

MARY, QUEEN OF SCOTS AND HER EXECUTION.

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By J. W. GORDON, K.C.

(1).

TRADITION AND THE MIDDLE TEMPLE. By THE EDITOR.

IT is remarkable how tradition persists in spite of its intrinsic absurdity. But how is tradition best to be accounted for? It is comparatively seldom that folk wantonly falsify history or invent tales for credulous travellers or sympathetic sight-seers. Surely the persistence of tradition is due to some truth that it embodies. It is however the most difficult of tasks to distinguish the truth in it from the fiction and to separate fact from the falsity which tradition has taken to itself. Yet the historian is every day called upon to perform his task realising that in some instances tradition may be accepted at its face value, while in others it must be almost wholly rejected. The canons by which the historian arrives at the one conclusion or the other or is led to assume some intermediate position form an interesting study, but must not detain us here; but in any case it is well to record tradition lest valuable evidence be irrevocably lost.

Now, here in London, there is a tradition which connects the tragic ending of Mary, Queen of Scots, with the Honourable Society of the Middle Temple, a tradition, the greater part of which, on the face of it, is seemingly false, but

a tradition which to some extent may embody truth. For the following, the Editor is indebted to Mr. J. Bruce Williamson, a Master of the Bench of the Middle Temple:—

“The story our late Head-Porter, Sergt. O’Connor, told me about the death-warrant for the Queen of Scots’ execution was this—He said that on a table in our Hall, Queen Elizabeth, actually affixed her signature to the warrant. The table in question was not the one we call the “Cupboard”—a square table just below the High Table—but the High Table itself. The story cannot be true as told by O’Connor for we know that Davison took the warrant to Greenwich and that the signature of Elizabeth was put to it there.

It is possible that some paper connected with the trial proceedings was signed in our Hall by Sir John Popham, Attorney-General and a member of the Middle Temple, and it may be this that is the origin of the romancing by our Porter. O’Connor told other curious things, handed down by the servants of the Inn no doubt, such as that King James signed “the Charter of the Inn (!) at the same table; meaning, I suppose, that the Letters Patent under which we acquired the property of the Inn—a statement which is palpably ridiculous. . . . It is lamentable how little we know of the festivities in the Hall during Elizabeth’s reign. Queen Elizabeth must often have visited it, but concerning royal visits or gifts our dull business records are absolutely ‘mum.’”

The following is a copy of the note which the present writer made in his *Everyday Book*:—

“December 14th, 1916. Mr. Philip Newman, F.S.A., told me that recently at a dinner, following a meeting of the Royal Society of Literature, Lord Halsbury (aet. 94) and he had a conversation concerning Mary, Queen of Scots. Lord Halsbury said that at the Middle Temple Library there were preserved all the papers relating to the trial of Queen Mary and that he had been at a loss to account

for their presence there. His Lordship had discovered that the Constable of the Tower to whose custody all papers, pleadings, etc., relating to seditious trials were customarily entrusted was a Bencher of the Middle Temple. From this the conclusion was to be derived that the Constable of the Tower had brought them to the Temple.

I remarked upon the minutes in London which the Middle Temple possessed of the execution of Queen Mary and suggested the possibility of confusion in his Lordship's mind."

This note was sent to Master J. Bruce Williamson, the Historian of the Temple, who replied:—

"As regards the curious story told your friend by Lord Halsbury about our having at the Middle Temple the papers relating to Queen Mary's trial concerning which you send me a copy of the note you made at the time, it is quite new to me. I know nothing of such papers. But we have many bundles of documents which are not indexed and which no one now living has examined, so I will not say that Lord Halsbury's story has no foundation. Sir John Popham was of our Inn and as Attorney-General prosecuted the Queen. Therefore such papers might well have been in his hands and deposited by him with the Inn. He was Treasurer for seven or eight years, part of that time coinciding with the trial. Later he was Chief Justice and presided at the trial of Sir Walter Raleigh. Oddly enough his shield of arms is side by side with that of Raleigh in one of our windows on the north side of our Hall. . . ."

