

Thomas Rudyard

Early Friends' "Oracle of Law"

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EARLY FRIENDS' "ORACLE OF LAW"

THE earliest Friends had not much use for lawyers. This is true, I think, both colloquially and literally. For the colloquial sense we need not look further than the first few pages of George Fox's *Journal*, where Fox describes how, in one of the apocalyptic visions he had at the beginning of his ministry, the Lord opened to him "three things relating to those three great professions in the world, physic, divinity (so called), and law"; how the physicians were "out of the wisdom of God by which the creatures were made," the priests were "out of the true faith," and the lawyers were "out of the equity and out of the true justice, and out of the law of God."¹

This passage, though written at a much later date, and containing certain expressions used by Fox later,² seems to reflect fairly the attitude of the earliest Friends. They were not anarchists; they believed in the rule of law;³ but they did not believe in law as administered by lawyers. In a pamphlet published in 1658 Fox wrote: "I see a darkness among the Lawyers, selfishness, wilfulness, and earthliness and unreasonableness," and in another place:

"I beheld the Lawyers black, their black robe as a puddle, and like unto a black pit, almost covered over with blackness, yet there was a righteousness in the middle, which their unreasonableness run from."⁴

¹ *Journal*, p. 28. References to Fox's *Journal* are to the 1952 edition (ed. J. L. Nickalls), unless otherwise stated.

See Henry J. Cadbury, *George Fox's Book of Miracles*, 1948, p. 120, for an example of the same general language, used by Fox at Yearly Meeting in 1674, not many months from the probable date of his writing the *Journal* passage.

³ This is discussed by Konrad Braun in his Swarthmore Lecture, *Justice and the Law of Love*, 1950, pp. 54 *et seq.*

⁴ *The Law of God and Lawyers Discovered*, pp. 3 and 4. The special occasion of this pamphlet, and of another written by Fox about the same time, in collaboration with Paul Moon of Bristol (*An Instruction to Judges and Lawyers*), was the hardship suffered by country Friends in connection

By "unreasonableness" Fox means whatever is contrary to the principle of divine Reason on which law is grounded, which "lets man see if he wrongs his neighbour he wrongs himself."¹

But in the literal sense also the earliest Friends had little use for lawyers. Apart from the "unreasonableness" of lawyers, they felt that legal assistance against injustice was not for them to seek, that their part was to endure patiently till God in his own time should bring the injustice to an end. Of this feeling, the classical expression is to be found in Dewsbury's noble words about "joyfully entering prisons as palaces," ending with the claim that "in the Name of the eternal God I always got the victory, for they could keep me no longer than the determined time of my God."² Nor was this expectation an illusion. There are many instances, of which Fox's experience at Launceston³ is only one, of "the power of the Lord coming over" persecutors, and bringing relief.

From these varied causes arose a distaste for seeking legal means of redress which, if it was never exactly a testimony against lawyers,⁴ amounted in practice to much the same thing. I have only found two cases, before the Restoration, of Friends voluntarily employing legal assistance to resist persecution.⁵ One of these, the action for false imprisonment brought by William Lovell of Hardingstone,⁶ has no

with prosecutions for non-payment of tithe. In some cases the only means of action available to the tithe-owner was to summon the defaulter before one of the London Courts. The Friend, arriving there after a long journey, would often find that he was then forced to employ a professional advocate, to enable him to be heard at all. Fox inveighs against this practice with a reiterated vehemence that would appear extravagant if it was not clear how deeply it offended his sense of justice. See, for an example from this same year, 1658, *Besse I*, p. 552 (case of Wm. Claytor of Elton, Notts.)

¹ *Journal*, p. 29.

² Cf. Jas. Parnell's letter, quoted in W. C. Braithwaite, *Beginnings of Quakerism*, p. 191.

³ *Journal*, p. 266.

⁴ We know of one Quaker attorney in the '50s, Hy. Bedford of Leominster, in whose house Meeting was held for over 3 years (*First Publishers of Truth*, p. 117), and who was also a sufferer (*Besse I*, p. 255). But I cannot find that he ever acted for Friends professionally.

⁵ "Voluntarily," because there was at least one case (Richd. Hitchcock of Chester, in 1653—*Besse I*, p. 99), in which a Quaker's non-Quaker friends, like Isaac Penington's later, took legal action for his relief. There were also the tithe prosecutions referred to in an earlier note, where the employment of legal assistance was more or less forced upon Friends.

⁶ *Calendar of State Papers (Domestic) 1656/7*, pp. 291, 308.

particular significance, for Lovell was an individual and independent Friend who would have acted on his own initiative. The other is more revealing; it arose out of the sentence of outlawry passed on Robert Widders for refusing to pay tithes, and was canvassed fully at Swarthmoor Hall. Now it was of great importance to Friends to establish that the outlawry procedure was inapplicable, for if they were made outlaws they could be imprisoned at will, with no opportunity of pleading their cause publicly at all. Yet in spite of this, it was some time before they felt free to take the necessary legal action for the reversal of the sentence; and this reluctance shows clearly how strong the conviction was that legal remedies were not for them to pursue.¹

But after the Restoration the position radically changed. Persecution before had been local and sporadic; often savage, sometimes arbitrary, but in general aimed at Friends as disturbers of the peace, not as sectaries. The official policy was toleration within the bounds of reasonable behaviour. But now began a prolonged campaign, directed from Whitehall, to extirpate nonconformity. Local magistrates were cajoled or coerced into enforcing the laws rigorously. It was no longer likely that the spectacle of Christian endurance and forbearance might move the hard heart of the persecutor, for the hard heart was away in London. Even the King, though personally tolerant and frequently appealed to, could only occasionally give any relief. Under these conditions imprisonments began to last for years, and the work of the itinerating ministers, on whom Quakerism had depended for its inspiration, was seriously interfered with. Howgill died in Appleby Gaol, Hubberthorne and Burrough in Newgate; Fox himself all but succumbed to his two winters of terrible privation at Lancaster and Scarborough, and had he done so, before he had established the Monthly Meetings, one wonders in what shape Quakerism, as an organized body, would have survived.

