primarysourcedocument

Dr. Bonham's Case

Dr. Bonham's Case

Dr. Bonham's Case

By Sir Edward Coke

[Coke, Sir Edward. "Dr. Bonham's Case." *The Selected Writings and Speeches of Sir Edward Coke.* Edited by Steve Sheppard. Indianapolis, Ind.: Liberty Fund. 2003. Volume 1. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=911&chapter=106343&layout=html&Itemid=27. Used with Permission of the Online Library of Liberty.]

Italicized text in brackets represents translations from Latin found in the footnotes in the original document. Italicized text in parentheses in brackets represents comments of the editor of this webpage.

(1610) Hilary Term, 7 James I.

In the Court of Common Pleas.

First Published in the *Reports,* volume 8, page 113 b.

[*Editor S. Sheppard's Preface:* . . . The College of Physicians held a concession in their charter under an act of Parliament giving it the sole right to license anyone who would practice medicine in London. Thomas Bonham was a medical doctor educated in the University of Cambridge, who began to practice medicine in London in 1606. He was examined by the College of Physicians, who refused to qualify him to practice. Bonham continued in practice and the censors fined him £5 and ordered him to stop. He continued and refused to obey the College's orders. The president and censors of the college and their two servants arrested Bonham. Bonham sued them for false imprisonment. Coke, sitting in Common Pleas but with the agreement of Fleming, the Chief Justice of the King's Bench, ruled that the language of the charter was not designed to give the college the right to imprison for unlicensed practice in order to benefit the public but to maintain the monopoly of its members and graduates, that the president did not have the power to fine, that proceedings of such a body should be recorded in writing and not done by voice alone, that any fines they collected belonged to the King and not to the College, and that the provision of the charter that allowed imprisonment must be read very strictly in order to prevent the loss of a subject's liberty at the pleasure of others. In reaching these conclusions, Coke noted that the College cannot be a judge in a case to which it is a party. He then considered whether the censors were judges, and stated that in many cases the common law will void acts of Parliament when they are "against common right and reason, or repugnant, or impossible to be performed." This is often thought to be the first judicial statement of a power of judicial review over legislation. . . .]

THE CASE PRESENTED TO THE COURT

--The Plaintiff's Case--

Thomas Bonham, Doctor in Philosophy and [Medicine] brought an action of false imprisonment against [the Defendants], [alleging] that the Defendants, the 10th of *[November, in the fourth year of the reign of King James],* did imprison him, and detain him in prison [for] seven days.

--The Defendants' Case--

The Defendants pleaded the Letters Patents of King Henry the Eighth . . . by which . . . the King granted . . . *[that . . . all men of the . . . faculty [of Medicine] of and in the city of London be in fact and in name a corporation and perpetual community by the name of "the president and college or community of the faculty of medicine of London," etc.]* And that they might make meetings and Ordinances, etc.

[T]he case at Bar . . . principally [rests] upon two Clauses in the Charter:

The first, *[We have also granted to the same president and College or Community and their successors, that no one in the said City, or within seven miles thereof, should exercise the said faculty of medicine, unless he has been admitted thereto by the said president and community, or their successors . . . under pain of one hundred shillings for every month in which they exercise the same faculty while not admitted. . . .]*

The second clause is, which immediately follows in these words, *[He further willed and granted . . . that every year four persons should be elected by the president [and] college [or] community aforesaid . . . who should have the supervision and scrutiny, correction and governance of all and singular the physicians of the said city using the faculty of medicine in the same city, and of all other . . . physicians [from outside the city] whatsoever frequenting and using in any way the faculty of medicine within the same city, and the suburbs thereof, or within seven miles of the same city, and the punishment of the same for their offences in not well executing, performing and using the same, and also the supervision and scrutiny of all medicines and of their receipt by the said physicians, or any of them, to be given to, imposed on and used for the said late king's lieges for curing and healing their infirmities as often and whenever the need arises, for the benefit and utility of the same lieges of the said late king, so that the punishment of the same physicians using the said faculty of medicine who thus offend in the foregoing respects shall be carried out by fines, amercements and imprisonment of their bodies, and by other reasonable and suitable ways,* as by the said charter more fully appears. *. . .]*

And afterwards by Act of Parliament *. . .* it was enacted, That the said corporation, and every grant, article, and other things in the said Letters Patents contained and specified, should be approved, granted, ratified, and confirmed, *[in as ample and large a manner as it may be accepted, intended and construed by the same letters patent.]* . . .

