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## A STRANGE MURDER CASE

WILLIAM RENWICK RIDDELL<sup>a</sup>

The very great diligence exercised by those responsible for the first collection called *State Trials*, 1719, in collecting material is well known,<sup>1</sup> and the editors of subsequent editions culminating in *Howell's State Trials* were no less marked in this respect.

It is, therefore, strange, that no mention is made of a case of murder in 1658/9<sup>2</sup> remarkable in its incidents and involving the rare and revolting sentence of *peine forte et dure*.

An account of it appears in a 4to pamphlet of 32 pages: *The Unhappy Marksman* . . . London, 1659, reprinted in *The Harleian Miscellany*, Vol. VII, pp. 9-23.<sup>3</sup>

John Fussel, an Attorney with a large practice, living in Blandford, Dorsetshire, came to London in Hilary Term, 1658, for professional reasons: sitting at his desk and facing the window of his lodging one story high near Temple Bar, between nine and ten o'clock p. m., he was shot, with two bullets from a carbine through the window.<sup>4</sup>

His son suspected Major George Strangeways, the brother of the elderly second wife of the deceased—who had tried to prevent the marriage of his spinster sister, Mabel, and had made violent threats that if she married Fussel, he would be the death of him. The Major

<sup>a</sup>Justice of Appeal of Ontario, Toronto, Can;

<sup>1</sup>See Wallace's *The Reporters*, 3rd ed., Philadelphia, 1855, pp. 54, sqq.; 4th ed., Boston, 1882, pp. 68, sqq.

<sup>2</sup>Until 1752, the year in England began, March 25—this was called Old Style, and now the months from January 1 to March 25 before that year are generally written January, 1607, O. S. or January, 1607-8 (what we could call January, 1608), etc., etc. The change was made by (1751) 24 George II, ch. 23, for "all his Majesty's Dominions and Countries in *Europe, Asia, Africa and America* belonging to or subject to the Crown of *Great Britain*." The occurrences mentioned in this article were early in our year 1659, according to what the Statute calls "the new Method of Supputation."

<sup>3</sup>This extraordinary "Collection of Scarce, Curious and Entertaining Pamphlets and Tracts as well in Manuscript as in Print, found in the late Earl of Oxford's Library," London, 1810, in 12 volumes should be in every Reference Library. And no lawyer should lay down this Volume VII without reading the next succeeding Pamphlet: *A Rod for the Lawyers* . . . *Greedily devouring yearly many Millions of the People's Money*. The writer has no mercy for the "pestiferous generation of lawyers . . . running . . . seeking whom they may devour" or the "Inns of Court, dens of thieves": and he piously hopes: *Deus dabit his quoque finem*.

<sup>4</sup>A third bullet completing the "lease"—see *post*, n. 9—was found in the window-sill.

who was also in London<sup>5</sup> was arrested and committed to Newgate, on denying all knowledge of the crime.

Then followed an extraordinary proceeding which I have found paralleled in but one other English case—it is said to have been not uncommon in Scotland, though I have found only one reported case in which it was employed.<sup>6</sup>

A Coroner's Jury sitting over the body, the accused was conveyed under guard to the Inquest; there, in the presence of the jury, he was "commanded to take his dead brother-in-law by the hand and to touch his wounds." This was on the theory that blood would flow from the dead body if touched by the murderer's hand—a superstition of very ancient date and widely spread.<sup>7</sup> The test failed: the blood did not flow, and the Major was returned to Newgate.

The Jury continued their inquest though with but little hope of success in determining the murderer. And then occurred what would scarcely be credited if related in a work of fiction. The Foreman suggested—a suggestion more fortunate than practical—that all the gunshops in London and adjacent places should be examined to determine what guns they had either sold or lent that day. On the Jury was a Mr. Holloway, a gun-smith living in the Strand: He, knowing the number of gunsmiths in and about London, expostulated, saying that this was almost an impossibility and could not be done without very great difficulty and delay—he said that he himself had lent one and no doubt several others in the business had done the same. The Foreman demanded the name of the borrower and, after some time,

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<sup>5</sup>Why does not clearly appear: but there was litigation between him and Fussel to which Fussel was attending that Term. He was "lodging in the Strand, over against Ivy Bridge at one Mr. Pim's, a tailor, a door on this side of the Black Bull": and apparently he left in his room a disguised friend to walk about during his absence committing or superintending the crime, so as to cause the family to believe that he was in the house as they mistakenly swore at the Inquest.

