Erskine May, Chapter III, pp. 167-175

Regency Legislation of the 1760s

WE have seen the prerogatives of the crown wielded in the plenitude of kingly power. Let us now turn aside for awhile, and view them as they lay inert in the powerless hands of a stricken king.

The melancholy illnesses of George III., at different periods of his reign, involved political considerations of the highest importance,—affecting the prerogatives of the crown, the rights of the royal family, the duties of ministers, and the authority of Parliament.

The king was seized by the first of these attacks in 1766. Though a young man, in the full vigour of life, he exhibited those symptoms of mental disorder, which were afterwards more seriously developed. But the knowledge of this melancholy circumstance was confined to his own family, and personal attendants. This illness, however, had been in other respects so alarming, that it led the king to consider the necessity of providing for a [168] regency, in case of his death. The laws of England recognise no incapacity in the sovereign, by reason of nonage; and have made no provision for the guardianship of a king, or for the government of his kingdom, during. his minority.(1) Yet the common sense of every age has revolted against the anomaly of suffering the country to be practically governed by an infant king. Hence special provision has been made for each occasion, according to the age and consanguinity of the surviving relatives of the minor; and as such provision involves not only the care of an infant, but the government of the realm, the sanction of Parliament has necessarily been required, as well as that of the king.

By the Regency Act of 1751, passed after the death of Frederick Prince of Wales, the Princess Dowager of Wales had been appointed regent, in the event of the demise of George II. before the Prince of Wales, or any other of her children succeeding to the throne, had attained the age of eighteen years. This act also nominated the council of regency: but empowered the king to add four other members to the council, by instruments under his sign manual, to be opened after his death.(2) But this precedent deferred too much to the judgment of Parliament, and left too little to the discretion of the king himself, to be [169] acceptable to George III. He desired to reserve to himself the testamentary disposition of his prerogatives, and to leave nothing to Parliament but the formal recognition of his power.

The original scheme of the regency, as proposed by the king, in 1765, was as strange as some of the incidents connected with its further progress. He had formed it without any communication with his ministers, who consequently received it with distrust, as the work of Lord Bute and the king's friends, of whom they were sensitively jealous. The scheme itself was one to invite suspicion. It was obviously proper, that the appointment of a regent should be expressly made by Parliament. If the king had the nomination, there could be no certainty that any regent would be appointed: he might become incapable, and die intestate, as it were; and this contingency was the more probable, as the king's mind had recently been affected. But his Majesty proposed that Parliament should confer upon him the unconditional right of appointing any person as regent, whom he should select. Mr. Grenville pressed him to name the regent in his speech, but was unable to persuade him to adopt that suggestion. There can be little doubt that the king intended that the queen should be regent; but he was believed to be dying of consumption, and was still supposed to be under the influence of his mother. Hence ministers [170] feared lest the princess might eventually be appointed regent, and Lord Bute admitted to the council of regency. Some even went so far as to conceive the possibility

of Lord Bute's nomination to the regency itself. It was ultimately arranged, however, that the king should nominate the regent, but that his choice should be restricted to the queen and any other person of the royal family usually resident in England, and the scheme of the regency was proposed to Parliament upon that basis.(3)

On the 24th of April, 1766, the king came down to Parliament and made a speech to both Houses, recommending to their consideration the expediency of enabling him to appoint, 'from time to time, by instrument in writing, under his sign-manual, either the queen, or any other person of his royal family, usually residing in Great Britain, to be the guardian of his successor, and the regent of these kingdoms, until such successor shall attain the age of eighteen years,'—subject to restrictions similar to those contained in the Regency Act, 24 Geo. II.,—and of providing for a council of regency. A joint address was immediately agreed upon by both Houses,—ultra-loyal, according to the fashion of the time,—approaching [171] his 'sacred person' with 'reverence,' 'affection,' 'admiration,' and 'gratitude,' scarcely venturing to contemplate the possibility of 'an event which, if it shall please God to permit it, must overwhelm his Majesty's loyal subjects with the bitterest distraction of grief;' and promising to give immediate attention to recommendations which were the result of the king's 'consummate prudence,' 'beneficent intention,' 'salutary designs,' 'princely wisdom,' and 'paternal concern for his people.'

A bill, founded upon the royal speech, was immediately brought into the House of Lords. In the first draft of the bill, the king, following the precedent of 1751, had reserved to himself the right of nominating four members of the council of regency: but on the 29th April, he sent a message to the Lords, desiring that his four brothers and his uncle, the Duke of Cumberland, should be specified in the bill; and reserving to himself the nomination of other persons, in the event of any vacancy.(4) The bill was read a second time on the following day. But first it was asked if the queen was naturalised,—and if not, whether she could lawfully be regent. This question was referred to the judges, who were unanimously of opinion, 'that an alien married to a king of Great [172] Britain is, by operation of the law of the crown (which is a part of the common law), to be deemed a natural-born subject from the time of such marriage; so as not to be disabled by the Act of the 12th William III., or by any other Act, from holding or enjoying any office or place of trust, or from having any grant of lands, etc., from the crown.' Then, suddenly a doubt arose whether the king's mother, the Princess of Wales, was comprehended in the 'royal family' or not. It was suggested that this term applied only to members of the royal family in the line of succession to the crown, and would not extend beyond the descendants of the late king. There can be no question that the king, in his speech, had intended to include the princess; and even the doubt which was afterwards raised, was not shared by all the members of the cabinet,—and by the Lord Chancellor was thought unfounded. Whether it had occurred to those by whom the words had been suggested to the king, is doubtful.

