



**THE EXCELLENT PRIVILEGE
OF LIBERTY AND PROPERTY**



**THE EXCELLENT PRIVILEGE
OF LIBERTY AND PROPERTY**

OF THIS BOOK ONE HUNDRED AND
FIFTY COPIES ARE PRINTED ON HAND-
MADE PAPER AND FIVE ON VELLUM

The Excellent
Priviledge of
Liberty and
Property

2042

BEING A REPRINT AND FAC-SIMILE
OF THE FIRST AMERICAN EDITION OF

Magna Charta

PRINTED IN 1687 UNDER THE DIRECTION OF
WILLIAM PENN BY WILLIAM BRADFORD



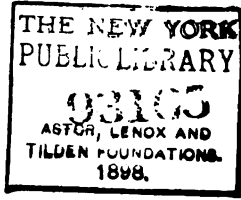
PHILADELPHIA

Printed for The Philobiblon Club

MDCCLXXVII

22

THE PHILIBLON CLUB
PUBLISHED
BY THE PHILIBLON CLUB



**COPYRIGHT, 1897, BY
THE PHILOBIBLON CLUB**

*Set up and Impressed by
J. B. Lippincott Company
Philadelphia*

NEW YORK
CLUB
VIA

INTRODUCTION

BY

FREDERICK D. STONE, Litt. D.,

LIBRARIAN OF THE HISTORICAL SOCIETY OF PENNSYLVANIA.

PREPARED FOR THE PRESS

BY

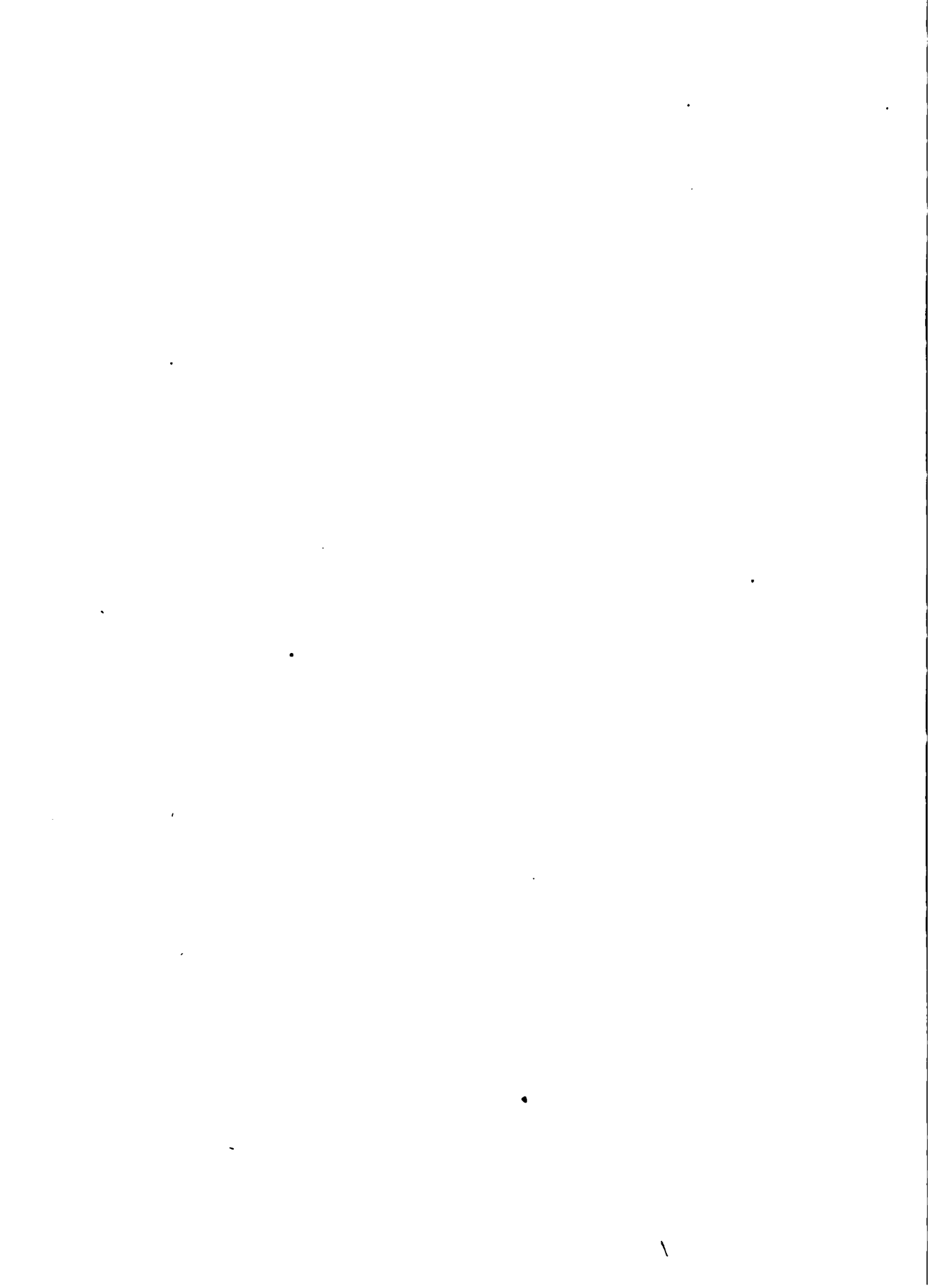
JOHN THOMSON,

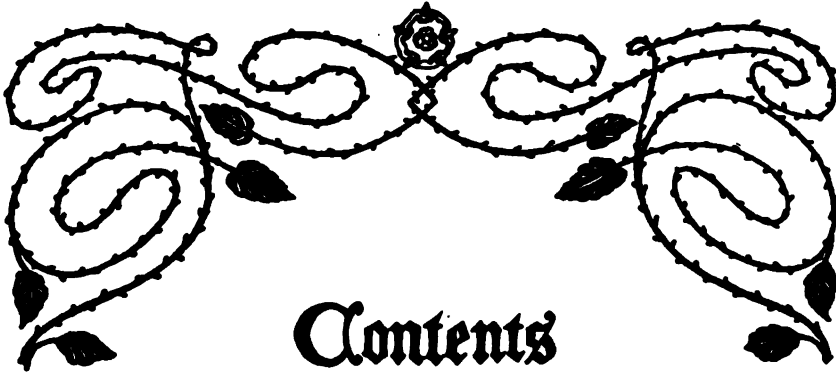
CURATOR OF THE PHILOBIBLON CLUB AND
LIBRARIAN OF THE FREE LIBRARY OF PHILADELPHIA.

THE DECORATIONS

BY

EDW. STRATTON HOLLOWAY.

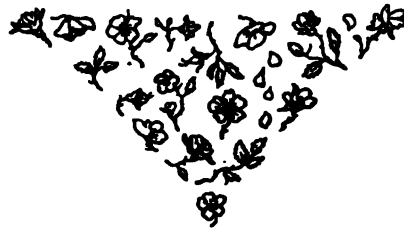




	PAGE
INTRODUCTION BY FREDERICK D. STONE, LITT. D.	ix
TO THE READER	3
INTRODUCTION	7
MAGNA CHARTA	13
THE COMMENT ON MAGNA CHARTA	43
A CONFIRMATION OF THE CHARTERS OF THE LIBERTIES OF ENGLAND, AND OF THE FOREST, MADE ANNO XXV. EDWARD I.	69
THE SENTENCE OF THE CLERGY AGAINST THE BREAKERS OF THOSE ARTICLES	77
THE SENTENCE OR CURSE GIVEN BY THE BISHOPS AGAINST THE BREAKERS OF THE GREAT CHARTER	81
A STATUTE MADE ANNO XXXIV. EDWARD I., COMMONLY CALLED DE TALLAGIO NON CONCEDENDO	85
THE COMMENT UPON THE STATUTE DE TALLAGIO NON CONCEDENDO	89

Contents

	PAGE
AN ABSTRACT OF THE PATENT GRANTED BY THE KING TO WILLIAM PENN AND HIS HEIRS AND ASSIGNS FOR THE PROVINCE OF PENNSYLVANIA	93
THE FRAME OF THE GOVERNMENT OF THE PROVINCE OF PENNSYLVANIA AND TERRITORIES THEREUNTO ANNEXED, IN AMERICA	103
NOTES	131
LIST OF THE PRINCIPAL DATES MENTIONED IN THIS WORK	167
FAC-SIMILE OF THE EXCELLENT PRIVILEGE OF LIBERTY AND PROPERTY	169





Introduction

By Frederick D. Stone Litt.D.