<sup>6</sup>R. V. Standsfield (1688) 11 *Howell's State Trials*, 1371; 5 *Tryals for High Treason and other Crimes* . . . London, 1720, 494. See also 14 *Howell's State Trials*, 1324; 5 *Howell's State Trials*, 1370; Burnett, *Criminal Law of Scotland*, pp. 529, 530.

<sup>7</sup>The theory of Sympathy is fully explained by Sir Kenelm Digby in his *A Discourse in a Solemn Assembly at Montpellier* . . . 1657, London, 1669. See my Article, *Sir Kenelm Digby and his Powder of Sympathy* (New York Medical Journal, February 19, 1916). Abbreviated, it was as follows: When light strikes any substance, blood or otherwise, it separates atoms of it into the air: like seeks like and these atoms tend to go toward their fellows left behind and *vice versa*, "from their Resemblance and Sympathy they have one for the other": when one person murders another, some of the floating atoms of the blood of the murdered man adhere to the murderer and when the latter touches the wound, the remaining blood flows out to its fellow. *Voilà tout*. The theory, however, had many complications, and the theory of the writer of this tract is not quite the same as Digby's, although substantially so.

Holloway recollected that it was one Thomson of Long Acre, formerly a Major in the Army. He could not be found,<sup>8</sup> as he was absent in the Country on urgent business; his wife was seen and, although she denied all knowledge of the gun, she was imprisoned. The husband, hearing of his wife's imprisonment, hastened to London; and at once told that he had borrowed a carbine on the day of the murder from Holloway at the request of George Strangeways who said that he wanted it to shoot a deer. He had had it loaded with a "lease of bullets"<sup>9</sup> at Strangeway's direction and handed the carbine loaded and primed to Strangeways between 7 and 8 p. m. in St. Clement's Church-yard. Strangeways brought it back discharged to Major Thomson's house between 10 and 11 p. m.; and went back to his own lodgings where he was arrested at 3 a. m.

The prisoner is brought before a Magistrate,<sup>10</sup> and, on seeing Thomson, he "in an amazed terror, after some minutes of a deep and considerate silence . . . no longer veils his guilt with confident denials but . . . stands now a contrite penitent . . . acknowledging that *Maxima peccantium poena est peccasse*."<sup>11</sup> He was brought to trial, Thursday, February 24, at the Sessions-house in the Old Bailey before Lord Chief Justice Glyn<sup>12</sup> of the Upper Bench (of the Commonwealth): on being called on to plead, he said that he would plead if he were permitted to die by the manner of death his brother-in-law fell: but if not, he would not plead but, by refusing to plead, would "both preserve an estate to bestow on friends . . . and free himself from the ignominious death of a public gibbet."

All arguments of the Lord Chief Justice and others on the Bench were in vain: the prisoner obstinately refused to plead or "to dis-

<sup>8</sup>The author is much troubled about Major Thomson—some say that he fled, conscious of guilt; but "with our charitable prayers for his freedom, referring our censures either of his innocence or guilt, to his further trial at the next Sessions," the author leaves him. What was the result of Thomson's trial I have been unable to discover—it is not in the *State Trials*.

<sup>9</sup>"Leash: A set of three: originally in Sporting language." N. E. D. *sub voc.* I have not found this word in either form used elsewhere except of hounds, hawks, deer, etc.

<sup>10</sup>Not Justice Blake who carefully examined him and committed him but Justice La Wright.

<sup>11</sup>"The greatest punishment for those sinning is to have sinned"; Seneca, *Epist.* 97.

<sup>12</sup>Sir John Glynne (Glyn, Glynn, 1603-1616), a "Parliament-man" of very great ability and learning, appointed, June 15, 1649, Chief Justice of the Upper Bench on the retirement of Chief Justice Rolle: he resigned in 1659. A sample of his quality as Judge may be seen in Penruddock's Case (1655), 5 *Howell's State Trials*, 767. sqq.: as prosecuting Counsel, in Vane's Case (1662) 5 *Howell's State Trials*, 119, sqq.

