

Spring 1926

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Recommended Citation

William Renwick Riddell, Sir Matthew Hale and Witchcraft, 17 *Am. Inst. Crim. L. & Criminology* 5 (1926-1927)

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SIR MATTHEW HALE AND WITCHCRAFT

HONORABLE WILLIAM RENWICK RIDDELL¹

The scepticism of Mr. Justice Powell^{1a} expressed at and after the trial before him at Hereford, March 4, 1712, of Jane Wenham of Walkerne for Witchcraft (which was the last trial and conviction for Witchcraft in England) excited the greatest indignation of many good people in England, who honestly believed that the authority of Scripture and the very foundations of religion itself were being undermined by the Sadducism of the Judge and those who thought as he did—particularly when she was not executed after being convicted.

And, indeed, there was ample ground for this feeling on the part of the unthinking followers of bygone traditions and too literal interpreters of the Scriptures.

Must not one who disbelieved in the very existence of Witchcraft be, *ipso facto*, a disbeliever in the Old Testament and the New? In the Old Testament is the Divine command "Thou shalt not suffer a witch to live": Exodus, XXII, 18; and in Deuteronomy, XVIII, 10, 11, it was forbidden that a witch or a consulter with a familiar spirit should be found amongst God's people: in the New Testament, Simon Magus practiced Sorcery and bewitched the people; Acts, VIII, 9; not only was Witchcraft wholly banned by St. Paul in Galatians, V, 20, but Sorcerers were, in Revelations, XXI, 8, given their place in the Lake burning with fire and brimstone along with murderers and the unbelieving.

¹LL.D., D.C.L., &c., Justice of the Supreme Court of Ontario.

^{1a}This Mr. Justice John Powell (1645-1713) must be (as he is not always distinguished from his namesake (1633-1696) who was removed from the Bench in 1688 for giving his opinion that King James II's Declaration of Indulgence was a nullity. They both were distantly related to our Chief Justice, William Dummer Powell.

This Powell was a Member of the Inner Temple: He is best known for his "shameful" remark at the trial of Jane Wenham for Witchcraft. She was charged with being able to fly and the Sadducee of a Judge said: "You may—there is no law against flying."

After the conviction the Judge exerted himself in her behalf and obtained her pardon. She was thereafter supported in comfort till her death in 1730 by the kindness of Col. Plummer and after his death, of Earl and Countess Cowper. Her funeral sermon, convicted Witch as she was, was preached by the Rev. Mr. Squire, 60 *Dict. Nat. Biog.*, p. 563.

There were no more prosecutions for Witchcraft in England but some supposed Witches have been mobbed and a few murdered—the last Witchcraft prosecution in Scotland was in 1722—but the Statute of 1 Mary remained in force in England until the repeal in 1736 by 9 Geo. 2, c. 5.

It was not to be wondered at that the conservative Christians who were for preserving the ancient landmarks, were greatly perturbed. And the law expressly recognized the existence of the crime of Witchcraft. As early as 1541, the Statute of 33 Henry VIII, c. 8, punished Witchcraft and Sorcery with death without benefit of Clergy—and the Royal Witchfinder, James I, was gratified by a similar Statute (1604), Jac. 1, c. 12.²

The great authorities to whom appeal was generally made for the orthodox view were Sir Matthew Hale in law and Sir Thomas Browne of Norwich in medicine—and the comments by some of the supporters of the modernist view on the case of Jane Wenham coupled with the scarcely veiled scepticism of Mr. Justice Powell induced the publication in support of the traditional view of an account of the celebrated Witchcraft case in which Hale and Browne both figured. A 12 mo. six-penny pamphlet published by the well known E. Curll "at the Dial and Bible against St. Dunstan's Church in Fleet Street" was issued in 1712 under the title *Witchcraft Farther Display'd*,³ along with an account of Jane Wenham since her condemnation and also an account of the trials in 1661 at Cork of Florence Newton; this contains an abstract

