Speech at First Taking His Seat in Chancery (7 May 1617)

Francis Bacon

Transcript

British Library, Additional MS 45145, ff. 1r–17r

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The Lord Chancellor's Speech

c Before I enter into buisnesse of the courte I must take aduantadge of soe many ho[noura]ble wittnesses to puplish and make knowne summarily, what charge the kinges most Excellent M[ajes]tie gaue me when I receaued the seale, and what Orders and resoluc[i]ons I my selfe have taken in Conformitie to that Charge, that the king may haue the honor of direction, and the parte of obedience, wherby yo[u]r lo[rdshi]ps and the rest of the pr[e]sence shall see my whole tyme of sitting in Chauncery, w[hi]ch may be longer, and shorter as it shall please God, and the king Contracted into one hower, and this I doe for three causes./

First to give account to the king of his Commaund./

Secondly, that it may be a Guard and Custodie to my selfe, and mine owne doeinges, that I doe

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not swarme and recede from any thing I have professed in soe good Companie.

And Thirdly, that all men that have to doe w[i]th the Chauncery, or the seale may know what they shall expect and both sett theire hartes and myne Eares att Rest, not moveing any thing against those Rules, knoueing that my answere is now turned from a Volumus into a quod non possumus, it is noe more I will not, but I cannot alter this declaracon./

And this I doe Allsoe under three cautions./

The first is that there be some things of a more secrett and Counsaylelike nature, w[hi]ch are rather to be Acted then puplished but those thinges w[hi]ch I shall

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speake of today, are of a more puplique nature

The second is That I will not trouble this presence w[i]th every perticular w[hi]ch would be too long, but select those thinges w[hi]ch are of greatest efficacie and conduce most *ad summas rerum* leaveing many oth[e]r particulars to be sett downe in a puplique table according to the good example of my last pr[e]decessor in his begini[n]gs.

And lastly that theise Imperatives w[hi]ch I have made but to my selfe and my tymes be w[i]thout preiudice to the Auhtoritie of the Courte, or to wiser men that may succeede me and chefely that they are wholly ~~Ad~~sub mitted unto the greate wisdome of my soveraigne and the absolutest Prince for Judicature that hath beene in the Christian

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wordle, for if of those thinges w[hi]ch I intend to be subordinate to, his directions shalbe thought by his M[ajes]tie to be Inordinate, I shalbe most readie to reforme them

Those thinges are but *tanquam Albu[m] prætoris*, for soe did the Roman Prætors w[hi]ch have the greatest affinitie w[i]th the Jurisdicc[i]on of the Chauncell[o]r here, whoe used to sett downe att theire entrance how they would use theire ~~J~~ Jurisdicc[i]on. And this I shall doe my lordes in *verbis masculis*, noe flourishing or painted wordes but such wordes as shall goe before deedes./

The kinges Charge w[hi]ch is my lanthorne resteth uppon fouer heades.

The first was that I should

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Conteyne the Jurisdiccon of the Courte, w[i]th[i]n the true, and due limitts, w[i]thout swelling or excesse.

The second that I should thinke the putting of the great seale to l[ett]res pattents was not a matter of course to followe after precedent warrants, but that I should take it to be the Maturetie, and fulnes of the kinges intencons, and therfore one of the greatest partes of my ~~p~~trust and if I saw therein any scruple or cause of stay that I should acquaint him, w[i]th a *quod non dubites ne fecere*./

The Third was that I should retrench all unnecessary delayes that the subiect might find that he did enioye the same Remedy against the fainting of the soule, and the Consumption of his Estate w[hi]ch: was speedie Justice./

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And that those same brambles w[hi]ch grow about Justice of needlesse charge and expence, and all maner of exaccons might be rooted out soe farre as might be

Theise Cammaundem[en]ts my Lords are righteous, and as I may terme them sacred, and therefore to use a sacred forme, I pray god blesse the king for his greate care over the Justice of this land and give me his poore servant grace and power to observe his precepts.

Now for a beginning towardes it I had sett downe, and applyed particular orders to day out of theise generall heades./

For the excesse or humor of the Courte of Chauncery, I shall devide it into five Natures.