As well as imprisonment, Friends suffered ruinous hardship from fines and forfeiture of goods. Many believed that the way of unresisting suffering was still God's way. Dewsbury endured without flinching nineteen years in Warwick

¹ The story has to be pieced together from references in the Swarthmore Letters (see also G. Benson, *Cry of the Oppressed*, 1656, pp. 23 *et seq.* and *Besse I*, p. 305), and its exact course is uncertain. The main point, however—the reluctance to seek legal redress—is clear.

Prison.¹ Penington went so far as not to seek legal redress even when his imprisonment was at the hands of a private individual, and totally illegal. But others began to search systematically for ways by which they might "stay the destroyers," to use the phrase frequently in use. A few, like George Whitehead, were able to acquaint themselves so thoroughly with legal technicalities that professional assistance was almost superfluous. There is a delightful account in Ellwood's *Life* of a bothered magistrate at Denham attempting vainly to draw up a committal warrant, Whitehead again and again pointing out flaws in it, until he finally in desperation told his prisoners to go.² But to most Friends it seemed more natural, and no more objectionable, to look for expert advice to the professional exponent. When, in 1670, the Second Conventicle Act let loose a fresh flood of prosecutions, we find it become a regular practice to seek relief by appealing to Quarter Sessions, often with legal assistance. Besse records some fifteen instances of appeals in this year, from all parts of the country, and there were others.³ The change of attitude was already marked when, about this time, the group of knowledgeable Friends in London was joined by a practising attorney, experienced in Court work,⁴ and, what is not always the same thing, an excellent lawyer. This was Thomas Rudyard, a native of North Staffordshire, a member of an old and distinguished

¹ John Whiting, *Persecution Exposed*, 1715, p. 12.

² It may be mentioned that Ellwood's own prosecution, in 1669, of the two informers Lacy and Aris for perjury (Ellwood, "*Life*"; *Besse I*, p. 79), seems to have been an isolated instance, the official Quaker attitude being apparently against such prosecutions (G. Whitehead, *Christian Progress*, 1725, p. 327). The action taken by Friends, after James II's accession, in connection with the "Royal Commission" on Informers, was evidently thought of rather differently.

³ The cases in *Besse* are as follows: *I*, p. 119 (Cornwall); *I*, pp. 157 and 159 (Devon); *I*, p. 258 (Herefordshire); *I*, p. 318 (Lancashire); *I*, p. 336 (Leicestershire); *I*, p. 496 (Norfolk); *I*, p. 555 (Notts.); *I*, pp. 601 and 603 (Somerset); *II*, p. 43 (Wiltshire); *II*, pp. 121-2 (Yorkshire). Among cases not recorded by *Besse* is that of Wm. Crouch of London (Crouch, *Posthuma Christiana*, 1712, p. 99). It is interesting to find that he paid, or deposited, his fine before entering his Appeal. Francis Bugg was later criticized for having, it was said, unnecessarily done so. This was Rudyard's opinion; but apparently both Crouch and Bugg received contrary advice.

⁴ In his pamphlet, *The Barbican Cheat Detected*, 1674, Rudyard says "I must declare my occasions have somewhat experienced me in the practice of the Courts of Common Law and Equity, and of Courts ecclesiastical and civil within this Kingdom."

family¹ taking its name from the township of Rudyard,² near Leek; he was a man of about 30, of assured position, with three children, but ready at once to testify to his convictions by a protracted ordeal of suffering.

The story of the sufferings of Thomas Rudyard is not easily accessible,³ and is worth re-telling; in places it reads rather like a modern thriller. It begins in the dead of a June night, in this same year of 1670, when Rudyard's house, just off Lombard Street, was suddenly broken into by the militia, and he was carried off to Newgate, on a warrant issued by the City magistrates. A few days later, on his failing to give sureties for his good behaviour, he was remanded there indefinitely, without further explanation or hearing, as a person suspected of "stirring up His Majesty's subjects to the disobedience of his laws, and abetting and encouraging such as did meet in unlawful and seditious conventicles." This procedure of imprisoning upon suspicion, though frowned upon by Parliament,⁴ was permissible under a statute of Elizabeth, but the magistrates were supposed to give some indication of the grounds for their suspicion and also to fix the amount of the security at a reasonable figure; in this case they demanded sureties for £2,000, perhaps the equivalent of £20,000 in our money.

¹ According to a contemporary pedigree (Harleian Society Publications, No. 63, p. 195) he was the eldest son of Anthony Rudyard of Delacres (Dieulacres=Dieu l'enresse) Abbey, a 15th-century Cistercian foundation, used as a private house after the Dissolution, and still in part standing. The pedigree also mentions Thomas Rudyard's brother "Raphe, a Quaker, died unmarried"; this is the Ralph Rudyard who was appointed with Thos. Hart in 1676 to act as London correspondent on Sufferings for Yorkshire. He died in 1678; his Will makes some small bequests for Friends' work.