²The Statute of (1541) 33 Hen. VIII, c. 8, made it a Felony to practise Witchcraft, &c., to get money or to consume any person in his body members or goods—this was repealed in 1547 by 1 Edw. VI, c. 12 and in 1553 by 1 Mar., Sess. 1, c. 1: but in 1562, Parliament not only legislated against "Fond and Fanatical Prophets" but also made Witchcraft a Felony; 5 Eliz., c. 16. When the "Royal Witchfinder" came to England as James I, the Elizabeth Statute was repealed but a more stringent one was enacted (1604) 2 (*Vulgo* 1) Jac. 1, c. 12.

See 3 Co. Inst., cap. VI, pp. 43, *sqq.*, for the earlier law.

In 1736 the Statute 9 Geo. II, c. 5 repealed the Act of 1604 as well as the Scottish Act of 9 Mariae "Anentis Witchcraft"—Witchcraft was thenceforward not a Felony but pretenders thereto were liable to be put in the Pillory and to be imprisoned for a year.

Accordingly, it was not till 1736 that the Statute of George II, c. 5, abolished the crime of Witchcraft, and Blackstone more than half a century later, while he does not class the Statute of 1603 "under the head of improvements," rather shamefacedly expresses his agreement with Addison "that in general there has been such a thing as Witchcraft though one cannot give credit to any particular modern instance of it." *Spectator*, No. 117: Blackstone, *Commentaries*, Bk. IV; pp. 61, 436.

³An earlier account of these trials was given in a pamphlet "Printed for William Shrewsbury at the Bible in Duck-lane 1682"—this is reprinted with learned notes in 6 *Cobbett's State Trials*, 1810, at pp. 647, *sqq.*

See also Davenport Adams: *Witch, Warlock and Magician*, New York, 1889 (a very unequal book) at pp. 281, *sqq.*

Other Witchcraft cases in the *State Trials* are to be found in Vol. 2, p. 49; vol. 4, p. 817; Vol. 8, 1017—and a curious case of Richard Hathaway of Southwark, a blacksmith's apprentice being convicted in 1702, of pretending to be bewitched by Mrs. Sarah Morduck "an honest and pious woman and not a Witch," in Vol. 8, p. 639. He had accused her of Witchcraft. She was tried at Guildford and acquitted after "the rabble got about her in London and abused her." The jury found him Guilty without leaving the Bar. He with others had a conviction against them for Riot and attacking Mrs. Morduck: 8 St. Tr. 690.

of the trial before Sir Matthew Hale in 1664 at Bury St. Edmonds, Suffolk, of Amy Duny and Rose Cullender, who were both convicted, March 10, and both were hanged, March 17, 1664, wholly unrepentant and denying the crime.

It may be worth while to see what was, two and a half centuries ago, considered by so great a man and philosopher as Sir Thomas Browne and so great a man and lawyer as Sir Matthew Hale to justify a verdict of Witchcraft and a sentence of death.

These unfortunate women were indicted severally for bewitching Elizabeth, Anne and William Durent, Jane Bocking, Susan Chandler, Elizabeth and Deborah Pacey (or Pacy).

The Durents were the children of Dorothy Durent, who swore that about March 10, 9 Car. II,⁴ she left her suckling infant, William, with Amy Duny with strict injunctions not to give it suck; Amy was an old woman with the reputation of being a witch, and the mother thought it must hurt the child sucking "nothing but wind." Amy disobeyed the injunction and on her return the mother was very angry. Amy in a great rage said: "She had better done something else than have found fault with her," and went away. This was the whole *fons et origo mali*—that very night, the child was taken with strange and terrible fits "of swoounding," and so continued for several weeks.