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The ~~nature~~first is when the Courte doeth embrace, or retayne causes both in matter and in Circumstance meerely determinable, and fitt for the Common law, for my Lordes the Chauncery is ordeyned to supply the law, and not to subvert the law. Now to describe unto yow: or delineate what theise Causes are, and uppon what difference, and what are fitt for the Courte or not fitt for the Courte were too long a lecture, but I will tell yow:, what remedie I have prepared, I will keepe the keyes my selfe, and I will nev[er] referre any demurrer or Plea tending to dischardge or dismisse the Courte of the Cause, to any M[aste]r of the Chauncery, but Judge of it my selfe, or at the least by the M[aste]r of the Rolls, Nay further I will appoynte regularly

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that on the Tuesday of evry weeke w[hi]ch: is the day of Ord[e]rs First to heare Mocons of that nature, before any other that the subiect may have his vale att the First w[i]thout

attending, and that the Courte may not leave and accumulate a Missellanie and Confusion of Causes of all natures./

The second point concerneth the tyme of the Complaint, and the late Commers into the Chauncery w[hi]ch stay till a Judgment be passed against them att the Com[m]on lawe and then Complaine, wherein yo[u]r Lordshipps may have heard a greate Rattle, and a Noyse of Præmunire, but I cannot tell what, but that cause the king hath settled according to the auncient presidents in all kinges tymes Continued. And this I will say that the opinion not

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to releeve any Case after Judg[men]t would be a guilty opinion guilty of the Ruygne, Naufrage, and perishing of Infortunate subiects and as the king found it well out why should a man fly into the Chauncery before he be hurte, but my Lordes the power would be preserved, but the practice would be moderate, My Rule shalbe there fore that In case of Complaints after Judegement except the Judgm[en]t be uppon nihil dicit and cases w[hi]ch are but disguises of Judgements As that Judgement be obteyned, in contempt of a preceding Order, in this Courte, yea, and after verdict allsoe, I will have the partie Complaynant to enter into good Bond to prove his successions, soe that he wilbe Releeved against a Judgement

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att the Common law uppon matter of equity he shall doe it tanquam et Vinculis, att his p[er]ill/

The Third poynt of excesse may be the over frequent, and facile graunting of Iniunctions for the stayeing of the Common law, or the altering of the possessions wherin theise shalbe my Rules, I will graunt noe Iniunctions meerely uppon prioretie of suite that is to say, because this Courte was first possessed, a thing that was well Reformed in the late lord Chauncell:[o]r Bromely's tyme, In soe much that I remember that mr: Dalton the Counsellar ~~of~~att law put a Pasquill uppon the Courte in nature of a Bill for seeing it was noe more but my lord, the Bill came in on munday and the arrest att Com[m]on law uppon

tuesday.

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I pray an Iniunccon uppon Prioretie of suite, he caused his client that had a debtor to put his Bill into the Chauncery before the Bond due to him was forfeited, to desire an order that he might have his money at his day because he would be sure to be before the other, I doe not meane to make it a matter of an horse race, whoe shall be first att Westminister hall Neither will I graunt a Iniunction uppon matter conteyned in the Bill onely, be it never soe smoth and specious but uppon matter confessed in the deffendants aunswere, or matt[e]r pregnant in writing, or of Record, or uppon Contempt of the def[endan]ts in not appearing, or not aunswering, or trifeling w[i]th the Courte by Insuffi-cient Aunswering, for then It may be thought that the

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Deff[endan]ts standes out of purpose to gett the starte att the Com[m]on law, and soe to take advantage of his owne Contempt w[hi]ch may not be suffered,

As for Iniunctions for poss[ess]ions, I shall mainteyne possession, as they were at the tyme of the bill exhibited, and for the space of a yeare att least before, except the possession were gotten by force or by any trick

Neither will I alter possession uppon Interlocutorie orders untill a decree, except uppon matter playnely confessed in the deff[endan]ts aunswere ioyned allsoe w[i]th a playne disabilitie and Insolvencie in the deff[endan]ts to aunswere the p[ro]fitts

As for takeing the possession away

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In Respect of Contempts I will have all the processe of the courte spent first, and a Sequestracon of the profitts before I Come to an Iniunction.

The Fourth poynt is, as con-cerning the Communicating of the Authority of the Chauncell[o]r too farre, and makeing uppon the matter too many Chauncellors, by relying too much uppon the reportes of the M[aste]rs of the Chauncery as concludent, I know, my lordes, the m[aste]rs of the Chauncery are reverend men,and the greate masse of the buisnes of the Court Cannot be spe~~e~~[d] d w[i]th:out them; And it is a thing the Chauncell[o]r may soone fall to for his owne case to rely much uppon them, but the Course that I will take gen[er]ally shalbe this, I will make noe binding order uppon any Report of

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One of the Masters, w[i]thout giving a seavenights day at [the] least, to shew cause against the Report, w[hi]ch neverthelesse I will have done modestly, and w[i]th due reverence towardes them, and againe I must utterly discontinew the Makeing of an Hipotheticall or Conditionall Order, That if a Master of the Chauncerie be certefied thus, & thus, that then it is soe ordered w[i]thout further mocon, for that it is a surprize, and giveth noe tyme for Contradiction.

