

## II.

SUPPLEMENTARY NOTICE REGARDING THE ENTRY OF THE DUKE OF YORK'S NAME IN THE PRIVY COUNCIL RECORD, JULY 1685. [See p. 90.]

Mr Robert Chambers read the following letter from Mr William Fraser, assistant-keeper of the Register of Sasines, adducing additional evidence from original letters written by the Duke of York, from England, at the time when he is entered by his style as present at the sittings of the Privy Council in Scotland. The question as to the fact itself is thus set at rest ; but much doubt may still be entertained as to the reason, or whether there was any reason beyond mistake, for the entering of the Duke's style in the minutes.

“ GENERAL REGISTER HOUSE, 25th May 1855.

“ MY DEAR SIR,—From the interest which you have taken in the question touching the evidence of the Duke of York having sat in the Privy Council at Edinburgh in July 1684, I know you will be glad to hear that I have found counter evidence which resolves the question in the negative.

“ In the Privy Council Records, the Duke is entered in the ‘ sederunts,’ or list of councillors present, on the 15th, 17th, 22d, and 24th July.

“ But there are extant two letters, holograph of the Duke, addressed to the Lord Treasurer, who was one of his confidential correspondents on Scotch affairs, which show that he could not have been present at any of the four meetings. The first of these letters is dated the 22d of July, being the third day on which the Duke is entered in the sederunts, and it bears to be dated from *Tunbridge*. Of course, the Duke could not have been there and in Edinburgh on the *very same day*.

“ But, independently of the place and date, the subject-matter of the letter is equally decisive that he was not present on the 15th when the Earl of Perth was inaugurated as Chancellor. The letter acknowledges receipt of one from the Lord Treasurer, dated 15th July, ‘ by which’ (says the Duke) ‘ I am very

glad to find that most of the loyal men are pleased at Lord Perth's being made Chancellor. I have not yett seen what passed at the Secret Comitty, but believe I shall when I am in London, where I intend to be to-morrow. I came yesterday from Windsor, and when I return back thether, which I intend on Thursday, shall answer more particularly your Letter.'

"The Duke was thus receiving in England accounts of what was passing in the Privy Council at Edinburgh from his official and confidential correspondents there. If he had been personally present to hear and see what was transacted in Council, as the records erroneously bear him to have been, it was, of course, altogether unnecessary to inform him of the proceedings by letter.

"The second letter is dated at Windsor on the 25th. The Duke acknowledges receipt of a letter from the Lord Treasurer, dated the 17th, and two from the Secret Committee. He expresses his satisfaction that the Treasurer had 'made so good an understanding between the Chancellor and M: Atholl. 'Tis a very good service to the King.'

"There is a third letter, which is dated at Windsor, August 5, 1684, in which the Duke says, 'I find by yours that the Boots had done no good upon Spence, and believe him so stuborne he will not owne what he knows.' Poor Spence was the Earl of Argyle's servant, who suffered repeated and inhuman torture, first by the boots, and then by Dalziel's experiment of the thumbikins, and a hair shirt.

"From the intimation contained in the first letter as to the movements of the Duke from day to day, he appears to have been either in London or at Windsor on the 24th. But it is not necessary to fix at which of these two places he actually was. Finding him at Windsor on the 25th precludes the possibility of his being in Edinburgh on the previous day.

"At the late meeting of the Society of Antiquaries, where the question was raised by you, I expressed an opinion that the records should be taken as good legal evidence of the Duke having been present in Council until they were contradicted by better evidence of an *alibi*. I had not previously investigated the matter in any way. I certainly, however, expected that any investigation which might be made would corroborate the records. My leanings were all in favour of the accuracy of the records; but, in common candour and fairness to you, I am now bound to confess that, instead of being corroborated, the records appear to be contradicted by the letters under the Duke's own hand, which are the best of all evidence, and that the view which you and Mr Macaulay entertained is fully established.

"The letters from the Duke of York to which I have referred are in the Charter Chest of the Duke of Buccleuch and Queensberry, who is the repre-

sentative of the Lord Treasurer, to whom they were addressed, which is thus the proper legal custody. They have been examined by me with much care, at the sight, and with the assistance of a gentleman of great accuracy, who has the more immediate charge of them, and you may rely upon their being correctly quoted.