MAGNA CHARTA was printed for the first time on the American continent at Philadelphia in 1687. The volume in which it then appeared has been selected by The Philobiblon Club for the first of its publications. Had no other reason existed for this choice than the fact we have mentioned, it would have passed unquestioned; but the causes which led to the first reproduction of Magna Charta in this country, the immediate object of its publication here, and the evident influence it exercised on the community which received it, are so remarkable as to overshadow the bibliographical and typographical interest that gathers round its first printing on a continent now dominated by a people who maintain that their government represents the highest development of that English liberty and English law whose foundation is the Charter.

Introduction

The little volume which contained the first American issue of the Charter is entitled "The Excellent Privilege of Liberty and Property: being the Birth-right of the Free-born Subjects of England." Besides extensive extracts from the Charter and Coke's comments thereon, it contains the confirmation of the charters of the liberties of England and of the Forest, made in the twenty-fifth year of Edward I.; a statute made in Edward's thirty-fourth year, commonly called *De Tallagio non concedendo*; an abstract of the Royal Charter of Pennsylvania; and the charter of liberties granted by William Penn to the free men of his province. It was printed by William Bradford, who, in 1685, had introduced the art of printing into the Middle Colonies of North America; but it was undoubtedly prepared for the press by William Penn, then in England; for David Lloyd, in 1728, quoted the book as the work of Penn in "A Defence of the Legislative Constitutions of the Province of Pennsylvania." Moreover, Mr. Hildeburn, in his "Press of Pennsylvania," has pointed out that Lloyd was then (1728) attorney-general of the Province; and, as the latter had been on friendly terms with Penn, as early as 1687, "his unchallenged statement is conclusive."

Only a single copy of this tract is known to have survived. It is preserved in the library of the Meeting for Sufferings of Philadelphia, and from it the present fac-simile has been made. It does not bear the imprint of William Bradford. The title-page looks as if the name of the printer had been removed from the form after it had been prepared for the press. There is no doubt, however, that it was the work of Bradford, as it is mentioned in an advertisement at the foot of a broadside

Introduction

almanac, issued by him in 1687, as being in press. Penn's absence in Europe at the time of its publication accounts for many obvious errors and awkwardnesses of expression which would have been corrected had he been present and which are referred to in detail in the notes to this reprint.

The causes which led to its production were evidently the results of the intimate knowledge of the true basis of English liberty Penn had acquired in defending the rights of his followers. How familiar he was with the provisions and principles of Magna Charta is shown in his trial at the Old Bailey, when he quoted it with an aptness and a pertinacity that drove the Recorder to his wits' end; and that official denounced both Penn and the law he quoted in such coarse and vulgar language that Penn accused him before the public of having spoken in contemptuous terms of the very foundations of English liberty.

As we study this chapter of Penn's life, the causes which led to the settlement of Pennsylvania stand out in bold relief. In defending the right of his followers to worship God according to the dictates of their conscience, he based his arguments on Magna Charta, feeling that this was the only foundation upon which the religious liberty he contended for could safely rest, and that if he could gain for the Quakers a full recognition of their rights as free born Englishmen, that liberty would be secure. In "England's Present Interest Considered," he traced liberty, both civil and religious, back to the pre-English Britons, pointing out that Magna Charta itself was but the embodiment of ancient customs in use when it was framed. He contended that the differences existing in England at his day resulted from the attempts that had been made to enforce conformity in re-

Introduction

ligious matters by subverting the ancient rights of the people, depriving them of their property without due form, and making them owe their protection not to the civil but to the ecclesiastical authority.

His studies in the history of government convinced him of the importance of making the people the fountain of power ; consequently, when the fundamental charter of West Jersey, was framed, in which work Penn and a number of Quakers were interested, the most important provisions of Magna Charta were made a portion of that instrument. Owing to the financial confusion into which the affairs of West Jersey drifted, the success of that colony became doubtful, and Penn turned his attention to the territory west of the Delaware, for which he obtained a royal patent. Here he determined to establish a government of which civil and religious liberty should be the corner-stone. Removed from the entangling complication of European politics, he hoped it would be an example to the nations of the world, and called it his "Holy Experiment." It was not for the benefit of his followers alone that he attempted this : he was willing to accord to others the liberty he claimed for his own people. "I went there," he said, "to establish a free colony for all mankind that should go thither, and more especially those of my own profession. Not that I have lessened the civil liberties of others because of their persuasion, but to screen and defend our own from infringements on that account."

On the almost feudal terms of the Royal Patent, Penn engrafted a government as liberal as circumstances would admit, but not as liberal, we now know, as he desired. In one draft

Introduction

of a Frame of Government he proposed to give the Assembly "whatever was the privilege of an English House of Commons," and in the same paper he provided that Magna Charta and all the laws confirmatory of the same, especially that called the Petition of Right, passed in the reign of Charles I., should be in full force and an effectual part of the Government of the Province. That the people should understand the true basis of their liberties, he deposited in the archives of his Colony a copy of Magna Charta, "certified by the Keeper and other officers of the Cottonian Library, illuminated and ornamented as the original ;"* and there it remained for a century. Whether it was before or after doing this that he caused "The Excellent Priviledge of Liberty and Property" to be printed we cannot say ; but the act was in perfect accord with the motives for the production of that volume, given in the address "To the Reader." This address is so remarkable that, although printed in full in this volume, we cannot refrain from stating its purport here.

It opens by saying that it may reasonably be supposed that there are few men in this part of the world who are acquainted with the inestimable inheritance to which every free born subject of England is heir, the unparalleled privilege of Liberty and Property ; and that as every man should understand upon what his happiness rests, the fundamental laws of England are now published, in order that every man who is a subject of the Crown of England may understand his rights and how to preserve them. The chief end of the publication, he asserts, is

* Trial of P. W. Duffen and Thomas Lloyd, page 24, London, 1793.

Introduction

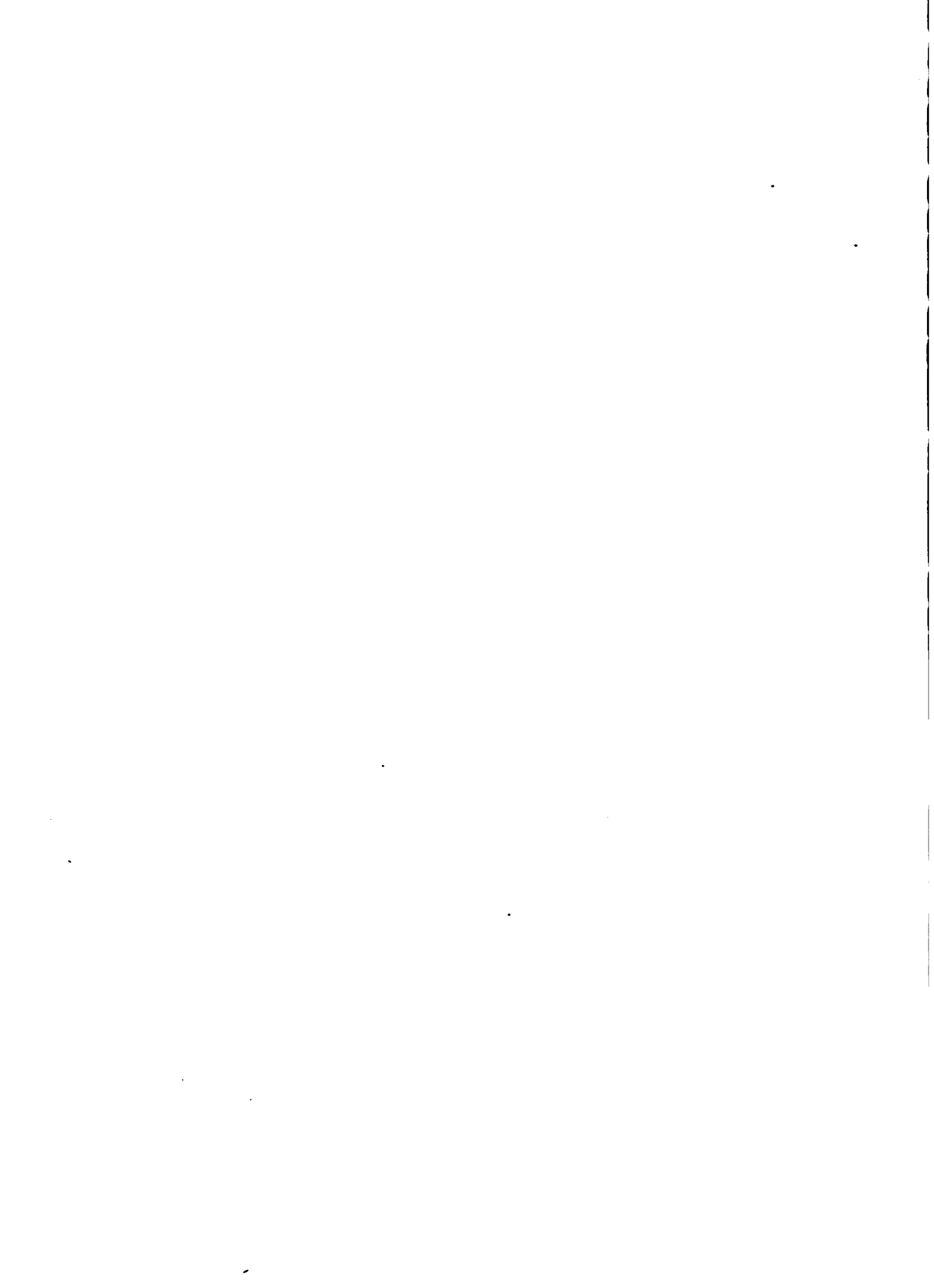
the benefit of those who have not the leisure to leave their plantations to consult law-books containing the Charter, of which there are but few in the country. It is hoped that the publication may raise up noble resolutions in all the Free men of the Colonies not to give up anything of Liberty and Property that they enjoy, but to take example from their ancestors, and understand that it is easy to part with great privileges, but hard to gain them if once lost.

