THE DUKEDOM OF NORFOLK

by J H Round[1]

EDITOR'S NOTE

A manuscript of this article by the well-known medieval historian, John Horace Round (1854-1928), in his own handwriting, is held by the FMG. A scanned copy of the original is available from the FMG. To the best of our knowledge it has not been published previously.
It has been dated, on the basis of internal evidence, to 1883.
Although not entirely medieval, it is felt sufficiently so to be of interest to our readers, especially given its author's eminence in our field.

As far as possible, given the author's propensity for adding marginal notes, parenthetic comments, deletions and additions, it has been transcribed as written, with minimal editing. The article was evidently written to correct prevalent errors, notably in *Burke's Peerage*. It is of biographical interest as an example of Round's early work, and we believe also provides several useful additions and corrections to the Dukedom of Norfolk in the second edition *Complete Peerage* (1936, vol.9, pp.610ff). In 1883 Round had not even seen the first edition *Complete Peerage* (1887-1898), and he died before the publication of the volume on Norfolk in the second edition (1936). Editorial comments are included as footnotes with the suffix [Ed.]. The remaining footnotes are from Round.

*Foundations (2004) **1** (3): 145-160* *© Copyright FMG*

"*On the 28th of June next the Dukedom of Norfolk will complete its fourth century*." So, at least, the world was informed by a paragraph in the *Times* of the 5th March[2], which served as a text for a leading article, remarkable for the enthusiasm of its language and for the singular inaccuracy of its facts. The true history, not of the dukes, but of their dukedom, together with that of their minor dignities, may therefore, at the present moment, be of some interest, and should, in any case, prove an instructive study, not only from the exceptional eminence of this dukedom, but also from the illustrations which it incidentally affords of the origin and growth of the English Peerage.

It may be as well to explain that to the word "Peerage" there are now unfortunately attached three distinct meanings. In its original sense it was the *Paragium*, the whole body of Peers *(pares)*, just as the Homage *(Homagium)* was that of the Tenants *(homines)* and the Villenage (*Villenagium*) that of the Villeins *(Villani).* Through negligence, however, it has long been extended, on the one hand to any list of that body, and, on the other, to the dignity, as it is technically termed, vested in any one of its individual members. For though we have the word "dukedom" for the dignity of a duke, and, similarly, the terms of marquessate, earldom, viscounty, and barony, for the other respective ranks, there is no comprehensive one to express the dignity of a peer as "baronetcy" expresses that of a baronet. Having thus guarded ourselves, at the outset, from a fruitful source of confusion, we may proceed to trace the history of the Dukedom of Norfolk.

The first dukedom created in England was that of Cornwall, conferred by Edward III, in 1337, on his son, "the Black Prince". He subsequently raised to the same rank two of his

---

1 *The author's address at the time is shown as:* J H Round, 15 Brunswick Terrace, Brighton.

For the excellent recent biography of Round see: Powell, W Raymond (2001). *John Horace Round – Historian and Gentleman of Essex*. Chelmsford: Essex Record Office. [Ed.]

2 *The Times*, London, 5th March 1883, p.12. [Ed.]

younger sons and his cousin Henry of Lancaster. No dukedom was granted outside the reigning house till the time of Richard II, who, in 1386, bestowed that of Ireland on his ill-fated favourite Robert de Vere. It was not till 1397 that the next creation took place, when Richard, so prodigal of favours to his supporters, in the full flush of his temporary triumph, surpassed anything that has ever been attempted since by making, in a single day, five dukes and a duchess! We learn that though he freely plundered his opponents, to give his newly-created dukes the means of sustaining the dignity, they received from the scornful populace the derisive nickname of "dukelets"[3].

We are informed by the Rolls of Parliament, of each of these Dukes, that the King "*seynta le dit duc ovek son espee & mist sr son chef un cap de honeur & dignite de duc*". The ceremonies of creation were very elaborate, the four principal features being these. First, there was the "belting", or girding on the bawdrick and sword *(cinctura gladii)*. This symbolised the grant of executive power, and was derived from the far older practice of "belting" earls on their creation, a custom which had originally a very real significance. Indeed the girding on "the sword of the county" was itself the virtual creation, and it may be remembered how large a part the question of "cincture" has played in the controversy on the Earldom of Mar[4]. Second, there was the delivery of the wand or "*rode of golde*" (*traditio virgae aureae*), peculiar to dukes. Third, there was the crowning with the Cap of Estate or Dignity (*cappae imposicio in capite*), which was also, at this time, peculiar to dukes, and to the sovereign as Duke of Normandy. This ancient emblem (*cappa honoris et dignitatis*) was gradually conceded to marquesses and earls, and even to a few favoured corporations by whom it has been highly prized. Eventually, however it lost its importance, and is now only retained in crests, where its original shape may still be seen. It was made of crimson velvet, turned up (or "guarded") with ermine. Fourth, there was the placing of the circlet *(circulus)* round the cap *("une cappe furre*[5]*, et desus un cercle d'or & de peres")*. When Douglas surprised, and "*with a knife despatched, schyr Thomas the Constable of Richmond,*" he carried of, in token of triumph, the "*fivoryt hat upon his helm*" (Barbour's *The Bruce*). In time of war the circlet could be worn round the helm[5], but, eventually it was combined permanently with a cap in the form of the ducal coronet. The "*circulum aureum super caput*" was still in use even in 1641, when that sturdy old veteran Leslie was created Earl of Leven, and Charles I, in person, "*putt the crowne of ane Erle upon his heid*" (Acts of Parl. (Scotland) V 453).

Among the five dukes created on the 29 Sept 1397, was Thomas, Lord Mowbray, who was now raised to the Dukedom of Norfolk, his grandmother being, at the same time, created Duchess of Norfolk for life![6] This important ancestress of the House of Howard was the only surviving child of Thomas "*de Brotherton*", Earl of Norfolk and Earl Marshal, who was the eldest son of Edward I by that King's second marriage. It was this descent which, by a lucky accident, founded the greatness of the Howards. The Mowbray dukedom, thus created, became extinct in 1475, on failure of the male line, but was revived by Edward IV, some two years later, in favour of his son Richard of Shrewsbury, then four years of age, as the future husband of the last Duke's only child and heiress.

---

3 "*Dukettes*": Chronica J. de Trobelave.

4 As late as 1633, Charles I, sitting "*in his chair of state*" at Holyrood, invested the Earl of Angus in the Marquisate of Douglas by "*girding him with his sword and setting the crowne upon his head.*"

5 Of this the best instance is the famous effigy of the Black Prince at Canterbury, where the jewelled circlet surrounds the bassinet. Lionel, Duke of Clarence mentions in his Will (1368) the "*two golden circles*", with which he had been created a duke and his elder brother a prince.

6 Similarly when William Howard was created Earl of Stafford (5 Oct 1688) his mother, by the same Patent, was made Countess of Stafford for life. This reminds one of the Chinese practice, by which the parents of a distinguished man were ennobled as a reward for bringing him into the world.

