

### III

## CHAPTER II

## THE CROWN

(1) *The King's title to the Crown.*—Before the Resolution of 1688 when James II fled from the country, it was not certain by what right the King claimed the Crown, whether it was hereditary or elective. But there can be no doubt that thereafter the title to the Crown has become a Parliamentary title, in the sense that Parliament can alter the succession to the Crown. The title to the Crown is at present regulated by the provisions of the Act of Settlement passed in the year 1701. By that Act, the title to the Crown was conferred upon William and Mary and the heirs of their body. The title stipulates two conditions : One, the Successor must be an heir, male or female and two, the Successor must be a Protestant Christian by faith.

(2) *Rights and duties of the Crown.*—The rights of the King are either Statutory or Prerogative. Statutory rights are those which are conferred upon the King by an Act of Parliament. The prerogative rights are the Customary or Common Law Rights of the King which he has been exercising and which have not been taken away by law. It is unnecessary... with those rights and duties of the King which are statutory because they are capable of exact definition and ascertainment by reference to the Statute from which they are derived. The prerogative rights on the other hand are not capable of such ascertainment by reference to any statute because it is of the essence of a prerogative right that is not derived from Statute. Prerogative rights of the King are customary rights and are independent of Statute, and like all customary rights the nature and extent have to be investigated by a Court of Law whenever they are asserted. The King's prerogatives may be conveniently discussed under the following heads :

### (A) Personal Prerogatives

(1) *The King can do no wrong.*—All acts are done in the name of the King, but by virtue of this Prerogative, the King is not responsible for any of his acts. The person responsible for his

royal acts are his Ministers. The King, therefore, cannot be sued or otherwise held responsible for his executive acts. When a subject is aggrieved by a breach of contract, he cannot sue the King, nor can he sue the King in respect of a tort. A special provision is made to soften the rigour of the rule which is known as *the Petition of Right procedure*. Under it, a subject aggrieved may petition the Crown for redress and that petition will become justiciable only if the Attorney-General, who is the Law-Officer of the Crown, issues his fiat permitting justice to be done in which case alone, the Courts can proceed with the petition as though it was a plaint in a suit. Even then there are certain rules which though they are binding between private parties, would not be binding upon the Crown, for instance it is a rule that the Crown cannot by contract hamper its future executive actions. As a result, the Crown can always dismiss a servant of the Crown at any time, no matter what the period of contract was, because such a contract would hamper the future executive action of the Crown. Consequently a servant of the Crown cannot sue the Crown for damages for wrongful dismissal even by a Petition of Rights.

(2) *The King never dies.*—The King has the attributing immortality. A particular person wearing the Crown may die. But the King survives. Immediately upon the decease of a reigning King, his Kingship, without any interregnum or interval, vests in his heirs. That is the law, and the popular cry—The King is dead ; Long live the King—is in conformity with the Law. The Coronation ceremony is not necessary to invest the King with Kingly power. A King can act as a King although he has not been coronated, provided he is the next heir of the last King. The Coronation ceremony has no other effect than to proclaim to the subjects and to the world at large, who the King is.

(3) *Lapse of time will not as a rule bar the right of the Crown to sue or to prosecute.*—To put it in a different way, the law of limitation does not apply to the Crown, as it does to a private individual. The private individual must sue or prosecute within a stated period fixed by the law of limitation. The Crown is free from the time-bar. The statement of this prerogative right must

now be qualified so far as the right to sue is concerned. The law of limitation has made the time-bar applicable to the Crown although the period of limitation is sixty years. The Prerogative of the Crown's right to prosecute remains in tact.

(4) When the right of the King and the right of the subject come in conflict, a subject's right must give way to the King's.

(5) The King is not bound by statutes unless expressly named in it.

## (II)

### **Political Prerogatives**

Now these may be divided into two categories into which they naturally fall: those which relate to the internal Government of the country and those which relate to foreign affairs. As to the King's Political Prerogatives which relate to the internal Government of the country, they may be considered in relation to the three divisions of State activity, e.g., the executive, the judicial and the legislative. According to the English Constitutional law, the executive Government vests in the King. It is his Prerogative to be the supreme head of the executive. As such, he has the authority to appoint Ministers and other officers of the state political as well as permanent. It is his prerogative to dismiss them. He is also the head of the Army, the Navy, the Air-force and the Civil Service. Every one appointed to discharge the service of the State, no matter how he is appointed, is in law the servant of the Crown. Turning to his Judicial Prerogative, the King at one time actually sat in Court to dispense justice but this Prerogative the King has now lost. The King at one time could create any Court and invest it with jurisdiction to try any matter or any cause he chose to prescribe. The establishment of the Star Chamber and the Court of High Commission by Charles I is an illustration of how wide was the King's judicial Prerogative. But this Prerogative also, the King has now lost. The King can now only create by Prerogative, *i.e.*, without the Sanction of Parliament, Court to administer the Common law. Even this remnant of a Prerogative he cannot exercise, because of the

