

## Erskine May, Chapter III, pp. 206-215

### The Regency Established, 1810-11

#### The King's Illness

The king's last mental disorder commenced in the autumn of 1810. His kingly career was to close for ever. Bereft of reason and nearly blind, the poor old king,—who had ruled for fifty years with so high a hand, and so strong a will,—was now tended by physicians, and controlled by keepers. His constitutional infirmity, aggravated by political anxieties and domestic distresses, had overcome him. and he was too far advanced in [207] years to rally again. It was a mournful spectacle. Like King Lear, he was

'A poor old man,  
'As full of grief as age: wretched in both.'

But as physicians will dispute at the bedside of the dying patient,—so the hopes and fears of rival parties, and the rude collisions of political strife, were aroused into activity by the sufferings of the king. The contentions of 1788 were revived, though the leaders of that age had passed away.

#### Meeting of Parliament

Parliament stood prorogued to the 1st November, and a proclamation had appeared in the 'Gazette,' declaring the king's pleasure that it should be further prorogued by commission to the 29th. But before this commission could be signed, his Majesty became so ill that the lord chancellor, unable to obtain his signature, did not feel justified in affixing the great seal; and in this view of his duty, statesmen of all parties concurred.(1) Following the precedent of 1788, both Houses met on the 1st November; and on being informed of the circumstances under which they were assembled,(2) adjourned [208] until the 15th,—fourteen days being the shortest period within which Parliament may, by law, be summoned for despatch of business. Circular letters were directed to be sent, summoning the members of both Houses to attend on that day. Strong hopes had been entertained by the physicians, of his Majesty's speedy recovery; and in the interval they were confirmed. Both Houses, therefore, on these representations being made, again adjourned for a fortnight. Before their next meeting, the king's physicians were examined by the privy council; and as they were still confident of his Majesty's recovery, a further adjournment for a fortnight was agreed upon,—though not without objections to so long an interruption of business, and a division in both Houses.

#### Precedent of 1788 Followed

No longer delay could now be suggested; and at the next meeting, a committee of twenty-one members was appointed in both Houses, for the examination of the king's physicians. They still entertained hopes of his Majesty's ultimate recovery, in spite of his age and blindness; but could not form any opinion as to the probable duration of his illness.

Continuing to follow generally the precedent of 1788, ministers proposed, on the 20th of December, in a committee on the state of the nation, three resolutions,—affirming the king's incapacity,—the right and duty of the two Houses to provide for this exigency,—and the

necessity of determining by what means the royal assent should be signified to a bill for that purpose.

[209] Again the question of proceeding by bill, or by address was argued. The proceedings of 1788 were exposed to a searching criticism; and all the precedents of constitutional history, presenting any analogy to the present circumstances, learnedly investigated. The expedients which had delighted Lord Eldon in his early career, found little favour with the more philosophic lawyers of a later school. Sir S. Romilly regarded them 'in no other light but as a fraudulent trick,' and asked what would be said of 'a set of men joining together, and making a contract for another in a state of insanity, and employing a person as his solicitor, to affix his seal or his signature to such a deed?'

Considering the recency and complete application of the precedent of 1788, it is not surprising that both ministers and Parliament should have agreed to follow it, instead of adopting a more simple course: but to minds of the present age, the arguments of those who contended for an address, and against the 'phantom,' will appear the more conclusive. The royal authority was wanting, and could be supplied by Parliament alone. So far all were agreed: but those who argued for proceeding by means of a bill, accepted a notoriously fictitious use of the king's name, as an equivalent for his real authority; while those who supported a direct address, desired that Parliament,—openly recognising the king's inability to exercise his royal authority,—should, from the necessity of the case, proceed to act without it. Of all the speeches against proceeding by way of bill, the most learned, able, and [210] argumentative, was that of Mr. Francis Horner. Comparing the proceedings of 1788, with those of the Revolution of 1688, he said : 'It is impossible not to contrast the virtuous forbearance of all parties at the Revolution, in concurring to provide for the public interests, with the struggle that was made for power in the other instance; and, above all, to contrast the studied delays by which power was then so factiously retained, with the despatch with which our ancestors finished, in one short month, their task of establishing at once the succession to the crown, reducing its prerogatives within limitations by law, and founding the whole structure of our civil and religious liberties.'

But independently of precedents and legal forms, the ministers expecting, like their predecessors in 1788, to be dismissed by the regent, were not disposed to simplify the preliminary proceedings, and accelerate their own fall; while the opposition, impatient for office, objected to elaborate preliminaries,—as much, perhaps, for the delays which they occasioned, as for their hollow subtlety and uselessness.

## **Proceedings on the Resolutions**

The resolutions were agreed to, and communicated to the Lords, at a conference. There an amendment was moved by Lord Holland, to the third resolution, by which an address to the Prince of Wales was proposed to be substituted for the proceeding by bill, inviting the prince to take upon himself the exercise of the powers and authorities of the crown, but to abstain from the [211] exercise of such powers as the immediate exigencies of the state shall not call into action, until Parliament had passed a bill for the future care of his Majesty's person, and securing the resumption of his authority. The Dukes of York and Sussex spoke in favour of this amendment, and all the seven dukes of the blood royal voted for it.(3) but the resolution was carried by a majority of twenty-six. The royal dukes also signed protests against the rejection of the amendment, and against the third resolution. The chancellor differed widely from the royal dukes, declaring that an address from the two Houses to the Prince of Wales, praying him to exercise the royal prerogatives during the king's life, would be treasonable.

