Erskine May, Chapter IV, pp. 262-272

Powers of the King over the Royal Family— The Royal Marriage Act

Such being the pecuniary relations of the crown and royal family to Parliament, let us take a brief review of the relations of the royal family to the reigning sovereign.

Among the prerogatives of the crown is that of a more than parental authority over the royal family; and, in 1772, the king sought the aid of Parliament for the enlargement of his powers. The Duke of Gloucester had been married for several years to the Countess Dowager of Waldegrave; but had not publicly acknowledged her as his consort, nor had she assumed his title. At court she was neither recognised as his wife, nor discountenanced as his mistress: but held an equivocal position between these two characters.

But in the autumn of 1771, another of the king's brothers, the Duke of Cumberland, announced to the king his marriage with Mrs. Horton, whom he at once called Duchess of Cumberland. By a singular coincidence, his bride was a daughter of Lord Irnham, and a sister of the famous Colonel Luttrell, whom the court party had put into Wilkes's seat for Middlesex. The mortification of the king, was only to be equalled by the malicious triumph of Wilkes. The family which had been made the instrument of his oppression, had [263] now brought shame upon the king.(1) The Duke and Duchess were not only forbidden to appear at court themselves: but their society was interdicted to all who desired to be admitted to the palace. At first the king was not without hope that the validity of the marriage might be questioned. It had been solemnised without the usual formalities prescribed by law, but the royal family had been excepted from Lord Hardwicke's Marriage Act, by the express command of George II., who would not allow restraints, intended only for his subjects, to be imposed upon his own family. Such restraints might now have postponed, or even prevented, this hateful marriage. The alliance of the Duke of Cumberland with a subject was followed by the public avowal of his marriage by the Duke of Gloucester, whose wife's position would have been seriously compromised by any longer concealment.

The king was now resolved to impose such restrictions upon future marriages in his own family, as had never been contemplated for his subjects. And, in truth, if alliances with persons not of royal blood were to be prevented, the king and his brothers had given proof enough of the dangers to which princes are exposed. In his youth the king had been himself in love with Lady Sarah Lennox:(2) the Duke [264] of York had been attached to Lady Mary Coke; and now his Majesty was deploring the marriages of his brothers.

The prerogative claimed by the crown, in matters concerning the royal family, was already considerable. In 1718, King George I., when in open enmity with his son, the Prince of Wales, maintained that he had power, by virtue of his prerogative, to direct the education of his grandchildren, and even to dispose of them in marriage, to the exclusion of the parental authority of the prince. A question was submitted to the judges; and ten out of the twelve, led by Lord Chief Justice Parker, afterwards Lord Macclesfield, decided in favour of the king's claim. Even the two dissentient judges, who were of opinion that the education of the king's grandchildren belonged to their father, yet held 'that the care and approbation of their marriages, when grown up, belong to the king of this realm.'

The Royal Marriage Act 1772

[Note: The text of the Act as passed is here]

It was now proposed to enlarge this prerogative, and extend the king's powers, by the authority of the law. On the 20th of February 1772, a message from the king was delivered to both houses of Parliament, stating that he was desirous, 'that the right of approving all marriages in the royal family (which ever has belonged to the kings of this realm, as a matter of public concern) may be made effectual;' and recommending to their [265] consideration the expediency of guarding 'the descendants of his late Majesty George II.' (other than the issue of princesses married into foreign families), from marrying without the approbation of the king.

On the following day, the Royal Marriage Bill was presented to the House of Lords. The preamble affirmed the prerogative, as claimed in the message, to its fullest extent, and the wisdom and expediency of the king's recommendation. The bill provided that no descendant of George II. (except the issue of princesses married into foreign families) should be capable of contracting matrimony, without the king's previous consent, signified under his sign-manual, and declared in council; and that any marriage contracted without such consent, should be null and void.

There was a proviso, however,—which it seems had not been contemplated when the message was delivered,—enabling members of the royal family, above twenty-five years of age, to marry without the king's consent, after having given twelve months' previous notice to the Privy Council, unless in the meantime both Houses of Parliament should signify their disapprobation of the marriage. This concession, it is said, was caused by the resignation of Mr. Fox, who intended to oppose the measure, and by the disapprobation of some of the advisers of the crown. It was also provided that any person solemnising, or assisting, or being present at the [266] celebration of such prohibited marriages, should incur the penalties of praemunire.

