Erskine May, Vol. III, Chapter XIII, pp. 146-156

The Catholic Claims to 1828

[146] The mantle of Mr. Grattan descended upon a fellow-countryman of rare eloquence and ability,—Mr. Plunket, who had already distinguished himself in the same cause. His first efforts were of happy augury. In February 1821, in a speech replete with learning, argument and eloquence, he introduced the familiar motion for a committee on the Roman Catholic oaths, which was carried by a majority of six. His bill, founded upon the resolutions of this committee, provided for the abrogation of the declarations against transubstantiation and the invocation of saints, and a legal interpretation of the oath of supremacy, in a sense not obnoxious to the consciences of Catholics. On the 16th of March the bill, after an animated debate, illustrated by one of Mr. Canning's happiest efforts, and generally characterised by moderation, was read a second time, by a majority of eleven. In committee, provisions were introduced to regulate the relations of the Roman Catholic church with the state, and with the see of Rome. And at length, on the 2nd of April, the bill was read a third time, and passed by a majority of nineteen. The fate of this measure, thus far successful, was soon determined in the House of Lords. The Duke of York stood forth as its foremost opponent, saying that 'his opposition to the bill arose from principles which he had embraced ever since be had been able to judge for himself, and [147] which he hoped he should cherish to the last day of his life.' After a debate of two days, the second reading of the bill was refused by a majority of thirty-nine.

Catholic Peers Bill 1822

Before the next session, Ireland was nearly in a state of revolt; and the attention of Parliament was first occupied with urgent measures of repression,—an Insurrection Bill, and the suspension of the Habeas Corpus Act. The Catholic question was now presented in a modified and exceptional form. A general measure of relief having failed again and again, it occurred to Mr. Canning that there were special circumstances affecting the disqualification of Catholic peers, which made it advisable to single out their case for legislation. And accordingly, in a masterly speech,—at once learned, argumentative, and eloquent,—he moved for a bill to relieve Roman Catholic peers from their disability to sit and vote in the House of Lords. Peers had been specially exempted from taking Queen Elizabeth's oath of supremacy, because the queen was 'otherwise sufficiently assured of the faith and loyalty of the temporal lords of her high court of parliament.'(1) The Catholics of that order had, therefore, continued to exercise their right of sitting in the Upper House unquestioned, until the evil times of Titus Oates. The Act of 30 Charles II. was passed in the very paroxysm of excitement, [148] which marked that period. It had been chiefly directed against the Duke of York, who had escaped from its provisions; and was forced upon the Lords by the earnestness and menaces of the Commons. Eighteen Catholic peers had been excluded by it, of whom five were under arrest on charges of treason; and one, Lord Stafford, was attainted,—in the judgment of history and posterity, unjustly. 'It was passed under the same delusion, was forced through the House of Lords with the same impulse, as it were, which brought Lord Stafford to the block.' It was only intended as a temporary Act; and with that understanding was assented to by the king, as being 'thought fitting at that time.' Yet it had been suffered to continue ever since, and to deprive the innocent descendants of those peers of their right of inheritance. The Act of 1791 had already restored to Catholic peers their privilege of advising the crown, as hereditary councillors, of which the Act of Charles II. had also deprived them; and it was now sought to replace them in their seats in Parliament. In referring to the recent coronation, to which the Catholic peers had been

invited, for the first time for upwards of 130 years, he pictured, in the most glowing eloquence, the contrast between their lofty position in that ceremony, and their humiliation in the senate, where 'he who headed the procession of the peers to-day, could not sit among them as their equal on the morrow.' Other Catholics might never be returned to Parliament. but the peer had the inherent hereditary right to sit with his peers; and yet was personally and [149] invidiously excluded on account of his religion. Mr. Canning was opposed by Mr. Peel, in an able and temperate argument, and supported by the accustomed power and eloquence of Mr. Plunket. It was obvious that his success would carry the outworks,—if not the very citadel,—of the Catholic question; yet he obtained leave to bring in his bill by a majority of five.

He carried the second reading by a majority of twelve; after which he was permitted, by the liberality of Mr. Peel, to pass the bill through its other stages, without opposition. But the Lords were still inexorable. Their stout Protestantism was not to be beguiled even by sympathy for their own order; and they refused a second reading to the bill, by a majority of forty-two.

