

Argument Concerning Ship Money (14 April 1638)

George Croke

Transcript

British Library, Additional MS 22959, ff. 58v–60r

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{gap: elision}

Iustice Crooke argued Apr. 14. 1638 in the [*Left margin:*Ship-mony] Exchequer chamber, before all the Iudges of England & Barons of the Exchequer.

The Case howeuer it immediatly concernes but one priuate man & the matter controuerted be but small namely 20s yet if we consider the dependance upon it, it is the greatest case that euer was argued in this place, for it concernes

The king in his Prerogatiue The Subjects in their liberties lands goods & liues.

The Counsell on both sides haue argued very learnedly according to their seuerall relations.

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But we which are Iudges speake upon our oathes & therefore must deliuer our judgments according to our Consciences & the fault will light upon us if we deliuer it for Lawe it being illegall. [*Left margin:* if it be illegal & we deliv[er] it for Law.]

Before me my brethren (I meane those that are Iudges) haue argued very learnedly & I doubt not but they haue deliuered their opinions according to their consciences.

Which I confesse makes me suspect my selfe but Iudgment is of the Lord & I must not runne with the multitude against mine owne Conscience my Iudgment therefore is for the Defendant That Mr Hambden ought to be discharged and that the said summe of xx s cannot be leuied by that writt.

[*Left margin:*{ }] For First I hold that the writt is contrary to [th]e Commo[n] law. It is against all Statutes & Actes of Parliament.

No pretence of danger can warrant this course of p[ro]ceedings. It is a writt now first deuised & never before knowne or read of, neither is there any one president to proue it for the writt in it selfe.

The pretences in the writt are not sufficient for this course of proceeding in point of Lawe for we which are Iudges must not giue our Iudgments according to S Policy or rules of State or Conueniencie but only according to Lawe.

No booke in Lawe no Authority in Lawe doth allowe it; but on the Contrary there are many bookes in lawe & Authorities in lawe that doe condemne it.

The Common lawe doth giue every man a p[ro]perty in his estate, neither can his mony or goods be taken from him but either in speciall by his owne priuate Consent or in generall by Parliament, & this makes the difference between a Free-man & a Slaue.

[*Left margin*:Profe 17.] John Fortescue a lerned Lawyer Profe 17 sometimes L[ord]d Chancello[u]r of England writes That the king cannot lay any Tallage Subsidies or other burthen upon the Subject but by full consent of Parliament. [*Left margin*:{ }]

From hence I ground mine opinion that to enforce any man to make any Contribution whether he will or not is cleerly contrary to the Common lawe.

The Inconveniency that may arise if we should grante one Shippe is, It may be lawfull then for Twoe, If

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two, then 3 then 10 & for I ought I knowe an 100 & from thence it may rise *ad infinitum*.

[*Left margin*:a pregnant Ex[ample]] We haue an Example of the Dane-gilt which within 11 yeeres from 1000li the First summe paid was raised to 48000li.

[*Left margin*:{ }] Therefore the Lawe hath prouided as bound *ne currat ad in=^{finitu}[m]*.

In all Ages in all times the way to supply the king hath been by Parliament.

1o-~~{gap: illegible}~~ Jac.33. when Tonnage & Poundage was granted by the Parliament the reason was yeelded in the Parliament Because the king shold alwaies haue mony in his Cofers for the defense of the kingdome upon any suddaine occasion

It is against all Statutes & Actes of Parliament 25 E 1 24 E. 7. 14. E. 3 2d Parliam[ent] 21. 22 Ed. 3 answered. 4 H 4 *pleno Parlamento* 13 H 4. 2 H. 4 R 3 cap 2

[*Left margin*:{ }] Answ[er] to the pet[ition] of c. 1432 1433.] But the concluding Statute is that of 3 Car. Then all the Cases & Pretences in this writte mentioned were expressed & when the king was rightly informed the Statute was ordeined.

Nowe take all this together & no Charge can be laid upon the Commonwealth but in *pleno Parlamento*.

The pretences of necessity or danger cannot be allow [*Left margin*:this Course] ed to procure these Courses for the Lawe doth allowe a Remedie in all Cases of Necessity when the king may command all Convenient aid by Land

[*Left margin*:{ }] All Men in their p[er]sons & Armes. All Shippes & Amunition by Sea. 5 H. 4 3 H 5. 1 He 6.

In the 4th y[ear] of H. 4. when the Enemie was in armes and readie to assalt what course was taken then? no more but that all men from 16 to 60 yeeres of age shold be readie in their Armes upon any occasion of Service. But now thankes be to God we haue Shippes plenty enough to defende our Seas & Landes.

But if there be newe Shippes builded it must be by Parliament, Nor can there be a danger in the conceipt of a delay for we all knowe there must be a time to build Then therefore

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all things necessary may be appointed & in the meane time a Parliament may be called for the payment of moneyes.

Besides the ould Lawe was that a Parliament shold be held twice every yeere After by a Stat of 4 E 3 & diuerse other later Statutes, once a yeere a Parliament was ordeined to be called.

And if this were followed there can be no Imaginatio[n] of any such danger, but it may be preuented by a Parliamentary & Legall Course. But it is mainteined by the Royall Prerogatiue.

To which I answer that we Iudges are bound by our oathes to mainteine the kings true Prerogatiue. I must therefore here define what the kings true Prerogatiue is

The kings true Prerogatiue is that the king can doe no wrong, Cannot *Non debet Rex non potest injustê agere* .

