

Thomas Gibson Bowles v
the Bank of England [1913]:
A modern John Hampden?

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Who was Thomas Gibson Bowles, 1842-1922?

- Illegitimate son of Thomas Milner Gibson (1806-84), landowner in Suffolk and Islington; MP and free trader, Tory radical
- Educated in France and at KCL – joined Legacy and Succession Office as a fast young man about town
- Soon left for journalism – wrote for *Morning Post* including defence of Paris. Owned *Vanity Fair* 1868-87 and *The Lady* from 1884
- Stood for Parliament in 1880 as an ‘independent Conservative’, sympathetic to ‘fourth party’ of Randolph Churchill
- Conservative MP for King’s Lynn 1892 – lost in 1906 when stood as a free trader; won as a Liberal in first election of 1910, but lost in second and re-joined Conservatives
- Turned to extra-parliamentary activities which led to our case

Dislike of party

- Not a party man: 1880 claimed that 'on all occasions prefer the interests of my country to those of my party'.
- Disliked party system: 'Parties have become more and more frankly organisations without any colourable pretence of principle, but only with appetites.'
- Translated into visceral hatred of Salisbury and Balfour – speech against them was 'the most brilliant of a series of essays in irony, more searching than anything which the House has heard since Disraeli set himself to destroy Sir Robert Peel'
- And of Joseph Chamberlain 'a tradesman-minded man, and incapable of rising to the heights of statesmanship', compared with whom 'the Thugs of India are faithful friends, and Judas Iscariot himself entitled to a crown of glory'. Also disliked his 'abjectly incapable son' Austen.
- Easily dismissed as 'simply a merry wag or jester' - but

... held firm principles

- Obsession with parliamentary procedure and privileges against prerogative powers of the crown and executive – agreed with Dicey on parliamentary sovereignty
- Complained rights of Commons ‘being filched from them by the exclusive oligarchs that successively occupied the Front Ministerial Bench’
- Linked with a partisan attack on state’s role in dealing with social problems
- Came together in an attack on William Harcourt’s budget of 1894
- Culminated in the case against Bank of England – dealt with a real abuse of procedure, as part of a campaign against Liberal welfare reforms

Harcourt's budget of 1894



LEMON-SQUASH

William Harcourt (*the Barman*): "Wonder if I can squeeze any more of *Him*?"

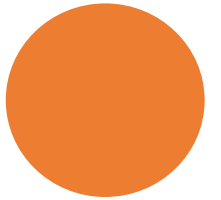
- Detailed critique – used knowledge from time at the Legacy and Succession Office.
- Discovered resolutions did not cover increases in succession duties, almost derailed the budget. EW Hamilton: 'an extremely sharp little Parliamentary ferret'.
- Wider case: rejected Harcourt's view that the state had a claim on the property of deceased – 'perfectly monstrous. No Eastern despot, no Robin Hood ... ever conceived such a contribution'.
- Not a tax but the oppression of a class.
- Harcourt was 'less liberal than the least liberal of all the Stuarts', Charles I. '..a man's life and goods were to be least his own, and that the State had the right to claim all the goods of every man who died possessed of property. That was not the law of England or the practice of the English people. The principle of English law was that what was contributed to the State was given as a benevolence'

Gibson Bowles's hostility to new Liberalism

- Not fair to tax large estates and incomes more: if not considered fair by those paying, they would evade/avoid tax
- Not help poorest for it would relieve the 'modestly well to do' at the expense of 'hatred and envy towards the rich', ending in confiscation
- Real issue: ambitions of spending departments: 'To each member of it, the Department is a sort of divinity, only to be worshipped with sacrifices of public money'.
- Opposed both Chamberlain's tariff reform and Lloyd George's progressive tax and social reform

