

Judicial Warfare and the Triumph of Equity

Courtney v. Glanvil (1615)

By Russell Fowler



King James I (1566-1625, reign 1603-1625)

The High Court of Chancery was born in the Middle Ages to provide relief from the inflexibility of the common law courts, which could only act upon property, or in rem, usually through the award of a money judgment for compensation. Chancery's body of jurisprudence, "equity," was forged to remedy frauds, mistakes and various hardships the law courts could not adequately address, often remedied by Chancery acting directly upon the person through subpoena, injunction and contempt powers.

For a time, the two systems operated in harmony. Chancery Court was seen as an aid, not a rival, and the common law judges were regularly invited to sit in on the chancellors' proceedings to offer advice and even approve of the intervention of equity. This cooperation was so strong that the Parliament of 1400 mandated that the judges spend less time at Chancery.¹

During the reign of Henry VIII, however, hostility arose between the law

courts (chiefly the Court of King's Bench) and Chancery. This acrimony was just as much between the lawyers as the judges, for although lawyers practiced in both courts, specialization developed and hence competition between the "attorneys at law" and their Chancery counterparts, the "solicitors in equity." Matters were made worse by the pomposity and lack of legal knowledge of Cardinal Wolsey, the Lord Chancellor.²

Yet upon Wolsey's fall from power, the

new Chancellor, Sir Thomas More, a lawyer of awesome legal and political talents, brought order to equity jurisprudence and strove to make peace with the law courts. Most particularly, More laid down fixed rules governing when injunctions would issue against the commencement of common law actions and execution of judgments at law that offended good conscience.³

Nevertheless, by the early 1600s and the reign of James I (of King James Version of the Bible fame), there was renewed tension that was part of a larger conflict between a Crown asserting absolute authority resting upon a theory of Divine Right and a Parliament seeking limits on royal power through the common law. The judicial front in the escalating political war was led on the parliamentary side by Sir Edward Coke (pronounced Cook), the Lord Chief Justice, and on the King's side by Lord Chancellor Ellesmere.

Due to each court's history and the political leanings of the judges, Chancery was associated with royal prerogative and the common law courts with parliamentary rights.⁴ Or, as was said, the common law became "the ground the rebels stand on"⁵ while, in contradiction to Magna Carta, Ellesmere declared: "The monarch is the law."⁶ Although the original battlefield of the rebellion was in the courts, Coke chose the wrong cases to fight over. For in each of these cases, despite Ellesmere's questionable view of royal supremacy: "Almost always, on the particular facts, Ellesmere was on the side of justice, the equitable side."⁷

Judicial Warfare

In *Courtney v. Glanvil* (1615)⁸ Courtney agreed to purchase from Glanvil a jewel for £360 that was only worth £30. When discovering the fraud, Courtney refused to pay and Glanvil won a judgment in the law court for the unfair price and collected his judgment. Courtney ran to

Chancery for help. Chancellor Ellesmere declared the contract void due to fraud and decreed that Courtney should get his money back and the jewel returned to Glanvil, but Glanvil refused and the Chancellor sent him to jail for contempt. Glanvil's lawyer then obtained a writ of habeas corpus from Chief Justice Coke, who admitted equity was on Courtney's side, but he ruled that the law court judgment must stand, and he freed Glanvil.⁹

In *The Earl of Oxford's Case* (1615)¹⁰ Merton College held a lease to Covent Garden for 72 years. Fifty years into the lease, the college sold its interest to the predecessor of the Earl of Oxford. When the leasehold increased in value, the college claimed its conveyance was illegal under an Elizabethan statute outlawing the transfer of college land, and the college took physical possession of the property. The Earl of Oxford brought an ejectment action, but the judge held for the college. The Earl turned to Chancery, and Ellesmere found that the college's claim was inequitable.¹¹ In doing so, the Chancellor presented his famous justification for his court:

The cause why there is a Chancery is, for that men's actions are so diverse and infinite, that it is impossible to make any general law which aptly meet with every particular act, and not fail in some circumstances. The office of Chancellor is to correct men's consciences for frauds, breach of trust, wrongs and oppression, of what nature soever they be, and to soften and mollify the extremity of the law.¹²

