

THE
TRIAL
OF
STEPHEN ARNOLD,
FOR THE
MURDER

Betsey Van Amburgh,

A CHILD SIX YEARS OF AGE:

BEFORE THE COURT OF OYER AND TERMINER
AND GENERAL GOAL DELIVERY, FOR
THE COUNTY OF OTSEGO, AT
THE COURT HOUSE IN
COOPERSTOWN,
JUNE 4th,
1805.

HARTFORD:

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PREFACE.

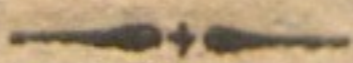


THE following account of a Trial, the occasion of which has excited much interest in the public mind, will be found correct, for substance, as far as it is extended. The testimony is nearly verbatim. It will be observed, however, that the arguments of the counsel are condensed so as to embrace the principal points only of the accusation and the defence. This method was rendered indispensable, as a copy thereof could not be obtained, either from the public prosecutor, or the advocate for the prisoner; but the public may be assured that the abstract thereof is nearly or completely correct.

The minutes of the trial were taken with the utmost care, and afterwards compared with notes taken by his honor chief justice Kent. At least one half of the great concourse of spectators were disappointed of witnessing the trial, as the courtroom, which is nearly 30 feet square, could not contain them, and it became necessary to place guards at the doors to prevent being too much crowded to proceed in the trial. It was this circumstance which rendered the publication the more necessary, as well to gratify those who attended but could not gain admittance, as the public at large, who will feel highly interested in the account of

a trial which has, almost beyond example, aroused the public attention.

The life of this unhappy man will soon be published, written by himself, and preceded by a circumstantial account of the manner of his being arrested, and such occurrences as could not have come to his knowledge, some of which bear strong evidence of the interposition of Divine Providence.



As the names of the grand inquest, who found a bill against Arnold, for murder, are not inserted in the body of the work, it is thought proper to insert them here, as taken from the records of the court. For the sake of brevity, titles and additions are omitted.

Elihu Phinney, *Foreman*; James Averill, jr. Ezekiel Kellogg, John M. Bowers, James White, Chauncey Newell, Ira Starr, Ashael Jarvis, Darius Warren, Abner Pier, James Downer, *Otsego*: John Hood, *Springfield*: Robert Dickinson, *Cherry-Valley*: Joshua Cook, *Hartwick*: William Stranahan, Uri Jackson, James C. Chapel, *Butternuts*: Benjamin Chase, George White, Jonas Babcock, Edward Goddard, *Worcester*: Daniel Hawks, *Richfield*: Elisha Driggs, *Middlefield*.

TRIAL
OF
STEPHEN ARNOLD.

TUESDAY, JUNE 4, 1805.

Otsego county—Court of Oyer and Terminer.

THE PEOPLE, }
VS. }
Stephen Arnold. } THE Prisoner was ar-
raigned before the court, in
the forenoon, at which his
honor chief justice Kent presided, when his indict-
ment, which was found by the grand Jury the
same day, was read to him, to which he plead-
ed—*Not Guilty.* The court then asked him, if
he was ready for trial, to which he answered in
the affirmative. He was then remanded to
prison, and the court adjourned till the after-
noon.

THOMAS R. GOLD, Esquire,
Counsel for the Prisoner.

AFTERNOON.

The Court was opened at about 3 o'clock, when the prisoner was again brought to the bar. The clerk of the court then called over the whole pannel of the Jurors, after which the

following persons were drawn and sworn as Jurors :

ELIHU WARD,	NABOTH EDDY,
WILLIAM ANDREWS,	JOB GORTON,
STUKELY COLWELL,	GIDEON WOOD,
JAMES ANDREWS,	JONA. KINNE,
ZALMON FAIRCHILD,	SETH HACKET,
DAVID TRIP,	SOLOMON SISCOE.

No objection was offered by the prisoner to either of the Jury.

