

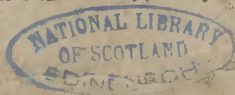
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T R I A L  
O F  
*Captain John Porteous.*

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*A Brief Account of the TRIAL*  
of Capt. JOHN PORTEOUS.

**O**N Thursday the 17th Day of June 1736, JOHN PORTEOUS late Captain Lieutenant of the City Guard of Edinburgh, received a Copy of his Indictment, in which he is charged with the Murdering, or being Art and Part of the Murder of the following Persons, viz. Charles Husband Servant to Paul Husband Confectioner in the Abbay of Holy-rood house, Archibald Balantyne Son to John Balantyne younger Dyfter in Dalkeith, John Anderson Son to George Anderson in Craighead Drover, Alexander M'Neal Son to Edward M'Neal Indweller in Mortonhall, Margaret Gordon Servant to William Ogilvy Taylor, Henry Graham Taylor in Canongate; and for grievously maiming and wounding the following Persons, to the great Danger of their Lives, viz. Margaret Arthur Residenter in the Canongate, Jean Peat Servant to James M'Doual Merchant in Edinburgh, David Wallace Journeyman Wright in Edinburgh, James Philp Servant to Lawder, Esq; Residenter in the Canongate, David Kidd Taylor in Edinburgh, Patrick Spalding Apprentice to David Mitchel Jeweller in Edinburgh, James Lyle and Alexander Wallace both Servants to James Wright Staymaker in Edinburgh, John Miller

Miller Taylor in Edinburgh, David Ogilvy Writer in Edinburgh, and James Nivan late Servant to William Sellars Writer in Edinburgh: In so far as, That upon the 14th of April then last, he being ordered to attend at the Execution of the deceased Andrew Wilson, to preserve the Peace and support the Executioner in the Discharge of his Duty, having under his Command a Detachment of about 70 Men of the City Guard, having attended accordingly, he, after the said Andrew Wilson had hung upon the Gallows till he was dead, shaking off all Fear of God and Respect to his Majesty's Laws, and conceiving a most wicked and malicious Purpose of destroying, wounding and maiming Numbers of his Majesty's Subjects, the Inhabitants of the City of Edinburgh, and others there assembled at the said Execution, without any just Cause or necessary Occasion, ordered the said Detachment of the City Guard under his Command to fire upon the People so assembled at the said Execution; and that the Men so under his Command, at least severals of them, having fired over the Heads of the Multitude, so as to avoid doing them any Harm, that he, with Threats and Imprecations, repeated his Commands to fire, calling out to them, *to level their Pieces and be damned*, or Words to that Purpose; and that at or about the same Time, he levelled the Firelock that was in his Hand, taking Aim at the above-mentioned Charles Husband, and most wickedly and murderously fired at him, whereupon he immediately dropt to the Ground; at least, that he so levelled his Piece, and appeared to take his Aim at some one of the innocent Multitude, who happened to stand directly over against him, and did  
fire

fire, and upon his so firing, the said Charles Husband, at least one or other of the Persons particularly above named, or more of them, did immediately fall to the Ground, having received a mortal Wound or Wounds, whereof they soon after died, &c.

Among the Defences offered for the Pannel are these, That he was ordered to attend the Execution of Andrew Wilson, with the greatest Part of the City Guard, and to support the Executioner in the Discharge of his Office; and the Magistrates apprehending a violent Attempt to rescue the said Wilson, he had Directions given him to repel Force by Force; That to make these Directions effectual, Powder and Ball were delivered out of the Town's Magazine to the Guard the Morning of the Execution, with Directions to load their Pieces; That the Pannel with the Town Guard, accordingly attended the Execution; That when the Offender was hung up on the Gibbet, the Magistrates retir'd from the Scaffold, and repair'd to a House over-against it in the Grass-market; That after the Offender had hung for some Time, the Multitude became unruly, and began to fling Stones of great Size, and with great Violence; That some of the Guard were thereby hurt, one had his Shoulder blade broke, others were bruised, and the Timber of the Drum was beat to Pieces; That the Insolence of the Mob growing still greater, and they pressing from all Sides upon the Guard, the Pannel, who apprehended they might have intended to carry off the Criminal, who by this Time was cut down, in order to attempt the recovering him to Life, found it necessary for him to keep off the Multitude by Threats and Menaces; That to  
this