In a number of smaller cases Chief Justice Coke advised successful lawyers in his court to assert *res judicata* when his judgments were attacked in Chancery and to avail themselves of writs of habeas corpus against Chancery contempt sanctions imposed on their clients. "Habeas corpus review struck at the heart of the



Edward Coke

Court of Chancery's in personam power."¹³ He also denounced the Chancellor's power to decree specific performance. Coke "contended that a decree of specific performance was always unjust to the defendant because it deprived him of his election either to pay damages or fulfil his promise."¹⁴

In one case, a law court plaintiff lured a defendant's key witness into an alehouse during trial and the plaintiff thereby won. Yet Chancellor Ellesmere enjoined the plaintiff from collecting his judgment. An angry Coke counseled the plaintiff's lawyer to bring criminal charges against the defendant under a medieval law,¹⁵ the Statute of Praemunire (1353),¹⁶ forbidding the impeachment of a royal court's judgment in another tribunal.¹⁷ It was further rumored that in the *Courtney v. Glanvil* case, Coke had urged a jury to return an indictment against Courtney's lawyer and a Chancery clerk for violating the statute. When the jury refused, he threatened to jail the jurors.¹⁸

One disreputable litigant even sought Ellesmere's indictment.¹⁹ Coke also stated he would not hear arguments from any lawyers who had sought equitable relief from a judgment of a law court.²⁰ It was all-out judicial war: "There were instances in which Ellesmere issued injunctions against the carrying forward of cases in the law courts, and others in which Coke

continued on page 22

Courtney v. Glanvil

continued from page 21

issued writs or judgments designed to thwart the Chancellor's decrees."²¹

Finally, in *Colt and Glover v. The Bishop of Coventry* (1616)²² the claimants disputed the right to control revenue from a church office. Colt and Glover asserted their right by law against the Bishop who answered that he was granted control by the King himself. Then King James sent a letter to the law judges commanding them not to hear the case. Chief Justice Coke defiantly responded in a letter co-signed by all twelve law court judges: "That in case any letters come unto us contrary to law, that we... go forth to do the law, notwithstanding the same letters."²³

Royal Intervention

With "judgments and decrees flying back and forth like missiles,"²⁴ *Courtney v. Glanvil* became the vehicle for appeal. Chancellor Ellesmere asked the King to intervene.²⁵ James was furious. His Attorney General, Francis Bacon, urged James to act, saying Coke's actions were an "affront . . . to your high Court of Chancery, which is the court of your absolute power."²⁶ He also counseled to use the situation "for settling of your authority and strengthening of your prerogative according to the true rules of monarchy."²⁷

The King commanded the judges and the Lord Chancellor to appear before him. As they fell to their knees, James denounced Coke's letter and "with a violent gesture"²⁸ tore it into pieces. He then asked if the twelve law court judges would follow his future orders to refrain from hearing cases. Eleven promised to obey. Coke would not. On his knees he said: "When the case shall be, I will do that which shall be fit for a judge to do."²⁹ On March 19, 1616, James referred the legal question of which court is supreme to a panel of legal advisors, including Bacon.³⁰

On June 20, the judges and chief lords of the land were summoned to the Star Chamber in the Palace of Westminster. In one of the greatest moments of legal



Edward de Vere, 17th Earl of Oxford

history, with trumpets blaring, James I appeared in his crown, crimson velvet robe, and full regalia.³¹ The king and his counselors had found for Chancery. Bacon reported that Ellesmere had always acted upon clear precedent when issuing injunctions and pointed out that common law judges had often advised litigants to seek injunctions against law court judgments.³² James was delighted and saw this as an opportunity to assert royal absolutism. He spoke:

Kings are properly judges, and judgment properly belongs to them from God: for kings sit in the throne of God, and thence all judgment is derived. It is atheism and blasphemy to dispute what God can do; so it is presumption and high contempt in a subject to dispute what a king can do.³³

On July 26, James issued a royal decree focusing on court procedure, not political philosophy. In it the Lord Chancellor was ordered to

give unto our subjects upon their several complaints such relief in Equity (not withstanding 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 precedence of our Chancery.³⁴

The principle of absolute monarchy the ruling served did not survive.³⁵ The judicial principle of *Courtney v. Glanvil* did.

