

Trial of George Busby, Priest, at Derby, 1681.

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IN 1679 the English nation, excited by rumours of Popish plots, once more endeavoured wholly to extirpate the Roman Catholic religion. Rewards were offered for the discovery of any Papist or reputed Papist in the kingdom; the magistrates received authority to search all houses, even St. James' Palace and Somerset House; and the judges were empowered to reward at their discretion all prosecutors of Popish recusants. The lists of criminals at assizes were swollen by the names of Roman Catholic priests accused of high treason; the Duke of York was compelled to leave the kingdom. Derbyshire, which had always been notorious for the Romish sympathies of many of its leading gentry, did not escape this visitation. Under a statute passed in the twenty-seventh year of the reign of Queen Elizabeth, any priest of the Roman Catholic religion, being a British subject, performing his functions as such priest in England, could be arrested and prosecuted for treason. This barbarous statute, which had been in abeyance for many years, was revived at this time, and under its provisions many harmless men, some over eighty years of age, were arrested, tried, condemned, and executed.

In Bodley's library at Oxford I came across the report of a trial for high treason held at Derby in 1681, which may interest the readers of this *Journal*. This pamphlet is entitled,

“The Tryal and Condemnation of George Busby for High Treason as a Romish Priest and Jesuit under the Statute of 27 Elizabeth, cap. 2, at the Assizes and General Gaol Delivery held at Derby, for the County of Derby, the 25th day of July in the 33rd year of the Reign of our Sovereign Lord King Charles the second, etc., before the Honourable Sir Thomas Street, Knight, one of the Barons of His Majesty’s Exchequer. As it was faithfully taken by a Person of Quality.

“London. Printed by Ranulph Taylor, 1681.”

George Busby was a Roman Catholic priest, who described himself at his trial as the son of a gentleman, and aged forty years; and added that his mother was an heiress, and that his family lived at Coddington, in Oxfordshire or Buckinghamshire. The “Person of Quality” must have misunderstood what Busby said. There is no such place as Coddington in either Oxfordshire or Bucks. The prisoner was the son of John Busby,¹ of Addington, in the county of Bucks, by Joan, daughter and heiress of Ralph Collyer, of Goddington, in the county of Oxford. John Busby had bought the manor of Addington from the Curzons at the beginning of the seventeenth century, and it remained in his family until the end of the eighteenth century, when, in default of male heirs, it passed into the hands of the Duke of Buckingham and Chandos.

The Grand Jury summoned by the High Sheriff² for the Summer Assizes at Derby in 1681 were:

Sir Henry Every, of Egginton, Bart.

Sir Robert Coke, of Longford, Bart.

Sir William Boothby, of Ashbourn, Knt. and Bart.

Sir Robert Clark, of Chilcote, Knt.

William Fitzherbert, of Tissington, Esq.

¹ There is a curious entry relating to John Busby in the Journals of the House of Commons: “In the Civil War five oxen of Mr. John Busby, a recusant stayed in Smithfield (24 Oct., 1642) were ordered by the Parliament to be delivered to the victuallers of the Navy to be accounted for to the House, and that the money for them sold to butchers be delivered to Capt. Bruce to fortify the neck of land over against ye Durham House.”

² Henry Balguy, of Derwent, was High Sheriff that year.

Henry Cavendish, of Dovebridge, Esq.

William Mundy, of Darley, Esq.

John Lowe, of Denby, Esq.

William Berrisford, of Bentley, Esq.

John Allen, of Gresely, Esq.

William Hopkinson, of Bonsall, Esq.

William Lees, gent.

Lionel Parshaw, of Dronfield, gent.

Joseph Harpur, of Yeaveley, gent.

John Stuffin, of Hopton, gent.

Matthew Smith, of Denby, gent.

John Whigley, of Cromford, gent.

Paul Jenkinson, gent.

George Birds, of Stanton, gent.

Sir Henry Every, chairman of the Grand Jury, was the second baronet; he was son of Sir Simon Every, first baronet, and was thirty-two years old in 1681.

Sir Robert Coke was the son of Edward Coke, Esq., of Longford, who was created a baronet in 1641. The title became extinct in 1727.

Sir Robert Clark was a scion of the Somersall family.

Sir William Boothby was the only son of Sir Henry Boothby, who was created a baronet by Charles I. in 1644. He was forty-three years of age at this trial.

William Fitzherbert was son of Sir John Fitzherbert, of Tissington, by Elizabeth, daughter of Anthony Fitzherbert, of Norbury.

Henry Cavendish was descended from an illegitimate branch of Cavendish of Chatsworth, and was ancestor of Lord Waterpark.

William Mundy was the son of John Mundy, of Markeaton, and married to a daughter of Coke, of Trusley.