The clerk then read the indictment, of which the following is a copy :

State of New-York, }
Otsego County, ss. }

The jurors of the people of the state of New-York upon their oaths present, that Stephen Arnold, late of the town of Burlington, in the county of Otsego, farmer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the tenth day of January, in the year of our Lord one thousand eight hundred and five, with force and arms, at the town of Burlington in the county of Otsego, aforesaid, in and upon one Betsey Van Amburgh, in the peace of God and the people of the state of New-York, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Stephen Arnold, with a certain large stick, of no value, which he the said Stephen Arnold in his right hand then and there had and held, her

the said Betsey Van Amburgh, in and upon the shoulders, back and hips of her the said Betsey Van Amburgh, then and there feloniously, wilfully, and of his malice aforethought, divers times did strike and beat, giving to her the said Betsey Van Amburgh, by the striking and beating of her the said Betsey Van Amburgh, with a stick aforesaid in and upon the shoulders, back and hips of her the said Betsey, one mortal bruise, of which said mortal bruise she the said Betsey, from the said tenth day of January, in the year aforesaid, until the fourteenth day of January, in the same year, at the town aforesaid, in the county aforesaid, did languish; and languishing did live; on which said fourteenth day of January, in the year aforesaid, the said Betsey, at the town aforesaid, in the county aforesaid, of the mortal bruse aforesaid, died; and so the jurors aforesaid upon their oaths aforesaid do say, that the said Stephen Arnold her the said Betsey, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, and against the peace of the people of the state of New-York and their dignity.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Stephen Arnold not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the tenth day of January, in the year of our Lord one thousand eight hundred and five, with force and arms, at the town of Burlington, in the county of Otsego

aforesaid, in and upon one Betsey Van Am-
 burgh, in the peace of God and the people of
 the state of New-York, then and there being,
 feloniously, wilfully, and of his malice afore-
 thought, did make an assault; and that the said
 Stephen Arnold, with divers large sticks of no
 value, which he the said Stephen Arnold in his
 right hand then and there had and held, her the
 said Betsey, in and upon the back and hips of her
 the said Betsey, then and there feloniously, wil-
 fully, and of his malice aforethought, divers
 times did strike and beat, giving to her the said
 Betsey, by the striking and beating of her the said
 Betsey, with the sticks aforesaid, in and upon the
 back and hips of her the said Betsey, divers mor-
 tal bruises, of which said mortal bruises she the
 said Betsey, from the tenth day of January, in
 the year aforesaid, until the fourteenth day of
 January, in the same year, at the town afore-
 said in the county aforesaid, did languish and
 languishing did live; on which said fourteenth
 day of January, in the year aforesaid the said
 Betsey, at the town aforesaid, in the county afore-
 said, of the mortal bruises aforesaid, died; and
 so the jurors aforesaid upon their oaths aforesaid
 do say, that the said Stephen Arnold her the
 said Betsey, in manner and form aforesaid, fe-
 loniously, wilfully, and of his malice afore-
 thought, did kill and murder, and against the
 peace of the people of the state of New-York
 and their dignity.

Endorsed—A true Bill.

ELIHU PHINNEY,
Foreman.

The district attorney, Nathan Williams, esq. opened the trial on behalf of the state. He addressed a few remarks to the jury on the importance of the cause about to be submitted to them, and enjoined them to lay prejudices and partialities aside, and in a concise manner mentioned the circumstances he should attempt and expected to prove by the witnesses.

The first witness was doct. Gaines Smith.

Question. Were you acquainted with Betsey Van Amburgh?

Answer. I was not.

Q. Are you acquainted with Stephen Arnold, the prisoner at the bar?

A. I had but little acquaintance with him till I saw him in January last.

The witness was then requested to inform the court and jury of such circumstances as he knew.

The Doctor stated, that he was called about the 12th day of January last in the afternoon, to visit the child, which he went to see, and found very sick lying in Mrs. Arnold's lap—felt of the Child's pulse, and observed its hands were rough; Mrs. Arnold said the child had a *breaking out*.—The doctor supposed the child was troubled with worms: and after some instructions concerning the child, left the house. The prisoner's wife was against the doctor's coming again.

