon, depos'd . . . upon the Prisoner's assisting to lift the Body, after it had been sew'd up and clean Linnen put on, it darted out Blood through the Linnen from the Left side of the Neck, which the Prisoner touch'd: But that when the Deponent and the other Surgeons put on the Linnen, and stir'd and mov'd the Head and Neck before, he saw no Blood at all." The bleeding was corroborated by others—and the touch added that when the accused saw the blood, "He let the Body fall, and fled from it in the greatest Consternation, crying, *Lord have Mercy upon me.*"

The framer of the Indictment set out that such bleeding was "according to God's usual Method of discovering Murder": and it was in vain that the "Panel's Procurator" (Prisoner's Counsel), Sir Patrick Hume argued: "That as to the Corps bleeding when the Prisoner touch'd it, it was a superstitious Observation founded neither upon Law or Reason: And quotes *Corpus ovius*³ & *Mattheus de Criminibus* to be of the same Opinion: And says the Bleeding was occasioned by the moving of the Body and the Incision the Surgeons

³A misprint for Carpzovius: the title in Mattheus quoted is Feb. 16, de quaestionibus, no. 12, "de sanguine puro de Cadavere profuente quod dicitur, id de plurimis experimenta falsa sint; ratio vero idonea nulla reddi possit non putaverim indicium ad torturam sufficiens esse: non enim sapientis iudicis est incerto experimento credere quod certa ratione dirimendum est."

had made: And that other People touching the Body at the same Time, it could no more be ascribed to the Prisoner than to them." Further, his other Counsel, Sir David Thoirs, argued that "though the Prisoner had assisted to lift the Body before the Incision was made, it did not bleed upon his touching it then . . . that it happened now only by his pressing the . . . Incision . . . And that the Prisoner's appearing surpriz'd at the sight of his Father's Blood was to be attributed to natural Affection and filial Piety rather than be made a Presumption of his Guilt." Filial Piety was rather discounted by the accused's habit of damning his father, "the Devil take him, the Devil ride him," threatening to shoot him, to cut his throat and the like.

Moreover, the King's Advocate (I presume, Sir John Dalrymple) urged that though several persons touched the body the hands of no other were besmeared with blood—"That the Body having lain Two Days in the Grave in a Cold Season the Blood must naturally be congeal'd; That the lifting about the Body and even the Incision that was made (between the *Os hyoides* and the Larynx) causing no such effusion before but only of some Matter or Gore and should upon the Prisoner's first touching it fall ableeding afresh, he must ascribe it to the wonderful Providence of God who in this manner discovers Murder; especially since no natural Reason can be assign'd for it: And that the horrible Impressions it made on the Prisoner, notwithstanding his Resolution to the contrary, might be urg'd as another Argument of his Guilt."

The unfortunate was found "Guilty of all the Facts laid in the Indictment; viz., Of Treason, Cursing his Father and being Accessory to his Murder, Which Verdict was subscribed by *William Baillie* of *Lamington*, Chancellour (i. e., Foreman). Then Sentence was pass'd upon him, as usual in Cases of High Treason."

As appears from the Report in 11 *Howell's State Trials*, 1420, this was gruesome enough. He was "to be taken upon Wednesday next, being the 15th of February instant, to the mercat cross of Edinburgh, and there, betwixt two and four o'clock in the afternoon, to be hanged on a gibbet till he be dead, and his tongue to be cut out, and burnt upon a scaffold, and his right hand to be cut off and affixt on the east port of Paddingtoun, and his body to be carried to the Gallowlie betwixt Leith and Edinburgh, and there to be hanged up in chains; and ordains his name, fame, memory, and honours to be extinct, his arms to be riven forth, and delet out of the books of arms, swa that his posterity may never have place, nor be able

hereafter to bruik or joyse any honours, offices, titles, or dignities, within this realm in time coming, and to have forfeaulted, amitted and tint all and sundry his lands, heretages, titles, offices, tacks, steddings, roums, possessions, goods and gear whatsomever pertaining to him, to our soveriegn lord, to remain perpetuallie with his highness in property; Which was pronounced for doom."

"Which Doom and Sentence, above written, was accordingly put to due execution upon the person of the said Philip Standsfield, in manner above prescribed."⁴

I find only one case of this superstition in England: 14 *Howell's State Trials*, 1324.