But the murder of the young Prince, with his brother, in the Tower (1483) again extinguished the title. As it is expressed in an old MS on the Marshalship, to which I shall again refer below, the young Prince "*was, in right of his wife, Duke of Norfolke, Earl Marshal and Nottingham; which office he enjoyed untill that coursed caitiffe, his unnatural uncle, Richard Duke of Glocester, bereft the babe both of life and office.*" Within a few days, it would seem, of his death, Richard bestowed the dukedom which the murder of his nephew had placed in his usurping hands on his devoted follower John, Lord Howard, to whom Commines alludes as the "*seigneur de Howart, qui depuis a esté, avec ce mauvais roy Richard, Duc de Norfolk.*" This was the creation of the 28 June 1483, the anniversary of which, according to the *Times*, "*will be full of profound interest for all whose imagination is lively enough to be touched by the romance of English history, and the renown of noble names*"! It is a singular coincidence that this Howard dukedom should have been created by the third Richard, and the Mowbray dukedom by the second, and created in each case, to reward a minister of their ambition.

Incredible, however, as the statement may appear when we consider that the premier dukedom of England is concerned, and that its holder, as Earl Marshal, is hereditary head of the whole heraldic fraternity, its creation, whether from complaisance or merely from ignorance, has been persistently and universally ante-dated by more than 30 years![7] The assertion to be found in all the *Peerages*, from Burke's and Foster's downwards, that the existing dukedom was created in 1483 has no foundation in fact. Yet they do but repeat the statements of standard authorities, such as Collins' *Peerage* and Tierney's excellent *History*, and, indeed, of the pedigree of this ducal house lately published under the sanction of an Officer of Arms, the present Somerset Herald. Nay, in that most valuable work, the *Synopsis* of Sir Harris Nicolas, edited, in 1857, by the learned Mr Courthope, then Somerset Herald, with the co-operation of other able members of the College, the "creation" of this dukedom figures as 1483 (p.lxxiii). Yet our dukedom was <u>not</u> created in 1483, nor, indeed, till the following century, and, consequently, its pretended four hundredth anniversary can only serve to obscure the truth and to perpetuate a persistent error. Unluckily for "the romance of English history", but happily for the honour of the House of Howard, the dignity vested in the Duke of Norfolk is <u>not</u> that which was bestowed by the bloodstained hands of Richard, but that which was nobly won on the glorious field of Flodden.

But to return to John, Lord Howard, the Duke of 1483. This eminent Yorkist had begun life as a commoner, but had been summoned to Parliament by Edward IV. He was the

---

[7] This point, discussed at length, seems well argued by Round, and assuming that he is correct it provides an important correction to the *Complete Peerage* (CP) 2nd edition (C[okayne], G E, 1936, vol. 9, pp.610ff). Later in his life he published *Studies in Peerage and Family History* (1901), in which he makes several references to the dukedom of Norfolk (notably pp.109-110 & 435-457), although not discussing this point in detail.

At pages 109-110 he says "*… he [the present duke] is duke of Norfolk, whatever any one may say, under the 'creation' of 1514, not under that of 1483.*", following shortly after with a footnote saying "*The views I have expressed on the Howard titles are all, I believe, virtually accepted by G. E. C. (Complete Peerage [first edition], VI. 45-48, 59)*". The relevant line from the 1st ed. CP (vol. 6, p.48) says "*1. Thomas (Howard), Earl of Surrey … was cr. 1 Feb 1513/4, DUKE OF NORFOLK, with a clause of precedency entitling him to the place held by any former Duke of Norfolk, putting him thus in the position of his great grandfather, Thomas (Mowbray), Duke of Norfolk, so cr. in 1397, such creation being confirmed by act of Parl., 5 Hen. VIII.*", elaborating no further on the creation, but the "*1.*" at the beginning of the line being in CP notation very specific.

This all implies that Round was content to let the matter rest, being unaware that the editors of the 2nd ed. CP would, in 1936, after Round's death, modify the above by saying of his father "*He was attainted 7 Nov. following, in the 1st Parliament of Henry VII, and all his honours were forfeited,* ***the attainder being reversed 4 Hen. VII***". [Ed.]

descendant of a Justice of the Common Pleas at the commencement of the previous century, who rightly figures in Foster's *Peerage* as the founder of this illustrious House.

"*That gorgeous repertory of genealogical mythology*", as Burke's *Peerage* has been aptly termed[8], annually informs us that "*recent enquiries*" have established "*by undoubted evidence*" his descent from "*a kinsman of Duke Oslac*" (!) and other primeval potentates. But it need hardly be said that this pedigree is notoriously and wholly apocryphal. On the death of the infant heiress of the Mowbrays, the "*lucky accident*" to which reference has been made, Lord Howard became, through his mother, entitled to half their inheritance. The other half passed to his cousin, Lord Berkeley. This afforded to Richard a plausible ground for reviving in favour of his faithful follower the ducal honours of the House of Mowbray. As the Patent of the 28th June 1483 would appear not to have been printed, it may be as well here to give an extract, taken from the original charter roll for the First of Richard the Third. We learn from it that the two reasons for Lord Howard's elevation to the dukedom were his services to Richard III, and his descent from the Mowbray dukes. As it has been questioned whether he or his cousin was the senior co-heir of the Mowbrays, the words "*veri et indubitati heredis*" may be worthy of special notice. The Patent recites that "*egregiam nobilitatem Carissimi Consanguinei nostri Johannis howard comitis Marescalli Angliae, ex nobili prosapiâ clarissimorum et illustrissimorum virorum ducum Norfolciae progeniti, veri et indubitati heredis Johannis ultimi ducis Norfolciae, ac etiam gratissima obsequia nobis tam tempora pacis quam belli multiplicita impensa, ipsiusque exiamias atque laudatissimas virtutes assidua meditatione perpendentes ……. consanguineum dietum nostrum ad aetiorem honoris gradum sublimare et erigere decrevimus.*"

It is clear from this extract that Lord Howard was Earl Marshal before he became Duke of Norfolk and that the two dignities were not, as is alleged, simultaneously conferred. This would seem to confirm the statement in the old MS on the Marshalship, quoted in the *Howard Anecdotes*[9], that Lord Howard "*being a favourer of King Richard's quarrell, was by him, the 20th of June in the first yeare of his reigne, preferred to the office of the Earle Marshall of England, and to the heires males of his body; and on the first of July following, was created (i.e. invested) Duke of Norfolk. He was (so) firmly feathered on King Richard's wing that he chose rather to abandon his life with his deare friend, than in falsefying of promise, to save the same.*" The duke fell at Bosworth two years later (not, as stated by Burke, "*the next year*"), his fate being commemorated by the well-known lines:

> *Jockey of Norfolk, be not too bold*
> *For Dickon thy master is bought and sold.*[10]

With his son the Earl of Surrey, he was posthumously attainted in the first Parliament of Henry VII, and thus closed the short career of the third Dukedom of Norfolk.

