

BURGAN AND HIS CRIME. ERRORS OF HISTORY IN REGARD TO A NOTED TRIAL.

Judge Chipman's Course Vindicated—Burgan was not a Mere Boy Who Stole a Quarter of a Dollar, but a Burglar Guilty of Two Depredations in One Night.

The tradition of "the boy who was hanged for stealing a loaf of bread," in St. John, many years ago, has been widely accepted as true, and I once saw a mention of it in a leading United States paper, as an instance of the severity of the penal laws in former times. It is probable that thousands of people nearer home give credit to the same remarkable statement, and I have myself met many who believed it to be true. In some cases a fitting, and equally false, addition to the story is given to the effect that Judge Chipman's last days were embittered by remorse for his cruelty, that his deathbed was attended by singularly repulsive incidents, and that one of his dying requests was that he should be laid in his coffin with his face downward that his fellow men might not look upon him. How such extraordinary gossip ever gained currency and received credence is something difficult to understand, as Judge Chipman lived for nearly a quarter of a century after Burgan was hanged, dying at the age of 64, the chief justice of New Brunswick, and with no indication of feeling otherwise than that he had faithfully fulfilled the high trust so long reposed in him.

A less apocryphal version, and one which has been generally accepted, is that the "boy" was hanged for stealing a quarter of a dollar from the till of his master's shop. Only a few months ago, an editorial writer in one of the daily papers went out of his way in an attempt to blacken the memory of Judge Chipman by instancing his cruelty in condemning a boy to death for stealing this paltry sum. The ignorance of that writer in regard to the amount taken may be excusable on the assumption that he, like others, was misled by a statement in Lawrence's "Footprints." Even then, however, a knowledge of the elementary principles of the administration of laws should have shown that were anybody to blame it was not Judge Chipman but Governor Douglas, to whom, as Mr. Lawrence states, the petition for mercy was forwarded.

Every student of local history must feel deeply grateful for the great service rendered by Mr. Lawrence, in his lifetime, in the collection and preservation of data in regard to the early history of the city and province. Had it not been for his efforts, and for the impetus he gave to historical research by others, much that is now available must have been lost. Careful and conscientious as Mr. Lawrence was, "Footprints" is usually so accurate that the wonder becomes greater that he should have fallen into a grave error in regard to the crime of the noted "boy," Patrick Burgan. By what was undoubtedly an unintentional failure to state all the circumstances of the case, Mr. Lawrence has conveyed an impression wholly at variance with the facts.

It would be presumption to say this had I not taken time and trouble to ascertain the truth of the matter from the best available sources. These are, first, the statements of men who were living at the time, and of an age to be acquainted with the facts, and second, the contemporary records. Most of those with whom I have talked in past years have now passed away, but in every instance they were of the opinion that, as the law then stood, Burgan was properly condemned and hanged. There is, however, yet living in St. John a well known citizen who distinctly remembers all the circumstances of the case and who was, moreover, well acquainted with Burgan and all the parties concerned.

According to "Footprints," at the January term of the court of oyer and terminer held at St. John in January, 1828, Judge Chipman presiding: Patrick Burgan, a boy of 18 years, was placed at the bar, charged with entering the dwelling, in the night, of his master, John B. Smith, manufacturer of ginger beer, corner of Union street and Drury lane, and robbing the till of one quarter of a dollar. He was arrested the day after by John McArthur, constable. * * * As the evidence of guilt was clear no other course was open to the jury than a verdict of guilty,—with this was a recommendation to mercy. Yet the judge, in sentencing the prisoner to be executed, told him there was no hope for mercy, and he should lose no time in preparing for death.

A petition was sent to the lieutenant-governor, Sir Howard Douglas, asking the interposition of the prerogative in behalf of the prisoner. Yet notwithstanding the recommendation of the jury and the coronation oath of the sovereign, requiring "His Majesty to cause law and justice in mercy to be executed in all his judgments," the law was allowed to take its course.

