

## SIR SAMUEL TUKE'S BRUSH WITH THE LAW, 1653-4: NEW EVIDENCE

In the absence of documentary evidence, the career of Sir Samuel Tuke (c. 1615-1674), distinguished royalist officer during the Civil Wars, author of the cloak and dagger tragicomedy *The Adventures of Five Hours* (London, 1661), and confidant of Charles II, has only been patchily accounted for. During his continental exile from about 1649 until the Restoration, Tuke attended Henry, Duke of Gloucester (1640-1660), fruitlessly sought an appointment as secretary to James, Duke of York (1633-1701), and served in The Hague as a gentleman-in-waiting to Mary, Princess Royal and Princess of Orange (1631-1660).<sup>1</sup> Described by Sir Edward Nicholas as the 'great oracle' at Mary's court, it was as a redoubtable swordsman however that Tuke gained notoriety.<sup>2</sup> On 28 July 1653 Nicholas informed Thomas Wentworth (bap. 1613–d. 1665), another military man and duellist, of a grim incident:

Col. Tuke sending a challenge to Sr Robert Starismere [sic], they met in Flanders on Saturday was se'nnight; and Sr Robert receiving a slight hurt in the groin or belly (having, even when he fought, so great a fit of the stone on him as Mr Tuke, before they fought, wished him in a friendly manner to put off fighting till he were well of it) fainted with it and continued very ill for a day or two; and then, when all men thought the danger past, he suddenly died to the great sorrow even of Mr Tuke, who (I hear) behaved himself very gallantly, in that business.<sup>3</sup>

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<sup>1</sup> C. H. Firth, 'Tuke, Sir Samuel, first baronet (c. 1615-1674)', rev. Andrew J. Hopper, *Oxford Dictionary of National Biography* (Oxford, 2004) [<https://doi.org/10.1093/ref:odnb/27807>, accessed 28 November 2021]; J. P. Vander Motten and Katrien Daemen-de Gelder, 'Sir Samuel Tuke (c. 1615-1674) at the 'Little Court' of Mary Stuart (1631-1660)', *Notes and Queries*, N. S. 53 (2006), 168-70.

<sup>2</sup> George F. Warner (ed.), *The Nicholas Papers. Correspondence of Sir Edward Nicholas, Secretary of State* (Westminster, 1892), II (Jan. 1653-June 1655), 15.

<sup>3</sup> Warner, *The Nicholas Papers*, II, 15; Stuart Reid, 'Wentworth, Thomas, fifth Baron Wentworth (bap. 1613- d. 1665)', *Oxford Dictionary of National Biography* (Oxford, 2004) [<https://doi.org/10.1093/ref:odnb/29057>, accessed 28 November 2021].

The captain of an English company of foot soldiers in the service of the United Provinces since at least February 1647, Sir Robert Starismore had been knighted by Charles II at Breda in 1650.<sup>4</sup> What the motive for Tuke's challenge was—professional envy or a slight to his honour—Nicholas' news item does not specify. But 'friendly' and 'gallant' as Tuke's behaviour may have been, his 'great sorrow' upon learning of Starismore's demise was not likely to shield him from the consequences of an act that was known to be frowned upon by Charles II and could hardly have been tolerated by his sister Mary, Princess Royal (1631-1660). Although councils of nobility sat in judgment on offenders during the exile, even after his proclamation against duelling of November 1658 'the King would not seek to protect duellists from the wrath of local laws against duelling'.<sup>5</sup>

Notarial documents preserved in the City Archives at The Hague contain hitherto unnoticed evidence on the precarious situation in which Tuke found himself after the encounter reported by Nicholas. The most revealing of these documents, dated 11 April 1654, was drafted upon the request of Starismore's widow:

Today, on 11 April 1654, has appeared before me, Lambert Rietraet, notary public...and the witnesses mentioned below, the honourable lady Mrs Maria Bust, widow of the late honourable and hardy lord Robert Starymore, during his lifetime a captain in the service of the United Netherlands, who has declared to have constituted and authorized Johan Bust, esquire, brother to the lady attestant, to transport himself on her behalf into the city of Brussels and any other place deemed appropriate and necessary, before the Council of his Royal Majesty of Spain and wherever it may be required, in order to prosecute the legal claims, the costs of which she is covering, against one Samuel Tuckque, English nobleman, in the case of manslaughter perpetrated by the same Tucque on the person of the attestant's late husband, of which [crime] letters of remission have been granted by the honourable lord Chancellor and the Council of his Majesty aforementioned, with the express proviso that they will not be ratified until proper compensation will have been given to the interested parties. To this end [Johan Bust will] appear before the honourable gentlemen the Chancellor and the Councillors aforementioned in order to impede, as much as possible, the ratification [of the letters], to dispute the request for the

<sup>4</sup> George W. Marshall (ed.), *Le Neve's Pedigrees of the Knights made by King Charles II, King James II, King William III and Queen Mary, King William alone, and Queen Anne* (London, 1873), 39.

