

ART. XVIII.—*The court-martial of General Oglethorpe.*
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Read at Penrith, September 14th, 1954.

IN September and October 1746 Major-General James Edward Oglethorpe faced a court-martial on a charge that "he disobeyed or neglected his orders and suffered the Rear of the Rebels near Shap to escape" in December 1745.

Was the General a fifth-columnist, as his enemies believed? Did he disobey an order to attack the rearguard of the Jacobites at Shap? Such an order was certainly sent to him, but his defence was that he did not receive it until too late. On the other hand he was pursuing the Jacobites in order to attack their rearguard, and he had already sent a message to the Duke of Cumberland that he intended to attack.

He did not attack at Shap, however, preferring to withdraw to Orton, where for some inexplicable reason, he delayed his march for hours, thus giving the Jacobites the time that they so desperately needed to get the main part of their army away.

Dr A. A. Ettinger, a recent biographer of Oglethorpe, heads his second chapter "A Jacobite Youth" and deals at length with the Jacobite activities of the General's mother and sisters.¹

On 20 September 1745 Oglethorpe, a Major-General since 30 March of that year, was ordered to the north,

¹ Ettinger: *James Edward Oglethorpe*, 1936, 47-80. Oglethorpe was actually the holder of the Jacobite peerage conferred upon his elder brother by the Old Pretender in 1717 (G.E.C. x 43). In 1723, when Bishop Atterbury was attainted for his part in the Jacobite plot of 1722, Oglethorpe's maiden speech in the House of Commons was in support of the Bishop — who had been Dean of Carlisle — and he pleaded against the sentence of banishment imposed upon him.

the Government (to quote Dr Ettinger) "forgetting the Jacobite connexions of his youth." At York he converted a body of local foxhunters into a cavalry unit which became known as the Royal Regiment of Hunters, of which he was appointed Colonel. In October he was ordered to Newcastle where he was on the 29th with the Royal Hunters and a body of his Georgia Rangers.

When the Jacobite retreat from Derby began on 6 December Wade sent Oglethorpe from Richmond in pursuit. On 10 December Oglethorpe arrived at Wakefield where he rejoined Wade, who ordered him, with 600 men, to join the Duke of Cumberland at Preston. This hundred miles march was accomplished over snow and ice in three days. The Duke of Cumberland arrived at Preston the same day and on 14 December Oglethorpe continued his march towards Lancaster.

The force under his command consisted of 200 men from St George's Dragoons, a squadron of 60 men from the Duke of Montagu's Regiment of Light Horse and Wade's Regiment, the Royal Hunters and some Georgia Rangers—in all a force of 600 men. Major Whitley, with 200 dragoons,² was between Oglethorpe's force and the Duke of Cumberland's army, to keep communications open and to reinforce Oglethorpe if necessary.

On 14 December there was a slight skirmish half way between Garstang and Lancaster, but the Jacobites got away and reached the latter place the same evening.

The Duke reached Lancaster on Monday, 16 December, on which day Oglethorpe left Garstang and reached Burton-in-Kendal, whence he sent Lieutenant Campbell with the Irregulars to take possession of Kendal, which he did at midnight.³ The Highland army had left the town at daybreak.

The Duke entered Kendal on 17 December with the

² 100 from Bland's and 100 from Kerr's Regiments.

³ Oglethorpe afterwards stated that that night the Horse were so fatigued that he could not find ten dragoon horses fit to march to Kendal. He was obliged to hire fresh horses for a corporal and ten dragoons and the Rangers, who were despatched that night to Kendal with Campbell.

knowledge that Oglethorpe was hot on the heels of the Jacobite rear. Oglethorpe sent a Ranger to the Duke with a verbal message that all or part of the Highland army, but he believed only a part, were at Shap and he was going to attack them.

The Duke thereupon sent Oglethorpe the first of four letters containing orders. If Oglethorpe's evidence at the Court Martial was true he received the first letter *after* letter No. 3—that is, not until the morning of 18 December and much too late for him to carry out the orders therein.

