JUDGE PARRY ON 'THE BLOODY ASSIZE'

WHEN it was known that His Honour Judge Parry had written a new volume on *The Bloody Assize*, it seemed that at long last we should have a really judicial and temperate record of events that until now had been presented from no satisfactory point of view. Writers hitherto have generally been biassed by party feeling or swayed by modern prejudice; they have regarded the seventeenth century through the eyes—and the conventions—of the nineteenth, and they have been content (worst sin of all in a historical writer) to reproduce earlier statements without any honest endeavour to authenticate them or trace their origin. That they were clever men only made matters worse; who of us has not been swayed by Macaulay or Campbell, till we began to examine their 'facts' and enquire into their authorities? We find in them—and still more in lesser writers copying them—the same old suggestions, the same old stories, the same old accusations repeated time and again; often without acknowledgement, generally without question, and almost always without any judicial balance. But now that not only a lawyer but a judge, a man of our own days of cooler tolerance and understanding, was to tell the story once again it seemed that we might hope for a very different treatment. Unfortunately, in the book that lies before me now, we do not get it.

It is a pleasantly-written volume, light enough to interest the casual reader, serious enough to deserve attention. It is intended to appeal to a wide public, and is, therefore, the more dangerous. Frankly, it contains no new matter, and does not, I think, fairly or judicially present the old; once again we are given what we know already—and once again we are given it all on one side.

Now Judge Parry must know well, as even those who have never had the honour to sit on the Bench are aware, that in this life of ours nothing—and no one—is wholly one-sided; that motives and their resulting actions regarded entirely from one point of view are not fairly represented; that there is good somewhere in the worst of men as there is evil hidden in the best. Moreover, to judge ought not to be to condemn; but to endeavour to understand. My quarrel with Judge Parry is that in *The Bloody Assize* he delivers sentence, but he does not give us the pleading *for* as well as against on which he founds it.

In so far as historic events are concerned, there is little in this volume (as I said before) that is new; most has been said, and said more than once, elsewhere. But in this latest version it is unfortunately given, as too often in the past, with a bias that it was hoped our historical writers had left behind, as well as with a carelessness that permits of, or has overlooked, far too many small errors. I have no room to quote here more than one or two examples: Monmouth, for instance, was not called James Scott as a young child, but only officially took the name when he married the Scott heiress; Jeffreys' second marriage did not take place *before* he became Recorder of London, but eight months *after* (*Marriage Licences granted by the Bishop of London*, Harl. Soc.); Guilford did not resign the Great Seal before the opening of the Assize (p. 196), but nearly a fortnight later—if indeed he can be said to have 'resigned' it at all, since it was only taken to the King after his death. We hear repeatedly of the 'Lord' Mayor of Bristol when, of course, at that time he bore no such title; and we are told in respect of the hanging of Cornish at the crossing of King Street and Cheapside that 'James had a penchant for these ghoulish incidents of terrorism'—when it was even then the common, and had been till re-

cently the usual, procedure to hang the criminal as near as possible to his own house. Again, when 'Judge' Wythens is portrayed as the boon-companion of Jeffreys and as having retired with him after the Lisle trial to 'share his potations,' would it not be fair to remember Roger North's contemporary description of him—'a very gentile person and *no debtor to the bottle*'? And need the old story of Feversham in bed during the battle be repeated with no better authority than Oldmixon?

When the principal characters appear on the scene —Monmouth, Oates, and Jeffreys—they are introduced to us as the 'walking gentleman,' the 'low-comedy buffoon,' and the 'comic villain.' Judge Parry himself tells us that he likes to see history from a dramatic point of view; I suggest that such a nomenclature scarcely deserves to be so described. But these three men can surely not be classed in the same category, save that in the end they all failed and suffered for it. At their worst they were not comic then, any more than now—nor is it a judicial attitude so to label them. Monmouth we all know, weak, shallow, the puppet of his advisers, and in his last hours pitifully tragic; but Judge Parry's portrait of Oates will come as a surprise to many. He is more sympathetically, or at least more tolerantly, treated than ever before; if he is not whitewashed, he comes near it (as indeed here do all dissenters and anti-papists)—and we hear of his prophecies and warnings coming true, and of his real knowledge of a real plot, while his unsavoury past is dismissed as not proven, and his sincerity insisted upon. It is possible that Oates' life has not yet been written historically upon *documented* evidence, but it is strange and not altogether pleasing to meet with at least a quasi-apology for him and his actions coming from the judicial Bench. And it is even stranger to find this attitude of excuse and

tolerance extended to him, and absolutely denied to Lord Chief Justice Jeffreys, for whom Judge Parry has nothing but condemnation.

