

Report by C HOPE, the Lord Chief Justice's Clerk, on 1 individual Petition (JOHN CUNNINGHAM, counsel for the prisoner) and 1 collective Petition (ARCHIBALD AMOS and his wife JANET AMOS) on behalf of RACHEL WRIGHT, of Armagh, Ireland, convicted at the last Circuit Court of Justiciary held at Glasgow in the autumn of 1808, for stealing the child of ARCHIBALD AMOS, shoemaker, and his wife JANET AMOS on 8 July 1808. Evidences supplied by ARCHIBALD AMOS and JAMES FLEW. There were points of law discussed by the six Judges. Two other child stealing cases are mentioned, that of the children of the late Captain NORVAL and Vice Admiral VASHON. Ground for clemency: lengthy account given in the Petition of precedents of 1752 (HELEN TORRENCE and JEAN WALDIE) and 1784 (IRVINE) do not fully apply to this case as the charge included murder of the child, this prisoner's indictment was laid out as an exact copy of the charge against IRVINE, Aberdeen 1784, there is no capital offence of child stealing in England or Ireland, no capital prosecution for child stealing on its own had occurred in Scotland, the prisoner had intended to take the child to Ireland and being Irish did not know that the offence was capital, youth (under 20 years), the prisoner was destitute, friendless, in want, had already suffered a long interment with painful suffering and no harm had come to the child. Initial sentence DEATH. Recommendation: Transportation for LIFE.

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Edinburgh

13<sup>th</sup> February 1809

My Lord,

I have the honour to acknowledge the receipt of your Lordships letter of the 2<sup>nd</sup> inclosing a Petition for RACHEL WRIGHT , a prisoner under sentence of DEATH for child stealing, which I return. I also have the honour to enclose a petition to His Majesty of ARCHIBALD AMOS and his wife , the parents of the child stolen, in behalf of the prisoner. This petition was sent to me some days ago out of ignorance, instead of being transmitted to your Lordship; but I thought it better to keep it, until I could transmit it along with my report.

In obedience to your Lordships commands to repeat to you for His Majesty's information a state of the convicts case as the same appeared on the trial, together with mu opinion far she may be considered an object deserving the Royal mercy, I beg leave to state that the prisoner RACHEL WRIGHT was tried at the last autumn Circuit at Glasgow for child stealing before Lord CULLEN and HERMAND. The indictment was framed with just care, indeed the statement of the charge was copied [       ] from that in the indictment against IRVINE tried at Aberdeen in 1784 before Lord HAILY and HENDERLAND, and approved of by those two learned and very accurate Judges and the Court here was unanimous that the indictment, by the Law of Scotland was well laid, as for "Theft, especially that species of it called child stealing"

The woman on her trial pleaded GUILTY and admitted the declaration she made before the Sheriff, when first apprehended, but arguably to a practice, which some time ago I stated to your Lordship was adopted by some of my brethren, the Prosecutor, His Majesty's Advocate, was still allowed to bring evidence of the woman's guilt. Accordingly from notes furnished to me by Lord

HERMAND, I find, that it was proved by the father of the child, that he missed her about 8 o'clock PM on the 8<sup>th</sup> July last – that he caused a proclamation to be made for her thro' the streets of Glasgow without success – that next day, he learned from two stranger women, that they had met a woman with a child answering the description at Kilmarnock. That he accordingly set out for Kilmarnock, but the woman was gone, but a Mr Wilson there told him that a woman with such a child had taken the road to Ayr.

That he accordingly went forward to Ayr, where he learned that the woman had gone towards Prestwick. That when he came to the Turnpike at Prestwick, he found that the prisoner had been apprehended by two [Colliers], on suspicion that the child was not her own.

That the prisoner immediately confessed her GUILT to him.

JAMES FLEW, deposed that he was present when the woman was seized by the Colliers, that words arising, he and some others went forward and took the child from the woman, whom he identified to be the prisoner. That soon afterwards Mr AMOS came up and claimed the child, which instantly clasped him around the neck, and would not go back to the prisoner. In short of the guilt of the prisoner there cannot be a doubt and accordingly the Jury returned a unanimous verdict – but when the Court was to about pronounce sentence, the Counsel for the prisoner moved an Arrest of Judgement on two grounds:

- 1: That the indictment was not well laid out for theft
- 2: That as it were, the stealing of a child did not amount to a Capital Crime.

Lords CULLEN and HARMAND had no doubt on the case – but the Counsel for the prisoner (who was a very young Lawyer) requesting very strongly that he would report the case to the High Court of Justiciary at Edinburgh in order that he might have more time and assistance to argue his objections, their Lordships indulged him, and certified the case accordingly.

The case was argued before the High Court at Edinburgh, all the six Judges being present, on the 23<sup>rd</sup> November last, and very great learning and ingenuity was displayed by the prisoners Counsel Messrs JEFFERY and CUNNINGHAM

As the doubt had been started the Court, willing to give every solemnity to its decision in order that the point might be set out [rest] for ever, ordered the argument to be printed in the form of a Memorial.