² The most famous modern possessor of the name, Rudyard Kipling, was so called because his parents first met at Rudyard Lake.

³ The main source is *The Second Part of the People's Ancient and Just Liberties asserted* (1670), published anonymously, but universally attributed to Rudyard himself. This pamphlet is not so effective, either as record or as propaganda, as the famous First Part, which dealt with the trial of Penn and Meade. This is partly because the author of the First Part was able to give a verbatim transcript of the Court proceedings. In the case of the Second Part this was not possible, as the magistrates, fearing further damaging publicity, prohibited the taking of notes and confiscated those that were taken (see Preface to pamphlet). The pamphlet, however, contains much interesting material, especially the concluding Dialogue between a Citizen and a Student of Law, which throws light on a number of points in 17th-century legal practice, of interest to the Quaker historian.

Rudyard's habeas corpus Appeal is reported in a volume of 17th-century Law Reports, 2 Ventris 22.

⁴ See judgment of Archer J. in the Report mentioned in the last note.

Rudyard himself was at a loss to know the reason for this sudden vindictiveness; and particularly why he had been arrested in the middle of the night, when, as he said, "they might have had him at noon-day, upon the Exchange, about his occasions." He put it down to the magistrates' displeasure at his defending and appearing for nonconformists. We, with our access to the State Papers, need not assume any private vendetta; we can see how much pressure was brought to bear on the magistrates to harry dissenters, by the central executive.¹ The magistrates may have hoped that an excess of zeal in one direction would serve to cover up a certain lukewarmness in others. Gerard Roberts, another well-known and readily accessible victim, was arrested at the same time.²

Rudyard appealed at once, by Habeas Corpus, to the Court of Common Pleas, and the case was argued before it by Counsel for two days. It is interesting to find that he was asked, at the outset, whether he would submit to what the Court "should propose and direct"; but he replied that he would submit to nothing but the rule of law. He no doubt feared that the Court would discharge him on condition that he meddled no more with dissenters. In the end the judges were divided. One of them was in favour of dismissing his appeal: "The proceedings of the magistrates against such seditious persons are to be encouraged, especially in such a time as this, when 'tis known they are grown to such a head." But the Chief Justice, Vaughan,³ though no lover of sectaries, would have none of this; he was the same judge who, a year later, was to make legal history by his decision that the jury who acquitted Penn and Meade had been illegally punished for their verdict.⁴ So now he argued force-

¹ See especially the letter dated 7th June from Sir John Robinson to Williamson, Secretary to Lord Arlington: "I have solicited the Attorney-General for the directions he was ordered to give at the Council, and this morning on receiving them, the Lord Mayor and I, with the aid of several of the lieutenancy, proceeded against those persons who refused to give security and committed them to Newgate. The business being of so great a concern, and everybody being cautious and shy in acting, I want half-an-hour's discourse with you early in the morning." (*Calendar of State Papers (Domestic)* 1670, p. 259.)

² *Calendar of State Papers (Domestic)* 1670, p. 254.

³ On Vaughan, see Holdsworth, *History of English Law*, VI, p. 501. Lord Clarendon described him as supercilious, proud and insolent, an estimate to which his judgment in this case lends some support.

⁴ The point of this celebrated judgment has not always been appreciated. It was never really doubted that the punishment of a jury for its

fully that this whole business of imprisoning upon a vague suspicion of incitement, always objectionable, was particularly obnoxious in the case of an attorney, who by the very nature of his calling would constantly have to do things which to an ignoramus might appear to be abetting.

"Put the case, one who had been fined £10 for an offence against this Act had come to Mr. Rudyard to know what he should do, and he had advised him to bring an Appeal at the Quarter Sessions, this is no offence, and yet 'tis an abetting to such as meet, and perhaps might be a cause of suspicion to a Justice of the Peace."

The majority of the Court agreeing, Rudyard was discharged, but a small sop was offered by Vaughan to the disgruntled magistrates: "I think the Justices should do well, if they know him to be guilty, to commit him by a better warrant."

Thus challenged, the Justices tried again, and at the end of June summoned him to the Old Bailey on a quite incredible charge, almost as wild as the charge of treason made against George Fox at Launceston. A bill of indictment against one Samuel Allingbridge, a stationer, had been drawn up at the Guildhall Sessions a month earlier, on the sworn information of two informers named Grove and Tillot, accusing him of having uttered seditious and menacing words, as follows: "The first man that shall disturb Mr. Vincent will never go out of the house alive". This Mr. Vincent was no doubt the Presbyterian minister Thomas Vincent who had debated with Penn two years before, and the occasion referred to would be the meeting for which Vincent himself, as we know, was fined £20 at the Guildhall Sessions.¹

verdict was unconstitutional (cf. the reaction of the House of Commons, 3 years before, to the fining of a jury by Chief Justice Keeling). But legal opinion was confused: there were certain acts of a contumacious jury (e.g. refusing to serve, brawling in Court) that were undoubtedly punishable, and it seemed to follow that "contumacity" in a verdict might be punishable also. It was Vaughan who first stated clearly the all-important point: that a jurymen has two sets of functions, which must be kept distinct; that so far as his functions are ministerial, he is answerable to the Court, but so far as they are judicial, he is answerable only to his own conscience (Holdsworth, *op. cit.* I, p. 345).