He was sitting with his Associates under a Commission of Oyer and Terminer and General Gaol Delivery not *en Banc*.

cover who it was that fired the gun," steadfastly affirming "that whoever fired it, it was done by his direction but with no intent to be the death of his brother-in-law . . . ."

The dread sentence of *Peine forte et dure*<sup>13</sup> must needs be pronounced:

"That the prisoner at the Bar be sent to the place from whence he came; and that he be put into a mean house stopped from any

<sup>13</sup>At the Common Law it is probable that a refusal by one arraigned to plead and put himself on the country, or *ut Curia advisaverit*, was equivalent to a plea of Guilty: and this continued to be the law in Treason and Misdemeanour. In Felony, however, the Statute of Westminster I (1275), 3 Edward I, ch. 12, enacted "qu les felons escriez & qe sout apertement de male fame, & ne se voillent mettre en enqueste, qe leur lui mettre faire devant Justices a la suite le Roi, soient mys en la prisone forte & dure, come ceux qi refusent estre a la commune ley de la terre," that notorious felons and those who are openly of ill fame and will not put themselves on the Inquest as to felonies of which they are charged before the Justices at the suit of the King shall be put in hard and strong imprisonment, as they who refuse to submit to the Common Law of the Land. This applied only to proceedings at the suit of the King and consequently in Appeals of Felony, the old rule continued—Lord Castlehaven's Case, 3 *Howell's State Trials*, 403—the Appellee, if he stood mute, was hanged. The *prisone forte et dure* was intended to compel the prisoner to plead, not as a punishment, 30 *Howell's State Trials*, 895, and there are recorded instances of success. In an old case, we read that a cleric refusing to plead in proper form the Judge told him "Vous serrez iugge a vostre penaunce" . . . "et ensi tut il iugge . . . qil serreit despoile de touz ses draps forspris ses dras langes et mis en une meson bale nettement et charge de tant de fers qe il pout porter et un ior une pece de pain et altre ior un tret la plus procheyn ewe esteante tanqil soit mort."—"You will be sentenced to your penance" . . . "and forthwith he was sentenced . . . that he should be stripped of all clothes but his linen and put in a bare cell and loaded with as much iron as he could bear and one day have a piece of bread and another a drink from the nearest stagnant water until he should be dead." Then we are told: "Pus fust taunt dur demene qil lendmein et sei myst de gree en paid qil ne fust de rine culpable, saunz faire mention de so clergie"—this he found so hard that on the morrow he came and of his own free will he put himself on the country as not guilty, without making mention of his Clergy. See the Selden Society's *The Eyre of Kent, 6 & 7 Edward II, A. D. 1313-1314*; also my Article, *When Law Was Law*, American Bar Association Journal, October, 1926. Cases occurred in which the prisoners survived forty days but that was before the practice came in of loading them with iron—they were simply starved: the sentence originally ran until he died or answered, not tanqil soit mort. However by the time of Henry IV, the *prisone forte et dure* being corrupted to *peine forte et dure*, the sentence was and was intended to be one of death.

Frequently the object of the prisoner was to prevent forfeiture or escheat as that could not follow except on Attaint, i. e., a sentence following a trial or on Outlawry. Some times the prisoner was wholly or partially insane. See Tomlin's *Law Dictionary*, sub voc. Mute: 1 *Howell's State Trials*, Pref. XXXII; 2 *Howell's State Trials*, 913; 3 *Howell's State Trials*, 360, 403; 30 *Howell's State Trials*, 767, 828, 895.

The practice was known on this Continent, Giles Corey having suffered in this way in a prosecution for Witchcraft at Salem, Mass.

It was never in use in Canada: the law in England was changed in 1772 by the Act, 12 George III. ch. 20, which made standing mute on arraignment for Felony or Piracy equivalent to a plea of guilty.

