

THE DUKEDOM OF SUSSEX.

A Committee of Privileges of the House of Lords sat on Thursday morning, May 23, the Earl of Shaftesbury in the chair, to consider the claim of Sir Augustus Frederick D'Este to the rank, title, and honours of his late father, the Duke of Sussex, Earl of Inverness, and Baron Arklow.

The committee was numerously attended. The Lord Chancellor and all the law lords were present; and the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, Justices Williams, Patteson, Colman, and Cresswell, and Baron Parke were also present, having been summoned to assist their lordships.

The counsel for the claimant were Sir T. Wilde, Mr. Erle, and Mr. Wilde; and the case was watched on the part of the Crown by the Attorney-General, the Solicitor-General, and Mr. Waddington. We sincerely regret to say that the Attorney-General appeared to be still very weak and suffering.

Sir Thomas Wilde said that he appeared at their lordships' bar to present to their consideration the grounds on which Sir Augustus D'Este claimed to succeed his late father as Duke of Sussex. He had presented to her Majesty his humble memorial, praying that he might be declared entitled to the succession, and it had been her Majesty's pleasure to refer this memorial to their lordships' consideration. The claimant would prove beyond all doubt that he was the son of his late Royal Highness. There would be no difficulty about that. Nor, it was hoped, would there be any in establishing his claim as the legitimate descendant of his father. He anticipated that the real question which their lordships would have to consider would be that which related to the construction and effect of an act of Parliament, the 12th Geo. III., commonly called the Royal Marriage Act. It was with no small degree of confidence that he looked to their lordships for a declaration of their opinion that that statute did not apply to the case of this claimant.

The points that he should have to establish were—first, the fact of the marriage, which took place at Rome, on the 4th of April, 1793, and of which he apprehended there would be no doubt; next, that that was a valid marriage, independently of the Royal Marriage Act; and lastly, that it was a valid marriage notwithstanding that Act. He should, before discussing these points, state the circumstances under which the marriage took place.

Their lordships knew that Prince Augustus, the son of George III., was sent abroad at the early age of thirteen. It would appear, from the course of his education, and the period of his absence, that it was intended that he should be domiciled abroad, and become an inhabitant of other dominions of his Majesty rather than that he should live in England. He was sent to the University of Göttingen in his thirteenth year, and remained there till he was twenty. At that age, his health was much affected, he had become subject to asthma. It was supposed that his growth had been beyond his strength, and that it was necessary he should go to Italy, to try the effect of a warmer climate. He arrived there at the end of 1792. The arrival of a young and accomplished English prince at Rome would, of course, create a great sensation, which was not likely to suffer any diminution when his manners and accomplishments became known in society there. He was very gladly received in all society. Lady Dunmore was at that time at Rome with her two daughters, Lady Augusta and Lady Virginia Murray. Lady Augusta, especially, possessed very considerable personal attractions, and her other merits were worthy of her rank, her sex, and her station. The Prince became warmly attached to her. She did not at first favour this attachment. She was aware that any connection with a family, however high and honourable, but which was not royal, was not likely to meet with approbation. He himself struggled with his passion, but the struggle threatened to be fatal to him—he abstained from food, and intimated his resolution to marry or to die. His attachment and his offers were studiously concealed from Lady Dunmore, but the prince and Lady Augusta met as often as they possibly could without attracting observation. At last he pressed for marriage in the most urgent manner. She was six or seven years older than he, and she acted a most honourable part. Though she was not insensible to the merits of his Royal Highness—though she must have been impressed with his attachment—though these circumstances would naturally induce on her part a strong feeling of regard towards him, yet she felt that it was necessary for her to resist her own feelings, and to assist him in repressing the indulgence of his own wishes. But parleying on such occasions never did much good. Where an ardent attachment existed, in proportion as the object of it showed magnanimity and generosity, in that same proportion was the passion of the other party excited and inflamed. Thus every appeal made by Lady Augusta to the prudence of the Prince, every attempt to induce him to impose a restraint on his own wishes, only increased the ardent repetition of his own entreaties. At last she gave way, and both seemed to have formed a determination to marry.