This was accordingly done – and on the 25<sup>th</sup> January the Court met to determine the case – all the six Judges delivered their opinions at great length, and the result was an unanimous Judgement on both objections:

1: That the indictment was well laid.

2: That by the Common Law of Scotland the Crime of child stealing is Capital.

I presume your Lordship does not except that I should go into a detail of the reasons on which the Court proceeded, for that would lead into a very wide field.

Holding therefore the prisoner to be justly convicted and condemned, it remains to consider, whether she is to be considered as an object deserving the Royal Clemency.

In reference to the circumstances of her case, as far as known, it seems very clear that she is not a deserving object – what her motive or object was in stealing the child does not appear, nor has she told it, as far as I know – but one thing is clear, that she intended to carry it over to Ireland, of which she is a native, and if she had got a few hours more start of the father, the child would probably have been lost to its parents for ever.

Neither does any reason for mercy seem to arise out of the nature of the crime, for one more [ ] it is impossible to conceive and, altho' it be true, as stated in the Petition for the prisoner, that there has been but few convictions for this crime, yet I have reason to believe that it is more frequently committed than is common believe.

Two other instances of it occurred in Edinburgh within these few years. The one child of the late Captain NORVAL , and now a ward of mine, the other a child of a servant of Vice Admiral VASHON , lately commanding on this station – in both cases, the children were fortunately secured, tho' not for some time , and in both cases, owing to the stupidity of the people who detected the thieves (both woman also) they were allowed to escape.

I appears to me therefore that the application for mercy, in this case, can rest on nothing, but the youth of the prisoner, and her presumed ignorance, as a foreigner, of the extent of the punishment, she was incurring by the perpetration of the crime, for I believe by the Law of England and Ireland, child stealing is not capital – this certainly is not a legitimate ground for pardon, tho' it is a feasible one – and when joined to the very earnest Petition of the parents, I think it may be listened to, especially if the pardon be is conceived as not [ ]

a doubt on the legality of the sentence, but to save the Law entire to be executed against any more [            ] offender in the future.

If therefore your Lordship view the case in the same light, I am of opinion that you may advise His Majesty graciously to extend his Royal Mercy to the prisoner, under consideration of being transported for life, and with reference to the object above suggested, I would beg leave to suggest, that the pardon should be made to proceed on the earnest supplication of the parents of the child, and other circumstances of the case, which induce His Majesty to mitigate the sentence of the Law – and that the pardon, conceived in proper terms to the above effect, should then be transmitted to me, instead of going directly to the Magistrates of Edinburgh.

I will then order the woman to be brought before the Court, to plead her pardon in due form, by which means the pardon will make a part of the records, and then it will be seen from the terms of it, that it does not proceed on any doubts as to the legality of the sentence, - for in this very case, the Counsel for the prisoner lent their whole force shake the authority of the Judgement in the case of IRVINE in 1784 on the grounds of the subsequent pardon, which however some of the Court knew had proceed on a very strong recommendation of the Jury, founded on what appeared in evidence, that the child had been well treated by the woman while in her possession and appeared to be fond of her.

I have the honour to be with great respect

My Lord

Your Lordships most obedient and humble servant

C Hope

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Unto the Kings Most Excellent Majesty

The Petition of RACHEL WRIGHT of the County of Armagh in Ireland presently under sentence of DEATH in the Tollbooth of Edinburgh.

Humbly Sheweth

That your Majesty's unhappy Petitioner was tried and convicted at the last Circuit Court of Justiciary held at Glasgow, of stealing the child of ARCHIBALD AMOS – a shoemaker there.

But GUILTY as the Petitioner was, she nod not either in the commission of the offence, or in her subsequent conduct exhibit the artifices of a hackneyed or hardened offender. Upon her first apprehension two days after the crime was committed, she at once acknowledged her GUILT and afterwards in her trial she repeated her confession publicly before the Court and the Jury. Even after the prisoners conviction however, a most important discussion arose, respecting the extent of the punishment annexed by Law to the crime of which the Petitioner had been found GUILTY. The record bears that the Learned Judges on the Circuit, before whom your Majesty's Petitioner was tried “ considered that the case in question has very really occurred in the County and requires the most deliberation and attention of the High Court of Justiciary”

Before preliminary sentence, therefore, they ordered the [ ] procedure on the verdict to take place before the High Court of Justiciary at Edinburgh in order that the opinion of the whole

Supreme Judges collectively might be received to ascertain the award of the Law on the prisoners offence.

The extent of the punishment which the Law authorized on the case of your Majesty's Petitioner, therefore was argued at great length before the High Court of Justiciary at Edinburgh and the point was discussed by the Learned Judges with all the anxiety, deliberation and research with the high importance of their decision both to the prisoner and to the Law suggested.

In the investigation which took place on this occasion it was ascertained that there was no statute or positive Law in Scotland declaring the crime of child stealing to be a Capital offence.

It was discovered that there were many instances on the Records of the High Court of Trials for forcibly carrying away and kidnapping men, and even for sending men abroad and selling them in the Colonies; but in some of those instances were the prisoners [ ]

[ ] they were invariably punished by imprisonment, fine or corporal pains.