And further they pleaded the Act of [the first year of Queen Mary]*,* by which it is enacted, *. . . That whensoever the President of the College, or Commonalty of the faculty of* [Medicine] *of* London *. . . shall send or commit any such offender or offenders for his or their offence or disobedience . . . to any ward, [jail], or prison within the same City (except the Tower of* London*) that then from time to time the Warden, [Jailer], or keeper,* etc*. shall receive,* etc*. such person so offending,* etc*. and the same shall keep at his proper charge, without bail . . ., until such time as such offender or disobedient be discharged of the said imprisonment by the said President, ...]*

And further pleaded, That the said Thomas Bonham the 10th of April, within *London,* . . . *[exercised the art of medicine, not being admitted by letters of the aforesaid president and college sealed with their common seal, [because] in truth the aforesaid Thomas Bonham was insufficiently qualified to exercise that art.]* By force of which, the said Thomas Bonham . . . was summoned in London by the Censors or Governors of the College, to appear before the President and Censors. . . . Thomas Bonham . . . was examined by the Censors *[concerning his knowledge of his ability to practice medicine. . . . Thomas Bonham, being so examined, answered ineptly and insufficiently in the aforesaid art of medicine, and was found upon the aforesaid examination by the aforesaid president and censors to be insufficient and inexpert to practice the art of medicine. [Furthermore, although] . . . Bonham has often previously been examined and banned by the president and censors . . . from practicing the art of medicine, he for one month and more after such interdiction [exercised] that faculty in London . . . without license, etc. Therefore it was then and there decided by the aforesaid president and censors that the aforesaid Thomas Bonham should be [fined] one hundred shillings for his . . . disobedience and contempt, to be paid at the next meeting of the . . . president and college, and in the meantime to abstain etc. until he should be found sufficient, etc., on pain of being put in prison if he should offend in the premises.]*

[In October, Bonham practiced medicine again and was subsequently fined again and imprisoned. When brought before the Censors, he] answered, That he had practiced [Medicine] and would practice [Medicine] within *London,* asking no leave of the College, and that he would not submit himself to the President and Censors. . . . [He] affirmed that the President and censors had no authority over those [such as he] who were Doctors in the University [of Cambridge]. For [this reason], the said four Censors *. . . [ordained and decreed that the aforesaid Thomas Bonham be sent to prison, there to remain until he should be delivered from thence by the president and censors, or governors . . . of the aforesaid college.]* . . .

--Reply of the Plaintiff to the Defendants' Argument--

The Plaintiff replied . . . That by the [same] Act of [Henry] VIII it was further enacted, *[. . . that . . . [anyone who seeks to] be admitted to exercise* [Medicine] *in [areas outside of London], . . . [shall not] be [allowed] to exercise or practice* [Medicine] *through[out]* England, *until such time that he be examined at* London *by the said President and three of the said Elects, . . . [Unless] he be a graduate of* Oxford *or* Cambridge, *[who has] accomplished all things for his [degree] . . . :* And that the Plaintiff, in the year of our Lord 1595 was a Graduate, *[namely]* a Doctor in the University of *Cambridge,* and had accomplished all things concerning his degree for his [degree] . . . , by force whereof he had exercised and practiced [Medicine] within the City of *London* until the Defendants had imprisoned him, etc. . . .

. . .