Here we may with advantage pause to note a singular and confusing legal fiction. It is stated in the *Peerages* that these nobles were attainted on the 7 November 1483. As a matter fact this was the day on which Parliament met, and, of course, was not the day on which the Act of Attainders became law. But, by a curious legal crotchet, all the Acts past in any one session were held, formerly, as past on the first day of that Session. This will be found to have constantly misled the peerage-writers, who sometimes give the actual day on which an Act was past, and sometimes the fictitious legal date. In the Strathallan case (1787) the claimant's attempt to benefit by a quibble was effectually defeated by this very fiction, which had been totally unknown to the Law of Scotland. The Judge's biddean on that occasion (1790) that "*in the contemplation of the law, the whole session makes but one*

---

8 Chester Waters (1883). *Parish Registers.* p.39.

9 Howard's *Historical Anecdotes of some of the Howard family,* p.196.

10 Shakespeare, William (1597). King Richard the Third. Act V, scene III, lines 305-306. [Ed.]

day." This case, however, as often happens, led to the reform by which, for the future, Acts were to date from the day they passed.

We now come to the creation of the fourth and existing dukedom. The son of the attainted Duke, as we shall see below, had been restored by Henry VII to his own title, that of Earl of Surrey, and had risen high in the Royal favour. Henry VIII confirmed him in his post of Lord Treasurer, and, soon after his accession, made him Earl Marshal for life. Thus it was the decisive victory achieved by his son and himself at Flodden (9 Sept 1513) that finally restored the greatness of the House. The Letters-Patent by which the Earl was created Duke of Norfolk are, I believe, as in the former case, not in print, and in illustration of the fact that this was no restoration, but an undisguised new creation, it may be advisable to quote the exact words, which are the same, it will be found, as are employed in the Patent creating Charles Brandon, on the same day, Duke of Suffolk. They accurately repeat, in fact, the normal formula of creation.

"*gratiâ nostrâ speciali ac ex cunctâ scienciâ et mero motu nostris praefatum Thomam consanguineum nostrum in ducem Norfolciae erigimus, creavimus, insignimus, praefecimus et ordinavimus, ac nomen, titulum, statum, stilum, locum, sedem, preeminentiam, honorem, auctoritatem, et dignitatem Ducis Norfolciae in tano amplo…..et honorifico modo et forma ut aliquis Dux Norfolciae unquam habuit, usus, aut gavisus fuit eidem consanguineo unâ damus per praesentes.*"

With the exception of the words *[underlined]* this is strictly the normal formula. But those words constitute an all-important addition. They represent a special precedency clause, and, as such, confer a precedence independent of the date of creation. A marked distinction, as was observed in the Strange case (1736), has always been drawn between the right to a dignity and the right to a certain precedence, and, it may be added, (as we shall see below) between precedence in Parliament and out of it. There would seem to be a kind of vulgar error that the precedence of a title is necessarily determined by the mere date of its creation. So far as the earlier period is concerned, such a view is wholly unhistorical. To take some instances from this very century we find Ann Boleyn created Marchioness of Pembroke, eighteen years later (1532) with place and precedence before all of like degree[11]. In 1557 Thomas Percy was created Earl of Northumberland, with a special precedency clause, in the Patent, granting him the "*place*" of the ancient earldom, while the Barony of Percy, created the day before, was assigned by Patent, in 1628, the precedence which any "*Baron Percy at anytime had held or enjoyed*". In Scotland, where the whole system was different, such cases are very frequent, but in Ireland there is a striking instance which deserves special mention. It has invariably been asserted that the Earldom of Ormond, now held by the Marquesses of Ormond, is the ancient and historic dignity created in 1328. It has been established, however, by my own researches, that the existing earldom was created by Henry VIII in 1536, in favour of the Earl of Ossory ("The Red Piers") and the heirs-male of his body. But the creation having been confirmed by the Irish Parliament in 1543-4 (35 Hen.VIII, cap.1), with a clause conferring on the new earldom the "*like pre-eminence and auncienty*" as had been enjoyed by the old one, the precedence thus conferred was, as usual, confused with the creation. The Nottingham case, however, is perhaps the most in point. In that instance, the precedence of the Mowbray Earls (1377) was conferred by James I, in 1618, on a Howard earldom of 1596, just as, by the clause in the Patent we are considering, the precedence of the Mowbray

---

[11] The Devon Patent of 1553, under which that Earldom is now held, secures, as in the Norfolk Patent, to the Patentee and his heirs-male the "*praeeminentiam, dignitatem, statum, honorem, et loca, in omnibus quibus aliquis antecessorum dicti comitis antehac comes Devoniae existens habuit, tenuit, aut gavisus fuit*" [Devon Report, App. p.IV].

dukes (1397) had been conferred on a Howard dukedom of 1514[12]. For, that this was the true meaning of the clause is manifest from its referring, in even more explicit terms, not to the new duke's father, but to "*any persons who ever bore the title of Duke of Norfolk*". And very significant to the same effect is the Act by which this Patent is confirmed (5 Hen.VIII, cap.9). There will be found, annexed to it, a proviso which was not in the original bill, but was added to it in its passage through the Houses. This is in the form of a saving clause, reserving to the Duke of Buckingham his "*state, place, sete, prerogatif, and pre-eminence*." To understand this allusion we must go back some seventy years. In the previous century, and especially between the years 1440 and 1450, there had been much intriguing among the dukes and earls for precedency, not only of one another, but also of all others. But it is sufficient for our purpose here to observe that, on the 22 May 1448, the then Duke of Buckingham had obtained a grant of precedence over all dukes not of the blood royal. It would seem that the new Duke of Norfolk's object in seeking the precedence of 1397 was to take the *pas* of Buckingham as a creation of 1444. This intention must have been detected in Parliament and frustrated by the addition of the proviso. It is passing strange that in none of the authorities, not even in the excellent *Synopsis*, is any reference whatever made to this remarkable grant of precedence. But this is only one of the many instances in which the facts which would be revealed by original research are ignored from generation to generation.

As it may be deemed singular that Henry should have raised Surrey to this dukedom, as he did, by an entirely new creation, instead of simply restoring to him his father's dignity, we may as well glance at the case of Exeter which is on all fours with that of Norfolk. John (Holland), Earl of Huntingdon was created Duke of Exeter in 1397, but, like "Jockey of Norfolk", forfeited the dukedom two years later. It was subsequently conferred (for life) on a son of John of Gaunt, but eventually John Holland, son of the forfeited duke was raised to the same title, as in the case of Norfolk, by an entirely new creation (6 Jan 1443). Shortly after he, similarly, obtained by patent a special grant of precedence. We see then that there is nothing abnormal in the dukedom of 1514 having been, as I have shown, a new creation, and not, as so persistently assumed, a restoration of the dignity created in 1483. That the very dukes themselves had no doubts on this point is clear from the petition of the duke then created for the confirmation of his patent by Parliament. He recites that the King "*hath made and create your said suppliaunt Duke of Norfolk.*" It is clear also from the monumental inscription erected to the hapless Surrey by his son the Earl of Northampton. Such inscriptions being *ex parte* statements, their evidence, as we shall see, cannot be relied upon, when in favour of the family erecting them, but when their evidence tells against the family, it is obviously the most conclusive of all. Now, in this case, the Earl of Northampton ignores, as the Crown did, the creation of 1483, and adopts the Duke created in 1514 as the first of his line, and his son as the second, though our *Peerage* writers have universally agreed to dub them, respectively, the second and the third! The inscription was erected (at Framlingham) in 1614, when the Tudors had ceased to reign, and when the Earl was wholly free to express his honest conviction.

Henrico Howardo, Thomae secundi Ducis Norfolciae filio primogenito; Thomae tertii patri; Comiti Surreiae…..Henricus Howardus, Comes Northamptoniae filius secundogenitus….posuit AD 1614.

