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Sample

## ***Case of Proclamations* [1610] EWHC KB J22**

**Source:** Hard copy via your law library or electronically via a subscription service

**Court details:** King's Bench

**Facts:**

- Tudor monarchs believed that they had the power to regulate, through the issue of royal proclamations, without the consent of Parliament.
- However, the monarch's absolute power to "make" the law was beginning to be challenged by the English judiciary and was raising concern in Parliament itself.
- The issue of the King's power to make law came before the judges in 1610 when James I and Parliament were struggling over the issue of impositions.
- Parliament was opposing the King's power to impose further duties on imports over and above what had already been sanctioned by Parliament.
- James however hoped to use proclamations to raise further money outside of Parliament.

**Procedural history:**

- On 20 September 1610, Sir Edward Coke, then Chief Justice of the Common Pleas, was called before the Privy Council of England alongside Lord Chief Justice Thomas Fleming, Lord Chief Baron Lawrence Tanfield, and Baron James Altham and asked to give a legal opinion as to whether the King, by proclamation, might prohibit new buildings in London, or the making of starch or wheat, these having been referred to the King by the House of Commons as grievances and against law.
- Coke asked for time to consider with other judges, since the questions were "of great importance, and they concerned the answer of the king to the Commons".

**Issue:**

- The extent of the Kings prerogative powers.

**Reasoning / Decision (Commentary):**

- The King's Bench defined some limitations on the Royal Prerogative at that time.
- Principally, it established that the Monarch could make laws only through parliament.
- The judgment began to set out the principle in English law (later developed by future Parliaments and other members of the judiciary in subsequent cases, for example Dr. Bonham's Case) that when a case involving an alleged exercise of prerogative power came before the courts, the courts could determine:
  - whether the proclaimed prerogative existed in law and how far it extended;
  - whether it had been limited by statute, and if so, in what way; and
  - whether there was any requirement that The Crown pay compensation after the exercise of the prerogative.

**Ratio:**

- Coke and his fellow judges ruled that the power of the King to create new offences was outlawed and that the King could not by proclamation prohibit new buildings in and around London; i.e., the Royal Prerogative could not be extended into areas not previously sanctioned by law:

“... the King cannot change any part of the common law, nor create any offence, by his proclamation, which was not an offence before, without parliament.”

- In giving his judgment, Chief Justice Coke set out the principle that the King had no power to declare new offences by proclamation:

“The King has no prerogative but that which the law of the land allows him.”

- Consequently, the King had no power by which to arbitrarily, through royal proclamations, prohibit the erection of new buildings in London, nor the making of wheat starch without the consent of Parliament, because this power had not previously been granted by Parliament to the King by the making of statute law
- James however did not concede this point and attempted to place all of his proclamations on a constitutional footing, having them published in a book as if they were statutes.

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