The letter ran as follows:

"Sir. It is H.R.H. Orders that you attack the party. If they quit Shapp that you take possession of it & lye there to-night. If the whole army is at Shapp you will wait till to morrow morning till you attack them when H.R.H. will be up with you. We beat to boot & saddle at four & march at 5 in the morning."

Later the Duke received information that the Jacobites were extremely harassed and tired, that their vanguard had reached Penrith at about 10 a.m. on 17 December and only their rearguard was at Shap.

Acting upon this perfectly accurate information the Duke sent Oglethorpe a second message at about 9 p.m. that night, ordering him to attack Shap at once, dismounting his dragoons and reconnoitring well with his Irregulars.

Oglethorpe's force reached Shap in the early evening of that day—at 6 p.m. according to Lt-Col. Chancey of Col. Cockran's Regiment, at 5 according to Major Charles Otway of the Duke of Montagu's Regiment.

Oglethorpe remained outside Shap for considerably more than an hour, during which time he called the field officers⁴ together and told them that there were more rebels in the town than he had first heard and he asked them if they thought it was advisable to attack.

⁴ Lt-Col. Arabin, Major Otway, Major Whitley, Major Erle, Capt. Strickland. The last named was in command of the Hunters.

At the court-martial Lt-Col. Arabin, of St George's Regiment, said that when the force arrived at Shap the ground was very bad and he could not find room to draw up the squadrons in line but had to draw them up one behind the other.

The information they had from people who came out of Shap was that a body of rebels was still there and had been joined by the force of 300 or 400 which Oglethorpe was pursuing and by another body of men which had returned from Penrith. The houses in Shap were indeed crowded with rebels. Major Otway stated that the decision not to attack and to retire from Shap was taken because of the poor condition of the troops—the men being cold and wet, having marched unclothed in the rain. They had lain at their horses' heads on the nights of 14 and 15 December. Their arms and ammunition were wet. It was also dark—so much so that he could not see the trumpeters who were just in front of him and on grey horses. Had they stayed at Shap they would have had to send to Orton for forage and the journey there and back would have taken the horses four or five hours. They could get no horses in Orton because the people had driven all their horses and cattle on the moors "and far away" because the Jacobites had seized so many beasts.

Lt-Col. Chancey said there was some sleet and a fresh wind, and Major Whitley said the attack was put off because it was raining and was pitch dark, and in order that they might clean their arms.

Nothing was said at this Council of War by Oglethorpe of any orders received from the Duke. If, however, his story as told at the court-martial was true, the Duke's all-important order had not arrived.

The decision not to attack having been taken, it was at first proposed that the troops should remain on the moors outside the town, but finding no forage could be got it was decided to withdraw either to Strickland Head,

Bampton or Orton. A shepherd was found who said that Strickland Head was beyond Shap and as the night was very dark and the moors "boggy and shaken" he was not prepared to act as guide to the troops. Asked about going to Bampton he explained that because of heavy rain there were two rivulets that would be very high, the road was "very cross" and the moors boggy, with only one bridge over each rivulet. If he missed the road he could not tell what the consequences would be.

Eventually the decision to retire to Orton, five miles away, was taken, and Josias Morley, one of the Royal Hunters, acted as guide.⁵ The march over a very bad road was further than supposed and the horses lost a great many shoes. One horse fell and halted the force and some of the Light Horse and St George's Regiment lost the way.⁶ A grand guard remained formed between Shap and Orton, and patrols went on all night between the two places.

On arrival at Orton Oglethorpe was so ill that he had to be helped off his horse and Major Otway's evidence was that he thought the General was in danger of dying, having been without sleep because of a fever he had had ever since he was detached from Wade's army on 10 December.

Major Otway told Oglethorpe that the horses needed shoeing, and there was only one farrier in Orton. Oglethorpe said that they must march in the morning as soon as the horses were ready.

In spite of his illness Oglethorpe managed to get a letter off to the Duke, a letter which was received at Kendal at midnight, an answer being dispatched half an hour after.

⁵ He seems to have known the district, for at the Court Martial he said "Shap has many houses and might if crammed contain many more than 2,000 men, there being a church and several barns".