Jane Norkott alleged to be murdered, a Coroner's Jury were inclined to find *felo de se*; but thirty days after her death, her body was dug up and the Jury changed their mind and charged the husband, mother, sister and brother-in-law with murder. They were tried at the Hertford Assizes and acquitted. The Trial Judge, Mr. Justice Harvey, was not satisfied and advised an Appeal of Murder to be brought—a child of the deceased brought an Appeal, and, as he was a minor, Wager of Battel was not resorted to but the case was tried before Sir Nicholas Hyde, Chief Justice of the King's Bench, (1627-1631).

At the trial the Minister of the Parish swore that the 30-day-old corpse lying on the grass was touched in turn by the four accused: On the sister touching the dead body, "the brow turned to a lively and fresh colour and the deceased opened one of her eyes and shut it again; and this opening the eye was done three several times: she likewise thrust out the ring or marriage finger three times and pulled it in again: and the finger dropped blood from it to the grass." No wonder that "Sir Nicholas Hyde . . . seeming to doubt this evidence asked the witness 'Who saw this besides you?'" The "witness . . . a very reverend person . . . about 70 years of age," said he could not swear what others saw but that he had no displeasure against any of the accused and that he had sworn the truth—"the thing was wonderful to me." His "brother . . . the minister of the adjoining Parish" swore to "the . . . change of colour—thrice opening the eye—and the thrice motion of the finger and drawing it in again"—the first minister adding "that he himself

⁴In *Howell's State Trials*, 1371, it is said that John Dickson, April 30, 1591, convicted of murdering his father was "sentenced to be broke at the wheel at the cross of Edinburgh"—and that at that time it was "customary to take the convict directly from the court to the scaffold."

dipped his finger in the blood which came from the dead body to examine it and he . . . believed it was blood." The result is not given.⁵

In the *Harleian Miscellany*, vol. VII, at p. 15. is an account of this test applied to Major George Strangeways, accused of the murder of his brother-in-law John Fussel (*lucris causâ*). As it sets out the fantastic theory, I copy it in full—the accused refusing to plead was pressed to death).

The account reads:

"He being now in the officers' custody, is had before Justice Blake, by whom, although with an undaunted confidence denying the act, he is committed to Newgate, where remaining till the next morning, he is then by a guard conveyed to the place where Mr. Fussel's body lay, where, before the coroner's jury, he is commanded to take his dead brother-in-law by the hand, and to touch his wounds; a way of discovery, which the defenders of sympathy highly applaud (on what grounds, here is no place to dispute). But the magnetism fails; and those effluviæ which, according to their opinion, being part of the *anima mediâ*, tenaciously adhere to the body, till separated by its corruption, being the same that, by united atoms becoming visible, compose those spectrums that wander about the coenotaphs and dormitories of the dead; and do, when hurried from the actions of vitality by a violent death, as endeavouring to revenge its wrongs, fly in the face of the murderer, and, though in such minute parts as are too subtle for the observations of sense, keep still hovering about him; and, when he is brought to touch the murdered body, which was its former habitation, by the motion of sympathy, calls from those sally-ports of life some of those parts of her life, which yet remain within it; who, that they may flow to meet it, are conveyed in the *vehiculum* of the blood. They illustrate this by dogs, and other animals, which, with a violent impetuosity, assail those that make a custom of murdering things of the same species."

⁵In the extraordinary Indictment. in 1661 against the Marquis of Argyle for High Treason, 5 *Howell's State Trials*, 1370, sqq., there is a curious statement made "that the Lord from Heaven did declare his wrath and displeasure against (certain) inhuman cruelties" by blasting trees and causing a "spring like unto blood" to come "popping up running in several streams all over the root . . . for several years thereafter."

In Burnett's *Criminal Law of Scotland*, p. 529, the author says: "In various trials for murder we find the notion of the corpse bleeding, touched by the murderer, a circumstance founded on." He also gives a trial in 1754 in which two witnesses sworn to seeing a "ghost which they said had told them where the body was to be found and that the pannels were the murderers"—adding "circumstances which would probably not now be admitted in proof."

When at the Bar, I was once offered such evidence by my client; but I declined to use it.