

## CHAPTER XXI.

*The Trial of Burke and M'Dougal—Circumstantial Evidence—  
Hare's Account of the Murder of Docherty—What he  
Declined to Answer—Mrs. Hare and her Child.*

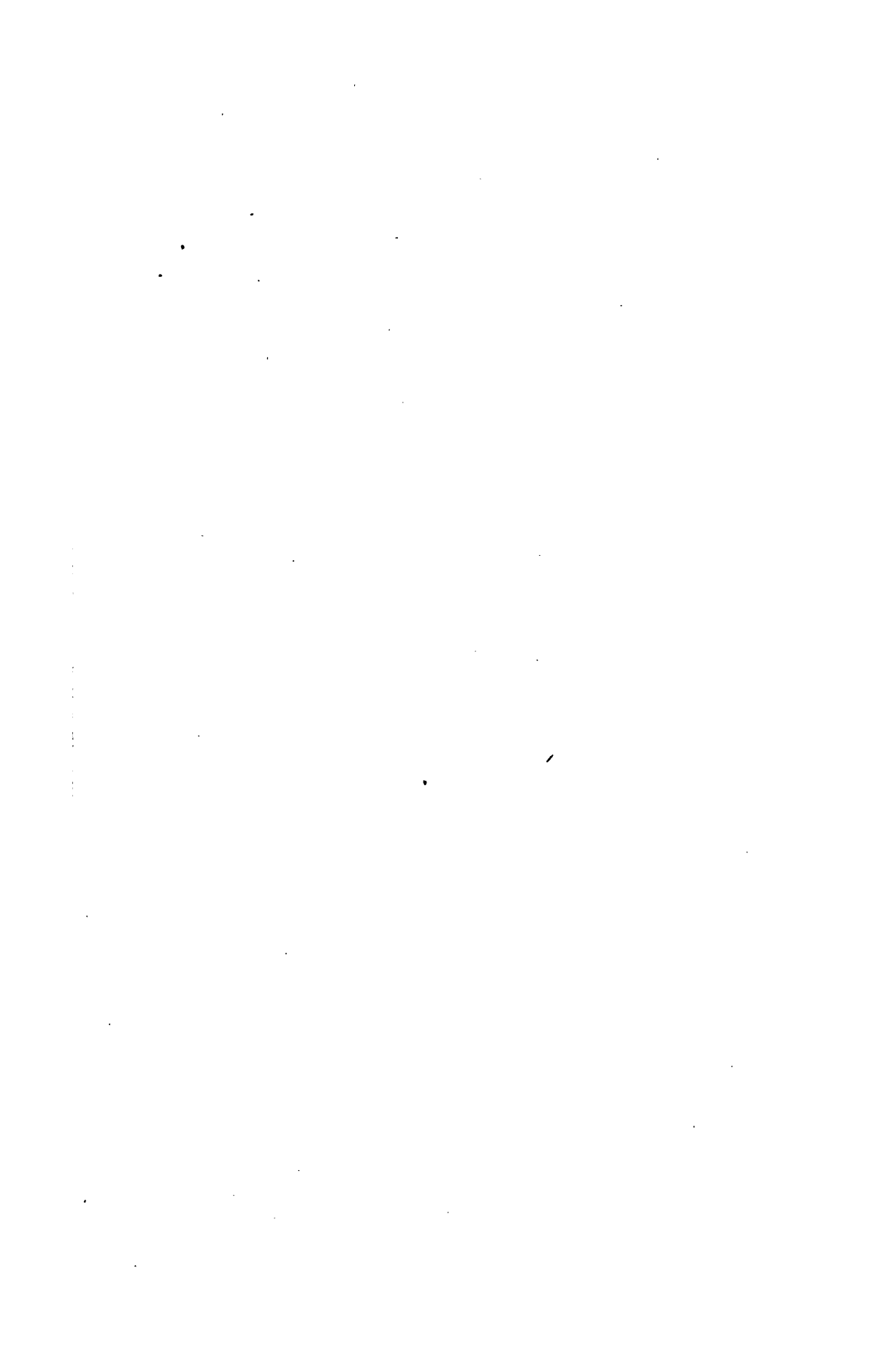
THE first witness called for the Crown was James Braidwood, a builder, and master of the Edinburgh fire brigade, who attested the correctness of the plan of the houses in Wester Portsburgh prepared for use in the trial, and which has been reproduced in this volume. He was followed by Mary Stewart, in whose house, in the Pleasance, Mrs. Docherty's son resided, and in which that unfortunate woman had slept the night before the murder. She remembered the circumstances well. The old woman was in good health when she last saw her in life, but she had no difficulty in recognising the body in the Police Office on the Sunday following. Further, she identified the clothing found in Burke's house, and produced in court, as having belonged to the deceased. Charles M'Lachlan, a lodger, corroborated this testimony. The shop-boy of Rymer, the grocer in the West Port, in whose premises Burke met Docherty, described what took place between them on the memorable Friday morning, and also mentioned the purchase by Burke on the Saturday of a tea-chest similar to the one in which the body had been conveyed to Knox's rooms. But the relationship between the prisoners and Docherty was brought out by a neighbour, Mrs. Connoway, who related that she had seen the old woman in their house during the day, and that it had been explained to her by M'Dougal that the stranger was a friend

of Burke. Later in the evening the old woman was in her house, when they were joined by Hare and his wife and the two prisoners. A dram was going round, and they began to be merry, until at last some of them took to dancing. In the course of this Docherty hurt her feet. The company afterwards returned to Burke's house, and Mrs. Connaway went to bed, but heard no noise or disturbance during the night. Next day she went in to see M'Dougal, and, missing the stranger, she asked what had become of her, when she was told that "Burke and her had been *over* friendly together, and she [M'Dougal] had turned her out of doors: that she had kicked her out of the house." The evidence of Mrs. Law, another neighbour, was similar in effect, with the addition that in the course of the night she had heard the noise of "shuffling or fighting" proceed from the house of the prisoners. More to the point, however, was the testimony of Hugh Alston, a grocer, residing in the same property. Between eleven and twelve o'clock on the night of Friday, the 31st October, while going along the passage that led from his house to the street, he heard a noise proceeding from Burke's house. The sound was as if two men were quarrelling, but what most attracted his attention was a woman's voice calling "murder." He went towards the door and listened, and he heard the two men making a great noise as if wrangling or quarreling. This continued for a few minutes, and then he heard something give a cry—a sound which seemed to proceed from a person or animal being strangled. After this remarkable sound had ceased he again heard a female voice cry "murder," and there was a knocking on the floor of the house. As he was afraid of fire, Alston went to look for a policeman. Not finding one he returned to his old stance, but the noise by this time had ceased. When he heard next night of the body having been found in the house the whole incident of the previous evening came back to him.

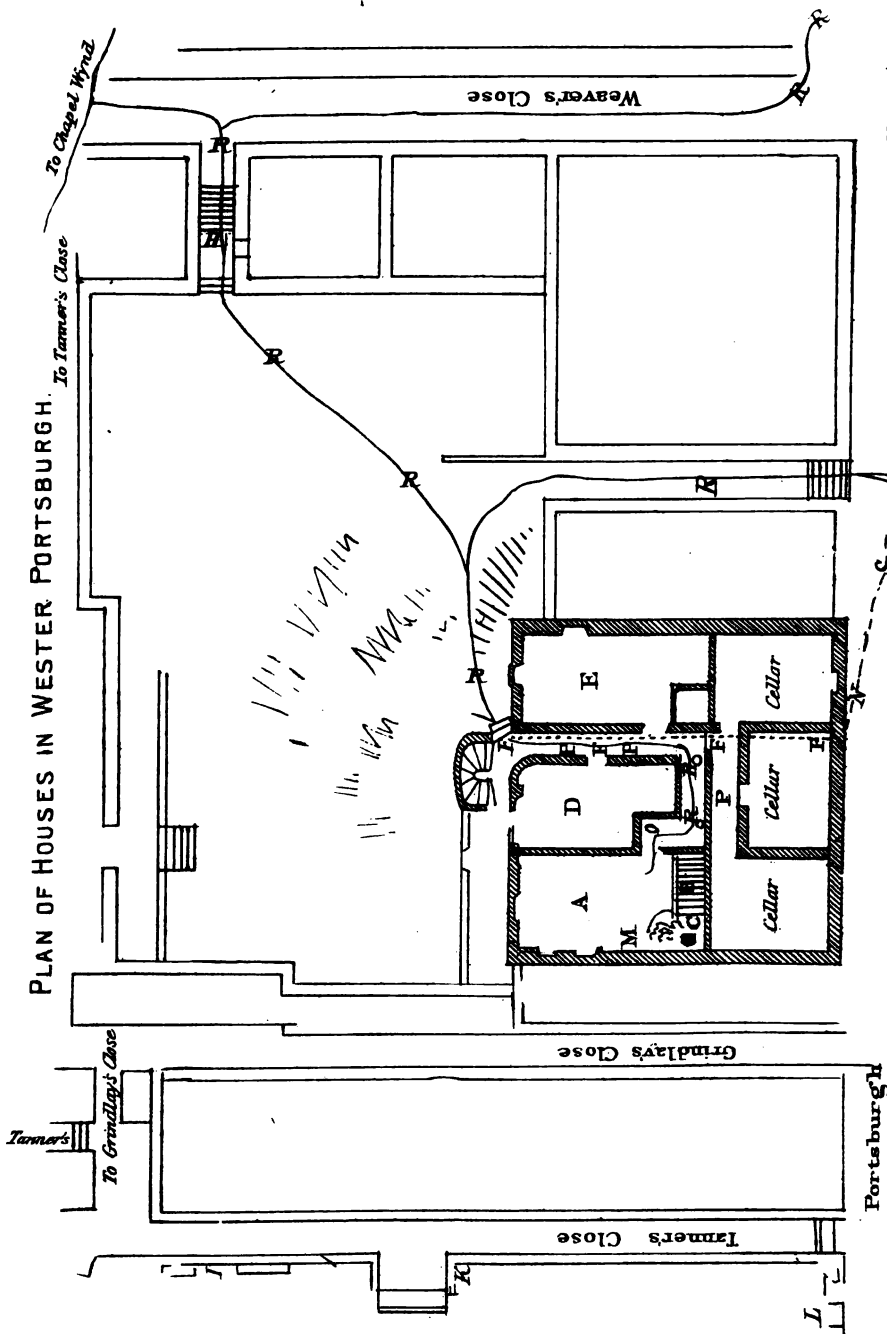
Interesting as all this evidence was, the testimony of David Paterson, "keeper of the museum belonging to Dr. Knox," as bearing on what was termed "the complicity of the doctors," attracted more attention. This witness gave an account of

how, about midnight, Burke called on him and took him to his house in Portsburgh, to point out that he had a subject for him. He identified Burke, M'Dougal, and Hare and his wife as being in the house while he was there, and he further stated that he had seen them the night after, when he paid the two men an instalment of the price of the body. He was examined at some length as to the appearance of the body when he gave it up to the police, and said the marks and the look of the face indicated that death had been caused by suffocation or strangulation, while the general appearance showed that the corpse had never been interred. He knew Burke and Hare, and had often had dealings with them for bodies. There were, he knew, people in the town who sold bodies that had never been interred; and he had known gentlemen who had attended poor patients, and who, on their death, gave a note of their place of abode, and this in turn was handed to men such as he supposed Burke and Hare to be, to get the bodies. This was startling information to the bulk of the people of Scotland, but, as has been shown in some of the early chapters of this work, it was nothing new to a certain class of the population of Edinburgh and other towns. The succeeding witnesses were Broggan, Mr. and Mrs. Gray, and Fisher the detective, but as their evidence has been embodied in the account of the murder itself, it need not be repeated here.

William Hare was next brought forward, and his appearance caused quite a sensation in court. It was known that on his evidence and that of his wife the case for the Crown principally rested, and "expectation stood on tiptoe" to hear the account he would give of the foul transaction in which he was a prominent actor. His position as an informer was peculiar, and Lord Meadowbank cautioned him "that whatever share you may have had in the transaction, if you now speak the truth, you can never afterwards be questioned in a court of justice," but if he should prevaricate he might be assured that the result would be condign punishment. The Lord Justice Clerk further informed him that he was called as a witness regarding the death of Docherty, and in reply to this he asked—"T'ould woman, sir?" He was then put on oath, being sworn on a New



PLAN OF HOUSES IN WESTER PORTSBURGH.



Portsburgh

PREPARED FOR USE AT THE TRIAL OF BURKE & McDUGAL.

For Explanatory Key See Page XII

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Testament having on it a representation of the cross, a mode only adopted in Scotland when the witness belongs to the Roman Catholic Church. In answer to the Lord Advocate he said he had known Burke for about a year. On the 31st October he had a gill with Burke, and the latter then told him that in his house there was an old woman whom he had taken off the street, and who would be a good *shot* to take to the doctors. From this word *shot* he understood that Burke intended murdering her. His evidence of the events up to the time of the quarrel about eleven o'clock was quite consistent with all that has already been related, but his account of the actual murder is worthy of reproduction. Having described the fight, during which the woman tumbled over the stool, he said, in answer to the Lord Advocate :—

He [Burke] stood on the floor;—he then got stride-legs on the top of the woman on the floor, and she cried out a little, and he kept in her breath.

Did he lay himself down upon her? Yes; he pressed down her head with his breast.

She gave a kind of a cry, did she? Yes.

Did she give that more than once? She moaned a little after the first cry.

How did he apply his hand towards her? He put one hand under the nose, and the other under her chin, under her mouth.

He stopped her breath, do you mean? Yes.

Did he continue this for any length of time? I could not exactly say the time; ten or fifteen minutes.

Did he say anything to you when this was going on? No, he said nothing.

Did he then come off her? Yes; he got up off her.

Did she appear dead then? Yes; she appeared dead *a wee*.

