

ULTIMATE PENALTY OF THE LAW

The Death Penalty at Early Perth

During its first decades, while British law prevailed at the Perth Settlement, the ultimate penalty of death applied to a list of 230 crimes ranging from the theft of vegetables or a cow to murder and treason. Over the course of its history, however, only three men were ever executed at the Bathurst District and Lanark County Jail in Perth.

The first was Thomas Easby who, arms bound and face hooded, mounted the scaffold in front of the Bathurst District Jail, on Monday, August 24, 1829. Easby had confessed to the murder of his wife and four of his children in Drummond Township on the night of December 10, 1828. He pleaded temporary insanity but the jury found him guilty in a matter of minutes and Justice Levisus Peters Sherwood (1777-1850) sentenced him to be publically hung. The event attracted *“the greatest multitude of spectators that has perhaps ever been assembled at Perth”*¹.

*The day was a public holiday. Schools were closed, work of all kinds suspended, and settlers came from all parts of the District, bringing with them their families to witness an event which it was hoped would have a great moral influence on the community. The scaffold in this case was erected in front of the Court House and the roadway and every point of vantage was at a decided premium for hours before the time of execution.*²

Presbyterian minister Reverend William Bell observed that; *“Never did I see a criminal discover less contrition for his offence. He grew as fat as a pig during his confinement”*.

Easby was briefly buried in the ‘Old Burying Ground’ (Craig Street Cemetery) at Perth but, as was the custom of the day, his body was exhumed and turned over to Dr. James Wilson (1792-1881) for use as a cadaver in training his medical students William Tayler (1814-1846) and Alexander Cameron (1801-1835). Legend holds that Wilson and his students skinned Easby, tanned his hide and sold strips at \$2.00 a portion. Easby’s only surviving child was sent to be raised by a family in Toronto.

Generally speaking Judges and juries at Perth, and across the colonies of Upper and Lower Canada, were reluctant to apply the ultimate sentence, even in the case of murder, and even when it was applied, commutation was not uncommon.

A decade after the Easby affair, on July 23, 1839, John Dean killed his son-in-law, John Leslie, stabbing him in the heart and lungs with a shoemaker’s knife. On September 12th Dean was convicted of murder and sentenced to hang two weeks later. His wife, however, raised a clemency petition among her Perth friends and neighbors, took it to Toronto and persuaded

¹ *Brockville Gazette* – August 1829

² ‘Early Legal History of Bathurst District and Lanark County’ - Undated, unsigned typescript, Perth Historical and Antiquarian Society c1898.

Lieutenant Governor Sir Arthur George (1784-1854) to commute the sentence to transportation to the Australian penal colony. A week before Dean was to climb the gallows, the Perth Courier reported;

*... a Dragoon arrived here from Kingston with a pardon for John Dean whose punishment is commuted to Transportation for Life to Botany Bay instead of death according to the sentence. Sir Arthur George was induced to spare the life of the old grey headed criminal. Accordingly on Friday morning last he was put on board one of the Rideau boats which had 81 other convicts on board for Botany Bay.*³

In other cases, whenever possible, both Corner's juries and trial juries tended to shun the charge of, or conviction for, murder in favour of manslaughter, thus opening the door for Judges to apply lesser punishment than the 'ultimate penalty'. In 1842 Tomas Foley killed Patrick Bowes in a brawl and William and John Toomey shot and killed William Oliver, but in both cases the finding was manslaughter not murder, and prison time was assessed not the death penalty.



Lanark County Jail, Perth

In fact, as early as the 1840s, a movement was afoot in the Canadas to abolish the death penalty and, in 1849, taking its cue from a Montreal petition that secured nearly 600 names, a similar petition was raised at Perth by James Esson and submitted to the House of Assembly, Legislative council and Governor-General. In the same year other petitions opposing the death penalty were drawn up at Pakenham and Smiths Falls. Despite growing opposition in some quarters however, capital punishment would not be abolished in Canada for another 130 years and the second man to swing at Perth was Francis Beare.⁴

On the night of Monday, December 16, 1850, at Adamston, northwest of Renfrew, Beare split the skull of his sleeping employer William Barry with an axe. Beare then stole Barry's team and sleigh, loaded Mrs. Beare and their two small children, along with valuables stripped from Barry's house, and set out for U.S. border. He was overtaken and arrested by Lanark County Sheriff Andrew Dickson (1797-1868) and Carleton County Deputy Sheriff James Fraser (1825-1879) at Rose's Inn in Montague Township near Smiths Falls. Tried jointly with his wife before a jury at Perth on May 2, 1851, Beare was convicted of murder and sentenced by Judge William Henry Draper (1801-1877)⁵ to hang. Although Beare later swore that his wife 'made him do it', Mrs. Beare was discharged.