For a good many years, the present writer had been aware of a manuscript memorandum referring with circumstance to the execution of Queen Mary which the Middle Temple possessed and which, many times having been shown by him to visitors, he had desired to reproduce. Through the kind offices of Master J. Bruce Williamson, permission for its reproduction was cordially granted by the Library Committee

of the Middle Temple, the manuscript being in the Library of the Inn in the custody of the Committee. The Editor is additionally fortunate in receiving for publication a paper by Mr. J. W. Gordon, K.C., describing the "Reports" in which the Memorandum occurs. This paper will be found to be full of interest not only to historians and antiquaries but also to those who are in daily touch with our old law reports.

In order to round off these notes, Mr. John Douglas, F.S.A.(Scot.), kindly acceded to the Editor's request to write a minute upon the tragic event of the year 1587.

(2)

THE EXECUTION.

By

JOHN DOUGLAS, F.S.A. (Scot.).

There does not seem to be any reliable proof that Queen Elizabeth went to the Temple to sign the death-warrant. Such a proceeding would cause suspicion and tell against the idea in Elizabeth's mind because she wanted to compass Mary's death without being held responsible for it. Copies of letters purporting to show that Mary wanted to bring about the assassination of Elizabeth, and said to be forgeries, had come into the hands of Walsingham. On the strength of these the imprisoned Queen was brought to trial in September, 1586. In October, she was condemned to death and it was not until the following February that Elizabeth signed the warrant of execution. The Court was at Greenwich at the time. Dr. Robertson says "It is not to humanity that we must ascribe her (Queen Elizabeth's) forbearance so long; at the moment of her subscribing the writ that gave up a woman, a Queen, her own nearest relation, into the hands of a executioner, she was capable of making a jest."

The letter written by Elizabeth to Sir Amias Paulet, the keeper of Fotheringay Castle shows that in addition to a previous proposal to hand over Mary to the Scottish Confederate Lords to be summarily dealt with, she plainly suggests private murder. This was backed up by Walsingham, who wrote to Paulet and Drury—"We find by a speech lately made by Her Majesty, that she doth note in you both a lack of that care and zeal for her service, that she looketh for at your hands, in that you have not in all this time (of yourselves, without other provocation) found out some way to shorten the life of the Scots Queen, considering the great peril she is hourly subject to so long as the said Queen shall live." In a postscript, Walsingham continued "I pray you let both this and the inclosed¹ be committed to the fire: as your answer shall be, after it has been communicated to Her Majesty for her satisfaction."

Elizabeth wished Mary to be put to death, but in a manner that would appear to be against her will and without her knowledge. Her Secretary, Davison, fell a victim to her artifice and was deprived of his fortune and put in prison for life.

Paulet had been studiously insolent to Queen Mary and treated her with disrespect; the nineteen years imprisonment had told on her, but according to eyewitnesses she, at the end, laid her head on the block with dignity and resignation. The reference to her head being "white and polled like the head of a boy, saving two locks, at either eare one," (Reports of cases by Bridgeman and Brock), is partly corroborated by Archbishop Spottiswoode in "the History of the Church and State in Scotland" (1655) where he describes the execution thus:—"Then stretching forth her body with great quietness, and laying her neck over the Block, she cried aloud, *In manus tuas, Domine, commendo spiritum meum*. One of the executioners holding down her hands, the other at two blows

¹ The Queen's letter to Sir Amias Paulet.

cut off her head, which falling out of her attire *seemed to be somewhat gray.*"

Queen Elizabeth in writing to King James referred to the execution as a "miserable accident" and as Spottiswoode says, "laying all the fault upon Secretary Davison to whom she had said that she would take another way." King James declined to see Robert Cary, the messenger, and refused to receive the letter which seems to show a disbelief in Queen Elizabeth's protestations.

(3)

THE MIDDLE TEMPLE MS. CATALOGUED AS "REPORTS OF
CASES BY BRIDGEMAN AND BROOK."

By

J. W. GORDON, K.C.

This folio volume which was acquired by the Honourable Society of the Middle Temple by purchase in February, 1897, and which is preserved in the Library of the Middle Temple, comes from the collection of Sir Thomas Phillips, and appears at one time to have belonged to E. Umfreville, a well known collector of law books in the second half of the 18th century.

