Early Friends and Informers

NORMAN PENNEY, writing in 1925, said that a monograph on informers was much to be desired. What follows does not pretend to be such a monograph; that would require a good deal more detailed research, into the records of other nonconformist bodies as well as Friends; but some notes, derived largely from the cases in Besse's *Sufferings*, of the impact of informers upon Friends, may be of interest.

Friends' contact with informers arose largely out of the Second Conventicle Act, which came into force in 1670. The earlier (1664) Conventicle Act, now lapsed, which had imposed considerably severer penalties, including transportation for a third offence, had failed, partly because of the unwillingness of the local magistrates and officers to enforce its stringent provisions. For this new attempt to suppress nonconformity, the legislature, inspired by the Archbishop of Canterbury, Sheldon, devised a quite different method, an attack on the nonconformist's purse rather than his person, and with special measures to prevent the practice of holding meetings for religious worship in private houses. The fines on individual worshippers were comparatively light; but the penalty for harbouring a conventicle was to be £20, perhaps £200 in our money, and the fine on the preacher or teacher was also to be £20, with £40 for a subsequent offence. Fines were recoverable by distraint, and to meet the case of a preacher who was a stranger, and had therefore no goods to be distrained on, the magistrate was empowered to charge one or more members of the congregation with the payment of his fine. To discourage any lukewarmness on the part of the local executive, such as had tended to nullify the earlier legislation, it was provided that constables and similar officers neglecting to carry out their duties were to incur a fine of £5, while in the case of magistrates themselves the fine for neglect was to be £100.[1]

[1] Besse records a number of such fines being imposed or threatened; e.g. for constables, *Sufferings I*, pp. 172, 177, 204; for magistrates, *I*, p. 460; *cf.* C. E. Whiting, *Studies in English Puritanism 1660–88*, 1931, p. 436.

Moreover, the crucial innovation was made that the magistrate could pass judgment and sentence on receiving the sworn statement of two witnesses, without notice to the parties charged, and that a third of the fines in connection with unlawful meetings was to go to the persons who gave information as to the breach of the law.

Friends' Objections to Informers

It was this provision for allowing, and bribing, "beasts of prey"[1] to give ex parte information against them that was a particular outrage to the feelings of Friends. They objected strongly to the character of many of the informers, "soldiers and base persons," "a rambling woman who used to stroll about the country begging and blowing a horn," "beggarly rude informers (some of them confident women)."[2] But they objected also to the whole conception of the informer, and procedure by information, as alien to the principles of English justice. Their knowledge of legal history came mostly from Coke's *Institutes*, a book coloured by its author's stand against arbitrary monarchy; and the particular illustration they took from him in this connection, was the law of Henry VII passed to legalize the proceedings of informers like Empson and Dudley, which was repealed by Henry VIII, as soon as he came to the throne, to ensure his popularity. Modern historians point out that this procedure by information (instead of by indictment) was in use before Henry VII's law, and continued intermittently to be used after its repeal; and undue importance may have been attached by Coke to the episode. It was rightly cited nevertheless in support of the principle, so strenuously maintained by Penn and others, that the power of the Crown and State was not absolute, but was subject to limitations that had long been recognized as fundamental to the laws of England.

It is worth noting, in passing, though Friends soon ceased to be affected by it, that the heyday of the informer was yet to come. In the eighteenth century a very large number of statutes were passed, giving informers, not now a third, but a

[1] "Informers, like beasts of prey, were lurking, creeping and skulking about in many, or most, parts of the nation." (Geo. Whitehead, *Christian Progress*, 1725, p. 500).

[2] Besse I, pp. 105, 356, xliii. Confident = forward, presumptuous, as in *Tom Jones, IV.* xii. Readers of the Georgics will remember how the pinioned Proteus addresses Aristaeus as *iuvenum confidentissime*.

half, of the fine, and a modern authority,[1] after quoting some of these, adds the comment:

> The incentive of the "moiety of the appointed penalty" was not confined to a few isolated penal statutes selected at random. It formed part of the deliberate and consistent policy of the legislature and pervaded the entire body of the criminal law.