A mother nowadays would probably give the baby castor oil or its equivalent which "children cry for," but Dorothy Durent went to Dr. Jacobs of Yarmouth, "a man famous for curing persons bewitched"; and that wise man advised her to hang the child's blanket all day in the chimney corner and at night wrap the child in it, and if she saw anything in it not to be afraid, but to throw it in the fire. She did as directed, a great toad fell out of the blanket and ran about the floor (toads seem to have run in those days). A young man (not named or produced as a witness) "catch'd this Toad and held it in the Fire with a Pair of Tongs: immediately it made a great Noise, to which succeeded a Flash like Gunpowder, followed by a Report as great as that of a Pistol; and after this, the Toad was no more seen. Neither was its substance perceiv'd to consume in the Fire." This was not all, the next day came in a niece of Amy Duny (not named or produced) and said that her aunt was in a sad way, her face being scorched. Dorothy went to see and found Amy with "her Face, Legs and Thighs much scorch'd with Fire."⁵ She asked Amy how this happened and

⁴1657—the reign of Charles II *de facto* began on the Restoration in 1660: but in law, the Commonwealth was passed over and it was supposed to begin on the execution of his father January, 1649.

⁵For the reason given in the next preceding note, this date March 6th, 11 Car. 11, would be March 6th, 1659.

she answered: She might thank her for it, she was the Cause of it, but she should see some of her children dead and go on crutches herself.

This extraordinary story was without a word of corroboration: it would be laughed out of Court in any civilized country now, but then it obtained credence from men of the deservedly high standing of Hale and Browne.

More was to follow. About March 6, 11 Car. II,⁵ Dorothy's daughter, Elizabeth, was taken with similar fits and cried out "that Amy Duny appeared to her and tormented her." The mother went for some physic for her and on her return found Amy Duny at her house alleging that she had come to see the child and to give her some water. Dorothy got very angry and turned her out, whereupon Amy said, "You need not be so angry, your child will not live long"—this proved to be true, for she died two days later. "And this examinant really believes that Amy Duny did bewitch her child to Death, she having long had the Reputation of a Witch and some of her Relations having suffered for Witchcraft."

Dorothy, soon after her daughter's death,⁶ fulfilled the rest of the prophecy—or malediction—she was taken lame in both legs some three

⁶It must have been about two years after her daughter's death that Dorothy became a cripple.

⁷This, of course, was the regular thing with witches everywhere. In the Baldoon Mystery, the only real Witch story this Province has afforded, John McDonald being much troubled with supernatural noises, missiles, &c., &c., apparently the work of a Witch, went to a doctor's daughter, "gifted with second sight and the mystical power of stone reading." She told him something of the future—the story is finished in my *Old Province Tales*, Toronto, 1920, at pp. 266-268, thus:

"But of much greater importance was the information she gave of the author of all the mischief—a stray goose which McDonald had once seen in his flock and had attempted in vain to shoot. The girl said, 'No bullet of lead would ever harm a feather of that bird . . . in that bird is the destroyer of your peace . . .' And she added, 'Mould a bullet of solid silver and fire at the bird: if you wound it, your enemy will be wounded in some corresponding part of the body.'

"Joyfully McDonald made his way home, moulded his silver bullet, and made inquiry about the goose. This he found to be well known to his children: it had a dark head, almost black, had two long dark feathers in each wing, and was noticeable for making a perpetual noise and for its continual restlessness. Soon the bird was discovered, the gun aimed and fired, and the bird, with a cry like that of a human being in agony, struggled away through the reeds with a broken wing. The doctor's daughter had spoken of a long log-house: McDonald was not in doubt of her meaning—there was a long log-house near to his farm, inhabited by an old woman and her family who had tried without success to buy McDonald's land from him. Thence through the long reeds he made his way; and there he found an old woman with a broken arm resting on her chair. When she saw him she shrank back, and John McDonald knew that the silver bullet had found its billet. The manifestations ceased and peace thereafter reigned supreme: but the old woman suffered intense pain from her injuries till death came to her relief."

years before the trial and had to go on crutches. However, as soon as Amy was convicted, "she was immediately restor'd to her strength and went Home without Crutches."