In particular there were no instances on the records of the High Court collectively assembled of any Capital conviction for child stealing alone, and there were only two precedents of any description which could be referred to for authority in the present case.

The first of these occurred in 1752 HELEN TERRENCE and JEAN WALDIE were then indicted alternately for the murder of a child of tender years, or at least of stealing the child, from his parents and selling his body dead, to a student of anatomy for dissection, in the course of a few hours afterwards on the same day. The Jury on that case, convicted the prisoners upon the latter charge, in the indictment, and they received sentence of DEATH, and were

executed. But this was not a conviction, on a charge of child stealing alone; the sale of the dead was specifically charged as an aggravation, and even the Counsel for the prosecution in the trial, by a pleading on record, argued that the stealing the child when alive, when disjoined from the selling it when dead, might NOT be capital, YET WHEN TAKEN TOGETHER, they might undoubtedly be relevant to infer a capital punishment. So that it appears questionably how far this was a precedent establishing a capital punishment for child stealing, as a separate and single offence.

The only other instance in which this offence was capitally prosecuted occurred not before the High Court of Justiciary collectively assembled, but before the Circuit Court of Justiciary held at Aberdeen in 1784. In that Circuit an unhappy woman was certainly condemned upon conviction of a charge precisely similar to that of which your Majesty's Petitioners was found guilty; and also the prisoner on that occasion afterwards received your Majesty's most gracious pardon, the authority of this single decision if sanctioned by the Court, was most certainly fatal to the prisoner; but it was argued on her part that this was only a single precedent – that it was contrary in its result to many previous cases on record, and could not be [ ] received by the High Court as conclusive evidence of the Law, in so far as it was only a recent case, and the opinion of THE WHOLE COURT at that period, had neither been required nor taken respecting the extent of the punishment.

The High Court however, lately assembled at Edinburgh on finally determining the Petitioners case, unanimously favour that they were constrained to pronounce a capital sentence on the Petitioner. Their Lordships held the two precedents which have been now laid before your Majesty to be now [ ] upon them, which some of their Lordships of the highest authority held that according to the genues

and principles of the Criminal Law of Scotland, they would have been bound to inflict the highest punishment on the Petitioner, even without the dissection of any previous statute or precedent. Your Majesty's unhappy Petitioner therefore was condemned to be executed at Edinburgh on the 8<sup>th</sup> day of March next.

With the most humble supplication therefore the Petitioner has been advised to lay the present application before your Majesty and to implore your Majesty for mercy.

Deeply impressed with the [ ] and atrocity of her offence the Petitioner does not approach your Majesty nor supplicate a remission of her awful sentence on any [ ] that the punishment is disproportionally to the crime, but there are some peculiar circumstances in her case, which the Petitioner is humbly [ ] will be received in your Majesty's beneficent and paternal breast as alleviations of the Petitioner's guilt.

Your Majesty's Petitioner is now a girl under twenty years of age; at the period when she was unhappily betrayed into the crime for which she has been condemned, she was in a part of the Empire far removed from her own home, deserted, friendless and in want. Your Majesty's Petitioner also did not add to her guilt by denying her offence – she never put the Prosecutor to any embarrassment in proving her charge, nor did she attempt to obstruct the course of public justice in her trial by maintaining any [ ] defence, but she at once and at all times, confessed her guilt, relying in that mercy from your Majesty which was never withheld from any of your subjects in her miserable situation but in [ ] of the most severe and [ ] necessity.

The Petitioner most humbly and anxiously waits that your Majesty will not in the present instance deem it necessary on grounds of

public expediency to withhold from her the mercy which she supplicates.

From the statement which has now been laid before your Majesty it appears that during the two preceding sentences the Petitioner is the only the third instance in which the Supreme Criminal Court of Scotland had been called to try any charge of the same nature with that of which she has been convicted. The frequency of the crime does therefore [ ] call for the executing of the Petitioner's awful sentence to deter the evil desp[ ] at present from the commission of such an offence.

For these reasons alone, the Petitioner would have humbly hoped that your Majesty would have extended your most gracious clemency to her even had the extent of her punishment never been the subject of discussion or doubt, but when your Majesty farther takes into your Royal [ ] that the present is the first instance on record in which the High Court collectively assembled ever declared this crime, unconnected with any other charge or aggravation to be a capital offence, the petitioner feels humbly confident that your Majesty will graciously interpose and save the miserable convict from so dreadful a punishment, which was not before fixed by the most highest and most indisputable authority.

May it therefore please your Majesty to extend your most gracious pardon to the Petitioner for the offence for which she now lies under sentence of DEATH or to commute that sentence for such other punishment as to your Majesty may seem adequate and proper.

And your Majesty's Petitioner shall ever pray.

John Cunninghame

Counsel for the Prisoner.

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RACHEL WRIGHT

13<sup>th</sup> FEBRUARY 1809

GLASGOW

SERIES – HO 47

SOURCE – JUDGES REPORTS ON CRIMINALS 1784-1830  
CORRESPONDENCE

PIECE 43

FOLIOS – 1 – 12