The system, whatever its superficial attraction in enlisting lay co-operation in the work of the police, gave rise to many and notorious abuses, of which two, the giving of perjured evidence, and the practice of modified blackmail whereby offenders were offered immunity by informers on payment of a fee, had already been experienced by Friends.[2]

The whole system, with a few unimportant exceptions, was finally abolished by the Common Informers Act of 1951.

What Defences Did Friends Possess?

Of these the one appearing to give the greatest measure of protection, the right of appeal to a jury at Quarter Sessions, proved by experience to be largely illusory. There are many records of appeals, but of these few were successful.[3] An account of one appeal is given later in this article. There is another illuminating example in Oliver Sansom's *Life*, which shows some of the appellant's difficulties very clearly.[4]

If the eighteenth- and nineteenth-century practice, under which the same man could not be both heard as a witness and rewarded as an informer, had been generally adopted, the lot of Friends would have been easier. But this was not so; in many cases the magistrate allowed the informer to swear to the facts, and proceeded to pronounce sentence, and authorise distraint, immediately. The first the Friend knew of it was often when the officer arrived to seize his goods.

[1] L. Radzinowicz, *A History of English Criminal Law*, 1956, vol. 2, p. 146.

[2] For a case of proposed "immunity" see Besse I, p. 188. The cases of false information are very frequent.

[3] Though it must be remembered that the cases recorded by Besse do not give a true sample, as he and his sources were naturally mainly concerned with instances of *continued* "suffering."

[4] See Chapter VI. One interesting point emerging from this account is that Friends did not object to evidence being given on oath, by non-Friends, in support of these appeals. No other evidence would of course have been allowed; but Sansom seems to regard it as an additional grievance that "sworn" evidence was rejected!

There was frequently difficulty in obtaining particulars of the information, with a view to an appeal. Before an appeal could be entered, the amount of the fine had normally to be deposited, and this was by no means always recoverable, even should the appeal be successful.[1] When the Quarter Sessions met, the convicting magistrate was usually one of the Bench himself, and obstacles could easily be put in the path of the appellant; the informers could be treated as "king's witnesses," and so pronounced exempt from cross-examination; or the Friend could be required to take the Oath of Allegiance before proceeding.

One method of limiting the hardship of distraint seems to have been used: a Friend who owed money to business creditors would execute a "Deed of Sale" for the benefit of these, so that there should be nothing in his own possession that was available to be distrained on. This procedure, so far as it ensured that creditors should not suffer, was officially commended from London, but there are hints that it was made use of, or goods deposited elsewhere,[2] where no genuine debt existed, and this must have been one of the points on which differing degrees of scruple created tensions between Friends.

Were Friends More "Steadfast" Than Other Dissenters?

It is attested by a large number of witnesses, of whom many were otherwise hostile to Quakerism, that whereas Friends, with some exceptions, continued to meet openly, other Nonconformists endeavoured to evade persecution by meeting in secret, in the woods or elsewhere. It is not at first sight clear *why* Friends should have shown this greater steadfastness, except perhaps that they were more inured to suffering, through their experience in tithe and other cases. But another, less apparent, reason may have been that other dissenters were more immediately *vulnerable* than Friends. There was some legal authority for the view that the Second Conventicle Act did not apply to the silent Friends'

[1] See, for two examples, Besse I, pp. 80, 457.
[2] *Cf.* Besse I, pp. 217, 536, 541.