---

[12] But the climax was reached when Charles I, by a still bolder stretch of prerogative, made Sir William Howard Baron of Stafford in 1640, with the precedence of the old Barony of Stafford which, according to Sir William, was 1298! On this occasion the Lords interposed, and the precedence though recognised in 1685, is not allowed to his heir, the present Lord Stafford. As the right of the Crown to confer by Patent a precedence beyond the right of creation has been denied, and is now rejected, it is the more important to lay stress on these striking precedents.

It will be found, on reference to any *Peerage*, that these dukes are invariably styled the third and the fourth. Lord Northampton similarly caused himself to be described, on his own monument, as "*secundi Ducis Norfolciae nepos*."

The Patent of Creation is dated, as has been said, 1 Feb 1514, and we learn from *Stow's Annals* that the ceremony of investiture took place the following day.

"On the day of the purification of our Lady in the Archbishop's Palace of Lambeth the K. created the Earle of Surrey duke of Norffolk with an augmentation of the Armes of Scotland, and otherwise rewarded him."

Now on this "augmentation" I have a good deal to say. From the times of the Tudors, "augmentations of honour" have provided the sovereign with a graceful means of rewarding the services of a subject – at no cost to himself. At the close of the last and commencement of the present centuries[13] the profusion of these grants and the grotesqueness of the designs threatened to bring them into disrepute. These abuses have, however, been corrected, and as instances of excellent modern "augmentations" we may take those displayed on the coats of Marlborough, Wellington, and Sir W. Gull. Camden, the celebrated herald and antiquary, thus alludes, in his *Remaines* to these distinctions:

"*For Augmentations, some were of mere grace, some of merit……For merit he (Henry VIII) granted to Thomas Howard, Duke of Norfolk, and his posterity, for his victory at Flodden Field, wherein King James IV of Scotland was slain, a demy Lyon geules, pierced through the mouth with an arrow, within a double tressure, flowered of the same, in the midst of the bend of the Howard arms.*"

In the eyes of a student of the evolution of custom a peculiar interest should, perhaps, attach to this historic augmentation, for, derived as it was from the law of chivalry, by which the arms of a defeated knight became the spoils of the victor, it handed on the tradition of the *spolia opima*, and possibly of that far earlier day when the barbarian chief nailed in triumph to his walls the head of a slaughtered foe. The lion of Scotland, with an arrow through its throat, which was henceforth to adorn the Howard shield, was the symbol of the conquered Scottish king, as, pierced by an English arrow, he lay wounded unto death.

But it is with the right to this historic augmentation that I am more immediately concerned. Dugdale informs us that it was granted to the duke "*and the heirs-male of his body*". In that case the limitation[14] would be the same as that of the dukedom, and the augmentation would consequently have been borne by the succesive dukes alone. At what time the other branches of the house were first allowed by the heralds to usurp the right I do not profess to decide. It should be observed, however, that it does not figure in the coats assigned by Vincent, the Jacobean herald, to the Earls of Northampton, Nottingham, and Suffolk. But the strangest part of the tale is this. The augmentation was not "limited" to the heirs-male of the duke's body, but to his heirs-"general", or "of line". This fact, hitherto unknown, I take from the patent rolls which I quoted from above (Pat. 5 Hen.VIII, p.2, m.13).

"*Et ut illa victoria imperpetuum habeatur in memoriâ…. damus et concedimus praefato duci et haeredibus suis temporibus futuris imperpetuum, in signum illius victoriae, quod ipso dux et haeredes sui praedicti gestent in medio bendi…integram medietatem superioris partis leonis rubei, sagittâ ore confessi, depictandi &ca &ca.*"

This limitation of the augmentation to the duke's *haeredes* (heirs of line) is doubtless rendered very singular by the dukedom being limited, in the same patent, to the heirs-

---

[13] NB Round was writing in the 19th century [Ed.]

[14] The "*limitation*" is the clause regulating the *descent* of a dignity or honour.

male of his body. The best parallel to these divergent limitations is to be found in the charter by which, 15 years later, Lord Rochford (Sir Thomas Boleyn) obtained the earldom of Wiltshire to himself and the heirs-male of his body, and that of Ormond to himself and his heirs-of-line. In that case, however, as I have elsewhere shown[15], the divergence, when explained, has a distinct significance. It seems however to have proved a sad stumbling block to the heralds, and the unhappy Brooke, in his *Catalogue of Nobility* (1619), ventured sententiously to append to it the warning - "*(a president not to be sampled)*." But there was war in those days in the College of Arms, and we know that when the members of this tabarded brotherhood have a passage of arms in earnest, the startled world has cause to exclaim "*Tantaene coelestium irae?*" The argus-eyed Vincent fell tooth and nail on his unpopular fellow-herald. "*You would make a wonder with a parenthesis*" he sneered, in his *Discoverie of Brooke's Errors*, and straightway he adduced some half dozen earldoms similarly limited *haeredibus.*

Now this was rather rough on poor "York", who had clearly meant to criticise, not the latter limitation, but the (to him inexplicable) divergence of the two. But we must hasten to the practical result of my discovery. It is this. Not only has this highly prized "augmentation of honour" been wrongfully allowed by the heralds to all the younger branches, but it has even been wrongfully borne by the dukes themselves since 1777, in which year they ceased, as is well-known, to be the *haeredes* of the victor of Flodden. Thus, - though to call on the Earl Marshal to purge his own coat is to place him in a similar dilemma to that of the Lord Chancellor in *Iolanthe*, - we may claim that this distinction should be forthwith erased from every Howard shield, including that of the duke himself on which prominently figures in that *sanctum sanctorum*, the Earl Marshal's court in the College of Arms! But though we might exclaim, in such a case as this, "*Quis custodiet ipsos custodes?*" it is but right to add that this historic corporation would not wittingly sanction the slightest flaw, and that it never occupied a higher position than under its present worthy head.

Returning to the dukedom we may notice, in passing, that its "creation money" was £40 a year, derived from the Crown Revenues in the counties of Norfolk and Suffolk. The grant of these pensions "*for the sustenance of the dignity*" may be traced to a usage, older than the Conquest, by which the earl of a county received the third penny (*tertius denarius*) of the profits of its pleas. This was eventually commuted for annuities, which were stereotyped in the earls' "creation money" at £20 *per annum*. Thus, for instance, among the forfeited estates of the aged Countess of Salisbury ("*the last of the Plantagenets*") which were seized upon by Henry VIII, we find under "Wilts" – "*a rent called the creation money of the Earle of Sarum - £20*." By a false analogy, this usage was extended to dukes, the pension, in their case, being doubled.