Next morning the prisoner came after the witness very early, witness asked him, is the child worse? Prisoner said, "*I want to tell*

you something, and can't, I'm ruined." and repeated it a number of times, and said, "*I will tell you, I have whipped it to death, and if you will go and cure it, and keep it a secret, I will give you half of my property, even all.*" They went together to prisoner's house; witness asked Mrs. Arnold to let him see the child, but she declined; Arnold said to his wife, "*you must let the doctor see the child, for it cannot be kept secret.*" Witness saw the back of the child, and advised prisoner to call for two other physicians: prisoner accordingly went after doctors Day and Ross. The prisoner admitted to witness, that he got *eight* beech sticks—that he trimmed them out and suppled them in the fire, and said he did not think he was going to whip her to death: said he took her out three times because she was obstinate and would not spell; said it was done the tenth day of January. Witness stated to the court and jury, that the child was cut and mangled shockingly, from the calves of her legs up to the middle of her back: the parts bruised, appeared to be black, withered, dead, and sunk down. Prisoner stated to witness that his wife advised him to whip the child as she was obstinate and would not read, and said his wife had whipped her before, and that it did her good. Prisoner at one time proposed sending for the child's mother.

Q. When did the child die?

A. Monday night. January 14th, 1805.

Q. Did the child appear to be bruised with a large stick?

A. It appeared so to me.

Q. By the court. Were there any marks across the child's face?

A. There was a mark on one ear.

Q. By Mr. Gold. Do you suppose the whipping was the cause of the child's death?

A. I do suppose it was.

Q. Did the child appear to have lost her senses?

A. She did.

2d Witness — Dr. Ezra S. Day.

Q. Was you called on to see the child after she was whipped?

A. Arnold called on me Sunday morning;— we walked out to the side of a fence; he lay across a pair of bars, cried, and said he had something very serious to tell me. Prisoner then confessed to the witness, that he had whipped the child, and said he put her clothes over her head, and held her clothes and hands across a stake out of doors, with her toes to the ground, and in that situation whipped her with a number of sticks, which he collected; that the child was black from her shoulder-blades to her legs, and would die.

The witness and doctor Ross went and examined the child, found the flesh bruised and lacerated from her shoulders to the calves of her legs; girl delirious and in a high fever, and begged of them not to whip her to death.

Q. By the court. What time of day did he whip her?

A. In the evening.

Q. Do you believe the child could have been cured, had application been made in time ?

A. I do not.

Q. Did the child appear to have her senses when you first saw her ?

A. She did not.

On the witness being asked if he saw the prisoner after that time, he said he never saw him from that time till he now saw him in court.

Q. By Mr. Gold. Did the prisoner when he came to you, appear to be much affected ?

A. He did, and said if the child died it would ruin his character, and offered me half of his property to cure her.

Q. What did the prisoner say he whipped the child for.

A. He said there were some certain words she would not pronounce.

Q. How old was the child ?

A. She appeared to be about six years old.

Q. By Mr. Gold. Was not you requested to keep this transaction a secret ?

A. He requested me to cure the child and keep it a secret, and he would give me half of his property.

3d Witness.—Rebecca Hubbel.

This witness stated, that she lived within eighty rods of the prisoner, at the time the child was whipped ; she and her husband went to see the child on Saturday evening, January 12th. Prisoner was then at home. Mrs. Ar-

nold appeared sly ; the room was darkened by wet wood being put on the fire, and as witness supposed, to prevent her from seeing the situation of the child. Mrs. Arnold said the child had worms and was very sick, and had been ill since Thursday evening—Child kept gagging, and appeared in great distress. Mrs. Arnold appeared, as witness says, unwilling to have her look at the child, which witness said looked as though it was dying ; its eyes rolled in its head, and it appeared senseless.

Whilst witness was there, prisoner came to the bed side, and said, “ *Bestey, I have been a cruel creature, I had rather die myself than let you die.*” Witness was there on Sunday afternoon, at which time the prisoner went away.

