Erskine May, Chapter III, pp. 216-224

Regency Acts of William IV and Victoria

The Royal Sign Manual Act 1830

[216] Happily there has been no recurrence of circumstances similar to those of 1788 and 1811, but Parliament has since had occasion to provide for the exercise of the royal authority, under other contingencies. From an early period in the reign of George IV., his Majesty's health had excited apprehensions.(1) In 1826, his life was said not to be worth a month's purchase; but it was not until within a few weeks of his death, that he suffered from any incapacity to exercise his royal functions. In 1830, during the last illness of the king, his Majesty found it inconvenient and painful to subscribe with his own hand, the public instruments which required the sign-manual; and accordingly, on the 24th of May, a message was sent to both Houses, desiring that provision should be made for the temporary discharge of this duty. The message was acknowledged by suitable addresses; and a bill was passed rapidly through both Houses, enabling his Majesty to empower by warrant or commission, under his sign-manual, one or more persons to affix. in his presence, and by his command, signified by word of mouth, the royal signature by means of a stamp. In order to prevent the possibility of any abuse of this power, it was provided that the stamp should not be [217] affixed to any instrument, unless a memorandum describing its object had been indorsed upon it, signed by the Lord Chancellor, the President of the Council, the Lord Privy Seal, the First Lord of the Treasury, and the Secretaries of State, or any three of them. The seal was directed to be kept in the custody of one of these officers, and when used, was required to be attested by one or more of them.

The course thus adopted was not without precedent. Henry VIII. had issued a patent, authorising the Archbishop of Canterbury, the Lord Chancellor, and other persons to apply a stamp, bearing the impress of the royal signature, to warrants for the payment of money out of the royal treasury; and had also issued several proclamations and other instruments, on which his sign-manual had been impressed by means of a stamp. His signature to the commission for signifying the royal assent to the bill for the attainder of the Duke of Norfolk had been given by means of a stamp, affixed,—not by his own hand, but by that of a clerk,—and was on that account declared by Parliament to be invalid. Edward VI. had issued two proclamations, to which his signature was affixed by means of a stamp. Queen Mary had issued a proclamation, in the same form, calling for aid to suppress the insurrection of Sir Thomas Wyatt. The same queen had issued a patent, in 1558, stating that in consequence of the great labour which she sustained in the government and defence of the kingdom, she was unable, without much danger and [218] inconvenience, to sign commissions, warrants, and other instruments with her own hand; empowering certain persons to affix a seal in her presence; and declaring that all instruments so sealed should be as valid and effectual in law, as if signed with the hand of the queen. It appears also that King William III., being on the point of death, and no longer able to sign his own name, affixed a stamp to a commission, in presence of the Lord Keeper and the clerks of the Parliament, by which the royal assent was signified to the Bill of Abjuration, and the Malt Duty Bill.

But notwithstanding these precedents,—which proved that in former times the kings of England had been accustomed, by their own authority, to delegate to others the right of affixing their sign manual,—it was now laid down by ministers, and by all legal authorities,

that such a right could not lawfully be conferred, except by the sanction of Parliament. This sanction was readily given in this particular case; but not without warnings that as his Majesty's present indisposition was merely physical, the proceedings then adopted should not hereafter be drawn into a precedent, if the mind of any future king should become affected. In such an event, the power of affixing the royal sign-manual to instruments, would invest the ministers of the day with all the authority of the crown. On more than one occasion, during the late reign, such a power might have been liable to abuse; and it would not again be conferred upon ministers, if there should [219] he any doubt as to the mental capacity of the sovereign.

Regency Act 1831

When William IV. succeeded to the throne, he was nearly sixty-five years of age, and his heiress presumptive was a princess of eleven. It was, therefore, necessary to provide for a regency; but ministers were of opinion that they might safely defer this measure, until after the assembling of a new Parliament. Even this brief delay was represented as hazardous. It was said that if the king should die suddenly, the crown would devolve upon an infant princess,—subject, perhaps, to the claims of a posthumous child of his Majesty. This risk, however, the ministers were prepared to encounter. The law did not recognise the incapacity of an infant king; and, in the event of a sudden demise of the crown before a regent had been appointed, the infant sovereign would be able to give her assent to an act of Parliament, appointing a guardian for herself, and a regent for the kingdom. Henry III., Richard II., and Henry VI., had succeeded to the throne, without any previous parliamentary provision for a regency; and after their accession, Parliament appointed persons to govern the kingdom during their minority.

The lord chancellor said: 'On the accession of an infant to the throne, the same course would be adopted as if the sovereign were of mature years: a declaration, similar to that which many of their [220] lordships had witnessed a few days ago, would be made. The infant would have the power of continuing or changing his ministers, and the same responsibility would exist as at present. And this doctrine of the law was thus explained by Lord Eldon: 'If an infant sovereign were to be on the throne, whose head could not be seen over the integument which covered the head of his noble and learned friend on the woolsack, he would, by what the Scotch called a fiction of law, and by what the English called presumption, in favour of a royal infant, be supposed to have as much sense, knowledge, and experience, as if he had reached the years of three-score and ten.'