⁶ When the force arrived in Orton Col. Arabin found two and a half squadrons missing, so he had the bells of Orton church rung so that the missing troops might think the peal was for the arrival of the King's men in Orton. The plan succeeded.

In his letter Oglethorpe reported that the party of rebels which he had been ordered to pursue were 200 to 300 in number. His force came up with them four miles from Kendal where they were guarding carriages.

"They retired before our Rangers with such speed," he wrote, "we could not get up with them without running our horses. The Rangers & Royal Hunters were several times very close to them but were not of strength enough, in Roads very inconvenient for charging. We forced them to leave a chaise, some carriages and left a good deal of Ammunition behind them and the Rangers took some horses. We chas'd them into Shapp where one of the Royal Hunters followed them and talk'd with one of their men, who afterwards Fired at him."

Some said that the whole army was in Shap, others that their artillery and heavy baggage had been marched on 16 December. Others said that only the rearguard of 400 men, whom they had been pursuing, was in Shap. To-morrow morning he intended getting spies into Shap to report, but it was impossible to do it that night because the rebels fired at everybody at night. He concluded by saying: "Finding them possessed of the place (Shap) and having no Forrage, I thought it was necessary to march to this Village to feed the Horses: I keep them form'd in order and they lay at their horses' heads."

Oglethorpe spent the night in Orton Vicarage, his host being the Vicar of Orton, the Rev. Richard Burn,⁷ and popular tradition has it that soldier and parson made a night of it, and that as a result Oglethorpe overslept and his march from Orton was thus delayed. This was the explanation accepted at the time, for Alexander Fothergill, who arrived in Orton at 8 a.m. on 18 December found the troops ready to march, but he says three hours elapsed before they moved, "their General keeping close quarters with Parson Brown (*sic*) until an express from the Duke parted him and his bottle."⁸

There is, however, no suggestion in the court-martial proceedings that Oglethorpe had dined and wined too

⁷ CWI x 228.

⁸ Army Quarterly XL No. 2, July 1940.

well with the Vicar. During the night Oglethorpe sent for Arabin and Otway to let them know how he was feeling and he told them if any accident happened "they were to take care the service might not suffer."

At 6 a.m. on 18 December Oglethorpe summoned Otway again. He was lying down and told him to hasten everything for the march.

Arabin also saw the General "before day" who told him he intended to march as soon as it was day to attack. He proposed to dismount the Dragoons and told Arabin to lead the attack on foot, and he would sustain it with the cavalry. It was then between 7 and 8 a.m. and orders were given for shoeing the horses and the issue of cartridges.

At 8 the express arrived which the Duke had sent off half an hour after midnight. In this Col. Napier, the Duke's A.D.C. wrote:

"if the detachment of the Rebels in Shapp be only 500 he thinks you may dismount your Dragoons & as it is an open straggling village that you may easily attack it with them & make yourself master of it, but as you who are on the spot must be the best judge he leaves it to you to do as you judge most proper. If you don't attack it before the morning you will during the night push constant patroles in the village to bring you accounts of their motions. H.R.H. apprehends the detachment cannot be very considerable now as he has accounts of the van guard being got into Penrith yesterday & the waggons & prisoners you have taken you will please to send here under a guard. Our cavalry here march this morning at 5."

At 4-30 that morning, before the Duke marched, he sent another letter to Oglethorpe as follows:

"Sir — It is H.R.H.'s orders that you get round the village of Shapp with the troops under Yr command whilst we march & attack the rebels in it. You will attack everything that endeavours to get by you after you have got on the other side of the village. We are now going to sound to horse. If the Rebels have quitted the village & gone on you will pursue them."

This letter was received by Oglethorpe shortly after the arrival of the letter sent off by the Duke half an hour after midnight.

At the court-martial Oglethorpe said that it was obvious when the Duke sent the above letter at 4-30 that he presumed Oglethorpe had not attacked and that the Jacobites might even have left Shap and gone on, as was indeed the case.