Did she appear to be quite dead? She was not moving; I could not say whether she was dead or not.

What did he do then? He put his hand across her mouth.

Did he keep it there for any length of time? He kept it two or three minutes.

What were you doing all this time? I was sitting on the chair.

What did he do with the body? He stripped off the clothes.

He took it and threw it at the foot of the bed, doubled her up, and threw a sheet over her ; he tied her head to her feet.

While this was going on, Hare continued, the two women had run into the passage, and they did not return until all was over. He then detailed the proceedings of the Saturday, as already described.

Hare's cross-examination, however, gave rise to an animated discussion. Mr. Cockburn, senior counsel for M'Dougal, asked him—"Have you been connected in supplying the doctors with subjects upon other occasions than those you have not spoken to yet?" The answer was—"No,—than what I have mentioned"; but the Lord Advocate objected to this line of examination. Mr. Cockburn appealed to the bench, and the witness was withdrawn while the question was being discussed. He insisted he was within his right in putting such a question, though the witness might answer it or not as he chose, but it would be for the jury to judge of the credit due to his evidence after it was seen how he treated the question. The Lord Advocate, on the other hand, contended that the caution given the witness when he entered the box precluded examination on any subject other than what was involved in the case they were trying. Authorities were again cited by both sides, and after considerable discussion, the judges pronounced an interlocutor declaring that the question might be put, but that the witness must be warned by the court that he was not bound to answer any question that might criminate himself.

Hare was recalled, and Mr. Cockburn resumed his cross-examination.

"Were you," said the counsel, "ever concerned in carrying any other body to any surgeon?"

"I never was concerned about any but the one that I have mentioned," replied Hare.

"Now, were you concerned in furnishing that one?" asked Mr. Cockburn.

"No," responded the witness, "but I saw them doing it."

"It is now my duty," interposed the Lord Justice Clerk, addressing Hare, "to state to you, in reference to a question in writing, to be put to you, that you are not bound to make any answer to it so as to criminate yourself. If you do answer

it, and if you criminate yourself, you are not under the protection of the court. If you have been concerned in raising dead bodies, it is illegal; and you are not bound to answer that question."

"Now, Hare," said Mr. Cockburn, after he had repeated the judge's warning, "you told me a little ago that you had been concerned in furnishing one subject to the doctors, and you had seen them doing it—how often have you seen them doing it?"

The witness thought a moment, and then declined to answer the question.

"Was this of the old woman the first murder that you had been concerned in? Do you choose to answer or not?"

"Not to answer," replied Hare, after a minute's consideration.

"Was there murder committed in your house in the last October?" persisted Mr. Cockburn.

"Not to answer that," was all the reply Hare would give.

The rest of the cross-examination was confined chiefly to the murder of Docherty, but Hare's original evidence was in no way shaken by it, and he was removed from court still in custody.

If Hare's appearance created interest in court, that of his wife caused quite as much. She was ushered into the witness-box carrying her infant child in her arms. The poor creature was suffering from whooping-cough, and every now and then its "kinks" interrupted the examination, sometimes very opportunely, when the questions put required a little consideration on the part of the witness. Mrs. Hare's evidence contained only one point calling for special notice. That was when, after relating how she ran out of the house when she saw Burke get upon Docherty, and returned to the house and did not see the woman, she was asked—"Seeing nothing of her, what did you suppose?" Her answer was—"I had a supposition that she had been murdered. *I have seen such tricks before.*" This hint was not followed up. But the remarkable fact about her whole testimony was that it corroborated, with exception of one or two points, that of her husband. There can be no doubt that they had conned their story together



before they were apprehended—for it was not likely they would have an opportunity of making it up while they were in custody. Be that as it may, their evidence was wonderfully alike.

The evidence of the police surgeon and of the medical men who made an examination of the body, was next taken up, and it all tended to show that death had been caused by suffocation or strangulation, the result of violence and not of intoxication. The reading of the prisoners' declarations concluded the case for the prosecution, and no evidence was brought forward for the defence.

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## CHAPTER XXII.

### *The Trial—Speeches of Counsel—Mr. Cockburn's Opinion of Hare—The Verdict of the Jury.*

WITHOUT any delay, on the reading of the declarations, the Lord Advocate at once commenced his address to the jury, and the public feeling is fully reflected in the following remarks made by him at the outset:—"This is one of the most extraordinary and novel subjects of trial that has ever been brought before this or any other court, and has created in the public mind the greatest anxiety and alarm. I am not surprised at this excitement, because the offences charged are of so atrocious a description, that human nature shudders and revolts at it; and the belief that such crimes as are here charged have been committed among us, even in a single instance, is calculated to produce terror and dismay. This excitement naturally arises from the detestation of the assassins' deeds, and from veneration of the ashes of the dead. But I am bound to say, that whatever may have occasioned this general excitement, or raised it to the degree which exists, it has not originated in any improper disclosures, on the part of those

official persons, who have been entrusted with the investigations connected with these crimes; for there never was a case in which the public officers to whom such inquiries are confided, displayed greater secrecy, circumspection, and ability. It is my duty to endeavour to remove that alarm which prevails out of doors, and to afford all the protection which the law can give to the community against the perpetration of such crimes, by bringing the parties implicated to trial; and I trust it will tend to tranquilize the public mind, when I declare I am determined to do so. I cannot allow any collateral considerations, connected with the promotion of science, to influence me in this course; and I am fully determined that everything in my power shall be done to bring to light and punishment those deeds of darkness which have so deeply affected the public mind." Having reviewed the evidence in the case, his lordship turned to the question of the admissibility and reliability of the testimony given by Hare. He pointed out that it would have been impossible to make out a case against the accused without the assistance of some of the individuals connected with the crimes; and argued that an acquittal, after a trial on the evidence brought before the magisterial inquiry, would probably have sent the accused parties back to their former practices, whatever they were, with increased encouragement and confidence. The public would have remained entirely ignorant of the extent to which such crimes had been carried by these persons; whether these four individuals comprehended the whole gang, or if there were others connected with them, or whether similar gangs did not exist in other places. Such a state of ignorance appeared to him altogether inconsistent with the security of the public; and he considered a knowledge of these matters indispensable, and as being of infinitely more public importance than any punishment which could be inflicted on the offenders. He did not think that such information was too dearly purchased by admitting some of these individuals to give evidence, and he was persuaded the country, when this matter came to be calmly considered, would support him in the propriety of the choice he had made. He admitted that by availing himself of such information he

necessarily excluded the possibility of bringing these witnesses to trial for any offence in which they had so acknowledged a participation. This, in the then state of excited feeling, might be regarded as unjust, but on that account the exercise of sound judgment was all the more required of him. The testimony given by these witnesses, his lordship contended, was thoroughly credible. Hare especially appeared to speak the truth; but he also pointed out that there was independent evidence which corroborated in part the statements made by these persons. He concluded his task by demanding at the hands of the jury, "in name of the country, a verdict of guilty against both these prisoners at the bar." The speech for the Crown was listened to with intense interest, and no wonder, for in addition to the importance of the issues at stake, it was acknowledged to be one of the best and most eloquent ever delivered by Sir William Rae.

The speech by the Dean of Faculty was more laboured and less spontaneous than that of the Lord Advocate. He felt himself beset with difficulties, especially the prejudice against his client, Burke, which was raised by the motive alleged in the indictment. "The motive for committing the offence which is here ascribed to the prisoner," he said, "involves in it a peculiar practice or employment which may be in itself a crime, though it is not necessarily criminal; but whether it implies public criminality or not, it involves in it a purpose which is revolting to the feelings of the generality of mankind, and calculated, almost above every other thing, to produce a prejudice in the minds of those who come to consider the case itself. For need I say that, when it is imputed to the prisoner that his object was to procure what they are pleased to call subjects for dissection, the very statement of such an occupation, stamps a degree of infamy on the individual engaged in it, and you are apt to set it down in the very commencement of the inquiry, that he is a person capable of any turpitude, and to imagine that to prove him guilty of any crime, however enormous, requires less evidence than that which you would consider indispensable to the conviction of any other person." He implored the jury to cast any such prejudice aside, and to consider the case solely upon the merits of

the evidence adduced. This he proceeded to analyse, making, as a matter of course, the most of the discrepancies and inconsistencies, and he sought to impress upon the jury that the whole of the case for the prosecution depended on the evidence of *socii criminis*—the alleged accomplices in the deed charged. He asked them if they could put the smallest faith in the testimony of Hare and his wife, who had nothing to restrain them from telling the most deliberate series of falsehoods for the purpose of fixing the guilt of the murder on the prisoners, and extricating themselves from the condition in which they stood. Hare, when asked if he had ever committed other murders, had declined to answer the question, yet this was the person who gave evidence before them, not with a paltry money motive, but with the tremendous motive of securing himself from an ignominious death. Let them change the position of parties, and suppose that Hare was at the bar, and Burke in the witness-box. He did not know what case they might get from Burke and M'Dougal, but nothing could hinder them, as witnesses, from making out as clear a case against Hare and his wife, totally transposing the facts, and exhibiting the transaction as altogether the reverse of what Hare said it was. "What," exclaimed the learned Dean, "if that ruffian who comes before you, according to his own account, with his hands steeped in the blood of his fellow creatures, breathing nothing but death and slaughter; what if that cold-blooded, acknowledged villain, should have determined to consummate his villany, by making the prisoners at the bar the last victims to his selfishness and cruelty? Do you think that he is incapable of it?"

Mr. Henry Cockburn, for M'Dougal, confined himself almost entirely to the credibility of Hare and his wife. "Hare," he said, "not only acknowledged his participation in this offence, but he admitted circumstances which aggravated even the guilt of murder. He confessed that he had sat coolly within two feet of the body of this wretched old woman while she was expiring under the slow and brutal suffering to which his associate was subjecting her. He sat there, according to his own account, about ten minutes, during which her dying agonies lasted, without raising a hand or a cry to save her.

We who only hear this told, shudder, and yet we are asked to believe the man who could sit by and see it. Nor was this the only scene of the kind in which they had been engaged. The woman acknowledged that she '*had seen other tricks of this kind before.*' The man was asked about his accession on other occasions, but at every question he availed himself of his privilege, and virtually confessed *by declining to answer.*" "The prosecutor," continued the learned counsel, "seemed to think that they gave their evidence in a credible manner, and that there was nothing in their appearance beyond what was to be expected in any great criminal, to impair the probability of their story. I entirely differ from this; and I am perfectly satisfied that so do you. A couple of such witnesses, in point of mere external manner and appearance, never did my eyes behold. Hare was a squalid wretch, in whom the habits of his disgusting trade, want, and profligacy, seem to have been long operating in order to produce a monster whose will as well as his poverty will consent to the perpetration of the direst crimes. The Lord Advocate's back was to the woman, else he would not have professed to have seen nothing revolting in her appearance. I never saw a face in which the lines of profligacy were more distinctly marked. Even the miserable child in her arms, instead of casting one ray of maternal softness into her countenance, seemed at every attack [of hooping-cough] to fire her with intense anger and impatience, till at length the infant was plainly used merely as an instrument of delaying or evading whatever question it was inconvenient for her to answer." Having dealt with the question of corroboration, Mr. Cockburn remarked:—"The simple and rational view for a jury to take is that these indispensable witnesses are deserving of *no* faith in any case; and that the idea is shocking of believing them, to the effect of convicting in a case that is capital. The prosecutor talks of their being sworn! What is perjury to a murderer! The breaking of an oath to him who has broken into the 'bloody house of life!'" In concluding, he called for a verdict of not proven:—"Let the public rage as it pleases. It is the privilege and the glory of juries always to hold the balance the more steadily, the more that the storm of

prejudice is up. The time will come when these prejudices will die away."

The Lord Justice-Clerk then summed up, carefully going over the evidence to the jury, and emphasising those points which he thought deserving of their attention.

The jury retired to consider their verdict at half-past eight o'clock on the morning of Thursday, 25th December—Christmas day—the trial having continued from ten o'clock the previous forenoon. Burke seemed to consider a conviction certain not only in his own case but also in that of M'Dougal, for he is said to have given her directions how to conduct herself, and told her to observe how he behaved when sentence was being pronounced. After an absence of fifty minutes the jury returned to court, and the chancellor or foreman, Mr. John M'Fie, a Leith merchant, gave, *viva voce*, the following as the verdict:—

"The jury find the pannel, William Burke, guilty of the third charge in the indictment; and find the indictment not proven against the pannel, Helen M'Dougal."

The audience applauded the finding of the jury, and the news was quickly conveyed to the enormous crowd outside in Parliament Square, who cheered to the echo. Burke remained cool, and turning to his companion he remarked,—“Nellie, you're out of the scrape.” The Lord Justice-Clerk then thanked the jury for the unwearied pains and attention they had bestowed on the case, and said it must be satisfactory to them to know that in the opinion of the court their verdict appeared to be well founded. It was afterwards reported that the jury had considerable difficulty in coming to a decision, and that the verdict they gave in was something of the nature of a compromise. An old legal maxim has it that a wife acts under the constraint of her husband, and it was believed to be in view of this that the jury found the charge against M'Dougal not proven.

## CHAPTER XXIII.

*The Last Stage of the Trial—Burke Sentenced to Death—The Scene in Court—M'Dougal Discharged—Duration of the Trial.*

THE last stage of a long trial had now been reached. After the verdict against Burke there was only one course open to the judges, but still the attention of the audience was given most earnestly to the proceedings. Burke seemed callous, for he had felt certain of the doom that was about to be pronounced upon him. The Lord Advocate moved for the judgment of the court, and the Lord Justice-Clerk called upon Lord Meadowbank to propose the sentence.