The tale of the tragic fall of the Howards in 1546 is well-known, but it is singular that their fate turned, chiefly, on a point of heraldry, and on their alleged wrongful assumption of an augmentation to the Mowbray coat. Their arrest is thus described by Stow:

"*The 12 of December, Tho. D. of Norffolk and Henry Earle of Surrey his son, upon certain surmises of treason, were committed to the Tower of London, the one by water, the other by land, that the one knew not of the other's apprehension.*"

The duke is usually considered to have been attainted on this occasion, and his honours forfeited, but though Sir Bernard Burke admits it under "*Norfolk*", he asserts, under "*Mowbray*", that "*the attainder of the Duke of Norfolk was never completed*." As the Bill of Attainder

---

15 Foster's *Collectanea Genealogica* I, 89.

received the Royal Assent 27 Jan 1547[16], I know of no foundation for this statement except that Mary, on her accession, recognised him at once as duke. But his restoration to the title will be duly found among the Private Acts of the first of Mary, and on the Rolls of Parliament for the same year. It was his grandson and successor, the third duke, who was attainted in 1572 on the charge of intriguing with the Queen of Scots. Under this attainder the dukedom remained forfeit for nearly ninety years, notwithstanding the most strenuous and persistent efforts to obtain the restoration of the title.

His son Philip, who had inherited, through his mother, the title and estates of the Earls of Arundel, was in turn attainted in 1590, and died before the accession of James brought a partial reparation to the family. His son Thomas was restored in blood by the Parliament of the 19 March 1 James I, and by an "*Acte of Restitucion*" (1 James I, cap.VI) was restored as well to the Earldom of Arundel, forfeited by his father's attainder (1590), "*as also to the honour state and dignity of Earle of Surrey and to such dignitie of barronies onely which the said late duke (his grandfather) forfeited and lost by his attainder*" (1572). The singular expression "*such dignitie of barronies onely*" deserves more notice than it has obtained. It is understood to refer to Clun and Oswaldestre, the two ancient lordships of the Fitzalans, which, instead of being restored to the youthful heir, were now bestowed on his kinsman, the Earl of Northampton. But as no peerage dignity was attached to these estates, it is difficult to see what titles can have been forfeited, the only barony vested in the late duke being that which Edward IV had originally conferred upon his grandsire. Great looseness, however, then prevailed in the use of secondary titles, and we may take it, in the light of subsequent evidence, that the family had assumed certain styles, of ornamental character and questionable status, and that the Crown, with the same negligence that it subsequently betrayed in the cases of Strange and Clifford, accepted without question the styles so assumed.

To console the Howards for the loss of their dukedom, they were allowed, in 1640, the premier barony of Mowbray, and were granted, four years later, the historic earldom of Norfolk. They continued, however, to urge their claims, till they obtained from the Merry Monarch what his sterner father had denied. In the heyday of the royalist carnival a petition was presented to the Crown, in which some 90 peers prayed for the restoration of the dukedom. Among them were, of course, the heads of each ennobled branch of the Howards. Bills were introduced in the Convention Parliament (which had met on the 25 April) for the simultaneous restoration of the dukedoms of Norfolk and of Somerset. It was probably considered wise, when restoring the great catholic dukedom, to extend the same favour to its pre-eminently protestant rival.

The details of this Norfolk restoration are deserving of careful study. In the House of Lords, where the Bill was warmly welcomed, it was read the first time 30 August (1660) and the second 5 September, but it was not till the 13 November that the committee brought up their report. The delay was caused by the examination of witnesses as to the conditions of the future duke, the committee reporting, at the close of their enquiry, "*that the said earl is a perfect lunatic, and hath a constant physician with him; that he lives in the best house in Padua and hath twelve servants to attend him, and all things fitting for his quality*."

After being re-committed the Bill was passed 22 November, and read a first time in the Commons on the 24th. We learn from a private letter that it was at once "*opposed, particularly by Bamfield*[17]*, Sir J. Northcote*[18]*, Pim, and others*[19]". But we are not told whether their

---

[16] So, at least, it appears, on reference to the *Lords' Journals.* This attainder has been referred to 1546, but only from a confusion with the legal date.

[17] Sir John Bampfylde bart., ancestor of Lord Poltimore

[18] Sir John Northcote bart., MP for Devon, and ancestor of Sir Stafford Northcote

objections were to a lunatic or to a "papist" duke. The opposition was fierce and long, and it was not till the 7th December, that it was finally and narrowly overcome. John Evelyn, most polished of gossips, was dining that afternoon at the Howard Palace in the Strand[20], and was able to congratulate his exultant host on his house attaining its long cherished hope.

"I din'd at Arundel House y^e^day when the greate contest in Parliament was concerning the restoring of the Duke of Norfolk; however 'twas carried for him."

Post tot naufragia partum!

"*A very fine person*"[21] was Mr Henry Howard – "Harry" Howard as he was always called – the then tenant of Arundel House, and the ambitious brother and heir-apparent of the afflicted Duke to be. He inherited to the full the family pride which had characterised, as we shall see, his grandfather. It led him, indeed, to devise a style for himself, adapted from that in use among the cadets of the great Roman houses.

"Mr Henry Howard, that will hereafter be Duke of Norfolke……being a very proud man and one that values himself upon his family, writes his name, as he do everywhere, Henry Howard of Norfolke."[22]

Yet, with his grandfather's pride, he had also inherited his munificence, and his patronage of the Royal Society made him the Maecenas of his day. And that his patronage of learning sprang from a truly liberal mind is shewn by his noble reply to the menial who strove to win his favour by going over to Rome. "*I had rather*," he said with quiet scorn, "*have an honest Protestant than a knavish Catholique.*"[21]

But to return, the Bill received the Royal Assent 29 December, as "*An Act for restitution of Thomas Earl of Arundell, Surrey, and Norfolk to the dignity and title of Duke of Norfolk*" (12 Car.II, No.50), and was ratified, in the formal Parliament of the following year (1661), by an "*Act for confirming an Act for Restitution &ca. &ca.*" (13 Car.II, No.36) which received the Royal Assent 20 Dec.1661. It is singular that the Howards should have been Dukes of Norfolk for only **fifty three** years in all, out of the **hundred and seventy seven** which elapsed beteen 1483 and 1660.

Though these Acts, as we shall see, are of vital importance, there is an amazing ignorance of the provisions they contain. But no one is so much at sea as Sir Bernard Burke, who states, under *Norfolk*, that the Earl "*was restored to the dukedom in 1664* (*sic.*) *with the original precedence of his ancestor, John, the first duke, and his grace obtained, in the following year, another act of parliament confirming the same, with reversionary clauses*."

The Acts are here post-dated by four years, and the "*reversionary clauses*" are said to have been added in the second Act whereas they were contained in the first. But the grave blunder concerning the precedence is, strange to say, universal. It is even found in the works of Tierney, who had access to these Acts, and of Nicolas, who had specially inspected them. Referring to the Act of 1660, on the original rolls of Parliament, we find that it restores the Earl of Arundel "*unto the honour, dignity, state, authority, and title of Duke of Norfolk, with all privileges, precedencies, and preheminencies thereunto belonging, as fully, amply, and*

---

19 Thomas Gower to John Langley (5th report, Hist. MSS, p.196)

20 Arundel House stood between Essex House and Somerset House, its site being now most appropriately marked by Norfolk Street, Arundel Street, and Surrey Street, all leading up from Howard Street. For the incredible destruction of the Arundel marbles in the course of these streets being built, see *The Howard Anecdotes*, pp.101-121.

21 Pepys.

22 Pepys, 28 Nov. 1666.

honourably as the said Thomas, Duke of Norfolk, did or might att any tyme before the said attainder (1572) hold and enjoy the same &ca. &ca."