necessity of financial legislation which such a course would involve, which would make it necessary for him to obtain the sanction of Parliament. Only four bits of his Judicial Prerogatives now remain. (1) He can grant leave to appeal to the Privy Council. (2) He can appoint judges. (3) He can pardon a criminal. (4) He can stifle the prosecution of a criminal, either by declining to offer evidence or by entering a formal *Grote Praseu*.

Coming to the legislative Prerogatives of the King, they extended at one time to vast proportions. The King at one time claimed the power to make laws independently of Parliament, to suspend laws in particular cases and to dispense with them generally. All this has now been altered. The right to suspend and dispense with laws made by Parliament is now completely lost. The right to legislate is also lost, except in so far as it relates to Crown Colonies. The only legislative Prerogatives that remains to the King are the Prerogatives right (1) to summon Parliament, (2) to prorogue Parliament, (3) to dissolve Parliament.

There are two other classes of Prerogatives which relate to the internal administration of the Country which must be referred to before considering the other classes of Prerogatives which relate to foreign affairs. They are Ecclesiastical Prerogatives and Revenue Prerogatives.

*Ecclesiastical Prerogatives.*—The King is the supreme head of the Church of England as established by law. As the head of the Church, he appoints on the recommendation of the Prime Minister, Archbishops, Bishops and certain other dignitaries of the Church. In his Prerogative right, the King convokes, prorogues and dissolves two Houses of the convocation and it is in his Prerogative right that the King can grant leave of appeal to the Privy Council from the decisions of the ecclesiastical Courts.

*Revenue Prerogatives.*—The revenues of the British Government fall into two classes, (1) the ordinary revenues and (2) the extraordinary revenues. The ordinary revenues are called the Prerogative revenues and they are derived from the following sources, (1) The custody of a Bishop's temporalities, *i.e.*, the

right of the King to take the profits which the episcopal see is vacant, though these are held in trust for his successor. (2) The rights to annates and tenths. Annates were the first year's profits of church's benefits formerly paid to the Pope and afterwards to the Crown. Tenths were the tenth part of the annual profits of a church's benefit formerly paid to the Pope. These are now paid to the Governor of the Queen Anne's Bounty. (3) Profits derived from the Crown lands. (4) The right to Royal fish wreck, treasure-trove, waifs and cotrays, royal mines and escheats.

The foregoing items constituting the ordinary revenues of the Crown were collected by Prerogative and paid to the King until 1715 when the first Civil Lists Act was passed whereby an arrangement was made between the King and Parliament whereby the King surrendered his Prerogative revenues to the state which are since then paid into the Consolidated Fund and Parliament in consideration of this assignment granted to the Royal family for its maintenance a fixed sum, which is made an annual charge upon the Consolidated Fund and is called the Civil List. The Civil List is not a permanent arrangement but is a temporary agreement made between the reigning King and the Parliament and lasts during the life-time of that King. When a new King succeeds, a new agreement is made with him which again is to last during his life-time. If no agreement is made, the Prerogative of the King in respect of the ordinary revenue will revive. The Civil List arrangement does not abrogate it in any way. It merely affects the appropriation of the revenue. It does not affect the right to raise that revenue.

## **II. The King's Prerogatives in relation to the foreign relations of the Country.**

The King possesses the right and the power to receive Ambassadors of foreign Countries and to send his Ambassadors to them. This is his Prerogative right. The right is important because of the immunity from Civil and Criminal process which Ambassadors, who are recognized as such by the King, enjoy. What those immunities are will be discussed at a later stage. It is enough here to note that they depend upon the recognition by

the King of a person as an Ambassador and that recognition is a Prerogative Right of the King.

The King has also the right to make war and peace whenever he thinks fit to do so. This also is his Prerogative right.

The King possesses the power to make a treaty with any foreign nation. The treaty may be a political treaty or a commercial treaty. It is his Prerogative. The only limitation upon the King's Prerogative to make a treaty is that he must not in any manner affect the rights of his subjects given to them by law.