Having briefly reviewed the facts of the case, as brought out in the evidence, Lord Meadowbank proceeded:—"Your lordships will, I believe, in vain search through both the real and the fabulous histories of crime for anything at all approaching this cold, hypocritical, calculating, and bloody murder. Be assured, however, that I do not state this either for exciting prejudices against the individual at the bar, or for harrowing up the feelings with which, I trust, he is now impressed. But really, when a system of such a nature is thus developed, and when the actors in this system are thus exhibited, it appears to me that your lordships are bound, for the sake of public justice, to express the feelings which you entertain of one of the most terrific and one of the most monstrous delineations of human depravity that has ever been brought under your consideration. Nor can your lordships forget the glowing observations which were made from the bar in one of the addresses on behalf of the prisoners, upon the causes, which, it is said, have in some measure led to the establishment of this atrocious system. These alone, in my humble opinion, seem to require that your lordships should state roundly that with such matters, and with matters of science, we, sitting in such places, and deciding on such questions as that before us, have nothing to do. It is our duty to administer the law as handed down to us by our ancestors,

and enacted by the legislature. But God forbid that it should ever be conceived that the claims of speculation, or the claims of science, should ever give countenance, to such awful atrocities as the present, or should lead your lordships, or the people of this country, to contemplate such crimes with apathy or indifference. With respect to the case before us, your lordships are aware that the only sentence we can pronounce is the sentence of death. The highest law has said—‘Thou shalt not kill,—thou shalt do no murder;’ and in like manner, the law of Scotland has declared, that the man guilty of deliberate and premeditated murder shall suffer death. The conscience of the prisoner must have told him, when he perpetrated this foul and deliberate murder, and alike violating the law of God, and the law of man, he thereby forfeited his life to the laws of his country. Now that detection has followed, therefore, the result cannot be by him unexpected; and I have therefore only further to suggest to your lordships, that the prisoner be detained in the tolbooth of Edinburgh, till the 28th day of January next, when he shall suffer death on a gibbet by the hands of the common executioner, and his body thereafter given for dissection.”

Lord Mackenzie concurred, saying that the punishment proposed by Lord Meadowbank was the only one that could be pronounced.

The Lord Justice-Clerk then assumed the black cap, and addressing Burke, who had risen from his seat to receive sentence, said:—“William Burke, you now stand convicted, by the verdict of a most respectable jury of your country, of the atrocious murder charged against you in this indictment, upon evidence which carried conviction to the mind of every man that heard it, in establishing your guilt in that offence. I agree so completely with my brother on my right hand, who has so fully and eloquently described the nature of your offence, that I will not occupy the time of the court in commenting any further than by saying that one of a blacker description, more atrocious in point of cool-blooded deliberation and systematic arrangement, and where the motives were so comparatively base, never was exhibited in the annals of this or of any other court of justice. I have no intention of



detaining this audience by repeating what has been so well expressed by my brother ; my duty is of a different nature, for if ever it was clear beyond the possibility of a doubt that the sentence of a criminal court will be carried into execution in any case, yours is that one, and you may rest assured that you have now no other duty to perform on earth but to prepare in the most suitable manner to appear before the throne of Almighty God to answer for this crime, and for every other you have been guilty of during your life. The necessity of repressing offences of this most extraordinary and alarming description, precludes the possibility of your entertaining the slightest hope that there will be any alteration upon your sentence. In regard to your case, the only doubt which the court entertains of your offence, and which the violated laws of the country entertain respecting it, is whether your body should not be exhibited in chains, in order to deter others from the like crimes in time coming. But taking into consideration that the public eye would be offended by so dismal an exhibition, I am disposed to agree that your sentence shall be put into execution in the usual way, but unaccompanied by the statutory attendant of the punishment of the crime of murder—viz., that your body should be publicly dissected and anatomised, and I trust that if it ever is customary to preserve skeletons, yours will be preserved, in order that posterity may keep in remembrance your atrocious crimes. I would entreat you to betake yourself immediately to a thorough repentance, and to humble yourself in the sight of Almighty God. Call instantly to your aid the ministers of religion of whatever persuasion you are ; avail yourself from this hour forward of their instructions, so that you may be brought in a suitable manner urgently to implore pardon from an offended God. I need not allude to any other case than that which has occupied your attention these many hours. You are conscious in your own mind whether the other charges which were exhibited against you yesterday were such as might be established against you or not. I refer to them merely for the purpose of again recommending you to devote the few days that you are on the earth, to imploring forgiveness from Almighty God.”

The sentence was formally recorded in the books of the court, with the addition that the place of execution was specified as in the Lawnmarket of Edinburgh, and the body of the deceased was ordered to be delivered to Dr. Alexander Monro, Professor of Anatomy in the University of Edinburgh, to be by him publicly dissected and anatomised.

The Lord Justice-Clerk then turned to Helen M'Dougal and said :—"The jury have found the libel against you *not proven*; they have not pronounced you *not guilty* of the crime of murder charged against you in this indictment. You know whether you have been in the commission of this atrocious crime. I leave it to your own conscience to draw the proper conclusion. I hope and trust that you will betake yourself to a new line of life, diametrically opposite from that which you have led for a number of years." An interlocutor of dismissal was pronounced, and M'Dougal was free from the pains of the law, though she had still to fear the fury of an unappeased public.

The *Edinburgh Evening Courant* of Saturday, 27th December, thus described the appearance of the prisoners when the Lord Justice-Clerk addressed them :—"The scene was altogether awful and impressive. The prisoner stood up with unshaken firmness. Not a muscle of his features was discomposed during the solemn address of the Lord Justice-Clerk consigning him to his doom. The female prisoner was much agitated, and was drowned in tears during the whole course of the melancholy procedure."

The trial was thus concluded, the court having sat, with certain intervals for refreshment, from ten o'clock in the forenoon of Wednesday, the 24th of January, until nearly ten o'clock next morning. Burke, it has been seen, was cool and collected, his mind having been made up before the judicial proceedings began as to how they were likely to end. About four o'clock on Wednesday afternoon he asked one of the jailors near him when dinner would be provided, and on being informed that the court would not adjourn for that meal until about six o'clock, he begged to be given a biscuit or two, as he was afraid he would lose his appetite before the dinner hour, M'Dougal, however, was not so calm, and during the

whole course of the trial manifested an amount of anxiety as to her position not shown by her companion.

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#### CHAPTER XXIV.

*The Interest in the Trial—Public Feeling as to the Result—Press Opinions—Attack on Dr. Knox's House.*

THE news of the result of the trial spread rapidly. All the Edinburgh newspapers gave lengthened reports of the proceedings—putting the “affairs of State” to a side for once—and in those cases where the usual publication day of a journal was on the Thursday, the day on which the trial closed, second editions containing the verdict and sentence were issued. The *Evening Courant* was at the pains to obtain statistics of the circulation of the newspapers. Between the Thursday morning and Saturday night it was calculated that not fewer than 8000 extra copies were sold, representing a money value of nearly £240. This was certainly surprising when the high price charged for the journals is taken into account, and is a testimony to the intense interest taken in the trial by the people at large.

The result of the trial was received with mingled feelings. The liveliest satisfaction was felt at the conviction of Burke; but the dismissal of M'Dougal, and the probable escape of Hare and his wife through having become informers, caused a great amount of discontent. The evidence given by the two principal witnesses showed that they were as much guilty of the offence as Burke himself, and an impression began to get abroad that Hare was after all the leading spirit in the conspiracy, and that he had, as the counsel for the defence had suggested, made Burke his last victim. This strong dislike, or rather detestation, to Hare did not, however, have a compensating effect by producing sympathy for Burke—the popular

mind was too deeply convinced of his guilt to think that he other than fully deserved the doom that had been pronounced upon him. And the peculiar feature of the matter was this, that while there was no need for the Lord Advocate proceeding further against Burke in respect of the first and second charges on the indictment, since he had been condemned on the third, the great mass of the people pronounced an unmistakable verdict of guilty against him for the murder of Daft Jamie; and the *Courant* shortly after the trial deepened the impression by stating that it was Burke himself who enticed the poor natural into his den, though there is every reason to believe that this was a mistake. The disappearance and cruel fate of that unfortunate lad had perhaps more to do with the "prejudice," as it was called at the trial, against the two prisoners and their accomplices than any other item in the case.

The *Caledonian Mercury* of Thursday, the 25th December, the day on which sentence was passed, had the following among other comments on the proceedings of the previous twenty-four hours:—

"No trial in the memory of any man now living has excited so deep, universal and (we may also add) appalling an interest as that of William Burke and his female associate. By the statements which have from time appeared in the newspapers, public feeling has been worked up to its highest pitch of excitement, and the case, in so far as the miserable pannels were concerned, prejudiced by the natural abhorrence which the account of a new and unparalleled crime is calculated to excite. . . . At the same time, it is not so much to the accounts published in the newspapers which merely embodied and gave greater currency to the statements circulating in Society, as to the extraordinary, nay, unparalleled circumstances of the case, that the strong excitement of the public mind must be ascribed. These are without any precedent in the records of our criminal practice, and, in fact, amount to the realization of a nursery tale. The recent deplorable increase of crime has made us familiar with several new atrocities: poisoning is now, it seems, rendered subsidiary to the commission of theft: stabbing, and attempts at assassination, are matters of almost everyday

occurrence; and murder has grown so familiar to us, that it has almost ceased to be viewed with that instinctive and inexpressible dread which the commission of the greatest crime against the laws of God and society used to excite. But the present is the first instance of murder alleged to have been perpetrated with aforethought purpose and intent of selling the murdered body as a subject of dissection to anatomists; it is a new species of assassination, or murder for hire; and as such, no less than from the general horror felt by the people of this country at the process, from ministering to which the reward was expected, it was certainly calculated to make a deep impression on the public mind, and to awaken feelings of strong and appalling interest in the time of the trial. Of the extent to which this had taken place, it was easy to judge from what was everywhere observable on Monday and Tuesday. The approaching trial formed the universal topic of conversation, and all sorts of speculations and conjectures were afloat as to the circumstances likely to be disclosed in the course of it, and the various results to which it would eventually lead. As the day drew near, the interest deepened; and it was easy to see that the common people shared strongly in the general excitement. The coming trial they expected to disclose something which they had often dreamed of or imagined, or heard recounted around an evening's fire, like a raw-head-and-bloody-bones story, but which they never, in their sober judgment, either feared or believed to be possible; and they looked forward to it with corresponding but indescribable emotions. In short, all classes participated more or less in a common feeling respecting the case of this unhappy man and his associate; all expected fearful disclosures; none, we are convinced, wished for anything but justice."

This was the expectation of the public, but it was, unfortunately, not altogether realised. True, the mystery attending the murder of Mrs. Docherty had been cleared up, but owing to the legal objections nothing had been said as to how Mary Paterson and Daft Jamie met their death. This had operated against a proper disclosure in more ways than one. The limitation of the indictment confined the informer's evidence, one-sided though it undoubtedly was, to one crime, and

prevented it being given in the case of the others; and, further, that limitation did away with the necessity of calling Dr. Knox and the other medical men whose names were on the list of witnesses, and who were supposed to be mixed up in the transaction. "Where are the Doctors?" was the question when the trial closed without any appearance of them; and it was repeated out of court with threatening emphasis. In the case which went to trial, and on which Burke was condemned, there was really no need for them. The body had been recovered and identified; there was no doubt as to the murder; the whole subject of inquiry was—By whom was it committed? Had the other charges in the indictment gone to the knowledge of an assize, the evidence of the doctors and their assistants would have been required, for they, and they only, could have spoken to the appearance and probable identity of subjects supplied to them about certain dates, and supposed to be the bodies of the unfortunate victims of the persons placed at the bar. Then, they would have been indispensable; as it was, they were not needed, with the result that public curiosity had only been whetted, not satisfied. And a circumstance that helped to make this feeling all the more intense was that the indictment, in so far as it related to the first two charges, seemed to have been framed on information supplied by Hare; while the fact that the Lord Advocate made them part of the libel, and intimated the production of certain articles belonging to the two victims, gave more than reasonable ground for the assumption that he was convinced he had a good case, otherwise he would not have sought to lay it before a jury. This fact, combined with the natural thirst for legal vengeance, gave the public hope that the officers for the Crown would be able to put Hare and his wife upon their trial for some crime other than any that were mentioned in the indictment, but in the same series, and that by this means the whole plot, with all relating to it, would be laid bare.

All these circumstances caused a strong feeling of discontent among every class of the community, but especially among the lower orders, who seemed to think their lives menaced by criminals of the stamp of Burke and Hare. Much excitement

consequently prevailed, but though disturbances were feared by the authorities, no serious breach of the public peace occurred until Sunday, 28th December. On that day a band of young men attacked Dr. Knox's house in Minto Street, and they were only driven off by a strong force of police after they had broken a great quantity of window-glass.

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## CHAPTER XXV.

*Burke's Behaviour in Prison—Liberation of M'Dougal, and the Consequent Riot—Visitors at Burke's House in the West Port—Burke's Idea of the Obligations of Dr. Knox—His Confessions.*

ALL through the trial Burke had seemed callous and indifferent, but when he was removed from the court-room to the lock-up he was considerably agitated. He threw himself on his knees on the floor of his cell and prayed to God, to whom he had long been a stranger, and to whose mercy the judge had so earnestly commended him. After this he appeared to be considerably relieved, and during the rest of the day he was comparatively cheerful. He spoke a good deal to the policeman who was beside him, and said he was pleased at the acquittal of M'Dougal. Without any hesitation he conversed freely about the murder of Docherty, who, he said, was not murdered by him in the way described by Hare. That individual was himself the murderer, though, he admitted, he had held the unfortunate woman's hands to prevent her from struggling. The policeman was a fair type of the public, as a question he put to Burke amply proved. He told Burke that he wondered above all things how he could imbrue his hands in the blood of Daft Jamie. That Burke was in a state of semi-delirium is shown by his answer—as he hoped to meet with mercy at the throne of grace, his hand was not concerned

in that murder; Hare and his wife were the sole perpetrators of it, though he had decoyed the poor simpleton into their house. That his mind was in a strange state he admitted by adding, that after he was more composed he would make disclosures that would implicate several others besides Hare and his wife in crimes similar to that for which he was condemned; and if he could make sure of the hanging of Hare, he would die happy. How did he feel when pursuing his horrible vocation? was the next query of the constable. In his waking moments he had no feeling, for he drank to deaden conscience, but when he slept he had frightful dreams. He also expressed a wish that one of his counsel should call on him that he might furnish him with notes of his life and adventures, as he desired his history to be published, whether for notoriety or as a warning to others, he did not say. In the course of that evening he read two chapters of the Bible, and afterwards retired to rest. His sleep, however, was not peaceful. He awoke in a frantic state every now and then; but after a short time he became more composed, and fell asleep again.