In reply to the letters from the Duke, Oglethorpe sent off a letter to inform him of what he had done before the Duke's orders arrived, and giving him the latest information about the movements of the Jacobites and the dispositions he had made for carrying out the Duke's orders and attacking the Jacobites. This, he told the Duke, he could not do because he had received word that they had abandoned Shap.

Whether the Duke ever received this letter would seem doubtful for he marched from Kendal at 5-30 that morning and Col. Napier, his A.D.C., said at the court-martial that on the march he was constantly in expectation of receiving accounts from Oglethorpe but none came.

Meanwhile at Orton at 9 a.m. on 18 December Col. Arabin went to report to Oglethorpe that the troops were ready to march. Oglethorpe's servant told him that the General "had been much disturbed and was much hurried that morning and could see nobody." Greeted with this astonishing news Arabin went straight in to the General, who was with his secretary "in a great hurry, preparing despatches." The General said that he would be as quick as he could and would come to Arabin in the field.

Joseph Cooper, Oglethorpe's servant, said at the court-martial that he heard Oglethorpe tell Arabin to march the troops immediately, and he, Oglethorpe, would go up on to the hill immediately and wait for them to come up. The hill was about half an hour out of Orton and there the General waited half an hour.

Another witness, Thomas Hawkins, said that Arabin spoke to the General about powder to which he replied "Don't talk to me now of Powder but get ready and march on and I will be up with you soon."

There is little doubt that Oglethorpe endeavoured to make Arabin a scapegoat and Dr Thomas Birch, in a letter to Philip Yorke dated 11 October 1746, wrote:

'He would fix the Blame of it upon Lieutenant Colonel Arabin of St. George's Dragoons, who I am assur'd could retort a much severer charge upon him for his conduct that evening near Clifton which according to the Account I have had of it was a complication of Cowardice and a thorough Ignorance of his Profession.'⁹

Arabin's own account is that after his interview with the General he went off to the field on the south-east side of the town where he found the squadrons mounted with the officers at their posts. He summoned the field officers and told them that Oglethorpe was coming and that he was to be received according to his rank.

Half an hour passed without a sign of the General, and Arabin, in order to ease the horses, gave the order for the cavalry to dismount. For about an hour the men were dismounted and still Oglethorpe had not appeared. Finally Arabin was surprised to see him not entering the field, but turning into the road, whence he sent Arabin orders for the troops to follow him. The time must then have been 11 or perhaps even later, for Dr Birch says that Oglethorpe did not march "till near noon."¹⁰

The troops set off at "a great pace", but not fast enough to please Oglethorpe who sent Arabin orders to make more haste. Two miles or so from Orton Oglethorpe received a letter from the Duke, which he said contained good news for the Duke was to support them.¹¹ The troops were making good progress—about 6 miles an hour—and had travelled four miles from Orton when they saw the Duke's army on their left, and in front of them.

⁹ Add. MSS. 35397 ff. 38 and verso, quoted by Ettinger. Philip Yorke was the eldest son of the 1st Earl of Hardwicke, whom he succeeded in 1764.

¹⁰ On 4 October, 1746 he said he began his march just before 11 a.m. At 11 he wrote to the Duke that the Rangers had entered Shap and "I march directly in pursuit of them and we have discovered the truth of their Braggs".

¹¹ It was then presumably that Major Whitley received orders from the Duke to march ahead of Oglethorpe and if possible "to get over the water somewhere out of sight of Penrith and take post on the other side of it, on the road to Carlisle", which he did.

The Duke had entered Shap to find that he was too late: the Jacobite rearguard had left the place very early. To his great surprise he learnt that Oglethorpe had not passed through Shap, but he comforted himself by the reflection that he had gone round the place and was hot upon the heels of the Jacobites. His surprise and anger, when a cavalry corps was reported on his right, about a mile from the rear of his men, can be imagined.

Lord Bury¹² pointed out that they were Royal troops and rode off to investigate. He brought Oglethorpe back with him to face H.R.H.'s wrath. To find that instead of a vanguard in hot pursuit of the Jacobites he had a rearguard was more than the Duke could bear, and he rounded on Oglethorpe, saying that if his orders had been obeyed few of the Jacobites could have escaped.