There are some questions that arise in connection with the question of the King's Prerogatives and which it would not be desirable to pass over without some consideration being bestowed upon them. The first question is this. What is the exact relation of the King's Prerogative to the authority of Parliament? The second question is what happens if the King becomes incapable of exercising his Prerogative or other Statutory rights?

Taking the first inquiry for consideration it is necessary to get a clear idea of what is exactly meant when it is said that it is the King's Prerogative to do this, that or other act. What is meant by this expression, that when the King acts on the authority of his Prerogative, he does not need the sanction of Parliament. His authority is inherent in him and is independent of Parliament. But while it is true that the Prerogative power of the King is inherent and independent of Parliament, it must not be supposed that it is on that account beyond the control of Parliament. On the other hand the Prerogative power of the King can be regulated, amended or abrogated by Parliament, so that the correct position would be that the King possesses Prerogative power so long as Parliament has not by law trenchd upon it. A matter which was once a matter of Prerogative if subsequently regulated by law made by Parliament, then the King cannot resort to his Prerogative power, but must act within the law which has superseded the Prerogative. Therefore, so far as the first inquiry is concerned, the conclusion is that the King's Prerogative is a source of independent power to him so long as Parliament has not interfered with its existence.

What happens if the King becomes incapable of exercising his Prerogative and other Statutory rights. Now this is no idle inquiry because there are certain important duties which are attached to the Kingly office and the King may become incapable of discharging them. Four contingencies of incapacity may be visualized. (1) The King may be absent from his Kingdom. (2) The King may be a minor. (3) The King may be insane. (4) The King may be morally incapable.

The absence of the King from the Kingdom cannot raise any very great difficulty. Modern means of communication have annihilated distance and have facilitated quick dispatch. The King, therefore, could discharge his Kingly duties from a distance with expedition at any rate without delay. There is also the other possibility of the King delegating his powers to somebody who could exercise them on his behalf when he is away.

Minority of the King cannot create any difficulty so far as the law is concerned. The law holds that the King is never an infant and is capable of transacting business even though he is a minor. A minor King, therefore, can exercise all his powers and discharge all his duties lawfully. Ordinarily if the reigning King is expected to die leaving an infant as his heir, Parliament always takes the precaution of appointing by law a regent. But this is by way of prudence and not by way of any requirement by law.

Insanity makes a hard case. The King cannot delegate his powers if he is insane. Parliament cannot pass a law, appointing a regent because the King being insane cannot give his assent to the Bill. There are two cases of English Monarchs having gone insane, while on the throne, Henry VI (1454) and George III (1788). The procedure then adopted was a very crude one and certainly could be deemed to be strictly in conformity with the law of the Constitution, which requires the assent of all three elements which constitute Parliament.

The moral incapacity of the King is another hard case. Can the King resign supposing people do not want him? Can the King be deposed if he does not resign? There is no legal provision regulating the insanity or the moral incapacity of the

King. Question of moral incapacity may not perhaps arise under the English Constitution owing to the development of responsible Government. But the question of insanity might.

## **Effect of the death of the King**

### **I. On Parliament**

The original rule was that Parliament was automatically dissolved by the death of the King. The Constitution and theory of which this was a consequence regarded members of Parliament as councillors of the King who summoned them. The tie of summons was regarded as a personal tie between the King who summoned and the members who assembled in return and that tie was broken by the death of the King. The members called by deceased King could not be on this account be called the councillors of the new King, and the King was entitled to call new councillors, which could happen only when the old Parliament was dissolved and the new King obtained an opportunity to call a new Parliament. This rule was first amended in \* by 7-8 William III Chapter XV whereby it was provided that the existing Parliament was to work for six months after the death of the King if not sooner dissolved by his successor. Subsequently in the year 1867, (30, 31 Victoria, Chapter II 102), the rule was altogether abrogated and the life of Parliament was made independent of the death of the king.

### **II. On the tenure of office**

The original rule was that all executive officers were to vacate their offices on the death of the King, and for the same reasons whereby the death of the King resulted in the dissolution of Parliament. Here again the law has gradually altered the theory. The Succession to the Crown Act of 1707 extended the tenure of executive Officers to six months after the death of the King. By another Act passed in the year \* the period was again extended and finally the Demise of the Crown Act of 1901 made the tenure of office independent of the death of the King.

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