This was unquestionably the king's own measure, and was reluctantly adopted by his ministers. His views of prerogative were exalted; and in his own family, at least, he was resolved that his authority should be supreme. The absolute control which he now sought for, over members of his family of full age, was not a little startling. First, as to his claim of prerogative. Had it ever yet been asserted to the same extent? It had been recognised by the 'grand opinion'—as it was called—of the judges in 1718, so far as regarded the king's grandchildren, but no farther; and it is impossible to read the arguments of the judges in that case, without being impressed with the slender grounds, strained constructions of law and precedent, and far-fetched views of expediency, upon which their conclusion was founded. As a matter of state policy, it may be necessary that the king should be empowered to negotiate alliances for the royal family, and for that purpose should have more than parental authority. But the present claim extended to brothers, of whatever age, to uncles, and to cousins. So comprehensive a claim could not be at once admitted. This question, therefore, was put to the judges: 'is the king entrusted by law with the care and approbation of the marriage of the descendants of his late Majesty George II., other than his present Majesty's own children, during their minorities?' As this question extended to all descendants of George II., whether within this kingdom or not, nine judges [267] unanimously answered it in the negative; and to another question, more restricted, they replied, 'that the care and approbation of the marriages of the king's children and grandchildren, and of the presumptive heir to the crown (other than the issue of princesses married into foreign families), do belong to the kings of this realm: but to what other branches of the royal family such care and approbation extend, we do not find precisely determined.' It was plain that the bill declared the prerogative to be much more extensive than that allowed by the judges. Yet in spite of their opinion, the lord chancellor, Lord Apsley, with an effrontery worthy of Lord Thurlow, said that, 'he would defend every clause, every sentence, every word, every syllable, and every letter' in the bill; and 'would not

consent to any amendment whatsoever!' The prerogative, he asserted, was founded in its 'importance to the state.;' an argument which might be extended to any other power claimed by the crown, on the same ground.

The arbitrary character of the bill was conspicuous. It might be reasonable to prescribe certain rules for the marriage of the royal family: as that they should not marry a subject,—a Roman Catholic,—or the member of any royal house at war with this country, without the consent of the king: but to prescribe no rule at all save the absolute will of the king himself, was a violation of all sound principles of legislation. Again, to extend the [268] minority of princes and princesses to twenty-five created a harsh exception to the general law, in regard to marriages.(3) The prohibition of a marriage might continue until the age of twenty-six ; and required nothing but the vote of a Parliament subservient to the crown, to render it perpetual; and this not by virtue of any general principle of law—human or divine,—but by the arbitrary will of a superior power.

But the personal will of the king triumphed over all opposition, whether of argument or numbers; and he was implacable against those who opposed it.(4) The bill was passed rapidly through the House of Lords, though not without one protest, signed by fourteen peers, and another signed by seven, in which the most material objections to the measure were concisely expressed. In the Commons the bill met with a more strenuous and protracted opposition:—the Lords' Journals were searched for the opinion of the judges,—and the most serious arguments against the measure were ably and learnedly discussed. But [269] it was still carried with a high hand. The doors of the House were closed against all strangers,—peers in vain sought admission below the bar,—and the government even went so far as to refuse the printing of the bill, and supported their refusal by a large majority. No amendment was suffered to be made, except one of pedantic form, suggested by the speaker, that the king's consent to a marriage should be signified under the great seal; and on the 24th March the bill was passed. Attempts have since been made, without success, to repeal this law,(5) and to evade its provisions; but it has been inflexibly maintained.

Secret Marriage of the Prince of Wales.

In 1785, the Prince of Wales contracted a clandestine marriage with Mrs. Fitzherbert, a Roman Catholic. His marriage being without the king's consent and consequently invalid, the princely libertine ventured to satisfy the fair lady's scruples, and to indulge his own passions; while he was released from the sacred obligations of the marriage tie, and saved from the forfeiture of his succession to the crown, which would have been the legal consequence of a valid marriage with a Roman Catholic. Even his pretended marriage, though void in law, would have raised embarrassing doubts and discussions concerning the penal provisions of the Bill of Rights; and, if confessed, would undoubtedly have exposed him to obloquy and discredit. The prince, therefore, denied the fact of his marriage; and made his best friend [270] the unconscious instrument of this falsehood and deception.(6)

Marriages of the Duke of Sussex.