At two o'clock on Friday morning he was removed quietly in a coach to the Calton Hill Prison, and placed in the condemned cell. Here the frenzy under which he had been labouring since his condemnation took another turn. He threw aside the semi-religious feeling which seemed to sway his mind the day before, and turned fiercely to the jailor—for there was always one beside him, as, before his trial, he had threatened self-destruction—and said: "This is a d——d cold place you have brought me till." The thirst for vengeance against Hare was still strong in him. He sat thinking over their connection, and broke out every now and again into curses against his one-time associate. Hare, he declared, was more guilty than he was. "Hare," he said, "murdered the first woman. He persuaded me to join him, and now he has murdered me; and I will regret to the last hour of my existence that he did not share the same fate." An officer said to him, "I think I could never wish to see that man forgiven who could murder that poor, harmless, good-natured idiot, Daft Jamie." Burke replied with fierce earnestness:—"My days are numbered. I am soon to die by the hands of man. I have no more to fear, and



can have no interest in telling a lie, and I declare that I am as innocent of Daft Jamie's blood as you are. He was taken into Hare's house and murdered by him and his wife. To be sure I was guilty so far, as I assisted to carry his body to Dr. Knox, and got a share of the money." Later in the day, he dropped into the frame of mind in which he was after his sentence, and willingly acknowledged to his jailors that he was guilty, though beyond that he declined to satisfy their curiosity. As the evening advanced he asked if he would be allowed to pray. There was, of course, no objection, and again he petitioned the Almighty for forgiveness, and specially mentioned Helen M'Dougal, that her heart might be touched and turned from evil.

This was the night on which M'Dougal was liberated. It was feared that the infuriated mob that paced the streets of the city after the close of the trial would tear her to pieces, and she had, as a matter of safety, been detained in the lock-up. Immediately on her liberation, she returned to her house in the West Port, and remained there unmolested until the next night. Then she went out to a shop in the neighbourhood for the purpose of purchasing some whisky—Burke's prayer had not yet been answered. The shop-keeper refused to supply her, and on her way home she was noticed by a number of boys, who, recognising her, raised the cry—"There's M'Dougal." Speedily a crowd assembled—a rough, tumultuous crowd, strongly under the sway of Judge Lynch. Fortunately for her, the police came to her rescue, and, again for safety, took her to the watch-house in Wester Portsburgh. The infuriated mob endeavoured to prevent this, and sought to tear the woman from the grasp of the officers in order that they might execute summary justice upon her; but her guardians drew their staves, and by laying about them in a determined manner, attained their purpose. At last the watch-house was reached, but still M'Dougal was not safe. The crowd, which had grown to huge dimensions, attacked the place from every side, smashed the windows, and seemed so determined to gain admittance and work their will upon the unfortunate woman, that the officers, judging themselves unable to make sufficient stand, had her dressed in men's clothes, and she escaped by a

back window unobserved. A show of resistance was made for a short time to allow M'Dougal to reach a place of safety, and then it was announced to the mob that she was being detained in order to give evidence against Hare. This pacified the passions of the people, for they were willing she should escape in the meantime if there was any chance of making sure that Hare would be punished, and they quietly dispersed. M'Dougal, though out of the office, was still under police protection, and on Sunday, 28th December, she was accompanied outside the city, on her way to Stirlingshire, with, it was stated, between ten and twelve pounds in her possession.

Up till the Friday night following the trial, the house occupied by Burke and M'Dougal, in the West Port, was visited by great crowds of people, who wished, out of curiosity, to see the place where such foul crimes had been perpetrated. On that night, however, the person who had the key gave it up to the landlord, as he wished to escape the imputation cast upon him by some, that he had been making money by showing it off. On the following Sunday, also, the street was crowded by well-dressed people, all attracted to the scene by its evil reputation. Here is the description given by one of the Edinburgh newspapers of that period, of the houses occupied by Burke and his accomplice:—"The immediate entrance to it [Burke's house] is appropriate—namely, through a dark passage, where the women stood while the murder of the Irish woman was being perpetrated. The dwelling is one small room, an oblong square, which presents the exact appearance it had when the culprits were apprehended. There is still the straw at the foot of the bed, in which the murdered woman was concealed. Altogether, it has an air of the most squalid poverty and want of arrangement. On the floor is a quantity of wretched old shoes, of all sizes, meant by Burke, perhaps, to indicate his being a cobbler; but they are so wretchedly worn, that we cannot suppose they were left with him to be mended, or that he designed to improve their appearance, for the purpose of selling them. We incline to think that they belonged to some of his victims. The dwelling is most conveniently situate for the murderous trade he pursued—there being many obscure approaches to it from different directions. Hare's

dwelling, also, has attracted many visitors. Its appearance is equally deplorable with that of Burke. It is on the ground-floor, consists of two apartments, and overlooks a gloomy close. Beside it is a sort of stable, used by Hare as a pig-stye, and secured with a large padlock. In this it is believed Hare and Burke committed many of their butcheries; and here, we are inclined to think, Daft Jamie encountered his fate."

But to return to Burke in the condemned cell. As the time passed on, his mind appeared to be agitated for brief intervals, though in general he seemed resigned to the fate his crimes so richly deserved. On one occasion he broke out in a curious manner. He had been sitting quietly, apparently thinking over his past life, and of the near approach of its end, when he startled his attendant by saying—

"I think I am entitled, and ought to get that five pounds from Dr. Knox which is still unpaid on the body of Docherty."

"Why, Dr. Knox lost by the transaction, as the body was taken from him," was the reply of the amazed warder.

"That was not my business," said Burke. "I delivered the subject, and he ought to have kept it."

"But you forget that were the money paid, Hare would have the right to the half of it," argued the other.

"I have got a tolerable pair of trousers," explained Burke, musingly, "and since I am to appear before the public, I should like to be respectable. I have not a coat and waistcoat that I can appear in, and if I got that five pounds I could buy them."

As the time went on Burke was induced to make a confession of his crimes. On the 3rd of January, 1829, he dictated a confession before Sheriff Tait, the Procurator-Fiscal, and the assistant Sheriff-Clerk; and on the 22nd of the same month he supplemented it by a short statement, made in the presence of the same parties, with the addition of the Rev. Wm. Reid, a Roman Catholic priest. Application was made to the Lord Advocate by an Edinburgh gentleman to obtain admission to Burke's cell to receive a confession from the criminal, but this was refused; and on an appeal being made to the Home Secretary the refusal was confirmed. On the 21st of January, however, the condemned man made another and fuller

confession, but this time unofficial, and this document had such a curious history that an account of it must be reserved until the proper time. Between his condemnation and execution Burke was visited by Protestant and Roman Catholic clergymen, and he received the ministrations of both without preference.

## CHAPTER XXVI.

*“The Complicity of the Doctors”—Numerous Disappearances—  
Dr. Knox and David Paterson—Paterson Defends Himself  
—“The Echo of Surgeon’s Square”—The Scapegoat.*

As time went on the excitement among the public increased, and the newspapers, thoroughly roused to the importance of the West Port murders, and freed from restraint by the decision of the court, spoke out fearlessly. “The complicity of the doctors,” as it was called, came in for a large share of attention and severe comment; while rumours as to the action the authorities intended to take regarding Hare and his wife were eagerly canvassed. It was stated that Hare, after the trial, made important disclosures, confessing to having been concerned in no less than twelve different acts of murder, in some of which he was the principal, in others an accessory; and that he knew of another, though he was not in any way a party to the commission of it. Then it was said that Burke had confessed to having sold some thirty or thirty-five uninterred bodies during the previous two years, and it was argued that these could only have been obtained by murder, notably the murder of unfortunate women, large numbers of whom had mysteriously disappeared in that time, no one knew how. Natural deaths had become very rare among that class, and for some time the interment of one of them was a thing almost unknown. This, it was argued, showed that a gigantic

conspiracy to murder, for the purpose of obtaining subjects for dissection, had been going on in Edinburgh, and it was suspected that the gang was larger than it really was. A medical man informed a journalist that in the autumn of 1828 the body of a woman was offered for sale by some miscreants—"probably of Burke's gang," was the opinion hazarded—to the assistant of an eminent teacher of anatomy in Edinburgh. The assistant did not know them, for they were not regular resurrectionists—he knew *them* well enough—but as he required a subject, he told them to bring the body, and if it were suitable he would purchase it. The body was conveyed to the dissecting-room the same evening, and on being turned out of the sack the assistant was startled to see it was that of a woman of the town, with her clothes and shoes and stockings on. He carefully examined the body, and found there was an enormous fracture on the back of the head, and a large portion of the skull driven in, as if by the blow of a hammer. With an oath he asked them where and how they got the body, and one of them coolly replied that it was the body of an unfortunate who had been *popped* in a brawl in Halkerston's Wynd. The "subject" was refused, and the merchants had to take it elsewhere.

This and many similar stories naturally gave rise to a demand for a searching investigation alike in the public interest and in the interests of the teachers of anatomy themselves. It was advocated that all the anatomical teachers, and others who used *cadavera* for their classes, both in and out of the university, ought to be examined as to the manner in which they were accustomed to receive their subjects. In particular, the assistants and students of Dr. Knox during the two previous sessions ought to undergo an examination as to the quarter whence bodies were procured, the state in which they were received, and the manner in which they were dissected. Without such a complete and thorough examination, it was argued, the public could have no guarantee that every anatomical teacher in Edinburgh had not a Burke in his pay; for it seemed to be the impression in the minds of the people "that one gentleman stands in the same relation to Burke that the murderer of Banquo did to Macbeth."

The *Edinburgh Weekly Chronicle* was especially outspoken in respect to Dr. Knox. "With regard to Dr. Knox," this journal said, "too much delicacy and reserve have been maintained by a part of the press. When the atrocities in question first transpired, it was stated that Knox conducted himself with the utmost civility towards the police officers who went to his house in search of the body, when the fact is, he swore at them from his window, and threatened to blow their brains out; and it was only upon their proceeding to force the door of his lecture-room, that it was opened by one of the keepers." From Knox, the *Chronicle* passed on to Paterson, his curator or porter, who, that journal asserted, "actually offered Docherty for sale to a respectable gentleman in the profession before she was despatched; he saw her in Burke's house immediately after the spark of life had been extinguished; and he then again offered her for fifteen pounds to the same gentleman, who indignantly ordered him out of his house." The *Caledonian Mercury* was equally plain, and would give no countenance to the idea that Knox and his assistants had been imposed upon by Burke and Hare, and gave all its weight in favour of the "complicity" idea. It also repeated the story of the supposed negotiations between Paterson and "the most respectable teacher of anatomy" as to the sale of Docherty's body for fifteen pounds, with this addition that he stated to the gentleman in question, on his second visit, "that the body he wished to dispose of was the body of a woman; and that he had 'a desperate gang' in his pay, through whom he could procure as many subjects as he wished for."

Knox remained silent under all these charges, but Paterson could not, and he wrote a letter on the 15th January to the editor of the *Caledonian Mercury*. He contended that he had been shamefully wronged by "the many false and cruel accusations made against him," and stated that he had "only kept silence by advice of Dr. Knox, as he was, according to promise, to espouse my cause, and clear my innocence; but which I now find he has cruelly failed to perform. And I now most solemnly protest, and can prove, that throughout all the services rendered by me to Dr. Knox, I acted entirely under his own guidance and direction." He also denied

a statement to the effect that he had absconded, and had been dismissed from Dr. Knox's service; and he called upon the authorities, if they conceived him in any way guilty in the transaction, to bring him to a public trial, and either let him be found guilty or have the benefit of an honourable acquittal. To this letter the editor of the *Mercury* appended some questions, but these will be best explained by a quotation from a letter from Paterson, dated 17th January, 1829, in reply to them. He says:—"After the publication of my letter to you in this day's paper, I observe you have inserted the following queries:—First, whether it be true or the reverse, that about one o'clock on the morning of 1st November last, I, in conjunction with another individual whom I well know, offered the body of a woman for sale to a highly-respectable lecturer on anatomy? My answer is simply, No. Secondly, whether or not I asked fifteen pounds for the subject, stating at the same time, that Dr. Knox would give only twelve?—Answer, No. Thirdly, whether I did not say, that I wished to have no further dealings with the Doctor, because he had handed us over to his (the Dr.'s) assistants? My answer is, No. And lastly, whether the body so offered was or was not the body of the woman Docherty? To this I answer, that having no body to offer, the transaction could not take place." Paterson proceeded to explain, however, that about three weeks before the murder of Docherty a friend of the "most respectable anatomist," referred to by the *Mercury*, called on him and asked where the individuals lived that were in the habit of supplying Dr. Knox with subjects. He did not know, so he could not give any information, but as the sum of fifteen pounds was offered for a subject he promised that the next time he saw the resurrectionists he would mention the matter to them, provided, always, that Dr. Knox was supplied. Paterson again gave a most emphatic denial to the statement of his dismissal, which the *Mercury* had reported upon the authority of Dr. Knox himself, and he enclosed a copy of a letter from that gentleman, dated the 11th January, asking him to return to his employment.