The impression given by this account is that Burgan was very harshly treated for a very slight offence. He is spoken of as "a boy," though he was 18, and some say 19, years of age. The picture drawn represents this boy, to the ordinary imagination, as entering in the night the dwelling of his master, where he had a right to enter during the day, and taking from the till a paltry silver coin which he thought would never be missed, and which he wanted for some boyish pleasure, or as the story sometimes goes, to buy bread to satisfy his hunger. The whole head and front of his offending seems to be an act differing in degree but not in kind from the abstracting of cake or candy from a shelf when the master's back was turned. That, I repeat,

is the impression conveyed by this statement of the case. It was the impression I had until I took a notion to inquire further into the matter, and I find that the story has been generally accepted from the same point of view. So, too, when one reads simply that Burgan was arrested the next day, the supposition may be that he was either playing with his companions, or innocently engaged in the ordinary duties of his master's establishment. It is no wonder that so much sympathy has been wasted on "the boy who was hanged for stealing."

The newspapers of three-score and odd years ago did not pay much attention to local news, and, in most instances are found to be disappointingly brief in regard to occurrence which are now considered of historic importance. The idea seems to have been that as everybody knew what was happening in town, the columns could be better utilized by printing long extracts from English papers which were seen by only a limited number of people in this country. When local news was given, however, it was written with a scrupulous care as to facts, for if it were untrue the falsity would be at once recognized and the conservative minded subscriber would at once bring the editor to shame. In those days, a man with an axe to grind could not attempt to gain some end by handing a reporter a paragraph so totally untrue that the editor, in a subsequent issue, would be obliged to explain that the blunder was due to the loose way in which the paper was run. The paper came out once a week, and there was no rushing of getting to press at a certain hour and minute. What was stated was published with a positive knowledge that it was true, and when there was the least doubt there was some such guarded phrase as "we are informed," or "it is stated." The newspapers are therefore to be considered good evidence of what actually happened, which is much more than can be said for some of their successors at the present day.

The Courier was the most reliable among the reliables in those times. Here is the account of Burgan's crime, as given in the issue of the 22nd of September, 1827. The Courier's account was copied in the next issue of the City Gazette four days later, which is a corroboration of its accuracy, because the Gazette editor, with a knowledge of the facts, gave the Courier's story in preference to writing his own version of it. This, in those times, would be an endorsement of it as strictly accurate. The Courier says:

Yesterday Patrick Burgan was apprehended on a charge of Burglary and brought before Mr. Alderman Peters for examination. It appears that Burgan had lived as a servant man in the house of Mr. John B. Smith, at York Point, a year ago. That on the night previous to his being taken into custody he found means of entering Mr. Smith's house by one of the windows, and had succeeded in getting into the bedroom of Mr. and Mrs. S., between twelve and one o'clock. He secured a silver watch which was in the room, and afterwards rifled the pockets of Mr. and Mrs. S., in which were some money and the keys of the desk. On his getting hold of the latter, he began to make use of them, but the noise occasioned by his doing so awoke Mr. S., who immediately started from bed and seized the thief, but was unable to keep hold of him. He escaped from Mr. Smith's house, but as it being detected in one crime only emboldened him to a repetition of it, he immediately entered the house of Mr. Coss, near that of Mr. Smith's, and stole from thence sundry articles of wearing apparel. The Constable sent in search of him in the morning overtook him on his way towards the French Village. He was fully committed for trial.

This account put a very different construction on the affair. The "boy," in the first place, was considered a servant "man" a year before that time, and on this occasion was big enough and bold enough to successfully resist Mr. Smith when the latter grappled with him. He did not steal from the house of his master, but came back to the place where he had worked a year before, utilizing his knowledge of the premises to enter the house to commit a burglary. He did not tremblingly abstract a coin from the till and depart, but he coolly proceeded to rifle the pockets of a sleeping man and woman, and to help himself to the loose change he found there. Not satisfied with this he took the keys of the desk in order to make a haul of all the money Mr. Smith had in the house, and would have carried away all he could get, had not he bungled and made a noise. It was not through any good will on his part that he did not carry off everything of value he could lay his hands on. That he had started out to rob in earnest is further shown by the fact that when disappointed of getting all he wanted at Smith's, he lost no time in breaking into the house of Mr. Coss, where for lack of anything better, he carried off a quantity of wearing apparel. The next day he was caught, not a terror-stricken boy but a lusty fugitive, making the best of his way to the French Village, doubtless in order to dispose of his plunder and get out of the country. French Village was at what is now known as Newburg, in Kings county, and seems to have been the objective point of a number of the malefactors who used to flee from St. John to evade the demands of justice.