<sup>5</sup> John Jeremiah Cronin, 'Honour, Duelling and Royal Power in Exile: a case-study of the banished Caroline Stuart Court, c. 1649-1660', *Crime, Histoire & Sociétés / Crime, History & Societies* [Online], 17 (2013), 47-69 (52, 54-5).

obtainment of the aforementioned letters of remission submitted with subreption and obreption by the said Tucque, and to insist in any case that in conformity with the aforementioned letters proper satisfaction shall first and foremost be given. To this end [Johan Bust is hereby empowered] to appoint in his place one or more solicitors having similar or more limited authority, to submit all writings, libels, and documents pertaining to the attestant's complaint, to prosecute the case until the very end, and to take any further action, such as the lady attestant herself, present here, shall or may come to undertake, even if an additional and special charge were required, as aforementioned. [Johan Bust hereby] promises at all times steadfastly and in good faith to serve her [Mary Bust] and the interested parties in all actions undertaken in the matter aforesaid by him, the proxy, and his substitutes, both under his own responsibility and according to the law ... Recorded and passed at The Hague, in the presence of Sr Willem Wisschart, accountant to the Princess Royal, and Lambert Hasselmans, notary's clerk....who have co-signed this document with the lady attestant and myself, the notary. Mary Starismore, Wm: Wisheart, Lamb: Hasselman 1654.<sup>6</sup>

Couched in 17th-century legalese, Mary Bust's statement requires a brief elucidation of the judicial process in the Spanish Netherlands. After Starismore's death resulting of the

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<sup>6</sup> Gemeentearchief Den Haag. 0372-01: Notarieel archief, inv. 46, folios 284-5. We are providing a slightly modernized translation: we have left out a few formulaic expressions, simplified the division into sentences, inseted some punctuation marks, clarified some phrases between square brackets, and capitalized forenames and family names. The original Dutch act runs as follows: /284r/ 'Op huijden den elfsten April 1654 compareerde voor mij Lambert Rietraet, openbaer Notaris bijden hove van Hollandt geadmitteert in 's Gravenhage residerende, Ende den getuijgen naergenoempt, de wel Edele Vrouwe Mevrouw Maria Bust, weduwe van wijlen den oock wel Edelen ende manhaften heere Robbert Starymore, in sijn leven Cap:t ten dienste vande vereenichde Nederlanden, ende verclaerde te hebben geconstitueert ende machtich gemaect, Constitueert ende maect machtich mits desen Jonckheer Johan Bust, haer Vrouwe comparante broeder, specialijcke omme sich uijttien naeme ende van wegen de vrouwe comparante te transporteren binnen de stadt Brussel, ende vorts over al daer het behooren ende van noode wesen sal, ende aldaer soo inden Raede van sijne Conincklijke mayesteijt van Spangien ende elders daer sulcx sal wesen gerequireert te vervolgen ende prosequeren alsulcke actie ende rechtvordering, als zij aldaer is sustinerende tegens eenen Samuel Tuckque, Engels edelman, ter zaecke vanden manslach bijden selven Tucque inden persoon vander voorn: vrouwe comparante man zal[iger] geperpetreert, ende daeraff aenden zelven Tucque brieven van remissie bijden Ed: heere Cancelier ende Raeden van /284v/ hoochgemelte sijne maiesteijt sijn verleent, doch onder expresse reserve dat de selve niet en sullen worden geinterineert oft effect sorteren, voor ende alleer aenden geinteresseerde partijen behoorlijcke satisfactie sal wesen gedaen, tot den fine te compareren voor de welgemelte Ed: heeren Cancelier ende Raeden, ende den voorz: Interimente, soo veel mogelijk is, tegens te staen, ende de supplicatie bijden voorn: Tucque tot obtenuue vande voorn: brieven van remissie gepresenteert, bij sus ende obreptie te debatteren, emmers ende in alle gevalle, dat in Conformiteijt vande voorz: brieven eerst ende alvooren behoorlijcke satisfactie sal worden gedaen, tot dien eijnde eenen oft meer Procureurs gelijcke ofte gelimiteerde mocht hebbende in sijne plaetse te substitueren, alle geschriften, libellen, ende munimenten tot der vrouwe comparante intentie, over te dienen, ende vorts de zaecke tot den uijteijnde toe te beleijden, ende alles voorders daer innen te doen handelen, ende verrichten, t'gene de voorn: vrouwe comparante selfs ads (*illegible*) present ende voor oogen sijnde soude comen oft mogen doen, alwaert oock zulckx dat hier toe naerder ende speciaelder last van noode waere, als voorz: is, beloovende t'allen tijden voor haer, ende alle de geinteresseerden vast ende van weerden in goeder trouwen te zullen hebben ende houden, al het gene bij haere voorn: geconstitueerde, ende desselfs gesubstitueerde in tgene /285r/ voorz: is sal wesen gedaen ... Aldus gedaen ende gepasseert in s' Gravenhage ter presentie van Sr Willem Wisschart Boekhouder vande Princesse Royall ende Lambert Hasselmans clerq mijns Notaris ... dije dese met de vrouwe comparante ende mij Notario hebben ondergeteekent. Mary Starismore, Wm Wisheart, Lamb: Hasselman 1654.'

