

[GOVERNMENT OF ENGLAND, 1616]

[Royal confirmation of jurisdiction of the High Court of Chancery]

[1] THE KING'S DECREE TOUCHING THE GRANTING
Anno 14 OF PRÆMUNIRES AGAINST ANY FOR SUEING IN
Jacobi Re- CHANCERY AFTER A JUDGMENT AT COMMON
gis: sexta LAW.
pars Pateñ.
numero 25. JAMES by the grace of God, *etc.*

WHEREAS our right trusty and well-beloved
Sir Francis Bacon, Knt., our Counsellor
and Attorney-General, received a letter from our
Chancellor of England, dated the 19th of March,
Anno Domini 1615, written by our express com-
mandment, directing and requiring him and the
rest of our learned counsel

to peruse such precedents as should be produced
unto them, of the time of K. Henry 7 and since,
of complaints made in the Chancery, there to be
relieved according to equity and conscience after
judgments in the Courts of the Common Law, in
cases where the Judges of the Common Law
could not relieve them, and

thereupon to certify us of the truth of that they
should find and of their opinions concerning the
same;

which letter followeth in these words:—

Mr. Attorney. His M. being informed that there be
many precedents in the Court of Chancery in the time
of K. Henry 7 and continually since, that such as com-
plained there to be relieved according to equity and
conscience after judgments in the Courts of the Com-
mon Law, in cases where the Judges of the law could
not relieve them (being bound by their oath to observe
the strict rules of the law), is willing to understand
whether there be such precedents as he is informed
of; and therefore hath commanded me to let you know
that his will and pleasure is that you call to assist you
his Majesty's Serjeants and Solicitor, and to peruse
such precedents of this kind as shall be produced unto
you, and thereupon to certify his Majesty of the truth
of that you shall find, and of your opinions concern-
ing the same.

And for your better direction therein I have sent you
here-inclosed a note in writing delivered unto me,
mentioning some such precedents in K. Henry 7 time
and since; and I am told that there be the like in former

times. His Majesty expecteth your proceeding in this
with as much speed as conveniently you may, and so
rest

Your assured friend,
T. ELLESMERE, *Canc.*

At York House
19 *Martii*, 1615.

AND WHEREAS our Attorney-General and the
rest of our Learned Counsel did thereupon return
unto us their certificate subscribed with all their
hands according to our commandment and direc-
tion given them by the said letter, which certificate
followeth in these words:—

According to your M. commandment we have ad-
visedly considered of the note delivered unto us of
precedents of complaining and proceeding in Chan-
cery after judgments at Common Law, and have also
seen and perused the originals out of which the same
note was abstracted: upon all which we find and
observe the points following:

1. We find that the same note is fully verified and
maintained by the originals.

2. We find that there hath been a strong current of
practice of proceeding in Chancery after judgment,
and many times after execution, continued from the
beginning of King Henry the seventh's reign unto the
time of the Lord Chancellor that now is, both in the
reigns *seriatim* of the several Kings, and in the times
of the several Chancellors, whereof divers were great
learned men in the law, it being in cases where there
is no remedy for the subject by the strict course of the
Common Law unto which the Judges are sworn.

3. We find that this proceeding in Chancery hath
been after judgment in actions of several natures, as
well real as personal.

4. We find it hath been after judgments in your
Majesty's several courts, the King's Bench, Common
Pleas, Justices in Eyre, *etc.*

5. We find it hath been after judgments obtained
upon verdict, demurrers, and where writs of error
have been brought.

6. We find in many of the cases that the judgments
are expressly mentioned in the Bills in the Chancery
themselves to have been given and relief prayed
thereupon, sometimes for stay of execution, some-
times after execution; of which kind we find a great
number in K. Henry 7th's time.

7. We find the matters in equity laid in such Bills
in most of the cases to have been matter precedent
before the judgments, and not matter of agreement
after.

8. We find in the said cases not only the Bill
preferred, but motions, orders, injunctions, and de-
crees thereupon for discharging and releasing of the
judgments, or avoiding the possession thereupon ob-

[1] [*The Letters and the Life of Francis Bacon* by James Spedding, London (1869), vol 5
pp 385-395. Copied from HathiTrust, <https://catalog.hathitrust.org/Record/100869727>.
According to *The Common Lawyers and the Chancery: 1616*, by J. H. Baker, *Irish Jurist*,
n.s. Vol 4 No 2 (Winter 1969), p 368, n (18), see these citations: Pat 14 Jac p 6 m 25; *Cal.*
State. Papers (Dom. 1611-18), p 384; Carey 186. The decree was widely circulated in
manuscript. In the British Museum see MS Harl 1767 f 49; MS Harl 4265 f 83; MS Lansd
174 f 119; MS Lansd 613 f 47; MS Lansd 826 f 2; MS Stowe 298 f 217v; MS Stowe 415
f 63; MS Harg 227 f 583; MS Harg 249 f 159; MS Harg 269 art 6.]

tained, and sometimes for the mean profits and the release of the costs, *etc.*

9. We find in some of the cases that this very point (that judgment hath been given) hath been stood upon by the defendants and alleged by them by way of demurrer, and overruled.

