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Document : Bill of Rights 1689: Constitutional status and tax.

26th January, 2015.

There is continued interest in the status of the United Kingdom Bill of Rights as a Constitutional document and as to its content and effect, particularly in penalties and tax matters.

See for example: JUDGE ANNE REDSTON First Tier Tax Tribunal in *Wayne Pendle v Revenue & Customs* [2015] UKFTT 27 (TC) (20 January 2015)
<http://www.bailii.org/uk/cases/UKFTT/TC/2015/TC04240.html>, and the cases referred to in it.

She resumes the temporal or secular position from which to start in her judgment neatly at §63:

.../...

§ 63. *The context of the Bill of Rights is that the catholic monarch, James II, had been deposed and parliament had invited William and Mary to rule in his place. The first of the declarations made in the Bill of Rights is that “the pretended power of suspending of laws or the execution of laws by regall authority without consent of Parlyament is illegall.” In other words, it established parliamentary sovereignty.*

64. *One of the particular abuses which, according to the Bill of Rights, had been committed by James II, was to make:*

“severall grants and promises made of fines and forfeitures before any conviction or judgement against the persons upon whome the same were to be leyed.”

65. *The Bill prohibited this, stating that “all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.” In modern language, I understand the declaration to mean that no penalties can be levied without due legal process.*

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66. *It follows that Parliament, with the legislative sovereignty vested in it by the very same Bill of Rights, can give HMRC the power to impose and collect civil penalties, providing they are appealable to an independent judiciary.*

The Bill as enacted has understandably a distinctly Protestant flavour, given the historical past and King James II's provocative abandonment of the unwritten conventions under which James I of England and VI of Scotland had been invited to be the monarch of England in addition to that of Scotland. That could infer reliance upon the Anglican church and the Church of Scotland as being a form of temporal now secular constitutional balance. It reads as follows

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" Preamble

Whereas the lords spirituall and temporall and comons assembled at Westminster lawfully fully and freely representing all estates of the people of this realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Minister then called and known by the names and stile of William and Mary Prince and Princess of Orange being present in their proper persons a certaine declaration in writeing made by the said lords and comons in the words following viz

Whereas the late King James the Second by the assistance of diverse evill councillors judges and ministers employed by him did endeavour to subvert and extirpate the Protestant religion and the lawes and liberties of this kingdome

By assumeing and exercising a power of dispensing with and suspending of lawes and the execution of lawes without consent of Parlyament...

By leying money for and to the use of the Crowne by [pretence] of prerogative for other time and in other manner then the same was granted by Parlyament...

And excessive fines have beene imposed.

And illegall and cruell punishments inflicted.

And severall grants and promises made of fines and forfeitures before any conviction or judgement against the persons upon whome the same were to be leyyed.

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.../...

All which are utterly and directed contrary to the knowne lawes and statutes and freedome of this realme...

And thereupon the said lords spirituall and temporall and commons...declare

Suspending power.--That the pretended power of suspending of laws or the execution of laws by regall authority without consent of Parlyament is illegall.

Late dispensing power.--That the pretended power of dispensing with laws or the execution of laws by regall authoritie as it hath been assumed and exercised of late is illegall...

Subjects' arms.--That the subjects which are protestants may have arms for their defence suitable to their conditions and as allowed by law.

Freedom of election.--That election of members of Parlyament ought to be free.

Freedom of speech.--That the freedome of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament.

Excessive bail.--That excessive baile ought not to be required nor excessive fines imposed nor cruell and unusuall punishments inflicted.

Juries.--That jurors ought to be duly impannelled and returned. . . .

Grants of forfeiture.--That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

Frequent Parliaments.--And that for redresse of all grievances and for the amending strengthening and preserving of the lawes Parlyaments ought to be held frequently.

...Now in pursuance of the premises the said lords spirituall and temporall and commons in Parlyament assembled for the ratifying confirming and establishing the said declaration and the articles clauses matters and things therein contained by the force of a law made in due forme by authority of Parlyament doe pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration are the true auintient and indubitable rights and liberties of the people of this kingdome and soe shall be esteemed allowed adjudged deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration..."

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