

The Arguments Exhibited in Parliament Regarding Contempt in Chancery (c.1572)

Lord Keeper Nicholas Bacon

Transcript

Norfolk Record Office, RYE 20, Item 2, ff. 1r–2r

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The Arguments exhibited by the Lord Keeper S[i]r Nicholas Bacon in Parliament, proving the Noblemens p[er]sons to be Attacheable for contempt com[m]itted by them in the Queenes Ma[jes]ties Court of Chancery, disobeying the decrees in that Court, which came in question vpon an attachement ordered out of the same Court to the Sheriff of Norff[olk] to attach the body of the Lord Cromwell for disobeying a decree made in the said Court betweene one Taverner plaintiff and the said Lord Cromwell defend[an]t, which Attachment so executed by the said Sheriff, and the body of the said Lord Cromwell brought prisoner in the said Court of Chancery /

First hee saith that by a contempt comitted by a Nobleman against his Prince, his p[er]son is attacheable by the lawe, but if a nobleman disobey a decree made in the Chancery in a matter examinable there, hee com[m]itteth a contempt ag[ains]t his Prince, and therefore by the com[m]on lawe his body for his contempt is attachable, and this is rather, because the decrees are given *coram nobis in Cancellaria nostra.*/

Secondly hee saith, That if a Nobleman com[m]itt a contempt against the Queenes Maiesties prerogative, in one of the highest degrees hee com[m]itteth the contempt aforesaid, and his body is attacheable for that by lawe, But if a nobleman

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disobey a decree made in the Chancery and warranted to be made by her highnes prerogative, in one of the highest degrees hee com[m]ittes a contempt against that prerogative, and therefore his body for the same is attacheable by the lawe, and the cause why hee thincketh is this, For ^{that} the Prince by his prerogative hath power to order causes otherwise then the lawe is, and to helpe the subiectes in a cause, wherein hee hath no helpe, by which seemes in reason as great as may bee./

Thirdly it hath byn allwayes vsed and accustomed, that Noblemen have byn and yet are called into the Chancery for matters examined in the same Court, and the same proceeded in and ordered and if vse & custome have allowed of this, then of all congruity it must allow the necessary dependentes of the same, which is the execuc[i]on of theis orders, for otherwise that vse should have byn altogether in vayne, and other meanes in the Chancery for execuc[i]on of theis orders, there is none but by Attachment, And therefore of necessary depend[en]tes vpon such orders thus vsed, they are to be allowed. And as to that w[hi]ch hath byn said, that there hath byn no vse of that execuc[i]on by Attachment. it hath byn aunswared That Noblemen were of that considerac[i]on, that they never disobeyed any of those orders, and therefore no cause of that vse.

Fowerthly to graunt a Court power to heare and order, and not to execute the same, is a playne absurdity. And againe to leave all Coppyholders of Noblemen ~~in matters~~ without remedy, if they be removed from their coppyholdes by their Lordes

and all

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and all other men against Noblemen in matters of equity, seemes a great inconvenience and much preiudicall to the com[m]on weale considering how great the number of theis may be, besides what an inconvenient thing it is, to have a Nobleman bring a matter in the Chancery, and the Court shall have power to doe Iustice for him, but not against him. This is not *Ius aequabile*, and all the thinges are to followe in his opinion, except theis Attachm[en]tes in the cases afore remembred be allowed ./

Fiftly, for as much as the Chancery is warranted to heare and order causes by vertue of the Queenes Maiesties prerogative, where otherwise by lawe the subiect hath an helpe and also to qualifie the extremity of the lawe, Therefore if all causes examinable in Chancery for the respect aforesaid betweene a Nobleman and another man should be taken from the hearing and ordering of that Court, that must needes be in derogation of the same, which hee thincketh ought not to be without the Queenes Maiesties privity, And therefore prayeth as hee hath aforesaid, and that her highnes may be made acquainted with this cause, before any order be taken herein ./

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