The last poynt of Excesse is, if a Counsell[o]r shall doe soe much of himselfe, as he shall neglect the assistance of reverend Judges, in cases of difficulty, especially if they touch uppon law, or calling them shall doe it but, pro forma tantum

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and give noe due respect to theire Opinions, wherein my Lordes preserving the dignitie and M[ajes]tie of the Courte, w[hi]ch I cannot rather encreased then ~~ad~~ diminshed by grave and due assistance, I shall never be found soe s[o]v[er]aigne or abundant in mine owne sence, but ~~as~~ I shall both desire and make [true] use of Assistants, Nay I assure yo[u]rLo[rdshi]ps if I should find any many diversitie of opinion of my assistantse from mine owne, though I know well the Judjcature of the Courte, wholly rests in my selfe yett I thinke I should have recourse, to the Oracle of the king's owne Judgement, before I should pronounce, And soe much for the temperate use of the Authoritie of this Courte, for surely the health of a Courte as well as a body consisteth in temperance

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For the second Commaundem[en]t of his M[ajes]tie touching staying of graunts att the seale, theire may be iust cause of stay either in the matter of the graunt, or in the manner of passing the same, out of both w[hi]ch I extract theise six principall causes, w[hi]ch I will now make knowne. All w[hi]ch neverthe lesse I understand to be wholly submitted to his M[ajes]t[y]s

will, after by me he shall have beene Informed, for if Iteratum mundatu[m] become obedience is better the sacrafice.

The first case is where any matt[e]r of Revenew, treasure, or profitt passeth from his M[ajes]tie, my first dutie shalbe to examine wheither the graunt have passed in the due and naturall course, by

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the greate Offic[e]rs of the Revenew, The Lord Treasurer and Chauncellor of the Exchequer, and w[i]th theire privitie; w[hi]ch if I find it, not to be, I presume it to have passed in the darke, and by a kind of surrepcon; & I will make stay of it, till his M[ajes]tie pleasure be further knowne./

If it be a graunt that is not meerely vulgar, and hath of course passed att the signett of fac simile but needeth science; my duety shalbe to examine, wheither it hath passed by the learned Councell, and had theire dockett, w[hi]ch is that his M[ajes]tie reades, and leades himselfe, and if I find it otherwise (although the matter were not in it selfe Inconvenient) yett I hold it iust cause to stay for presidents sake to keepe men in the right way./

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Thirdly if it be graunt w[hi]ch I conceave out of my litle knowlege to be against the law, (of w[hi]ch nature Theodosius was wont to say I spake it or I wrote it but I graunted it not) if it be uniust) I will call the learned Counsell to it aswell he that drew the booke as the rest, or some of them, for as for the Judges, they are [Judges] grants past, but not of grauntes to come except the king call them./

Fourthly if graunts be against the kings puplique booke of bounty, I am expressly Comannded to stay them, untill the king eith[e]r revise his booke in generall, or give direction in the p[ar]ticular./

If as a Counsellor of Estate I doe foresee Inconvenience to ensue by reason of estate in respect of the kinges honour, or discontent,

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or Murmure of the people, I will not trust to mine owne Judegment, but I will either acquaint his M[ajes]tie w[i]th it, or the Counsell table or some such of my Lordes as I shall thinke fitt,/

Lastly for matter of pardons, if it be for treasons Mispriclu[m] Murther either exprest or involute, by a non obstante or of Piracy, or Premunire, or of fines or exemplary punishment in the starre Chamber, or some other natures I shall by the grace of god stay the, untill his M[ajes]tie who is the fountayne of grace shall resolve betweene god and him, how farre grace shall abound or superabound./

And if it be of persones attainted and Convicted of Robbery, Burglary, &c, then will I examine wheith[e]r the pardons passed the hand of any

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Justice of Assize, or Justice of peace, or other Commissioners, before whome the triall was made, And if not I thinke it my dutie allsoe to stay them/