Bridgeman is said to be Sir Jno. Bridgman who was eventually Chief Justice of Chester and died in 1647. It may be doubted whether this attribution is correct.

The reports collected in this volume begin with the year 1586 and although it cannot be supposed impossible that Jno. Bridgman should have been recording law cases at that time it is hardly probable that he would be producing at that date the very finished work that is here preserved. Furthermore, the reports which were published within a few years of his death from his own collection of cases all date from 12 to 17 Jas. I, that is to say, they were made about 30 years later than the cases here collected.

Brock is identified by a reference made upon a fly-page in the front of the MS. to Popham's Reports, p. 39. The passage cited reads:

“ And the first case was very well argued by one Brock, a puny utter Barrister of the Inner Temple this Term for the Plaintiff. And it was the first Demur that he argued in Court.”

The Term was Hillary, 36 Eliz. (1593). There is therefore no difficulty about supposing Brock, not otherwise known as a law-reporter, to have been the author of his contribution to this collection. But the cases attributed to him are but a small proportion of the whole. “ Bridgman's ” cases occupy the first 185 folios. Brock's extend from 185 to 208.

The cases here attributed to Bridgman have, at any rate in large proportion, been already printed under the name of Gouldsbrough's reports. My examination has been too cursory to enable me to say how complete the reproduction in Gouldsbrough is but I have carefully examined the first 30 pages of Gouldsbrough reports and find that they consist of a literal translation so far of this MS. The reports are identical and placed with only slight changes of order for the Easter, Trinity and Michaelmas Terms of the 28th Eliz. The MS. continues with Hillary Term, 29 Eliz., but that Term is omitted from Gouldsbrough's collection. Down to this point it may be said that Gouldsbrough's reports are a rendering in English of this identical text and this circumstance raises, in a somewhat pointed way, the question whether the MS. is correctly attributed to Bridgman.

It has already been pointed out that there is at least one reason in the date of the MS. itself for doubting this attribution. If the Editor of Gouldsbrough's reports may be trusted Bridgman was certainly not the reporter. For that editor says that his book was printed from a collection of reports made by Gouldsbrough, a prothonotary of the time to which they relate, and that it was printed from Gouldsbrough's own MS. The MS. in the Society's possession

was certainly not written by Gouldsbrough's hand but it was as certainly copied from the same original as that from which Gouldsbrough's reports were printed. A circumstance which lends further colour to this doubt is that the front page of the MS. is inscribed in the left hand corner of fo. No. 1 thus:—

~~Brookesrep~~
BRIDGM.REP

Thus Brookes (which may mean Brock) was originally inserted as the name of the reporter, the name of Bridgman being substituted later. Upon the whole the association of Bridgman's name with the work seems very much open to question.

The MS. as I have said, is a copy and six distinct hands may be traced in it. The divisions, in my judgment fall as follows:—1 | 20 | 92 | 133 | 162 | 183. The two scribes who wrote the first 90 folios seem to have worked together as their handwritings alternate. But the continuity of the reporting shows that the manuscript is a transcript of a continuous set of C.B. Reports divided up for the purpose of transcription only. It is unquestionable that this manuscript is of very great intrinsic interest and value, for it belongs to that small body of reports which fall within the gap between the Year Books and the old law reports. Few such are known although the period covered is considerable. The Year Books came to an end in the 12 Henry VIII, (1520).

The first of our printed reports, Plowden Commentaries, appeared in 1599. Dyer, Keilway, and the first volume of Coke followed in the year 1601. The controversy which arose over Coke's reports, and which contributed largely to his fall from office, no doubt exercised a deterrent influence upon the publication of other collections during the lifetime of their authors, and the commotion of Charles I's reign was certainly not favourable to this form of literature. Moreover a strict censorship exercised by the Star Chamber over the printing of books, and of law books in particular, tended to

restrict the supply. For these reasons the reigns of James I, and Charles I saw the production of Law Reports at its lowest ebb.