Again the *Mercury* returned to the charge, and said:—"Now this is not a question of probability but of *fact*;

and we again ask him (Paterson), *whose* was the corpse he confessedly offered for sale an hour or an hour and a-half after Burke had, according to his own evidence in the witness-box, told him he had 'something for the doctor, which would be ready in the morning.' Paterson replied to this on the 23rd January, and complained that he was being made "the scape-goat for a personage in higher life." As his letter is not only interesting in itself, but also because there is introduced in it an account of a transaction with Andrew Merrilees—the Merry Andrew of an early chapter of this work—it is worth quoting pretty fully.

"I will now give you," says Paterson, "what I trust the public will consider a *satisfactory* explanation of the transaction alluded to in your paper of the 22nd, which will at the same time answer the queries in the *Caledonian Mercury* of the 17th. About three weeks before the murder of Docherty, a Mr. ——— called upon me, who was very intimate (or appeared to be so) with Dr. ———. During the conversation, in a walk along the Bridges, the topic turned upon the scarcity of subjects amongst the lecturers. I was asked how Dr. ——— was supplied; and after informing him to the best of my knowledge, he, Mr. ———, said he understood that Dr. ——— could not get one, and that he had offered him fifteen pounds if he could get one for him. My answer was, that I thought there was nothing more easy, as there were plenty of resurrection men came about Dr. ———'s rooms, who might procure one for him. He then requested me to accompany him to Dr. ———'s house, and he would ascertain if Dr. ——— had got one. I did so. Dr. ——— and Mr. ——— talked for some time on various matters, when the discourse turned upon the matter in question. I heard Dr. ——— offer fifteen pounds for a subject, as he was in great straits. *I took no part in the conversation, nor made any remark*; but after we had left Dr. ———, Mr. ——— strongly urged me to allow a subject to go to Dr. ———'s rooms, when any should arrive, without the knowledge of Dr. ———, for which no doubt *I was to receive a remuneration for my trouble*. Dr. ——— about that time had fifteen subjects, and I did resolve to allow one to Dr. ——— at the first opportunity. Shortly after this time,



Burke and Hare brought a subject, but not having an opportunity of speaking to them that night, resolved to do so when I next saw them, or any *other* of the resurrectionists. A few days after a notorious resurrectionist called at the rooms and informed me that he was going to the country upon business, and inquired if the Dr. was in want of goods. I replied that possibly he might, but that I wanted one for a friend, and would pay him when he returned. The bargain was struck, and he received earnest and a trunk, saying he had two customers before me, and it might be eight or ten days before he could supply me, as the grounds were strictly watched. This passed over, and on Friday evening, the 31st October, a person brought a letter addressed to Mr. ———, Surgeon's Square. This turned out to be from Andrew M——s (or Merry Andrew, as he was styled). The following is a literal copy:—

“ ‘ Oct. 29.

“ ‘ Doctor am in the east, and has been doin little busnis, an short of siller send out abot aught and twenty shilins way the carer the thing will bee in abot 4 on Saturday mornin its a shusa, hae the plase open.

“ ‘ AND. M——s.’

Just after I received this letter I went with Mr. ——— to spend the evening, and returned home about twelve o'clock. I found Burke knocking at the door of my lodgings. . . . After my return from Burke's, which was only a few minutes past twelve o'clock, I went to bed: the letter had escaped my memory. I slept none: the suspicions I had entertained of Burke and Hare, and the determination I had come to *to examine the body of the subject they were to send*, and a retrospective view of their late conduct, passed before me. The letter now came into my mind; it was between *three and four o'clock*: I went to Dr. ———; did say I expected a subject from his friend: *did not say what place*. The Doctor desired it to be sent to his lecture-rooms, as his assistants were or would be in waiting. He did not refuse it, as has been alleged. The Doctor did not receive it, however, as Mr. Andrew M——s thought proper to address it to another quarter—a very common trick with him, especially if he received part in advance. . . . I confess that the circumstance of the subject coming from the

east at the nick of time Docherty was murdered looks rather suspicious. But when I inform you that I have seen three subjects at the same time of day sent to the lecture-room from different quarters, your suspicions will cease." For the third time he denied that he had been dismissed by Dr. Knox, and said that since his last letter the Doctor had sent for him, expressing the most friendly intentions towards him.

But a more serious charge than that was made against David Paterson in a communication from Dr. Knox's principal assistants, also published in the *Caledonian Mercury*. These gentlemen, after declaring that Paterson was not "keeper of the museum belonging to Dr. Knox," though he was cited and gave his evidence at the trial of Burke as such, said:—"With regard to his connexion with Burke and Hare, he was so far associated with them, that he was on the eve of entering into an agreement with one of these miscreants to accompany him to Ireland, that they might (as he said) procure a greater supply of subjects, and at less price, the people being poorer there." Whether this was the case or not was never made clear; but it was certainly stated by Burke in his *Courant* confessions that such a project was on foot, though he did not state who the other party was. Popular belief was that it was Paterson.

Paterson had taken another method of repelling the allegations brought against him. This was a pamphlet, in the form of a letter to the Lord Advocate, under the title of "An Echo from Surgeon's Square." The *Courant* of Thursday, 22nd January, gave an account of this document, and taking it all in all, after making allowance for the prejudice the paper exhibited in common with the great mass of the public against the man, it is a fair indication of its contents. The statement, it said, had for its object the vindication of Mr. D. Paterson, the late assistant of Dr. Knox, and of course threw the blame on others. The pamphlet contained a good deal of irrelevant matter, and sundry details as to the means of procuring subjects for the anatomical schools which were not of great interest, and rather calculated to do injury. It contained, however, "information of greater importance, if it can be depended on, which we have no doubt will be eagerly sought

after in the present general excitation." The document stated that D—— P—— was first in the employment of Dr. —— in the year 1824 or 1825, for about one year, and, on his return from the army at the close of 1827, he applied to Dr. —— for his former situation, and was engaged in the beginning of February, 1828, as museum keeper; his salary was very small, but from the fees paid him by the students, he contrived to make a very comfortable livelihood. He had nothing whatever to do with the subjects (or bodies) brought to the lecture room; his sole duty was to keep the museum. At that time he did not know how the doctor obtained his subjects. Shortly after he saw Burke and Hare (Burke was called John, and Hare, William), and understood from a conversation that passed between them and one of the assistants that they had been in the habit of supplying subjects previous to that time. He threw the blame of negotiating with these two men on one of Dr. Knox's assistants, and said that once, after he began to be suspicious of the true nature of the calling of these two men, he asked Burke where he got the body he was then offering. The man replied sternly—"If I am to be catechised by you where and how I get subjects, I will inform the doctor of it, and if he allows you to do so, I will bring no more to him, mind that." In other respects the "Echo" was very similar to the letter by Paterson already quoted.

But before concluding this part of the subject it will be proper to give Leighton's opinion of Paterson's position in the dispute. Writing in 1860 on the complicity of the doctors, he gives this calm testimony in Paterson's favour:—"As for the curator, who is still a respectable inhabitant of Edinburgh, and upon whom the short-lived blind fury of some newspapers of the time fell, with much surprise to himself, and much indignation elsewhere, he was, of all the parties concerned, the most free from blame; nor did any one but himself come forward and assist the authorities in the prosecution. Nay, it is understood that, under a passing reflection that the number of apparently unexhumed bodies brought by these men required explanation; he mentioned the circumstance to his principal, and that gentleman silenced him at once by the statement that they had long known of the practice of sale and purchase, and

so the suspicion passed away." Viewing the whole matter after the lapse of fully half a century, there seems no reason to doubt that Paterson, though certain of his acts were, to say the least of it, shady, and morally reprehensible, if not legally punishable, was made, as he himself said, "the scape-goat for a personage in higher life."

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## CHAPTER XXVII.

*The Legal Position of Hare and his Wife—Gossip about Burke—Mrs. Hare and her Child—Constantine Burke—Anatomical Instruction—Mrs. Docherty's Antecedents.*

BUT in addition to this outcry against Paterson, the public mind was, as has already been indicated, agitated by the rumours that no further action was to be taken against Hare, and that he and his wife were to be liberated. The *Caledonian Mercury* was greatly exercised over the following passage in the charge given to the jury at the trial by the Lord Justice-Clerk:—"They (the jury) had been told of the Hares being concerned in the murders. With what murders they might be chargeable, he did not know; but to a certainty they could not be libelled on either of the charges contained in the indictment now under trial, and which had not been sent to the jury." The *Mercury* argued, and quoted legal authorities, too, that Hare and his wife were liable to be tried for the murders of Mary Paterson and Daft Jamie, regarding which they had not given evidence; and that the protection of the court only extended to any self-crimination in the case in which they had given evidence. "The public prosecutor," it was contended, "has discharged all title to molest them in regard to the murder of Docherty, the only part of the libel against Burke which went to trial, because they gave evidence and crimated themselves in regard to the crime; but he has not discharged

this title to pursue them for the murder of Paterson or Daft Jamie; and, accordingly, when Mr. Cockburn proposed to interrogate Hare in his cross-examination, concerning his connection with the latter crime, the Court interposed, by telling the witness that he was entitled to decline answering such a question as tending to criminate himself, and as beyond the reach of the protection afforded him for his evidence in the case of Docherty. It was frequently stated from the bench, that his answering the question put by Mr. Cockburn would implicate himself in the crime. And how else could he have been entitled to decline answering it? As a protected *socius*, he was bound to answer every question that should be asked him within the compass of that protection; and if it had extended to and included the murder of Jamie, which was included in the same charge, the obligation to answer would, of course, have been co-extensive with the protection." The *Edinburgh Weekly Chronicle* lamented "the acquittal of the fiend M'Dougal," and said there had been some very painful suspicions that the investigation of these murders was not to be further prosecuted. "We happen to know," they said, "that a certain public functionary (not the Lord Advocate, whose zeal in forwarding the late trial is beyond all praise) remarked the other day that *they* were perfectly sick of the business, and were resolved to stir no further in it, lest it should bring shame on the city! . . . In the present state of the public mind, no Lord Advocate will dare to say, 'Thus far—(to the death of Burke)—shall the tide of public vengeance flow, and no farther.' . . . It is satisfactory to reflect, however, that our law has wisely restricted the Lord Advocate's prerogative, so that, even were he disposed, he cannot screen a murderer from justice, if the deceased's relations incline to prosecute him. The law says that murder shall not go unavenged, if either the public, represented by the Lord Advocate, or those who have been deprived by it of a near relative, insist for punishment. Will not, then, the friends of some of the butchered individuals, whose blood calls to Heaven for retribution, be roused to prosecute the butchers? No one can

doubt that money would be liberally provided by the inhabitants to defray all expenses."

The rumours which so alarmed these newspapers, and, it must also be said, a large portion of the public, had foundation in fact. After Hare and his wife had given evidence against Burke, they were recommitted to jail under a warrant of the Sheriff. This was done, probably, to allow the Lord Advocate time to consider in what relationship he stood towards them—whether he could try them on the first two charges in the indictment, or whether he was bound to release them, they having turned King's evidence. He seems to have come to the conclusion that he must liberate them, and, accordingly, on the 19th of January, the commitment was withdrawn. This was a wise decision, notwithstanding all that was said to the contrary at the time in the public prints and elsewhere. If the Crown could not gain a conviction against Burke of the murder of Docherty without the aid of two of his accomplices, it was not at all likely that it would be able to convict Hare and his wife without similar evidence. Thus, so far as the public prosecutor was concerned, the two informers were free; but proceedings of another kind were taken against Hare, who was detained in prison pending their settlement, though his wife was liberated on the 19th of January.

Other matters were also attracting the attention of the people, for every issue of the newspapers gave circulation to gossip stories about Burke or his accomplices, or relating to circumstances bearing in some way or other upon the subject which was causing such universal interest. It was stated, for instance, that at one time Burke made considerable sums of money among the unlettered inhabitants of the West Port by writing begging petitions, and that while working at the construction of the Union Canal he for the first time engaged in the trade of a resurrectionist. Whatever truth there may have been in the first part of this statement, there is good reason to believe that the latter part was founded upon mere idle rumour. It was also alleged that in the course of the preceding summer Burke made an attack upon an unfortunate girl in St. Cuthbert's Entry, at the head of the West Port, evidently with murderous intent. She escaped from his grasp, and ran

to the watch-house, where she gave a particular description of her assailant to the police, who would certainly have been able to apprehend him had he not judiciously left the city for a time until the hue and cry was given up. It is difficult to believe that Burke would have acted so incautiously—that he should have sought to dispense with that drugging with whisky which so often did half his work for him. His friendly relationship with certain members of the police force was emphasised by a statement that he was in the habit of going home at any hour of the night or morning, always accompanied by the constable on the beat, to whom he gave a glass or two of whisky out of a bottle he carried with him, and it was urged that an inquiry should be made into this breach of discipline.

Such were the items of gossip about Burke, to which publicity was given by the newspapers, but a charge of a serious kind was made against Mrs. Hare in the issue of the *Courant* published on the 1st January, 1829. It was stated that Mrs. Hare, after Log's death, and at the beginning of her relationship with Hare, bore a child, which the people of the neighbourhood asserted was murdered by her. So confidently was this allegation put forward that it was added that there would be no difficulty in obtaining sufficient evidence to establish a case against her for destroying the life of the infant. A singular fact was mentioned in the same paper in connection with Hare. His mother and sister from Ireland arrived in Edinburgh a day or two before, purposing to visit him, and it was not until they were within two miles of the city that they were apprised of the fact that he was involved in a series of the most shocking murders. Another statement was that Hare, in the course of the summer of 1828, had murdered a young woman who was a servant to one of the city clergymen. This, if true, would point to the identity of the body over the proceeds from the sale of which Burke quarrelled with his colleague.