¹ A. G. Matthews, *Calamy Revised*, p. 503, quoting the Guildhall Records. Cf. a letter of 23rd May to Lord Arlington: "There were 3 great Presbyterian meetings, where the doors were defended by 3,000 or 4,000 people, who refused to move but by violent force." (*Calendar of State Papers (Domestic)* 1670, p. 234.)

The bill against Allingbridge, a parchment document, was produced for inspection to Rudyard as his attorney. When the point in the proceedings was reached at which it was required by the Court, it was found to have mysteriously vanished. It was now alleged and sworn by Grove, with dubious confirmatory evidence from Tillot, that Rudyard had surreptitiously made away with the bill; further,¹ that he had subsequently approached Grove, and said to him, unlawfully and craftily: "I will come to you some time this week, and we will go and drink a pint of wine with Mr. Tanner,² and contrive to draw up a slight Bill, that may not be found" (that is, that would be thrown out by the Grand Jury) "and so make an end of the business", the inference clearly being that Rudyard was trying to suborn Grove into watering down evidence, with a view to securing his client's release.

The absurdity of the charge was apparent on the face of it: it was improbable in the extreme that Rudyard would have hazarded his professional reputation by actions so very unlikely to benefit anyone. There was no evidence that the wine-party at Mr. Tanner's had ever taken place, and Allingbridge had in fact been tried and convicted, on a new bill of indictment, a day or two later. The case was, however, remitted to the next Sessions, Rudyard being remanded to Newgate, and came up again at the Old Bailey on September the 5th, immediately following the trial of Penn and Meade for their part in the historic Meeting in Gracechurch Street. The same jury had originally been sworn to try this and other Quaker cases also, but as it was now in prison, a new and less sympathetic jury was empanelled.³

Rudyard acknowledged that he had borrowed the parchment indictment from one of the Court officials, wishing to know what Allingbridge was charged with, but

¹ This charge was apparently added as an afterthought, the magistrates being advised, both by the Clerk of the Peace and by Archer (one of the Justices of the Common Pleas who had just heard Rudyard's appeal), that the first charge showed no cause for an indictment. The narrative is, however, obscure, as it does not transpire why Archer was at the Old Bailey at all.

² My friend Mr. E. A. Schalch, an authority on the London wine-trade, though he cannot trace "Mr. Tanner," thinks he was probably a wine-merchant, the reference to him here being similar to those made by Pepys to Daniel Rawlinson and others.

³ It was said that some of the members of this jury had sworn "over their cups" to find any Quakers guilty whom they came to try.

declared that he had done so in open court, and had immediately returned it. He was proceeding to cross-question Grove, when "the Mayor interrupted him, saying he was not to examine the King's witnesses . . . What was deficient in the evidence the Recorder made up in his charge to the jury," and after a brief absence Rudyard and the other Quakers were found guilty of the offences charged against them. Rudyard was fined £100, and committed to prison until payment. As Newgate was now full, he and the others were sent to "the Dog, by Newgate,"¹ in which house two persons had recently died of spotted fever, "where through the goodness of the Almighty they were preserved in health."

Rudyard did not want for occupation during the many months he remained in Newgate.² He wrote the account of his own trial, under the title "The Second Part of the People's Ancient and Just Liberties asserted." He is also thought to have had a hand in the more famous First Part, which contained the verbatim record of the trial of Penn and Meade, with some illustrative material.³ This damning pamphlet the authorities tried vainly to suppress,⁴ and it received the compliment of a reply under the initials of the Lord Mayor, Samuel Starling, himself.⁵ Penn and Rudyard,

¹ This is presumably the same as "the sign of the Black Dog, in Newgate Market," to which Penn and Meade were committed after the Gracechurch St. Meeting (Letter of Penn to his father, 15th August, 1670, quoted in Janney, *Life of Penn*, 1852, p. 67).

² As well as Friends, there were many Baptists in Newgate. These later made it a source of complaint, in their controversies with Friends, that they were treated disrespectfully by Friends in Newgate. Rudyard was able to deny this from his own knowledge (*The Anabaptist Preacher Unmasked*, 1672).

³ For a discussion of its authorship, see G. Orwell and R. Reynolds, *British Pamphleteers*, Vol. I, 1948, p. 140.

⁴ I take it to be "the ugly scandalous book against the proceedings of the former sessions against Quakers," referred to in a letter dated 12th March 1671 from Robinson to Williamson (*Calendar of State Papers (Domestic)* 1671, p. 128). Arnold Lloyd, in his informative chapter, "The Quaker Press," in *Quaker Social History*, 1950, makes this letter refer to an earlier pamphlet, *Some Seasonable and serious Queries upon the late Act against Conventicles*; but there seems to be some confusion here, as he antedates the letter by a year, and also supposes that it specifically mentions *Some Seasonable and serious Queries*, which it does not. The language used would be much more applicable to the pamphlet on the Penn-Meade trial.

⁵ It has been suggested (e.g. by W. I. Hull, *William Penn*, 1937, p. 143) that the S. S. of the title page is not the Lord Mayor, but the Rev. Samuel Smith, of Hereford, who was an experienced controversialist. But it is difficult to believe that, whoever actually wrote the pamphlet, the initials were not intended to be taken for those of the Lord Mayor.

now avowedly collaborating, replied effectively¹ to the reply. By this date, February 1671, Penn was back in Newgate, and their imprisonment together enabled the two men to form or cement a friendship that was of historical consequence later. They were both released in time to start for a two months visit to Holland and Germany in August of that year.