It would be proved to their lordships, that neither of these young people had at the time the slightest idea of the Royal Marriage Act. The only difficulty that they anticipated was the possibility of the royal displeasure. It even seemed that the Prince imagined that when he was twenty-one there would be no difficulty in his marrying in England or elsewhere; and his object was to procure a marriage at Rome, so as to secure to himself for life this lady, in whom his happiness was centred. That object was with him one of paramount importance—he would have sacrificed anything to it. He was a man of too much honor and of too high feeling to entertain for a moment the intention of attempting to possess Lady Augusta upon any terms but those of marriage. To that purpose he thought there was no objection but in the possible opposition of the King; and he thought that a marriage at Rome would place him beyond the power of his Majesty's resentment; and he hoped that, that having taken place, he should be able, when he came to England, to conciliate the King, and then he intended publicly to celebrate the marriage, and thus reconcile his duty with his wishes. This accounted for a promise which some of the evidence would show he had made, never to disclose the name of the clergyman who had married them. He thought that, in fact, he should be permitted to have this second marriage, if he could have a private one performed at Rome. The Prince applied to the priests of the Roman Catholic Church to celebrate this marriage, but they declined to do so. It happened that there were at that time very few Protestants at Rome. Mr. Gunn was there. He was a clergyman of the Church of England, and was there on some private business;—he was employed on a search after the Stuart papers, and this introduced him to his Royal Highness. Mr. Gunn felt that it would be an imprudent act on the part of the Prince; and when, therefore, he was asked to perform

the ceremony, he refused for some time, but at last he yielded. The parties met at the residence of Lady Dunmore, taking advantage of an opportunity when that lady was absent. Mr. Gunn was made to call on Lady Augusta. She received him, and, while they were in conversation, the Prince came forward, and the two young persons importuned Mr. Gunn to perform the ceremony. He did celebrate it according to the rubric of the Church of England. Everything which could render the marriage valid in that way was performed; and nothing, so far as form went, was wanting to give it force and validity. After a few months, the Prince was recalled to England. The lady and her family were likewise about to return hither, and on their road they met at Florence. The consequence of the intercourse between them had then begun to manifest itself. The lady was unwell, a medical man was called in, and at Florence, in order to prevent her from being treated in a manner which her case did not really require, the truth was confessed, and then, for the first time, her mother became acquainted with her marriage. They came to England in September or October, 1793. The Prince went to his own family, and she remained with hers. From the first, he had been extremely desirous that no question should be raised as to the legitimacy of the child, but he knew the pledge of secrecy which he had given to Mr. Gunn at Rome, and he was desirous of keeping that pledge. But when the condition of the lady rendered it necessary that some step should be taken, the Prince caused the banns of marriage to be published in the church of St. George, Hanover-square. They were published in the names of Augustus Frederick and Augusta Murray, names which did not attract attention, and no one knew of the marriage which was intended to take place, and which did take place shortly afterwards. It was impossible to say at what time the King was informed of the matter; but it appeared that very shortly afterwards a nobleman, having occasion to search the registry of marriages in that church, saw the names and handwriting, and immediately afterwards the King became acquainted with the fact of the marriage. The fact of the King's knowledge did not appear to have been communicated to the Prince, for he was shortly afterwards ordered abroad, where he remained for some years, and it was not till after his departure, and after some severe proceedings had been adopted towards the lady, that the fact of the King's knowledge of the matter was ascertained. Some time afterwards the Prince was taken ill at Berlin, and the lady went thither to attend her husband. There was some difficulty in her getting a passport, and at last she obtained one in a feigned name, and departed to discharge her conjugal duties. After she had been there a short time she was required to quit Berlin, and she returned to this country. The Prince afterwards returned to this country, and he then lived with her for some little time in a house which he occupied in Lower Grosvenor-street. During this time, his communications with the royal family were not satisfactory, and he quitted England. From that time they never met again.

In the first instance the Prince had left England at so early an age that he could have had no knowledge of the virtues or the firmness of his father, and thought, when about to marry, that his father would relent; but he knew from history what the character of that father was, and, in fact, he positively resisted, from the beginning, anything like a concession or a consent. Some years had passed away when, after this residence in Lower Grosvenor-street, the Prince again quitted England. In the meantime his brothers had received titles and provision for their maintenance; he alone was kept in a state of extreme depression. Separated from his wife, from his family; oppressed with absolute poverty, he suffered dearly for the imprudence he had committed. His wife for some time suffered similar evils, and the consequences were such as might naturally have been anticipated. The lady became perhaps a little impatient under her sufferings. Wants and wishes had been excited in her which could not be gratified. In England she had, for the first time, become aware of that act of Parliament, which appeared the more to be feared from the obscurity of the terms in which it was couched, subjecting as it did, the persons who violated its provisions to all the consequences of a præmunire—a word which, to those who did not understand it, appeared to threaten them with transportation. Complaints of her wants and privations were made to him, and, perhaps, appearing to him unreasonable, as these wants and privations were inevitable, produced by degrees in his mind an altered state of things. Letters of disappointment, possibly of reproach, followed. She was not aware of the efforts made by him to do her justice; and all this led to alienation of feeling between them; and having separated in full warmth of feeling, believing that their happiness depended on each other, they never again met.