And yo[u]r lo[rdshi]ps see in this matter of the seale, and his M[ajes]t[y']s Royall Co[m]maundement concerning the same I meane to walke in the light, soe that men may know where to finde me, And this puplishing thereof plainly I hope will save the king from a great deale of abuse, and me from a great deale of Envy when men shall see that noe particular turne, or end leades me but a generall Rule,

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For the third generall heade of his precepts concerning speedy Justice, It Resteth much uppon my selfe, and much uppon oth[e]rs yett soe as my procuracon may give some Remedy and order unto it./

For my selfe I am resolved that my decree shall come speedily, if not Instantly after the heareing, and my signed decree speedily uppon my decree pronounced, for it hath bin a manner much used of late in my last lordes tyme, of whome I have much to Imitate, and somew[ha]t to avoyde, that uppon the solemne and full heareing of a cause noetheing is pronounced in Courte, but breviats are required to be made (w[hi]ch I doe not dislike in it selfe

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In caused perplexed) for I Confesse I have somewhat of the Cunctative, And I am of opinion that Whoesoever is not wiser uppon advise then uppon the soddayne, the same man is noe wiser att fiftine, then [hee was] att thirtye, and It was my Father's ordinary wordes yow must give me tyme, but yett I finde that when such breviates were taken, the Cause was sometymes forgotten a terme or two, and then sett downe for a new hearing, or reheareing three or foure termes after./

And in the meane tyme the

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subiects pulse beates swifte though the Chauncery pace be slowe, of w[hi]ch kind of Intermission I see noe use, And therefore I will promise regularly to pronownce my decree w[i]th:in few dayes after my hearing, and to signe my de~~g~~[c] ree att the least in the Vacation after the pronouncing of fresh Justice is the sweetest, And to the end that there be noe delay of Justice nor any other meanes makeing or labouring, but the labour of the Counsell att the barre./

Againe because Justice is a sacred thing, and the end for w[hi]ch I am called hither, and there fore is my way to heaven (And if it be shorter it is never ~~th~~e[a] whitt the worsse) I shall by the grace of god (as

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farre as god will give me leave) add the after noone to the afforenoone and some fortnight of the Vacacon to the service of the expediting, and clearing of the Causes of the Courte, onely the depth of the thre long vacacons, I would reserve in some measure free from buisnes of Estate, and for studies, Acts, and services, to w[hi]ch : In mine owne nature, I am most Enclined./

There is an oth[e]r poynt of true Expedicon w[hi]ch resteth much in my selfe, And that is my manner of giving orders For I have seene an

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affectacon of dispatch turne utterly to delay at length, for the manner of it is to take the Tale out of the Counsell[o]r att the Barre his mouth and to give a Cursary order noething tending, or conducing to the end of the buisnes, It makes me Remember what I have heard one say of a Judge that sate in the Chancery, That he would make fortie ord[e]rs ~~out~~[in] a morning out of the way and it was out of the way indeede, for it was noething to the end of the buisnes, and that is that w[hi]ch makes fiftie [& sixtie] eightie, 100 orders in a cause, too, and froe begetting one another, and like Penelope's Webb, doeing and undoeing,/

But I meane not to purchase the prayse of expedetive in

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that kind, but as one that hath a feeling of my duetie, and of the case of others in my endeav[ou]r shalbe to heare patiently, and to cast my Order into such a mould, as may soonest bring the subiect to the end of his Journey./

And for delayes that may Concerne others, first the great Abuse is, that if the p[lainti]ff have gott an Iniunction to stay suites att the Common law, then he will spinne out his Cause att length, But by the grace of god I will make

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Iniunctions but an hard pillow to sleepe on, for if I finde that he prosecutes not w[i]th effect, he may perhappes when he is awake find not onely his Iniunction dissolved but his Cause dissmissed./

There be other perticular orders, I meane to take for non prosecution, or faint prosecucon wherew[i]th I will not trouble yow now because summa sequor vestigia reru[m] and soe much for matter of Expedicon./

Now for the fourth and last point of the king Com[m]andem[en]t for the cutting of unnecessary charge of the suibect, A great porcon of it is fulfilled, in the precedent Article, for it is the length of suites that doeth multiply Charges cheefely

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Butt yett there are some other Remedies, that doe Conduce thereunto./

First therefore I will maynteyne strictly, and w[i]th former orders w[hi]ch I finde my lord Chauncellor hath taken for the moderate, and needelesse prolixitie, and length of bills, and Aunsweres &c/ aswell in punishing the partie, as fining the Counsell whose hand I shall find att such bills, and aunsweres/