The latest instances of pressing to death of which I can find any account seem to have been in the reign of George II. See 30 *Howell's State Trials*, 767, 828; Barrington, *Observations on the Statutes*, pp. 82, 86. The last Barrington had heard of was at Cambridge in 1741, Baron Carter being the Judge.

light; and that he be laid upon his back with his body bare except as required by decency: that his arms shall be stretched forth with a cord, the one to one side of the prison, the other to the other side of the prison: and in like manner shall his legs be used: and that on his body shall be laid as much iron and stone as he can bear and more: and the first day shall he have three morsels of barley bread, and the next day shall he drink thrice of the water in the next channel to the prison door but no spring or fountain water: and this shall be his punishment till he die."

On Monday, February 28, 1658 (O. S.), about 11 a. m., the Sheriffs of London with their officers came to the Press-yard and the prisoner was brought down clothed in white, waistcoat, stockings, drawers and cap, over which was a long mourning cloak—then he was led to a dungeon accompanied by a few friends including his spiritual adviser. Stripped, he was laid on his back and the shocking sentence was carried into execution: he died in eight or ten minutes, although "he was prohibited that usual favour . . . to have a sharp piece of timber laid under his back to accelerate death"—he was buried at Christ-church.

The story ends with the exquisite verses of Lucretius:

Cedit item retro, de terra quod fuit ante  
In terram & quod missum est ex aetheris oris  
In rursum coeli fulgentia templa receptant.<sup>14</sup>

<sup>14</sup>"Then, too, that which was of the earth returns to earth, and that which was sent from the regions of the Upper World the refulgent temples of heaven welcome returning."

The verses are not from Book IV as the author says, but from Book II of the *De Rerum Natura*, vv. 998-1000 (999-1001). The better Texts read in v. 1000: "Id rursum coeli relatum templa receptant" ("relatum" being often written "rellatum") "duplicator litera aut syllaba, producat" as the Scholiast has it. The commentators cite the same thought from Euripides, *Supplices*, v. 534; it is found in others and may be called almost a commonplace. Earth to Earth, the Soul to God who sent it.

#### GENERAL NOTE

It is certain that sometimes Judges caused the thumbs of prisoners to be tied together in order to oblige them to plead. Barrington, *op. cit.*, p. 82, note (d), says: "It appears by the Sessions Papers, that this was practiced at the Old-Baily in the reign of Queen Anne. In 1714, a prisoner's thumbs were thus tied at the same place, who then pleaded, and, in January, 1720, William Spigget submitted in the same manner after the thumbs being tied *as usual*; and his accomplice Phillips was absolutely pressed for a considerable time, till he begged to stand on his trial. In April, 1720, Mary Andrews continued so obstinate, that three whipcords were broken before she would plead. In December, 1721, Nathanael Haws suffered in the same manner, by squeezing his thumbs; after which he continued seven minutes under the press with 250 lbs., and then submitted. Collections of Old-Baily Trials, which I have been favoured with the perusal of.

John Durant was also obliged to plead by tying his thumbs together very tight, during the mayoralty of Sir William Billers, in the year 1734. Mr. Baron

"The Murderer's Touch."—In New York.—The belief that blood would flow from the corpse when it was touched by the murderer, the subject of my Article, *At the Murderer's Touch*, Journal of the American Institute of Criminal Law and Criminology, Vol. 18, pp. 175-179, August, 1927, was widespread. An instance of it on this Continent may be of interest. The papers of the pre-Revolutionary Sir William Johnson of the Mohawk Valley, New York, were long the treasured possession of the Empire State. The recent disastrous fire at Albany consumed much of inestimable value and seriously damaged these papers. What is left of them has been appreciatively prepared for publication by the Division of Archives and History, Dr. Alexander C. Flick, Director and State Historian; and the Fifth Volume has just issued from the press.