Some time afterwards, proposals were forwarded to her through Lord Grenville, to settle 4,000*l.* a year on her, on certain conditions, such as giving up the royal livery; and the lady, smarting under the circumstances already detailed, accepted these proposals. The claimant, however, was then, and always had been, the object of his father's affection, who addressed him in terms of as warm affection as were ever used by parent towards children. The Prince, too, desired that the son should succeed to all his honours. In his will, where he made the Prince of Wales, afterward George IV., and the Duke of York, his executors, he urged them in the strongest manner to maintain the interests and rights of his son; and, even after being fully made acquainted with the provisions of the Royal Marriage Act, the Prince still asserted the legitimacy of his son, and looked on him as entitled to succeed to his own titles and honours. The influence of the royal character was predominant in these affairs, and the separation produced in this way became permanent.

The claimant grew up; he thought he had claims on his father to bring the question of his rights to an issue; but the Prince had the most marked aversion to a public discussion of the matter during his life. His son did not sympathise with this feeling; and, when he saw his father becoming more and more infirm, and the clergyman who had celebrated the marriage drooping into the vale of years, he pressed the matter on his father, perhaps a little too urgently for his father's pleasure. He at length filed a bill in chancery, in order to obtain an examination of witnesses, and so to perpetuate testimony; but this bill could, by the rules of law, have no legal effect; his hope was that his father would have yielded to it. But the Duke of Sussex refused to be examined, on the ground that by such examination he might render himself liable to the penalties of the Royal Marriage Act. The clergyman refused in the same manner, and, as the law could not force the examination, none took place. He ought here to mention that another child had been born after the lady's visit to Berlin. The marriage had, as a fact, never been doubted, and the evidence that still remained would establish it. [Here the learned Counsel read extracts from several letters which passed be-

tween the Duke and Lady Augusta before and immediately after their marriage.]

On the 15th of September, 1799, the Prince made his will in terms which left no doubt as to what he thought of his own marriage and his son's legitimacy. This was an extract from it:—

"I think it requisite and just for me to declare, in this my last will, that I was solemnly and duly married to Lady Augusta Murray (second daughter of the Earl of Dunmore) on the 4th day of April, 1793, at the city of Rome, and in the inn commonly known by the name of Sarmiento, and her sister, then resided with her mother, Lady Dunmore, and her sister, Lady Virginia Murray; and also that, for greater security, and not from an apprehension of the first being insufficient, I again performed the ceremony of marriage with my said wife at the parish church of St. George, Hanover-square, in the county of Middlesex, by virtue of banns published in the said church, on the 5th day of December, in the year of our Lord 1793; and that, notwithstanding a decree has since passed the Court of Doctors' Commons to declare my marriage unlawful and void, yet I feel myself still not less bound by every obligation of law, conscience, and honour, to consider her as my lawful and undoubted wife in and to every respect as if that decree had never taken place. And that every respect as if that decree had never taken place. And that I consider and ever shall acknowledge our son Augustus Frederick, who was born after both these marriages, as my true, legitimate, and lawful son."

In another will, made in 1800, he appointed the Prince of Wales, and the Duke of York as his executors, and treated them to maintain the just rights of his son. He wrote on the same subject to various persons of influence, and took every means short of that of open public avowal, which, if then made, would have superseded the necessity of the present proceeding. Such were the means he took to assert his marriage. There were now but few persons alive who had taken part in these transactions. The only person of the family now alive was Lady Virginia Murray, now residing in Paris, who would come here as a witness should their lordships deem her attendance necessary, but who could only prove the secrecy which had been observed by the Prince and her sister respecting the whole affair, till the circumstances he had already mentioned had rendered a disclosure necessary and inevitable. The facts he had stated were, he thought, sufficient to establish the fact of a marriage.

