

George Fox's Last Imprisonment

THE story of George Fox's last imprisonment, which continued from December, 1673 to February, 1675, is an intricate but absorbing one. It has been noted by many writers that this imprisonment, compared with his terrible sufferings at Launceston and Scarborough, was a mild one; and there were several periods when he was not confined at all, although the strain and anxiety weighed heavily on a man now fifty. But less notice has been taken of another aspect of the case—the difficulty of terminating it, once it had started, in a way that would not be regarded, by the authorities on the one hand, or the Society of Friends on the other, as dishonourable. It is these “politic” considerations in the long-drawn-out proceedings that make them so interesting.

The narrative in Fox's Journal needs to be supplemented, as recent editors have recognized, by letters and other material written at the time. The course of events can be briefly sketched as follows, particular attention being given to items which illustrate the “politic” aspect.¹

THE ARREST AND CHARGE

George Fox's arrest took place at the house of John Halford, at Armscott in Worcestershire, at which hamlet a meeting is still held, once a year, in the old Meeting House. Fox was to spend the night with John Halford, and Friends from the neighbourhood had been invited to a Meeting in his barn; the news leaked out, and a local justice named Henry Parker came, with the incumbent of a nearby parish, to apprehend them. But owing to a christening party which delayed them, they did not arrive till the Meeting was over, and the local Friends dispersed; and evidence for successful proceedings under the Conventicle Act was therefore no longer available.

Nevertheless Parker arrested Fox and Thomas Lower,

¹ Where no source is referred to, this is Fox's *Journal*, or the material printed with it either by Norman Penney (1911 edition) or by John L. Nickalls (1952 edition).

Margaret Fox's son-in-law, who was travelling with him, other members of the party being Margaret herself and her youngest daughter, Rachel.

The charge, as set out in the committal warrant, was, as Besse¹ remarks, "of an extraordinary nature"; it alleged that several large meetings had been recently held in the parish, attended by persons from remote parts of the kingdom. This, even if true, could not have involved Fox and Lower; the only strangers now present were the members of their own party, and one Friend from Bristol who was travelling on business.

Now occurred the first "politic" episode. Parker offered to release Fox on sureties being found for his appearance at Quarter Sessions, but this offer was refused. The refusal was repeated on other occasions later, when similar offers were made, Fox speaking of them all as "snares". It appears that he took the view that to accept release on these terms would mean that he accepted also that he had something to answer for, whereas he asserted that "he was an innocent man and knew no law he had broken". The reason for this unaccommodating attitude will be considered later.

FIRST APPEARANCE AT QUARTER SESSIONS

It may well be that if he had agreed to the release, the case would have been quietly dropped; for the charge was flimsy in the extreme, and although Parker spoke at some length to his fellow-justices at the Sessions at Worcester, there was no real attempt made to substantiate it. As Fox and Lower were in prison, however, they had perforce to be brought up. During the interval, of about a month, Friends had been very active, both locally and in London, in lobbying for their discharge. Thomas Moore, a Friend who had the ear of the King, applied to Charles, who declined to take any action then, but made certain promises as to action later if necessary.² Other influential persons in London wrote letters to Worcester, and many of the local justices who would be sitting at the Sessions were canvassed.

There was a general feeling that the justices would decide

¹ *Sufferings* II, p. 71.

² See letter from T. Lower in *J.F.H.S.*, x, p. 145. Cf. letter from T. Lower dated 7th January 1674 quoted in I. Ross *Margaret Fell*, p. 249.

on a discharge. Friends were advised that the prisoners "should speak little, and not provoke them". A letter from Fox reporting this adds that "all people said we were as lambs before them"; this is however not quite borne out by the narrative, as Fox had interposed when Lower was being examined and had to be called to order. It soon became clear, however, that as far as the charge was concerned, they must be released.

But a greater danger remained, one that had been in the mind of Friends ever since the arrest, and had been largely the reason for the intensive lobbying. It was a device frequently adopted by courts when they were dealing with Quakers who might otherwise escape, to require them to take the "oath of allegiance and supremacy". No Friend would take an oath, and however much therefore he protested that he would subscribe solemnly to the substance of it instead, this did not prevent his being remanded in custody and made subject to the praemunire penalties of imprisonment and forfeiture at the next assizes or quarter sessions.

An action of this sort by a Court could only be taken out of malice, or, in the current diction, from envy; for it was well known that Friends were loyal subjects, and had no sympathy whatever with the papal pretension to suzerainty against which the oath was directed. But the justices at Worcester, having conferred, decided to tender the oath to Fox, though not to Lower. The Chairman told Fox he was a "famous man", and it was obviously felt that for this very reason, to allow him to be discharged after a hearing in open court would be damaging to the dignity of the local justices.