On the 1st May, Lord Lyttleton moved an address, praying the king to name the regent, which was rejected. On the 2nd, the Duke of Richmond moved an amendment in committee, defining the persons capable of the regency to be the queen, the princess dowager, and the descendants of the late king. Strange as it may seem, the ministers resisted this amendment, and it was [173] negatived. The doubt which had thus been raised concerning the Princess of Wales had not been removed, when, on the following day, Lord Halifax and Lord Sandwich had an audience of the king, and represented, that if the Lords should insert the princess's name in the bill, the Commons would strike it out again; and that such an insult might best be avoided by not proposing her name at all. The king was taken by surprise, and either misunderstood the proposal, or failed to show his usual firmness and courage in resisting it. Lord Halifax at once proceeded to the House of Lords, and moved the re-commitment of the bill, according to the alleged wishes of his Majesty, in order to make an amendment, which limited the regency to the queen, and the descendants of the late king, usually resident in

England. Thus, not satisfied with gaining their point, ministers had the cruelty and assurance to make the king himself bear the blame of proposing an affront to his own mother. Well might Horace Walpole exclaim: 'And thus she alone is rendered incapable of the regency, and stigmatised by Act of Parliament!'

The king had no sooner given his consent than he recoiled from its consequences,—complained that he had been betrayed,—and endeavoured to obtain the insertion of his mother's name. He could gain no satisfaction from his ministers:(5) but in the [174] Commons, the friends of the Princess, encouraged by the king himself, took up her cause; and, on the motion of Mr. Morton, Chief Justice of Chester, which was not opposed by the ministers,—her name was inserted in the bill. The king had been assured that the Commons would strike it out: and yet, after the House of Lords had omitted it, on the supposed authority of the king himself, there were only thirty-seven members found to vote against its insertion, while one hundred and sixty-seven voted in its favour; and in this form the bill passed.

Could any lover of mischief,—could Wilkes himself,—have devised more embarrassments and cross purposes, than were caused by this unlucky Regency Bill? Faction and intrigue had done their worst.

The Regency Act(6) provided for the nomination by the king, under his sign-manual, of the queen, the Princess of Wales, or a member of the royal family descended from the late king, to be the guardian of his successor, while under eighteen years of age, and 'Regent of the kingdom,' and to exercise the royal power and prerogatives. His nomination was to be signified by three instruments, separately signed and sealed up, and deposited with the Archbishop of Canterbury, [175] the Lord Chancellor, and the President of the Council. It attached the penalties of praemunire to any one who should open these instruments during the king's life, or afterwards neglect or refuse to produce them before the privy council. It appointed a council of regency, consisting of the king's brothers and his uncle, the Duke of Cumberland, and several great officers of church and state, for the time being. In case any of the king's brothers or his uncle should die, or be appointed regent, it gave the king the power of nominating another person, being a natural born subject, to the council of regency, by instruments in the same form as those appointing the regent. The act also defined the powers of the regent and council. On the demise of his Majesty, the privy council was directed to meet and proclaim his successor.

Footnotes.

1. 'In judgment of law, the king, as king, cannot be said to be a minor; for when the royall bodie politique of the king doth meete with the naturall capacity in one person, the whole bodie shall have the qualitie of the royall politique, which is the greater and more worthy, and wherein is no minoritie.'—Co. Litt., 43.
2. 24 Geo. II. c. 24; Walpole's Mem. Geo. III., ii. c. 102.
3. Lord John Russell says that the ministers 'unwisely introduced the bill without naming the regent, or placing any limit on the king's nomination.' Introd. to 3rd vol. of Bedford Corr., xxxix. This was not precisely the fact, as will he seen from the text; but ministers were equally blameable for not insisting that the queen alone should be the regent.
4. Walpole's Mem., ii. 109; Lords' Journ., xxxi. 162. A memorial by Lord Lyttelton says, 'While the bill was in the House of Lords, the clause naming the king's brothers was concerted, with the Duke of Cumberland, unknown to the ministry till the king sent to them. They, to return the compliment, framed the clause for omitting the princcss dowager, and procured the king's consent to it.'—Rockingham Mem., i. 183.
5. 'The king seemed much agitated, and felt the force of what Mr Grenville said in regard to the different directions given to his servants in the two Houses, but still enforced the

argument of this being moved by the gentlemen of the Opposition. The king was in the utmost degree of agitation and emotion, even to tears.'—Mr. Grenville's Diary, May 5th, 1765; Grenville Papers, iii. 154.

6. 5 George III., c. 27.

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