This abstract presumption of the law was not denied: but it was argued that to rely upon it in practice, would bring into contempt the prerogatives of the crown, and might be fraught with dangers to the state. An infant sovereign might indeed appoint her own guardian, and a regent of the kingdom: but she would scarcely be more competent to exercise the discriminating judgment of a sovereign, than was George III. when the royal assent was given, in his name, to the Regency Bill, by a phantom commission. That necessary act had struck a blow at royalty: it had shown how Parliament could make laws without a king: it had exhibited the crown as a name, a form, a mere fiction of authority: and to allow a princess of eleven to assent to another act of regency, would be a dangerous repetition of that precedent. But there are other dangers which ought to be averted. It was easy, before the demise of the [221] crown, to nominate a regent who might never be called upon to exercise his power; but to appoint a regent,—possibly from among many claimants,—who would at once assume all the authority of the crown, might be difficult and embarrassing. Still greater would be the embarrassment, if the right of succession should be rendered doubtful, by the prospective claims of an unborn child. An attempt was made, in the Commons, to represent to the king the importance of making immediate provision for a regency: but ministers successfully resisted it; and the question was reserved for the consideration of the new Parliament.

Happily, these dreaded evils were not encountered , and on the meeting of the new Parliament, a well-considered Regency Bill was introduced. By this bill the Duchess of Kent was appointed sole regent, until her Majesty should attain the age of eighteen. Departing from former precedents, it was not proposed that the regent should be controlled by a council. It was said that a regent, for the maintenance of the royal authority, needed the free exercise of the prerogatives of the crown, even more than a king himself. Cases might, indeed, arise in which it would be necessary to control the ambition and influence of a regent, by such a council: but here the regent could never succeed to the throne: her interests were identified with those of the future sovereign, to whom she was united by the tenderest ties; and she could have no object but to uphold, in good faith, the authority of the infant [222] queen. Her Royal Highness would, therefore, be left to administer the government of the country, by means of the responsible ministers of the crown, and to act upon their advice alone.

Possible Claim of a Posthumous Child

Another question of great constitutional delicacy was also wisely dealt with. No precedent was to be found, since the Norman conquest, of any provision having been made for the exercise of the royal prerogatives, between the demise of the crown, and the birth of a posthumous child. The law upon this important question was not settled: but reasoning from the analogy of the law of real property, as well as according to the dictates of common sense, it was clear that an unborn child could not be seised of the crown. There could be no abeyance or vacancy of the crown. The king never dies. The crown must, therefore, devolve at once upon the heir presumptive; and be resigned, if a child should be born, entitled to inherit it. If Parliament interposed, and appointed a regent to administer the government until the birth of a posthumous child, such a regent would not be governing in the name and on behalf of the sovereign, but would be a parliamentary sovereign, created for the occasion, under the title of regent,. And, in the meantime, if no child should be born, the heir presumptive would have been unlawfully deprived of her right to the throne. Upon these sound principles the regency was now to be established. If the king should die during the minority of the Princess Victoria, she was to be proclaimed queen, subject to the rights of any issue of his Majesty, which might afterwards be born of his [223] consort. The Duchess of Kent would at once assume the regency in the name of the infant queen, and on her behalf; and should a posthumous child be born, her Majesty Queen Adelaide would forthwith assume the regency, on behalf of her own child. These principles were accepted by statesmen and lawyers of every party; and the Regency Bill, which had been prepared by the government of the Duke of Wellington, was adopted and passed by the government of Lord Grey.(2) It was a wise provision for contingencies, which fortunately never arose. When King William IV. died, in 1837, after a short but eventful reign, her most gracious Majesty had, less than a month before, completed her eighteenth year; and ascended the throne, surrounded by happy auguries, which have since been fully accomplished.

Regency Acts 1837 and 1840

On the accession of her Majesty, the King of Hanover became heir presumptive to the throne; and as he would probably be resident abroad, it was thought necessary to provide that, in the event of her Majesty's decease, while her successor was out of the realm, the administration of the government should be carried on in his name by lords justices, until his arrival.(3) But the queen's marriage, in 1840, required provision to be made for another contingency, which, though more probable, has, happily not arisen. Following the precedent of 1831, Parliament now provided, that in the event of any child of her Majesty succeeding to the throne before the [224] age of eighteen, Prince Albert, as the surviving parent, should be regent, without any council of regency, or any limitation upon the exercise of the royal prerogatives,—except an

incapacity to assent to any bill for altering the succession to the throne, or affecting the uniformity of worship in the Church of England, or the rights of the Church of Scotland. And, founded upon these principles, the bill was passed with the approval of all parties.(4)

Footnotes.

1. So far back as 1812 the Prince had been afraid of paralysis, Lord Colchester's Diary, ii. 354. In Sept. 1816, he was dangerously ill at Hampton Court, his death being hourly expected. Ibid., ii. 581 ; Ibid., iii. 112, 115, 116, 272, 298.
2. Act 1 Will. IV. c. 2.
3. 7 Will. IV. and 1 Vict. c. 72.
4. 3 and 4 Vict. c. 52.