He accords to him what may be called the leading part, and incidentally it is curious how this man dominates his surroundings whenever and wherever he appears. Not only does he so dominate Judge Parry's book, but in every notice I have yet seen of it he is practically the only person mentioned; it is, therefore, the more important to deal with him fairly, justly, and with restraint—the pros and cons alike balanced and considered. But His Honour is content to repeat the old stories for the most part told by Tutchin, a man who suffered at Jeffreys' hands in the Assize, who was later a political pamphleteer, an extreme dissenter and a violent Whig; no attempt is made to confirm him from other sources, while every point that we know in Jeffreys' favour is suppressed, or, let us hope, overlooked. I have no room here to bring forward many examples; but where in these pages is any mention of the Taunton clergyman whose remonstrances were met with courtesy and whose courage was ultimately rewarded by a canonry? Where is any reference to Hannah Hewling's own statement in the Kiffin memoirs that when she appealed to Jeffreys for the life of her brother he treated her with the greatest politeness and respect? We are given once more the hackneyed quotation about the 'ten carted street-walkers'—and once more we are not told that it comes to us from Titus Oates; most writers have found it difficult to hold him up as a perjurer one moment and as an authority the next. We hear of 'the foulness of his' (Jeffreys') 'habits,' but we are not told that in his private life he contrasts well with other men of his time; Judge Parry says that, preferring to throw in his lot with the courtiers, 'he merely did as they did'—but not even his enemies

have suggested that he copied the Sedleys and the Rochesters. His 'obscene and blasphemous' language is insisted upon, but is His Honour aware that when Mrs. Oliphant deals with Penn's trial in her *Sketches of the Reign of Queen Anne* she mistakes the worthy and respectable Recorder Howel for Jeffreys because of his language and behaviour—and indeed the similarity of style and phrase is surprising? Judge Parry himself, too, speaks of Lord Chief Justice Rainsford in the Muggleton trial 'pelting' the prisoner 'with abuse'; it was apparently a habit of the time. Then we are told that Jeffreys drank—which we knew already. But for the disease—stone—which led him to do so (apart from the customary drinking in company, universal then and long after) there seems to have been little other alleviation then known. Of the pain arising from it, Judge Parry in one place says 'there is no evidence' and in another dismisses a mention of it as slightly humorous. We are not allowed to hear Roger North's description, that 'when in temper . . . . he became the seat of justice better than any I ever saw in his place . . . . and would deal forth his severities with a sort of majesty.' Yet these are the words of a contemporary, and one who assuredly had no love for him.

I have no intention of defending Lord Jeffreys, nor of belittling his faults; it is His Honour himself who by giving him pre-eminence forces me to do the like. But perhaps I may turn from this by quoting—slightly paraphrased—Judge Parry's own words concerning Oates: 'Even in modern times (Jeffreys') biographers cannot allow a word in his favour, and eagerly extract the abuse with which the (Whig) pamphleteers befouled him. But these entertaining writers must not be taken too seriously.' I agree!

Nor have I any desire to uphold the methods of Kirke and Jeffreys when dealing with the Rebellion;

these have gone deservedly into that limbo which is filled with our past sins. But I should like to see the whole question reviewed with balance; not to find the evil insisted upon and the good, such as it may be, ignored. I should wish to see the blame fairly apportioned amongst the many who were responsible; and I should like to note some recognition of the fact that in the seventeenth century they had come to one of those partings of the ways between old standards and new, dying usages and others barely new-born into existence. And, above all, I should like as a general reader to see that sense of proportion that we look for on the judicial Bench. Judge Parry finds no reason or excuse for 'this terrible event . . . . in a comparatively civilised community,' and suggests that we should turn aside from 'these horrors' in shame. Perhaps we should. Yet in the reign of 'The Deliverer,' William III (as I fear before and since), there were very similar happenings in Ireland; and sixty years later, in the enlightened days of the eighteenth century, has Judge Parry overlooked the after-scenes of Culloden and the panicky executions at Carlisle? Had Kirke done worse—did Jeffreys do more?

If Kirke killed the wounded at Sedgemoor, so did Cumberland kill *and burn* at Culloden; if Jeffreys ordered floggings in Dorset, so also were men, women and children flogged in the Highlands. If women were ravished in the south, so also were they raped in the north; if Somerset saw her people hanged and quartered or transported, so also were they hanged and quartered or transported at London and Carlisle. If Jeffreys smiled when the Dorchester preacher spoke of mercy, so did Cumberland call Duncan Forbes (the great Whig Lord Advocate) 'that old woman who prated to me of humanity'; and if Jeffreys was called the Bloody Judge, was not Cumberland—even in

England—nicknamed the Butcher? Yet it is not long since Walter Besant, in speaking of the Forty-Five, excused the Duke by saying that he had at least succeeded in doing what he was sent out to do—that is, in crushing the Rebellion. So did the Bloody Assize.

Before the scales of Justice turn, they should be balanced evenly. It is not in black alone, any more than in snow-white, that history—or humanity—can be painted.

M. C. BALFOUR.

FAITH'S INFINITE OUTLOOK

Man, paddocked in a narrow garth
  Of earth,
Hath only towards the sky
  Infinity.

VINCENT MCNABB, O.P.