Secondly for all examinacons taken in the Countrey, I doe

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give charge unto the examin[e]rs uppon perill of loosing theire places, that they doe use any Idle Repeticons, or needelesse Circumstance in setting downe the deposicons taken by them And I would I could helpe it likewise in the Countrey, but that is Impossible./

Thirdly I shall take a diligent survey of the copies in Chauncery, that they have theire Just number of lines and w[i]th out open, and wastefull writing./

Fourthly, I shalbe carefull there be noe ~~n~~exaccon of ~~any~~ any new Fees, but according as they have beene heretofore sett and tabled./

As for lawyers Fees I must leave that to the conscience and meritt of the lawyers,

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and the estimacon, and gratitude of the Clyent, but this I can doe, I know there have used to attend this Barre a numb[e]r of lawyers, that have not beene hard scarce once, or twice in a terme, and that maketh the ~~Counsell~~[Client] seeke to greate counsel[lors] and favourites (as they call them) for evry ordder, that a meane ~~mens~~[lawyer] might aswell dispach (a terme fitter for kinges then Judges) therefore to helpe the generalitie of lawyers, and therein to helpe the Clyents I will constantly observe that evry tuesday, and other dayes

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of Orders, After nine a clocke strucken, I will heare the Barre untill eleaven, or halfe an hower After tenn att the least, and since I am uppon [~~whome~~] the pointe [whome] I will here yo[u]r lo[rdshi]ps will give me leave to tell a fancie./

It falleth out that there be three of us the kinges servants in greate places that are lawyers by descent, Mr Attourney somnne of a Judge, Mr Solicitor likewise sonne of a Judge, and my selfe a Chauncellors sonne./

Now because the law rootes so well in my tyme, I will water it at the Roote thus farre, As besides theise great ones I will heare any Judges sonne before

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a Serieant, and any seriants sonne be a Reader if there be not many of them,

Lastly for the better ease of the subiects, and the bridling of Contentious suites, I give better that is great coastes where the suggestions are [n]o[t] proved then hath beene hithe~~e~~[r] to used./

There be divers O[rders] for the better Regiment [of] this Courte, and for gr[a]nting of writts, and for graunting of benefitts, and others w[hi]ch I shall sett downe [in] a table, but I will deale [w[i]th] noe other to[day] but such as have a proper

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Relacon to his M[ajes]ti[e]s Commaundem[en]t it being my Comforte, that I serve such a master that I shall neede to be a Conduit onely, for Conveying his gooodnes to his people, And it is true that I doe aspire, and affect to make good that saying, That optimus Magistratus praestat optimae legi, w[hi]ch is true in his M[ajes]tie and for my selfe, I doubt I shall not attaine it, but yett I have a domesticke Example to follow./

My Lordes I have noe more to say, but now I will goe on in the buisnes of the Courte./

finis/

Other manuscript witnesses

- British Library, Additional MS 22591, ff. 268r–271r
- British Library, Harley MS 1576, ff. 86r–89r
- British Library, Harley MS 39, ff. 248r–258r

- British Library, Harley MS 830, ff. 38r–52r
- British Library, Lansdowne MS 612, ff. 20r–31r
- British Library, Sloane MS 1856, f. 74r
- Beinecke Library, Osborn Shelves Gordounstoun Box 5, ff. 47r–58r
- Beinecke Library, Osborn fb60, ff. 448r–456r
- Bodleian Library, MS Rawlinson D 924, ff. 16v–23r
- Bodleian Library, MS Tanner 395, ff. 48r–57r
- Folger Shakespeare Library, MS V.a.206, ff. 25r–34v
- Harvard Law School, MS 1026, ff. 147r–155v
- Lincolnshire Archives, MON 21/12/1
- Nottingham University Library, Cl LP 16
- Sheffield Archives, WWM/MS/2, ff. 90r–94r
- UCL, Ogden MS 7/3, ff. 21r–29v
- UCL, Ogden MS 7/52, ff. 14r–15v
- Woburn Abbey, MS 19, pp19–23
- Woburn Abbey, MS 192, pp111–126
- Woburn Abbey, MS 4E-60, ff. 106v–107r

Seventeenth-century print exemplars

- Francis Bacon, *Resuscitatio* (1657) [Wing B319], pp. 79–86

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https://mpese.ac.uk/t/BaconSpeechChancery1617v1.html