It would seem as if this error arose from a desperate effort to represent these Acts as virtually restoring the dignity of 1483, which, as we have seen, was, from the first, hopelessly lost.

But the really striking feature in these Acts has been most strangely overlooked. Nominally restoring an ancient dignity, they virtually constitute a new one. The Duke of Somerset's Act was a true restoration, placing him in the shoes of his ancestor, but then, as Charles himself observed, it was "*an act of an extraordinary nature, done for an extraordinary person*." The Duke of Norfolk's Act was of a different character. Instead of enabling him to inherit under the original Patent, by removing the obstacles to its operation, it treated him as the *stirps* of a new line of dukes, with specific remainders over to certain collateral heirs. Now these remainders did not extend to all the heirs-male of the body of the first duke (1514). In fact, all his descendants by his second wife (among whom are the Earls of Effingham) are now excluded by this Act from succeeding to the dukedom, though if the original Patent were still in force, they would all be in remainder to it. It is clear then that the dignity is now held, not even under the Patent of 1514, but under the limitation constituted by the Acts of 1660 and 1661. It may be added, that it was not till the present[23] century that the succession opened to the existing line, and that his Grace is unable, strange as it may seem, to number among his lineal ancestors, from 1572 to 1813, a single Duke of Norfolk!

Let us now turn to the Earldom of Surrey. When "Jockey of Norfolk" received his dukedom in 1483, his son was simultaneously made an earl. The title chosen was that of Surrey, in commemoration of his descent, through the Mowbrays and Fitzalans, from the Counts of Warrenne, Earls of Surrey, whose well-known "chequy" coat still figures among the Howard quarters. Attainted, with his father, two years later, he was imprisoned in the Tower for some time, as we learn from a "*Bill for the bourding of the erle of Surrey*" (at 40s. a week). On the 27 March 1486 he received a special pardon, and is said by the authorities to have recovered his earldom in 1489. But though his petition for the reversal of his attainder was accepted so, in the Parliament of the 13 Feb 1489, and though he fully regained the royal favour, I doubt whether his restoration was complete till the "*Acte of Restitucion*" was passed two years later (1491). In this it was specially provided (7 Hen.VII, cap.16) - "*that this said acte of restitucion extend …… onely to the creacion of your said subject unto the Erle of Surrey and his name of Erle by reason of the same creacion, and to the annuite to him and to his heirs-males of his body begoten graunted for sustencacion thereof*."

On the earl being raised to the Dukedom of Norfolk, in 1514, he was desirous that his son should be created an earl, and that his earldom should be that of Surrey. One would have thought that, as in the solitary case of Warwick, some forty years later, the son might have been summoned in his father's earldom. But it is illustrative of the intricate character which the peerage system had developed, that so simple an end could only be attained by a singularly cumbrous device. The duke had first to denude himself of the earldom, which was vested in himself and the heirs-male of his body. But instead of resigning it to the Crown, as would have been done in Scotland, that it might at once be conferred, by a re-grant, upon his son, he merely resigned the life interest of himself and his son in the earldom, thus placing the dignity in the hands of the Crown, for his son's lifetime, after which the original patent would revive as if nothing had been done. Thus the Crown would be enabled to bestow the dignity on his son for the period that it had the disposal of it, *i.e.* (as we have seen) for his life. The first step was for the father to

[23] 19th [Ed.]

surrender the dignity. The power of surrender, which was derived from the feudal renunciation of allegiance, fell into disuse, with us, at an early period, and was finally abolished by the decisions in the cases of Grey de Ruthyn (1646) and Purbeck (1678). In this very exceptional case the process is thus described:

"*Et cum idem nuper Comes per scriptum suum……per nomen Thom' Comitis Surr'…..reddiderit nobis et heredibus nostris pro termino vitae praefati Thomae filii nomen Comitis Surr' ac p' dictum titulum, statum, stilum, honorem, auctoritatem, et dignitatem Comitis Surr', &ca. &ca.*"

The expression *nuper Comes* ("late Earl") should by carefully noticed. Similarly, where the ancestor of the Dukes of Leeds resigned in favour of his second son his Scottish Viscounty of Dumblaine, we find him styled in the re-grant (5 Dec 1674) "*late Viscount Osburn of Dumblain*." The denudation was thus complete. On the very same day (1 Feb 1514) that the earldom was resigned, it was bestowed, by a fresh creation, on the son "*pro termino vite sue*". The *Peerages* seem quite ignorant that this creation was for life, or indeed in any way unusual. As a matter of fact there had not been a clear case of an earldom for life for a century before, and there would seem never to have been another since. It must be remembered, however, that even this, though avowedly a new creation, was in reality but a new grant of an old dignity. For an earldom was, in those times, more of a concrete entity than now. The comital dignity of each shire, thanks to the identity of its *Feodum*, preserved its own objective continuity, as apart from the lines which held it. If only this truth had been borne in mind, the great Mar problem would have assumed a very different aspect. The new earl's Patent of Creation (Pat.5 Hen.VIII, p.2, m.20) was confirmed, like his father's, by Act of Parliament (5 Hen.VIII, cap.11) and recites that "*praefatum illustrissimum suum patrem, Thomam, marescallum angliae et nuper Comitem surreiae, ab victoriam in eâdem pugnâ*[24] *ejus ductu atque virtute partam, ducem Norfolciae fecimus*" after which it narrates the surrender of the earldom in the terms above quoted. It does not contain any precedency clause, and the dignity would therefore, I take it, be degraded for the earl's life-time, and rank as of 1514, and not of 1483. The cause of this omission was the earl's conviction that, as a duke's eldest son, he would rank, in Parliament as well as out of it, before all the other earls. In this expectation he was, however, disappointed, for the Lords decided that he must rank, in Parliament, merely according to his creation. The unending controversy on the "Decreet of Ranking" (1606) turns largely on the question of precedence in Parliament. Mr W.O. Hewlett, in his excellent work on *Jurisdiction in regard to Scottish Titles of Honour*, asserts, of the great officers of state, that "*it does not appear from the Acts of the Parliament of Scotland that precedence in Parliament was ever held by either of those great officers by reason of their offices. Elsewhere precedence was held by them*." (p.161).

But there is a passage in the Acts which might, possibly, support the opposite conclusion, *viz.* the contention that "*thair wes of auld ane contentiam betwix the constable and admiral for the prioritie of their place and voit in parliament…..at the quhilk tyme it wes concludit that the constable sould first voit in parliament.*" (Acts of Parl. Vol.III, p.375).

On the death of the earl (1554), the original patent became again operative, and the Earldom of Surrey, now vested in the duke, is that which was conferred by Richard III in 1483.

