

THE PRESENT LEGAL STATUS OF THE ENGLISH BILL OF RIGHTS

by Elizabeth Cook

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(6th Wilkes rev.

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(1) "An Act declareing the Rights and Liberties of the Subject and Setleing the Succession of the Crowne" (1 W. & M. sess. 2, ch. 2 (1689)), or the English Bill of Rights as we know it today, has been affected by several subsequent statutes since it was enacted by the Convention Parliament in December 1689.

(2) In March 1690, during William and Mary's second Parliament, the Crown and Parliament Recognition Act was passed to avoid any disputes as to the authority of the Convention Parliament, after William and Mary became King and Queen, to enact statutes. The Act provided:

That all and singular the acts made and enacted in the said [Convention] [P]arliament were and are laws and statutes of this Kingdom, and as such ought to be reputed, taken and obeyed by all the people of this Kingdom.

Thus the English Bill of Rights, together with other acts passed by the Convention Parliament after February 13, 1689, is a statute not only in its own right but also because it was declared to be a statute by a subsequent Act of Parliament. Crown and Parliament Recognition Act, 1690, 2 W. & M., ch. 1.

(3) In 1896 a short title for "An Act declareing the Rights and Liberties of the Subjects and Setleing the Succession of the Crowne" was established: The Bill of Rights. Short Titles Act, 1896, 59 & 60 Vict., ch. 14, sch. 1.

(4) As originally written, the English Bill of Rights declared:

That Jurors ought to be duely impannelled and returned, [and Jurors which pass upon Men in Trials for High Treason ought to be Freeholders.]

In 1825 the Juries Act, an extensive statute consolidating and amending laws regarding juries, repealed in part a portion of the provision of the Bill of Rights dealing with juries. The deleted words are indicated above in brackets. The purpose of the 1825 act was to increase the number of persons qualified to serve on juries; the act applied only to persons living in England or Wales. Juries Act, 1825, 6 Geo.4, ch. 50.

(5) In 1950 the repeal of the requirement that jurors for trials of high treason had to be freeholders was extended to persons living in Northern Ireland. Statute Law Revision Act, 1950, 14 Geo. 6, ch. 6, sch. 1.

(6) As enacted in 1689, the Bill of Rights required that the King and Queen make the declaration set forth in the Second Test Act, i.e., "An Act for the more effectuall Preserveing the Kings Person and Government by disableing Papists from sitting in either House of Parlyament" (30 Car. 2 stat. 2, ch. 1 (1678)). In 1910 the Accession Declaration Act substituted for that oath a new oath:

I _____ do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my powers according to law.

(Accession Declaration Act, 1910, 10 Edw. 7 & 1 Geo. 5, ch. 29.

This 1910 statute replaced the following 1678 oath:

I _____ do solemnly and sincerely in the presence of God profess, testify and declare, that I do believe that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ at or after

the consecration thereof by any person whatsoever:

(2) And that the invocation or adoration of the virgin Mary or any other Saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous. (3) And I do solemnly in the presence of God profess, testify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evasion, equivocation or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration or any part thereof, although the pope, or any other person or persons, or power whatsoever, should dispense with or annul the same, or declare that it was null or void from the beginning.

(7) The penultimate paragraph of the English Bill of Rights, dealing with non obstantes, originally read as follows:

And be it further declared and enacted by the Authority aforesaid, That from and after this present Session of Parliament, no Dispensation by Non Obstante of or to any Statute, or any Part thereof, shall be allowed, but that the same shall be held void and of no Effect, except a Dispensation be allowed of in such Statute, [and except in such Cases as shall be specially provided for by one or more Bill or Bills to be passed during this present Session of Parliament.]

In 1948 the bracketed portion of the paragraph was repealed. Statute Law Revision Act, 1948, 11 & 12 Geo. 6, ch. 62, sch. 1.

(8) In 1867 the following proviso, which formed the final paragraph of the Bill of Rights, was repealed:

Provided that no Charter, or Grant, or Pardon, granted before the three and twentieth Day of October in the Year of our Lord one thousand six hundred eighty-nine, shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same Force and Effect in Law, and no other than as if this Act had never been made.

Statute Law Revision Act, 1867, 30 & 31 Vict., ch. 59.