A King who is a just king doth mainteine a Royall Prerogatiue by Legall Courses which I am confident his Majestie will doe & so he hath alreadie manifested himselfe. It was his owne speech That if it were not legall he wold not presse it.

But they say it may be levied more *Majorum* Our Fore Fathers haue done it. [*Left margin:**]

Judicandum est Legibus non Exemplis.

yet to take this of cleerly there is no one president to mainteine this Cause. Here all the Recordes urged by the precedent Iudges were refuted by other Recordes & Iudgments vouched by the said M[aster]r Iustice Crooke in his Argument.

[*Left margin:**] But this is no Argument for we that are Iudges must not deliu[er] what may be done de facto but what may be done de jure.

Other manuscript witnesses

- All Souls College, MS 144, ff. 44r–62v
- All Souls College, MS 181, ff. 108r–114v
- All Souls College, MS 181, ff. 154r–165v
- Alnwick Castle, MS 14, ff. 166r–167v
- Alnwick Castle, MS 544
- British Library, Harley MS 3790, ff. 167v–168v
- British Library, Harley MS 3791, ff. 100r–101v
- British Library, Harley MS 6241, ff. 43r–61v
- British Library, Harley MS 6810, ff. 140x–163x
- British Library, Harley MS 6865, f. 25x
- British Library, Lansdowne MS 254, ff. 332r–348r
- British Library, Lansdowne MS 616, ff. 98x–163x
- British Library, Lansdowne MS 617, ff. 63r–88x
- British Library, Lansdowne MS 93, ff. 154r–156v
- British Library, Sloane MS 3933, ff. 210v–257v
- British Library, Additional MS 78655, ff10
- British Library, Hargrave MS 234, ff. 3r–63r
- British Library, Harley MS 1221, ff. 113r–128v
- British Library, Harley MS 1578, ff. 224r–227v
- British Library, Harley MS 1769, ff. 105r–115x
- British Library, Stowe MS 152, ff. 56x–65x
- British Library, Stowe MS 405, ff. 86r–116r
- Beinecke Library, OSB MSS 28, Box 1, Folder 7, item 6, ff.91r–117r
- Beinecke Library, Osborn fb57, ff. 373–375

- Bodleian Library, MS Add. C 26, ff. 496r–521v
- Bodleian Library, MS Add. C 26, ff. 524r–587v
- Bodleian Library, MS Ashmole 1151, item 6, 1r–7v
- Bodleian Library, MS Bodley 184, ff. 273r–296v
- Bodleian Library, MS Eng. hist. c. 319, ff. 70r–71v
- Bodleian Library, MS Rawlinson A 469, ff. 30r–61r
- Bodleian Library, MS Rawlinson A 471, ff. 1r–80v
- Bodleian Library, MS Rawlinson A 472, ff. 1r–57r
- Bodleian Library, MS Rawlinson C 169, ff. 83r–106r
- Bodleian Library, MS Rawlinson C 169, ff. 107r–181r
- Bodleian Library, MS Rawlinson D 342, ff. 377r–403r
- Bodleian Library, MS Rawlinson D 342, ff. 404r–473r
- Bodleian Library, MS Tanner 67, ff. 10r–16r
- Cambridge University Library, MS Dd.9.22, ff. 29r–118v
- Cambridge University Library, MS Ee.3.4, ff82
- Cambridge University Library, MS Ii.5.27, ff. 214r–224r
- Cambridge University Library, MS Ii.5.30, ff. 317r–341r
- Cambridge University Library, University Archives CUR 36.1
- Durham University Library, MSP 45, pp105–156
- Folger Shakespeare Library, MS V.b.206, pp55–60
- Hertfordshire Archives and Local Studies, XII.A.20
- Hertfordshire Archives and Local Studies, XII.A.2b, pp58–88
- Harvard Law School, MS 1276
- Houghton Library, fMS Eng 1081, ff. 1r–2r
- Huntington Library, EL 6977, ff. 116–139
- Huntington Library, EL 7877a
- Huntington Library, HM 204, ff. 173r–195x
- Huntington Library, HM 724, ff. 306–393
- Huntington Library, Hastings Ship Money Box, Item 1
- Huntington Library, Hastings Ship Money Box, Item 3
- Inner Temple Library, Petyt MS 538/43, ff. 315r–330r
- Inner Temple Library, Petyt MS 538/43, ff. 335r–480v
- Kent Archives, U951/C214
- Kent Archives, U951/O5/9, ff. 1r–2v
- London Metropolitan Archives, COL/AC/11/001, item 13
- Longleat House, MS 111, ff. 55–56
- Nottingham University Library, Pw V 87, ff. 1r–11r
- Northamptonshire Record Office, FH4154
- Northamptonshire Record Office, FH59, ff. 59r–74v
- Northamptonshire Record Office, IL 3341
- Parliamentary Archives, WDR/1, ff. 145v–143r
- Queen's College, MS 310, ff. 153–334
- Somerset Archives, DD\DH, Accession G/757, Box 1 [Civil War Papers]
- Sheffield Archives, WWM/Br P/183
- Sheffield Archives, WWM/MS/41
- The National Archives, SP 16/394, ff. 57r–74r
- Woburn Abbey, MS 242, ff56

Manuscript Pamphleteering in Early Stuart England

<https://mpese.ac.uk/t/CrokeShipMoney1638.html>