“An error being thus traced to the Privy Council Records, in so far as they shew the Duke of York in the sederunt of Councillors, the next inquiry should be for an explanation of such a startling mistake. This point I have not yet had an opportunity of investigating. I remain, my dear Sir, yours very faithfully,

“WM. FRASER.

“ROBERT CHAMBERS, Esq.”

In the discussion which took place in reference to this subject. Mr Joseph Robertson of the General Register House made a communication, of which the following is the substance :—

That the Duke of York was not present in person at the meetings of the Privy Council at Edinburgh, in July 1684, is now sufficiently certain. If the silence of contemporary annalists, and his own letters to the Marquis of Queensberry, left any room for doubt, it would be excluded by other evidence. Thus, on one of the days (the 22d of July) on which “his Royal Highness his Majesties High Commissioner” is represented as being in attendance, the well-known Patrick Walker was ordered by the Council to be put to the torture for refusing to disclose the names of those who were present with him at the murder of one of Lord Airlie’s troopers.<sup>1</sup> The Cameronian martyrologist himself narrates the circumstances;<sup>2</sup> and while he names the Archbishop of St Andrews and Lord Tarbet, he says not a word of the Duke of York, although the glory of confronting and defying that “sworn vassal of Antichrist” is the last thing that the vain, garrulous, old pedlar would have failed to commemorate. So, again, on the 29th of July—only five days after the last appearance of the Duke’s name in the list of the Privy Councillors—we find the Lord Primate of Scotland writing to his English brother of Canterbury requesting him to inform his Royal Highness of the complexion of Scottish affairs, in terms which utterly preclude the supposition that he had been in the midst of them within less than a week.<sup>3</sup>

<sup>1</sup> Registrum Secreti Concilii, Acta 1682-1685, p. 418. MS. General Register House. The sentence, it may be added, was not carried into execution.

<sup>2</sup> Biographia Presbyteriana, vol. i., p. 307.

<sup>3</sup> Dr Clarke’s Letters of Scottish Prelates, pp. 64, 65. Edinburgh, 1848.

But it is not in the summer of 1684 only that the name of the Duke of York is entered in the roll of statesmen deliberating in the Scottish capital at a time when he was unquestionably not in Scotland.

In 1682, on the 9th of March, and again on the 21st of March (but not at the intermediate meeting of the 16th of March), "His Royall Highness his Majesties High Commissioner" figures at the head of the "sederunt" of the Privy Council at Edinburgh.<sup>1</sup> Yet nothing can be more certain than that on neither of these days was his foot upon Scottish ground. It can be shown by the amplest and most conclusive proofs that he left Scotland on the 6th of March, and did not return until the 7th of May.

Sir John Lauder, writing on the spot, and at the moment, notes in his journal, that "on the 6th of March 1681-2, the Duke of Albany shipped at Leith for London."<sup>2</sup> The next day, on the 7th of March, we have the Bishop of Edinburgh writing from that city to the Archbishop of Canterbury, that "His Royall Highnes being called to wait on the King at Newmarkett . . . is parted from us a most intirlic beloved Prince by all good men in the nation, and his return is impatientlie longed for."<sup>3</sup> Two days later, on the 9th of March, the Archbishops of St Andrews and Glasgow and the Bishops of Edinburgh, Gallo way, Dunkeld, Brechin, and Dunblane, write from Edinburgh to inform the English Primate of "His Royall Highness having parted from this [Edinburgh] on Moonday last [the 6th of March], being called by the King to attend his Majesty at Newmarkett."<sup>4</sup> Let it be observed, firstly, that this is written on that selfsame 9th of March, on which the Duke is entered in the record as present in the Privy Council at Edinburgh; and, secondly, that not only were two, at least, of the writers, the Archbishop of St Andrews and the Bishop of Edinburgh, Privy Councillors, but both of them sat in Council on that very day.<sup>5</sup>

On the morrow, the 10th of March, the Duke of York landed at Yarmouth, and on the 11th of March he was with the King at Newmarket. Two days afterwards, Secretary Pepys, writing from that place to Lord Brouncker, says: "The Duke was pleased to tell me last night [the 12th of March] that the King . . . had not yet declared anything of his pleasure touching his stay here [Newmarket] and remove hence with him to London."<sup>5</sup> On the 15th of March

<sup>1</sup> Registrum Secreti Concilii; Decreta 1681-1684, pp. 109, 113, 116.

