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OLD BAILEY.

Trial of Governor Wall,
Before the Chief Baron, Justice Rooke,
and Justice Lawrence.

Joseph Wall was brought to trial on an indictment, charging him with the wilful murder of Benjamin Armstrong, on the 10th July, 1782, at Goree, in Africa. On this indictment the prisoner had been arraigned on a former day, and had pleaded not guilty.

The Attorney-General—"Gentlemen of the Jury, it will have occurred to you, on hearing the indictment read, that the crime laid to the prisoner's charge was committed so long since as the year 1782. You will therefore naturally inquire why this trial was deferred so long; and here the prisoner must take to himself the blame, as he thought fit to withdraw himself from justice at a time when a prosecution had been already commenced. He was now brought to trial under the authority of an act of Parliament, empowering his Majesty, on representation being made to his Majesty's privy counsellors, to grant special commissions for the trial of offences committed beyond sea. It becomes my duty to state to you, that the issue before you is only, whether the prisoner at the bar is guilty of murder?—or whether the act that shall be proved against him was justifiable homicide?—For the nature of this case is such, that it does not admit any consideration of the middle crime of manslaughter. It is necessary also to advert to the defence that must be adopted, for it is the only one that can be set up—a charge of mutiny and a sentence of a court-martial. The deceased was a soldier in the garrison of Goree, of which place the prisoner was Governor at the time of the offence. There were also in the garrison at the time a capt. Lacey, a lieut. O'Shanley, a lieutenant Ford, and an ensign Fall. The prisoner returned to England in 1782, and in 1784 he was apprehended under a warrant from the privy council. The garrison consisted of 150 men—it had been a considerable time under short allowance—a compensation in money is usually made for those stoppages—it had been given out in orders, that the governor was on the eve of his departure for England, and that he was to be accompanied by ensign Dearing, who acted as commissary to the garrison, and in whose hands these stoppages were. The garrison, anxious for their money, came to the house of the commissary to demand payment. When they passed Governor Wall's house, he came out and reprehended them, and they retired. About an hour and an half afterwards another party came, and Armstrong among them. Gov. Wall seeing Armstrong with the men spoke to him. Armstrong pulled off his hat, spoke respectfully, and retired, as he was ordered. From that time till the crime was committed which led to the death of Armstrong, there was no symptom of mutiny. I quote from no vague authority, but from the solemn declaration of the deceased, made on the brink of eternity; and you will be informed from the Bench what credit is due to a man in those circumstances. He declares himself punished without a crime. The proceeding toward the commissary's house to demand the payment of the short allowance money took place in the morning. About six in the evening the drum beat for parade; the men were formed into a circle, Governor Wall and some officers being in the centre. After some conversation between the Governor and the officers, Armstrong was called from the ranks by the Governor—he was ordered to be stripped and tied to a gun. He was then whipped, not with the ordinary instrument, but with ropes; not by the ordinary persons, but by black slaves, changed at every twenty-five lashes, till eight hundred were inflicted, while the prisoner looked on, commanding the

executioners to exert themselves, he cried, "Cut him to the heart; Cut him to the liver! This, and the sickly season will do for him." The sickly season was then approaching. The prisoner languished for a few days, and died, making a formal declaration that he was punished without trial or offence. On the next day, the Governor departed, accompanied by Dearing and others. If mutiny existed, why did he withdraw, taking three out of seven officers? If there was a mischief so great, as to authorize execution without form of trial, why abandon his government in such a desperate state? Does not his subsequent conduct shew there was no such thing? If it was true, would not the Governor on his arrival in this country give notice to administration of the mutiny in his garrison? No such representation had been made.