The bewitching of Anne Durent was not by Amy, but by the other prisoner—and there is no word of evidence against her in respect of the Durents than has been given. It is so plainly autosuggestive, hysterical and *ex post facto*, if not perjured, that no one in these days would give it the slightest weight.

But Amy's villainies were not confined to the Durent children and their mother; she was "proved" to have bewitched Elizabeth and Deborah Pacey, 11 and 9 years old, respectively, daughters of "Samuel Pacey of Leystoff, merchant, a sober and good man."

His evidence was that Deborah was taken so lame in October, 1663, "that she could not stand on her Legs": at her own request, she was taken, October 17, to a bank on the east side of the house overlooking the Sea: while she was sitting there, Amy Duny came to the house to buy herrings but was refused and "went away discontented and grumbling." At this very "Instant of time, the child was taken with terrible Fits, complaining of a Pain in her Stomach as if she was prick'd with Pins, shrieking out with the Voice of a Whelp and thus continued 'till the 30th of the Month." Dr. Feaver being sent for could not account for all this: and the child between fits said that Amy Duny appeared to her and frightened her—and she charged the old woman with being "the cause of her Disorder."

Samuel Pacey, the sober, good man, "did suspect the said Amy Duny to be a Witch and charg'd her with being the Cause of his child's Illness and set her in the stocks."

In the stocks, she was asked what was the reason of the child's illness, and she said: "Mr. Pacey keeps a great stir with his child, but let him stay till he has done as much by his children as I have done by mine"—and explained that she had been fain to open her child's mouth with a tap to give it victuals.

Two days afterwards, the elder Pacey child was taken with such strange Fits that they could not force her mouth open without a tap—and then the younger child was taken in the same way. Both children complained that Amy Duny and Rose Cullender appeared to them and tormented them: they kept crying out: "There stands Amy Duny," "There stands Rose Cullender." "The Fits were not alike. Sometimes they were lame on the *Right Side*, sometimes on the *Left*: sometimes so sore that they could not bear to be touch'd; sometimes perfectly well in other Respects but they could not hear; at other times they could not

see; sometimes they lost their speech for one, two and once eight days together. At times they had swooning Fits and when they could speak, were taken with a Fit of Coughing and vomited Flegm and crooked Pins and once a great Twopenny Nail with above 40 Pins which Nail the Examinant said he saw vomited up and many of the Pins. The Nail and Pins were produced in the Court. They usually vomited a Pin towards the end of a Fit, four or five of which they sometimes had in a Day."

They would say that the two accused often "appear'd to 'em . . . and threaten'd 'em that if they told what they saw or heard, they would torment 'em ten times more than ever they did before." Their aunt at Yarmouth, Margaret Arnold, to whom they had been sent, thought they "had play'd Tricks and put the Pins into their mouths themselves"; and so she took all the pins from their clothes, sewing them instead; but, notwithstanding "they rais'd at times at least 30 Pins in her Presence and had terrible Fits, in which Fits they would cry out upon Amy Duny and Rose Cullender saying they saw them and heard them threatening as before." The elder child told her aunt that "she saw Flies bring her crooked Pins and then she would fall into a Fit and vomit such Pins"—once she said she had caught a mouse and when she threw it into the fire, her aunt said "something like a Flash of Gunpowder altho . . . she saw nothing in the child's hand." And sometimes "one of them catch'd one of the Things like Mice running about the House and threw it into the Fire which made a Noise like a Rat."

Nothing, however, was so fatal to the accused as the evident possession by the Devil of the two Pacey girls—when caused by their father to read the New Testament, they could not pronounce the words Lord, Jesus or Christ but fell into a Fit; but when they came to the word Satan or Devil they would say "This bites, but makes me speak right well." This we would now call autosuggestion.

Diana Bocking of Leystoff, mother of Jane Bocking, testified to her daughter having Fits, vomiting pins and a lath-nail, produced in Court and accusing the alleged witches.

