

III.

ON A CURIOUS DIFFICULTY AS TO EVIDENCE ARISING FROM AN ENTRY OF THE DUKE OF YORK'S NAME IN THE SEDERUNT OF THE PRIVY COUNCIL AT EDINBURGH, IN JULY 1684. BY ROBERT CHAMBERS, Esq., F.S.A. Scot.

A remarkable change of administration took place in Scotland in the summer of 1684, when the Chancellor, the Earl of Aberdeen, was displaced, and the Earl of Perth appointed to succeed him, the latter being a more devoted friend of the Duke of York. The Earl of Perth left London in a coach with other new officers of the government at the beginning of July in that year, and arrived on the 10th in Edinburgh, in order to commence the duties of his government, where —while they must have been secretly detested by the people at large, as a more tyrannical set than even their predecessors,—“they got a most magnificent reception, by shooting of guns, and the forces drawn out, and the magistrates meeting them in their robes, so that little more could be given either to the king or his brother if they were coming hither;”¹ one of these fair-faced demonstrations, indeed, with which terror-stricken officials sometimes flatter hated rulers, and make them think all is safe, while, in reality, the ground is rapidly hollowing beneath their feet.

In the record of the Privy Council, the first out of five meetings after Perth's arrival, namely, on the 15th, 17th, 22d, and 24th of July, the sederunt or list of councillors present is headed with the words, “His Royal Highness, His Majesty's High Commissioner,” being the style under which the Duke of York was recognised in the same record when he attended the meetings of Privy Council three years before. To look to this record alone, and better evidence no one would ask for, the Duke of York was in Edinburgh during the month of July 1684, and presided, as was his wont, at the meetings of the Privy Council. His style does not head the sederunt of the 23d; one might suppose him to have been prevented from attending that day. It does not recur after the 24th; we might suppose that immediately after that day he had returned to London. The whole looks most natural and feasible, as an indication of a brief visit paid by the Duke at this time to the Scottish capital, in order to inaugurate those new ministers and counsellors from whom a more zealous service of the court was expected. Yet there can scarcely be a doubt that the Duke did not visit Edinburgh at this time, and that the entry of his style in the sederunt is a fiction.

¹ Fountainhall's Historical Observes, p. 132.

The most complete disproof of his presence in Scotland between the 15th and 24th of July 1684, would be, of course, an *alibi*. As yet, however, means of establishing an *alibi* have not been obtained. On the 28th May he took his seat at the English Council Board as Lord High Admiral, by an exercise of the dispensing power. On the 6th of June, he wrote from Windsor a letter to the Prince of Orange, which is printed by Dalrymple. On the 2d of July, he wrote a letter from Windsor to the Earl of Rochester, which appears in the Clarendon Correspondence. On the 5th of August, Lord Godolphin saw him at Hampton Court, as appears by another letter in the Clarendon Correspondence. Thus we can account for the Duke in England a short while before, and a short while after, his figuring in the Scottish Privy Council Records, *but not during the time*. Other disproof must be sought for.

It is, in the first place, certain that no other notice of the Duke's being in Edinburgh at this time occurs anywhere. Lord Fountainhall, we see, not merely does not intimate his coming with or about the same time as Perth and his associates, but says that the reception of these men was as magnificent as if the King or Duke *had been* visiting Edinburgh. Wodrow, writing only thirty years after, says nothing of a visit of the Duke at this time. It may be surmised that the Duke came *incognito*; but had he done so, and appeared in the Privy Council amongst a dozen noblemen, not to speak of clerks and other officers, it would have been impossible in such a town as Edinburgh to have kept so remarkable a circumstance secret. Fountainhall, who knew and chronicled all that was going on in the Privy Council, could not have detailed to us the Earl of Perth's reception and other matters of the 15th, to the extent of three or four quarto pages, without revealing the fact of the Duke being president for that day, if he had really been so. Further, the record itself contains no other particulars tending to show that the Duke was there bodily. On the contrary, it contains some things forming all but conclusive evidence that he was not personally present. Two letters, addressed to himself by the Council, one of them an effusion of loyal and dutiful acknowledgments, the other a pleading for his interest with the king in favour of an effort which the burghs were making to get the Scotch privileges in France more clearly defined, are distinctly entered in the minutes, together with a third letter inclosing these to the English Secretaries of State, in the following terms:—

“RIGHT HONOURABLE,—Having sent inclosed to his Sacred Majestie and his Royall Highnes the acknowledgment of the great honor they have done us in our last commissions, Wee hereby address them to your lordships, and hoping you will present them to your (*sic*) Sacred Majestie and the Duke, as the Coun-

cill's sincere thoughts. Signed in name and by warrant of his Majesty's Privy Council by your lordships' most humble servant. *Sic subscribitur*,

“PERTH, *Cancell., I.P.D.*”

“*Postscript.*—We have also sent to your lordships a letter to his Royal Highness in favor of the burrowes, to be addressed to his Highness. *Sic subscribitur.* PERTH, *Cancell., I.P.D.*”

It seems in the highest degree unlikely that, if the Duke had been personally present, the acknowledgments here spoken of would have been paid otherwise than directly to himself, or the interest sought for asked through the round-about method of a letter. Even if we could go so far as to suppose such things done by letter, under a regard to form, there remains the difficulty of imagining them done without any allusion, in the record of proceedings, to his Royal Highness's personal presence, besides the additional, and perhaps greatest difficulty, of supposing that if these things were to be effected through letters, there would have been any need of employing the services of the English Secretaries of State in getting these letters delivered. With such strong grounds for concluding that the Duke was only *constructively* present, or entered in the sederunt by mistake, it is hardly necessary to add a fact in itself almost sufficient to prove his absence, that, while in the instances of his undoubted presence in 1680-1-2, the deliverance or decision of the Council always commences in this form, “His Royal Highness, his Majesty's High Commissioner, and the Lords of Privy Council, having considered,” &c., it is, in these four instances of July 1684, given in the *usual* form, “The Lords of Privy Council having considered,” &c.

It is worthy of remark, that in the record, which is a *transcript* of notes taken during the meetings, and usually appears to have been very carefully prepared, the style of the Duke is interpolated in a space too narrow for it, and thus clearly appears as inserted after the record was completed. In a transcript of the original minutes or notes, this could scarcely be as the correction of an accidental omission. Far more likely it was the result of some after-thought, though proceeding on grounds unknown to us, and which may never be discovered.

The matter seemed worthy of this extent of discussion, not only for the determination of a historical fact of some importance, but on account of its value as an illustration of the laws of evidence. It shows us that we must take what appears as the best documentary evidence under a certain liability to correction. Were there any strong *ex parte* reason for establishing the Duke's absence from London, or presence in Edinburgh, between the 15th and 24th of July 1684, here is the strongest *e facie* proof of it; and if from any cause, disproof

could not be adduced, the case must go in favour of that assumption. Yet we see, strong as that proof, taken by itself, is, it is fallacious.