I hold in my hand a letter written in August, 1782, giving an account of the state of the garrison, mentioning many particulars of less importance, such as that Lieut. Poplet was under arrest by sentence of a general court-martial. The prisoner could not then have known the fate of the deceased, so as to be deterred from mentioning the fact by considerations of personal danger. The proper tribunal for trying the offence imputed a regimental court-martial, might consist of so few as five members, or even of three.—There was not even that tribunal of the last necessity, a drum-head court-martial. The law of the country in every instance requires that the prisoner should hear the evidence on which he is condemned; but there was no trial, no charge. The first question for you to try is, whether the death of Armstrong was the consequence of the orders of the prisoner? Of this there can be no doubt, and when it is established, the law imposes on the prisoner the necessity of proving such a mutiny as rendered a regular trial impossible. It will also remain for him to shew, why he withdrew from trial in 1784. If innocent, that was the best time to assert his innocence. If, as we shall be told, a sort of sentence was passed on the deceased, the persons were living who assisted in passing it. Captain Lacey, Lieuts. Ball and Ford, were in the kingdom. In a letter to Lord Sidney, then Secretary of State, he says that he left the kingdom in order to collect evidence; but he could collect his compurgators without going in search of them. He wrote one letter in March 1784, in consequence of a proclamation, offering 200l. for apprehending him. In the October of the same year, he wrote another letter, saying that he would come to trial as soon as his witnesses could arrive, and that the French court had consented to give every facility to their passage. He then withdrew from this kingdom; in 1801 he returned, and sent a letter to Lord Pelham, to say, that he wished to abide his trial. Why did he fly when proof of the facts, as well favourable as unfavourable, was easy to be found—to return and demand trial when the hand of death had swept away the greater number of the witnesses? If, however, a mutiny of an alarming nature did exist, and was chargeable on the deceased, the prisoner is justifiable; and God forbid, for the discipline of the army, the safety of the country, and the safety of us all, that a hair of his head should be touched. But if the contrary should appear in evidence, and this evidence should be confirmed by the circumstances of the prisoner's withdrawing from his government, by his silence on the subject in his account to administration on his return, and by his flight, when those witnesses were living who will now be said to have been able to bear testimony in his favour, painful as it is, it will be your duty to find him guilty of murder. But I shall be happy, if any circumstances can be adduced, capable of leading you to another determination.

Edward Lewis examined by the Solicitor-General.

Was in Goree from 1779, till Christmas 1783; he was at first a private soldier, but was made a corporal by Governor Wall; he did serjeant's duty, and attended the Governor as orderly serjeant on the 10th and 11th of July, 1782. The Governor left the island on the 11th; his intention was known a day or two before. While on duty as orderly serjeant in front of the Governor's house on the morning of the 10th, saw about fifteen or twenty men pass. He was sent by the Governor to enquire what they were about. He went, and brought back word that they were going to the Commissary's for their short allowance money. He told them, by the Governor's orders to go back to their barracks, or they would be flogged. They retired submissively; they were totally unarmed.—In about an hour and an half another party came, rather more in number, Armstrong was among them, they were also unarmed. The Governor asked Armstrong what they wanted; Armstrong answered, their short allowance money. "You are a fool, said the Governor, get back to your barracks." Armstrong held his hat in his hand all the time, and retired immediately without saying a word.

The men had been for some months on short allowance, and it was known that the Commissary was to come away with the Governor; both the applications were in the forenoon. In the evening, the officers that dined with the Governor went away earlier than usual; the Governor walked towards the parade, the witness attending him. The Governor walked up and down on the ramparts opposite the main guard; after some time, he ran suddenly by the witness, and began to beat a man that was in arms in front of the guard-house: he beat him first with his sword, and then with a bayonet he took from the centinel; he then put both him and the centinel in confinement. The witness thinks the occasion of beating the man was, that he was in liquor. The Governor then ordered the drum to beat, and when the men assembled, they were ordered to form in a circle; they obeyed directly; they were without arms. The Governor was in the centre; Capt. Lacey, Ford, Fall, and Shanley, were present part of the time, but this witness is not certain they were there in the beginning. The carriage of a six pounder was brought from the ramparts, and there were blacks within the circle. The Governor spoke with the officers a little time, and then called Benjamin Armstrong from the ranks, where he stood in his place as serjeant; Armstrong came out. He was then tied to the gun carriage, and flogged with rope by black men, changing at every 25 lashes. Governor Wall was in the circle, urging and threatening the blacks to lay on. The witness heard him say several times, "Lay on you black, as I lay on you. Cut him to the heart! Cut him to the liver!" He believes Armstrong called for mercy; but he does not recollect in what words. He was outside the circle, but so near, that he could hear most of what passed, by leaning between the men. There was no mutiny. He saw no Court-Martial, and heard no sentence, though near enough to see and hear. The first words addressed to Armstrong were, to come out of the ranks. The next day the Governor came off with Commissary Dearing.