10. We find that the Judges themselves in their own Courts when there appeared to them matter of equity, because they by their oath and office could not stay the judgment, except it be for some small time, have directed the parties to seek relief in Chancery.

11. We find that this hath not only been done in the times of the several Chancellors, but by the Judges themselves (and that without difficulty) while they sat in Chancery in the vacancy or absence of the Chancellor.

12. We find the hands of sundry principal counselors at law, whereof divers of them are now Judges and some of them in chief place, to bills of this kind.

13. Lastly there were offered to have been showed unto us many other precedents, whereof we heard some read; and found them to be of like nature with those contained in the note.

FR. BACON.
HEN. MONTAGU.
RAN. CREWE.
HEN. YELVERTON.

AND WHEREAS also our said Attorney received one other letter from our said Chancellor with a Case therein enclosed, written likewise by our express commandment, dated the 27th of March 1616, directing and requiring him and the rest of our Learned Counsel, together with the Attorney of our dear son the Prince, to confer together upon the said case, and to consider advisedly of all the parts thereof, and thereupon to peruse all the statutes of *Præmunire* or Provisors, and all other statutes as they should conceive to be necessary to be considered of, for resolving the question propounded in that case; and thereupon to report unto us their opinions in writing concerning the same; which letter and Case therein enclosed follows in these words:—

Mr. Attorney. His Majesty hath perused this case enclosed, and hath commanded me to send it unto you; and his will and pleasure is that you call unto you Mr. Serjeant Montague, Mr. Serjeant Crew, Mr. Solicitor, and Mr. Walter the Prince's Attorney, and that you confer together thereupon and consider advisedly and deliberately of all the parts thereof, and thereupon to peruse all the statutes of *Præmunire* or Provisors, and all other such statutes as you shall conceive to be necessary to be considered of, for resolving the question propounded in this case. This his Majesty would have to be done with mature deliberation, and yet with as much speed as conveniently you can. And when you have sufficiently informed yourselves therein, then to report unto him your opinions in writing. And so I commit you to God, and rest

Your very assured loving friend
T. ELLESMERE, *Canc.*

At York House,
27 *Martii* 1616.

A. hath judgment and execution in the King's Bench or Common Place against B. in an action of debt of 1000 *l.* and in an *ejectione firma* of the manor of D. B. complains in the Chancery to be relieved against these judgments according to conscience and equity, allowing the judgments to be lawful and good by the rigour and strict rules of the Common Law, and the matters in conscience and equity such as the Judges of the Common Law (being no Judges of Equity but bounden by their oaths to do the law) cannot give any remedy or relief for the same either by error or attainr or by any other means.

Quæstio.

Whether the Chancery may relieve B. in this and such like cases, or else leave him utterly remediless and undone; and if the Chancery be restrained herein by any Statute of *Præmunire &c.* then by what statute and by what words in any statute, is the Chancery so restrained and conscience and equity banished, excluded, and damned ?

AND WHEREAS according to our said commandment our said Learned Counsel and the Attorney of our dear son the Prince returned unto us a certificate of their opinions upon the said Statutes under all their several hands concerning the same case; which certificate followeth in these words:—

According to your M. commandment we have deliberately advised of the Case sent unto us by the Lord Chancellor, and of the Statutes, as well those of *Præmunire* as others, as far as we take it may concern the case; and for our better information herein, we have thought fit to send for and peruse the original records themselves remaining in the Tower of London of those Statutes, not only appearing upon the Roll of Parliament but also upon the original Roll of petitions in Parliament with the King's answers, which is the warrant to the Roll of Parliament.

We have also taken into consideration as well book-law as divers other acts of Parliament which may give light to the Statutes whereupon the question properly grows; together with such ancient records and precedents as we could find; as well those which maintain the authority of the Chancery, as those which seem to impeach the same.

And upon the whole matter we are all of one opinion that the Chancery may give relief in the case in question; and that no Statute of *Præmunire &c.* or other statute restraineth the same.

And because we know not what use your Majesty will be pleased to make of this our opinion, either for the time present or future, we are willing to give some reasons of the same; not thinking fit to trouble your Majesty with all those things whereupon we have grounded ourselves, but selecting out some principal things which moved us to be of this opinion, to the end the same may be a fuller object of your Majesty's

princely judgment, whereunto we always submit ourselves.