Passing now to the very ancient Earldom of Arundel, we may note that Burke declared it (in virtue of the 1433 decision) to be held "*by tenure of Arundel Castle only, without any creation*." Whether it was originally so held has been long and fiercely discussed, it being contended by such authorities as Courthope and Nicolas that, in the fuller state of our historical

[24] Flodden

knowledge, the assertions made in 1433 "*cannot, under any circumstances, be maintained*." The question, however, is now of a merely academic nature, the earldom having been held, since 1627, wholly and solely under the parliamentary entail constituted by an Act of that year. It is probably among "facts not generally known" that in the event of the male issue of the entailing earl becoming extinct, this earldom, together with the Castle of Arundel, will pass, by this entail, to his heirs-of-line, while the dukedom, under the Acts of 1660-1, will pass to his (collateral) heir-male.[25]

The historic dignity of Earl-Marshal can here be only briefly alluded to. Edward I, who had wrested it from the Bigods, by a questionable, if not iniquitous, transaction, [conferred it] on his son Thomas "of Brotherton"[26], an ancestor (as has been explained), through females, of the Howards. It was granted, for life, from time to time, to several members of that house, but did not become an hereditary dignity till bestowed by Patent, in 1672, on the then duke's brother and heir, with remainder ever to the same collaterals who, under the Acts of 1660-1, were in succession to the Dukedom of Norfolk. The assertion in Burke that the duke is Earl-Marshal under a creation of 1483 is, consequently a flagrant error, and is the more inexcusable as the true date of creation was at one time duly inserted. The Earl Marshal has official precedence immediately after the Lord Chamberlain and Lord High Constable and "*above all other personages being of the same estate and degree as he may happen to be of*" (31 Hen.VIII, cap.10, sec.5). An attempt to revive the obsolete jurisdiction of this once potent dignitary is to be numbered, fitly enough, among the follies of the first of the Stuarts. On the 4 Dec 1621, the Earl of Arundel was created Earl-Marshal for life (Pat.19, Jac.I, p.13), and in the following August he was empowered to revive the ancient Court of the Constable and Marshal (*Breve de priv. sigill.* 20 Jac. I)[27]. His official zeal and personal haughtiness gave offence, it would seem, in many quarters, and led Clarendon to say of him, with lofty irony, that "*he thought no other part of history so considerable as what related to his own family, in which, no doubt*", adds the magnificent Hyde, "*there had been some memorable persons*". At length his unbridled arrogance drew down a sharp rebuke. Lord Spencer, ancestor of the Duke of Marlborough and Earl Spencer, was addressing the peers on the charters of liberties which the swords of their forefathers had won. "*My Lord*," interrupted the Earl-Marshal, "*when these things you speak of were doing, your ancestors were keeping sheep!*"

"*And when mine*," was the retort, "*were keeping sheep, <u>yours</u> were plotting treason!*" Both peers were, at once, placed under arrest, and Arundel, refusing to apologise, was promptly committed to the Tower.

---

[25] The exaggerated enthusiasm which this Howard title has recently evoked from Mr Freeman, so that Lewes and Arundel, and its connection in his mind with the South Saxons, the familiar Godwine, and the irrepressible Harold, suggest that he is somewhat unfamiliar with its history, of which the mighty Riddell has cruelly observed:

"*From the family of Fitz-alan the Earldom of Arundel came by female descent to the Howards, whose male representation, the Duke of Norfolk, is still less the direct heir of the Albinis, the original Earls of Arundel; - being not even the heir-general of the stock of the Howards, through whom he derives the dignity; and hence this earldom, which it has been so fashionable to extol, appears under circumstances little likely to raise it in our estimation.*" Remarks on Scotch Peerage Law (1833)

[26] Chatelherault, Her. & Gen. IV, 97

[27] This Patent was annulled and the jurisdiction of the Court abolished by a resolution of the Long Parliament 1641. For the Marshal's numberless and vexatious perquisites, ranging from "*feather bedds*" to "*spotted hearts*", see the MS on the Marshalship, quoted above, which also assigns to him the special charge of the members of the court harem, and, in a modified degree, the peculiar function of a Phinchas.

The existing dignity, as has been said, is that of "Earl Marshal." But this single and simple title has oddly expanded into two. It is amusing to trace, on magniloquent coffin-plates, the gradual process of evolution. The first holder is accurately styled *Comes Marescallus Angliae.* His son becomes *Comes Marescallus Angliae hereditarius*, and this addition, in the case of his nephew and successor, splits off into a separate title. He is buried as "Earl Marshal, and hereditary marshal of England" (1732). It is to be regretted that this silly pleonasm figures in all the peerages, and has received, misleading though it is, the sanction of the College of Arms. By the side of the duke's genuine title, - that of "Earl-Marshal" - there appears in every grant of arms the wholly unmeaning addition - "and Hereditary Marshal of England."

The baronies held with the dukedom (but attached to the Earldom of Arundel) are said in the peerages to be four – Fitzalan, Maltravers, Oswaldestre, and Clun. There is a doubt, however, whether two, or perhaps even three, of these are peerage baronies at all. When, in 1841, the son of the then duke was called up to the peers in his father's lifetime, he was summoned in the barony which bears the romantic name of Maltravers, as the only one of the four which had an historical existence. Singularly enough, his direct ancestor had been summoned, *vitâ patris*, in the same barony 400 years ago! The right to this dignity would have passed from the Howards, when they ceased to be the heirs of the Earls of Arundel (1777), had it not been wrenched from its right line of descent by the intervention of the "extraordinary"[28] Parliamentary Entail of 3 Car.I (1627). It is doubtful whether the other three "baronies" should not be combined in the one title, "Fitzalan of Clun and Oswaldestre." For so doing we have the authority of the "synopsis" and of one ducal coffin-plate (1701). Clun and Oswaldestre were the border lordships of the Fitz-Alans, subsequently Earls of Arundel, but there had never been a peerage barony of Fitzalan, Oswaldestre, or Clun. The Howards, however, among their minor titles, bestowed upon themselves three "baronies" of these names, and the Crown, as we have seen, in 1604, tacitly recognised the assumption. But, in the admittedly extraordinary Act of 1627, it went a step further. This measure is intituled:

"An Act concerning the title, name, and dignity of Earl of Arundel, and for the annexing of the castle, honour, manor, and lordship of Arundel in the County of Sussex, with the titles and dignities of the baronies of Fitzalan, Clun and Oswaldestre, and Maltravers,…….to the same title name and dignity of Earl of Arundel."

As the Act is merely a recital and confirmation of the Earl's own petition, the styles are of his own devising. He speaks in it of "*the titles, names, and dignities of Lord Fitzalan, Lord of Clun and Oswaldestre, and Lord Maltravers*"; and it is clear, from the punctuation, that "*Clun and Oswaldestre*" are here treated as one title, though now accounted as two. But the real point is the astounding negligence with which the Crown accepted, as peerage dignities, baronies which are known to have never existed! In fact these dignities are only vested in the Howards by a parliamentary *tour de force* resembling the Napoleonic Decreet of 20 April 1864 in virtue of which the Dukedom of Châtelherault is vested in the present ducal house of Hamilton[29]. In both cases it can be satisfactorily shewn that the titles in question had never been created, and that, even had they been created, they ought not to have been vested in their present holders.