So much for the contemporary records of the crime of Patrick Burgan. Now for a living witness. John R. Marshall, the late chief of police, now living in St. John, was a lad of 16 in the year 1828, and was well acquainted with the young man whom he knew as "Faddy" Burgan. Mr. Marshall's account of the burglary, the circumstances of which he very clearly remembers, agrees in all the essentials with the story told by the Courier. Still more, it is entirely independent of the latter, which he has never seen, unless possibly he read it in the paper at the time. He was surprised to find that I knew of the breaking into the house of Coss, as he had never seen that mentioned; and it is indeed a remarkable fact that this very important

evidence of Burgan's criminal propensity seems to have been unknown to Mr. Lawrence and other writers. Mr. Marshall relates some additional facts which will be of interest.

The premises of John B. Smith were at the corner of Union street and Drury lane, on the west side of the latter, and he was known as "Ginger Beer Smith." This was not because some wit of that day construed the initials "J. B." to stand for "Ginger Beer," but because it was the custom of the time to distinguish men of the same patronymic by prefixing the name of their occupation. Thus it was that William Smith, the first man to introduce sloop garments into St. John, about 1820, was known as "Ready-made Smith." The modern convenience of a hyphenated name was not then in vogue, otherwise the beer man might have assumed the name of, possibly, Boingbroke-Smith, while the clothing man, with equal propriety, could have handed his name down to posterity as Mr. W. Shoddy-Smith.

J. B. Smith owed his designation and his fame to a particularly good quality of ginger beer which he had made and sold, and often when John R. Marshall was passing Faddy's ginger beer stand, he would treat him. The two thus became very well acquainted. Burgan was two or three years the elder of Marshall, and at the time of the burglary was a man as far as strength and stature were concerned. He was quiet and inoffensive in respect to disposition, and appeared to be the only one of his family in St. John, as Mr. Marshall does not remember that he had any known relatives.

Mr. Coss lived on Union street, nearly opposite Smith's place, and kept a sailors' lodging house, on a part of the property now occupied by the works of the Consolidated Electric company. Burgan, therefore, merely crossed the street in his attempt to atone for the disappointment he felt in not being able to rob Mr. Smith as fully as he had intended. Mr. Marshall remembers that he took two pairs of boots from the house of Coss, and this would imply that he did not steal to supply his own needs but to make something by disposing of the plunder. According to Mr. Marshall, Burgan stole at least three or four dollars' worth of boots.

Thus it will be seen that the crime committed was no mere robbery of a till, but a breaking and entering at night, or a burglary in both the legal and popular sense of the term. Though the penalty has of late years been mitigated, burglary is even now a very serious offence and is severely punished when the law is properly enforced. In those days, while the penalties could be modified for petty larceny, such as the mere stealing of a quarter of a dollar would be itself, burglary was punishable by death in the case of a clergyman. Whether the law was a just one is not the question. It is enough to know that it was the law and that the duty of the courts and of the king's representative was to enforce it. In those days, in a community like St. John, where the first bank was a new institution, citizens were accustomed to keep their specie at their stores and houses, and it was necessary for the common good that one example should be made of any burglar whose guilt was clearly proven. The offence in Burgan's case was not a petty one, and he secured a thousand pounds. The amount he actually got was not in issue, and it would seem very clear that he had the intent and purpose to take all he could secure.

Burgan had a fair trial before a jury composed of good citizens, the names of some of whom are set in honorable remembrance to this day. They were John Cunningham, foreman; William Cormick, Amos Robertson, David Schurman, Gilbert T. Ray, M. J. Lowrey, William Stout, James Rankin, Isaac Flewelling, Nehemiah Vail, George Hutchinson and William B. Coss. He had William B. Kincaid for his counsel, assigned to him by the court, and the prosecuting officer, John T. Murray, clerk of the crown, had merely to establish the undisputed facts in order to secure a conviction.

That the jury should recommend the prisoner to mercy meant no more than it means in many cases in these days. There was probably a desire that the young man should not be hanged, just as there may be now a reluctance to see the dread penalty inflicted on a murderer who is undoubtedly guilty. Judge Chipman, however, did more than prove himself a sound jurist when he told Burgan there was no hope of mercy and warned him to prepare for death. What else could he have said to a man who had rendered himself liable to the extreme penalty by crime in the course of one night? It can be well understood that a petition for a commutation of the sentence was got up and forwarded to the governor. Burgan was young, and had previously borne a good character, and these facts would be sufficient to enlist sympathy without at all assuming any mitigation in the sentence. I have known of a largely signed petition in more recent times when the object of sympathy was the perpetrator of a deliberately planned inexcusable murder, and so it will be as long as men have hearts and capital punishment exists. Sir Howard Douglas did not bear the character of a hard-hearted or unjust man, and it may well be assumed that could he have exercised the prerogative consistently with his oath, he would have done so. As it was the facts of the case precluded any interference.