This, then, brought him to the statute. There were now two questions to be considered: first, whether, supposing the marriage made at Rome, under circumstances like these, was held to be a marriage of the claimant's parents, this act contained anything which would render a marriage that was otherwise perfectly valid of no value whatever, and make the offspring, who would otherwise be legitimate, merely bastard. But he should not argue that point till he had made some observations on the statute; for, if the statute could render it null, it would be of little importance that it was in other respects valid and binding. In arguing on the statute, he must assume the marriage to be in other respects a good and lawful marriage. Assuming that, he came to the question, whether it was void by reason of this act of Parliament, one of the parties to it being, within the words of the act, a descendant of George II.;—was this act confined to marriages contracted in England, or in British territories, or did it prohibit British subjects from marrying anywhere, or under any form, without first obtaining the consent required by its provisions? He contended that its effect must be confined to this country, and to marriages contracted within the British territories, and that the ordinary rules of construction would so confine it. Such, he was sure, would be the conclusion of their lordships when its history was considered. The Act was passed in the summer of 1773. In the previous year, the marriages of the King's brothers, the Dukes of Cumberland and Gloucester, had been made public. The children of the King were too young at that time to require such a statute for their protection. The act was rather an expression of the royal displeasure against the King's brothers than anything else. It was passed with extreme rapidity—it might be doubted whether it was consistent, either with regard to policy or religion, and on the face of it little consideration was shown either for principles or details. It was passed after a short but vigorous opposition, and was adopted amidst the protests of many noble lords. The Marriage Act of George II. had been considered by the Courts as an act creating disabilities, and, therefore, to be strictly construed; the Royal Marriage Act much more truly deserves that character, and required the application of that rule of construction. It was indefinite both as to the persons to be affected by it, and the time during which it should operate upon them. It interfered with that which was most sacred in its nature, and most necessary to man's happiness and the good of society, and it professed to hand over to one person the choice of that which was dearest to man, though the person thus entrusted with the choice might have no one sympathy with the person for whom he was to choose. The first objection to the act in point of law was, that there was no period during which its provisions were restricted in their operation—it would operate on the descendants of George II. for ever. If all the children of George III. had families as numerous as his own, the multiplication of persons on whom the act was to operate would have become ridiculous. If the public interests required such a restriction, the public ought to provide for the persons on whom the restriction was placed, for even the most remote descendants of George II. were affected by its operation. The circumstance alone showed the sort of rules of construction that ought to be applied to such an act. This act was uncertain as to time, place, and persons, and its value and general expressions could not be assisted by the doctrine of implication. In order to enforce this act, their lordships must abandon all the ordinary rules of construction, and guess at possible intentions.

Lord CAMPBELL—You do not go so far as some of the lords who dissented from the bill, and declared that it was against the constitution, and though passed in Parliament could not have the force of law.

Sir T. WILDE never went to that length, when the Parliament which made the law possessed the power to enforce it. It might be unholy, irreligious, and bad, but still it was law. What were its terms? He would read the whole of it, and then comment on its provisions.

[The learned counsel here read the act. The two chief clauses are these:—

"Be it enacted, that no descendant of the body of his late Majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families,) shall be capable of contracting matrimony, without the previous consent of his Majesty, his heirs or successors, signified under the great seal, and declared in council; and that every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void, to all intents and purposes whatever.

"2. Provided always, and be it enacted, that in case any such descendant of the body of his late Majesty King George II., her resolution to contract a marriage disapproved of, or dissented from, by the King, his heirs or successors, that then such descendant, upon giving notice to the King's Privy Council, which notice is hereby directed to be entered in the books thereof, may,

at any time from the expiration of twelve calendar months after such notice given to the privy council as aforesaid, contract such marriage; and his or her marriage with the person before proposed and rejected may be duly solemnised without the previous consent of his Majesty, his heirs or successors; and such marriage shall be good, as if such act had never been made, unless both Houses of Parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage."

[A third clause subjected all parties concerned in the marriage to the penalties of præmunire.]