British Constitutional Association, 1905

- first president was Lord Hugh Cecil, leader of the Hughligans: hostile to Balfour, supported free trade
- John Lubbock, Lord Avebury: opposed municipal trading and local debt
- Leonard Courtney: ‘the fundamental fact of our Constitution is the absolute unqualified supremacy of Parliament’ which rested on exclusive rights over taxation by annual votes
- AV Dicey: oppression not from royal or aristocratic tyranny but ‘the passing of laws, and still more the administration of the law, in accordance, not with the deliberate and real will of the majority of the nation, but with the immediate wishes of a class, namely the class – to use an inoffensive term – of wage-earners. *We fear class legislation.*’
- Lord Balfour of Burleigh: not social reform which would destroy the ‘moral fibre of our people’; self-help and individual freedom ‘the mainstay of national character’.
- ‘Most of our social difficulties come from moral weaknesses in human nature or from physical defect rather than from imperfections in our social system.. The solution must come through the individual, and not through the State’ – completely free labour market, with Charity Organisation Society to help deserving poor.
- Many members were eugenicists: Flinders Petrie, John Lubbock



The problem of procedure

- Bowles received a return in September 1911 relating to liability to pay supertax for year ending 5 April 1912, with a notice relating to Finance (1909-10) Act 1910
- Legislation for people's budget of 1909 delayed by constitutional crisis – only passed 29 April 1910; and act relating to supertax for 1911/12 only passed in December 1911
- Bowles v Attorney General, 1912: could the Inland Revenue assess and demand tax before the Act imposing the tax passed?
- Fiction: income tax a temporary tax which expired every year on 5 April
- Reality: a permanent tax with permanent staff, needed continuity of assessment and collection

Solutions

- Pass an Act before 5 April to continue statutory provisions as if authority for the tax granted – used in 1870-3
- 1874 Customs and Inland Revenue Act, renewed in 1890. Section 30: keep machinery in operation before legislation passed to impose the income tax and determine the rate - 'shall have full force an effect' to bridge the gap between budget in April and the legislation usually completed by August
- And every Act re-imposing income tax also had a clause applying the provisions in force on 5 April to the ensuing year
- Finance (1909-10) Act 1910, section 72(2) required anyone served with a notice to make a return for assessment of supertax, whether or not chargeable
- Gibson Bowles: section 30 of CIRA did not apply to supertax which a new tax; and Act of 1910 only imposed the supertax for 1909/10

Judgement of Parker J

- Demand was lawful: the supertax was an income tax
- Act of 1910 did regulate the collection of supertax in subsequent years
- BUT

“It must not be understood that I am expressing any opinion as to how far the Special Commissioners have power, before the tax for any financial year is actually imposed, to go beyond the preliminary work such as the demand for returns necessary for its assessment. If, for example, they assess and demand payment of the super-tax before it is actually imposed, different conditions might and probably would arise.”

Gibson Bowles's opportunity

- Deduction at source central to success of income tax, about 70 per cent of revenue in 1919: done by schedules
- Schedule C: tax deducted at Bank of England on government bonds before paid to bondholder
- Gibson Bowles: collection at source before legislative authority was a 'lawless levy' that was 'no casual error perpetuated through inadvertence, and abandoned as soon as recognised. It was deliberate, considered, persistent and obstinate'.
- The government was no better than criminals: 'Had these been pearls stolen by thieves in the post instead of millions lawlessly filched by the Inland Revenue from the pocket of the tax-payer, there would have been a loud outcry. As it was there was none'.
- Government long realised the issue and knowingly relied on resolutions before the Act was passed: 1851, Erskine May said it was 'remarkable' and 'not strictly legal', but Gladstone said in 1860 that resolutions on customs duties for immediate practical purposes have the force of law
- For customs duties, explicit authority given to resolution in Customs Consolidation Act, 1876 – but not for income tax
- Harcourt 1894: 'it was perfectly true that until the Budget Bill was passed the actual authority for levying any taxation was not complete', but he noted that 'it had always been the practice with reference to the duties of Customs and Excise, that they should be levied from the date of the Resolutions. If that were not done the Revenue would be seriously injured.'