With the triumph of Parliament in the Civil War the authority of the Star Chamber came to an end and the printing of books took a fresh start. But the production of books of which the Puritans did not approve led the Parliament, as is well known, to set up a new censorship which called forth Milton's *Areopagitica* in the year 1644. The censorship continued until the Rump Parliament was forcibly dissolved by Cromwell. But even before that event the censorship was so enfeebled that it could be defied and in 1648 the first of the unlicensed Law Reports appeared in the shape of March's thin quarto. The next was Godbolt in 1652, the third Gouldsbrough in 1653, and this may, for present purposes, be identified with the Society's MS. It was on the 20th April, 1653, that Cromwell and his musketeers turned Sir Harry Vane and the remnant of the *Long Parliament* out of doors and brought the censorship of the press to an end for the period of the Commonwealth. Then law reports issued in a flood from the Press. Popham, Hutton, Owen, Noy, Hutley, Winch, Lane, three volumes of Bulstrode, two of Croke, two of Levinz and one volume each of Style, Bridgman and Ley, all appeared during the Protectorate and without imprimatur; for under the Protector's rule, Milton's view about the freedom of the press prevailed. A few of the cases contained in this MS. appeared in print in one or other of these unlicensed books, the great majority in Gouldsbrough's collection. Inasmuch as the appearance of the Gouldsbrough volume coincided in date with the abolition of the Parliamentary Censorship, this volume stands in the very front rank of unlicensed Law Reports.

For these reasons a great interest attaches to this document, and that interest is heightened by the circumstance that the manuscript not only contains some unprinted cases

but also some unprinted memoranda of even greater interest than the cases. Several of these memoranda are collected at the end of the report of the term Hill. 29 Eliz., and the beginning of the ensuing term.

The most interesting of these memoranda is one which relates to the beheading of Mary, Queen of Scots. This is exhibited, accompanied by a translation, in the Library of the Inn. I have been asked to transcribe the original text and it follows here with its abbreviations extended.

Le report del	Memorandum que en cest terme de S.
mort de Roigne	Hill. Anno 29 Eliz. le merkredie esteant le
del Escoce.	huite jour de February Marye nadgarres
	roigne de Scoce al castell de Foderinghey
en le countie de Northampton	fuit decolle and mist al
condigne mort por divers treasons tres cruell practises and	hey nous conspiraces encounter le tres reverend roigne Eliza-
bethe et tout le Royalme d'Engleterre solonq le judgment	done et proclamacions accordent—Termino Michis dar-
reine passe por reason del statute de 27 Eliz. Les counties de	Kent et Shrewsburye fuerent al execution et pluisors auters
chevallers. Her heade being cutt of was white and polled	like the heade of a boye savinge twolockes, at either eare one.
Issint el devie que fuit un roigne tres honorable estate et	un foits cy grand princesse com ascun en tout Christendome
car e avoit le Corone de Escoce per discent et fuit Royne	de Fraunce par mariadg mes murder require mort cy ben
en le haute come en le base et ce que el indignement done al	auters por sa demerites fuit done a lui car 20 ans devant le
10 jour de February el avoit cause sa baron detre murders	en Escoce. Le jouesdaye apres sa mort tous les bells en
Londres fueront ronge et bonfires fait ove graunde rejoycing	./.:/:./.:/:

(I do not understand the last symbol—which I have copied—It resembles the shorthand sign for a sum of money which was in use in the MS. accounts of this date. I should think that it is probably used here as a signature by the writer of the note.

The following is a transcript of the translation in the Library of the Middle Temple:—

“The report of the death of the Queen of Scotland. Memorandum, that in this term of St. Hilary, anno 29 Eliz., on the Wednesday before the 8th day of February, Mary, late queen of Scotland in the castle of Foderinghay in the county of Northampton, was beheaded and put to condign death for divers treasons, very cruel practices, and heinous conspiracies against the very reverend queen Elizabeth, and all the realm of England, according to the judgment given and proclamations according in the term of Michaelmas last past, by reason of the Statute of 27 Elizabeth. The earls of Kent and Shrewsbury were at the execution and many other Knights. ‘Her heade being cutt of, was white and polled like the head of a boye, savinge two lockes, at either eare one.’ Thus she ended, who was esteemed a very honourable queen, and once as great a princess as any in all Christendom, for she had the crown of Scotland by descent, and was queen of France by marriage; but murder demands death, as well in the high as in the low; and what she unjustly gave to others, for her demerits was given to her. For 20 years before, on the 10th day of February, she had caused her husband to be murdered in Scotland. On the Thursday after her death, all the bells in London were rung, and bonfires made with great rejoicings.”