The Position in 1823

After so many disappointments, the Catholics were losing patience and temper. Their cause was supported by the most eminent members of the government; yet it was invariably defeated and lost. Neither argument nor numbers availed it. Mr. Canning was secretary of state for foreign affairs, and leader of the House of Commons; and Mr. Plunket attorney-general for Ireland. But it was felt that so long as Catholic emancipation continued to be an open question, there would be eloquent debates, and sometimes a promising division, but no substantial redress. In the House of Commons, one secretary of state was [150] opposed to the other; and in the House of Lords, the premier and the chancellor were the foremost opponents of every measure of relief. The majority of the cabinet, and the great body of the ministerial party, in both Houses, were adverse to the cause.

This irritation burst forth on the presentation of petitions, before a motion of Mr. Plunket's. Sir Francis Burdett first gave expression to it. He deprecated 'the annual farce,' which trifled with the feelings of the people of Ireland. He would not assist at its performance. The Catholics would obtain no redress, until the government were united in opinion as to its necessity. An angry debate ensued, and a fierce passage of arms between Mr. Brougham and Mr. Canning. At length, Mr. Plunket rose to make his motion; when Sir Francis Burdett, accompanied by Mr. Hobhouse, Mr. Grey Bennet, and several other members of the opposition, left the House. Under these discouragements Mr. Plunket proceeded with his motion. At the conclusion of his speech, the House becoming impatient, refused to give any other members a fair hearing; and after several divisions, ultimately agreed, by a majority of upwards of two hundred, to an adjournment of the House. This result, however unfavourable to the immediate issue of the Catholic question, was yet a significant warning that so important a measure could not much longer be discussed as an open question.

A smaller measure of relief was next tried in vain. [151] Lord Nugent sought to extend to English Catholics the elective franchise, the commission of the peace, and other offices to which Catholics in Ireland were admissible, by the Act of 1793. Mr. Peel assented to the justice and moderation of this proposal. The bill was afterwards divided into two,—the one relating to the elective franchise,—and the other to the magistracy and corporate offices. In this shape they were agreed to by the Commons, but both miscarried in the House of Lords. In the following year, they were revived in the House of Lords by Lord Lansdowne, with no better success, though supported by five cabinet ministers.

Marriage Law Amendment

Ineffectual attempts were also made, at this period, to amend the law of marriage, by which

Catholics and dissenters were alike aggrieved. In 1819, and again in 1822, Mr. William Smith presented the case of dissenters, and particularly of Unitarians. Prior to Lord Hardwicke's Marriage Act, dissenters were allowed to be married in their own places of worship: but under that Act the marriages of all but Jews and Quakers were required to be solemnised in church, by ministers of the establishment, and according to its ritual. At that time the Unitarians were a small sect; and had not a single [152] place of worship. Having since prospered and multiplied, they prayed that they might be married in their own way. They were contented, however, with the omission from the marriage service of passages relating to the Trinity; and Mr. Smith did not venture to propose a more rational and complete relief,—the marriage of dissenters in their own chapels.

In 1823, the Marquess of Lansdowne proposed a more comprehensive measure, embracing Roman Catholics as well as dissenters, and permitting the solemnisation of their marriages in their own places of worship. The chancellor, boasting 'that he took as just a view of toleration as any noble Lord in that House could do,' yet protested against 'such mighty changes in the law of marriage.' The Archbishop of Canterbury regarded the measure in a more liberal spirit; and merely objected to any change in the church service, which had been suggested by Lord Liverpool. The second reading of the bill was refused by a majority of six.

In the following session, relief to Unitarians was again sought, in another form. Lord Lansdowne introduced a bill enabling Unitarians to be married in their own places of worship, after publications of bans in church, and payment of the church fees. This proposal received the support of the Archbishop of Canterbury, and the Bishop of London: but the chancellor, more sensitive in his orthodoxy, [153] denounced it as 'tending to dishonour and degrade the church of England.' To the Unitarians he gave just offence, by expressing a doubt whether they were not still liable to punishment, at common law, for denying the doctrine of the Trinity. The bill passed the second reading by a small majority: but was afterwards lost on going into committee, by a majority of thirty-nine.(2)