That "The Excellent Priviledge of Liberty and Property" had an effect on the minds of the people is evinced by the fact that nearly half a century after its production it was quoted in a defence of the legislative constitutions of the Province of Pennsylvania. In speaking of Magna Charta in this paper, David Lloyd says, "From these noble principles the Proprietor settled the Rights and Privileges of this colony on the true Basis of English Liberty and Property, and not only granted his charters whereby he confirmed the same to the inhabitants, but likewise published a small Treatise (The Excellent Priviledge of Liberty and Property &c.) exhorting them to maintain with firmness and resolution their inestimable privileges."

No one who is familiar with the able papers that were called forth by political discussions in the early history of Pennsylvania can fail to see that Penn's efforts to convey to the minds of the inhabitants of his Province a full knowledge of the character of their political and civil rights were successful. Nor is it going too far to say that in the atmosphere that surrounded his government, and in its traditions, a class of men grew up who under less favorable circumstances would have been unknown to history. Among them may be named David

Introduction

Lloyd, the stout defender of the people's rights; Andrew Hamilton, who, in the defence of John Peter Zenger, established the liberty of the press in America; and John Dickinson, author of the "Bill of Rights" of the Stamp Act Congress in 1765, of the "Farmer's Letters" in 1768, and of "The Constitutional Power of Great Britain over the Colonies," in 1774.




**THE EXCELLENT PRIVILEGE
OF LIBERTY AND PROPERTY**



TEXT



To the Reader



T may reasonably be supposed that we shall find in this part of the world, many men, both old and young, that are strangers, in a great measure, to the true understanding of that inestimable inheritance that every Free-born Subject of England is heir unto by Birth-right, I mean that unparalleled privilege of Liberty and Property, beyond all the Nations in the world beside; and it is to be wished that all men did rightly understand their own happiness therein; in pursuance of which I do here present thee with that ancient Garland, the Fundamental Laws of England, bedecked with many precious privileges of Liberty and Property, by which every man that is a

To the Reader

Subject to the Crown of England, may understand what is his right, and how to preserve it from unjust and unreasonable men: whereby appears the eminent care, wisdom and industry of our progenitors in providing for themselves and posterity so good a fortress that is able to repel the lust, pride and power of the Noble, as well as ignorance of the Ignoble; it being that excellent and discreet balance that gives every man his even proportion, which cannot be taken from him, nor be dispossessed of his life, liberty or estate, but by the trial and judgment of twelve of his equals, or Law of the Land, upon the penalty of the bitter curses of the whole people; so great was the zeal of our predecessors for the preservation of these Fundamental Liberties (contained in these Charters) from encroachment, that they employed all their policy and religious obligations to secure them entire and inviolable, albeit the contrary hath often been endeavoured, yet Providence hitherto hath

To the Reader

preserved them as a blessing to the English Subjects.

The chief end of the publication hereof is for the information and understanding (what is their native right and inheritance) of such who may not have leisure from their Plantations to read large volumes; and beside, I know this Country is not furnished with Law-Books, and this being the root from whence all our wholesome English Laws spring, and indeed the line by which they must be squared, I have ventured to make it public, hoping it may be of use and service to many Freemen, Planters and Inhabitants in this Country, to whom it is sent and recommended, wishing it may raise up noble resolutions in all the Freeholders in these new Colonies, not to give away any thing of Liberty and Property that at present they do, (or of right as loyal English Subjects, ought to) enjoy, but take up the good example of our ancestors, and understand, that it is easy to part with or give

To the Reader

away great privileges, but hard to be gained, if once lost. And therefore all depends upon our prudent care and actings to preserve and lay sure foundations for ourselves and the posterity of our loins.

Philopolites.





IN *France*, and other nations, the mere will of the Prince is Law, his word takes off any man's head, imposeth taxes, or seizes any man's estate, when, how and as often as he lists; and if one be accused, or but so much as suspected of any crime, he may either presently execute him, or banish, or imprison him at pleasure; or if he will be so gracious as to proceed by form of their laws, if any two villains will but swear against the poor party, his life is gone; nay, if there be no witness, yet he may be put on the rack, the tortures whereof make many an innocent

Introduction

person confess himself guilty, and then, with seeming justice, is executed. But,

In *England* the Law is both the measure and the bound of every Subject's duty and allegiance, each man having a fixed Fundamental Right born with him, as to freedom of his person and property in his estate, which he cannot be deprived of, but either by his consent, or some crime, for which the law has imposed such a penalty or forfeiture. For (1) all our Kings take a solemn oath at their Coronation to observe and cause the laws to be kept: (2) all our Judges take an oath wherein among other points they swear, to do equal Law and Right to all the King's Subjects, rich and poor, and not to delay any person of Common Right for the Letters of the King, or of any other Person, or for any other cause: Therefore saith Fortescue,¹ (who was first Chief Justice, and afterwards Lord

Introduction

Chancellor to King Henry the Sixth) in his Book *De Laudibus Legum Angliæ*, cap. 9, *Non potest Rex Angliæ*, etc. The King of England cannot alter nor change the laws of his realm at his pleasure; For why, he governeth his people by power not only royal, but also politic: If his power over them were only regal, then he might change the laws of his realm, and charge his Subjects with Tallage and other burthens, without their consent; but from this much differeth the power of a King whose government is politic; for he can neither change laws without the consent of his Subjects, nor yet charge them with impositions against their wills. With which accords Bracton,² a learned Judge and Law-Author, in the Reign of King Henry the Third, saying, *Rex in Regno suo superiores habet Deum et Legem; i.e.*, The King in his Realm hath two superiors, God and the Law; for he is under the

Introduction

directive, though not coercive Power of the Law.

Tis true, the Law itself affirms, *the King can do no wrong*, which proceeds not only from a presumption, that so excellent a Person will do none, but also because he acts nothing but by Ministers, which (from the lowest to the highest) are answerable for their doings; so that if a King in passion should command A. to kill B. without process of law, A. may yet be prosecuted by Indictment or upon an Appeal (where no royal pardon is allowable) and must for the same be executed, such command notwithstanding.

This original happy Frame of Government is truly and properly called *an Englishman's Liberty*, a Privilege not exempt from the law, but to be freed in person and estate from arbitrary violence and oppression. A greater inheritance (saith Judge Coke) is derived to

Introduction

every one of us from our laws than from our parents. For without the former, what would the latter signify? And this Birth-right of Englishmen shines most conspicuously in two things :

1. PARLIAMENTS.

2. JURIES.

By the *First* the Subject has a share by his chosen Representatives in the Legislative (or law-making) Power ; for no new laws bind the people of England, but such as are by common consent agreed on in that great Council.

By the *Second*, he has a share in the executive part of the law, no causes being tried, nor any man adjudged to lose life, member or estate, but upon the verdict of his Peers or Equals his neighbours, and of his own condition : These two grand pillars of English liberty, are the Fundamental Vital Privileges,

Introduction

whereby we have been, and are preserved more free and happy than any other people in the world, and (we trust) shall ever continue so: For whoever shall design to impair, pervert or undermine either of them, do strike at the very Constitution of our Government, and ought to be prosecuted and punished with the utmost zeal and rigour. To cut down the banks and let in the sea, or to poison all the springs and rivers in the kingdom, could not be a greater mischief; for this would only affect the present age, but the other will ruin and enslave all our posterity.

But beside these paramount privileges which the English are estated in by the original Constitution of their Government, there are others more particularly declared and expressed in divers Acts of Parliament too large to be inserted in this place.

Magna Carta

THE Great Charter, made in the Ninth Year of King Henry the Third, and confirmed by King Edward the First in the Five and twentieth Year of His Reign.

EDWARD,¹ by the grace of God King of England, Lord of Ireland, and Duke of Guyan,² to all Archbishops, Bishops,³ &c.