This revelation may, fitly, prepare us for my last point. In the year 1777, the position of the Dukes of Norfolk underwent a fundamental change. The dukedom then passed to a collateral heir, and the dukes, though still Earls-Marshal and Earls of Arundel, Surrey, and Norfolk, ceased to have any share whatever in the representation of the ancient Earls of Arundel and of Surrey, or in that of Thomas (Plantagenet) Earl of Norfolk and

---

28 *First Report on the Dignity of a Peer*. p.431

29 Herald and Genealogist **IV**: 105

Earl-Marshal. The whole of this splendid inheritance (in blood), together with the representation of more than four centuries of Howards, passed to their heirs-general, the Lords Stourton and Petre. In gracious and fitting commemoration of this heirship, the abeyance of the baronies of Mowbray and Segrave was recently (1878) determined by the Crown in Lord Stourton's favour. Here, however, I am compelled to state, with all possible respect, that the decision arrived at by the Committee for Privileges, with regard to the abeyance of these titles, appears, in my humble judgement, to be, historically speaking, erroneous[30]. It had always been considered, till this decision, that ever since the death of the heiress of the Mowbrays, the barony of Segrave had remained in abeyance, and that if the abeyance of Mowbray had been determined, it was only by the most irregular operation of the writ of 1639/40. My own conviction is that, when Henry Howard was so summoned in the barony of Mowbray, and was allowed its precedence as the premier barony, he received that writ on the erroneous supposition that the barony was then vested in his father. We have had proof of the negligence with which in 1604, and again in 1627, the Crown accepted a user as evidence of title, and it is startling to find that, even so lately as 1784, the same "*unaccountable negligence or ignorance*", to use the words of the learned editor of the *Synopsis*, was displayed in the Patent of the Earldom of Leicester, in which just as in the case of the Howards, no less than three baronies were assigned in error to the grantee! Only twelve years before the Mowbray writ, the Crown had on a similar erroneous supposition, issued the writs of Strange and Clifford. As with Mowbray, the original precedence was erroneously allowed in both these cases, as it also was in that of Percy (1722) and semble in that of de la Warr (1597). No such theory, however, would seem to have commended itself to the committee, who, recognising in the writ of 1639/40 a proof that the father must have held the barony, and yet unable to point to that determination of the abeyance which alone could have entitled him to hold it, resolved that the abeyance must have been determined "*subsequently to 1481, but before the time of Elizabeth*." And, for support of this most cautious conclusion, their lordships, it would seem, chiefly relied on the undoubted user of the style by the Howards and on certain letters-missive of Richard III styling the Duke of Norfolk "Lord Mowbray and Segrave". As to the user, it would be more difficult to say what titles the dukes did not use than what they did. In those halcyon days every peer was free to assume what secondary titles he pleased, and to determine an abeyance in his own favour, as was done in this very instance, by the lines of Howard and Berkeley, who can be proved to have simultaneously used the styles of Mowbray, Segrave, and Braose! And yet a funeral certificate, in which these styles were assigned to the Howard co-heir, was actually put in evidence. As to the letters-missive, it has always been accepted that abeyance is determined by the issue of a writ of summons in the barony. It is obvious that, in those days, a writ in a barony would not be issued to a duke, and that, as nothing but such a writ could confer on him a peerage barony, the abeyance could not then have been validly determined. I cannot, a propos of these letters-missive, quote more apposite testimony than is found in the *Third Report on the Dignity of a Peer* (p.134). It observes of a style given in a commission of about the same date: "*But the style given in commissions often extended to titles to which the persons named in them had no legal right; and even in patents of creation advancing peers to a higher title, they have been described by names of dignity which did not belong to them.*" As Mr Joseph Foster has justly reminded the supporters of baronets by recognition, "*It is a popular error to suppose that, because a person is designated a baronet, he must be one of necessity……The mere designation as a baronet (or by any other title) in any document whatsoever – even by the Crown itself – saving in letters-patent of creation is not of itself evidence that the person so styled is a*

---

[30] This topic is discussed at length in Round's later work *Studies in Peerage and Family History* (1901, pp.435-457, *The Abeyance of the Barony of Mowbray*). [Ed.]

baronet; it is merely evidence that a certain style is in use by him; and such user cannot possibly confer a dignity which emanates by letters-patent only" (Preface to Peerage, 1883)[31].

It would surely prove a most grave innovation if the incidental recognition by the Crown of styles unwarrantably assumed were held to constitute them peerage dignities, descendible to the heirs of the assumer. I hold, therefore, that the barony of Mowbray, now vested in Lord Stourton, was in abeyance from the death of the heiress of the Mowbrays till 1878, and that the Mowbray writ of 1640, created, according to the decisions in the cases of Strange and Clifford, a new barony which is still in abeyance between the two co-heirs of the Howards.

The barony of Greystock, which was among those assumed by the Dukes of Norfolk, stands on an exceptional footing. It is stated in the *Synopsis* to be "*extremely doubtful*" whether the abeyance of that barony was ever determined in their favour. But this doubt I hope to be able to solve when I come to deal with the "barons" of Stafford, and of Greystock. The Lords' committee on the dignity of a peer reported on these styles that - "*Why the Staffords as well as the Greystocks were particularly thus distinguished by the appellation of baron, the committee have not discovered*" (*Third report, p.185*) – a confession which was repeated on p.230, and which is echoed by the learned editors of the *Synopsis*, and in the *Constitutional History* of Canon Stubbs. I believe myself to have discovered the explanation of this style, but it is obviously not a subject which can be dealt with at the end of an article.

We can but glance at the office of Chief Butler of England, which though unnoticed by the *Peerages* is still held by the Dukes of Norfolk. Their ancestor William de Albini, under the Norman Kings, held his Norfolk lordship by this grand serjeanty, and derived from it his *soubriquet* of "Pincerna". There is great doubt whether the butlership was not annexed to the manor of Buckenham, the lords of which have claimed the office at the coronations of Edward VI, Charles II, and George IV. The Earls of Arundel, however, have always sustained their right, though not, as pretended, in virtue of the earldom, but of their tenure of Kenninghall, another of the Albini manors. It is not improbable, however, that the earldom "attracted" the office. Another of the duke's lordships, that of Worksop, held by the singular grand serjeanty of supporting the King's right arm, and providing a glove for his right hand, on the occasion of his coronation.

Briefly to resume the results we have obtained, we have found that his Grace is Duke of Norfolk under the Act of 1660 (confirmed by the Act of 1661), Earl of Arundel under the Act of 1627, Earl of Surrey under the Patent of 28 June 1483, Earl of Norfolk under the Patent of 6 June 1644, Earl Marshal under the Patent of 19 Oct 1672, Lord Maltravers, Lord Fitzalan, and Lord of Clun and Oswaldestre, all under the Act of 1627, and (in right of his tenure of Kenninghall?) Chief Butler of England.

Acknowledgements

The FMG wishes to extend grateful thanks to Patrick Dickinson, Richmond Herald, and to Raymond Powell, Round's biographer, for helpful comments on the manuscript. The editor is particularly appreciative towards Danna Messer and Joseph Edwards, who have carefully proof read the text against the original manuscript. The editor accepts full responsibility for any remaining transcription errors and would be grateful for any obvious corrections from readers.

---

[31] Nay, this negligence has even extended, not only to the recognition by the Crown, in error, of minor and secondary titles, but even to the recognition by the Crown, as peers, of persons who had no right whatever to enjoy the dignity of a peer! Witness, for instance, the flagrant case, which I have lately been compelled once more to expose, of the coronation summons issued in error to the self-styled Viscount Oxenford, and the self-styled Baroness Ruthven (*Notes & Queries* 6th series, **VII:** 168, 290, etc.).