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America's First Firearms Product Liability Suit?

I have spent much of the last year poring through dusty old books, and microfiche that is so hard to read that I sometimes look forward to the dust! My mission has been to get at the truth of gun ownership in America before 1840. I have found some amusing stories and facts, and more than a few surprises. Among the “interesting documents” that I have found is what I believe was America's first firearms product liability suit.

Firearms product liability suits have received a lot of press attention in the last several years. Indeed, my column last month was about the California Supreme Court's August 6, 2001 decision. That case, like many other recent suits against gun makers, argued that guns were defective because they were so dangerous when they worked as intended that the risks to society exceeded the benefits to society. The courts, in a shocking and almost unprecedented display of common sense, have struck down these creative suits with considerable energy—even in California and New York State!¹

It is easy to look at these abusive lawsuits and forget that once upon a time (and yes, this does sound like a fairy tale), firearms product liability suits were usually about defective guns, not the defective people that misused them. Firearms liability suits have traditionally been about guns that blew up in someone's face, or fired when they should not have—not these clever attempts at banning guns through civil suits.

New Haven was originally its own colony, not part of Connecticut. I have long been interested in knowing more about New Haven's history, because one of my ancestors, Thomas Nash, was a signer of the 1639 Fundamental Agreement that was New Haven's first constitution.² Regular readers of my column will also not be surprised to find that my

¹ *Hamilton et. al. v. Beretta et. al.* (N.Y. 2001), at <http://www.courts.state.ny.us/ctapps/decisions/36opn.pdf>. *Merrill v. Navegar*, slip opinion S083466 (Cal. 2001).

² See <http://www.yale.edu/lawweb/avalon/states/ct01.htm> for the charter.

ancestor was New Haven's armorer. (As an Englishman of noble breeding, or at least of noble pretensions would say, "Blood will tell.")

It was therefore most gratifying to discover that Thomas Nash's son was also a gunsmith, and a witness in what must have been America's first firearms product liability suit. While digging through *The Records Of The Colony And Plantation Of New Haven, From 1638 To 1649* I found a fascinating description of a 1645 trial. A Stephen Medcalfe went over to visit a friend named John Linley. "Francis Linley, his brother, being in the house, told him he would sell him a gun.... Stephen asked him if it were a good one, he answered yea, as any was in the town, whereupon they bargained, and Stephen was to give him 17s."³

Now, as often happens when one buys a bargain, Medcalfe, as he walked out the door, took another look at the gun, and asked Francis Linley if the lock (the part of the gun responsible for lighting the gunpowder) was okay. Francis's response was that the gunsmith John Nash "told him she was not worth 3d" but then again, Linley claimed that gunsmiths did not appreciate old guns. (To my mild surprise, guns in many seventeenth and eighteenth century documents seem to be "she," like boats, and other objects that men regard with affection.)

With Francis Linley's assurances that the gun was good, Stephen took it home, apparently with his friend John Linley in tow. "Stephen went home & afterward discharging the said gun the breech flew out & struck into his eye and wounded him deep and dangerously into the head."⁴

When the case came to trial, there were many witnesses who testified. Francis, unsurprisingly, told the court "that he told Stephen that John Nash told him that the gun was [worth] naught, that it was not worth 3 pence, that the barrel was thin... and advised Stephen to secure her well and... to put but a little charge in her."⁵

³ Charles J. Hoadly, ed., *Records Of The Colony And Plantation Of New Haven, From 1638 To 1649* (Hartford, Conn.: Case, Tiffany, 1857), 176-77.

⁴ Hoadly, 177.

⁵ Hoadly, 177.

But many other witnesses testified at the trial contradicting Francis. Francis in a previous hearing had already denied making any such statement, contradicting his current testimony.

John Nash testified that he had warned Francis that “it was a very naughty piece” (meaning, worth nothing, but as it turned out, naughty in the modern sense as well) “not worth the mending....” “the barrel at the breech was as thin as a shilling, cracked from the breech to the touch-hole....” (In a matchlock gun, the touch-hole was where the slowmatch lit the powder to fire the gun.) John Nash also testified that he had told Francis “he would not discharge it for all New-haven, for it would do some mischief.”

A Richard Myles testified that “he heard John Nash speak much of her [the gun’s] badness & unserviceableness to Francis Linley.” Francis Linley had been warned that the gun was unsafe, and there were plenty of witnesses who could testify that Linley *knew* the gun was unsafe.

Showing that kinship is a stronger bond than friendship, John Linley, Stephen’s friend and Francis’s brother was asked, “why he was taken with such a quaking and trembling when Stephen was going to shoot,” after Stephen took the gun home. John Linley denied that he had done either. But a woman named Fancy testified that after Stephen’s accident, John Linley spoke of “hard thoughts of his brother concerning the gun.” A Mr. Pell confirmed Fancy’s account.

Everything was in place: proof that Francis Linley knew the gun was dangerous; evidence that Francis discounted the danger to Stephen both before and after the sale; evidence that Francis Linley’s brother John also knew the gun was dangerous, and yet took no action to warn Stephen other than “quaking and trembling.” Unsurprisingly, the court awarded £20 in damages—a sizeable amount of money in those days—to Stephen Medcalfe for medical expenses, the loss of his eye, and his suffering.

Along with the details of the case—and the skill with which the witnesses were brought together to demonstrate Francis Linley’s responsibility for this serious injury, there is another

interesting point: how tremendously unremarkable this whole gun transaction seems to be. The account of how Stephen Medcalfe bought the gun from Francis Linley suggests that it was a spur of the moment decision, in no way unusual.

Many gun enthusiasts tell me how much they appreciate my work in studying through the dusty old books, but I can tell that they regard it as a labor of love on my part—one of those jobs that someone needs to do, but they can't imagine that anyone would enjoy it. Buried in the dustbin of history, however, are some fascinating gems.

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