WE have seen the Great Charter of the Lord Henry, sometimes King of England, our Father, of the Liberties of England, in these words :

Henry, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Guyan,⁴ and Earl of Anjou, to all Arch-

Magna Charta

bishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and other our faithful Subjects, which shall see this present Charter, Greeting. Know ye, that We,⁵ unto the Honour of Almighty God, and for the salvation of the souls of our progenitors and successors, Kings of England,⁶ to the advancement of Holy Church, and amendment of our Realm, of our mere and free will, have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all Freemen of this our realm, these Liberties following, to be kept in our kingdom of England for ever.

CAP. I.

A CONFIRMATION OF LIBERTIES.

FIRST,⁷ We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, That

Magna Charta

the Church of England shall be free, and shall have all her whole rights and liberties inviolable. (2) We have granted also, and given to all the Freemen of our realm for Us, and our Heirs for ever, these liberties underwritten, to have, and to hold to them and their heirs, of Us and our Heirs for ever.

CAP. II.

THE RELIEF OF THE KING'S TENANT OF FULL AGE.

IF any of our Earls or Barons, or any other, which hold of Us in chief by Knights service,⁸ die, and at the time of his death, his heir be of full age, and oweth to Us Relief, he shall have his inheritance by the old Relief; that is to say, the heir or heirs of an Earl, for a whole Earldom, by one hundred pound; the heir or heirs of a Baron, for a whole Barony, by one hundred marks; the heir or heirs of a Knight, for one whole

Magna Charta

Knights fee, one hundred shillings at the most; and he that hath less, shall give less, according to the old custom of the fees.

CAP. III.

THE WARDSHIP OF AN HEIR WITHIN AGE. THE HEIR A KNIGHT.

BUT if the heir of any such be within age, his Lord shall not have the ward⁹ of him, nor of his land, before that he hath taken of him homage. (2) And after that such an heir hath been in ward (when he is come to full age), that is to say, to the age of one and twenty years, he shall have his inheritance without Relief, and without Fine; so that if such an heir, being within age, be made Knight, yet nevertheless his land shall remain in the keeping of his Lord, unto the term aforesaid.

Magna Charta

CAP. IV.

NO WASTE SHALL BE MADE BY A GUARDIAN IN
WARDS LANDS.

THE keeper of the land of such an heir, being within age, shall not take of the lands of the heir, but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods. (2) And if We commit the custody of any such land to the Sheriff, or to any other, which is answerable unto Us for the issues of the same land, and he make destruction or waste of those things that he hath in custody, We will take of him amends and recompence therefore.¹⁰ (3) And the land shall be committed to two lawful and discreet men of that fee, which shall answer unto Us for the issues of the same land, or unto him whom We will assign. (4) And if We give

Magna Charta

or sell to any man the custody of any such land, and he therein do make destruction or waste, he shall lose the same custody; and it shall be assigned to two lawful and discreet men of that fee, which also in like manner shall be answerable to Us, as afore is said.

CAP. V.

GUARDIANS SHALL MAINTAIN THE INHERITANCE OF
THEIR WARDS: AND OF BISHOPRICKS, ETC.

THE keeper, so long as he hath the custody of the land of such an heir, shall keep up the houses, parks, warrens, ponds, mills," and other things pertaining to the same land, with the issues of the said land; and he shall deliver to the heir when he cometh to his full age, all his land stored with ploughs, and all other things, at the least as he received it. All these things shall be observed in the custodies of Archbishopricks,

Magna Charta

Bishopricks, Abbeyes, Priories, Churches, and Dignities vacant, which appertain to Us; except this, that such custody shall not be sold.

CAP. VI.

HEIRS SHALL BE MARRIED WITHOUT DISPARAGEMENT.

HEIRS shall be married without Disparagement.¹²

CAP. VII.

A WIDOW SHALL HAVE HER MARRIAGE, INHERITANCE, AND QUARENTINE. THE KING'S WIDOW, ETC.

A WIDOW, after the death of her husband, incontinent, and without any difficulty, shall have her marriage, and her inheritance, (2) and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, (3) and

Magna Charta

she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle ; (4) and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid ; and she shall have in the mean time her reasonable estovers of the common ; (5) and for her dower, shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the Church-door. (6) No widow shall be distrained to marry her self ;¹³ nevertheless she shall find surety, that she shall not marry without our licence and assent (if she hold of Us) nor without the assent of the Lord, if she hold of another.

Magna Charta

CAP. VIII.

HOW SURETIES SHALL BE CHARGED TO THE KING.

WE or our Bailiffs, shall not seise any land or rent for any debt, as long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefore. (2) Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. (3) And if the principal debtor fail in payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt. (4) And if they will, they shall have the lands and rents of the debtor, until they be satisfied¹⁴ of that which they before paid for him, except that the debtor¹⁵ can shew himself to be acquitted against the said sureties.

Magna Charta

CAP. IX.

THE LIBERTIES OF LONDON, AND OTHER CITIES
AND TOWNS CONFIRMED.

THE City of *London* shall have all the old¹⁶ liberties and customs which it hath been used to have.¹⁷ Moreover, We will and grant, that all other Cities, Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their liberties and free customs.

CAP. X.

NONE SHALL DISTRAIN FOR MORE SERVICE THAN
IS DUE.

NO man shall be distrained to do more service for a Knights fee, nor any freehold, than therefore is due.

Magna Charta

CAP. XI.

COMMON PLEAS SHALL NOT FOLLOW THE KING'S COURT.

COMMON Pleas shall not follow our Court, but shall be holden in some place certain.

CAP. XII.

WHERE AND BEFORE WHOM ASSIZES SHALL BE TAKEN. ADJOURNMENT FOR DIFFICULTY.

ASSIZES of Novel Disseisin,¹⁸ and of Mort d'ancestor,¹⁹ shall not be taken, but in the shires, and after this manner: If We be out²⁰ of this Realm, our Chief Justicers²¹ shall send our Justicers through every county once in the year, which, with the Knights of the shires, shall take the said Assizes in those counties; (2) and those things that at the coming of our foresaid Justicers, being sent to take those Assizes in the counties,

Magna Charta

cannot be determined, shall be ended by them in some other place in their circuit; (3) and those things, which for difficulty of some articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there shall be ended.

CAP. XIII.

ASSIZES OF DARREIN PRESENTMENT.

ASSIZES of Darrein Presentment,²² shall be always taken before our Justicers of the Bench, and there shall be determined.

CAP. XIV.

HOW MEN OF ALL SORTS SHALL BE AMERCED, AND BY WHOM.

AFREEMAN shall not be amerced for a small fault, but after the manner of the fault; and for a great fault, after the greatness thereof, saving to him his contene-

Magna Charta

ment;²³ (2) and a Merchant likewise, saving to him his merchandise; (3) and any other's villein²⁴ than ours shall be likewise amerced, saving his wainage,²⁵ if he fall into our mercy. (4) And none of the said ameracements shall be assessed, but by the oath of honest and lawful men of the vicinage. (5) Earls and Barons shall not be amerced, but by their Peers, and after the manner of their offence. (6) No man of the Church shall be amerced after the quantity of his spiritual Benefice, but after his Lay tenement, and after the quantity of his offence.

CAP. XV.

MAKING OF BRIDGES AND BANKS.

NO Town, nor Freeman shall be distrained to make Bridges nor Banks,²⁶ but such as of old time, and of right have been accustomed to make them in the time of King Henry our Grandfather.

Magna Charta

CAP. XVI.

DEFENDING OF BANKS.

NO Banks²⁷ shall be defended from henceforth, but such as were in defence in the time of King Henry our Grandfather, by the same places, and the same bounds as they were wont to be in his time.

CAP. XVII.

HOLDING PLEAS OF THE CROWN.

NO Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs, shall hold Pleas of our Crown.

CAP. XVIII.

THE KING'S DEBTOR DYING, THE KING SHALL BE FIRST PAID.

IF any that holdeth of Us Lay fee do die, and our Sheriff or Bailiff do shew our Letters Patents of our summon for debt, which

Magna Charta

the dead man did owe to us; it shall be lawful to our Sheriff or Bailiff, to attach and inroll all the goods and chattels of the dead, being found in the said fee,²⁸ to the value of the same debt, by the sight and testimony of lawful men, so that nothing thereof shall be taken away, until We be clearly paid off the debt; (2) and the residue shall remain to the Executors, to perform the testament of the dead; (3) and if nothing be owing unto Us, all the chattels shall go to the use of the dead (saving to his wife and children their reasonable parts).

CAP. XIX.

PURVEYANCE FOR A CASTLE.

NO Constable, nor his Bailiff, shall take corn or other chattels of any man, if the man be not of the town where the Castle is, but he shall forthwith pay for the same, unless that the will of the seller was to

Magna Charta

respite the payment; (2) and if he be of the same town, the price shall be paid unto him within forty days.

