

## The Precontract – the legalities

Contributed by Annette Carson

A summary of the legal processes that put Richard III on the throne of England. And some of the objections raised by historians.

\*\* In June 1483 it was revealed that the late King Edward IV had married Elizabeth, the mother of his sons, bigamously. It appears this was revealed by Robert Stillington, Bishop of Bath & Wells, Edward's erstwhile Lord Chancellor and a doctor of law.

\*\* Bigamy, yes. But the reason this made Edward's sons unable to succeed him is twofold.

1. His first marriage AND second marriage were both made in secret, against Church law. Some people have argued that sins could be expiated upon request. Unfortunately, this particular combination of bigamy compounded by secrecy couldn't ... and anyway Edward never made that request.

2. In civil law, marriage was a contract which conferred legal rights of inheritance only on *legitimate* offspring. No legal marriage, no inheritance.

\*\* Some people have argued that Edward V's illegitimacy could have been set aside. But the entire edifice of mediaeval land and estate ownership, not to mention the legal profession, revolved around inheritance. Any tiny flaw in inheritance could be brought up in legal challenges for generations to come. The entire Plantagenet dynasty would be forever vulnerable.

\*\* By around mid-June the King's Council, which was in sole charge of governing England, considered the precontract enough of a legal impediment that they couldn't go ahead with Edward V's coronation and Parliament (22 and 25 June). Invitations had already gone out, so London became host to a large attendance of lords, clergy and commons: the 'three estates' of Parliament.

\*\* From 22 June there were public announcements and meetings explaining and/or debating the potential disinheritance of Edward V. The 'three estates' assembled on the day originally scheduled for Parliament, and decided to present a petition to Richard on 26 June offering him the crown. The petition was drawn up by a lawyer, probably Robert Stillington. It was lengthy, and included a catalogue of reasons why the laxity of Edward IV had landed the country in this crisis. Such perorations were normal in important legal documents.

\*\* Finally the Act of Settlement, *Titulus regius*, was drawn up by a lawyer, presented to a properly constituted Parliament, and passed. Embedded within this even longer document, which can be seen in The National Archives, was the wording of the petition. In it we see there were actually several grounds for objection to Edward IV's second marriage. In the proper tradition of rhetoric as practised by all doctors of law, these grounds were set out from the least to the greatest. They ended with the climax that trumped all other defects: Edward had entered his second marriage in secret because he knew it was illegal by reason of his precontract.

\*\* Writing in November 1485 the chronicler of Crowland Abbey, another doctor of law, recognized the precontract as the primary grounds. Some historians have attempted to dismiss it as 'a kind of afterthought' because it is mentioned last. This displays a fundamental ignorance of the key mediaeval art of rhetoric, especially in setting out legal cases, in which arguments were assembled in order of importance (*gradatio*) using *auxesis* and other rhetorical devices until the *most important* argument is stated at the end as a *climax*. Compare Mark Antony's "Friends, Romans, countrymen" speech in Shakespeare's *Julius Caesar*, where he sways the people from hating Caesar to loving him: it's an inexorable build-up of arguments until at last he reveals that every citizen will receive a gift of cash in Caesar's will. It's not an afterthought – it's the clincher.

The most thorough legal examination is to be found in Professor H.A. Kelly's article 'The case against Edward IV's marriage and offspring: Secrecy, Witchcraft, Secrecy, Precontract', *The Ricardian*, September 1998.