Another person who came in for a share of public attention was Constantine Burke, the brother of the condemned man, in whose house in the Canongate, it has been seen, Mary Paterson was murdered. After the trial he was continually in danger of being maltreated by the mob, and at last the Sheriff gave him a

small sum of money to enable him and his family to leave the city. According to the *Courant*, Constantine had always been a sober, industrious, poverty-pressed man. He admitted having once taken a chest to Surgeon's Square, being conducted to the place by his brother and Hare, although he was not aware of its contents or its destination. Receiving ten shillings for his trouble, he suspected his employers were resurrectionists, and he then declared he would do no work for them again.

While all these stories were in circulation, thoughtful persons were considering the revelations in their most practical bearing. They admitted the necessity for teachers of anatomy being supplied with a sufficient number of subjects for dissection, for it was apparent that had the legitimate supply been adequate, there would have been little temptation to any one to enter upon a career of crime. Theories were started as to how the evident defect was to be remedied, letters on all aspects of the subject were sent to the newspapers, and a wordy battle was fought out. Amid all this clamour, on the 5th of January, 1829, several of the anatomical teachers in Edinburgh had an interview with the Lord Advocate; and on the 7th of the same month the Royal College of Physicians and Surgeons held a meeting at which they passed resolutions expressing regret that anatomical instruction, which they conscientiously believed to be an essential part in the education of medical men, should ever have furnished a temptation to such unexampled atrocities, and calling upon the Legislature to remove the restrictions under which such instruction was then given.

This, however, was only one side of the question, and the resolutions, right and proper in themselves, only served to inflame the public mind, for they showed that bodies obtained at least in a surreptitious manner were being used. Other incidents added to the general excitement. Several boys, belonging to respectable families, disappeared suddenly, and the conclusion at once jumped at by their despairing relatives was that they had been stolen away to supply the dissecting tables of the teachers of anatomy. No other explanation seemed at all tenable, until the missing lads were discovered, some days later, in a village some miles from Edinburgh, whither they had gone to hawk broadside or pamphlet accounts of the trial



of Burke and M'Dougal. Another matter which gave additional cause for anxiety was an attempt to steal the body of a man from a house in Edinburgh. Early on the morning of Tuesday, the 20th January, some passers-by observed a curious-looking package being lowered by means of a rope from the upper window of the house. On examination, it was found to be the body of a man named M'Donald, better known locally as "Nosey," on account of the size of his nasal organ, who had died the day before. The thieves had broken into the house, where the corpse was lying unattended, and were in the act of removing it when the discovery was made. They managed to escape by the back of the house and were never captured.

This desultory chapter may be brought to a close by an interesting item regarding Mrs. Docherty, the last victim of the West Port murderers, to which publicity was given by the *Glasgow Herald* shortly after the conclusion of the trial. "The poor woman Sally Docherty or Campbell," it was stated, "was well known amongst the inhabitants of the Old Wynd, Glasgow, about two years ago, where she kept a lodging-house for indigent people. She was a thin-faced woman, generally wore a red duffle-cloak, and had, of course, experienced a great deal of hardships in the station of life to which she was habituated. At the period alluded to, she had a son, a shoemaker, and a young man for a husband, of the name of Campbell. The last time she appeared in the Glasgow police office was as the complainer against this fellow, who is still living, for demolishing all the crockery, and pulling down her grate from the fire-place." It was in search of the son mentioned in this notice that Mrs. Docherty went to Edinburgh, where she met with a death the violent nature of which was not inconsistent with the sad life she had lived. But it is a remarkable fact that while the murder of this poor woman was the crime which led to the discovery of the dreadful conspiracy in which Burke and Hare were engaged, and to the execution of the former, the popular mind speedily lost hold of the fact, and oral tradition in many parts of the country—in the city of Edinburgh itself—even to this day, has it that Burke suffered the last penalty of the law on the scaffold for the murder of Daft Jannie,

## CHAPTER XXVIII.

*Burke's Spiritual Condition—The Erection of the Scaffold—The Criminal's Last Hours—Scene at the Execution—Behaviour of the People.*

THE hour for the closing scene of the Burke and Hare tragedy was now almost come, and Burke, to all appearance, seemed to regard his approaching fate with composure. He is even reported to have declared that had a pardon been offered him he would have refused it; but, if the story is true, it is more likely that the firm conviction that a pardon would not be granted had as much to do with the remark as any sentiment of resignation. It was simply a case of bowing before the inevitable. And so far as the outward affairs of religion were concerned the condemned man was very attentive, though it could not be said that he looked forward to eternity with hope, or, if he did, he kept his feelings very much to himself. A large section of the people, always inclined for dogmatic discussion on religious matters, found full scope for their critical powers in the consideration of Burke's spiritual state. The rank and unbending Calvinists argued that a new spiritual birth was, under the circumstances, if possible—and on that point they were doubtful—not at all probable; while the Armenians, with a wider theology, thought in the words of the Paraphrase:—

“ As long as life its term extends,  
Hope's blest dominion never ends ;  
For while the lamp holds on to burn,  
The greatest sinner may return.”

Theologians, however, could discuss as much as they liked, but it was never certain whether Burke's spiritual state was such as to give reason for hope.

The execution, it has already been seen, was fixed to take place on Wednesday, the 28th January, 1829, and to this event the people had looked forward with a ghastly satisfac-

tion. Indeed, so high did public feeling run that the authorities deemed it prudent to remove Burke from Calton Hill Jail to the lock-up in Liberton's Wynd at four o'clock on the morning of Tuesday, the 27th January, the day before the execution. This was absolutely necessary, as, had the removal taken place at a time when the people were about, or were expecting it, the probability was that, instead of undergoing a judicial execution, Burke would have been torn to pieces by an infuriated mob. The long confinement in prison had not changed his appearance much. He was given a black suit in which to appear on the scaffold, and this afforded him some consolation. Shortly after noon on the same day, preparations were begun at the place of execution in the Lawnmarket. Strong poles were fixed in the street, to support the chain by which the crowd was to be kept back, and on this occasion the space was considerably larger than usual. The work progressed, witnessed by a large crowd, which gradually swelled in size, as the excited people came to see the erection of the structure that was to work legal vengeance on a hated murderer. As the night went on, and the work approached completion, the rain fell heavily, but the crowd, notwithstanding, showed no diminution; and whenever any important part of the erection was finished they raised an approving cheer. About half-past ten o'clock the frame of the gibbet was brought to the spot, and its appearance was the signal for a tremendous shout. It was quickly put in its place, for the men did their work with a grim satisfaction, and when all was completed, the crowd, as a contemporary newspaper put it, "evinced their abhorrence of the monster Burke, and all concerned in the West Port murders, by three tremendous cheers; and these were heard as far away as Princes Street." This was about two o'clock in the morning, and, wet and dismal though it was, those anxious to see Burke suffer for his crimes were beginning to take up their places. Closets and stairs were quickly packed by intending sight-seers, who preferred to remain outside all morning than run the risk of being disappointed by arriving late. By seven o'clock the vicinity of the scaffold was occupied by one of the densest crowds until that time witnessed on the streets of Edinburgh—from

20,000 to 25,000 persons were calculated to be present—many of the best people in the city being among them. Every window giving a view of the place of execution had been bought up some days previous, the price paid varying, according to the excellence of the view, from five to twenty shillings. “The scene at this time,” said the writer already quoted, “was deeply impressive. No person could without emotion survey such a vast assemblage, so closely wedged together, gazing on the fatal apparatus, and waiting in anxious and solemn silence the arrival of the worst of murderers.”

Matters, meanwhile, had been going on quietly inside the prison. Burke had, during the day, been visited by the Rev. Messrs. Reid and Stewart, two priests of the Roman Catholic Church, and the Rev. Messrs. Porteous and Marshall, Protestant ministers, and he received their spiritual consolations calmly, but without much apparent benefit, though he lamented his connection with the murders to which he had confessed. He slept soundly the greater part of that night, and rose about five o'clock on the Wednesday morning. Shortly after waking he held up his hands, and remarked, with an earnestness that struck his attendants, “Oh, that the hour was come which shall separate me from this world!” This was thoroughly dramatic, but whether it proceeded from a weariness of this life and a hope for a better, can never be known. An incident even more dramatic, but similar in character, occurred shortly afterwards. He had been placed in irons shortly after his condemnation, and he now expressed a desire to be freed from them. The men proceeded to knock them off, and the fetters fell with a “clank” on the floor of the cell. “So may all my earthly chains fall!” exclaimed Burke. These remarks, whatever his spiritual condition, showed that he was a man, however debased by a terrible course of wickedness, of considerable education and natural refinement. About half past six o'clock the two Catholic clergymen who had been so attentive to him arrived at the lock-up, and for half an hour he was closeted with Mr. Reid. Then he entered the keeper's room, and sat down for a short time in an arm-chair by the side of the fire, deeply immersed in thought—that his meditations were saddening was apparent by

the heavy sighs that came now and then from his breast. He was at last fairly in the presence of death; but the law was more merciful to him than he had been to his victims—he was given time to prepare for the awful change, but they were hurled in the midst of their sins, drunken and unrepentant, into eternity. Bailies Small and Crichton had meantime entered the jail, and the two priests commenced the last religious exercises. The condemned man joined in the devotions with apparent fervour, and he seemed much affected by the exhortation to “confide in the mercy of God.” After that he retired to an adjoining apartment, but on the way he was met by Williams, the executioner, who accosted him in an unceremonious manner. Burke waved him away, remarking, “I am not just ready for you yet,” but Williams followed him, and set about the work of pinioning. The criminal submitted to the operation without a movement, and simply remarked that his handkerchief was tied behind. When this was done he accepted a glass of wine which was offered him, and on putting it to his lips he looked around, and gave his last toast—“Farewell to all my friends!” For a few minutes he talked with the Protestant ministers, and then the magistrates, dressed in their official robes, re-entered the room, with their rods in their hands. Burke, seeing the end had now come, expressed his gratitude to the magistrates, and especially to Bailie Small, for their kindness to him, and also to the prison and lock-up officials. The solemn procession then formed, and marched out of the jail to the scaffold.

Burke was supported on either side, as he walked up Liberton’s Wynd towards the Lawnmarket, by the Catholic priests, and he leaned on the arm of Mr. Reid. The two bailies headed the procession, and whenever they made their appearance the enormous crowd sent up one loud and simultaneous shout. The condemned man was affected by this outburst of popular feeling, and, as if afraid the mob might break through the barriers and tear him to pieces, he made haste to ascend the scaffold. His appearance there was the signal for another yell of execration from the multitude. Shouts of “Burke him,” “choke him,” “No mercy, hangie,” came from all sides; but otherwise the crowd showed no signs of interfering. They





**WILLIAM HARE,**  
(From a Sketch taken in Court.)

wished to see the hangman do his duty properly—if he did so, they had no particular desire to take part in the work. Burke looked round somewhat defiantly, and then quietly kneeled down by the side of one of the priests, and engaged in devotional exercises for a few minutes; after which the Rev. Mr. Marshall offered up a short prayer. This solemn ceremony, however, found small favour with the spectators—they wished to see the culprit, and the kneeling kept him out of their view, so they cried out to the persons on the scaffold, “Stand out of the way,” “Turn him round;” and though the magistrates intimated by signs as well as they could the nature of the ceremony that was going on, the clamour still continued, and there were frequent shouts of “Hare, Hare, bring out Hare! Hang Knox, he’s a *noxious morsel!*” and others of a similar kind. About ten minutes had now gone, and the crowd was becoming impatient. After he had completed his devotions, Burke lifted the silk handkerchief upon which he had been kneeling, and put it in his pocket. He gave a glance up to the gallows, and then stepped on the drop with a firm step. The executioner proceeded to adjust the rope round his neck, and his confessor said to him, “Now say your creed; and when you come to the words, ‘Lord Jesus Christ,’ give the signal, and die with his blessed name on your lips.” The shouts from the crowd still continued, and the people, out of their better reason by the excitement, cried out, “Burke him; give him no rope;” “Do the same for Hare;” “Weigh them together;” “Wash the blood from the land;” and “You’ll see Daft Jamie in a minute.” Williams then tried to loosen Burke’s *neckerchief*, but he found some difficulty in doing so, and the condemned man said, “The knot’s behind.” These were the only words Burke uttered on the scaffold. The rope was then adjusted, a white cotton night-cap was put on his head and pulled over his face, and Burke, with an air of firmness, began the recitation of the creed. When he came to the holy name he gave the signal, the bolt was drawn, and the greatest murderer of his time—except, perhaps, his associate Hare—was swinging on the gallows. The multitude set up a fearful yell, and every time the body of the dying man gave a convulsive twitch the



crowd cheered to the echo. An eye witness said—"He struggled a good deal, and put out his legs as if to catch something with his feet; but some of the undertaker's men, who were beneath the drop, took him by the feet, and sent him spinning round—a motion which was continued until he was drawn up above the level of the scaffold." It was now fully a quarter past eight o'clock, and Burke had been "separated from this world." The body was allowed to hang until five minutes to nine o'clock, when the executioner cut it down amid the gloating yells of the people. They made a rush forward to the scaffold as if to lay hold of the corpse of the murderer, but they were kept back by the strong force of policemen who lined the barriers. The assistants at the scaffold, too, seemed to be affected by the general frenzy, and a scramble took place among them for portions of the rope, or shavings from the coffin, or any thing that would serve as a relic of the closing scene of the West Port murders—the great Burke and Hare tragedies. The body was conveyed to the lock-up, and the large crowd dispersed, without a single mishap having occurred, though the people still laboured under intense excitement, which even an accident might divert in a dangerous direction.

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#### CHAPTER XXIX.