And first of all we must lay for a sure foundation that which was contained in our former certificate, concerning the continual practice by the space now of six score years, in the times of King Henry the 7th, King Henry the 8th, King Edward the 6th, Queen Mary and Queen Elizabeth, of this authority; and that in those times when the same authority was managed not only by the Bishops, which might be thought less skilful or less affectionate towards the laws of the land, but also by divers great lawyers which could not but both know and honour the law as the means of their advancement; Sir Thomas Moore, the Lord Awdeley, the Lord Riche, Sir Nicholas Bacon, Sir Thomas Bromley, Sir John Puckering.

And further that most of the late Judges of the kingdom, either as Judges when they sate in Chancery by commission, or as counsellors at law when they set their hands to Bills, have by their judgment and counsel upheld the same authority.

And therefore forasmuch as it is a true ground that *optimus legum interpres consuetudo*, especially when the practice or custom passeth not amongst vulgar persons but amongst the most high and most scient magistrates of the kingdom; and when also the practising of the same should lie under so heavy a pain as the *Præmunire*; this is unto us a principal and implicit satisfaction that those statutes ought not to be construed to extend to this case. And this of itself (we know) is of far more force to move your Majesty than any opinion of ours; because Kings are fittest to inform Kings, and Chancellors to teach Chancellors, and Judges to teach Judges.

But further out of our own science and profession we have thought fit to add these further reasons and proofs, very briefly, because in case of so ancient a possession of jurisdiction we hold it not fit to amplify.

The statutes upon which this question grows are principally two; whereof one is a statute of *Præmunire*, the other is a statute of simple prohibition.

That of the *Præmunire* is the statute 27 Ed. 3. cap 1°. And the statute of the simple prohibition is the statute of 4 H. 4. cap. 23°.

There be divers other statutes of both kinds; but the question will rest principally upon these two, as we conceive it.

For the statute 27 Ed. 3 it cannot in our opinions extend unto the Chancery for these reasons:—

1. First out of the mischief which the Statute provides for and recites, *viz*: That such suits and pleas (against which the statute is provided) were in prejudice and disinherison of the King and his Crown, which cannot be applied to the Chancery: for the King cannot be disinherited of jurisdiction but either by the foreigner or by the subject, but never by his own Court.
2. Out of the remedy which the Statute appoints: *viz*: That the offenders shall be warned within two months to be before the King and his Council or in his Chancery, or before the Kings Justices of the one Bench or the other &c. By which words

it is opposite in itself that the Chancery should give both the offence and the remedy.

3. Out of the penalty, which is not only severe but hostile; namely that the offenders shall be put out of the King's protection; which penalty altogether savours of adhering to foreign jurisdiction, and would never have been inflicted upon an excess only of jurisdiction in any of the King's Courts, as the Court of Chancery is.
4. Out of the statutes precedent and subsequent of 25° Ed. 3i, cap. 1°, and 16° R. 2 cap. 5°. which are of the same nature and cannot be applied but to foreign Courts: for the word *alibi* or elsewhere is never used but where Rome is named specially before.
5. The disjunctive in this statute (which only gives the colour) *viz*: that they which draw any out of the realm in plea whereof the cognizance pertaineth to the King's Court, (or) of things whereof judgments be given in the King's Court, or which do sue in any other Court to defeat or impeach the judgments given in the King's Court,—This last disjunctive (we say), which must go further than Courts out of the realm (which are fully provided for by the former branch), hath sufficient matter and effect to work upon in respect of such Courts which though they were locally within the realm, yet in jurisdiction were subordinate to the foreigner: such as were the Legate's Court, the Delegate's Court, and in general all the Ecclesiastical Courts within the realm (at that time), as it is expressly construed by the Judges 5° E. 4i, fol. 6°.
6. In this the sight of the record of the petition doth clear the doubt, where the subjects supplicate to the King to ordain remedy against those which pursue in other Courts than his own against judgments given in his Court, which explains the word (other) to be other than the King's Courts.
7. With this agreeth notably the Book of Entries, which translates the word 'in other Court,' not *in alia Curia*, but *in aliena Curia*.
8. This statute of 27 E. 3 being in corroboration of the Common Law (as itself recites), we do not find in the Register any precedent of the writs of (*ad jura Regia*)¹ which are framed upon these cases that were afterwards made penal by *præmunire*, but only against the Ecclesiastical Courts.
9. Lastly, we have not found any precedent at all of any conviction upon the statutes of *Præmunire* of this nature for suits in Chancery; but only two or three Bills of Indictment preferred. *Sed nihil inde venit* for ought appears to us.

For the Statute of Henry 4, that no doubt was made against proceedings within the realm and not against foreign, and therefore hath no penalty annexed. Nevertheless we conceive that it extends not to the Chancery in the case delivered, for these reasons:

1. First. This Statute recites, where the parties are made to come upon grievous pain, sometimes before the King himself, sometimes before the King's Council, and sometimes in the Parliament, to answer thereof anew, &c. Where it appeareth that the Chancery is not named, which could not

have been forgotten, but was left out upon great reason, because the Chancery is a Court of ordinary Justice for matter of Equity, and the statute meant only to restrain extraordinary commissions, and such like proceedings.

