

Case of Ship-Money, (R v Hampden) (1637)
Prerogative Discretion in Emergency
Conditions

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Fiscal transformation: taxation and consent

	% non-parliamentary	% parliamentary
1560-1602	73	27
1626-1640	76	24
1661-1685	10	90
1689-1714	3	97

The monetisation service to c. 1640

- Purveyance
- Militia reform
 - Trained bands
 - Militia rates
- Ship money

Monetising service: the navy

		Royal Ships	Private Vessels
1588	Armada	23	79
1589	Lisbon	14	120
1625	Cadiz	14	30
1627	Ile de Ré	10	90
1635	Ship Money	19	6
1636	Ship Money	24	3
1637	Ship Money	19	9
1638	Ship Money	24	7
1639	Ship Money	28	11
1641	Summer Guard	15	10
1642	Summer Guard	16	16
1643	Summer Guard	24	23
1644	Summer Guard	30	55
1645	Summer Guard	36	16
1646	Summer Guard	25	4
1652	Mobilisation	39	0
1653	Gabbard	25	15
1666	Four Days Battle	31	1
1672	Sole Bay	32	0
1673	Schoonveldt	49	0
1688	Dartmouth's fleet	35	0
1690	Beechy Head	56	0
1692	Barfleur	55	0

Ship money

Precedents from 1590s and 1620s (both periods of warfare)

1635 first national writ

Feb 1637 Extra-judicial ruling

Aug 1637 Hampden's Case

February 1637 Judgement

[W]hen the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, whether may not the King, by writ under the Great Seal of England, command all subjects of our kingdom at their charge to provide and furnish such a number of ships, with men, victuals and munition, and for such time as we shall think fit for the defence and safeguard of the kingdom from such danger and peril ?

In such circumstance could the king
by law compel the doing thereof ?

Finally, and crucially,

is not the King the sole judge both of the danger, and when and how the same is to be prevented and avoided ?

R v Hampden, Aug 1637: arguments for parties

Three questions

- whether on 4 August 1635 Charles had the power to charge Buckinghamshire to 'find a ship at their cost and charges'
- if he had that power, whether he could give the Sheriff the power to assess the county for those costs and charges
- if so, whether charges assessed but unpaid could be recovered using writs for debt.

R v Hampden, Aug 1637: arguments for parties

St John for Hampden: balance of King's duty to defend realm with subject's property rights. He argued King should borrow, call parliament and then repay

Littleton for King: King's duty super-eminent, and precedents for all kingdom to share responsibility for defending kingdom. Without security there was no private property after all

Holborne for Hampden: accepted emergency but not the means for collection. King could demand service but not impose a charge. Could there be a prosecution for debt therefore?

Bankes for King: strong statements on all points, and that there was a debt to the commonwealth which the King was responsible for collecting.

R v. Hampden: judgements

Legality of demand and sufficiency of writ

- All judges recognized legality of demand and writ. Varying opinions on whether he should call parliament and borrow, but only Croke and Hutton found that demanding money (as opposed to service) in emergency was illegal.
- All more or less agreed that the writ was sufficient, although some pointed out that it had not stated what the emergency actually was.

Legality of enforcement

- Five judges found that Hampden could not be prosecuted for debt, since he owed service not money; Jones only found for king on condition that none of Hampden's money went into general funds, 'for it do, my opinion is against it'
- Other questions about the powers of the Sheriff.

Reactions

Earl of Clarendon

failing to question the emergency, resulted in a 'judgement of law grounded upon matter of fact of which there was neither inquiry or proof', and earned judges 'deserved reproach and infamy [having been] made use of in this and the like acts of power'.

George Peard, speaking in parliament:

[I]f wee have noe property, noe man will marry that cannot leave his estate, noe man industrious if not sure to enjoy his labours, noe man sowe he may reape, but not sure to sowe. Noe may provid for his daughter, nor bring up a sonne at university, but must pay shipmoney. Noe man eate but in danger to have his meate taken away or to be taken away from his meate.

An Act for the declaring unlawful and void the late proceedings touching Ship-Money, and for the vacating of all records and process concerning the same (1641)

By implication it limited the King's discretionary power to determine a national emergency and has been understood as ruling out the use of non-parliamentary taxation, but the text says nothing directly about this.

Declared the extrajudicial opinions and the judgments in R v Hampden 'utterly against the law of the land' and 'contrary to the laws and statutes of this realm, the right of property, the liberty of the subjects, former resolution in Parliament and the Petition of Right'.

Three judges had died. Seven judges were impeached or threatened with it. Bramston and Davenport had found in Hampden's favour but all had agreed the extra-judicial opinion. Only Croke and Hutton escaped vengeance.

Henry Parker, the parliamentary cause and *The case of Shipmony (1642)*

- Ship-money had been justified as necessary for the benefit of the Commonwealth (of which the King was in such conditions the sole judge) and not the benefit of the King: a number of the judges saw themselves as arbitrating between Hampden's rights in his own property and the collective interests of the community as determined by the King.
- Parker accepted these arguments but turned them: it was the King who had been pursuing an individual benefit and Hampden who stood for the collective good. Parker now vested that executive interest in Parliament, not the King's will. This was the origins of a parliamentary absolutism (some would say tyranny) that licensed dramatic new measures, without legal precedent, enacted by Parliament in Ordinances without royal assent.