The reading ‘esteant le huitte jour de February’ instead of ‘devant le huitte jour’ &c., is doubtful; but as the 8th of February, 1587, was a Wednesday, the reading ‘esteant’ seems preferable. Consequently the translation should appear as “being,” instead of “before the 8th day of February.”—Ed.

On the dorse of the folio (33) containing the foregoing note there are the following, which I reproduce in translation.

“Note that this term of St. Hillary ended the 13th day of February being Monday because the 12th day was day of Sabbath and so last day of the term of St. Hillary was not the 12th day of February as the rule is.

The morrow after the end of the term-day in the Star Chamber and at this term it came about that the Chancellor and Treasurer were indisposed and there was no Lord Privy Seal so there was no day in the Star Chamber beyond that last day. And then the motions were taken before Lord Anderson, Chief Justice of the Common Bench and in his accustomed place and there were present the Archbishop of Canterbury, the Earl of Derby, the Lord Admiral, the Lord Buckhurst, Sir Christopher Hatton, Vice Chamberlain of the Queen and Chancellor of the Exchequer, the Master of the Rolls together with the Justices of the Common Bench and one of the JJ. of the King’s Bench. Quod nota that it was a day in Court non obstante the absence of the Chancellor, Treasurer and Privy Seal. Vide 8 fo. 13 the last case entered that year.

Memorandum that the day of the same April this 29th year of Elizabeth Sir Thomas Bromley, Lord Chancellor of England who was

of the Inner Temple died on the morning of the same day. The second day of May following he was interred at Westminster with great honour and solemnity."

The whole of this term is omitted from Gouldsbrough's book and these notes, therefore, have never yet been printed. The notes of the next term, Easter 29 Eliz., begin with an account of the assumption by Sir Christopher Hatton of his office of Lord Chancellor and as Gouldsbrough has printed the proceedings of that term the incident is duly reported in the same position which it occupies in the MS. It is printed at p. 36 of Gouldsbrough's Reports and need not therefore be reproduced here. There is one inconsiderable variation inasmuch as in Gouldsbrough Sir Christopher Hatton is described not only as late Vice-Chamberlain to the Queen but also as Captain of the Guard.

Another memorandum of the same kind occurs at fo. 83 (dorse) of the MS. and is inserted in the beginning of the proceedings of the Term Hill, 31 Eliz. It reads as follows:—

After the end of the last term and before the beginning of this term Rodes the puisne Justice of the C.B. died in his (own) country so there were only 3 Justices on the Bench.

Following upon that is the following paragraph:—

"One Osberton, an Attorney of the Bench, had before this time committed divers false practices in his office and now recently he had forged a supersedees (de lui meme) for stay of execution upon a writ of error by reason of which the defendant made an estrepment and for this falsety by judgment of the Court he was committed to the Fleet and sworn upon a (Cujus?) by Nelson, chief protonotary that he should never afterwards practice in this court nor any other Court in England and then he was put beyond the bar where the serjeants stood and after led round the hall by two tipstuffs. And Anderson said that so it was in ancient times and if he had not been a "pour knave" he would have been fined up to £500.

The next paragraph opens the report of a quare impedit and in doing so introduces an interesting item of news very casually with the sentence

"Shuttleworth who was made serjeant to the Queen in the place of Gawdy" etc.,

The appointment of Serjeants receives more formal notice in the opening paragraph of the report on fo. 119 (not dated).

This notice is of very special interest and reads as follows:—

Memo^m that on the quindene of S. Mich., on the fourth day, 8 new serjeants were sworn in the Chamber and the Tuesday following they came into the Common Bench with all solemnities and ceremonies, and the same day they took their seats at the south of the Middle Temple their names were in seniority Yelverton of Grey Inn, Bemond and Drewe of the Inner Temple, Hunham and Hains of the Middle Temple an Glawith of Lincn's Inn.