CAP. XX.

DOING OF CASTLE-WARD.

NO Constable shall distraint any Knight for to give money for keeping of his Castle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself, for a reasonable cause. (2) And if We do lead or send him in an army, he shall be free from Castle-ward for the time that he shall be with Us in fee in our host, for the which he hath done service in our wars.

CAP. XXI.

TAKING OF HORSES, CARTS, AND WOOD.

NO Sheriff nor Bailiff of ours, or any other, shall take the horses or carts

Magna Charta

of any man to make carriage, except he pay the old price limited, that is to say, for carriage with two horses, ten pence a day; for three horses, fourteen pence a day. (2) No demesne cart²⁹ of any Spiritual Person or Knight, or any Lord, shall be taken by our Bailiffs; (3) nor We, nor our Bailiffs, nor any other, shall take any man's wood for our Castles, or other our necessities to be done, but by the licence of him whose the wood is.

CAP. XXII.

HOW LONG FELONS' LANDS SHALL BE HOLDEN BY
THE KING.

WE will not hold the lands of them that be convict of Felony, but one year and one day, and then those lands shall be delivered to the Lords of the fee.

Magna Charta

CAP. XXIII.

IN WHAT PLACE WEARS SHALL BE PUT DOWN.

ALL Wears from henceforth shall be utterly put down by Thames and Medway, and through all England, but only by the sea-coasts.³⁰

CAP. XXIV.

IN WHAT CASE A *PRÆCIPE IN CAPITE* IS NOT GRANTABLE.

THE Writ that is called *Præcipe in Capite*³¹ shall be from henceforth granted to no person of any freehold, whereby any Freeman may lose his Court.

CAP. XXV.

THERE SHALL BE BUT ONE MEASURE THROUGHOUT THE REALM.

ONE measure of Wine shall be through our Realm, and one measure of Ale, and one measure of Corn, that is to say, the

Magna Charta

Quarter of London; and one breadth of dyed Cloth, Russets, and Haberjects,³² that is to say, two yards within the lists; (2) and it shall be of weights as it is of measures.

CAP. XXVI.

INQUISITION OF LIFE AND MEMBER.

NOTHING from henceforth shall be given for a Writ of Inquisition,³³ nor taken of him that prayeth Inquisition of Life, or of Member, but it shall be granted freely, and not denied.

CAP. XXVII.

TENURE OF THE KING IN SOCAGE, AND OF ANOTHER BY KNIGHTS SERVICE. PETIT SERJEANTY.³⁴

IF any do hold of Us by Fee-ferm,³⁵ or by Socage³⁶ or Burgage,³⁷ and he holdeth lands of another by Knights service, We will not have the Custody of his heir, nor of his land, which is holden of the fee of another, by reason of that Fee-ferm, Socage or Bur-

Magna Charta

gage. (2) Neither will We have the custody of such Fee-ferm, or Socage, or Burgage, except Knights service be due unto Us out of the same Fee-ferm. (3) We will not have the Custody of the heir, or of any land³⁸ by occasion of any Petit Serjeanty, that any man holdeth of Us by Service to pay a knife, an arrow, or the like.

CAP. XXVIII.

WAGER OF LAW SHALL NOT BE WITHOUT WITNESS.

NO Bailiff from henceforth shall put any man to his open Law,³⁹ nor to an oath, upon his own bare saying, without faithful witnesses brought in for the same.

CAP. XXIX.

NONE SHALL BE CONDEMNED WITHOUT TRIAL.

JUSTICE SHALL NOT BE SOLD OR DEFERRED.

NO Freeman shall be taken, or imprisoned, or be disseised of his free-

Magna Charta

hold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will We not pass upon him, nor condemn him,⁴⁰ but by lawful judgment of his Peers, or by the Law of the Land. (2) We will sell to no man, We will not deny or defer to any man, either Justice or Right.

CAP. XXX.

MERCHANT STRANGERS COMING INTO THIS REALM
SHALL BE WELL USED.

ALL merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in, and go through England, as well by land as by water,⁴¹ to buy and sell without any manner of evil Tolts,⁴² by the old and rightful customs, except in time of war. (2) And if they be of a Land making war against Us, and⁴³

Magna Charta

be found in our Realm at the beginning of the wars, they shall be attached, without harm of body or goods, until it be known unto Us, or our Chief Justice, how our merchants be intreated there in the Land making war against Us; (3) and if our merchants be well intreated there, theirs shall be likewise with Us.

CAP. XXXI.

TENURE OF A BARONY COMING INTO THE KING'S
HANDS BY ESCHETE.

IF any man hold of any Eschete, as of the honour of Wallingford,⁴⁴ Nottingham, Boloin, or of any other Eschetes, which be in our hands, and are Baronies, and die, his heir shall give none other Relief, nor do none other Service to Us, than he should to the Baron, if it were in the Baron's hand. (2) And We in the same wise shall hold it as the Baron held it; neither shall We have,

Magna Charta

by occasion of any Barony or Eschete, any Eschete or keeping of any of our men, unless he that held the Barony or Eschete, otherwise⁴⁵ held of Us in chief.⁴⁶

CAP. XXXII.

LANDS SHALL NOT BE ALIENED TO THE PREJUDICE
OF THE LORD'S SERVICE.

NO Freeman from henceforth shall give or sell any more of his land, but so that of the residue of the lands the Lord of the Fee may have the Service due to him, which belongeth to the Fee.

CAP. XXXIII.

PATRONS OF ABBEYS SHALL HAVE THE CUSTODY OF
THEM IN THE TIME OF VACATION.

ALL Patrons of Abbeys which have the King's Charters of England of Advowson, or have old Tenure or Possession in the same, shall have the Custody of them when

Magna Charta

they fall void, as it hath been accustomed, and as it is afore declared.⁴⁷

CAP. XXXIV.

IN WHAT ONLY CASE A WOMAN SHALL HAVE AN
APPEAL OF DEATH.

NO man shall be taken or imprisoned upon the appeal of a Woman, for the death of any other, than of her husband.⁴⁸

CAP. XXXV.

AT WHAT TIME SHALL BE KEPT A COUNTY COURT,
SHERIFF'S TURN, AND A LEET.

NO County Court from henceforth shall be holden but from month to month; and where greater time hath been used, there shall be greater: (2) Nor any Sheriff, or his Bailiff, shall keep his Turn in the Hundred but twice in the year; and no where but in due place, and accustomed; that is to say, once after Easter, and again after the Feast of Saint

Magna Charta

Michael. (3) And the View of Frankpledge shall be likewise at the Feast of Saint Michael without occasion ; so that every man may have his liberties which he had, or used to have, in the time of King Henry our Grandfather, or which he hath purchased since. (4) The View of Frankpledge shall be so done that our Peace may be kept ;⁴⁹ (5) and that the Tything be wholly kept as it hath been accustomed ; (6) and that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have for his View-making in the time of King Henry our Grandfather.

CAP. XXXVI.

NO LAND SHALL BE GIVEN IN MORTMAIN.

IT shall not be lawful from henceforth to any to give his lands to any Religious House, and to take the same land again to hold of the same House. Nor shall it be

Magna Charta

lawful to any House of Religion to take the lands of any, and to lease the same to him of whom he received it. If any from henceforth give his lands to any Religious House, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the Lord of the Fee.⁵⁰

CAP. XXXVII.

A SUBSIDY IN RESPECT OF THIS CHARTER, AND THE CHARTER OF THE FOREST, GRANTED TO THE KING.

ESCUAGE from henceforth shall be taken like as it was wont to be in the time of King Henry our Grandfather ;⁵¹ reserving to all Archbishops, Bishops, Abbots, Priors, Templers, Hospitallers, Earls, Barons, and all persons, as well Spiritual as Temporal, all their free liberties and free customs, which they have had in times passed. (2) And all these customs and liberties aforesaid, which We have granted to be holden within this our

Magna Charta

Realm, as much as appertaineth to Us and our Heirs,⁵² We shall observe; (3) and all men of this our Realm, as well Spiritual as Temporal, (as much as in them is) shall observe the same, against all persons⁵³ in like wise. (4) And for this our Gift and Grant of these liberties, and of others⁵⁴ contained in our Charter of Liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto Us the fifteenth part of all their moveables. (5) And We have granted unto them on the other part that⁵⁵ neither We nor our Heirs shall procure or do any thing whereby the liberties in this Charter contained shall be infringed or broken; (6) and if any thing be procured by any person, contrary to the premises, it shall be had of no force nor effect. These being Witnesses,⁵⁶ Lord B.⁵⁷ Archbishop of Canterbury, E. Bishop of London, J. Bishop