There is another bit of history which has been overlooked by those who have helped to create the current belief in regard to the case. In the Nova Scotian of the 13th of February, 1828, is an account, from the New Brunswick papers, of an attempt of this alleged martyr to secure his freedom by burning the St. John jail, after his trial and sentence. About 11 o'clock on Sunday night, the 3rd, the jailer, Mr. Nowlin, found the hall full of smoke, and on investigating found it coming from Burgan's cell, in the lower story. The prisoner had taken the wood left to keep him comfortable during the night and placed it all at once on the fire. After it had become sufficiently ignited, he took all the fire off the bench and placed it, together with the blazing wood, against the wooden door of his cell, in order, he admitted, to burn a hole by which to escape. Burgan was hanged on the 21st of February, 1828, at the old jail, which stood about where the registry office is now, on the top of the rock. The execution took place from a window of the second story, at the west end of the building, which would be a little in the rear of the present court house, then in course of construction.

The trial had taken place in the old city hall on Market Square. The execution was witnessed by an immense crowd. According to Mr. Lawrence, the executioner was an Englishman named Bizard Baine, a convict under imprisonment for robbery, who was rewarded with a pardon and ten pounds in cash, with which he left the city.

It is an unpleasant task to deal with the dead for the purpose of proving them more culpable than they have been thought to be. In the instance of Burgan, however, it is a duty not only in the interests of historical accuracy, but because an opprobrium wholly undesired has been attached to the memories of Governor Douglas and Judge Chipman for their course in the matter. Both of these men may have done much that was wrong in their lives, but in Burgan's case they acted simply according to their oaths, of office and in conformity with the law of England and her colonies, under which Burgan was fairly tried and condemned. Mr. Marshall remembers that Judge Chipman felt very badly over the matter, but that he felt he had done no more than his duty. The judge is well remembered by many as a kind and charitable man.

Ginger Beer Smith died in 1839, and at the time of his death was proprietor of a licensed tavern on the east side of King square, not far from the scene of Burgan's execution.

Eleven years ago when the workmen were excavating for the foundations of St. Peter's church, North end, a number of coffins were taken up from the old graveyard which was the site of the edifice. Among others was a small one bearing the initials "P. B." Some of the local antiquaries assuming that the letters must stand for "Patrick Burgan," had, I believe, a learned discussion in some of the newspapers. As a matter of fact, Burgan's grave was not there, nor in any other burying ground. The body was interred somewhere outside the city limits, but Mr. Marshall is not quite sure whether it was in the neighborhood of Mount Pleasant or Courtenay Bay, but thinks it was the latter. If the coffin could be discovered, it would be found to be that of a full grown man.

To find an undoubted judicial murder in New Brunswick one must go back beyond the time of Burgan. That there was at least one such is established on undoubted oral testimony, though I have neither the date nor the name of the victim. The fact that he was a negro, and that hanging was common in those days, may account for the lack of data, but I fear there is no doubt as to the fact.

In the case in question a man saw a barrel of pork in front of a store door, and watching his chance when the owner was absent, rolled it away a short distance. Whether the thief owned a Nova Scotia schooner, an up river wood-boat or was a citizen of Carleton with a boat, does not appear, but he was anxious to get the stolen article to the wharf without risk to himself. A colored man, on the lookout for a job and knowing nothing of the circumstances, readily undertook to roll the barrel down the hill, and was doing so when he was apprehended as the thief, the other man having, of course, disappeared. The negro's story was not credited, the proof of his guilt seemed clear and he was sentenced to death. The luckless wretch does not seem to have understood matters fully until he was brought out to be hanged, but when that happened he began to protest in earnest. Grey with terror and his eyes swelling with astonishment and fear, he turned to those who were adjusting the noose, loudly exclaiming, "What gwine to hang me to? I ain't done nuffin!" And so he continued to reiterate until the rope cut short his speech and he was left kicking in the air, a victim of circumstantial evidence. His lot was a good deal harder than that of Paddy Burgan.

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