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AN ACCIDENTAL CRIME

N. J. MILLS

IN THE SUMMER OF 1840, as Edinburgh's New Town was emptying of people for the hot month of August, a trial was taking place at the High Court for a crime which should never have happened: it was not intended by the perpetrators, what they had intended was not achieved, and the likely medical outcome did not, apparently, occur.¹ A little drama was enacted around George Street, Hanover Street and Rose Street, a drama involving a pretty girl, a couple of bored teenagers, and a pennyworth of poison.

The victim was Ann Sutherland, a sixteen year old servant at the lodging house of Miss Harriet Robertson at 50 George Street, a fine grey stone building on the east side of the Assembly Rooms divided into apartments housing a variety of teachers and suchlike.² Miss Robertson described her employee as 'a very decent girl', and nothing in the story suggests otherwise – indeed it is probable that if she had seemed more readily available, the accident which befell her would not have occurred. Sent out for the groceries on the morning of Thursday 25 June, she called into the shop of Alexander Kedzlie at 34 Hanover Street, on the corner of George Street, where the shopman and the message boy offered her a fig, which she took and ate.³ She realised straightaway that there was something wrong with the fig, but the lads reassured her and she went on her way. She did not complete her errands but went home to her mistress's, where she complained that her mouth was burning and told her of the fig. Miss Robertson thought it possible that some cayenne pepper had fallen on the fig, and being a kindly woman she decided not to send Ann out to market as planned but to go herself. On her way from Kedzlie's, where she bought some more figs for comparison, she stopped Ann's father, a porter at the corner of Hanover Street and George Street, and sent

him to see his daughter, taking the new figs with him.

David Sutherland seems to have been the kind of man who is too impatient for the sickroom but is determined to help in some way. Shocked at finding his daughter shaking and hardly able to speak, he led her into the kitchen to sit down. As soon as he found that the new figs Miss Robertson had bought did not look like the fig Ann had eaten, he ran to fetch his wife, who lived almost directly behind the lodging house, in Rose Street. When he had brought her back to their daughter, he immediately left again to confront the shopmen at Kedzlie's. They denied all knowledge of the incident, even when Sutherland pleaded with them to tell him what they had put into the fig so that he could obtain proper medicine for his daughter. In desperation he ran again, this time to 15 Dundas Street to call Dr John Hutton Balfour,⁴ but finding him not at home he returned to the George Street house, where his daughter was now in a very bad way. She had been vomiting constantly and complained of severe pains in her mouth, throat and bowels, and Miss Robertson and Ann's mother, having tried gin and warm water with no effect, were sure that Ann was going to die. There seems to have been some little audience at the George Street house by this point: since Ann's family lived in Rose Street and her father's place of work was only a few minutes' walk away, it is not surprising that some who knew them would have gathered to see the spectacle and offer advice and assistance. Amongst them was a fellow porter and friend of David Sutherland who had for some time worked for an apothecary, and who gave it as his opinion that the fig had contained spirit of opium.

David Sutherland had not exhausted his energies yet. He continued to try to contact Dr Balfour, finally finding him at 4 pm. He went, too, for James Gorrie,

sergeant of police with three years' service, who with his junior colleague James Anderson briefly joined the audience in George Street. They noted that Ann was 'very ill and much pain'd', and immediately went and arrested the shopman, William Buchan, and the message boy, Daniel or Donald Hossack. Dr Balfour was less sympathetic. Finding 'the girl stupid and exhausted', and being told that there had been spirit of opium in the fig, he doubted the 'friends' who were standing around but had no way of telling what might have been the cause of Ann's illness. He did not examine her, beyond finding a feeble pulse and cool skin, and when he looked about for the samples of vomit and urine from which physicians at this date obtained most of their diagnostic information, he found that the vomit had been thrown away and there was no urine. He decided that if she had taken anything poisonous she had probably got rid of it by then, and of the three options for treatment generally open to him at the time, purging, bleeding or blistering, he chose to administer a purgative, and left, dismissively passing the case on to one of his apprentices. Miss Robertson was not impressed and later told the clerk taking the precognitions for the case that the mixture and pills afforded Ann no relief, although she did add that at the time that Dr Balfour called it was not known for certain what was in the fig. Around this time another physician, Dr Alexander Longmore Black, was also called to examine her.

The police, meanwhile, were holding Buchan and Hossack at the watch house, since they had admitted to putting 'flies of some kind' into the fig they had given Ann Sutherland. Dr Alexander Black, Police Surgeon (not the same doctor who attended the girl as physician), was dispatched to George Street to examine the victim.⁵ He found her still in severe pain, and later certified 'on soul and conscience' that at the time he considered her life to be in danger. Returning to the police office, he interrogated the prisoners, who

finally confessed that they had given her Spanish flies with the intention of directing her affections towards the prisoner William Buchan.