<sup>2</sup> Fountainhall's Historical Notices, vol. i., p. 349. ]

<sup>3</sup> Letters of Scottish Prelates, pp. 56-58.

<sup>4</sup> Ibid., pp. 61, 62. Wodrow's Hist. of the Church of Scotland, vol. ii., append., no. lxxvi.

<sup>5</sup> Registrum Secreti Concilii, Decreta 1681-1684, p. 109.

<sup>6</sup> Pepys' Diary and Correspondence, vol v., p. 312, edit. 1851.

we have Sir William Paterson, Clerk to the Privy Council of Scotland, writing from Newmarket to Sir George Gordon of Haddo, Lord President of the Court of Session, thus: "You have heard of the cheirfull and welcome reception his Royal Highnes meits with heir by all persons. . . . Manie begin to think the Duke's stay may be longer than he designed. . . . Last night the King calld such of the Scottish Councill who are in toune, wher I had the honour to vait."<sup>1</sup> On the 17th of March the Earl of Moray, Secretary of State for Scotland, writes from Newmarket to the Lord President of the Court of Session that—"His Royall Highnes will by this or next post, recommend the dispatch of it [a gift by the King to the writer] to you, that it may be closed this session."<sup>2</sup> On the 23d of March—that is, two days after the second apparition of the Duke's name in the "sederunt" of the Privy Council at Edinburgh—the Earl of Perth, writing from Newmarket to the Lord President of the Court of Session, says: "Wee long for Marquess Queensberry; but I imagine the Duke wil not be too sudden in the Scottish affaires, least that should be used as a dvice to send him away as having done his busines: those who most opposed his coming now seem best pleased with it."<sup>3</sup> Still dating from Newmarket, Sir William Paterson, on the 25th of March, thus again writes to the Lord President of the Court of Session: "I returnd yesternight from London, whither I went by the Duke's command to wait on my Lord of Canterburrie to deliver to him a leter from the Bishops of Scotland [the letter of the 9th of March 1682 above cited]. . . This day the King receawed four addresses . . . and not a day passes vifhout some . . . manie of them giving his Majesty thanks for bringing hom the Duke, so that most people beleive the Duke will stay."<sup>4</sup>

More than enough has been quoted to show that the Duke of York remained at Newmarket from the 12th to the 25th of March, and so could not be at Edinburgh on the 21st of that month. It were needless to follow his footsteps any further in England. On the 4th of May he embarked at Margate for Scotland, was shipwrecked on the sand-bank called the Lemon and Ore on the 6th, and arrived at Leith on the 7th of May 1682.<sup>5</sup> Abundant evidence might here be adduced, if any were wanted, still farther to prove that this was the first time that the Duke returned to Scotland after his departure on the 6th of March. Thus Sir John Lauder records that, on the 22d of April 1682, "being Sunday, the Privy Counsell met after sermon, and red a letter from the King,

<sup>1</sup> Letters to George first Earl of Aberdeen, p. 9; (Spalding Club.)      <sup>2</sup> *Ibid.*, pp. 8, 9.

<sup>3</sup> Letters to George first Earl of Aberdeen, pp. 10, 11.

<sup>4</sup> *Ibid.*, pp. 11, 12.

<sup>5</sup> Fountainhall's Historical Notices, vol. i., p. 354; Pepys' Diary and Correspondence, vol. v., pp. 314, 315; Sir H. Ellis' Original Letters, vol. iv., pp. 67, 72, second series.

discharging the counsellors to goe out of toune ; and commanding such as ware absent to returne. This was to hinder Halton or others from coming up to London, as they intended, till his Royall Hynesse came back to them again, which would be within three weeks or theirby."<sup>1</sup> Thus also the Privy Council of Scotland, writing from Edinburgh to the King in London on the 20th of May 1682, in obvious allusion to the Duke's shipwreck, express their satisfaction at seeing his Royal Highness, "after his miraculous escape at his return to us."<sup>2</sup> So again, the contemporary Scottish chronicler, the Reverend Robert Law, writes: "The King's Majesty having sent for his brother the Duke of York, then at Edinburgh, in March last, to come to him to Newmercat-toun in England, he takes shipping, and suffering a great storm at sea, he lands nearer hand, and rides to Newmercat, went to London, and was entertained there by the artillery-company. Coming home to Scotland to bring his lady, May 5th 1682, his ship strands on Yermouth sands. . . . Some few days after the Duke came down to Scotland in the same month of May, he takes shipping at Leith with his Dutchess and daughter, and goes for England."<sup>3</sup> He never returned to Scotland. Orders, indeed, were issued to prepare Holyrood for his reception in January 1685;<sup>4</sup> and allusions to this expected visit are to be found in the correspondence of the period.<sup>5</sup> But the design was interrupted by the illness and death of King Charles II.