2. This appears fully by view and comparing of the two petitions which were made the same Parliament of 4 Hen. 4, placed immediately one before the other; the first which was rejected by the King, and the second whereupon the statute was made; whereof the first was to restrain three ordinary proceedings of justice; that is to say, in the Chancery by name, in the Exchequer, and before the King's Council by process of Privy Seal. Unto which the King makes a royal and prudent answer in these words: The King will charge his officers to be more sparing to send for his subjects by such process than they have heretofore been. But notwithstanding it is not his mind that his officers shall so far abstain but that they may call his subjects before them in matters and causes necessary, as it hath been done in the time of his good progenitors. And then immediately follows the petition whereupon the Act now in question was made, unto which the King gave his assent: and wherein no mention is made at all of the Chancery or Exchequer.
3. If the Chancery should be understood to be within the statute, yet the statute extends not to this case: for the words are, That the King's subjects after judgments are drawn to answer thereof anew—which must be understood, when the same matter formerly judged is put in issue or question again. But where the cause is called into Chancery only upon point of equity, there, as the point of equity was never in question in the Common Law Court, so the point of law or of fact (as it concerns the law) is never in question in the Chancery. So the same thing is not twice in question, or answered anew; for the Chancery doth supply the Law and not cross it.
4. It appears to our understanding by the clause of error and attain in the same statute, what jurisdiction it was that the statute meant to restrain: viz: such jurisdiction as did assume to reverse and undo the judgment as error or attain doth; which the Chancery never doth, but leaves the judgment in peace, and only meddles with the corrupt conscience of the party: for if the Chancery doth assume to reverse the judgment in the point adjudged, it is void, as appears 39° E. 3i. fol. 14°.
5. We find no precedents of any proceeding to conviction or judgment upon any indictment framed or grounded upon this statute, no more than upon the statutes of *Præmunire*. And the late indictments are *contra diversa statuta*, not mentioning the particular statutes.
6. Lastly, it were a great mischief to force the subject in all cases to seek remedy in Equity before he know whether the Law will help him or no: which oftentimes he cannot do till after judgment. And therefore he is to seek his salve properly when he hath his hurt.

There be divers other things of weight which we have seen and considered of, whereupon we have grounded our opinion; but we go no further than upon that we have seen.

But because matter of precedent is greatly considerable in this case, and that we have been attended by the Clerks of the Chancery with the precedents of that Court, and have not yet been attended by any officers of the King's Bench with any precedents of indictments, although we required them and gave them convenient time to have attended us, if it shall please your Majesty to direct that the said officers shall attend us with their precedents, we shall give your M. faithful report of them as we have done of the other. All which we most humbly leave to your M. princely judgment.

FRANC. BACON.
HEN. MONTAGUE.
RANULPH CREWE.
HEN. YELVERTON.
JOHN WALTER.

NOW FORASMUCH as mercy and justice be the true supporters of our royal throne, and

that it properly belongeth to us in our princely office to take care and provide that our subjects have equal and indifferent justice ministered to them; and

that where their case deserveth to be relieved in course of equity by suit in our Court of Chancery, they should not be abandoned and exposed to perish under the rigour and extremity of our laws:

WE in our princely judgment having well weighed and with mature deliberation considered of the several reports of our Learned Counsel and all the parts of them,

do approve ratify and confirm as well the practice of our Court of Chancery expressed in their first certificate, as their opinions for the law upon the statutes mentioned in their latter certificate, the same having relation to the Case sent them by our said Chancellor.

And do will and command that our Chancellor or Keeper of the Great Seal for the time being shall not hereafter desist to give unto our subjects upon their several complaints now or hereafter to be made such relief in Equity (notwithstanding any former proceedings at the Common Law against them) as shall stand with the true merits and justice of their cases, and with the former ancient and continued practice and precedency of our Chancery.

And for that it appertaineth to our princely care and office only

to be Judge over all our Judges and

to discern and determine such differences as at
any time may or shall arise between our several
Courts, touching their jurisdictions, and
the same to settle and decide as we in our prince-
ly wisdom shall find to stand most with
our honour, and
the example of our royal progenitors in the best
times, and
the general weal and good of our people, for
which we are to answer unto God who hath
placed us over them,
our will and pleasure is that our whole proceedings
herein by the degrees formerly set down be en-
rolled in our Court of Chancery, there to remain
of record for the better extinguishing of the like
questions or differences that may arise in future
times.

Per ipsum Regem.

18^o Julij Anno XIII. RR Jacobi, etc.