Not dissimilar evidence was given concerning Susan Chandler by her mother and father. Poor Rose Cullender, moreover, was made to furnish evidence against herself. Mary Chandler, Susan's mother, being appointed with five other women by Sir Edmond Bacon, the Magistrate who issued the Warrant on the complaint of Mr. Pacey, "to search the Bodies of the Prisoners," they found in the abdominal region of Rose, "something like a teat about an inch long," and then

a smaller one. Of course these were simple hernias and were so explained by Rose—but in vain, they were clearly the identifying marks of a favorite of Satan.⁸

Three of the supposed bewitched were in Court, Anne Durent, Elizabeth Pacey and Susan Chandler, but none of them gave evidence—they all “fell into violent Fits screaming in a dismal manner, so that they were incapable of giving their Evidence; and altho’ they did at length recover out of their Fits yet they continu’d speechless ’till the Conviction of the Prisoners.”

William Durent would be about 7 or 8 years old only; Elizabeth Durent was dead; Jane Bocking “was so ill that she could not come to the Assizes”; as was Deborah Pacey.

Serjeant Keeling⁹ “was unsatisfy’d with the Evidence which he thought not sufficient to convict the Prisoners.” Common sense surely spoke when he said: “Supposing these persons were bewitch’d yet their Imagination only was not sufficient to fix it on the Prisoners.” No modern lawyer could find a tittle of evidence against either prisoner of being guilty of the offense with which she was charged.

But “the learned Dr. Browne of Norwich being also present,” placed an indelible stain on his name by giving “his Opinion of the three Persons in Court. He said he was clearly of Opinion that they were bewitch’d; that there had lately been a Discovery of Witches in *Denmark* who us’d the same Way of tormenting Persons, by conveying crooked Pins, Needles and Nails into their Bodies. That he thought in such Cases the Devil acted upon Human Bodies by natural means, viz., by exciting and stirring up the superabundant Humours, he did afflict them in a more surprizing manner by the same Diseases that Bodies were usually subject to. That these Fits might be natural only rais’d to a great Degree by the Subtilty of the Devil co-operating with the malice of these Witches.” He does not seem to have suspected that the co-operator was the malice or mischievousness or love of notoriety of the children.

The conduct of these children in Court should have opened the eyes of everyone—for example, one of them in a fit would shriek out, etc., when touched by one of the accused; but when blindfolded and touched by an innocent bystander, she made the same exhibition.

Then some utterly irrelevant and incredible evidence was given as to other acts of witchcraft by the two old women—Sir Matthew charged the Jury saying “he did not in the least doubt but these were

⁸It was supposed that the Devil used to suck these adventitious projections!

⁹Or Keyling.

witches: *First*, Because the Scriptures affirm it; *Secondly*, Because the Wisdom of all Nations, particularly our own, has provided Laws against witchcraft; which implies their Belief of such a Crime. He desir'd them strictly to observe the Evidence and begg'd of God to direct their Hearts in the Weighty Concern they had in Hand since to condemn the Innocent and let the Guilty go free are both an abomination to the Lord."

The Jury after half an hour's absence brought in a verdict of Guilty on all Counts, thirteen in number.

Within half an hour afterwards all the afflicted were "restor'd to their Speech and Health and slept well that Night without Pain except Susan Chandler, who complain'd of a Pain like pricking of Pins in her Stomach." Annie Durent seems to have had some qualms of conscience: for she prayed that she might not see the witches; "but the other two declar'd in open Court before the Prisoners (who did not contradict them) that all that had been sworn to was true. After this, the whole Court being satisfy'd with the Verdict, the Witches were sentenced to be hang'd"—and hanged they were and the judicial murder was complete. Convicted on Thursday, March 13, 1665, they were executed on Monday, March 17, Sir Matthew Hale being so satisfied with the verdict, that he refused to grant a reprieve.