‘slight hurt’ sustained in the duel, Tuke ran the risk of being brought to justice. As contemporary criminal law did not distinguish between murder and manslaughter, a conviction would inevitably lead to capital punishment, a verdict against which no appeal was possible.<sup>7</sup> But if the party concerned felt that there were attenuating circumstances, they could submit a petition for remission, in the hope of avoiding a regular lawsuit. To this end, a solicitor would have been enlisted to appeal to the highest judicial authority in the province of the Spanish Netherlands where the incident had taken place.<sup>8</sup> In Tuke’s case, this was the Council of Brabant, the ‘Council of his Royal Majesty of Spain’ in the words of the notarial act. Petitions for remission generally contained a circumstantial account of the case, which was designed to be favourable to the accused and frequently resorted to the use of ‘subreption’ or ‘obreption’, a subtle suppression or distortion of the facts. (Tuke’s solicitor might have argued, for instance, that Starismore’s condition had been aggravated by his acute kidney stone crisis.) The Council would thereupon collect additional information from the authorities in the town where the incident had taken place and draft a recommendation intended for the members of the ‘Conseil Privé’. In a so-called ‘consult’ the latter then submitted the case to the Governor-general, who ultimately decided whether a remission could be granted or not. If not, a trial would go ahead. If a remission was granted, all the parties concerned recognized that the offence had some excusable grounds. But, whatever the outcome, the injured party (Starismore’s widow) was entitled to pecuniary compensation, which had to be paid before the letter of remission could take effect.

The notarial act of 11 April 1654 was signed shortly before the remission granted to Tuke was ratified by the Council. As compensation had not yet been paid, Mary attempted to prevent the ratification by having her brother argue before the Council that Tuke’s petition

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<sup>7</sup> Jos Monballyu, *Six Centuries of Criminal Law. History of Criminal Law in the Southern Netherlands and Belgium, 1400-2000* (Leiden, 2014), 37-63.

<sup>8</sup> Marjan Vrolijk, *Recht door gratie. Gratie bij doodslagen en andere delicten in Vlaanderen, Holland en Zeeland, 1531-1567* (Amsterdam, 2004), 35-56.

had distorted the facts and/or left some of them undisclosed. Clearly, then, Tuke's case had already been submitted to the Governor-general, and he had been granted a conditional pardon.<sup>9</sup> Whether Bust's petition with the Council served to secure the payment of damages must remain a moot point. That Sir Samuel Tuke was a repeat offender, however, suffers no doubt. Shortly after the fatal duel with Starismore, Edward Nicholas was informed by Christopher Hatton (bap. 1605 – d. 1670), another royalist exile, writing from Paris on 30 December 1653 that

[y]our deere frend Collonel Tuke hath beene in a late scuffle, where he hath gott a knock; but it is thought he hath given the Host of the Cabaret a mortall wound, whereof they say he cannot escape, soe deadly it seemes is that Collonels hand...<sup>10</sup>