The poison cantharidin (Spanish or blister flies, derived from the fly *Cantharis vesicatoria*) has an ill-founded reputation as an aphrodisiac. It is, rather, an extremely powerful irritant, and is now a scheduled poison. When ingested, even very small quantities can cause serious damage to the kidneys and to the whole digestive tract, producing blood in vomit and urine; a larger dose will produce convulsions, delirium and death. In the 1840s it was in fairly common use for the medical practice of blistering: applied to the skin it produced spreading blisters which doctors believed drew poison out of the system. It was used as a stimulant, a rubefacient or a vesicant in the treatment of a wide variety of illnesses, including pleurisy. Its deleterious effects were also well known – it was used criminally to produce abortion, and the police surgeon stated that 'a large dose may produce or rather would produce death'. No chemical antidote was known, and ingestion of water was recognised as worsening the symptoms; Dr Jonathan Pereira, author of *Materia Medica*, was in dispute with the Edinburgh physician Robert Christison on the efficacy of oil in treatment.⁶

Robert Sim, assistant to the druggist Horatio Nelson Siree at 5 Hanover Street, had known enough to ask the message boy from Kedzlie's what he wanted it for: the boy did not know and the assistant was too busy to hear the answer anyway, but gave in his statement that it was James Dempster 'or at least a boy very like him' who had purchased the flies.

Dempster was the shopboy at Kedzlie's other shop, in Stockbridge. He had brought Buchan his dinner on the day before the incident and was sent by Buchan and Hossack to buy the flies from the druggist. Buchan and Hossack seem to have been quite open about what they were doing, for as soon as Dempster came back with the flies they began to spoon the powder into a

fig, and when Dempster asked them what they were doing Buchan said 'he was going to give it to the Porter's daughter to make her rumpish'. Dempster added in his statement that Hossack then laughed and said, 'This will do for her'. Buchan and Hossack, aged seventeen and fifteen, each blamed the other for opening the subject of Spanish flies but agreed that Hossack was the one with the information. According to Buchan, Hossack said that he had used Spanish flies on girls at school and it had always worked, but in Hossack's own statement he said that he 'had seen it given to girls when he was at school'. In Buchan's and Hossack's accounts of the events, they said they had no specific girl in mind, and Buchan seemed eager to imply that there was hardly any premeditation: it was all done on the day of the poisoning in a spontaneous way. However, two independent witnesses, Dempster and the druggist's assistant Sim, agreed that the flies were bought the day before Ann came into the shop, and Dempster vouched for the fact that the scheme was aimed at Ann specifically.

In the statements of Buchan and Hossack, Ann was presented as a somewhat provocative girl, flirting with a couple of lads by ordering them about, teasing them with her repeated appearances in their shop, quite different from the impression given by her own account of going obediently straight to the shop and straight back to her mistress's house. Hossack was from Leith, Buchan from outside Edinburgh.⁷ They were newly acquainted with one another: Hossack had worked in Kedzlie's for only about three months, but they were considered responsible enough to take care of the Hanover Street shop on their own, and treated James Dempster very much as their junior. They seem to have egged one another on to a deed which they carried out with casual carelessness and dangerous ignorance, spooning far too much flies into the fig so that Ann immediately noticed that there was something wrong, and in panic denying everything to

Ann's father, though later admitting almost instantly to the police what they had done.

At this time, medical jurisprudence was past its infancy and beginning to become an accepted part of the legal process. This is clear from the fact that it was the Police Surgeon, Dr Alexander Black, who questioned the prisoners Buchan and Hossack, and that it was he who identified the poison and attested to its nature. The Asiatic cholera of 1832 had raised civic awareness of the need for 'medical police', based on the French model, to investigate and control issues of public health; in Black's activities we are beginning to see the cross-over to the use of medical investigation in criminal cases too. Dr Balfour, once he had realised that Dr Alexander Longmore Black had been called in and that the Police Surgeon had also visited Ann Sutherland, was suddenly interested in the case again. His apprentice had reported the other doctor's appearance to him and it was clear that Balfour's reputation was in some danger – Ann's mother, unimpressed by Balfour, said in her statement that 'it was not till Dr Black [it is not clear to which Dr Black she was referring here] came about nine o'clock and prescribed for her that she got relief to a considerable extent'.⁸ Balfour visited Ann again, finding her 'less confused'. He and Alexander Longmore Black were able at last to examine some urine and gave her 'some soothing medicine with a dose of castor oil'. Between them they continued to visit Ann in person – not by sending their apprentices – until they made their required joint medical report on 30 July, when they described her as 'now nearly in her usual health, although somewhat feeble'.