Dr. Phillimore, with no better success, brought in another bill to permit the solemnisation of marriages between Catholics, by their own priests,—still retaining the publication of bans or licences, and the payment of fees to the Protestant clergyman. Such a change in the law was particularly desirable in the case of Catholics, on grounds distinct from toleration. In the poorer parishes, large numbers were married by their own priests: their marriages were illegal, and their children, being illegitimate, were chargeable on the parishes in which they were born. This marriage law was even more repugnant to principles of toleration than the code of civil disabilities. It treated every British subject,—whatever his faith,—as a member of the Church of England,—ignored all religious differences; and imposed, with rigorous uniformity, upon all communions alike, the altar, [154] the ritual, the ceremonies, and the priesthood of the state. And under what penalties?—celibacy, or concubinage and sin!

Three years later, Mr. W. Smith renewed his measure, in a new form. It permitted Unitarian dissenters, after the publication of bans, to be married before a magistrate,—thus reviving the principle of a civil contract, which had existed before Lord Hardwicke's Act of 1752. This bill passed the Commons: but failed in the Lords, by reason of the approaching prorogation. And here the revision of the law of marriage was left to await a more favourable opportunity.(3)

Developments in 1824-5

In 1824, Lord Lansdowne vainly endeavoured to obtain for English Catholics the elective franchise, the right to serve as justices of the peace, and to hold offices in the revenue. But in the same year Parliament agreed to one act of courtly acknowledgment to a distinguished Catholic peer. An Act was passed, not without opposition, to enable the Duke of Norfolk to execute his hereditary office of Earl Marshal, without taking the oath of supremacy, or subscribing the declarations against transubstantiation and the invocation of saints.(4)

Meanwhile, the repeated failures of the Catholic cause had aroused a dangerous spirit of discontent in Ireland. The Catholic leaders, [155] despairing of success over majorities unconvinced and unyielding, were appealing to the excited passions of the people; and threatened to extort from the fears of Parliament what they had vainly sought from its justice. To secure the peace of Ireland, the legislature was called upon, in 1825, to dissolve the Catholic Association:(5) but it was too late to check the progress of the Catholic cause itself by measures of repression; and ministers disclaimed any such intention.

While this measure was still before Parliament, the discussion of the Catholic question was revived, on the motion of Sir Francis Burdett, with unusual spirit and effect. After debates of extraordinary interest, in which many members avowed their conversion to the Catholic cause, a bill was passed by the Commons, framing a new oath in lieu of the oath of supremacy, as a qualification for office; and regulating the intercourse of Roman Catholic subjects, in Ireland, with the see of Rome. On reaching the House of Lords, however, this bill met the same fate as its predecessors; the second reading being refused by a majority of forty-eight.

With a view to make the Catholic Relief Bill more acceptable, and at the same time to remove a great electoral abuse, Mr. Littleton had introduced a measure for regulating [156] the elective franchise in Ireland. Respecting vested interests, he proposed to raise the qualification of 40s.freeholders; and to restrain the creation of fictitious voters, who were entirely in the power of their landlords. By some this bill was regarded as an obnoxious measure of disfranchisement: but being supported by several of the steadiest friends of Ireland, and of constitutional rights, its second reading was agreed to. When the Catholic Relief Bill, however, was lost in the House of Lords, this bill was at once abandoned.

In April of this year, Lord Francis Leveson Gower carried a resolution, far more startling to the Protestant party than any measure of enfranchisement. He prevailed upon the Commons to declare the expediency of making provision for the secular Roman Catholic clergy, exercising religious functions in Ireland. It was one of those capricious and inconsequent decisions, into which the Commons were occasionally drawn, in this protracted controversy, and was barren of results.

Footnotes.

1. 5 Eliz. c. 1, s. 17.
2. Hans. Deb., 2nd Ser., xi. 75, 434. Twiss's Life of Eldon, ii.512. Mr. C. Wynn, writing to the Duke of Buckingham, May 6th, 1824, said, 'You will, I am sure, though you doubted the propriety of the Unitarian Marriage Act, regret the triumphant majority of the intolerant party, who boast of it as a display of their strength, and a proof how little any power in the country can cope with them.'—Court and Cabinets of Geo. IV., ii. 72.
3. Infra, p. 188.
4. 5 Geo. IV. c. 109.
5. Supra, Vol. II, 371.

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