³ *Bathurst Courier*, September 27, 1839

⁴ Francis Beare also used the alias John Wood. In *Perth Courier* reports the name is spelled 'Bear'.

⁵ Draper had been the prosecuting Crown Attorney at the trial of John Dean in 1839.



Rose's Inn, C-2/L-22 Montague Township

An appeal to the Governor General⁶ for clemency was denied and on Saturday, May 17, 1851, Beare went to his death.

At about half-past ten o'clock, Francis Bear, the murderer of William Barry, suffered the last penalty of the law by public execution in front of the Court House. The unfortunate culprit, with his arms pinioned, clothed in a white gown and cap, ascended the platform in front of the gallows with a firm foot. He had received the last rites of the Roman Catholic Church that morning from the Very Rev. J. H. McDonagh⁷, and was accompanied on the platform by that reverend gentleman as well as by the Rev. E. Vaughan⁸, of Ramsay, and Rev. Dr. Maddon⁹, of Trent.

The condemned man knelt down in supplication and repeated in a firm voice the prayers of the church, after which he glanced at the crowd before him, but said not a word. He took his position under the gallows and his doom was sealed. In a few minutes, after a few convulsive struggles, all was over, his spirit had taken its flight to another state of existence. The body hung for about an hour, when it was lowered into a rough box of sufficient length to contain it, and conveyed for interment to the Roman Catholic burying ground.¹⁰

There was nothing remarkable or striking in the personal appearance of Bear, at least nothing that could indicate that he would be guilty of the atrocious crime for which he forfeited his life. He was a man of about five feet six inches in height, with rather a slight frame of body, delicate complexion and youthful appearance, we should say about 25 years of age. He was French Canadian¹¹. His eyes were rather grey or a light blue, and had an unintelligent, unmeaning stare, which gave his countenance the appearance of simplicity; yet withal, a sullenness of disposition could be traced under it all. He was very ignorant and his intellect was of the lowest order.

Since the trial and before the execution, he confessed having committed the murder, and that he struck two blows instead of one, as first supposed, in doing the deed; but insisted until the last that his wife had urged him to it.

⁶ James Bruce, Earl of Elgin and Kincardine (1811-1863).

⁷ Very Reverend John Hugh McDonagh V.G., born County Mayo Ireland 1812, Priest at Parish of St. John the Baptist, Perth, 1838-1866, died 1866 at Perth, Ontario.

⁸ Reverend Edward Vaughan, born County Mayo Ireland 1813, Priest at Parish of St. Mary, Almonte, Ontario, 1848-1868, died 1882 at Petit Clairvaux Trappist Monastery, Tracadie, Nova Scotia.

⁹ Probably Reverend P. J. Madden D.D., Priest at St. Peter-in-Chains Parish, Trenton, Ontario, 1850-1854.

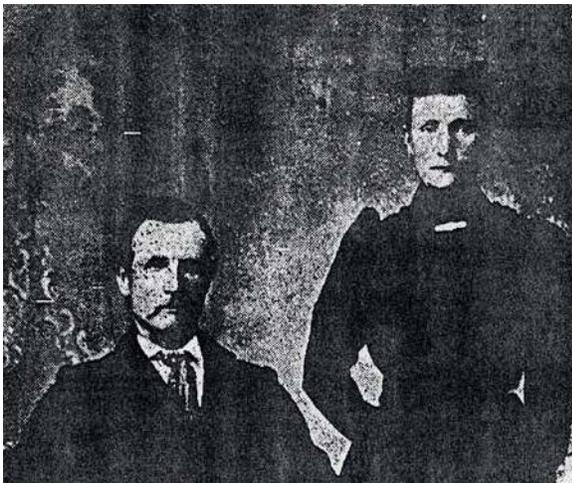
¹⁰ St. John the Baptist Parish register records: *On the 17 May 1851 the undersigned Priest interred in the Cemetery of this Parish Francis Bear who was hung for the murder of Barry. In presence of Michael McCabe, Bernard Morgan. [Signed] J. H. McDonagh. In 1851 the "Roman Catholic burying ground" was a designated section of the Craig Street Cemetery. The grave is unmarked.*

¹¹ In an earlier report the *Perth Courier* described Beare as being of mixed blood, Indian and French Canadian; i.e. Metis.