this End he presented his Piece, first to one Quarter, and then to another, calling to the People to stand off, and threatning, that if they did not, he would fire ; That nevertheless he neither fired himself, nor gave any Orders to fire ; but on the contrary, when some of the Guard, provoked by the Hurts they received, had, without his Orders or Authority, presumed to fire, whose Example was followed by several others, he did all he could to prevent that Mischief, by commanding them to desist, and actually did beat down the Muzzle of one of the Men's Pieces, who was presenting it in order to fire ; That finding he could not be obeyed, he marched with those that followed him up the West Bow, where they, provoked by what he did not know, fac'd about and fir'd towards the Grass-Market ; That his first Notice thereof was by hearing it, which made him turn about in order to stop it ; That at this Place he neither fired, nor gave Orders to fire : That he marched as many of his Men as he could gather together back to the City-guard Room, where he prevented the Mens clearing their Pieces, that the Guilty who fired might be distinguished from the Innocent who did not fire ; That his own Piece had not at that Time been at all fired ; That, conscious of his own Innocence, he presented himself before the Magistrates, whereas nothing was more easy to him than to have made his Escape, and that in their Presence the Firelock that was in his own Hand was presented, and appeared not to have been at all fired ; and that therefore the Libel, as libelled, could not be true.

That the delivering Powder and Ball to the City Guard, and the Direction to the Pannel, to  
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support the Execution of the Sentence against Wilson, and in Case of a violent Rescue, to repel Force by Force, amounted to a flat Order from the Magistrates to fire when it became necessary; and that the violent Assault by the Mob with Stones, in order, as the Pannel believed, to carry off the Offender, in Hopes of recovering him to Life, made it necessary to repel Force by Force; which ought to be sustained as a total Defence against the Indictment, at least as Circumstances fit to mitigate the Punishment, and restrain it from the *pœna ordinaria*, since the Pannel being *versans in licito*; and engaged in the Discharge of a lawful Piece of Duty, if any Excess was committed by him, it ought not to be attended with capital Punishment, but ought to be corrected *extra ordinem*, according to the Degree of the Excess &c.

To these it was answered, That tho' it were true that the Magistrates upon just Apprehension of a violent Rescue of the Criminal, had ordered Powder and Ball to be distributed to the Guard, had directed the Pannel at all Hazards to support the Execution, and prevent a violent Rescue; and had even told him in case of Necessity, he was to repel Force by Force, it will not in the least follow that these Orders could in any degree justify him, except in case of Necessity, and an Attempt made towards a violent Rescue; That no Order from any civil Magistrate whatever, could justify so horrid a Barbarity, and that tho' the Magistrates had ordered him on the Spot to fire upon innocent People, it could not in the least acquit him, since he was not at all bound to obey such illegal Orders. That the Pannel does not pretend to have had any Orders to fire, except in the Case of a violent At-

tempt

empt to Rescue; and had that happened, the reading the Proclamation would have made it justifiable; that it is not even denied by the Pannel, that the Execution was over before the Firing; that the Trust reposed in him, and the Duty expected from him was ceased; he was no longer an Officer employed to that End for which the Fire Arms were loaded; and his Actions came then to be estimated of, by the same Rules that would have made them lawful or unlawful upon every ordinary Occasion; that tho' the flinging of Dirt and Stones at the Executioner, might perhaps justify a holerick Person for drubbing any of the Actors or their Wantonness, yet it could not justify the slughtering of them, far less could the Impertinence of a few Boys, or other idle People, excuse the firing sharp Shot upon an innocent Multitude; that it is far from being the Interest of the Town or the Publick, that an innocent Man should suffer; but it is greatly the Interest of both, that a fair and strict Enquiry be made where the Guilt lies, when a Massacre so cruel and dangerous happens that the Guilty may be made an Example to restrain others to commit the like in time coming, &c. That therefore the Pannel must stand or fall, upon his being or not being Guilty of the Acts charged upon him in the Indictment.

*The LORDS Interlocutor.*

Ands, That the Pannel having, at any of the Times and Places libelled, fired a Gun among People assembled at the Execution libelled, or having given Orders to the Soldiers under his Command to fire, and thereupon they the the Soldiers, or any of them, having accordingly fired,  
and

and upon the firing either by himself or them, the Persons mentioned in the Indictment, or any of them, were killed or wounded, or the Pannel's being guilty Art and Part of any of the fore-said Crimes, all *separatim* relevant to infer the Pains of Law: But allows the Pannel to adduce what Evidence he can, with respect to his Behaviour, at the Time the fore-said Crimes are libelled to have been committed, for taking off the Circumstances which shall be brought, for inferring his being guilty of, or Art and Part of the Crimes libelled, and remits, &c.

*The Verdict of the JURY.*

**WE** all in one Voice find it proven, That the said JOHN PORTEOUS Pannel, fired a Gun among the People assembled at the Place of Execution, and Time libelled; As also, That he gave Orders to the Soldiers under his Command to fire, and upon his or their so firing, the Persons mentioned in the Indictment were killed and wounded. And find it proven, That the Pannel and his Guard were attacked, and beat by several Stones of a considerable Bigness, thrown among them by the Multitude, whereby several of the Soldiers were bruised and wounded.

Whereupon the Lords sentenced him to be executed in the Grass Market upon the 8th Day of September next.

F I N I S.