Mr. Gold asked witness if Arnold did any thing to prevent her seeing the child : Witness said he did not

4th Witness.—Sally Adams.

Q. Did you live with Mr. Arnold ?

A. Yes.

Q. Did you see the sticks with which the child was whipped ?

A. I did.

Q. Were they as large as your little finger ?

A. Nearly.

Q. How many times did he take her out and whip her ?

A. Seven times.

Q. Did you hear her cry ?

A. Not very much.

B

Q. Did you see the girl's body ?

A. Yes.

Q. Was it bruised much ?

A. It was very much bruised, from her shoulders to her heels, but not very bloody.

Q. After Arnold took her out the first time, what took place ?

A. She sat down and took her book ; said she could spell and would try ; I did not perceive she was ugly or willful.

Q. How long did she sit after he brought her in the first time ?

A. Ten minutes.

Q. Did she complain of being badly whipped ?

A. No.

Q. Do you suppose she was badly whipped the last time ?

A. She was. He appeared angry the last time. She would not spell gig as he wished.

Q. Did Arnold ever whip her before ?

A. Twice.

Q. Do you think the child could have pronounced the word right, if she had tried ?

A. I do not know.

Q. How was the child Saturday morning ?

A. She sat up and walked.—I was sent away to Mr. Rudd's, to get him to go after the doctor.

Q. Did Arnold appear to be affected after he had whipped the child ?

A. He wept and cried.

Q. Did he say he had as leave whip her to death as not ?

A. When he whipped her before, he said he had as leave whip her to death as not.

Q. Did the child try to pronounce the word?

A. She did, but pronounced it wrong.

Q. Before he went out the last time, did you see him put any sticks in the fire?

A. I did not. I saw several sticks which were worn up.

Q. How long was he out with her the last time?

A. About half an hour.

Q. Did he prevent her from crying?

A. He put her clothes over her head, and held them with one hand.

Q. Had the child stockings and shoes on when she was taken out?

A. She had.

Q. By Mr. Gold. Has the prisoner kept school a great while?

A. He has kept school seven winters.

Q. Did you ever observe the child to be obstinate?

A. Only in spelling.

Q. Was it not with difficulty she could pronounce the word gig?

A. No, she had frequently pronounced the word as he wished.

The witness said the girl was very smart to learn; prisoner used to speak well of her; witness said the girl played the next day after she was whipped, with her rag babies: prisoner went on Friday to keep school, and on Friday night said he was sorry he had whipped the

child; nothing discovered or said on Tuesday night about the feet of the child being frozen; the girl was well and hearty previous to whipping: the prisoner never told the child how to pronounce the word gig till the seventh time; the child said she was ugly, and wished she was better; witness heard the girl say, before she went out the first time, that she did not mean to go out but once before she would pronounce the word.

5th Witness.—Eliphaz Alexander.

Q. Was you one of the persons who went after Arnold to Pittsburgh?

A. Yes.

Q. Did you ever hear him make any confessions?

A. He appeared very sorry, and said he had forfeited his life, and was ready to give it. He said, he believed persons in his situation had been cleared wrongfully, and mentioned a case as similar to his, that occurred in Vermont: He frequently wished us to shoot him.

Q. Did you ever know him before this transaction?

A. I believe not; he says he knew me.

He said the prisoner behaved very well on the road from Pittsburgh to Cooperstown.

6th Witness—Lemuel Hubbell.

The witness was a near neighbor to the prisoner at the bar, and was asked if Arnold was a man of violent passions? to which he answered, he had seen him in a passion, and had

once seen him beat a cow very severely for a trifling cause.

—

Sally Adams, called again.

Witness, on being interrogated, said, that when Arnold brought in the child the last time, he pulled up her clothes, and Mrs. Arnold said, O my God! Arnold, you have killed the child! Prisoner said he hoped he had not whipped her so as to kill her.

Witness stated, that Arnold said at a previous day, that he wished that he was like the old country people, that he could whip her to death; meaning, as witness supposed, that he wished he possessed a hard heart.

