

R v Steven Thoburn
Sunderland Magistrates Court
15-17 January, 1 March 2001

Background

In February 2000, Mr Thoburn was served with an infringement notice by Sunderland Council trading standards department, giving him 28 days to convert his imperial weighing machines to metric. On 31 March 2000, trading standards officers revisited Mr Thoburn's greengrocers shop in Southwick Market, Sunderland, and stamped the scales as not fit for trade. On 4 July 2000, an undercover female trading standards officer made a "test purchase" of 34p worth of bananas, advertised at 25p per pound, which Mr Thoburn weighed out in pounds and ounces. Shortly afterwards, two more trading standards officers arrived and told Mr Thoburn that he was breaking the law. They stated that they were going to impound the offending lb/oz weighing machines. When Mr Thoburn objected, two police officers were called, and Mr Thoburn was warned that his behaviour could lead to arrest for causing a breach of the peace during an operation that Mr Thoburn later described as "frightening and heavy handed". Mr Thoburn had three sets of weighing scales impounded, worth £1,304, and Mr Thoburn was forced to tell four of his ten staff not to come into work the following day. After a two-month interval, on 6 September 2000, a spokesman for Sunderland city council said: "Following careful consideration the city council has decided to prosecute Steven Thoburn for using non-metricated scales in his business".

The Trial 15-17 January 2001

On the first day, Monday 15 January, Eleanor Sharpston, QC, for Sunderland city council, told the magistrate District Judge Mr Morgan that trading standards officers had a duty to protect consumers. Miss Sharpston said, "This case is not about prosecuting Mr Thoburn for selling a pound of bananas; it is about Mr Thoburn using the scales for weighing goods not approved by weights and measures authorities". To laughter from the public gallery, Ms Sharpston said: "We say this case is about avoiding consumer confusion by avoiding the situation that apples priced in Sainsbury's in metric, where a housewife with two kids in tow has to do mental arithmetic to work out the price of the apples on the shelf, are cheaper than those sold on Thoburn's stall."

Defence barrister Michael Shrimpton, said: "There is no evidence of deceit or dishonesty in the conduct of this man. He is a man of some courage who has stood his ground in the face of criminal prosecution. He is just an ordinary greengrocer who wants to go about his business of serving customers in the way they want to be served. He was not simply serving bananas by the pound; in fact he was shouting it from his stall. His conduct was open. At no time was it necessary for an undercover purchase to be made".

During the second day, Michael Shrimpton said that when Britain entered the Common Market in 1972, Parliament was assured that ministerial powers would only be used to bring in changes of "a small, minor or insignificant nature". He said: "No one in this court would realistically or sensibly suggest that the sweeping away of our imperial weights and measures was a change of a small, minor or insignificant nature."

Mr Shrimpton said that the Weights and Measures Act 1985 had specifically allowed the choice between trading in metric and imperial measurements, and so superseded the Units of

Measurement Regulations 1994 passed under the earlier European Communities Act 1972. Mr Shrimpton quoted from 18th and 19th century authorities on Britain's constitution, Sir William Blackstone and Prof Albert Dicey, to argue that ministers or the European Union had no power to override an Act of Parliament. As such, any conviction of Mr Thoburn would be "unconstitutional".

Eleanor Sharpston argued that under the European Communities Act 1972, through which Britain entered the European Union, the government was entitled to introduce the new regulations. She said: "This case is not about imposing the will of Brussels by bypassing Parliament, because Parliament had already given a responsible minister powers to do what he has done."

On day three, Mr Shrimpton said that because Parliament was the sovereign authority in Britain, the Weights and Measures Act 1985 could be changed only by a subsequent Act of Parliament and not by the government using so-called Henry VIII powers, under which ministers can only rule by proclamation within reason. A list of law authorities was read to the court dating back to 1671, which supported his case that Parliament superseded EU law and European directives. He maintained that imperial weights and measures were "part of the fabric of our way of life" and that, if Mr Thoburn was convicted, it would amount to a "constitutional crime".



Steven Thoburn at the end of the third day.

Thursday, 1 March Due to the complexity of the case, an extra day was allowed for final submissions. Eleanor Sharpston QC told the court that Mr Shrimpton's case was based on "a series of very fundamental misconceptions" and that he could be compared to Lord Nelson, putting a telescope to his blind eye at the battle of Copenhagen:

"Mr Shrimpton's argument is based on turning a Nelsonian blind eye to the legislative, jurisprudential and constitutional landscape that has taken place but does not fit in with the defence case. The fact that such a comprehensive blind eye is required should alert the court to the erroneousness of the chain of argument that has been put before it."

Referring to this previous presentation, Ms Sharpston said that Mr Shrimpton was, "like a clever magician who saws his beautiful assistant in half. You almost believe what you think you have seen then, when they take their bow, you realise it was an exceptionally clever illusion. You almost believe what you see as I did with the arguments put forward by Mr Shrimpton. But his arguments are based on a series of very fundamental misconceptions".

Ms Sharpston told the Court that European Community law dating back to 1972 had paved the way for an eventual change from imperial to metric and that the nation's traders are legally bound to abide by European directives. She maintained that if Britain wants to be part of Europe it has to abide by its laws. She closed by saying:

"We are not, as has been suggested, living in a UK which is sovereign in the classic British Empire 19th century way. That UK is part of political and legal history. The UK has expressed, through its constitution and endorsed by the Queen in Parliament that the UK is part, geographically, of Europe and, much more importantly, is part of the European Union. It is imperative that this Court finds Steve Thoburn guilty as charged. Britain is a member of the European Union and this is part of the legal framework of that European Union".

Mr Shrimpton summed up by arguing that British Acts of Parliament cannot be overturned by European directives passed under earlier Acts of Parliament and that Mr Thoburn is entitled to sell his fruit and vegetables in Imperial weights. He said that legislation passed to implement EC directives by amending existing UK laws were *ultra vires* (unlawful). He said that, if the court ruled against Steven Thoburn, doors would open for all British laws to be changed; Europe would have supreme power.

Mr Shrimpton said: "If the prosecution is right, the UK is no longer sovereign and Community law is supreme. The European Community see its law as supreme and as such its directives can be amended against the wishes of the British people by qualified majority voting. According to the prosecution, if a directive is brought into force whether the British Government agree to it or not, it would take precedence over an Act of Parliament".