meeting at all.[1] But even if this was wrong, there was not much attraction to an informer in the small fines levied on individual worshippers; the chief prize was the fine of £20 on the preacher, and if there were no preacher, or teacher, this could not be imposed; it was even doubtful whether praying was preaching.[2] There is evidence of considerable uncertainty as to the position[3] and informers may well have decided to concentrate on other conventicles, where the element of preaching or teaching was manifest, and the £20 was certain to be secured. But when these defenceless congregations had gone into hiding, the informers had perforce to be content with what they could get at Quaker meetings, even though they were often frustrated. Besse describes the lengths to which they went, on a number of occasions, to try to ensure that there was a "preacher"; in one case a Friend who had reproved "certain rude boys who threw in a dead dog" was held to be preaching.[4]

A Devonshire Case

We have a racy account,[5] clearly based on verbatim notes, of an appeal to Quarter Sessions in 1670, in which Counsel appeared on Friends' behalf; in this case he was able to maintain successfully that the same person could not act both as informer and as witness. The meeting was at the home of a widowed Friend, and the appellants admitted that it was a "conventicle," but claimed that there was no evidence of any preaching. It appeared that a number of informers decided after church to make a "raid" on the

[1] See the volume of Opinions at Friends House known as the Book of Cases, vol. I, Thos. Corbett, a Counsel frequently employed by Friends, advised (p. 15) that for a breach of the Act some exercise of religion not according to the liturgy and practice of the Church of England was necessary; and that "till some of the company begins to preach or teach none can say or swear that there was any colour or pretence of exercise of religion." Corbett was in this, as in other matters on which he was consulted, a little too sanguine, as perhaps befitted his Welsh temperament. Another Counsel advised less hopefully (p. 116): "Quakers' silent meetings have been taken to be within the law," *i.e.* caught by it.

[2] George Whitehead at least was still arguing in 1684 at the Guildhall, "preaching, or teaching, is done to men, but prayer and supplication is made to God. Men do not preach to God, nor teach God, but pray to God." (*Christian Progress*, 1725, p. 562).

[3] See, e.g. Besse I, p. 30.

[4] Besse II, p. 26. Friends were also frequently incited to speak, e.g. I, pp. 555, 754.

[5] Besse I, pp. 156–9.

Meeting, but one of the widow's sons, who was in the churchyard, heard what was intended, and ran on ahead to give notice. When the informers arrived, having brought constables with them, they found the company sitting in silence, with no other indication of any "preaching" than the presence, so it was stated, of a Bible on the table, and the fact that one member of the gathering was standing behind it, half concealed by the others. Both these statements were denied.

An interesting interlude was provided by one witness, a blacksmith, who said that he had frequently attended the Meeting in the past, and that there was always preaching at the Sunday gathering; the silent meeting was held on a weekday; he knew this because he had often shod the horses of leading Quakers; he named among others George Fox, a shoemaker, and Margaret Fell. The blacksmith's evidence was received with marked disapproval; he was called "a counterfeit Quaker" and "an impudent fellow," and his statement that Friends concealed their activities was disbelieved, as inconsistent with their reputation for honest dealing. ("They are of a more noble spirit than so.")

When the testimony of another constable had been read, confirming Friends' denials, the Court was in a quandary; the Chairman directed the jury that the evidence on either side was about equal, and it was left to them to decide. They also could not agree for some time, but eventually, "the foreman and some others over-ruling the rest," found against the appellants. This case well illustrates the difficulty of succeeding on such an appeal, even when the rebutting evidence was strong, and the Court reasonably impartial.

Prosecution of Informers for Perjury

One possible safeguard against reckless accusations by informers was that if the person informed against could prove he was not in fact present at the Meeting, he might indict the informer for perjury, an offence carrying heavy penalties, as well as social ignominy, in days when the absolute dependability of sworn evidence was thought to lie at the very root of justice. There is some divergence of view as to whether Friends made much use of this weapon. Arnold Lloyd states that "the Meeting for Sufferings financed