John Lowe was a son of John Lowe, of Denby, by Katherine, daughter of Sir Arthur Pilkington, and was thirty-nine years of age.

William Beresford was a scion of that distinguished family from which descended the Marquess of Waterford.

John Aleyne, of Gresley, was a son of John Aleyne, who died in the garrison of Ashby-de-la-Zouche in 1646.

William Hopkinson, of Bonsall. This family had considerable property in that parish since the time of Henry V., but sold their share of the manor at the end of the seventeenth century.

Lionel Parshaw, of Dronfield, must be a misprint for Fanshawe, a considerable family at Dronfield. Lionel Fanshawe, of Fanshawe Gate, appears in a list of magistrates in 1650.

Joseph Harpur was descended from a branch of the family of Harpur of Swarkestone.

John Stuffyn, of Shirbrooke and Hopton, by his mother, who was heiress of John Ferne, sold Hopton Manor to Sir Philip Gell.¹ He died in 1696.

Matthew Smith was High Sheriff of Derbyshire in 1685.

John Wigley was a son of Henry Wigley, of Wirksworth.

Paul Jenkinson, of Walton Hall, created a baronet in 1685.

George Birds, of Stanton. The Birds were considerable landowners in Derbyshire at Locko, Youlgreave, Ashford, and Eyam. They possessed Locko in the reign of Henry IV.

The Grand Jury found a true bill.

When Busby was called upon to plead to his indictment, he declared that he was outside the statute, as he was an "alian," having been born in Brussels. The learned baron told him that was a question of fact that must be proved during the trial.

The jury list was then called over, and Busby was allowed thirty-five challenges, and he actually used twenty-one of them, viz. :

John Burrowes, gent.

Cornelius Dale, gent.

¹ *Lysons*, p. 297, *Old Halls of Derbyshire*, vol. i., p. 277.

Thomas Wingfield, gent.

John Agan, gent.

Thomas Coxon.

James Dawson.

John Rose.

Wm. Salt.

John Hurd.

John Stone.

Thomas Cockayne, gent.

Thomas Wetton, gent.

William Kirkland, gent.

Henry Wild, gent.

Robt. Rowland.

Robt. Cooper.

Edw. Ridge.

Wm. Alsop.

James Cooper.

John Wallat.

Gregory Steele.

The Crown only challenged two, viz. :

Robert Doxey.

Christopher Holmes.

At last a jury was sworn in, and their names were :

Samuel Ward, gent.

John Steer.

Edward Wolmesley, gent.

George Trickett, gent.

John Loper.

Edward Woodhead.

Thomas Wilson, gent.

John Ratcliff.

William Horn, gent.

Jeremiah Ward.

John Creswell, gent.

Anthony Browne.

Busby was charged in his indictment "for that he being born in the King's dominions, and made a priest and received orders from the See of Rome, on the 16th March came into the Realm, and did abide at West Hallam, in the County of Derby."

According to this, the mere fact of residing in the realm, being a Romish priest, amounted to high treason; so only three counts had to be proved by the Crown.

Firstly, that Busby was an Englishman.

Secondly, that he was an ordained priest of the Roman Church.

Thirdly, that he had resided at West Hallam, in the county of Derby.

To the first count Busby pleaded that he was an alien, having been born at Brussels. To disprove this statement, Joseph Dudley, Mr. Powtrel's bailiff, was called as a witness, who deposed that he had lived at West Hallam for six years, and had known Busby well, and conversed with him often. "I have heard," he said, "Mr. Busby relate what happened to his family in the late wars; that their house was often plundered, and his father and mother living at Coddington in Oxfordshire. The first time the souldiers came and plundered the house he was about two yeares old or more, and being frighted at the souldiers he hid himself behind the curtains of the bed, so that while they were there none of the house knew where to find him, which made them believe that the souldiers had taken him; but when the souldiers were gone, his mother and some of the family lamenting for him in her chamber, he having then appeared, so that with great joy they received him. And, my lord, when he was five yeares old, he did also say that he could remember the souldiers coming to plunder, and he being at the time in the garden or orchard he did hide himself in the hedge."

Baron Street also pointed out to the prisoner that even if he had been born in Brussels, his parents having removed thither on account of the Civil War in England, he had been

naturalized by the statute 29 Charles II., which was specially passed to prevent any person who had, for such cause, been born abroad from losing his privileges as an Englishman.

On the second count, as to his being a Romish priest, several witnesses were called. One man had fallen in love with a girl who was a Roman Catholic, and Busby refused to allow him to marry her unless he changed his religion. The man's love was too violent to stick at such a trifle, so he professed the Roman Catholic faith, was married by Busby to his lady love, and the first result of his union was baptized by Busby with Romish rites.

Two women were called, who deposed that they had confessed to Busby, and received from him the sacramental wafer.