Magna Charta

of Bath, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of Worcester, J. of Ely, H. of Hereford, R. of Chichester, W. of Exeter, Bishops; the Abbot of St. Edmonds, the Abbot of St. Albans, the Abbot of Bello,⁵⁸ the Abbot of St. Augustines in Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Bourgh St. Peter, the Abbot of Reding, the Abbot of Abindon, the Abbot of Malmesbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Certesey, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotebir,⁵⁹ the Abbot of Middleton, the Abbot of Seleby, the Abbot of Cirencester; H. de Burgh Justice, H.⁶⁰ Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, G. de Clare Earl of Gloucester and Hereford,⁶¹ W. de Ferrars Earl of Derby, W. de Mandeville Earl of Essex, H. de Bygod Earl of Norfolk, W. Earl of Albemarle, H. Earl of Hereford, J. Constable

Magna Charta

of Chester, R. de Ros, R. Fitz-walter, R. de Vyponte, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, F.⁶² Gresly, F.⁶³ de Breus, J. de Monemue,⁶⁴ J. Fitzallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauly,⁶⁵ Brian de Lisle, Thomas de Multon, R. de Argenteyn, G. de Nevil, W. de Maudit, J. de Balun, and others.⁶⁶

We, ratifying and approving these Gifts and Grants aforesaid, confirm and make strong all the same for Us and our Heirs perpetually, and, by the tenour of these Presents, do renew the same ; willing and granting for Us and our Heirs, that this Charter, and all and singular his Articles, forever shall be stedfastly, firmly, and inviolably observed ; and if any Article in the same Charter contained, yet hitherto peradventure hath not been kept, We will, and by Authority Royal command, from henceforth firmly they be observed.⁶⁷ In Witness whereof

Magna Charta

We have caused these our Letters Patents to be made. T.⁶⁸ EDWARD, our Son at Westminster,⁶⁹ the twenty eighth day of March, in the twenty eighth year of our Reign.





The Comment on Magna Charta

THIS excellent Law holds the first place in our Statute Books, for though there were, no doubt, many Acts of Parliament long before this, yet they are not now extant; it is called *Magna Charta*, or the Great Charter, not in respect of its bulk, but in regard of the great importance and weight of the matters therein contained; it is also stiled, *Charta Libertatum Regni*, The Charter of the Liberties of the Kingdom; and upon great reason (saith Cook¹ in his Proem²) is so called, from the effect, *quia Liberos³ facit*, because it makes and preserves the People free. Though it run in the stile of the King, as a Charter, yet (as

The Comment

my Lord Cook well observes on the thirty-eighth chapter⁴) it appears to have passed in Parliament; for there was then a fifteenth granted to the King by the Bishops, Earls, Barons, Free Tenants and People, which could not be, but in Parliament, nor was it unusual in those times to have Acts of Parliament in a form of a Charter, as you may read in the Princes Case, *Cook's Reports, liber 8.*⁵

Likewise, though it be said here, that the King hath given and granted these Liberties, yet they must not be understood as mere emanations of royal favour, or new bounties granted, which the People could not justly challenge, or had not a right unto before; for the Lord Cook in divers places asserts, and all lawyers know, that this Charter is for the most part only declaratory of the principal ground of the fundamental laws and liberties of England. No new freedom is hereby granted, but

The Comment

a restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any Power whatsoever, and therefore you may see this Charter often mentions *sua jura*, their rights and liberties, which shows they had them before, and that the same now were confirmed.

As to the occasion of this Charter, it must be noted, that our ancestors, the Saxons, had with a most equal poise and temperament, very wisely contrived their government, and made excellent provisions for their liberties, and to preserve the people from oppression; and when William, the Norman, made himself master of the land, though he be commonly called the Conqueror, yet in truth he was not so, and I have known several Judges that would reprehend any gentleman at the Bar that casually gave him that title; for though he killed Harold the usurper, and routed his army, yet he

The Comment

pretended a right to the kingdom, and was admitted by compact, and did take an oath to observe the laws and customs.

But the truth is, he did not perform that Oath so as he ought to have done, and his successors William Rufus, King Stephen, Henry the First and Richard likewise made frequent encroachments upon the liberties of their people; but especially King John made use of so many illegal devices to drain them of money, that wearied with intolerable oppressions, they resolved to oblige the King to grant them their liberties, and promise the same should be observed, which King John did in Runnymede between Staines⁶ and Windsor, by two charters, one called *Charta Libertatum*, The Charter of Liberties (the form of which you may read in Matthew Paris, fol. 246,⁷ and is in effect the same with this here recited) the other, The Charter of the Forest,⁸ copies of which he sent

The Comment

into every County, and commandeth the Sheriff, &c., to see them fulfilled.

But by ill counsel he quickly after began to violate them as much as ever, whereupon disturbances and great miseries arose, both to himself and to the Realm. The son and successor of this King John, was Henry the Third,⁹ who in the ninth¹⁰ year of his reign, renewed and confirmed the said Charters; but within two years after cancelled them by the pernicious advice of his Favourites, particularly Hubert de Burgh,¹¹ whom he had made Lord Chief Justice; one that in former times had been a great lover of his Country,¹² and a well-deserving patriot, as well as learned in the Laws, but now to make this a step to his ambition (which ever rideth without reins) persuaded and humoured the King, that he might avoid the Charters of his Father King John, by duress, and his own Great Charter, and *Charta de*

The Comment

Foresta also, for that he was within age when he granted the same; ¹³ whereupon the King in the eleventh year of his reign, being then of full age, got one of the Great Charters, and of the Forest into his hands, and by the counsel principally of this Hubert his Chief Justice, at a Council holden at Oxford, unjustly cancelled both the said Charters, (notwithstanding the said Hubert de Burgh was the primary witness of all temporal lords to both the said Charters) ¹⁴ whereupon he became in high favour with the King, insomuch that he was soon after (namely the tenth of December, in the thirteenth year of that King) created (to the highest dignity that in those times a Subject had) to be an Earl, namely, of Kent: ¹⁵ But soon after (for flatterers and humourists have no sure foundation) he fell into the king's heavy indignation, and after many fearful and miserable troubles, he was justly, and according to law, sentenced

The Comment

by his peers in an open Parliament, and justly degraded of that dignity,¹⁶ which he unjustly had obtained by his counsel, for cancelling of *Magna Charta*, and *Charta de Foresta*.

In the ninth chapter of this Great Charter, all the ancient liberties and customs of London are confirmed and preserved, which is likewise done by divers other Statutes, as 14 *Edward III.*, *chap. 2*,¹⁷ &c.

The twenty-ninth chapter, **NO FREEMAN SHALL BE TAKEN**, &c., deserves to be written in letters of gold; and I have often wondered the words thereof are not inscribed in capitals on all our Courts of Judicature, Town-Halls, and most publick edifices; they are the elixir of our English freedoms, the store-house of all our liberties; and because my Lord Cook in the second part of his *Institutes*,¹⁸ hath many excellent observations, his very words I shall here recite.

The Comment

This chapter containeth nine several branches.

1. That no man be taken or imprisoned, but *per legem terræ*, that is, by the Common Law, Statute Law, or Custom of England; for these words, *per legem terræ*, being towards the end of this chapter, do refer to all the precedent matters in this chapter, and this hath the first place, because the liberty of a man's person is more precious to him, than all the rest that follow, and therefore it is great reason, that he should by Law be relieved therein, if he be wronged, as hereafter shall be shewed.

2. No man shall be disseised, that is, put out of seisin, or dispossessed of his free-hold (that is) lands or livelihood, or of his liberties, or free customs, that is, of such franchises and freedoms, and free customs, as belong to him by his free Birth-right, unless it be by the law-

The Comment

ful judgment, that is, verdict of his equals (that is, of men of his own condition) or by the law of the land (that is, to speak it once for all) by the due course and process of law.

3. No man shall be outlawed, made an *ex lex*, put out of the law, that is, deprived of the benefit of the law, unless he be outlawed according to the law of the land.

4. No man shall be exiled or banished out of his Country, that is, *nemo perdet*¹⁹ *patriam*, no man shall lose his Country, unless he be exiled according to the law of the land.

5. No man shall in any sort be destroyed, (*destruere, id est, quod prius structum, et factum fuit, penitus evertere et*²⁰ *diruere*) unless it be by the verdict of his equals, or according to the law of the land.

6. No man shall be condemned at the King's Suit, either before the King in his Bench, where the pleas are *Coram Rege* (and

The Comment

so are the words, *nec super eum ibimus*, to be understood) nor before any other commissioner or judge whatsoever, and so are the words, *nec super eum mittemus*,²¹ to be understood, but by the judgment of his peers, that is, equals, or according to the law of the land.