The next step was to propose, in committee on the state of the nation, resolutions to the effect that the Prince of Wales should be empowered, as regent of the kingdom, to exercise the royal authority, in the name and on behalf of his Majesty, subject to such limitations as shall be

provided: that for a limited time the regent should not be able to grant any peerage, except for some singular naval or military achievement:(4) nor grant any office in reversion: nor any office otherwise than during pleasure, except such offices as are required by law to be granted for life or during good behaviour: that his Majesty's private property, not already vested in [212] trustees, should be vested in trustees for the benefit of his Majesty: that the care of the king's person should be committed to the queen, who, for a limited time, should have power to appoint and remove members of the royal household; and that her Majesty should have a council, with power to examine the king's physicians, upon oath, from time to time. It was explained, at the same time, that twelve months would be the period to which the proposed limitations upon the regent's authority would extend.

Four of these resolutions were agreed to in the Commons by small majorities, and not without strong arguments against any restrictions upon the authority of the regent. The fifth was amended on a motion of Earl Gower, in such a manner as to leave the queen merely 'such direction of the household as may be suitable for the care of his Majesty's person, and the maintenance of the royal dignity.'

The resolutions were communicated to the Lords at a conference. There, on the motion of the Marquess of Lansdowne, the first resolution was amended by the omission of the last words, viz., 'subject to such limitations and restrictions as shall be provided'(5)—thus appointing the regent generally, without restrictions upon his authority. But as the two next resolutions, imposing limitations upon the grant of peerages, places and pensions, were immediately afterwards agreed to, the words were restored to the first resolution. And thus the restrictions proposed [213] by the Commons were ultimately agreed to without alteration.

The next step, as in 1789, was to lay these resolutions before the Prince of Wales, and to beg him to accept the trust, subject to the proposed restrictions; and in reply, he signified his acceptance of the regency.(6) The queen was also attended in regard to the direction of the royal household.

## **Passage of the Regency Act 1811**

Again, it was resolved by both Houses that a commission should issue under the great seal for opening Parliament; but warned by the precedent of 1788, ministers had taken the precaution of consulting the royal dukes, and by their desire omitted their names from the commission. On the 15th January, Parliament was opened by virtue of this commission; and the Regency Bill was brought in by the Chancellor of the Exchequer, on the same day. The bill, though still the subject of much discussion, was rapidly passed through both Houses, with some few amendments. Resolutions were agreed to by both Houses, authorising the issue of letters patent under the great seal, for giving the royal assent by commission; and on the 5th February, the bill received the royal assent by virtue of that commission.

It is worthy of note, that both this commission and that for opening Parliament, deviated materially from the usual form of such commissions, and instead of being issued by the advice of the privy council, it was expressed thus: 'by the [214] king himself, by and with the advice of the Lords spiritual and temporal, and Commons in Parliament assembled.'

## **Issue of Public Money**

During these proceedings, an unexpected difficulty had arisen. Certain sums of money had already been granted, and appropriated by Parliament, for the service of the army and navy: but in consequence of the king's incapacity, the usual warrants, under the privy seal, could not be prepared, directing issues to be made from the Exchequer, for such services. The Lord Keeper of the privy seal was willing to take upon himself the responsibility of affixing the seal to such a warrant, although by the terms of his oath he was restrained from using it

'without the king's special command;' but the deputy clerks of the privy seal held themselves precluded by their oaths of office, from preparing letters to pass the privy seal, until a warrant had been signed by the king himself, for that purpose. The necessities of the public service were urgent; and the Treasury, unable to obtain the money according to the usual official routine, prepared two warrants addressed to the auditor of the Exchequer, directing him to draw one order on the Bank of England for £500,000, on account of the army, and another to the same amount, for the navy. The auditor, Lord Grenville, doubting the authority of these warrants, desired that the law officers of the crown should be consulted. It was their opinion that the Treasury warrants were not a sufficient [215] authority for the auditor, who accordingly refused to issue the money; and although the Treasury expressly assumed the entire responsibility of the issue, he persisted in his refusal.

It was now necessary to resort to Parliament to supply the defect of authority which had been discovered; and on the 4th of January the chancellor of the Exchequer moved a resolution in committee of the whole House, by which the auditor and officers of the Exchequer were 'authorised and commanded' to pay obedience to Treasury warrants for the issue of such sums as had been appropriated for the services of the army and navy, as well as money issuable under a vote of credit for £3,000,000. To this resolution it was objected, that it involved a further assumption of the executive powers of the crown, and was only rendered necessary by the unreasonable delays which ministers had interposed, in providing for the exercise of the royal authority: but the immediate necessity of the occasion could not be denied; and the resolution was agreed to by both Houses. A protest, however, was entered in the Lords' Journal, signed by twenty-one peers, including six royal dukes, which affirmed that the principle of the resolution would justify the assumption of all the executive powers of the crown, during any suspension of the personal exercise of the royal authority; and that this unconstitutional measure might have been avoided without injury to the public service, by an address to the Prince of Wales.

#### **Footnotes.**

1. Lord Colchester's Diary, ii. 280. Lord Campbell, however, says, 'It would have been but a small liberty to have passed this commission, for there had been an order made at a council, at which the king presided, to prorogue Parliament from the 1st to the 29th November, and to prepare a commission for this purpose.'—Lives of the Chancellors, vii. 242.
2. In the Commons, the Speaker first took his seat at the table, and explained the circumstances under which the House had met, before he took the chair.—Hansard's Debates, 1st Ser., xviii. 3. On taking the chair, he acquainted the House that he had issued a new writ during the recess. See also Lord Colchester's Diary, ii. 282. et seq.
3. Clarence, Kent, Cumberland, Sussex, Cambridge, and Gloucester.
4. This exception was subsequently omitted.
5. By a majority of 3.
6. See supra, p. 121.

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