On pp. 52-54 appears what remains of a Deposition of a Captain Lemuel Barritt of Cumberland Valley, Pennsylvania, concerning the murder of a Six Nation Indian in Pennsylvania in January, 1766. The Deposition is in the handwriting of Guy Johnson, a nephew of Sir William, and was sworn before Chief Justice William Allen, March 6, 1766. The document is mutilated by fire but sufficient remains for our present purpose. Captain Barritt swears that Samuel Jacobs was suspected of the murder—that he, the Deponent, and some of his neighbors, viewing the body found that a bullet had passed through his breast—that "as they stood round the said Indian's body," he remembered "that if a murderer touched the dead Body of the person the Carcass, though lifeless, would bleed and therefore he proposed the experiment and by that method they would either acquit the suspect" of the "Suspicion of having killed the said Indian, or, if another had really killed him, he would be discovered and become Evident, or to that purpose. That this proposal being generally approved, this deponent and all the rest of the Company (except the said Samuel Jacobs) very ready touched alternately the said body, but the said Samuel made some hesitation when it came his turn and his countenance chang'd and he appeared confused . . . on the importunity of the Company, (he) touched the said Body . . . the behaviour of the said Samuel induced the Company to suspect . . . Jacobs with the killing the said Indian, but he absolutely" denied it. Apparently, the blood did not flow: but the Deposition goes on to state that Jacobs told one Elby where the Indian's gun was hidden, and it was found two hundred yards from the place stated. The former suspicions being thus strengthened, proceedings were had to apprehend Jacobs and take him before a Justice of the Peace: but to their great surprise, they found they were too late, for Jacobs had absconded. He never made his appearance in the Country since but was supposed to be "in the back parts of the Colony" of Virginia. "And further this deponent saith not." nor are we furnished with any more of the story by him. It may be the same Indian as that referred to in a letter from Captain George Croghan to Sir William from Philadelphia, March 10, 1766 (pp.

Carter and M. Baron Thomson assisted at the Old-Baily during this Trial. See the Sessions Papers of that year."

On p. 83, he quotes a Pardon of 31 Edward III to Cecilia, widow of John Rygeaway, indicted for the murder of her husband who, refusing to plead, was sent to "prisone forte et dure" and lived forty days without food or drink "contra naturae ordinem: Nos eâ de causa pietate moti, perdonavimus. . . ."

On p. 85, note (1), the interesting fact is stated that when Strangeways was being pressed, "many people in the press-yard cast . . . stones upon him to hasten his death," which occurred "in about eight minutes."

67-70): "I Wrote you Some Days ago . . . that a Six Nation Indian had been murdered near Fort Cumberland . . . there has been four more. . . ." By the way, Sir William was "Colonel of the Six United Nations" (p. 314). The Deposition of Captain Barritt was sent by Governor Penn of Pennsylvania to Sir William, who thought it "pritty well proves it to have been committed by one Samuel Jacobs who they say has since fled to Virginia." He was "verry apprehensive that this with the rest of the conduct of the back settlers will render a peace verry uncertain and of a short duration. . . ." (p. 119, letter from Sir William Johnson to George Croghan from Johnson Hall, March 28th, 1766). Sir William's letter to Governor John Penn (Lieutenant-Governor of Pennsylvania, 1773-1776) of the same date refers to Barritt's affidavit, but is too seriously mutilated to be of any use (pp. 123, 124). The murder of the Six Nation Indian in "Pensilvania" is referred to in connection with a similar murder about the same time at the "Minisinks" of an Oneida (p. 194). Nothing, however, seems to have been done to punish the offender, Jacobs.

From the Proceedings of the New Jersey Council, November 8th to December 11th, 1766 (pp. 418-422) it appears that a Commission of Oyer and Terminor was issued for the trial of the person charged with the murder of the Oneida—he is differently called Simmonds (p. 170), Seamor (p. 171), Seamon (p. 173), Seymore (p. 420), Seamour (p. 421) and Seymour (p. 419)—he had been freed by his neighbours at Minisink who, April 2nd, "laid violent hands on the Gaoler (Isaac Hull) of Sussex County and obliged him to unlock the door" (pp. 170, 171): but had been retaken (p. 421), and placed in the County Gaol of Morris County.

The result of the trial, if it was ever had, does not appear in these papers. Another instance of superstition is to be found in Sir William Johnson's letter to his son-in-law, Daniel Claus, from Johnson Hall, September 10, 1766 (pp. 370, 371): "Tiata, the Huron Speaker who was at Oswego with me dyed at Fort Erie of a hard drinking bout, though the Inds. say that a Potawattamy poisoned or bewitched him."—*William Renwick Riddell, Osgoode Hall, Toronto, September 19, 1927.*