

MR. J. G. MUDDIMAN ON 'THE BLOODY
ASSIZES'

IT is not long since a book bearing almost the same title as the one before me now¹ appeared under the aegis of a judge's name; which, while it set out to give a clear and readable account of the Monmouth rising and its consequences, was a disappointment to the serious student because of its obvious Whig bias and lack of that chief essential of the judicial mind—the sense of balance. Judge Parry, moreover, was content to perpetuate many errors because they fitted in with his own conceptions, and I fear that, backed by the influence of his name and position, they have been strengthened in the mind of the casual reader.

The present volume is unlike its predecessor in all but name; the whole aim and intention so different that in a sense the title is misleading. Mr. Muddiman is not really concerned at all with the rising itself, nor does he attempt to give us dramatic sketches of the characters connected with it; we find here no suggestion of the Walking Gentleman, the Low-Comedy Buffoon, or the Comic Villain, no tolerance for Oates or Tutchin, no special tenderness for Dissenters, and above all no bias against 'Judge' Jeffreys. Even the standpoint—and the book is written from the Tory standpoint on the whole—is one of reason, moderation, and restraint. In short, it is necessary to realise from the beginning that these pages deal less with opinions than with facts; and that, while Judge Parry aims at giving us his own

¹ *The Bloody Assizes*. Edited by J. G. Muddiman, M.A. Notable British Trials. (Wm. Hodge & Co., Ltd.; 10/6 net.)

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View of the period and the personalities who played their parts in it, Mr. Muddiman is inquiring into the foundations on which our knowledge of that period and of those personalities is based. It is his contention that those foundations are unsatisfactory and unreliable, and have only obtained credence through constant repetition by historians (mostly Whig) who have attempted neither to examine into them nor to question them.

Certainly, if dates are to be taken as a guide, it seems impossible to deny that the Oates-Dunton-Tutchin pamphlets, issued in various editions and under several names, must undoubtedly be the main basis of all later accounts of the Monmouth rising and its aftermath. They are more nearly contemporaneous than any other publications; Roger North's works were not printed till the next century, and it is difficult to think that, in looking back over forty-five to fifty years, he would not be biassed by succeeding events; Evelyn has nothing to tell us; Burnet, who has a good deal, was out of England at the time and is notoriously unreliable; Pepys, who might have given us the honest version of a King's man, had long closed his diary; and Ailesbury's memoirs did not appear till long after, when he was mainly concerned in shifting all responsibility from the King on to the chosen scapegoat. Early tracts or pamphlets, other than the Dunton series, either did not exist or have not been preserved; and allusions in private letters seem to be rare—possibly men did not like to express their opinions too freely, though Sir Charles Lyttleton, writing from Taunton on the 7th of October, 1685, while disliking the 'shambles,' considered that those who suffered there were 'far from deserving any pity.' Under the circumstances, therefore, historians had to rely for their particulars on the Dunton publications, the first three editions of which

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appeared in 1689, and the fifth and last in 1705—all, however, after the death of Lord Jeffreys, and thus when he could no longer refute their statements or defend himself from their attacks.

Apparently it did not occur to those who quoted so freely from these pamphlets to question the credibility of such authors as Titus Oates, condemned for perjury in the spring of 1685; Dunton, a low-class publisher of sensational literature; and Tutchin, himself a partizan of Monmouth in 1685, condemned by Jeffreys to be whipped, fined, and imprisoned, and later (in 1704) tried and sentenced as 'the daily inventor of false novelties and of horrible and false lies.' Perhaps the earlier historians were still too near in time to care to acknowledge such men as their authorities! However this may be, quote from them they did and at length, so that certain highly-coloured passages from these pamphlets are found repeated in the pages of nearly all who have written on the Monmouth rising ever since it took place; and they quoted verbatim, usually without acknowledgment and almost always without any attempt to verify or substantiate the statements they thus handed on. It has therefore occurred to Mr. Muddiman that the only way to deal with the whole question was to reprint the original edition of *The Bloody Assizes*, considering first the character of those men who were responsible for it and then carefully comparing its statements with such other evidence as there is and especially with the recently discovered contemporary newsletters. By this means it becomes possible to examine into the truth or probability of its assertions and to make plain how far it has been used as a general quarry by later writers. It is the first time that this has been done systematically; hence the importance of this volume for all those who wish to study the period.

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Some of Mr. Muddiman's material, as I have indicated, is new; and some of his comments may seem to the ordinary reader both new and surprising—as when he casts doubt on the reliability of the *State Trials*. Most writers quote these as authoritative; but Mr. Muddiman claims that not all the reports can be considered 'official.' Some of the cases, such as that of Titus Oates, were printed immediately on their hearing—these are to be taken as 'verbatim and accurate'; others were only written, or compiled later, possibly in part from notes taken at the time, but with large additions prompted by party or religious feeling. So at least Mr. Muddiman asserts; and he quotes the well-known trial of Dame Alice Lisle as one of the latter. His suggestions are well worth careful study; but this (if correct) would remove from history a very clever, if merciless, piece of cross-examination by one who is known to have been almost the first master of that art—and frankly I cannot think the author is quite justified in saying that Jeffreys 'did not use language like this from the Bench.' Had he said that this language was no worse than that used by several other judges I should have found it easier to agree; but I cannot forget that Roger North, in speaking of Jeffreys, says that 'he could not reprehend without scolding; and in such Billingsgate language as should not come out of the mouth of any man It was ordinary to hear him say, "Go, you are a filthy, lousy, knitty rascal"'; I grant that this follows on, 'When he was in temper and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place'—a quotation of which Mr. Muddiman omits the qualifying beginning. But the personality of Jeffreys, allowing always for the exaggerations and distortions of party prejudice, was so forcible in his own time and has remained so vivid in ours that even those who

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think best of him would perhaps be the least willing to deny that violence and brilliance that made him one of the best hated and most envied men of his day.