Rudyard's sufferings must have served to recommend him to Friends, and helped to dispel any remaining feeling against lawyers, and this was presently confirmed by the signal success of the lawyers in the prolonged legal battle that followed George Fox's arrest in Worcestershire. Fox himself had only gradually become reconciled to the idea of professional assistance; at Lancaster in 1664 he was still "willing to let no man speak for me" (to the indictment) "but to speak to it myself."² This he did, as we know, most ably and effectively, though as Margaret Fell on the same occasion was represented by Counsel, he may have had the benefit of their advice before the hearing. Fox's attitude, however, was no longer the same as Dewsbury's and Penington's; he now felt no hesitation about strenuously resisting what he regarded as injustice; but he felt, as we have seen, that professional lawyers were "out of the true justice," and he felt also, as a matter of principle, that justice, being essentially straightforward and uncomplex, ought not to be dependent for its successful pleading on the employment of a paid advocate.³

This objection, being less fundamental than Penington's, was perhaps more susceptible to argument; at any rate in 1674 Fox was largely content to leave himself in the hands of his advisers, both lay and legal,⁴ and allowed himself to be borne backwards and forwards by habeas corpus between Worcester and London, only stipulating that he should not be required to accept release by means

¹ *Truth Rescued from Imposture*.

² *Journal*, p. 477.

³ "The Law being grounded upon Reason, I know Reason and unreasonableness, so I by that means, and every poor man, is able to plead his own cause, and appear in his own person without Attorney and Counsellor." (*An Instruction to Judges and Lawyers*, c. 1658, p. 20.)

⁴ Four lawyers appeared for him at different hearings; he also spoke for himself on several occasions.

of a pardon.¹ Rudyard acted as London attorney throughout,² and shared in the final triumph, though chief credit for this must be given, first to the magnanimity of the presiding judge, Hale, who refused to tender the Oath of Allegiance again; and secondly to the legal acumen of Thomas Corbett, the Counsel, very sympathetic to Friends, brought in on the recommendation of his admirer Richard Davies of Welshpool. Corbett employed the time-honoured forensic stratagem of first presenting the Court with a new and ticklish point of law to decide (in this case the proposition that it was illegal to imprison upon a *praemunire*), and then giving them an excuse for not deciding it by providing other reasons (errors in the indictment) for finding in his favour.

Richard Davies, whose account of the proceedings is for the most part modestly copied from Fox's *Journal*, allows himself one little crow:

"As we were going out of Westminster Hall" (the case having been adjourned after Corbett had put his point of law) "some Friends were much troubled that the Welsh counsellor should start such a plea, contrary to the opinion of the judges and all the counsellors. . . . But honest, plain G. Fox said he had a fine trial, and was cheerful in his spirit. I desired Friends to have a little patience, for I thought the Welsh counsellor would stand upon his own legs."

This experience seems to have finally convinced both Fox and most other Friends that they need no longer scruple to call in the assistance of lawyers. As regards Fox himself, there are eight letters written by him from Swarthmoor

¹ There was some difference of opinion among Friends as to whether they need scruple to accept pardons; see the interesting discussion in 1672 between Thos. Moor and Geo. Whitehead (*Christian Progress*, 1725, p. 356). I think most Friends would have accepted Whitehead's common-sense view that a pardon was the most convenient method of wiping out a technical offence. It is noteworthy that when Theophilus Green and others appealed in 1671 against sentences of *praemunire*, asking to be allowed to make a *statement* of allegiance, the Court, though unable to accept this in lieu of the oath, advised the prisoners that their best course was to supplicate for a pardon (*I Ventriss* 171); which they successfully did (*Besse I*, p. 430). But Fox in this instance took the opposite view, that the acceptance of a pardon would not be "agreeable with the innocency of my cause" (*Journal*, p. 701).

² See letter of 23rd January 1674, in *Cambridge Journal*, II, p. 273; letter of 28th August 1674, in *J.F.H.S.*, Vol. 10, p. 145; account by Richd. Davies of the King's Bench hearing in February 1675; all mentioning Rudyard.

Hall in 1676 that are thought to have been to Rudyard,¹ and when he came to London in 1677, the period of just over a year there covered by the Haistwell Diary (broken by visits to the Continent and to Worminghurst) included eight interviews between the two men.

As to Friends in general, it was in 1675 that the momentous step was taken, partly perhaps because Rudyard and Corbett were available, of setting up a permanent standing committee specially charged with safeguarding the interests of persecuted Friends, by legal action if necessary. This decision was not reached without heart-searching. Some still did not feel free to take legal action, and the Minute of the representative Conference makes it clear that if so, they were to be at liberty to refuse it.² But it was made equally clear that those who wished to accept it were not "to be discouraged or reflected upon." This body, the Meeting for Sufferings, had none of the general executive functions that it possesses to-day. Its nearest modern counterpart would be the Central Board for Conscientious Objectors. In fact, had it been formed of representatives of all the nonconformist bodies, as under rather different circumstances might have been possible,³ the resemblance would have been complete. Like the Central Board, it had three main duties: the collection and correlation of detailed accounts of sufferings, in continuation of those already kept; the provision of advice and, where thought necessary, legal assistance to individuals in need of it; and a reasoned and persevering propaganda, both by appeals to the public and by the lobbying of influential persons, for the reform of unjust laws. It did not raise false hopes of any wholesale release from persecution, though occasionally it had spectacular successes; like the Central Board again, its greatest value

¹ *Annual Catalogue of George Fox's Papers* (ed. H. J. Cadbury, 1939), Nos. 99F. to 106F.