7. We shall sell to no man justice or right.

8. We shall deny to no man justice or right.

9. We shall defer to no man justice or right.

Each of these we shall briefly explain.²²

1. No man shall be taken (that is) restrained of liberty by petition, or suggestion to the King or his Council, unless it be by indictment, or presentment of good and lawful men, where such deeds be done. This branch, and divers other parts of this Act have been notably explained and construed²³ by divers Acts of Parliament.²⁴

2. No man shall be disseised, &c. Hereby is intended that lands, tenements, goods, and

The Comment

chattels shall not be seised into the King's hands, contrary to this Great Charter, and the law of the land; nor any man shall be dis-seised of his lands, or tenements, or dispossessed of his goods, or chattels, contrary to the law of the land.

A custom was alledged in the town of C. that if a tenant cease by two years, that the Lord should enter into the freehold of the tenant, and hold the same until he were satisfied of²⁵ the arrearages, and it was adjudged a custom against the law of the land, to enter into a man's freehold in that case, without action or answer.

King Henry the Sixth granted to the Corporation of Dyers within London, power to search, &c., and if they found any cloth dyed with log-wood, that the cloth should be forfeit: and it was adjudged, that this Charter concerning the forfeiture, was against the law of

The Comment

the land, and this Statute: for no forfeiture can grow by letters patents.

No man ought to be put from his livelihood, without answer.

3. No man out-lawed, that is, barred to have the benefit of the law. *Vide*, for the word, the first part of the Institutes.

Note to this word *utlagetur*, [outlawed], these words, *nisi per legem terræ*, [unless by the law of the land] do refer.²⁶

De libertatibus. This word *libertates*, or liberties, hath three significations:

1. First, as it hath been said, it signifieth the laws of the Realm, in which respect this Charter is called *Charta Libertatum* as aforesaid.²⁷

2. It signifieth the Freedoms, that the Subjects of England have; for example, the Company of Merchant Taylors of England, having power by their Charter to make ordinances, made an ordinance, that every brother of the

The Comment

same Society should put the one-half of his clothes to be dressed by some cloth-worker free of the same Company, upon pain to forfeit ten shillings, &c., and it was adjudged that this ordinance was against Law, because it was against the liberty of the Subject, for every Subject hath freedom to put his clothes to be dressed by whom he will, *et*²⁸ *sic de similibus*: and so it is, if such, or the like grant had been made by the²⁹ letters patents.

3. Liberties signifieth the franchises and priviledges, which the Subjects have of the gift of the King, as the goods, and chattels of felons, outlaws, and the like, or which the Subjects³⁰ claim by prescription, as wreck, waif, stray, and the like.

So likewise, and for the same reason, if a grant be made to any man, to have the sole making of cards, or the sole dealing with any other trade, that grant is against the liberty

The Comment

and freedom of the Subject, that before did, or lawfully might have used that trade, and consequently against this Great Charter.

Generally all monopolies are against this Great Charter, because they are against the liberty and freedom of the Subject, and against the law of the land.³¹

4. No man exiled, that is, banished, or forced to depart, or stay out of England, without his consent, or³² by the law of the land: no man can be exiled, or banished out of his native Country, but either by authority of Parliament, or in case of abjuration for felony, by the Common Law: and so when our Books, or any Records³³ speak of exile or banishment, other than in case of abjuration, it is to be intended to be done by authority of Parliament: as Belknap and other Judges, &c., banished into Ireland in the reign of Richard the Second.³⁴

The Comment

This is a beneficial law, and is construed benignly, and therefore the King cannot send any Subject of England against his will to serve him out of the³⁵ Realm, for that should be an exile, and he should *perdere patriam*: no, he cannot be sent against his will into Ireland, to serve the King as³⁶ his Deputy there, because it is out of the realm of England: for if the King might send him out of his Realm to any place, then under pretence of service, as Ambassador, or the like, he might send him into the furthest parts³⁷ of the world, which³⁸ being an exile, is prohibited by this Act.³⁹

5. No man destroyed, &c.,⁴⁰ that is, fore-judged of life or limb,⁴¹ or put to torture, or death. Every oppression against law, by colour of any usurped authority, is a kind of destruction, and the words *aliquo modo*, any otherwise, are added to the verb *destruatur*, and to no other verb in this chapter, and therefore all things,

The Comment

by any manner of means tending to destruction, are prohibited: as if a man be accused, or indicted of treason or felony, his lands or goods cannot be granted to any, no not so much as by promise, nor any of his lands or goods seised into the King's hands, before he is attainted; for when a Subject obtaineth a promise of the forfeiture, many times undue means and more violent prosecution is used for private lucre, tending to destruction, than the quiet and just proceeding of law would permit, and the party ought to live of his own until attainder.

6. By lawful⁴² judgment of his peers, that is,⁴³ by his equals, men of his own rank and condition. The general division of persons, by the law of England, is, either one that is Noble, and in respect of his nobility of the Lords House of Parliament, or one of the Commons, and in respect thereof of the House

The Comment

of Commons in Parliament: and as there be divers degrees of nobility, as Dukes, Marquesses, Earls, Viscounts and Barons, and yet all of them are comprehended under this word (pares) peers, and are Peers of the Realm, so of the Commons, they be Knights, Esquires, Gentlemen, Citizens and Yeomen,⁴⁴ and yet all of them of the Commons of the Realm, and as every of the Nobles is one a peer to another, though he be of a several degree, so it is of the Commons; and as it hath been said of men so doth it hold of noble women, either by birth or marriage.

And forasmuch as this judgment by peers is called lawful, it shews the antiquity of this manner of trial: it was the antient accustomed legal course long before this Charter.

· 7.⁴⁵ Or by the law of the land, that is, by due process of law, for so the words are expressly expounded by the Statute of 37 *Edward*

The Comment

the Third, chap. 8, and these words are especially to be referred to those fore-going, to whom they relate ; as, None shall be condemned without a lawful trial by his peers, so, None shall be taken, or imprisoned, or put out of his freehold, without due process of the law, that is, by the indictment or presentment of good and lawful men of the place, in due manner, or by writ original of the Common Law.

Now seeing that no man can be taken, arrested, attached, or imprisoned, but by due process of law, and according to the law of the land, these conclusions hereupon do follow :—

1. That the person or persons which commit any, must have lawful authority.

2. It is necessary that the warrant or mittimus be lawful, and that must be in writing under his hand and seal.

3. The cause must be contained in the

The Comment

warrant, as for treason, felony, &c., or for suspicion of treason or felony, or the like particular crime: for if it do not thus specify the cause, if the prisoner bring his *Habeas Corpus*, he must be discharged, because no crime appears on the return, nor is it in such case any offence at all if the prisoner make his escape; whereas if the mittimus contain the cause, the escape would respectively be treason or felony, though in truth he were not guilty of the first offence, and this mentioning the cause, is agreeable to Scripture, *Acts* 5.⁴⁶

The warrant or mittimus, containing a lawful cause, ought to have a lawful conclusion, viz., and him safely to keep, until he be delivered by Law, &c., and not until the party committing shall further order.

If a man by colour of any authority, where he hath not any in that particular case, shall presume to arrest or imprison any man, or cause

The Comment

him to be arrested or imprisoned, this is against this Act, and it is most hateful, when it is done by countenance of justice.

King Edward the Sixth did incorporate the town of St. Albans, and granted to them to make ordinances, &c., they made a by-law⁴⁷ upon pain of imprisonment, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an ordinance had been contained in the Patent itself.⁴⁸

8. We will sell to no man,⁴⁹ deny to no man, &c. This is spoken in the person of the King, who in judgment of Law in all his⁵⁰ Courts of Justice is present.

And, therefore, every Subject of this Realm, for injury done to him *in bonis, terris, vel persona*, in person, lands, or goods, by any other Subject, ecclesiastical or temporal whatever he be, without exception, may take his remedy by the course of the law, and have justice and

The Comment

right for the injury done him, freely without sale, fully without any denial, and speedily without delay; for justice must have three qualities, it must be *libera*, free, for nothing is more odious than justice set to sale; *plena*, full, for justice ought not to limp, or⁵¹ be granted piecemeal; and *celeris*, speedily, *quia dilatio est quedam negatio*, delay is a kind of denial: And when all these meet, it is both JUSTICE and RIGHT.

9. We will not deny⁵² or delay any man, &c. These words have been excellently expounded by latter Acts of Parliament, that by no means Common Right or Common Law should be disturbed, or delayed, no, though it be commanded under the Great Seal, or Privy Seal, Order, Writ, Letters, Message, or Commandment whatsoever, either from the King, or any other, and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other

The Comment

Commandment were come to them. All⁵³ our Judges swear to this for it is part of their oaths, so that if any shall be found wresting the Law to serve a Court's turn, they are perjured, as well as unjust. The common laws of the Realm should by no means be delayed, for the Law is the surest sanctuary that a man can take, and the strongest fortress to protect the weakest of all; *Lex est tutissima cassis*, the Law is a most safe head-piece, and *sub clypeo Legis nemo decipitur*, no man is deceived whilst the Law is his buckler; but the King may stay his own suit, as a *capias pro fine*, for he may respite his fine, and the like.