FOX IN LONDON

Fox and his advisers decided that the right course now was for him to be removed to London by habeas corpus and brought before the King's Bench there. It was evidently hoped that, removed from the local atmosphere of animosity and the need for face-saving, his case would be considered impartially and disposed of. The King's Bench seemed at first inclined to take it over, but there was opposition to this. After two hearings the judges decided that it should be sent back to Worcester, and Fox was returned there.

He had continued to declare that he accepted the substance

of the oath, and to protest his loyalty, saying that he "was cast into Derby dungeon, and there kept six months together", because he refused to take up arms at the battle of Worcester against King Charles; this was the famous occasion on which he spoke of the power that takes away the occasion of war. It has been suggested that this protest was a little disingenuous, as he would have refused equally to take up arms against the Commonwealth; but this is rather to miss the point, which was that his record fully supported his claim that he was refusing the oath on grounds of conscience alone.

BACK AT WORCESTER

The Assizes at Worcester taking place earlier than the next Quarter Sessions, Fox was brought up before these, at the beginning of April. The judge on circuit was Turner,¹ who had sentenced Fox and many other Friends in the past; on this occasion he was apparently inclined to release Fox, but some of the local justices objected, and he therefore remitted the case to the Sessions. At the sitting of these, at the end of the month, there was a new Chairman, Street,² who tendered the oath to Fox again, and then directed that an indictment should be prepared and read, charging him with having refused it. Fox, as allowed by the procedure, traversed, that is, formally denied, the charge; and this entitled him to an adjournment until the next Sessions, a useful interval during which the terms of the indictment could be scrutinized, and any flaws or errors detected. Through the good offices of some of the justices, who disapproved of the proceedings, he was allowed his liberty until the next Sessions in July. This enabled him to go to London again, and attend Yearly Meeting; and a further unsuccessful attempt was made to persuade the King's Bench judges to take the case over.

At the Sessions at Worcester in July, Street, who was still Chairman, was plainly in a quandary. He confessed freely that if he had been on the Bench in January he would not have tendered the oath to Fox, and that he wished Fox had never come there to trouble them. Apparently the proceed-

¹ Sir Christopher Turner (1607-75).

² Sir Thomas Street (1626-96).

ings had resulted in a large concourse of Friends assembling at Worcester; the under-sheriff complained to Thomas Lower that "the justices have sent one preacher to prison and now they have a hundred come into their country".¹

But a discharge would have meant an open defeat for the justices, who appear to have been incensed also that Fox should have "rambled away to London", and tried to get the case dismissed by the King's Bench. Street therefore instructed the jury to give their verdict, which, although they felt considerable sympathy for Fox, was bound to be against him; it could not be denied that the oath had been tendered to him on several occasions. Street refused to consider the flaws or errors that had by this time been detected in the indictment, saying, as he was entitled to do, that the remedy lay in another place, meaning that the prisoner could apply to the King's Bench if he thought fit. He accordingly passed sentence of praemunire, and Fox was taken to prison.

WHAT SHOULD THE NEXT STEP BE?

Now began the great debate among Friends, as to how the imprisonment could or should be brought to an end. It was clear, from what had been said to Thomas Moore, that the King would be willing to grant a release by means of a pardon; but this Fox and his advisers would not accept, for reasons to be discussed later. Certain misguided Friends, Gilbert Latey and others, made a rather different approach to Charles through Lord Arlington, much to the distress of Thomas Moore, who feared that they had queered his own pitch completely. He wrote to Fox in the middle of August:

"Very unhappily some Friends had got thither before me (out of true love to thee), and when I came thither I found they had obtained by Arlington's means an order from the King to set thee at liberty for some convenient time whilst thou shouldst gain health, but on such terms as I know no true Christian can answer them in."²

¹ *J.F.H.S.*, x, p. 144.

² In the *Brief Narrative of the Life and Death of Gilbert Latey* Richard Hawkins, his nephew, does not refer to this episode, though it is true that he expressly disclaims the intention of narrating all Latey's services to Friends in attending on King Charles.

In fact, when Moore applied for an unconditional release, he was rebuffed. Other applications were made to the King, notably by William Penn, who was told by Fox in a letter that "if thou canst effect my release without the title of a pardon, thou mayest".¹ Margaret Fox herself also applied.² At one time it was believed that the applications had been successful, and that the necessary release was only held up in the office of the Lord-Keeper; but these hopes proved illusory, and it became clear that Charles would not, or, as he and his ministers maintained, could not, grant a permanent discharge except by means of a pardon. Any arbitrary action by the King outside the royal prerogative of mercy involved constitutional issues, which we can appreciate better than could contemporary Friends.