² As late as 1680 Thos. Hymans of Bridgwater was offered Counsel by the Court, but refused, saying: "I depend wholly on the Lord: let Truth and Innocency plead my Cause." (*Besse I*, p. 617.)

³ For in spite of Friends' violent controversies with other nonconformists, there is evidence also of a good deal of co-operation between them. E.g. after telling the well-known story how other Dissenters (John Bunyan among them) were included by the help of Friends in the Pardon of 1672, Geo. Whitehead adds: "And indeed I was never backward to give any of them advice (if I could) for their help, when any of them have been in straits, and come to me for advice, or help." (*Christian Progress*, 1725, p. 359.)

may have lain in the assurance it gave to sorely-trying men and women that their sufferings were not forgotten, but were receiving week by week the attention of skilled and devoted sympathisers.¹

The Meeting for Sufferings proceeded tentatively at first; it had to win the confidence of the provinces, and the early minutes of its weekly executive are comparatively brief. But by 1679 its work had increased so much that a second Friend attorney, Rowland Vaughan, was brought in to relieve Rudyard of some of the cases. Other Counsel as well as Corbett had been employed from the beginning. Of these one of the most interesting is Robert West, of the Middle Temple, who was associated with Friends as one of the Proprietors of East Jersey, and was later implicated in the Rye House Plot.

Rudyard's work for the Meeting for Sufferings was not his only service for Friends. He was one of the original members of that other august body, the Six Weeks Meeting, and his name occurs in its minutes with equal regularity. As described in a recent issue of the Society's Journal, he was responsible for shaping the form of Marriage Certificate still in use.² He acted as Registrar of Wills and Trusts for London Friends.³ He was at one time offered Friends' business as printer and publisher, though the return of Andrew Sowle to favour made a decision unnecessary.⁴ He was a member of the important mission to the Continent in 1677, in which Fox, Penn, Barclay and Keith all took part; as Rudyard is not known to have been a minister, it seems likely that his services were required in a business capacity, perhaps in connection with the legal difficulties in which Dutch Quakerism was involved.

He was also a prolific writer on behalf of Friends, and was particularly used, in the first years of his association with them, in their disputes with the Baptists.⁵ There was still an authority thought to attach to the printed word, which made Friends reluctant to allow any mis-statement

¹ For a more detailed account of the work of the Meeting for Sufferings, and of its especial success in "ecclesiastical" cases, see Arnold Lloyd, *Quaker Social History*, 1950, Chapters 6 and 7.

² *J.F.H.S.*, Vol. 46, p. 57.

³ *Minutes of Six Weeks Meeting*, Vol. I, p. 116.

⁴ *J.F.H.S.*, Vol. 18, p. 7.

⁵ C. E. Whiting, *Studies in English Puritanism 1660-1688*, 1931, pp. 167-9, gives a summary of Rudyard's "pamphlet war" with the Baptists.

about them in print to pass without immediate denial. Rudyard's promptness in this regard, and the expedition of the printers, is remarkable. On one occasion he had just completed a pamphlet¹ on 24th October, dealing with events only eight days earlier, when he heard a sheet² of Jeremy Ives, a writer in the opposing camp, "crying about the streets." He sat down at once and wrote a postscript, dated 26th October, for publication with the original pamphlet; a few days later a reply³ appeared; he answered this, and the answer⁴ was published, by 16th November. His legal training in the precise presentation of a case made him a good controversialist, in a field that was apt to be bogged by irrelevancies and inessentials, though it laid him open to the charge made by one of his opponents: "It seems our pettifogging Friend T. R. stands always pressed to rail in the behalf of his faction, and ready for a fee to stigmatise all that would expose them."⁵ The pamphlet of Rudyard's that provoked this retort is interesting as one of the few satires published by Friends.⁶ Later, as he became immersed in his Meeting for Sufferings work, his writings deal more exclusively with legal questions. The last of them, "The Case of Protestant Dissenters of late Prosecuted on old Statutes made against Papist and Popish Recusants," was a reasoned summary of the proposition, which the Meeting made such efforts to get officially accepted, that dissenters could not be prosecuted for recusancy, that is, for non-attendance at Church services.

Rudyard's abilities were made use of less happily in the controversies with disaffected Friends with which this decade is filled. Of these the best documented is the prolonged altercation⁷ with Francis Bugg of Mildenhall as to whether the fines incurred under the Conventicle Act in respect of a visiting minister should be borne by the local Friends or from some central fund. It is Bugg who, attacking the Second Day Morning Meeting, calls Rudyard jeeringly

¹ *The Anabaptists' Printed Proposals Discussed*, 1674.

² *A Sober Request to the Quakers*.

³ Thos. Hicks, *A Reply to Thomas Rudyard's Folly and Impertinency*.

⁴ *An Answer to a Scandalous Paper of T. Hicks*.

⁵ *The Character of a Quaker* (2nd Part), 1672.

⁶ *The Libeller Characterised by his Own Hand*, 1671.

⁷ The references to Rudyard are in Geo. Whitehead, *Judgment Fixed &c.*, 1682, p. 219; Saml. Cater, *The Liberty of an Apostate's Conscience*, 1682, p. 75; F. Bugg, *Painted Harlot*, 1682, *passim*.

“their oracle of law.” Bugg was a cross-grained and rather dull-witted man, whose grievance quickly became an obsession; but, to begin with at any rate, there was a genuine question of principle involved, and Rudyard’s letters, making points of law that did not touch the real issue, can only have exasperated him.