Cross-examined by Mr. Knowles.

He knew of no sentence of 800 lashes. He did not hear Armstrong say, "I'll be damned if you shall stir from this island till the short allowance money is paid." He was quite near. He did not know that Mrs. Lacy was in the Governor's House, and if she was, she could not hear so well as he, the house being at some distance. He did not know that the centinel pointed his bayonet at the Governor; but possibly it

might be so. He saw a drum-head Court-Martial once at Chatham; he does not recollect the particulars, but there was pen and ink, and they were writing.

Roger Moore, examined by Mr. Plomer.

He was a private in the garrison of Goree, 10th July, 1782.—He confirmed the testimony of the last witness as to the fact and manner of flogging; but he did not hear Governor Wall say, "Cut him, &c." He heard Armstrong beg for mercy, and say he never would do so again. The Governor said, he hoped it would be warning to him. He could hear as well as any one, being in the inside line, and was sure such words as the above could not escape him; he counted 800 lashes; he was washing his linen in the early part of the day, and when he returned to the barracks, he heard serjeant Armstrong say, he had got the arrears: the men were overjoyed at this, and many of them were intoxicated; he understood that liquor had been given to them instead of money, by Ensign Dearing.

Thomas Poplet, then Lieutenant of the African corps, and a prisoner at large under sentence of a Court-Martial, saw the transaction from his court-yard; there was no Court-Martial, no mutiny that he knew of; the rope was not the proper instrument of military punishment, dog-line is only used on severe occasions, the common thing is whipcord.—[Here a piece of rope was produced, to which the witness could not swear, though it was exactly similar.] He had got five pieces from the blacks, and had kept them a long time. Capt. Lacy was alive at Chichester in 1784; he is now dead. Shanley died on his passage from Africa in the same transport with the witness. He never saw Fall since 1783. He saw Dearing about three years ago, but not later, and does not know whether he be dead or alive. He swore to Governor Wall's signature in three letters produced by the Attorney-General.

Peter Ferrick, surgeon of the garrison was sent for by the Governor after the flogging began, had no doubt at the time it was excessive, but dared not mention it. The man certainly died of it. Rope was more dangerous than whipcord, as it bruises and does not cut. Armstrong passed blood by stool and urine, and had asthma from the quantity that was forced into the chest. He walked to the hospital by the assistance of two men. He died on the fifth day.

Witness, on his cross-examination, said, he never doubted, from the first moment to this, but that the punishment was the cause of the death. The deceased was in a good state of health before he received it.

Several soldiers in the African corps were called, and asserted that there was no mutiny.

Mr. Maguffy, the deputy judge advocate-general here in England, said that the proceedings, of all General Courts-Martial are returned to his office; that he searched, but could not find no account of any Court-Martial held upon the deceased—drum-head, or field Court-Martial are never returned to his office.

[Here the case was closed on the part of the prosecution.]

The prisoner being called on for his defence, said, that having proposed to return to Europe on the 20th of July, some of the men came up to the government house on the morning of the 10th, and made a demand on account of short allowance of provisions, but they were easily persuaded to return to the barracks. About two o'clock the same day they came again very much intoxicated; he expostulated with them for a length of time to no effect, and ordered the deceased to march them back. The deceased said he would be damned if he should until they were settled with, and the demand complied with. He then ordered the whole to face to the