The other alternative was to get the indictment quashed by the King's Bench because of its flaws. Margaret Fox broached this with the judge at the next Assizes, who was not encouraging about the prospects. There was the further drawback that even if the appeal succeeded, the Court might then simply tender the oath to Fox again, and proceed under a more carefully-worded indictment, and this would leave him no better off. Moore and Penn were accordingly averse to this procedure, but Thomas Lower was all for it, provided it could be shown that there was a reasonable chance of success; he argued that if it succeeded it would be thought of by everyone as an unqualified triumph for Friends.

"I find that their judgment is that a writ of error and an arrest of the judgment of sentence of praemunire would undo and overthrow all this work of theirs, which if so would much more torment and plague them than if my father were freed from his praemunire by the King's grant".³

It was finally decided to try to get the indictment quashed for error, and Fox, after some delay and obstruction, caused by the unwillingness of the Worcester authorities to release him,⁴ was brought up to London. He came before the King's Bench, under the habeas corpus procedure, for

¹ Letter printed in *J.F.H.S.*, vii, p. 73.

² Documents cited in I. Ross *Margaret Fell*, p. 254.

³ *J.F.H.S.*, x, p. 144.

⁴ See Margaret Fox's Testimony in Fox's *Journal* (Ellwood edition).

the third time, in February 1675. As had been hoped, the flaws in the indictment proved sufficient to invalidate it. There was an anxious moment when it was proposed in Court that the oath should be again tendered,¹ but fortunately the Lord Chief Justice was Sir Matthew Hale, who has a unique reputation among Restoration judges for fair-mindedness and humanity. He refused to carry out the proposal, and Fox was released at last. Margaret spoke very warmly of Hale's attitude, saying that he "was a very honest tender man, and he knew they had imprisoned him but in envy".

Thomas Lower wrote in triumph after the hearing:

"He could not have been more nobly released, and his adversaries and malicious persecutors less gratified, than by this way and manner of discharge".

REASONS FOR THE LONG IMPRISONMENT

In the view of Friends it was Parker, the justice who had arrested and charged Fox at Armscott, who was the chief villain of the piece throughout, constantly thwarting the wishes of other justices at the Sessions to discharge the prisoner, and preventing other courts from assuming jurisdiction to do so. Clearly he wished to avoid any outcome that would have branded his original action as arbitrary and unjustified, and this he succeeded in doing. But it is evident also there was a general feeling among those in authority, or most of them, that the case having become a *cause célèbre*, Fox ought not to be released except on terms that could be construed as implying some guilt. This was why he records with such satisfaction that he was set at liberty "upon a trial of errors in my indictment, without receiving any pardon or coming under any obligation or engagement at all", and, in another place, "I had rather have lain in prison all my days than have come out in any way dishonourable to truth".

We can see his attitude of mind in the way he was constantly on the look out for "snares" in the offers made to him. He would not accept release on bail, if any securities were required; he would not accept the release from imprison-

¹ The proposal was apparently made by one of the opposing Counsel; see Richard Davies *Account*, 1710 edition, pp. 189 f.

ment on the conditions arranged through Lord Arlington, even though in practice this might have meant a permanent discharge; and he would not accept the King's pardon; because in each case he felt that the acceptance would be in some measure an admission of guilt, or at any rate an admission that there was some offence to be answered for, or pardoned, whereas he maintained steadfastly that there was none.

The attitude to a pardon is particularly interesting, as it was only two years before that the King had granted a pardon, known to us as the Great Pardon, to 491 prisoners, mainly Friends, and they had accepted it. The argument used at that time to allay some Friends' scruples was, that an offence against the law, though an unjust law, having been committed and recorded, some exercise of the royal prerogative of mercy was necessary to wipe the slate clean; and if this could only be constitutionally done by means of a pardon then a pardon it must be.¹ After all, as the King himself said, "there are persons as innocent as a child new born, that are pardoned".

Probably in the case of the Great Pardon, as in other cases, including that of Margaret Fox herself, it was felt that no suggestion could be put forward that Friends were making any acknowledgment of guilt. But in Fox's case, after all the efforts to establish that he had committed no offence, and that his imprisonment was an unjust one, to accept a pardon would be a defeat; it would not, as he said, be "agreeable with the innocency of my cause".

It is an interesting question how far this particular moral scruple is valid. It has been debated in modern times also. Now the possible alternative of ordering a fresh trial can sometimes be made use of instead. But this was not available in the seventeenth century.

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¹ See full account in Geo. Whitehead *Christian Progress* 1725, pp. 350 f.