*There was a large number of people present at the execution and (how amiable, how consistent with the tender feelings of the other sex) a large number of respectably dressed females on the ground to witness the sad spectacle. This is the second execution that has taken place since the establishment of courts of justice in this district – a period of about thirty years.*¹²

As in the case of the Easby execution 22 years earlier, Beare died “*in the presence of thousands*”¹³, but the event did not have the same carnival atmosphere and the Perth Courier thought it unseemly that “*respectably dressed females*” had been in attendance. Attitudes were shifting and much of the crowd was in fact hostile. Sheriff Andrew Dickson found it impossible to engage a hangman at Perth or anywhere in the province. In the end he resorted to hiring a prisoner from the Kingston Penitentiary who agreed to do the job in exchange for a pardon. When the hangman (name unknown) mounted the scaffold he was jeered by the crowd and, as the heckling got louder, yelled back that “*he’d hang them all for a shilling a dozen*”.¹⁴ With the execution complete rumors began to circulate of a plan to lynch the hangman. The authorities smuggled him into the Registry Office and concealed him in the vault until he could be put on the afternoon stage to Brockville, by way of Smiths Falls.

Although Francis Beare had gone to the gallows, the reluctance to charge and convict for murder remained strong. In the same year (1851) Robert Tool was tried for the shooting death of Jean Cassimir Portra. In 1857 a man named Slattery kicked one John Lumsden to death in a bar-room fight and John Horn shot and killed Matthew Baird. In 1870 Peter Cairns shot and killed a 12-year-old boy named Low and Alexander McNichol stabbed William Playfair to death. In 1871 John Dowdall was tried for the stabbing death of Thomas McGarry. In 1873 John Halliday beat his wife to death. Where convictions were secured in these cases, all were for manslaughter and none of the perpetrators suffered the death penalty. Sixty years would pass before another convict suffered the ultimate penalty at Perth.



Rufus & Catherine Weedmark

The last convict to hang at Perth was Rufus Weedmark (1857-1910) who dropped through the trap on Wednesday, December 14, 1910. Weedmark had strangled his wife, Catherine Cowen McArthur (1870-1910), after she threw a teapot at him during a drunken dispute prompted by the fact that she had earlier had him jailed for failing to support her and his three daughters. He pleaded not guilty but his 14-year-old daughter Evelyn testified against him. Judge John Alexander Boyd (1837-1916) sentenced him to death.

By 1910, however, there had been no

¹² *Perth Courier*, May 23, 1851

¹³ Spectator John W. Douglas writing in 1905, *Perth Courier*

¹⁴ *Ibid.*

public hangings in Canada for over 40 years¹⁵; Weedmark went to his death inside the walls of the Lanark County Jail. County Sheriff Daniel George McMartin (1844-1923)¹⁶ also went a step further. Abandoning traditional practice, he even barred members of the press from witnessing the execution. The Ottawa Citizen thought this an excellent decision;

In this respect Sheriff MacMartin, who was appointed early this year, has established a good precedent and the execution was in marked contrast to two other executions here.

The *Perth Courier* and other Lanark County press, however, disagreed with the *Citizen*. They appealed Sheriff McMartin's ruling to the Provincial Ministry of Justice but Toronto declined to interfere in the matter and let McMartin's decision stand. Only officers of the court (and probably a clergyman) were present when, according to his death certificate, Rufus Weedmark dangled for 10 minutes before dying. He was buried in Hillcrest Cemetery, North Elmsley Township.

Over the 160 years from the founding of the Perth settlement until Canada abolished capital punishment in 1976¹⁷, Thomas Easby, Francis Beare and Rufus Weedmark were the only victims of the hangman's noose at the Lanark County jail.

- Ron W. Shaw (2016)

¹⁵ The last public hanging in Canada took place at Goderich, Ontario, December 7, 1869.

¹⁶ Son of one of Perth's first lawyers, Daniel McMartin (1798-1869).

¹⁷ The last executions in Canada took place in 1962, although the civil death penalty remained in effect until 1976 and offenses under the National Defense Act could attract the death penalty until 1998.