There are here several noteworthy points:—

1. It is to be observed that six serjeants are mentioned by name. Five of these are enumerated in Pulling's list in which are included two other names, Pro. Cooper and Thos. Owen, assigned to the year 1589 making up the number eight noted here. The omitted name is Yelverton. Now three Yelvertons are mentioned in Pulling's list, one, Christopher, being called in 1586. It seems possible that a printer's error has substituted the date 1586 for 1589.

2. The references to the ceremonies of the call are of special interest because of the allusion to the taking of seats in the Hall of the Middle Temple. This is, presumably, on the occasion of the Serjeant's Feast. Speaking of this feast, Pulling says that in early times it was a great occasion held usually at Ely House, Lambeth Palace or St. John's Priory, and intimates that at that time neither the Serjeant's Hall nor any of the Halls of the Inns of Court was large enough to afford the necessary accommodation. At one period it seems that the City was accustomed to lend its gold plate to grace the occasion. But, naturally, fashion changed in the course of years and in Elizabeth's days it was much shorn of glory. Pulling says that reports of only two feasts subsequent to the 16th century have been preserved and that one of them was given at the Middle Temple Hall (? in 1735). This entry in the Society's MS. would seem to add a third occasion and it is to be noted that the somewhat perfunctory reference seems

to indicate that the ceremony at this time usually took place in the Middle Temple Hall. If it had been a merely occasional occurrence it would have been more natural, even necessary, for the Chronicler to explain that he referred to a Serjeant's feast held for the nonce in the Middle Temple Hall. The fact that a mere mention of the Middle Temple Hall in this connexion connoted the Serjeant's Feast—if I am right in supposing that it did—would seem to argue that at this period the hospitality of the Middle Temple was regularly extended to the Serjeants for such occasions. I gather from *Pulling's narrative that this is an incident in the history of the Middle Temple of which no other known memorial is preserved.*

A circumstance which has only a casual connexion with this discussion is that my eye has been caught by the following sentence in Wynne's reference to the call of Jno. Bridgman to the degree of Serjeant at Law *John Bridgman 22 Sept. Festum in aula Medii Templi* (see Wynne *Law Tracts* p. 297). This occurred in the year 1623, and is, therefore, a third recorded instance of the use of the Middle Temple Hall for this purpose.

There is yet another interesting passage which I have observed in glancing through this MS.

On fo. 5 (dorse) there is a full report of the case of Knight v. Breache. This case is printed at p. 15 of Gouldsborough's reports but in a very abridged form. In the MS. it opens with what I take to be a series of extracts from the Common Pleas Roll of a Fine levied between Plaintiff and Defendant. The whole of this matter of record is omitted by Gouldsborough and for obvious reasons. It is matter, of course, and would be manifestly out of place in a printed report of the legal points of the case. It belongs to what the Elizabethan lawyers called "entries" and what we call "Seton." But it was, no doubt, preserved as "profitable" matter by the compiler of these notes and is of interest to a modern reader because it introduces Jno. Doe and Richard Roe in the real

life of an actual report and furnishes all those fascinating details about the working of this ingenious mode of making a conveyance which do not survive in the works of historians and textbook writers. The passage is much too long to be transcribed here and to transcribe it will be a formidable task even when it is undertaken at leisure for the passage has been written in the most illegible handwriting which has been admitted to this work. A reference to it is all the service therefore which I am able at this time to offer to my readers.

On fo. 141, at the beginning of Easter Term 37 Eliz. the death is reported of Shute, the second Justice of the Bench, and the appointment of Serjeant Fenner in his room.

It is now, I hope, evident that the document is of great interest. The Selden Society has shewn how much light upon the legal and general history of England is to be derived from the Year Books, but certainly no Year Book could at all compare in interest with this volume. The Year Books grow in interest for the student with the years and this volume which carries on the Year Book traditions is more illuminating than any of them. Moreover it sheds light on "the spacious days of great Elizabeth" and is an indispensable link in the chain of English Law Reports.