THE DELIBERATIONS OF THE JUSTICES

[OMITTED]

THE JUDGMENT OF THE COURT

As to the two points upon which the Chief Justice, Warburton and Daniel, gave judgment:

--THE FIRST POINT--

It was Resolved by them, That the said censors had not the power to commit the Plaintiff for any of the Causes mentioned in the [case], and the cause and reason thereof shortly was, That the said clause, which gives power to the said Censors to fine and imprison, does not extend to the said Clause,

[namely, that no one in the said City, etc. should exercise the said faculty, etc.,] which prohibits every one to practice [Medicine] in *London,* etc. without license of the President and College; but extends only to punish those who practice [Medicine] within *London, [for their offences in not well executing, exercising, and using the faculty of medicine,]* by fine and imprisonment: So that the Censors have not power by the Letters Patents, and the Act to fine or imprison any for practicing [Medicine] within *London,* but only *[for their offences in not well executing,* etc*. namely]* for ill and not good use and practice of [Medicine].

And that was made manifest by five reasons, called *[vivid or "living" reasons],* because they had their vigour and life from the Letters Patents and the Act itself.

And the best Expositor of all Letters Patents, and Acts of Parliament, are the Letters Patents and the Acts of Parliament themselves, by construction, and conferring all the parts together. *[The best interpreter of a statute, once all the points thereof have been looked into, is the statute itself;]* And *[Unless the whole of the law has been looked into, it is unjust to adjudge or answer in any one point that has been propounded.]*

1. The first reason was, that these two were two absolute, perfect, and distinct Clauses, and as parallels, and therefore the one did not extend to the other; for the second begins, *[He moreover wills and grants, etc.]* and the branch concerning fine and imprisonment, is parcel of the second clause. The first Clause prohibiting the practicing of [Medicine], etc. does [contain criteria that can be adjudicated with certainty: the nature of the offense, its penalty, how to distribute the penalty, etc.] . . . But the clause to punish *[offences in not well executing, etc.]* upon which branch the case at [hand] stands, is altogether uncertain, for the hurt which may come thereby may be little or great, *[light or serious],* excessive or small, etc. And therefore the King and the makers of the Act, cannot, for so uncertain [an] offense impose a certainty of the fine, or time of imprisonment, but leave it to the Censors to punish such offenses, *[according to the seriousness of the offence*,] which is included in these words *[by fines, amercements, imprisonment of their bodies, and by other reasonable and suitable ways;]*

2. The harm which accrues by *[not well executing, etc.]* does concern the body of man; and, therefore, it is reasonable that the offender should be punished in his body, *[namely]* by imprisonment; but he who practices [Medicine] in *London* in a good manner, although he does it without leave, yet it [does no harm] to the body of man.

[3. He who practices medicine in London does not offend the statute by his practice, unless he practices it by the space of a month.] But the clause of *[by not well executing, etc.]* does not prescribe any certain time, but at what[ever] time . . . he [ad]ministers [Medicine] *[not well, etc.]* he shall be punished by the said branch. And the Law has great reason in making this distinction, for [various] Nobles, Gentlemen, and others come upon [various] occasions to London, and when they are here they become subject to diseases, and thereupon they send for their Physicians in the Country, who know their bodies and the cause of their diseases; now it was never the meaning of the Act to bar any one of his own Physician; and when he is here he may practice and minister [Medicine] to another by two or three weeks, etc. without any forfeiture; for any one who practices [Medicine] well in *London* (although he has not taken any degree in any of the Universities) shall forfeit nothing, [unless] he [should] practice it by the space of a month; and that was the cause, that the time of a month was put in the Act.

4. The Censors cannot be Judges, Ministers, and parties; Judges, to give sentence or judgment; Ministers to make summons; and Parties, to have the [half] of the forfeiture, *[because no one ought to be a judge in his own cause, it is wrong for anyone to be the judge of his own property:]* and one cannot be Judge and Attorney for any of the parties. . . .