A reward of £100 (a large sum in those days) had been offered to anyone who would arrest any Romish priest of English birth found in the kingdom. This had stimulated the zeal of Mr. Henry Gilbert, J.P., of Locko, who resided about two miles from West Hallam, and had made him keep an eye on Busby's movements. The Gilberts, originally of Barrow, had removed to Trusley, William Gilbert having married his father's widow, who was the daughter of William Coke, Esq. So says Lysons. We must presume that his father's widow was his step-mother, but even then the alliance was a strange one. William was evidently desirous of keeping the property in the family. The Gilbert family resided at Locko for several generations. As long ago as 1678 Henry Gilbert had suspicions about Busby, which had been aroused by a letter and warrant which he had received from Sir Simon Degge. He had heard that Busby was hiding at Mr. Powtrel's house at West Hallam, so he went thither in January, 1679, with Mr. Gray, to search for him. He says in his evidence: "We perceived Mrs. Powtrel, who is Busby's niece, to be much troubled and in great passion, the causes whereof Mrs. Powtrel declared to be for fear the said search was made for her uncle Busby, who I heard

afterwards was then in the house, though at the time was reported to be fled."

The Powtrells were an ancient family, resident at West Hallam since the reign of Richard II. Six generations are noted in St. George's *Visitation of Derbyshire* in 1611, and four additional ones are added in Dugdale's *Visitation* in 1662. Henry Powtrell was the last of the family to reside at West Hallam, and the estate passed to the Hunlokes.

In August, 1679, Mr. Powtrell obtained a licence from the King to travel beyond the seas, and it was supposed that George Busby accompanied him, as nothing was heard of him for some time. But at Christmas, 1680, Gilbert heard that Busby had been seen at West Hallam walking in the garden with Mistress Anne Smally; so, making an excuse that he wanted some wood for his "cole-pits," Gilbert interviewed Mrs. Smally, and asked her about Busby, but that deceitful lady swore that he was in Flanders, and that "if I had any business with him I must go beyond sea for him, as she had not seen him for two yeares, though she had helped to convey him out of the garden into his hiding-hole but a few minutes before." But Gilbert apparently knew the lady, and, not believing her, proceeded to search the house, and found in Busby's chamber "a crimson damask vestment, wherein was packed up a stole, a maniple of the same (as the Papists call them), an altar stone, surplice, a box of waffers, mass books, and divers other Popish things." Still both Mrs. Smally and Mrs. Brailsford denied any knowledge of Busby, and jeered at him, saying, "If there was a priest in the house, why did I not take him?"

Gilbert removed the Popish vestments to Derby, and produced them before Mr. Justice Charlton when that judge arrived to open the Spring Assizes. The judge ordered the noxious articles to be burnt immediately, but Gilbert demurred, as in case of Busby's arrest he wished to produce them at his trial; the judge was insistent, but Gilbert managed to preserve the vestments.

At length the zealous magistrate was rewarded for his patience and perseverance. From information received, as the policemen say, Gilbert went to West Hallam on the 16th March, 1681, about eleven o'clock at night. In his evidence at the trial he describes what happened: "I knocked at Mistress Ann Smally's window about twelve o'clock in the night, and said, 'Mistress Smally open the doors; I am come to search for a Popish priest.' She started up, and said, 'Who was there?' I told her it was I; she knew me well enough; I dwell at Locko. Then I stayed a pretty space of time, and called aloud to her again; but by that time I suppose she and her bedfellow, Mistress Braylesford, were gone to give the priest notice, and to help him to his hiding-hole, for nobody answered me. Then, after a pretty space, I called to her a third time; and when I could have no answer I went to Joseph Dudley's chamber, and called there, but no answer, for he also was gone into the priest's chamber, and found Ann Smally busy in helping Busby to secure himself, as Joseph Dudley did afterwards inform me." Tired of waiting, Gilbert ordered his men to break into the house, and found in the priest's chamber a fire lately extinguished, and the bed disordered; the upper part of the bed was quite cold; but Gilbert was an old hand. "The upper part of the feather bed," he says, "was cold, which I wondered at; then I put my hand underneath, and the bed was warm, for they had turned it." The scent was now warm. He questioned Ann Smally, but she denied all knowledge of Busby, and said that no one had slept in the bed for divers nights. However, Gilbert felt sure that she lied, and that Busby was concealed somewhere in the house, so he continued his search. "I began to search about one of the clock, and continued until after ten the next morning before I could find him; and though the watchers in the garden told me they heard the paces and steps very plainly amongst the lofts and false floores, and described on the outside of the house the place where they last heard him