*Lecture on Burke's Body—Riot among the Students—Excitement in Edinburgh—The Public Exhibition—Dissection of the Body of the Murderer—Phrenological Developments of Burke and Hare.*

It was certainly a strange conclusion to the West Port tragedies that the man who had been so active a participant in them, and who had assisted in supplying so many "subjects" for dissection, should himself, after death—a death also by strangulation—become a "subject" of more than

ordinary interest. Not only was that the case, but the public exhibition of the body, while it may be regarded as being in a sense an act of retributive justice, displays a certain amount of barbarity of feeling and sentiment which it is difficult to believe could have existed in this country so short a time ago as fifty years. The rapid advance made by all classes during that period is generally admitted, but it should be borne in mind, in reference to the events now about to be described, that only a few years ago public executions were common, and that the change in the manner caused among certain classes some little irritation. The propriety of having executions in private is now fully and freely acknowledged, but having regard to the comparatively recent change we should not look upon our respected fathers and grandfathers as altogether barbarous.

But passing from the line of thought suggested by the events that followed Burke's execution, the thread of the narrative may be continued. The body, as already stated, was conveyed from the scaffold to the lock-up, and there it remained until the next morning. It was expected it would be taken to the College during the day, and a large crowd surrounded the building. The motive of the people may have been simple curiosity, but the authorities, being afraid the rougher part of the crowd, if they obtained an opportunity, might seize the body and treat it with scant respect, deemed it proper to delay the removal until such time as it could be done with safety. This was done early on Thursday morning, when the excited populace was asleep. The body was laid out on a table, and several eminent scientists—among them Mr. Liston, Mr. George Combe, Sir William Hamilton, and Mr. Joseph, the sculptor—who took a cast for a bust—examined it before the students began to gather.

Leighton, who seems to have seen the body, says it was "that of a thick-set muscular man, with a bull-neck, great development about the upper parts, with immense thighs and calves, so full as to have the appearance of globular masses. The countenance, as we saw it, was very far from being placid, as commonly represented, if you could not have perceived easily that there remained upon it the bitter expression

of the very scorn with which he had looked upon that world which pushed him out of it, as having in his person defaced the image of his Maker." He supplements this by a sentence from the notes of another eye-witness:—"He (Burke) was one of the most symmetrical men I ever saw, finely-developed muscles, and finely-formed, of the athlete class."

Dr. Munro, in the afternoon of the day the body was removed to the College, gave a lecture upon it, and for this purpose the upper part of the head was sawn off, and the brain exposed. The brain was described as being unusually soft, but it was pointed out that a peculiar softness was by no means uncommon in criminals who had suffered the last penalty of the law. While this lecture was going on a large number of students had assembled in the quadrangle of the College, and clamoured for admission. Those who were entitled to be present at the class, opening at one o'clock in the afternoon, were provided with tickets, but owing to the greatness of the crowd it was with the utmost difficulty that these could be made available, even with the assistance of the police. At last all the ticket-holders were admitted, and then the doors were thrown open to as many of the other students as the room would accommodate. Many, however, were left outside. The lecture began at the regular hour, but the nature of the subject caused it to extend over two hours, instead of the usual time. Meanwhile, the crowd in the quadrangle had grown so unruly that a strong body of police had to be called to preserve order. Instead of keeping the youths in awe, this display of force rather exasperated them, and they made several attempts to overpower the constables. In the course of the struggle the glass in the windows of the dissecting room was destroyed. The police had to use their staves, and many of the combatants on both sides were injured, some of them rather seriously. The Lord Provost and Bailie Small, the college bailie, put in an appearance, thinking their presence would have a salutary effect, but they were glad to retire with whole bones under the abuse that was showered upon them. The disturbance continued until four o'clock, when Professor Christison came to the rescue. He intimated that he had arranged for the admission of the young men in bands of fifty at a time, and

had given his own personal guarantee for their good behaviour. This was an appeal to their honour, which is always found to be effectual with a crowd of students, however riotously inclined, and in the present instance the youths cheered the professor lustily. The tumult ceased, and some of the ring-leaders, who had been apprehended by the police, were liberated on their parole by the magistrates.

The students were thus pacified, but it was far otherwise with the city mob. There had been a restlessness throughout Edinburgh all day, and it was threatened that unless the public were admitted to view the corpse an attack would be made on the college, and the remains of the murderer taken out and torn to pieces. The manner in which the students had gained their end was quite after the mind of the discontents, and in their case it was, owing to greater numbers, likely to be more quickly successful. The magistrates were in a quandary, but they came to the conclusion that it would be better to have a public view, and in this way endeavour to allay the tumultuous spirit that was abroad. Accordingly, they sent out scouts among the crowds that thronged the streets to intimate their decision, and by this means the people were induced to return home.

Those who witnessed the scene at the College of Edinburgh on Friday, the 30th January, 1829, would never readily forget it. The magistrates and the university authorities had made the most elaborate preparations for exhibiting the body of Burke. It was placed naked on a black marble table in the anatomical theatre, and a through passage was arranged for the accommodation of the visitors. The upper part of the skull, which had been sawn off for the purposes of the lecturer on the preceding day, was replaced, and to the uninitiated it was unlikely that what was apparently a slight scar would be much noticed. "The spectacle," says Leighton, who saw it, "was sufficiently ghastly to gratify the most epicurean appetite for horrors. There was as yet no sign of corruption, so that the death pallor, as it contrasted with the black marble table, showed strongly to the inquiring and often revolting eye; but the face had become more blue, and the shaved head, with marks of blood not entirely wiped off, rather gave effect to the

grin into which the features had settled at the moment of death. However inviting to lovers of this kind of the picturesque the broad chest that had lain with deadly pressure on so many victims—the large thighs and round calves, indicating so much power—it was the face, embodying a petrified scowl, and the wide-staring eyes, so fixed and spectre-like, to which the attention was chiefly directed.” It was to see this sight that the people crowded the streets of the Old Town of Edinburgh, and made it appear as if the occasion were one of general holiday. The doors of the anatomy theatre were thrown open at ten o'clock in the forenoon, and from that hour until dusk the crowd streamed through the narrow passage in front of the body at the rate, it was calculated, of sixty per minute, so that the total number who viewed it in this way was about twenty-five thousand. The crowd was composed for the most part of men, though some seven or eight women pressed in among the rest, but they were roughly handled by the male spectators, and had their clothing torn. Notwithstanding this extraordinary number there were still many who did not obtain admittance, and in the hope that the exhibition would be continued on the Saturday, many returned to the college next day, but to their great disappointment they were refused admission. This was Burke's last appearance.

An informant of Leighton gives the following interesting notice of the subsequent treatment of the body of the murderer:—“After this exhibition Burke was cut up and put in pickle for the lecture-table. He was cut up in quarters, or rather portions, and salted, and, with a strange aptness of poetical justice, put into barrels. At that time an early acquaintance and school-fellow was assistant to the professor, and with him I frequently visited the dissecting-room, when calling on him at his apartments in the College. He is now a physician in the Carse of Gowrie. He shewed me Burke's remains, and gave me the skin of his *neck* and of the right arm. These I had *tanned*—the neck brown, and the arm white. The white was as pure as white kid, but as thick as white sheepskin; and the brown was like brown tanned sheepskin. It was curious that the mark of the rope remained on the leather after being tanned. Of that neck-leather I had a tobacco-doss made;

and on the white leather of the right arm I got Johnston to print the portraits of Burke and his wife, and Hare, which I gave to the noted antiquarian and collector of curiosities, Mr. Fraser, jeweller, and it was in one of his cases for many years, may be still, if he is alive."

Burke's body was thus destroyed, but the qualities which were denoted by the developments of his head gave rise to an excited discussion between phrenologists and their opponents. Combe, the apostle of phrenology, and Sir William Hamilton, the metaphysician, with their followers, waged a terrible war of words over the conclusions to be drawn from the measurements of Burke's head. This is not the place to renew the discussion, but in view of the importance of the question, an estimate of the phrenological development of Burke, published at the time, may be quoted. The account reads thus:—

#### PHRENOLOGICAL DEVELOPMENT OF BURKE.

##### *Measurement.*

	INCHES.
Circumference of the Head, - - -	22·1
From the occipital spine to lower Individuality, -	7·7
From the ear to lower Individuality, - -	5·
From ditto to the centre of Philoprogenitiveness, -	4·8
From ditto to Firmness, - - - -	5·4
From ditto to Benevolence, - - - -	5·7
From ditto to Veneration, - - - -	5·5
From ditto to Conscientiousness, - - -	5·
From Destructiveness to Destructiveness, - -	6·125
From Cautiousness to Cautiousness, - -	5·3
From Ideality to Ideality, - - - -	4·6
From Acquisitiveness to Acquisitiveness, - -	5·8
From Secretiveness to Secretiveness, - -	5·7
From Combativeness to Combativeness, - -	5·5

##### *Development.*

"Amativeness, very large. Philoprogenitiveness, full. Concentrativeness, deficient. Adhesiveness, full. Combativeness, large. Destructiveness, very large. Constructiveness, moderate. Acquisitiveness, large. Secretiveness, large. Self-esteem,

rather large. Love of approbation, rather large. Cautiousness, rather large. Benevolence, large. Veneration, large. Hope, small. Ideality, small. Conscientiousness, rather large. Firmness, large. Individuality, upper, moderate. Do., lower, full. Form, full. Size, do. Weight, do. Colour, do. Locality, do. Order, do. Time, deficient. Number, full. Tune, moderate. Language, full. Comparison, full. Causality, rather large. Wit, deficient. Imitation, full.

“The above report, it may be necessary to observe, was taken a few hours after the execution. In consequence of the body having been thrown on its back, the integuments, not only at the back of the head and neck, but at the posterial lateral parts of the head, were at the time extremely congested; for in all cases of death by hanging, the blood remaining uncoagulated, invariably gravitates to those parts which are in the most depending position. Hence, there was a distension in this case over many of the most important organs, which gave, for example, *Amativeness*, *Combativeness*, *Destructiveness*, &c., an appearance of size which never existed during life, and, on the other hand, made many of the moral and intellectual organs seem in contrast relatively less than they would otherwise have appeared. In this state, a cast of the head was taken by Mr. Joseph; but although for phrenological purposes it may do very well, yet no measurement, either from the head itself in that condition, or a cast taken from it, can afford us any fair criterion of the development of the brain itself. We know that this objection applies to the busts of all the murderers which adorn the chief pillars of the phrenological system; and in no case is it more obvious than in the present.

“Our able professor, Dr. Monro, gave a demonstration of the brain to a crowded audience on Thursday morning [the day before the public exhibition of the body]; and we have, from the best authority, been given to understand it presented nothing unusual in its appearance. We have heard it asserted that the lateral lobes were enormously developed, but having made enquiry on this subject, we do not find they were more developed than is usual. As no measurement of the brain itself was taken, all reports on this subject must be unsatisfactory; nor could the evidence of a eye-witness in such a matter

prove sufficient to be admitted as proof either in favour of or against phrenology.

“The question which naturally arises is, whether the above developments correspond with the character of Burke? It is not our intention to enter into any controversy on this subject; yet we cannot help remarking, that it may be interpreted, like all developments of a similar kind, either favourably or unfavourably for phrenology, as the ingenuity or prejudices of any individual may influence him. We have the moral organs more developed certainly than they ought to have been; but to this it is replied, that Burke, under the benign influences of these better faculties, lived upwards of thirty years, without committing any of those tremendous atrocities which have so paralyzed the public mind. He is neither so deficient in benevolence nor conscientiousness as he ought to have been, phrenologically speaking, and these organs, which modified and gave respectability to his character for as many as thirty years, all of a sudden cease to exercise any influence, and acquisitiveness and destructiveness, arising like two arch fiends on both sides, leave the state of inactivity in which they had reposed for so long a period, and gain a most unaccountable control over the physical powers under which they had for so many years succumbed. But, is the size of the organ of destructiveness in Burke larger than it is found in the generality of heads?—and are his organs of benevolence and conscientiousness less developed than usual?”

While dealing with this question of phrenology, it will be interesting to give the

#### PHRENOLOGICAL DEVELOPMENT OF HARE,

taken the night before his release from prison :—

##### *Measurement.*

	INCHES.
From the Occipital Spine to lower Individuality,	7·17-20ths
From the Ear to lower Individuality, - -	4·8
From ditto to the Occipital Spine, - -	4·3
From ditto to Philoprogenitiveness, - -	5·0
From ditto to Firmness, - - - -	5·7
From ditto to Benevolence, - - - -	5·4



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From ditto to Causality, -	-	-	-	5·0
From ditto to Comparison, -	-	-	-	5·4
Destructiveness to Destructiveness,	-	-	-	5·19-20ths
Secretiveness to Secretiveness, -	-	-	-	5·8
Acquisitiveness to Acquisitiveness,	-	-	-	5·11-20ths
Combativeness to Combativeness,	-	-	-	5·7
Ear to Conscientiousness, -	-	-	-	4·5
Ideality to Ideality, -	-	-	-	5·4

*Development.*

The organ of destructiveness is large in Hare, but certainly rather below than above the average size. The organ of acquisitiveness is also large, but its true development cannot be ascertained in consequence of the size of the temporal muscle, under which it lies. Secretiveness is large. Benevolence is well developed, in proportion to the size of the head. Conscientiousness is full. Cautiousness is large. Combativeness is large. Ideality is very large. Causality is large. Wit is full.

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CHAPTER XXX.

*Hare's Position after the Trial—Warrant for his Commitment Withdrawn—Daft Jamie's Relatives seek to Prosecute—The Case before the Sheriff and the Lords of Justiciary—Burke's Confessions and the "Courant"—The Lord Advocate's Reasons for Declining to Proceed against Hare—Pleadings for the Parties.*

FROM the conclusion of the trial until some time after the execution of Burke, the position of Hare was one of great danger, notwithstanding the protection which his evidence was supposed to have afforded him. After the conviction of his accomplice he was, it has been seen, recommitted to prison, and for a time it was believed the Lord Advocate was conducting investigations in order to see if he could by any means

proceed against the informer. The press and the public clamoured for the indictment of Hare, for all parties were now convinced that Burke, though undoubtedly guilty of the crime for which he had been condemned, had in many respects been but an instrument in the hands of his wily and more vicious confederate. Some incidents occurred which gave colour to the impression that a criminal indictment would be laid against Hare. On the 1st of January, 1829, the *Courant* informed its readers that towards the end of December a girl, who had at one time acted as a servant to Hare, had been apprehended in Glasgow, whither she had fled on being cited as a witness in Burke's trial, and that her evidence would now probably be used against Hare. This was Elizabeth Main, who is mentioned in one of Burke's confessions as Elizabeth M'Guier or Mair.

