

Defendant pleads all this special matter; and the Plaintiff replies, *De injuria sua propria absque tali causa*.³ And the first day of this Term, this Issue was tried, and it was proved directly, that if the things had not been cast out of the Barge, the passengers had been drowned: And that *Levandi causa*,⁴ they were ejected; some by one passenger and some by another; And upon this the Plaintiff was non-suit.

It was also resolved, that although the Ferry-man sur-charge the Barge, yet for safety of the lives of Passengers in such a time and accident of necessity, it is lawfull for any passenger to cast the things out of the Barge: And the Owners shall have their remedy upon the sur-charge against the Ferry-man, for the fault was in him upon the sur-charge; but if no sur-charge was, but the danger accrued only by the act of God, as by Tempest, no default being in the Ferry-man, every one ought to bear his losse for the safeguard of the life of a man, for *Interest Reipublicae quod homines conserventur*,⁵ 8 Edw. 4. 23, &c. 12 Hen. 8. 15. 28 Hen. 8. Dyer 36. plucking down of a house in time of fire, &c. And this *Pro bono publico, & conservatio vitae hominis est bonum publicum*.⁶ So if a Tempest arise in the Sea, *Levandi navis causa*,⁷ and for salvation of the lives of men, it may be lawfull for Passengers to cast over the Merchandizes, &c.

Prohibitions del Roy.

(1607) Michaelmas Term, 5 James I.

In Conference Before the King.

First Published in the *Reports*, volume 12, page 63.

Ed.: These are Coke's notes of a conference in which he and his fellow Judges informed the King that he does not have the privilege to personally decide a Case at Law. The Law requires an artificial logic, in which he is not skilled. The Law, also, protects the King. These were not the answers the King was expecting; James was a strong proponent of the divine right of monarchy and saw little merit to being beholden to the Law. Other

3. [*Ed.*: Of his own wrong without such cause.]

4. [*Ed.*: In order to lighten the load.]

5. [*Ed.*: It is in the interest of the common weal that men should be saved.]

6. [*Ed.*: For the public good; and the preservation of a man's life is a public good.]

7. [*Ed.*: In order to lighten the ship.]

reports of this conference do not depict Coke in as cool a light. Even so, this report was widely circulated after its publication. This opinion reflects remarks in Bracton and Fleta, earlier Law Books, but no one had been quite so bold in presenting the ideas to a monarch. As a cornerstone of modern notions of the rule of Law and an independent judiciary, the report is one of the most important Law opinions in the history of the Common Law.

Note, upon Sunday the 10th of November, in this same Term, the King, upon complaint made to him by Bancroft, the Archbishop of Canterbury, concerning Prohibitions, the King was informed, that when the question was made of what matters the Ecclesiastical Judges have Cognizance, either upon the exposition of the Statutes concerning tithes, or any other thing Ecclesiastical, or upon the Statute 1 Eliz. concerning the high Commission, or in any other case in which there is not express authority in Law, the King himself may decide it in his Royall person; and that the Judges are but the delegates of the King, and that the King may take what Causes he shall please to determine, from the determination of the Judges, and may determine them himself. And the Archbishop said, that this was clear in Divinity, that such Authority belongs to the King by the Word of God in the Scripture. To which it was answered by me, in the presence, and with the clear consent of all the Judges of England, and Barons of the Exchequer, that the King in his own person I cannot adjudge any case, either criminall, as Treason, Felony, &c. or betwixt party and party, concerning his Inheritance, Chattels, or Goods, &c. but this ought to be determined and adjudged in some Court of Justice, according to the Law and Custom of England, and always Judgments are given, *Ideo consideratum est per Curiam*,¹ so that the Court gives the Judgment: And the King hath his Court, viz. in the upper house of Parliament, in which he with his Lords is the supream Judge over all other Judges; for if Error be in the Common Pleas, that may be reversed in the King's Bench: And if the Court of King's Bench err, that may be reversed in the upper house of Parliament, by the King, with the assent of the Lords Spirituall and Temporall, without the Commons: And in this respect the King is called the chief Justice, 20 Hen. 7. 7 a. by Brudnell:² And it appears in our Books, that the King may

[64]

1. [Ed.: Therefore it is decided by the court,]

2. 2 Ric. 3. 9. 21 Hen. 7. 8.