The child, during the sixth interval said to the prisoner, "do uncle, let me thaw my feet, for they are almost froze." Witness said, she was a lively child, always dancing, and good natured.

Witness was asked if she had ever discovered very dangerous passions in the prisoner?—she said no—prisoner had always used her well.

Here the testimony closed on the part of the people. No witnesses were called on the part of the prisoner.

The district attorney then read to the court and jury, some authorities, stating what constituted *malice* and *proper correction*, &c. He quoted Hale's pleas of the crown, page 454; Leach's cases, page 163; Blackstone, 4th vol. page 197; Foster, page 291.

Mr. Gold then addressed the jury: He said

it had fallen to his lot to appear before the court and jury, in the defence of the prisoner at the bar; that it was an unpleasant task; it gave him pain to have any agency in the case of murder; he trusted that the jury would divest themselves of whatever impressions had gone abroad, as he believed much injustice had been manifested towards the prisoner, by many reports that were spread. From what had transpired, it appeared obvious to him, he said, that the prisoner's wife was anxious to have the child well educated—in this the prisoner acceded to his wife's wishes—that he saw more hasty passion than *r* alignity in the conduct of the prisoner—his passions, the counsel said, were more evanescent than malignant—there was not about this transaction, that malevolence which had been represented. He concisely stated and summed up the testimony of the several witnesses against the prisoner; mentioned the chastisement being given in the evening, when the prisoner might not have seen what he was doing—the prisoner went out of the room to avoid being where females were: this, the counsel contended was natural; stated that the child appeared not to have suffered much, till the last time of correction, and that the chastisement did not appear, from the testimony, to be too unreasonable at the time the child was brought in the sixth time—the prisoner after so many fruitless attempts to subdue the child's obstinacy, was aroused and provoked from her stubbornness; under these impressions, the counsel

did not think there was such malicious conduct as to amount to murder—the prisoner, it was true had been hasty, but what was his conduct afterwards? There was a great degree of concern expressed by him for the child, and he even would have offered his own life as a substitute for hers—his offer to doctor Smith, shewed the regret and anxiety he felt, at what he had done.

The counsel said that the prisoner was not aware on Friday, the day after he corrected the child, that he had done a bad deed—every case, like the present one, said Mr. Gold, must rest on its own circumstances—he did not believe that the prisoner procured those sticks with an intention to whip the child, but as a means to frighten and bring her to a sense of her duty—the sticks it is true were too large—larger perhaps than either of the jurors would have used, in correcting a child; if, said the counsel, they were suppled in the fire, they were not so likely to danger the child's life. The child persisted in its perverseness, when it could and had pronounced the word right. The counsel trusted the jury would consider the child's obstinacy; with these and many other observations, which escaped us, the counsel for the prisoner concluded. His defence occupied about an hour's time.

The distirct attorney then addressed himself to the jury.

He said he felt somewhat indisposed, and should therefore depend on the charge from the bench. He would however, he said, make a

few observations. He stated that the passions of the people were aroused on an occasion of this kind, but as it had been a long time since the crime was committed, he trusted that passions had now subsided. He wished the jury to take up the testimony, and candidly examine it, and if they could acquit the prisoner, conscientiously, he should be as happy as they could be. He believed for himself, that the outrageous whipping, given the girl, by the prisoner, was the cause of her death. He said it was not necessary to prove express malice; he thought from the prisoner's conduct, altogether, it must be considered as malicious. Mr. Williams said the jury would not perceive hasty malice; the prisoner had some time for reflection: the transaction was done in the night, when foul deeds are often done. Why, asked he, should the prisoner go out of the house? Was he afraid of his wife? Was it not apparent that he had some bad intention, and was therefore ashamed to be seen? It was evident that the prisoner's intentions were to give the girl a severe whipping. Why should he get eight large sticks, as big as ox goads, and whip the child at seven different times? Such an outrageous correction as this, said Mr. Williams, can never be allowed by law.