But in addition to the general public there were two parties who may be said to have had a kind of personal interest in seeing Hare brought to justice. These were Burke and Helen M'Dougal. The condemned criminal, it was stated by the *Courant*, made his first confession before the Sheriff, more for the purpose of inculpating Hare, than with any idea of giving a general view of his crimes. So eager was he to see his late colleague suffer the same punishment as himself, that he offered to give information of circumstances connected with the murder of a woman by Hare in the course of the preceding summer. This was the old matter over which the quarrel occurred. M'Dougal, also, waited on the Sheriff on the 27th and 29th of December for the same purpose. Besides these, if the *Courant* is to be trusted, other witnesses were precognosed, notably several persons who were known to have been in the habit of frequenting Hare's house, but as the police officials had become even more circumspect than ever, not a hint as to the drift of their information was allowed to reach the public.

These circumstances show that in addition to considering the legal aspect involved by Hare's protection as an informer, the Lord Advocate had fully inquired into the possibility of putting him on his trial for a crime to which that protection did not apply. His conclusion was that he could do nothing, and it was definitely ascertained by the 15th of January that the

commitment obtained by the Crown after the trial would be instantly withdrawn. Every precaution had been taken by the public in view of this contingency, and a subscription had been made to enable the relatives of James Wilson (Daft Jamie) to take up the case as private prosecutors.

On the 16th of January, then, a petition was presented to the Sheriff, charging Hare with the murder of "Daft Jamie," and his lordship granted permission to take precognitions. When Hare was visited by the agent and counsel employed by Mrs. Wilson (the mother of the murdered lad), he refused to answer any questions, and when leaving the room to which he had been taken to be examined, he remarked, with a sardonic laugh, to a person standing near, "They want to hang me, I suppose." This was not, however, sufficient, and Mr. Duncan M'Neill, as counsel for Hare, on the 20th of January, presented to the Sheriff a petition for liberation and for the interdict of the precognitions instituted by the private prosecutors. On the following day the counsel for both parties were heard, and the Sheriff pronounced a decision, in which he said:—"In respect that there is no decision, finding that the right of the private party to prosecute is barred by any guarantee, or promise of indemnity given by the public prosecutor, refuses the desire of the petition; but in respect of the novelty of the case, supersedes further proceeding in the precognition before the Sheriff, at the instance of the respondents [the private prosecutors], till Friday next, at seven o'clock, in order that William Hare may have an opportunity of applying to the Court of Justiciary." There was accordingly presented to the High Court of Justiciary, on behalf of Hare, a bill of advocation, suspension and liberation. This was an exceeding long document, setting forth all the circumstances of the case, in which it was pleaded that the case by Mrs. Wilson against the petitioner—who had given evidence against Burke on the assurance that if he made a full disclosure of all he knew relative to the several murders which formed the subject of inquiry, no criminal proceedings would be instituted against him for any participation or guiltiness appearing against him—was incompetent, irregular, oppressive, and illegal, and that he was entitled to liberation,

The review of the court was asked on the Sheriff's judgment. This petition was presented to the court on the 23rd January, and it was ordered to be served on the agent for the private prosecutors, while the parties to the case were ordained to appear before the court on Monday, 26th January. On this same day, Hare presented another petition to the Sheriff craving to be released from close confinement, and to be allowed to communicate with his counsel and agent. The Sheriff pronounced an interlocutor to that effect.

In accordance with the liberty granted by the Sheriff to the private prosecutors to take a precognition as to the murder of Daft Jamie, a visit was, on the 23rd January, paid to Burke in the condemned cell by the Sheriff-substitute, one of the city magistrates, and Mr. Monro, S.S.C., the agent for Mrs. Wilson and her daughter. The criminal spoke out fully as to the circumstances attending the murder of the unfortunate lad, and thus far satisfactory progress had been made.

But an incident occurred which diverted public attention to a certain extent in a different direction. This was an announcement in the *Courant* of Monday, 26th January, that in the issue of the following Thursday there would be published a full account of the execution of Burke and of his conduct during his last moments; together with an important document which had been in their possession for some time—a full confession or declaration by Burke, "which declaration was dictated and partly written by him, and was afterwards read by him, and corrected by his own hand, and his signature affixed to attest its accuracy." This announcement raised the hopes of the public to a high pitch, for the information that had reached them before was only to be gained from a trial, the scope of which was confined solely to one event, and from vague rumours and uncertain statements. Now, it was expected, the whole conspiracy would be made patent. But the announcement was somewhat injudicious and premature, as the case against Hare was pending in the High Court of Justiciary, and it was plainly evident that until a decision was pronounced in it, any confession by Burke would have a prejudicial effect upon him. Accordingly, when the High Court that morning had heard the counsel for parties, Mr. Duncan McNeill, on

behalf of Hare, called attention to the threatened contempt of Court by the *Edinburgh Evening Courant*, in promising to publish the confessions of Burke, and he asked that such publication be interdicted, especially in so far as related to the murder of James Wilson. The Lords of Justiciary concurred in the propriety of the application, granted interdict of the publication in the *Courant* of the document which would likely prejudice Hare, and "recommend all other newspapers to abstain in like manner from so doing." This was highly disappointing to the public. There was, however, no help for it but to wait, and on the Thursday the *Courant* was under the necessity of intimating to its readers:—"We regret to state that owing to an interdict issued on Monday last by the Court of Justiciary, to which we are bound to yield the most respectful obedience, we are prevented for the present from laying before our readers the confessions of Burke. But so soon as it is removed, we shall lay this document before our readers, as formerly promised."

When the Bill of Advocation came before the High Court of Justiciary on Monday, the 26th January, the counsel for the parties were heard at length, after which an order was made that the bill be intimated to the Lord Advocate to make such answer to it as he should think necessary; and also that the counsel for the parties should lodge informations upon the subject matter of the bill by the following Saturday. The Lord Advocate's answer was interesting in more ways than one, for in addition to bringing into prominence the question of whether the private prosecutor was superseded by the public prosecutor, he detailed the difficulties by which he had been beset in the preparation of the case against Burke. Having briefly touched on the question as to whether the court had the power to require, in this shape, a disclosure of the grounds on which he, as public prosecutor, had been guided in the exercise of his official discretion, he pointed out that the four persons arrested for the murder of Mrs. Docherty, denied all accession to the crime. The evidence he had been able to gain was, he found, defective, and was not sufficient to ensure a conviction from a Scottish jury, which was uniformly scrupulous in finding a verdict of guilty where a capital punishment was to

follow. The only mode by which the information essentially wanting could be procured was by admitting some of the accused persons as witnesses against the others, and as he had reason to suspect that at least another case of a similar description had occurred, he felt it to be his imperative duty not to rest satisfied until he had probed the matter to the bottom. For the public interest it was necessary to have it ascertained what crimes of this revolting description had really been committed, who were concerned in them, whether all the persons engaged in such transactions had been taken into custody, or if other gangs remained whose practices might continue to endanger human life. A conviction of all the four persons might lead to their punishment, but it could not secure such a disclosure, which was manifestly of more importance. The question then arose as to what one of the four should be selected as a witness. M'Dougal positively refused to give any information, and as the Lord Advocate deemed Burke to be the principal party, Hare was chosen, and his wife was taken with him, because he could not bear evidence against her. Hare was, in consequence, brought before the Sheriff on the 1st of December for examination, and then, by authority of the Lord Advocate, he was informed by the Procurator-Fiscal that "if he would disclose the facts relative to the case of Docherty, and to such other crimes of a similar nature, committed by Burke, of which he was cognisant, he should not be brought to trial on account of his accession to any of these crimes." "This assurance," continued the Lord Advocate in his answer, "had no reference to one case more than another. It was intended for the purpose of receiving the whole information which Hare could give, in order that the respondent might put Burke and all others concerned on trial, for all the charges which might be substantiated. In giving it the respondent acted under the impression, and on the understanding, that when offences are to be brought to light, in the course of a criminal investigation carried on at the public interest, such assurance altogether excluded trial at the instance of any private party. In its nature, this assurance was thus of an unqualified description, and was calculated to lead the party to

believe that the *possibility* of future trial or punishment was thereby entirely excluded. The assurance was so meant to be understood." Having briefly alluded to the circumstances attending the trial, when he was prevented from examining Hare and his wife as to each of the three murders set forth on the indictment, his Lordship said it was from the information obtained from Hare, on the assurance of immunity, that he conceived he was enabled to secure a conviction. He proceeded:—"The warrant of imprisonment against Hare and his wife, at the public instance, has since been withdrawn, in consequence of its having turned out, after the most anxious inquiry, that no crime could be brought to light in which Hare had been concerned, excepting those to which the disclosures made by him under the above assurance related." After he had given the assurance, and obtained the results he had, the Lord Advocate said he would not make any attempt to prosecute Hare, indeed, he "should strongly feel such a proceeding, upon his part, dishonourable in itself, unworthy of his office, and highly injurious to the administration of justice."

After having given so fully the Lord Advocate's reasons for declining to proceed against Hare, it will not be necessary to do much more than refer to the information lodged by Hare himself, especially as it goes over to a great extent much the same ground. It was maintained that on account of the promise and compact with the public prosecutor he could not now be tried in order to punishment for the murder of James Wilson; and on the question of his position as between public and private prosecutors, it was stated:—"When an offence is committed, the duty of the public prosecutor is to proceed in the matter with a view to the interests of the community in relation to the wrong done, without regard to the effect his proceedings may have upon the power or right, if such exists, of a private party to come forward and prosecute for punishment. The interest of the community, in the matter of punishment, is the paramount interest, and the only ultimate interest which the law can regard; although different persons may, under certain circumstances, be permitted by the law to vindicate that interest. The public prosecutor, as being the person entrusted with the interest of

the community, and as representing the community, has the primary right to take up the matter; and, having commenced proceedings for behoof of the community, he cannot be stayed or hindered, or impeded in his prosecution for punishment, by any right or any interest which any private party can claim; and he may do, and daily does, many things which exclude the private party from demanding punishment. . . . On the other hand, none of these proceedings on the part of the public prosecutor, acting for behoof of the community, can exclude or infringe upon the inherent personal right and interest of the private party to prosecute for *assythment* or *satisfaction*. That right belongs to him as an individual, not as a member of the community at large. He claims *that*, not to deter others from committing the like crimes, but to solace *his own* wrongs. That is not a matter of *punishment*, but of *satisfaction*."

Some more attention must, however, be paid to the "Information for Janet Wilson, Senior, and Janet Wilson, Junior, Mother and Sister of the late James Wilson, generally known by the name of Daft Jamie," the private prosecutors, prepared by Mr. E. Douglas Sandford, under the direction of Mr. Francis (afterwards Lord) Jeffrey. After the usual review of the proceedings up to that time, the private prosecutors set forth their intention thus:—"The prosecutors are, in the *first* place, obliged to support their title in the present prosecution, and to show the constitutional right which, according to the law of Scotland, they possess, of bringing the individual to justice, whom they conceive guilty of the atrocious crime by which they have been injured. But, *2ndly*, the prosecutors are anxious to contest the doctrine of indemnity upon which the prisoner has founded, and to show that he is stretching, far beyond its legal limits, the indulgence granted by the Court of Justiciary to those who are examined *before it as socii criminis*." As to the right of the private party to prosecute, this, it was contended, was a fundamental and constitutional principle in the criminal jurisprudence of Scotland—not an antiquated right, but one that was recognised by the latest authorities. Having quoted Burnet and Hume, the private prosecutors went on to say, that, legally speaking, there



were only two situations in which a prisoner could plead indemnity in bar of trial—previous acquittal, by a jury, of the crime of which he was charged, or remission by the Crown. But the point which the prosecutors were anxious to establish was “that whatever may be the nature of the private arrangement between the public prosecutor and the criminal, and whatever may have been his inducement to give up the right of calling upon the criminal to answer at the bar of justice, for the crime of which he is guilty, that arrangement cannot deprive the private party of his right to insist for the full pains of the law. If the law contemplated the power of the public prosecutor to deprive the private party of his right to prosecute by arrangements to which the latter is no party, it had better declare at once that the private instance shall be at an end, because it virtually would be so. In every case where the public prosecutor wished to protect a criminal, and shield him from the effects of crime, an arrangement, under the pretence of a precognition and searching for evidence against a third party, might at once be made; and if the doctrine maintained on the part of the prisoner be correct, that would prevent all prosecution at the instance of the individual injured.” The assertion of the prosecutors was that their legal right to investigate the circumstances attending the death of their near relation, and to indict the accused party if they should find sufficient ground to do so, could not be interfered with by the proceedings of the public prosecutor, in circumstances over which they had no control. In point of form, it was required by the law that the Lord Advocate should grant his concurrence to a prosecution before the High Court of Justiciary, and he had no right to refuse this concurrence, but if he should so refuse it he could be compelled to grant it, for the reason that it was not *in arbitrio* of him to deprive a party of his right. In support of the contention for the private prosecutors various cases were cited, particular stress was laid upon the warnings addressed by the Lord Justice-Clerk and the counsel for Burke and M'Dougal to Hare when he was in the witness box, that the protection of the Court only extended to the case under trial, and not to the other two charges in the indictment, which had been deserted *pro loco et tempore*.

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Such, in brief, were the pleadings for the parties, and the decision of the Court was awaited by all with great interest—by the lawyers because it would establish an important legal precedent, and by the public because they hoped, through it, to see Hare put on his trial and convicted of the murder of Daft Jamie.