

"PEINE FORTE ET DURE"—A LEAF FROM HISTORY.

PEINE FORTE ET DURE—"strong and hard pain") was the penalty applied by the law of England for those who, being arraigned for treason or felony, refused to plead and remained *mute*. The person subjected to this ordeal was literally pressed to death, large weights being placed upon him, and several instances are given of the infliction of this fearful punishment. The motive which induced an accused person to submit to this penalty, rather than to plead, was probably to escape the attainder resulting from a conviction for felony. In 1442, Juliana Quick, charged with high treason in speaking contemptuously of Henry VI., was pressed to death. In 1605, Walter Calverly, of Calverly, Yorkshire, having murdered two of his children, and stabbed his wife, in a fit of jealousy, being arraigned at York Assizes, "stood mute," and was thereupon pressed to death in the Castle—a large iron weight being placed upon his breast. In 1657, Major Strangeway suffered death in a similar manner at Newgate prison, London, for murdering his brother-in-law, Mr. Fussell.—John Evelyn, in his *Diary*, in giving an account of an adventure which befell him—and which well illustrates the danger of travelling by road in those days (1652)—also, as the sequel shows, gives an instance of a prisoner who, refusing to plead, was pressed to death. Mr. Evelyn had gone to Rye to meet his wife, who had been in Paris, which had been besieged for some time by the Prince of Condé's army—

"I went to Rie [Rye] to meet her, where was an embargo on occasion of the late conflict with the Holland fleet—the two Nations being now in warr, and which made sailing very unsafe. . . .

"On Whitsunday I went to the Church (which is a very faire one), and heard one of their Canters, who dismissed the assembly rudely and without any blessing. Here I stay'd till the 10th with no small impatience, when I walk'd over to survey the ruines of Winchelsea, that ancient Cinque-port, which by the remains and ruines of ancient streets and public structures discovers it to have been formerly a considerable and large City. There are to be scene vast caves and vaults, walls and towers, ruines of monasteries and of a sumptuous church, in which are some handson monuments, especially of the Templars, buried just in the manner of those in the Temple at London. This place being now all in rubbish, and a few despicable hovells and cottages onely standing, hath yet a Mayor. The sea which formerly render'd it a rich and commodious port has now forsaken it. . . .

"About 4 in the afternoon, being at bowles on the Greene, we discover'd a vessell, which prov'd to be that in which my wife was, and which got into the harbour about 8 that evening to my no small joy. They had ben three days at sea, and escaped the Dutch fleet, thro' which they pass'd, taken for fishers, which was great good fortune, there being 17 bales of furniture and other rich plunder, which I besee God came all safe to land, together with my wife, and my Lady Browne, her mother, who accompanied her. . . .

"The weather being hot, and having sent my man on before, I rod negligently under favour of the shade, till within three miles of Bromley, at a place called the Procession Oake, two cut-throates started out, and striking with long staves at the horse and taking hold of the reins threw me downe, took my sword, and haled me into a deepe thicket some quarter of a mile from the highway, where they might securely rob me, as they soone did. What they got of money was not considerable, but they took two rings, the one an emerald with diamonds, the other an onyx, and a pair of bouckles set with rubies and diamonds, which were of

value, and after all bound my hands behind me, and my feet, having before pull'd off my bootcs; they then set me up against an oake, with most bloody threats to cutt my throat if I offer'd to crie out or make any noise, for they should be within hearing, I not being the person they looked for. I told them if they had not basely surpriz'd me they should not have had so easy a prize, and that it would teach me never to ride neere an hedge, since had I ben in the mid-way they durst not have adventur'd on me; at which they cock'd their pistols, and told me they had long guns too, and were 14 companions. I begg'd for my onyx, and told them it being engraven with my armes would betray them, but nothing prevail'd. My horse's bridle they slipt, and search'd the saddle, which they pull'd off, but let the horse graze, and then turning againe bridl'd him and tied him to a tree, yet so as he might graze, and thus left me bound. My horse was perhaps not taken because he was mark'd and crop't on both eares, and well known on that roade. Left in this manner grievously was I tormented with flies, ants, and the sunn, nor was my anxiety little how I should get loose in that solitary place, where I could neither heare or see any creature but my poore horse and a few sheepe stragling in the copse. After neere 2 houres attempting I got my hands to turn palm to palm, having been tied back to back, and then it was long before I could slip the cord over my wrists to my thumb, which at last I did, and then soone unbound my feet, and saddling my horse and roaming awhile about I at last perceiv'd dust to rise, and soone after heard the rattling of a cart, towards which I made, and by the help of two country men I got back into the high way. I rode to Coll. Blount's, a grate justiciarie of the times, who sent out hue and cry immediately. The next morning, sore as my wrists and armes were, I went to London and got 500 tickets printed and dispers'd by an officer of Goldsmith's Hall, and within two daies had tidings of all I had lost except my sword which had a silver hilt and some trifles. The rogues had pawn'd one of my rings for a trifle to a goldsmith's servant before the tickets had came to the shop, by which meanes they scap'd; the other ring was bought by a victualler, who brought it to a goldsmith, but he having seen the ticket seiz'd the man. I afterwards discharg'd him on his protestation of innocence. Thus did God deliver me from these villains, and not onely so, but restor'd what they tooke, as twice before he had graciously don, both at sea and land; I meane when I had ben robb'd by pyrates, and was in danger of a considerable losse at Amsterdam; for which, and many, many signal preservations, I am extremely oblig'd to give thanks to God my Saviour. . . .

"One of the men who robb'd me was taken; I was accordingly summon'd to appeare against him, and on the 12th was in Westminster Hall, but not being bound over nor willing to hang the fellow I did not appeare, coming onely to save a friend's baile, but the bill being found he was turn'd over to the Old Bailey. In the meane time I received a petition from the prisoner, whose father I understood was an honest old farmer in Kent. He was charg'd with other crimes, and condemn'd, but repriev'd. I heard afterwards that had it not been for his companion, a younger man, he would probably have kill'd me. He was afterwards charg'd with some other crime, but refusing to plead, was press'd to death."

So late as the year 1741, the punishment of *peine forte et dure* was inflicted at the Cambridge assizes—the tying of the prisoner's thumbs having been first tried without effect. The punishment was abolished in 1772, and judgment was awarded against "nutes," as if they were convicted or had confessed; and in 1778 a man refusing to plead was condemned and executed in London, on a charge of murder; and another, on a charge of burglary, at Wells, in 1792.—In 1827 an Act was passed, by which the Court was directed to enter a plea of "Not Guilty" when the prisoner would not plead.