He said there was a cruel neglect on the part of the prisoner, after the child was whipped: because the child could not pronounce the word gig, as the prisoner wished, she must be whipped with eight sticks to a jelly. It is an outrage-

ous transaction, said the district attorney, and no excuse can be offered : his deliberation, said he, is what I complain of, and his seven fold cruelty • there was no provocation for such a correction. He concluded by saying, that he submitted the cause to the judgment of the jurors, as he relied on their decision. Mr. Williams said much more than we have inserted, but we believe the foregoing to embrace the most material points of his plea.

The pleadings being closed, his honor chief justice Kent, in his charge to the jury, observed, that the cause before them was of serious importance : That upon their verdict was suspended the fate of the prisoner, the due administration of justice, the protection afforded by the laws to the peaceable members of community, and the means necessary to be used to deter others from the violation of the social virtues. His honor recapitulated the testimony of the several witnesses, and observed that, after duly weighing and carefully comparing the same, and considering the time expended in the transaction, an hour and a half, and the seven intervals, affording time and opportunity for reflection, and that the barbarous severity of the scourging, had occasioned the death of the child, he was inclined to consider it murder—his honor, however, wished, and enjoined it on the jurors to judge for themselves, as he had no wish that they should be influenced or biassed by his opinion, but would prefer a verdict which

should be the result of their patient investigation and cool deliberation on the subject.

His honor recited the case of Gov. WALL, who was executed in London in 1801, as applicable. The Governor was a captain in the British service, in the Island of Goree, and for some slight offence ordered a serjeant to be punished with 800 lashes, in consequence of which the serjeant died in about three days thereafter. Nineteen years after this transaction, Governor Wall repaired to England, and surrendered himself to justice. He was accordingly tried, found guilty of murder, and executed.

He then closed by observing, that, should there be any hesitation in the minds of the jury, they should find a verdict of manslaughter only.

The jury retired from the court house, and were absent about two hours, when they returned, at about half after ten o'clock in the evening.

The prisoner was then brought to the bar.

The clerk called over the names of the jurors, and asked them if they had agreed on their verdict; they answered in the affirmative. He then said, What say you, gentlemen, do you find the prisoner at the bar guilty of the felony whereof he stands indicted, or not guilty?

The jury, by their foreman Mr. Wood, answered, *Guilty of Murder.*

The prisoner being asked if he had any thing to offer why sentence should not be passed on him, only wished the time of execution to be

so fixed as to admit his two brothers from Rhode-Island to visit him.

Chief justice Kent then addressed the prisoner with great perspicuity, and in a very impressive manner stated, that he had been arraigned on a charge of murder, to which he pleaded not guilty, and had put himself on his country for trial—after hearing the evidence and every thing that could be offered in his favor, a jury of his country had found him guilty of murder—and he believed the prisoner's conscience must acquiesce in the verdict. His honor believed the jury could not have done otherwise. He was found guilty of whipping a young child of six years old, till she died, because she did not pronounce the word *gig* or *jig*, as he thought proper—he had whipped her seven times, and was an hour and an half employed in the horrid transaction—after whipping her seven times, he told her how to pronounce the word—a slight chastisement, said the judge, might not have been improper. He supposed that a man of his age had obtained a tolerable education, having been a schoolmaster; and having the care of children, he ought surely to have known how to treat them. His honor said the court could exercise no mercy towards him, and that they felt no disposition to exercise any from the whole circumstances of the trial; that it was necessary to make a public example of him to deter others from the like offence.

His honor expressed his approbation of the prisoner's conduct, in repenting as he had of

the cruel transaction, and he hoped he would continue to repent. He concluded the prisoner had been educated in the principles of the Christian religion, and hoped he might meet forgiveness in the world to come. He then pronounced the sentence as follows, viz.

“ You are to be taken from hence to the place of confinement, and from thence to the place of execution, and there to be hanged by the neck until you are DEAD ! and the Lord have mercy on your soul.”

The time of execution was the next day assigned, viz. Friday July 19th, between the hours of 10 A. M. and 4 P. M. On which day the prisoner was brought out for execution, and at the hour, respited until the further order of the Governor.

FINIS