This episode also brings to light a certain tactlessness and impulsiveness in Rudyard, which is sometimes met with in his profession combined with real shrewdness and sagacity. Bugg’s references to him as “the hot-headed lawyer” are borne out by his behaviour in two other instances. One, his outburst against John Pennyman at White Hart Court Meeting,¹ can perhaps be excused, for Pennyman, another disaffected Friend, had for years pursued the infuriating tactics of going from Meeting to Meeting, waiting until a message had been delivered, and then rising to complain, in a pained manner, of its shallowness and lack of spirituality. The indiscretion preserved in the State Papers² seems less excusable. According to information laid by a certain Captain Shrawley, Rudyard had stated in conversation that if the Quaker Meetings were again disturbed, it would mean open war. When taxed with this, he explained skilfully that he was referring to war against the Quakers, not by them. His explanation appears to have been accepted, but it was an unwise thing to have said.

He was never called upon to undergo any further imprisonment, but suffered regularly distraint on his goods for the thirty shillings a year charged, in lieu of tithe, on his house in George Yard, off Lombard Street.³ The rector’s coachman, who acted as tithe-collector, took from him, at different times, pewter, two watches, “one Hair Chamblet Cloak lined with Shalooone, and one new Cloth Coat lined with friezed Bayes.”⁴

¹ John Pennyman, *Life*, 1703, pp. 133-4. Pennyman, like Bugg, gives Rudyard the ironical title of “their lawyer.”

² *Calendar of State Papers (Domestic)* 1682, p. 275.

³ To help the incumbents of London parishes affected by the Great Fire, a statute had been passed for the commutation of tithes into a fixed annual sum recoverable by distraint (*Besse I*, p. 437). It was no longer therefore possible, in the case of London Friends, for there to be much effective resistance to the tithe-owner.

⁴ These details are taken from a pamphlet, by Wm. Gibson and Thos. Rudyard, *A Christian Testimony Born by the People of God in Scorn called Quakers in London*, 1679, summarized in *Besse I*, pp. 438-440; cf. also pp. 443-4.

Rudyard's service to Friends in England lasted only just over the decade. In 1682 he left for America, and his story thereafter belongs rather to American than to Quaker history; it can be briefly summarized.¹ Through his friendship with Penn he had been involved from the beginning in Penn's colonial projects. Many of the original Pennsylvania deeds were drawn up and signed in his office, and he was himself a Proprietor of West Jersey, a First Purchaser of Pennsylvania, with 3,000 acres, and one of the 24 Proprietors of East Jersey. Now, on the appointment of Robert Barclay as Governor of East Jersey, with the understanding that he would never be expected to cross the Atlantic himself, Thomas Rudyard was given two commissions, one as Deputy Governor, the other as Secretary and Registrar of the colony, and arrived at Elizabethtown, New Jersey, in November of the same year.² It has been suggested³ that his appointment as Deputy-Governor was only intended to be a provisional one; in any case another Deputy-Governor was appointed next year, Rudyard continuing as Secretary and Registrar. These offices he combined for a time with that of Attorney-General in the neighbouring colony of New York.⁴ Rudyard's services as a lawyer were in considerable demand, as there were then very few persons in the colonies with any legal training, but he was not a successful administrator. The continual conflict of views between the absentee Proprietors, many of them autocratic Scotsmen, and the Council of residents, needed careful and delicate handling, which Rudyard was not the man to provide. At the end of 1685 he removed to Barbados,⁵ where he died seven years later, aged about fifty.

¹ For a fuller account see "The Board of Proprietors of East Jersey," by David McGregor, in *Proceedings of New Jersey Historical Society*, 1922, pp. 177-195, and "The Proprietors of the Province of East New Jersey, 1682-1702," by J. E. Pomfret, in *Pennsylvania Magazine*, July, 1953, pp. 251-293.

² His two daughters accompanied him, together with 5 or 6 servants (*New Jersey Archives*, XIII, p. 114), but apparently not his son Benjamin, nor (perhaps) his wife; his son is mentioned later as being in Barbados (*N. J. Archives*, XXI, p. 209). Both his daughters married in America, Margaret twice and Anne three times.

³ By D. McGregor, loc. cit.

⁴ *New York Colonial Documents*, Vol. III, pp. 351-2. He received an honorary fee of £5 per annum, "and reasonable fees in special cases."

⁵ There is some evidence that he claimed to be entitled to carry on his office by deputy, a claim which was resisted (*N. J. Archives*, I, p. 378, XIII, p. 144).

It is interesting that in 1684 he applied to Penn to be allowed to take up a commission in Pennsylvania, which had been granted him in England. There is still extant in Friends House library a statement prepared by Penn, in his most forthright and incisive style, explaining why the application was inadmissible, first, because Rudyard had forfeited the commission by accepting office in another colony, and secondly, because the laws of Pennsylvania forbade the employment of a man of ill fame and evil conversation.¹ Penn adds that if Rudyard will reform, he will find him another office in Pennsylvania, "which reformation would be my joy to see," and signs himself "Thy ancient friend."

This moral lapse alluded to by Penn, for which we have other evidence,² was no doubt the main reason why Rudyard was treated in England as having severed his connection with Friends. But the Quaker tradition is never hostile or ungrateful to him. His name was omitted from the Ellwood and later popular editions of Fox's *Journal* (to which it has now happily been restored),³ but Sewel, writing a generation later, gives him honourable, if inaccurate, mention, and to Besse, a generation later still, he is "a man skilful in the law of the land, and zealous for the liberties of the people." That would seem to be a worthy epitaph.