Sir T. Wilde, having concluded reading the act, continued—In this act there was no limitation on the power of the Crown; and the fancied power of the party to give notice under the second clause might be for ever prevented by the simple delay of the Crown to express any dissent. Then again, the issue of Princesses marrying into foreign families were excepted from the operation of the act. Why, that would have excluded the issue of the Princess Charlotte, and perhaps even the issue of her Majesty, for both were Princesses who married into foreign families; unless indeed, the fact that her Majesty had come to the throne before her marriage prevented the act from applying to her. The fact that such a question might be raised on the act showed how loosely its provisions were drawn, and how rigidly it ought to be construed, if it was not to be turned into means of defeating the principles, as well as impeding the practice, of the law of England. The act, it would be said, created a personal incapacity. But for that very reason it must be strictly construed. Now, its effect must in some measure be judged by the means of enforcing it. It created not only an incapacity, but a crime, one punishable by a præmunire; in other words, by a forfeiture of goods and imprisonment. But how was this præmunire to be enforced? How could an offence against the laws of this country be committed beyond the seas, unless the act creating the offence declared that it might be committed by such persons? In all other cases that rule of construction applied. No crime declared to be such by our law could be tried in this country if committed abroad, unless the law distinctly declared that it should be so tried, and settled how it should be tried. In foreign states a marriage good by the law of those states was recognised as good here. Such was a principle of law, existing not here alone, but throughout the civilized world. The marriage in this case was not good by the law of the place where it was celebrated. He should not repeat his arguments, that no statute of this country could affect British subjects in foreign states, without expressly declaring that the Legislature intended so to affect them. But such was the rule; and the cases of the laws against slavery and against usury were instances strikingly in point upon this subject. The learned counsel here proceeded to refer to several legal authorities in support of his arguments, and concluded by observing that he hoped, upon a review of the circumstances of this case, that their lordships would be of opinion that there was nothing to deprive the claimant of those honours to which he was, in justice at least, so fully entitled. He trusted that their lordships would consider the act of Parliament as one which, imposing liabilities, required, according to the ordinary rules of law, to be strictly construed, and as one the provisions of which could not be impliedly extended to cases for which it did not contain any express enactments. He should not stay to consider what might be the consequences of a contrary construction—what fearful events might arise from it; how it might even give rise to all the horrors of a disputed succession, and bring on the country all those evils which it had so long been our happiness to avoid. He simply asked their lordships to act on the ordinary rules of law—on those rules which had been found the best security for our lives and property, and, if they did so, he felt confident that they would in the end advise Her Majesty to award to the claimant those honours to which he was justly entitled.

The further hearing of the case was adjourned *sine die*.

JERUSALEM CONTRASTED WITH OTHER CITIES.—If the traveller can forget that he is treading on the grave of a people from whom his religion has sprung, on the dust of her kings, prophets, and holy men, there is certainly no city in the world that he will sooner wish to leave than Jerusalem. Nothing can be more void of interest than her gloomy and half ruinous streets, and poverty stricken bazaars, which, except at the period of the pilgrimage at Easter, present no signs of life or study of character to the observer. We have wandered for hours among the other great cities of the East,—Cairo, Constantinople, or Damascus, watching the brilliant crowds that pour through the narrow bazaars, like the gay motes that people the sunbeam; and seen the aristocratic Turk, slowly prancing by on his splendid Arabian, gay and proud with Oriental trappings; the quiet, portly Armenian, grave in dress, pushing by with business haste on his sleek, well-conditioned mule; the Bedouin, from the desert, half-startled at the unwonted display, but not without a proud air, among the sons of traffic; the elegant Persian; the quick, subtle Greek; the Jew, whether rich or poor, sordid in exterior and abject in mien; the haggard, half-naked Dervish, pale with fanaticism, mingling and jostling on the narrow thoroughfare; long trains of camels laden with merchandise and fruit; and the humble ass of the water carrier, pushing steadily through the throng; with hundreds of women, their dark eyes flashing forth from their muslin envelopes, attended by negro slaves, chaffering with the venders of shawls and slippers; while the thousand cries of a great city and the noise of artificers echoed through the endless passages of the vaulted bazaars:—but Jerusalem, once like these, 'full of stir, the tumultuous city,' no longer the capital of a nation, and remote from the centre of traffic, is destitute of any interest but that connected with the past; and the traveller gladly hastens from the dullness and misery within her walls, to the lonely hills around, where there is nothing to disturb the picture of the momentous past brought before him by his imagination.—*Bartlett's Jerusalem.*

NOVEL CONVEYANCE.—On Wednesday, May 22, Mr. Nelson, the clown, accomplished his difficult and extraordinary task of sailing in a washing-tub, drawn by four geese, from the Park Wharf to Broadwick's Wharf, on the canal at Kidderminster. The crowd who were assembled threw pieces of bread to the geese to divert their attention, and some threw stones and sticks at them. This, of course, rendered the task more difficult, but it was performed by Mr. Nelson, in beautiful style.—*Worcester Journal.*