On the other hand, Mr. Muddiman is exceedingly interesting in what he has to say of Bristol in 1685. He points out that the only authority for the charge with which Jeffreys opened the assize—a charge used by almost every succeeding historian as a basis of attack upon him—is a half-sheet published by Tutchin and later incorporated with one of the subsequent editions of *The Bloody Assizes*. It has been repeatedly quoted in full; and even H. B. Irving, whom some call Jeffreys' apologist, accepts and explains it as caused and in part excused by ill-health, fatigue, and the stimulants taken to ease the acute pain of his disease. But it seems that no reliable and certain version of it is in existence. Unwilling to accept any statement without confirmation, I have myself made inquiries at Bristol, and so far as I have been able to discover, no report of the charge, either private or official, in fact no reliable contemporary report of the proceedings, is known to exist. There is, in short, little to go on but Jeffreys' own letter to Sunderland dated the 22nd day of September. This may not be conclusive, as Bristol possibly was not anxious to preserve a record of somewhat discreditable facts; but so far as it goes, it agrees with Mr. Muddiman's contention that the only direct authority for this often-quoted speech is Tutchin's half-sheet, the work of a man who had been sentenced by Jeffreys, who belonged to the opposing party both in religion and politics, and who did not, apparently, issue it till the Judge was no longer able to defend himself. The whole question of these Reports, however, is perplexing. It has long been recorded that the account of the Baxter trial in particular is a bit of

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party pleading; now Mr. Muddiman suggests that the case of Dame Alice Lisle was never given to the public till it was included in *State Trials* in 1719, and then was only in part based on notes taken by some junior barrister who had been present. It is a difficult matter to decide and it opens the way to further difficulties. For instance, in this volume allusion is made to the fact that no record exists in the official journals of the House of Commons—or in the newsletters of the day—of Jeffreys having been rebuked on his knees at the Bar of the House in 1680; whereas Wythens' appearance at the Bar is fully noted. But it is usually pointed out that in the Stephen Colledge case, when the witness Lunn says, 'I was never upon my knees before the Parliament for anything,' Jeffreys replies, 'Nor I neither, for much'—which is taken to be an admission of the fact. But if the Reports are unreliable, as Mr. Muddiman infers, and additions have crept in to suit party prejudices, the question arises: Did Lunn actually say this and did Jeffreys make this answer?

I have said enough, I think, to show that this book deserves a full and careful study in the light of new material that has recently become available in connection with Jeffreys and the Bloody Assize. I wish I need not close with a word of criticism; but in the notes with which the author prefixes his reprint of *An Impartial History of the Life and Death of George, Lord Jeffreys, late Lord Chancellor of England*, it is unfortunate that he should say that the 'true facts of George Jeffreys' earlier career are now beyond possibility of dispute' and proceed to quote them as hitherto accepted, without verification. It is doubtless by oversight that Mr. Muddiman does not refer to recent discoveries on these points. For instance, George Jeffreys' father, Mr. John Jeffreys, of Acton Park, Wrexham, was at no time Member for Brecon

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Boroughs in any Parliament—this is confusing him with another Jeffreys altogether, namesake but no relation, Alderman John, known as the 'great Smoaker' on account of the burning of his tobacco warehouses in the Fire of London. George was certainly his father's sixth son, but he was born not in 1648 but in 1644 (see the Shrewsbury Burgess Roll, the entry book at Shrewsbury School, and my letter in *The Times Literary Supplement*, 1st August, 1929). His brother Charles presumably died before 1654, as no mention is made of him in the full return officially required for the Burgess Roll; but William went to St. John's, Cambridge, where he graduated B.A. in 1664, M.A. in 1669, and was Vicar of Holt 1668-75. The only daughter, Margaret, was not the youngest of the family, as Mr. Muddiman asserts, but the eldest—older by four years than John, the heir. Again, George Jeffreys' first wife died in February, 1677-8, and his second marriage did not take place in the following May, but on the 10th of June, 1679 (see article in *The Law Quarterly Review*, January 1925, *Marriage Licences granted by the Bishop of London*, published by the Harleian Society, and the Verney Papers, Hist. MSS. Comm. Rep. VII, Appendix). I grant that these points are not of the first historical importance, but since Mr. Muddiman's commendable aim in this book has been to verify facts and to combat mis-statements, it is a pity that he has overlooked them.

Nevertheless, it must be recognised that this volume is a valuable and balanced contribution to the history of the Bloody Assize, and it should be given the fullest consideration by all students of the period. It lays before us much that is new, more that is interesting, and perhaps a little that is controversial, and to one who has spent much time in searching out the more personal records of George Jeffreys' life, it is

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not unpleasing to close with the dignified words of the author's own verdict. ' That he was a great lawyer; a great judge, and a great man—the trusted confidant of one king and the neglected adviser of another—is beyond dispute. He was by no means exempt from the faults of his times, nor was he free from the defects of the judges of his day, but he has chiefly been condemned in modern times for his Western Circuit of 1685, about which the true facts have never hitherto been known.' Mr. Muddiman has here endeavoured to lead to a juster conclusion.

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