The prisoners were taken to Edinburgh Jail and brought before the High Court on 22 July 1840. They were charged with 'stellionate' (a fraud that does not come under a specific head), 'more particularly the wickedly and maliciously administering Cantharides or other deleterious matter to the serious injury of the

person and danger of life'.⁹ One of the regular advocates, Robert Handyside (later Lord Handyside), appeared for the prosecution along with John Thomson Gordon (later Sheriff of Midlothian, 1848–1865), with twenty-three years' experience between them; Mr Patrick Arkley, twenty-four years old and admitted to the bar only two years previously, appeared for the defence. The judge was Sir James Wellwood Moncrieff, Lord Moncrieff, raised to the bench in 1829. Buchan and Hossack pleaded guilty to all but the aggravation of danger to life, a plea accepted by the prosecution who would in any case have found it difficult to prove an intention to harm Ann Sutherland. Buchan and Hossack were sentenced to three months' imprisonment each in Edinburgh Jail. In this they were extremely lucky. Miss Robertson allowed Ann's mother to stay with her at the lodging house until Ann was well enough to get up again, and at the time of trial she was said to be making a slow but good recovery. However, there is good reason to think that she may have suffered permanent kidney

damage from the incident – given the quantity of poison put into the fig she was encouraged to eat, it is very surprising that she did not die within days.

Buchan and Hossack appear, not surprisingly, to have lost their jobs at Kedzlie's, and the 1845 *Post Office Directory* shows the Hanover Street shop gone.¹⁰ Both police officers had left the force by 1853.¹¹ The doctors and the police surgeon continued in their professions, Alexander Black giving his address in the *Directory* as 'Police Office'. John Hutton Balfour became Professor of Botany in Edinburgh University and Keeper of the Royal Botanic Garden from 1845 to 1879.¹² It is difficult to trace what happened to Ann Sutherland in the days before statutory registration of marriages and deaths, but the girl described by her mother as 'generally healthy, and had no trouble about her of any kind', is likely never fully to have recovered from the effects of an act of selfish ignorance on the part of two teenage boys in the close-knit community of the central New Town.

NOTES AND REFERENCES

- 1 This account is based on the precognitions for the trial in the Scottish Record Office (SRO), AD 14/40/357.
- 2 Edinburgh *Post Office Directory*, 1840–41: she appears as Mrs Robertson in the *Directory* though she is referred to as Miss in the court proceedings and *Scotsman* account on 25 July 1840.
- 3 'Alex. Kedzlie, tea and spirit merchant, 34 Hanover street, and 9 Deanhaugh street' (*Directory*, 1840–41).
- 4 An inscription at 15 Dundas Street today records the foundation of the Botanical Society of Edinburgh at a meeting in Balfour's house in 1838: see Harold R. Fletcher and William H. Brown, *The Royal Botanic Garden Edinburgh, 1670–1970* (Edinburgh 1970), chapter 10.
- 5 Alexander Black, MD Edinburgh, 1829. He is recorded as Police Surgeon in the list of witnesses at the trial of William Burke in 1828: see M. H. Kaufman, 'Another Look at Burke and Hare: The Last Day of Mary Paterson – A Medical Cover-up?', *Proceedings of the Royal College of Physicians of Edinburgh*, 27 (1997), pp. 78–88.
- 6 For further detail and descriptions of cases of cantharidine poisoning and treatment see Jonathan Pereira, *The Elements of Materia Medica and Therapeutics* (London 1857), vol. II, part 2; A. S. Taylor, *On Poisons in relation to Medical Jurisprudence and Medicine* (London 1875); P. V. Taverner, *Aphrodisiacs: The Science and the Myth* (Philadelphia 1985). Forensic medicine in Scotland is studied in detail in M. Anne Crowther and Brenda White, *On Soul and Conscience: The Medical Expert and Crime* (Aberdeen 1988).
- 7 SRO, Old Parish Register for South Leith.
- 8 Dr Alexander Longmore Black, graduate of Edinburgh in 1832, specialist in fits and epilepsy.
- 9 The definition in the text is from *Chambers's Twentieth Century Dictionary* (Edinburgh, revised edition 1959).

Stellionate is defined in William Bell's *Dictionary and Digest of the Law of Scotland* (1838) as 'crime which, though indictable, goes under no general denomination, and is punished arbitrarily'. Had Ann Sutherland died, a charge of culpable homicide would most probably have been made, and the prisoners could have been transported for life. 'Maliciously' originally read 'feloniously' in the charge, but the latter was erased in the original document (SRO, JC 8/43), and 'maliciously' appears in the recital of the charge in the

Scotsman report on 25 July 1840.

- 10 The business continued, however, in the other branch at 9 Deanhaugh Street, Stockbridge.
- 11 *The Edinburgh Police Register, 1815-1859*, edited by Peter Ruthven-Murray (Edinburgh 1991).
- 12 See Fletcher and Brown, *Royal Botanic Garden* (note 4), chapter 11; Balfour also served as Secretary of the Royal Society of Edinburgh, 1860-79.