Bowles v Bank of England, 1913 1 CH 57

- May 1912, bought £65,000 Irish land stock issued under Irish Land Act, 1903 to buy land from large owners – a measure he opposed. Complained of burden of debt - ‘a remote and inaccessible cave in which a band of brigands was engaged in cutting the throats of the British taxpayer’.
- Interest due on 1 July; on 26 June 1912 applied for an injunction to stop the Bank deducting tax at source
- Swinfen Eady J refused the injunction but felt it should be heard speedily
- To Parker J on 28 June: Bank to pay the tax into court
- 4 July Parker Bowles claimed Bank had no authority as the tax was not imposed – Bank argued had authority under resolutions of 2 April 1912; that always relied on them; and Gibson Bowles knew when he bought the stock
- Case heard on 23-24 July when Parker J ruled the crown should appear since its rights were affected
- Heard on 21 October 1912

Government inaction between July and October

- Outcome uncertain - Lloyd George proposed to move a resolution to be confirmed in Finance Bill, 1912 that resolutions have statutory effect provided that Finance Act enacted by 31 August in any year
- Austen Chamberlain agreed it solved the problem (common interest as front benchers)
- But also attacked Lloyd George for gross abuse in delaying the Finance Bill – welcomed fact that, having sinned, he would prevent others from sinning
- Did not work: Commons complained of haste: government and bank argued that existing practice was lawful, so wait for decision; and Finance Bill about to pass anyway (did on 7 August).

Judgement

- 4 November 1912, Parker J ruled resolutions had no authority for collecting taxes not yet imposed by an Act
- Bill of Rights established that no taxation except under authority of an Act of Parliament
- Section 30 of CIRA 1890 no authority: to impose a tax, need to know the rate; and if imposed at rate of previous year, and reimbursed if rate fell, in effect a permanent tax with no need for an Act to reimpose – and if the money was spent, to give it back would mean an increase in the tax. The tax revenue would have to be set aside and not spent.
- Allowed preliminary work but not assessment or collection
- Found against the Bank, with costs

Aftermath

- Cast doubt on deduction at source prior to passing of Finance Act
- Government had done little, though aware of the problem – Lloyd George complained that passing the Act had been disrupted by behaviour of Tories and Lords; and then collapse of agreement with Chamberlain
- Chamberlain: government delayed the finance business for party political reasons, passing Irish home rule and national insurance before dealing with Finance Bill. But realised by men of business on both sides of the House that the issue needed to be resolved: Chamberlain accepted need to resolve the practical issue.
- Provisional Collection of Taxes Bill, 1913: resolution could have a temporary statutory effect. Faced strong opposition – what if used for a radical new tax; would it threaten Commons control and cede authority to the executive? Lloyd George decided to limit it to existing taxes – Chamberlain worried that this would remove flexibility in war.
- Passed when speaker announced it was a money bill – if had not, Lords might have delayed it until 1915, during war.
- PCT or Bowles Act removed the problem. Resolution had to be agreed within working 10 days of budget; Finance Bill receive its second reading within 20 sitting days; if not passed in four months, power of resolutions ceased.

Was Gibson Bowles a modern John Hampden?

- Austen Chamberlain: 'The law is even more decisive and unquestioned on the side of Mr Gibson Bowles than it is on the side of John Hampden, and I am not at all prepared to say that Charles I was a more despotic monarch than the present Cabinet is a despotic Cabinet.'
- David Lloyd George: 'rather a poor view to take of that great man'
- Dealt with a serious procedural matter, and removed a clear abuse that called legitimacy of taxation into question
- Hampden acted on a fundamental principle, fearing his land would be threatened by the crown
- Gibson Bowles deliberately purchased stock knowing it was liable to taxation
- Used the procedural flaw for partisan political purposes in favour of small state, hostility to social welfare reform that had democratic electoral support
- Won his narrow point but lost the wider campaign against the changing role of the state