The rule is that equity is supreme. "Equity conquered common law."³⁶ When legal requirements conflict with equity,

equity prevails, and this is still true today within separate courts of law and equity or those with merged jurisdictions applying both systems, for without this principle equity is rendered useless. More important than protecting jurisdictional turf of courts, equity "follows the law" but will act when the law fails or is inadequate under the rules of equity jurisprudence.³⁷

Aftermath

Before 1616 was over, Coke would be dismissed as Chief Justice, but he moved to Parliament to continue the battle.³⁸ Ellesmere died the following year³⁹ and Francis Bacon became Lord Chancellor, only to be forced from office for taking bribes, although he said the "gifts" did not affect his judgment.⁴⁰ Bacon went on to win lasting fame as a philosopher and scientist.

The concept of absolute monarchy vanished with the execution of England's next king, Charles I, following a bloody civil war. For a time following the war, it looked as if Chancery might be abolished because it was so associated with absolute monarchy. But Chancery and its equity were too ingrained in the English legal system to be done away with.⁴¹ With the peace, Chancery business grew with the rise of British commerce and empire as did its power and popularity. Moreover, its equity jurisprudence, fortified by *Courtney v. Glanvil*, spread throughout the English-speaking world and gave the greatest meaning to the maxim: "Equity will not suffer a wrong without a remedy."⁴² 



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See endnotes on page 31

clause, the general-welfare clause, and the commerce clause.”

- As President Washington pondered whether America should take a side in the war between England and France, in cabinet meetings, Hamilton “pummeled listeners with authorities on international law,” and also, in his successful advocacy for neutrality, according to Thomas Jefferson, “made a jury speech of three-quarters of an hour.”
- As House Republicans led by Madison opposed Jay’s Treaty and in their quest to derail it, sought access to Washington’s correspondence with John Jay, Hamilton invented executive privilege to protect the confidentiality of the president’s documents.

In summary, just as Pulitzer Prize-winning historian James McPherson has concluded that Lincoln successfully navigated the Civil War’s constitutional and political minefield only because of his superior legal skills, Pulitzer winner Chernow also has made a compelling case that Hamilton’s virtuoso talents as a lawyer played a major role in allowing the United States to move forward during its infancy with a workable Constitution, an independent judiciary, an expanding economy, a prudent foreign policy, and a strong presidency that could hold its own with Congress.



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Courtney v. Glanvil

continued from page 21

Notes

1. See John H. Langbein et al., *History of the Common Law: The Development of Anglo-American Legal Institutions* 329 (2009).
2. See L. B. Curzon, *English Legal History* 109 (1979).
3. See J. H. Baker, *An Introduction to English Legal History* 124 (1990).
4. See Langbein at 329.
5. Charles Rembar, *The Law of the Land: The Evolution of Our Legal System* 283 (1980).
6. *Id.* at 284.
7. *Id.*
8. Cro.Jac.343.
9. Rembar at 284; See Curzon at 110.
10. 1 Ch.Rep.6
11. See Curzon at 110.
12. *Id.* at 110-11.
13. Langbein at 330.
14. *Id.* at 331.
15. Curzon at 111.
16. 27 Edw. 3.
17. Curzon at 111.
18. Langbein at 333.

19. *Id.*
20. Curzon at 111.
21. Rembar at 284.
22. Hob.154.
23. Rembar at 285.
24. *Id.* at 284.
25. Curzon at 111.
26. Langbein at 333.
27. *Id.* at 333-34.
28. Rembar at 285.
29. *Id.*
30. Langbein at 334.
31. Rembar at 285.
32. Curzon at 111.
33. Rembar at 286.
34. *Id.*
35. *Id.*
36. See Langbein at 335.
37. See Curzon at 111.
38. See Langbein at 335.
39. Baker at 126.
40. Darien A. McWhirter, *The Legal* 100 76 (1998).
41. See Christopher Hill, *God’s Englishman: Oliver Cromwell and the English Revolution* 144-45 (1979).
42. See Henry R. Gibson, *Gibson’s Suits in Chancery* § 2.02 (8th ed. 2004).



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