How the name of the Duke of York came to be inscribed in the "sederunt" of meetings, at which he was assuredly not present, is still to be explained. It is impossible to give much weight to the argument that "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." This may be true on one occasion, and in one series of the register,<sup>6</sup> but even in this solitary instance we have, in the other concurrent series of the register, the "sederunt" written fairly and orderly, without any semblance of crowding or interpolation.<sup>7</sup> It is engrossed, no doubt, by a different hand from that which engrossed the rest of the register of that day's proceedings; but so far from this being unusual, it is only in conformity with the invariable practice of the period. It is not to be over-

<sup>1</sup> Fountainhall's Hist. Notices, vol. i. pp. 351, 352.

<sup>2</sup> Wodrow's Hist. of the Church of Scotland, vol. ii., append. no. lxxvii., p. 86.

<sup>3</sup> Law's Memorials, pp. 232, 233, 234.

<sup>4</sup> Minute of letter by the King to the Lord Treasurer, dated at Whitehall on the 6th of January 1685, in the General Register House.

<sup>5</sup> Miscellany of the Spalding Club, vol. iii., pp. 220, 225.

<sup>6</sup> Registrum Secreti Concilii, Acta 1682-1685, p. 391.

Id., Decreta 1681-1684, p. 753.

looked, either, that on another occasion, the 18th December 1679, when there is no reason to suppose that the Duke was not present, his name is interlined in the same awkward way.<sup>1</sup> Nor can reliance be placed in the remark which has been made, that "in the instances of the Duke of York's undoubted presence in 1680, 1681, 1682, 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." More than forty instances can be pointed out in which, although the Duke of York was present—it does not appear that he ever presided—the judgment of the Council runs simply—"The Lords of His Majesty's Privy Council having considered," &c.<sup>2</sup>

Perhaps it may be worth while to add, that on yet another occasion, when the Duke of York was not in Scotland, his name is entered in the "sederunt" of Privy Council at Edinburgh. This is on the 4th of July 1682; and that the record was not left without revision, as has been suggested, is proved by the fact that, in this instance a contemporary pen has carefully expunged the words "His Royall Highness, His Majesty's High Commissioner" from the roll.<sup>3</sup> In framing these "sederunts," it may be explained, the officer who made them up had before him a sheet containing a list of the whole Privy Council, clearly ranged and distinctly written. As each member entered the chamber, or took his seat at the board, he was marked off by a long broad line drawn opposite to his name on the paper spread before the clerk. We have dozens of these sheets still preserved in the General Register House; and in looking at them the chance of mistake seems so exceedingly slender—especially in the case of such a personage as the heir-presumptive to the throne, and the actual Viceroy of the realm—that one is tempted rather to seek an explanation of the difficulty in a conjecture that as the King himself, although residing at Westminster, not unfrequently dated his charters from Edinburgh, so, possibly, his representative in Scotland might, in certain circumstances, be accounted present in the Privy Council at Holyrood at a time when he was known to be really at Newmarket, Tunbridge, or Windsor.

### The Society adjourned to the Winter Session.

<sup>1</sup> *Id.*, Decreta 1678-1681, p. 302.

<sup>2</sup> *Id.*, Decreta 9, 11, 18, 23 Dec. 1679; 15, 27 Jan.; 5, 12 Feb.; 16, 18, 23, 25 Nov.; 4, 9, 16, 23 Dec. 1680; 4, 6, 13, 23, 27 Jan.; 1, 10, 17, 24 Feb.; 3, 10, 15, 17, 24 March; 6, 8 April; 4, 5 May; 2, 9, 14, 21, 23, 30 June; 5, 7 July 1681.

<sup>3</sup> *Registrum Secreti Concilii*, Decreta 1681-1684, p. 191.