and organized the prosecution of informers,"[1] but the Minute he quotes, which authorizes a Friend, Josiah Ellis, to prove perjury if he can, at the Meeting's expense, seems more likely to refer to an appeal by the Friend to Quarter Sessions. There is one famous case of a successful prosecution by a Friend, Thomas Ellwood's indictment of the informers Lacy and Aris; and there are two unsuccessful attempts recorded by Besse, though he does not *say* that the prosecutors were Friends.[2] But George Whitehead states quite positively that informers were "prosecuted by other dissenters, not Quakers," and although, writing many years after the event, he might have overlooked or forgotten a few isolated cases, from different parts of the country, he could hardly have been in error as to the official policy of the Meeting for Sufferings, in which he was a leading member all the time.[3] It seems right then to conclude that Friends on the whole did not make use of this weapon; the procedure was an expensive one,[4] and the prospects of success uncertain; moreover Friends may well have felt that there was an element of vindictiveness in attacking individual offenders, when what was really objected to was the system under which they worked. Later, however, when persecution had ceased, Friends did take a leading part in demonstrating, by massive evidence before the commissioners appointed by James II, the abuses to which the system led, and the many examples of perjured evidence that had been given.

Conclusion

The Second Conventicle Act bore very hardly on Friends, though its burden varied a good deal from district to district. In London its chief effect at the beginning was to prevent the use of meeting-houses, and informers are said to have

[1] *Quaker Social History*, 1950, p. 95. The Minute is in vol. III, p. 252, of the MS. Meeting for Sufferings Minutes at Friends House.

[2] See Besse I, p. 80 (from Ellwood's *Life*), I, p. 636 (Somerset), p. 724 (Sussex).

[3] Geo. Whitehead, *Christian Progress*, 1725, p. 327. Friends also did not use physical violence against informers, in the way that other nonconformists sometimes did; see C. E. Whiting, *Studies in English Puritanism 1660–88*, 1931, pp. 437 *f*, and the amusing episode of the barricading of a minister's house reproduced in *J.F.H.S. IV*, p. 148.

[4] Arnold Lloyd, *op. cit.*, p. 162, quotes the Minutes of Upperside Monthly Meeting as showing that the Meeting spent the equivalent of over one year's income in the prosecution of Lacy and Aris.

been few for some time, following their unfortunate experience with George Fox.[1] Later however they appeared in London in large numbers. At Colchester no informer dared show his head,[2] and in the whole of Shropshire there was one only; no other of "the sons of Belial . . . would be a partner with him in it."[3] But in other counties sufferings were continual, informers, when Friends in one district were impoverished, moving to another.

One grievous result of the persecution was the occasion it provided for censoriousness between Friends. Loss of property is often harder to bear patiently than loss of liberty; there was some backsliding and evasion, and reprimands from London were not well received. The Wilkinson-Story separation stemmed in part from this feeling of resentment in the provinces. Again, the way in which the penalties were imposed threatened to impair the work of the travelling ministers, from which so much of the strength of early Quakerism had come. For if a meeting held in silence was comparatively inexpensive, even if informed against, while a meeting with a visiting speaker might cost the local Friends £20,[4] it was only in human nature for them to wonder whether the visit was worth it. The original estrangement of that interminable controversialist Francis Bugg of Mildenhall arose from just this grievance, and his contention that if the Morning Meeting chose to send a visiting Friend, it ought to be responsible for the "preacher's fine."

Yet it is possible that, as in other instances, Friends' sufferings worked out in the end to their advantage. Their neighbours, knowing them to be harmless and peaceable Christians, disliked seeing them continually plundered by a disreputable band of informers. An atmosphere slowly gathered which made the novel principle of toleration in religious matters more acceptable and congenial. If so, some good will ultimately have come from what Ellwood called "this unlawful unjust unequal unreasonable and unrighteous law."

ALFRED W. BRAITHWAITE

[1] *Journal*, ed. Nickalls, p. 566.

[2] *First Publishers of Truth*, p. 95.

[3] Besse I, p. 753.

[4] It will be recalled that George Whitehead, arrested for preaching at Norwich, was careful to insist that he had an estate elsewhere, in the hope that this would prevent his fine being levied on Norwich Friends (*Christian Progress*, 1725, p. 381).