sit in the Star Chamber, but this was to consult with the Justices, upon certain questions proposed to them, and not *in Judicio*;³ so in the King's Bench he may sit, but the Court gives the Judgment: And it is commonly said in our Books, that the King is alwaies present in Court in the Judgment of Law; and upon this he cannot be non-suit: But the Judgments are always given *Per Curiam*;⁴ and the Judges are sworn to execute Justice according to Law and Custom of England. And it appears by the Acts of Parliament of 2 Edw. 3. cap. 9. 2 Edw. 3. cap. 1. That neither by the great Seal, nor by the little Seal, Justice shall be delayed; *ergo*, the King cannot take any cause out of any of his Courts, and give Judgment upon it himself,⁵ but in his own cause he may stay it, as it doth appear, 11 Hen. 4. 8. And the Judges informed the King, that no King after the conquest assumed to himself to give any Judgment in any cause whatsoever, which concerned the administration of Justice within this Realm, but these were solely determined in the Courts of Justice: And the King cannot arrest any man, as the Book is in 1 Hen. 7. 4. for the party cannot have remedy against the King; so if the King give any Judgment, what remedy can the party have, *vide* 39 Ed. 3. 14. One who had a Judgment reversed before the Councill of State; it was held utterly void for that it was not a place where Judgment may be reversed, *vide* 1 Hen. 7. 4. Hussey chief Justice, who was Attorney to Edward the fourth reports that Sir John Markham, chief Justice, said to King Edward the fourth that the King cannot arrest a man for suspicion of Treason or Felony, as others of his Lieges may; for that if it be a wrong to the party grieved, he can have no remedy: and it was greatly marvelled that the Arch-bishop durst inform the King, that such absolute power and authority, as is aforesaid, belonged to the King by the word of God, *vide* 4 Hen. 4. cap. 22. which being translated into Latin, the effect is, *Judicia in Curia Regis reddita non annihilentur, sed stet judicium in suo robore quousque per judicium Curiae Regis tanquam erroneum, &c. vide* West. 2. cap. 5. *vide* le Stat. de Marlbridge, cap. 1. *Provisum est, concordatum et concessum, quod tam majores quam minores justitiam habeant et recipiant in Curia Domini Regis, et vide* le Stat. de Magna Charta,⁶ cap. 29. 25 Ed. 3. cap. 5. None may

3. [*Ed.*: in the way of judgment.]

4. [*Ed.*: By the court.]

5. 17 Hen. 6. 14. 39 Edw. 3. 14.

6. [*Ed.*: Judgments given in the king's courts shall not be annulled (elsewhere), but a judgment shall stand in its force until (it is annulled) by judgment of the king's court as erroneous, etc. See Westminster

be taken by petition or suggestion made to our Lord the King or his Council, unless by Judgment: And 43 Ed. 3. cap. 3. no man shall be put to answer without presentment before the Justices, matter of Record, or by due process, or by writ Originall, according to the ancient Law of the Land: And if any thing be done against it, it shall be void in Law and held for Error, *vide* 28 Ed. 3. c. 3. 37 Ed. 3. cap. 18, *vide* 17 Ric. 2. *ex rotulis Parliamenti in Turri, act.* 10.⁷ A controversy of Land between parties was heard by the King, and sentence given, which was repealed for this, that it did belong to the Common Law: Then the King said, that he thought the Law was founded upon reason, and that he and others had reason, as well as the Judges: To which it was answered by me, that true it was, that God had endowed his Majesty with excellent Science, and great endowments of nature; but his Majesty was not learned in the Lawes of his Realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his Subjects; they are not to be decided by naturall reason but by the artificiall reason and judgment of Law, which Law is an act which requires long study and experience, before that a man can attain to the cognizance of it; And that the Law was the Golden metwand and measure to try the Causes of the Subjects; and which protected his Majesty in safety and peace: With which the King was greatly offended, and said, that then he should be under the Law, which was Treason to affirm, as he said; To which I said, that Bracton saith, *Quod Rex non debet esse sub homine, sed sub Deo et Lege.*^{8*} [65]

The Lord Aburgaveney's Case.

In the Parliament.

First Published in the *Reports*, volume 12, page 70.

Ed.: This is a note of a judicial conference which resolved a question referred to it by members of the House of Lords, whether a man is made a baron

II, ch. 5. See the Statute of Marlborough, ch. 1: It is provided and agreed, and granted, that both great and small should have and receive Justice in the king's court. And see the Statute of Magna Carta.]

7. [*Ed.*: out of the rolls of parliament in the Tower.]

8. [*Ed.*: The king ought not to be under any man, but under God and the Law.]

*[Note (in 1703 edition), Bracton and Fleta both affirm, *Rex libert superiore in regno Deum et legem. Item curiam suam, i.e. comites et barones, &c.*]