within the space of nine or ten feet where he was hid, yet were we almost so many houres before we could find him. At last, when the searchers were almost tyred, Ann Smally and others of the family scoffed at us, and asked, 'What! have you not found him yet? You said there was a priest in the house, why do you not find him then? Why do you not take him?' I said, 'All in good time.' I was resolved to find him or starve him out. Nay, the footboy of the house, seeing my servant look within the kitchen chimney, where there hung a Port-Mantua, said jeering to my man, 'Look if he be not in the Port-Mantua.' After those persons had pleased themselves a good while with mocking at us for our disappointment, I persuaded two or three of my searchers once again to climb upon the lofts, and to look well near the place where Busby's last steps were heard. Which, when they had done somewhat, and found nothing, I took my sword and scabbard and knocked on the plaster floores over my head, and at last I knocked near unto a stock of three chimneys; but they could not answer within a yard, but told me there was nothing but tiles and roofing. I bid them break open these tiles, which they did, and espied a wooden door and a little iron hinge; I bade them break the door. Then one of the searchers put in his hand into a little hole that was broken in the door, and felt a hat; then he told me somebody was in that place, for a man had thrown his hand off the hat. Then I caused them to break open the entrance; which, when they had done, Busby spoke to them, and desired them to be civil; so I told them to be civil and bring him to me, which they did, and I arrested him."

These secret chambers, which are called "Priests' holes," are often found in old houses of the Tudor period. They were much used during the civil and religious troubles in England to conceal fugitives.

So there was little doubt that Busby had been residing at West Hallam, as stated in the indictment. As to his being a Romish priest, additional evidence was forthcoming. Joseph

Dudley stated, in answer to Busby's questions: "You talked to me in the gardens at West Hallam, when my master, Mr. William Powtrel, and Mrs. Ann Smally sent me to you. Your first discourse was of the gardens, withal giving me a description of the Jesuit College at Liege, where you did own your receiving orders. Besides, I have heard my master, Mrs. Smally, Mrs. Winifred Attwood, and George Harrison (who lived in the college beyond the sea) own it. And yourself said that Mr. Evers, my Lord Ashton's priest (who hath been with you at West Hallam), was your master and tutor when, as I think, you were a scholar at St. Omer's. And, my lord, as to his being a priest, when my master was committed to prison for refusing the oaths of supremacy and allegiance, saying his Church did expressly forbid it, nevertheless, Mrs. Powtrel, Mr. William Powtrel, and divers of the family did argue for his so doing, especially after Mr. Thomas Cannyng came from St. Thomas' in Staffordshire, and said that his uncle Fowler, he and all belonging to him, had taken the oath of allegiance with the consent of Mr. Fitter, their priest. But Busby did reject the notion. So Mrs. Powtrel and I went to Mr. William Brent, at Fox Coat, in Warwickshire, her grandfather, and Mr. Busby's father-in-law, a councillor, to have his advice, and then Mr. Powtrel took the oath."

In support of this count, Gilbert also produced the vestments "and other Popish trinkets" which he had rescued from Mr. Justice Charlton, and an account book, showing that Busby had acted as Procurator for the Jesuits, and received and disbursed large sums of money for them.

The three counts in the indictment having been proved to the satisfaction of the prosecution, Busby called two witnesses in his defence, but they proved little in his favour. The judge briefly and fairly summed up the evidence, and the jury, after a short retirement, found the prisoner guilty.

Baron Street then proceeded to pass sentence, but before doing so he mercifully told the prisoner that he would not

undergo the extreme penalty of the law, as, by the King's command, a reprieve would be granted. The sentence pronounced was: "That you, the prisoner now at the bar, be conveyed hence to the place from whence you came, and that you be conveyed thence on a hurdle to the place of execution, where you are to be hanged by the neck, that you be cut down alive and disemboweled, etc.; that your head be severed from your body, that your body be divided into four quarters, which are to be disposed of at the King's pleasure, and God in His infinite mercy have mercy upon your soul."

It is interesting to observe in this trial how little it differs from modern criminal proceedings before a Judge of Assize. Baron Street was evidently a fair and upright judge. Whatever his private opinions may have been, it was his duty to administer the law as he found it. He treated the accused with every consideration, allowed him his full number of challenges, and at his request assigned counsel to him to assist him in arguing any point of law which might arise during the trial. But, be it observed, prisoner's counsel was not permitted either to examine or to cross-examine witnesses. The judge's summing up of the evidence was perfectly fair, and he relieved the prisoner's mind as to his ultimate fate before pronouncing the barbarous sentence which the law enacts for those convicted of high treason. The witnesses tell their own story, without any browbeating or insinuation from either judge or prosecutor. The jury were evidently men of probity and position, six of them being described as gentlemen, which meant much more then than it does now. And throughout the whole trial there seems to be no intention to distort evidence or to press too hardly for a conviction. It compares very favourably with most of the State trials which disgraced the later years of the reign of Charles II.

Gilbert, J.P., received from the judge a warrant on the Treasury for £100; whether it was honoured on presentation we are not informed.