The General bowed and rode back to his troops. Arabin said that he never saw a man in such distress as the General was. Oglethorpe said that he had had a severe rebuke from H.R.H., who had ordered him not to interfere with his line, but to keep to the right and get ahead of the Jacobites if he could.

I am not concerned here with the events which took place later in the day on Clifton Moor, but it is interesting to note a contemporary opinion on Oglethorpe's conduct, contained in Alexander Fothergill's account already referred to.¹³ He writes:

"Perhaps people in low station ought not to censure their superiors nor pry into their conduct, yet in such a case as this where every individual must sensibly feel the weight of the misfortune one cannot help regretting the consequence and rather pointing at the person whose remissness seems to be the cause of it.

"If the commander of the Vanguard had had those three hours daylight at Lowther Bridge, which were thrown away at Orton in the morning how easily he might have dispersed the rearguard of the rebels and opened the Duke and his army the

¹² Later 3rd Earl of Albemarle.

¹³ Army Quarterly XL No. 2.

road to pursue them and as the Duke and his army halted several times (at least one hour and a half) to give the Vanguard time to take their post might not the loss of that time be placed to the account of their commander? And lastly the Duke's army halted on Clifton Moor near an hour to give the Vanguard time to take possession of the bridges which they omitted doing though a shorter and safer step than retreating. How happy had it been in many respects if we had shown the Scots by matters of fact that they must not invade England and go home again unchanged which must have been the case if the vanguard had done their duty as they gladly would if they had been led on."

Immediately after the skirmish on Clifton Moor Cumberland sent Oglethorpe with 2,000 horse to Carlisle.

Early in the New Year Oglethorpe left Carlisle and went to Newcastle, and on 27 January 1746 he was in York, where Archbishop Herring saw him and reported "He looks dismally and I judged of the sore place by his falling instantly upon the affair of Shap."¹⁴

Oglethorpe was struck off the Duke of Cumberland's staff and in March his command was handed over to General Cadogan. On 7 August 1746 he accepted service for attendance at a court-martial, which opened on 29 September with Lt-General Wentworth presiding.¹⁵

The charge against Oglethorpe was that he "disobey'd or neglected his orders and suffered the Rear of the Rebells near Shap to escape." The chief witnesses for the prosecution were Lt-Col. Robert Napier, one of the Duke's A.D.C's, Major Charles Otway of the Duke of Montagu's Regiment, Lt-Col. Arabin and Major Henry Whitley, who was also one of Oglethorpe's witnesses. The court-martial concluded on Tuesday, 7 October and on 11 October Dr Thomas Birch wrote to Philip Yorke.¹⁶

"I heard the whole Proceedings & think it will leave some Imputation upon his Character, tho' he should escape Punishment."

This prediction was fulfilled: Oglethorpe was acquitted,

¹⁴ Herring to Lord Hardwicke, quoted by Ettinger, p. 265.

¹⁵ P.R.O.: W.O. 71/19.

¹⁶ Ettinger, *op. cit.* 269.

but his reputation suffered. A pamphlet criticising the acquittal appeared, its title being "Philaxias. Both sides of the Question; or a Candid Inquiry into a certain Doubtful Character, in a letter to a General Officer remarkably acquitted by a C——t M——L."¹⁷

Although in September 1747 he was promoted lieutenant-general, his military career ended at Clifton Moor, and for the remainder of his life—he lived nearly another 40 years—he was in Dr Ettinger's phrase "a forgotten man".

I have to acknowledge my indebtedness to the Leverhulme Research Trustees, without whose help I could not have undertaken research at the Public Record Office, to the Rev. C. M. L. Bouch, F.S.A., for calling my attention to Alexander Fothergill's letter in the *Army Quarterly*, to Mr L. S. Chapman of Appleby for lending me a copy of it, and finally to Anne Hudleston, my daughter, for checking my notes at the Public Record Office.

¹⁷ Church: *Oglethorpe* (1932) 298.