The Duke of Sussex was twice married without the consent of the crown: first, in 1793, to Lady Augusta Murray; and, later in life, to Lady Cecilia Underwood. His first marriage having been solemnised abroad, a question was raised whether it was rendered invalid by the Royal Marriage Act. It was again celebrated in England, where it was unquestionably illegal

The king immediately directed a suit of nullity of marriage to be commenced by his proctor, and it was adjudged by the Court of Arches, that the marriage was absolutely null and void.(7)

In 1831, the law officers of the crown were consulted by the government as to the validity of this marriage; and their opinions confirmed the judgment of the Court of Arches. On the death

of the Duke of Sussex in 1843, Sir Augustus D'Este, the son of his Royal Highness by this marriage, claimed the dukedom and other honours of his father. The marriage had been solemnised at Rome in 1793, according to the rights of the Church of England, by a clergyman of that establishment, and would have [271] been a valid contract between British subjects but for the restrictions of the Royal Marriage Act; and it was contended before the House of Lords, that the operation of that Act not be extended beyond the British dominions. But it was the unanimous opinion of the judges,—in which the House of Lords concurred,—that the prohibition of the statute was personal, and followed the persons to whom it applied, out of the realm, and beyond the British jurisdiction. It was accordingly decided that the claimant had not made out his claim.(8)

Education of Princess Charlotte, 1804.

The prerogative of the king to direct the education of his grandchildren, which had been established in 1718, was again asserted in 1804. The king claimed the guardianship of the Princess Char1otte; and the Prince of Wales, her father, perplexed with divided councils, was long in doubt whether he should concede or contest the right.(9) At length, he appears to have agreed that the king should have the direction of the princess's education. The understanding not being very precise, a misapprehension arose as to its conditions ;and it was said that the prince had withdrawn from his engagement. But Mr. Pitt ultimately [272] arranged this difference by obtaining the removal of the princess to Windsor, without excluding the prince from a share in the control of her education

Footnotes.

1. Walpole says, 'Could punishment be more severe than to be thus scourged by their own instrument ? And how singular the fate of Wilkes, that new revenge always presented itself to him when he was sunk to the lowest ebb!'—Mem., iv. 356.
2. Mr. Grenville relates in his Diary, that the king actually proposed to marry her, and that her engagement with Lord Newbottle was consequently broken off: but she broke her leg while out riding, and during her absence the match was prevented, by representations that she continued her intercourse with Lord Newbottle.—Grenv. Papers, iv. 209.
3. A squib appeared in answer to the objection that a prince might ascend the throne at eighteen, yet might not marry till twenty-five:

   'Quoth Tom to Dick,—"Thou art a fool,
   And little know'st of life
   Alas! 'tis easier far to rule
   A kingdom, than a wife."'—Parl. Hist. xvii. 407.

4. Fox's Mem., i. 75. Lord Chatham said of the Bill, 'the doctrine of the Royal Marriage Bill is certainly new-fangled and impudent, and the extent of the powers given wanton and tyrannical.'—Letter to Lord Shelburne, April 3rd, 1772, Corr., iv. 203. Horace Walpole said, 'Never was an Act passed against which so much and for which so little was said.'—Fox's Mem., i. 81. See also Walpole's Journ., i. 28-74.
5. By Lord Holland, in 1820; Hansard's Debates, New Ser., i. 1099.
6. Parl. Hist., xxvi. 1070. See an excellent letter from Mr. Fox to the Prince, Dec. 10th, 1786, dissuading his Royal Highness from the marriage.—Fox's Mem., ii, 278, 284, 287. The prince confessed his marriage to Lord Grey; Ibid., 289. Lord J. Russell's Life of Fox, ii. 177, et seq. Lord Holland's Mem. of the Whig Party, ii. 123-142, 148. Langdale's Mem. of Mrs. Fitzherbert. The general incidents of this discreditable marriage do not fall within the design of this work: but a most animated and graphic

narrative of them will be found in Mr. Massey's History, vol. iii. 316-331.

7. Heseltine v. Lady A. Murray, 2 Addam's Reports, ii. 400; Burn's Eccl. Law, ii. 433; Ann. Reg. 1794, p. 23.
8. Clark and Finnelly's Reports. xi. 86-164.
9. Lord Malmesbury says: 'The two factions pulled the prince different ways; Ladies Moira, Hutchinson, and Mrs. Fitzherbert, were for his ceding the child to the king: the Duke of Clarence and Devonshire House most violent against it, and the prince ever inclined to the faction he saw last. In the Devonshire House Cabal, Lady Melbourne and Mrs. Fox act conspicuous parts, so that the alternative for our future queen seems to be whether Mrs. Fox or Mrs. Fitzherbert shall have the ascendency.'—Malm. Diar., iv. 343.

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