And it appears in our Books, that in many Cases, the Common Law does control Acts of Parliament, and sometimes shall adjudge them to be void: for when an Act of Parliament is against Common right and reason, or repugnant, or impossible to be performed, the Common Law will control it, and adjudge such Act to be void [*Editor's emphasis*]; and,

therefore . . . Some Statutes [turn out to be] against Common Law and right, [such that] those who made them, would not put them in[to] execution.

[For example, the court] in [the case] 33 [Edward] III *Cessavit* 42 . . . [judged that the Statute of West 2. Cap. 21 could not be applied because of an internal contradiction]. . . . [Therefore] because it shall be against right and reason, the Common Law shall adjudge the said Act of Parliament as to that point void.

[Another example:] The Statute of *Carlisle . . .* enacts, That the Order of the *Cistercians,* and *Augustines* who have a Covent and Common Seal, that the Common Seal shall be in the keeping of the Prior, who is under the Abbot . . . and that any deed sealed with the Common Seal [that] is not . . . in keeping [of the Prior], shall be void. [Therefore] the opinion of the Court . . . was, that this Statute was void, . . . for [if] the Seal [is] in [the Prior's] keeping, the Abbot cannot seal any thing with it, and when it is in the Abbot's hands, it is out of [the Prior's] keeping *[by that very fact];* and if the Statute should be observed, every [agreement sealed by the] Common Seal shall be [voided] upon a simple surmise, which cannot be tried. . . . [And further, in the case of another statute that presumes the—impossible—use of the same Common Seal] the Common Law does control it, and adjudges the same void [as to those points whose force presumes the use of the Common Seal]. . . .

5. If he should forfeit £5 for one month by the first clause, and shall be punished for practicing at any time by the second clause, two absurdities would follow,

a. that one should be punished not only twice but many times for one and the same offence. And the Divine says, *[God does not proceed twice against the same person;]* and the Law says, *[No one ought to be punished twice for one offence.]*

b. It should be absurd, by the first clause to punish practicing for a month, and not for lesser time, and by the second to punish practicing not only for a day, but at any time, so he shall be punished by the first branch for one month by the forfeiture of £5 and by the second by fine and imprisonment, without limitation for every time of the month in which anyone does practice [Medicine].

And all these reasons were proved by two grounds, or Maxims of Law:

--1. *[A general clause is not to be extended to something which is specially mentioned:]* And the Case between *Carter* and *Ringstead, Hil.* 34 *Eliz. Rot.* 120. in Common Pleas, was cited to this purpose . . . .

--2. *[Subsequent words, added for the purpose of certainty, are to be referred back to the previous words which lack certainty.]* [Citing] 6 Edward III 12 a, b. . . .

--*Objections on the First Point from the Defendants***--**

[OMITTED]

--*THE SECOND POINT***--**

Admitting that the Censors had power by the Act, if they had [acted according to] their Authority, or not?

And it was Resolved by the Chief Justice, Warburton and Daniel, that they have not [acted according to] it for six causes [OMITTED].

. . .

And Coke chief Justice, in the conclusion of his argument did, observe seven things for the better direction of the President and Commonalty of the said College in time to come [OMITTED].

And afterwards for the said two last points, Judgement was given for the Plaintiff, *[with no one opposing]* as to them.

And I acquainted Sir Thomas Fleming, Chief Justice of the Kings Bench [*(the supreme court of common law, to which Coke's Court of Common Pleas was subordinate)*] with this Judgment and with the reasons and causes thereof, who approved of the Judgment which we had given: And this is the first Judgment upon the said Branch concerning fine and imprisonment, which has been given since the making of the said Charter and Acts of Parliament, and therefore I thought it worthy to be Reported and published.
Original Author Sort: Coke, Edward
Publication Date: 11610.00.00.##
Topic: The Early Modern Liberal Roots of Natural Law
Subtopic: Common Law and the Law of Reason

Source URL:
http://www.nlnrac.org/earlymodern/common-law/primary-source-documents/Dr.-Bonham%27s-case