Certainly his defection made no difference to the willingness of Friends to employ legal assistance. Rowland Vaughan, Rudyard's colleague on the Meeting for Sufferings, continued to be engaged in Friends' work, particularly in the negotiations for the discharge of prisoners after James's accession, which needed expert handling.⁴ Between 1684

¹ Cf. "Laws agreed upon in England 1682." Nos. XXVII and XXXIV, in *Pennsylvania Archives*, 8th series, Vol. I, pp. lxi-lxii.

² Two disaffected Friends make charges to this effect: John Pennyman explicitly (*Life*, 1703, p. 133); Francis Bugg impliedly, by putting Rudyard in his "cage of unclean birds" (see also F. Bugg, *The Pilgrim's Progress from Quakerism to Christianity*, 1698, p. 143). There is the further fact that Rudyard by his Will, dated 7th December, 1685, made provision for his "natural" son; as this boy, John Rudyard, was still a minor in 1696 (*N.J. Archives*, XXI, pp. 231, 378), it seems reasonable to connect his birth with the same circumstances. John Rudyard died at the end of 1726, leaving six children, all under age (*N.J. Archives*, XXIII, p. 397).

³ *Journal*, p. 566.

⁴ Vaughan is a shadowy figure in Quaker history compared with Rudyard. Little is known about him personally, and it has even been queried whether he was a Friend, as Geo. Whitehead in one place (*Christian Progress*, 1725, p. 610) calls him "an attorney employed by us." However, in another place (*op. cit.*, p. 590) Whitehead refers to him by his Christian

and 1686 there are thirteen references in the *Itinerary Journal* to George Fox consulting Vaughan, sometimes about Friends' business, sometimes about his own; included in the latter was a suit for non-payment of tithes, in which Fox, though defeated after a long legal battle, succeeded with the help of Counsel in limiting the effects of the judgment.¹

Had Fox then modified his former opinion as to the "earthliness and unreasonableness" of lawyers? I think not necessarily. It is a subject that cannot be adequately treated here, but I think it may be that his attitude, on this as on other matters, had only altered to this extent: he was now willing to recognize that in an imperfect world the imperfect institutions of the world have a function to perform, which is, in a sense, "of God," and which the Christian can accept and make use of, as long as he retains his awareness of the divine perfection beyond. It is an attitude that may encourage the hypocrite, and the charge of hypocrisy was indeed frequently made against Friends in this connection. There is a letter from the next century preserved in the *Harleian Miscellany*² which so exactly typifies the then popular idea of the Quaker litigant that I take it to be spurious, in spite of the Editor's contrary assertion. It runs as follows:

"Friend John, I desire thee to be so kind as to go to one of those sinful men in the flesh, called an attorney, and let him take out an instrument with a seal fixed thereunto, by means whereof we may seize the outward tabernacle of George Green and bring him before the lambskin men at Westminster, and teach him to do as he would be done by, and so I rest thy friend in the light."

It is interesting to contrast with this letter the authentic one written by George Fox to his wife, at the time when her son was threatening, with what show of legal right we cannot now determine,³ to eject her from Swarthmoor Hall. Fox

name alone, suggesting a friendly familiarity. Vaughan regularly attended the Meeting for Sufferings and its weekly executive, and his name occurs frequently in the Minutes among lists of "Friends" appointed for different purposes.

¹ Fox, *Journal*, ed. Ellwood, Bi-centenary Edition, II, pp. 355-8.

² 1808 edition, Vol. I, p. 376.

³ This question, though frequently debated, is not really capable of solution, because we have no certain information as to the legal grounds on which Geo. Fell based his claim. It is clear that his claim was generally felt to be morally unjustified.

does not counsel submission; he feels that would not be in the best interests of Friends, her son, or herself. His letter is full of practical advice, including approval of her consulting her attorney brother-in-law. But woven in with this strand, and constantly recurring, is his other counsel, to remember always "to keep in that which was and is and will be." I give two extracts only.¹

"As concerning the house, keep over it, and give both it and him up to the Lord's ordering, and see if thou canst preserve a part to thyself, the interest thou hast already, whereby ye may not be as banished out of the country by him. And thou may speak with thy brother Richardson about this also, for if he wholly put thee out of the house, it might hurt himself and be the destroying of himself, turning the Lord out of doors. But these things I shall leave wholly to the seed and wisdom of God in thee, to order thee to do as thou feels. . . So if you can keep things clearly as they be you may, but however keep over them all in the power of God that doth bind, for that must work through all things."

I treasure this letter particularly as showing Fox illustrating, in an unassuming, and certainly unhypocritical way, how the complete acceptance of divine perfection may yet be combined with the limited acceptance of the imperfect world, of which lawyers are a part.²

¹ The letter (from the Thirnbeck Collection) is quoted in full in Helen G. Crosfield, *Margaret Fox of Swarthmore Hall*, 1914, pp. 141-3.

² In *Besse* (I, p. 536) there is printed, under the date 1667, a paper published by Friends in Northampton Prison, declaring against "hireling priests and deceitful lawyers." Besse, writing 80 years later, adds his own explanatory comment: "The foregoing paper expresses the early sense of this people" (i.e. Friends) "respecting mercenary priests and lawyers, as having no place among perfect Christians; because the true ministers of Christ are ever ready freely to communicate unto others their experience of the teachings of his spirit freely given them: and as to lawyers, a Government of universal Peace can find them no employment." It will be interesting to see whether this is so.

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