In May 1653, Tuke had accompanied the Duke of Gloucester to Paris as the Princess Royal's envoy.<sup>11</sup> After Starismore's death in July 1653 he may have slunk away to Paris for a very different reason: in order to avoid royal wrath or to await his petition for clemency to be brought before the Council in Brussels. But this evidently did not keep him from becoming embroiled in a brawl in which, reportedly, he lived up to his reputation, mortally wounding the host of a drinking-house. Although it is unclear whether this incident, like the previous one, had any legal repercussions, the head-on confrontation between two of Princess Mary's trusted servants in July 1653 and the ensuing court case would have been cause for serious embarrassment to her 'little Court' at The Hague. But the extant records suggest that the Princess acted as a conciliatory force between Tuke and Mary Bust.

A letter of proxy dated 11 June 1654 shows that on 25 July 1653 Princess Mary had conferred upon Mary Bust the right to the rents and revenues of several parishes and

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<sup>9</sup> We have been unable to trace a 'consult' relating to Tuke in the register of the 'Conseil Privé Espagnol' for July 1653 to December 1654, preserved in the State Archives at Brussels.

<sup>10</sup> Warner, *The Nicholas Papers*, II, 39.

<sup>11</sup> J. P. Vander Motten and Katrien Daemen- de Gelder, 169.

ecclesiastical fiefs within the barony of Breda.<sup>12</sup> Bust assiduously enforced this privilege, instructing the local magistrate to ‘compel by legal means tenants reluctant to pay their rent’ and to ‘rent out all farmlands, now vacated, at the highest possible price, to the profit of the attestant [i.e. Mary Bust]’. These rights had possibly been granted as financial compensation for the loss of her husband—long before Tuke’s conditional letter of remission was issued and the extent of the damages to be paid by him was decided upon. In view of the destitute state of most cavaliers in exile, it is unlikely that Tuke ever indemnified the complainant or that he could have done so out of his own financial resources. There is evidence, however, that he did rely on the Princess to discharge some of his other debts. In another notarial act dated 26 January 1657, five separate individuals acknowledged the receipt of the sum of £ 1,000 in repayment of the collective debt which ‘Mr Samuel Tucque’ owed them. Payment was made by Nicholas Oudaert, treasurer, on the express instructions of Princess Mary herself.<sup>13</sup> Is it too far-fetched to suggest that if Mary Bust was paid any compensation at all, her royal mistress may have done so on Tuke’s behalf?

Both the lucrative rights granted to Mary Bust and the payment of Samuel Tuke’s debts demonstrate the Princess’s concern over her servants’ well-being. If related to the legal fallout of the Tuke vs Starismore incident, Mary’s acts of generosity would have been in line with her brother’s policy of resolving conflicts arising out of duels not by meting out punishments but ‘by acting as an elite peacemaker’ promoting reconciliation between the opponents. In Mary Bust’s case she appears to have done so by means of pecuniary relief.<sup>14</sup> Continuing these favours after the Restoration, Charles II in 1661 granted Bust an annual

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<sup>12</sup> Gemeentearchief Den Haag. 0372-01: Notarieel archief, inv. 46, folios 346 and 459.

<sup>13</sup> Gemeentearchief Den Haag. 0372-01: Notarieel archief, inv. 110, folios 30-31. Out of the Princess’s finances, Tuke was paid £ 400 annually by way of ‘Traitement [salary] et argent de Cheval’: see Vander Motten and de Gelder, 169.

<sup>14</sup> Cronin, 62.

pension of £ 200 for her services ‘to Our deere Sister the Princess Royall deceased’.<sup>15</sup> As far as Sir Samuel Tuke is concerned, the duel in Flanders and the incident in Paris left his post-Restoration career unscathed, as he continued to be ‘treated with great favour’ by the King.<sup>16</sup> Providing a jurisdictional context for what was seemingly no more than a *fait divers*, the archival documents at The Hague add appreciably to our understanding of the vicissitudes of Tuke’s career in the 1650s—and of the part played in it by the exiled Stuarts.

J.P.VANDER MOTTEN  
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<sup>15</sup> The copy of the original warrant was sold at auction a few years ago. See [Bonhams : CHARLES II Warrant signed \("Charles R" at head\), to 'the Clerk of Our Signett attending', requiring him to draw up a bill for the royal signature granting yearly pension of £200 to Lady Mary Starismore, Whitehall, 10 May 1661.](#)

<sup>16</sup> Firth, rev. Hopper.