All protections that are not legal, which appear not in the register, nor warranted by our Books, are expressly against this branch, *nulli differemus*, we will not delay any man; as a protection under the Great Seal granted to any man, directly to the Sheriff,⁵⁴ &c., and

The Comment

commanding them, that they shall not arrest him, during a certain time at any other man's suit, which hath words in it, *per prærogativam nostram, quam nolumus esse arguendam*, by Our Prerogative, which We will not have disputed; yet such protections have been argued by the Judges, according to their oath and duty, and adjudged to be void; as *Mich. 11 Henry VII. Rot. 124*, a protection granted to Holmes a vintner of London, his factors, servants and deputies, &c., resolved to be against law; *Pasch. 7 Henry VIII. Rot. 66*, such a protection disallowed, and the Sheriff amerced for not executing the writ; *Mich. 13 and 14 Elizabeth*, in *Hitchcock's Case*, and many other of latter time: and there is a notable Record of antient time in *22 Elizabeth 1. John de Marshall's Case; Non pertinet ad vicecomitem de protectione Regis judicare, imo ad Curiam.*

The Comment

Justice or Right,⁵⁵ We shall not sell, deny, or delay Justice and Right, neither the end, which is Justice, nor the mean whereby we may attain to the end, and that is the Law.

Right is taken here for Law, in the same sense that Justice⁵⁶ often is so called,

1. Because it is the right line, whereby justice distributive is guided and directed, and therefore all the Commissioners of Oyer and Terminer, of Goal-delivery, of the Peace, &c. have this clause, *facturi quod ad justitiam pertinet, secundum legem et consuetudinem Angliæ*, that is, to do justice and right, according to the rule of the law and custom of England; and that which is called Common Right in 2 *Edward the Third* is called Common Law in 14 *Elizabeth*, 3, &c., and in this sense it is taken, where it is said, *Ita quod stet Recto in Curia, id est Legi in Curia.*

2. The Law is called *Rectum*, because it dis-

The Comment

covereth, that which is tort, crooked or wrong, for as Right signifieth Law, so tort, crooked or wrong signifieth injury, and *injuria est contra jus*, injury is against right: *recta linea est index sui et obliqui*, a right line is both declaratory of itself and the oblique, hereby the crooked cord of that which is called discretion appeareth to be unlawful, unless you take it, as it ought to be, *discretio est discernere per Legem, quid sit justum*, discretion is to discern by the Law what is just.

3. It is called Right, because it is the best Birth-right the Subject hath, for thereby his goods, lands, wife and children, his body, life, honour and estimation are protected from injury and wrong: *major hæreditas venit unicuique nostrum a jure et legibus, quam a parentibus*, a greater inheritance descends to us from the laws, than from our progenitors.

Thus far the very words⁵⁷ of that oracle of

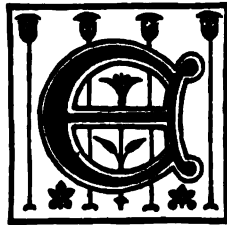
The Comment

our law, the sage and learned Cook ; which so fully and excellently explains this incomparable Law, that it will be superfluous to add any thing further thereunto.





**A Confirmation of the Charters
of the Liberties of England and
of the Forest made Anno rrrv.
Edward I.**



EDWARD,¹ by the Grace of God,
King of England, Lord of Ire-
land, and Duke of Guian² to all
those that these present Letters
shall hear or see, Greeting. Know ye, that
We, to the Honour of God, and of Holy
Church, and to the profit of our Realm,
have granted for Us and our Heirs, that the
Charter of Liberties, and the Charter of the
Forest; which were made by common assent³
of all the Realm, in the time of King Henry

A Confirmation

our Father, shall be kept in every point without breach.

(2) And We will that the same Charter⁴ shall be sent under our Seal, as well to our Justices of the Forest, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that they cause the foresaid Charters to be published, and to declare to the People, that We have confirmed them in all points.

(3) And that our Justices, Sheriffs, Mayors, and other Ministers, which under Us have the laws of our land to guide, shall allow the said Charters pleaded before them in Judgment in all their points, that is to wit, the Great Charter as the Common Law, and the Charter of the Forest, for the wealth of our Realm.⁵

A Confirmation

CAP. II.

JUDGMENTS GIVEN AGAINST THE SAID CHARTERS
SHALL BE VOID.⁶

AND We will, that if any Judgment be given from henceforth contrary to the points of the Charters aforesaid, by the Justices, or by any other our Ministers that hold plea before them against the points of the Charters, it shall be undone and holden for nought.

CAP. III.

THE SAID CHARTERS SHALL BE READ IN CATHEDRAL
CHURCHES TWICE IN THE YEAR.

AND We will, that the same Charters shall be sent, under our Seal, to Cathedral Churches throughout our Realm, there to remain, and shall be read before the People two times by the year.⁷

A Confirmation

CAP. IV.

EXCOMMUNICATION SHALL BE PRONOUNCED AGAINST
THE BREAKERS OF THE SAID CHARTER.

AND that all Archbishops and Bishops shall pronounce the sentence of excommunication against all those that by word, deed, or council do contrary to the foresaid Charters, or that in any point break or undo them. (2) And that the said Curses be twice a year denounced and published by the Prelates aforesaid. (3) And if the same Prelates,⁸ or any of them, be remiss in the denunciation of the said sentences, the Archbishops⁹ of Canterbury and York for the time being shall compel and distrain them to the execution of their duties in form aforesaid.¹⁰

A Confirmation

CAP. V.

AIDS, TASKS, AND PRISES GRANTED TO THE KING
SHALL NOT BE TAKEN FOR A CUSTOM.

AND for so much as divers People of our Realm are in fear, that the Aids and Tasks which they have given to Us before time, towards our Wars, and other business, of their own grant and good will (howsoever they were made) might turn to a bondage to them and their heirs, because they might be at another time found in the Rolls, and likewise for the prises taken throughout the Realm by our Ministers:¹¹ (2) We have granted for Us and our Heirs, that We shall not draw such Aids, Tasks nor Prises into a Custom, for anything that hath been done heretofore, be it by Roll or any other precedent that may be founden.¹²

A Confirmation

CAP. VI.

THE KING OR HIS HEIRS WILL TAKE NO AID OR
PRISES, BUT BY THE CONSENT OF THE REALM,
AND FOR THE COMMON PROFIT THEREOF.

MOREOVER We have granted for Us
and our Heirs, as well to Arch-
bishops, Bishops, Abbots, Priors, and other
folk of Holy Church, as also to Earls, Barons,
and to all the Commonalty of the Land, that
for no business from henceforth we shall take
such manner of Aids, Tasks nor Prises, but by
the common assent of the Realm, and for the
common profit thereof, saving the antient Aids
and Prises due and accustomed.

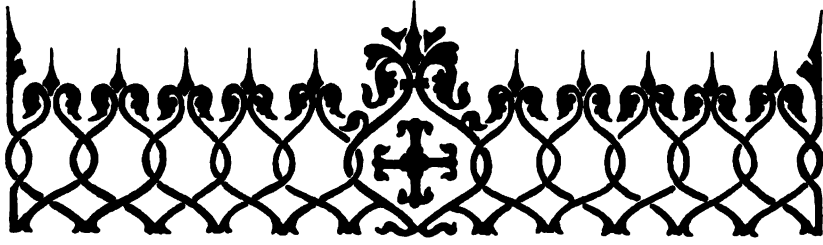
CAP. VII.

A RELEASE OF TOLL TAKEN BY THE KING FOR WOOL ;
AND A GRANT THAT HE WILL NOT TAKE THE LIKE
WITHOUT COMMON CONSENT AND GOOD WILL.

AND for so much as the more part of
the Commonalty of the Realm find

A Confirmation

themselves sore grieved with the Maletent¹³ of Wool, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to Us to release the same: We at their requests have clearly released it, and have granted¹⁴ for Us and our Heirs, that We shall not take such things, without their common assent and good will, saving to Us and our Heirs the custom of wools, skins and leather, granted before by the Commonalty aforesaid. In witness of which things We have caused these our Letters to be made Patents. Witness Edward our Son, at London, the tenth day of October, the five and twentieth year of our Reign.¹⁵



The Sentence of the Clergy against
the Breakers of the Articles above
written



N¹ the Name of the Father, the
Son and the Holy Ghost, Amen.
Whereas our Sovereign Lord the
King, to the Honour of God and of Holy
Church,² and for the common profit of the
Realm, hath granted for Him and his Heirs³
forever, these Articles above written, Robert,
Archbishop of Canterbury, Primate of all
England, admonisheth all his Province⁴ once,
twice and thrice. Because that shortness⁵ will
not suffer so much delay, as to give knowledge
to all the People of England⁶ of these Presents

Sentence of the Clergy

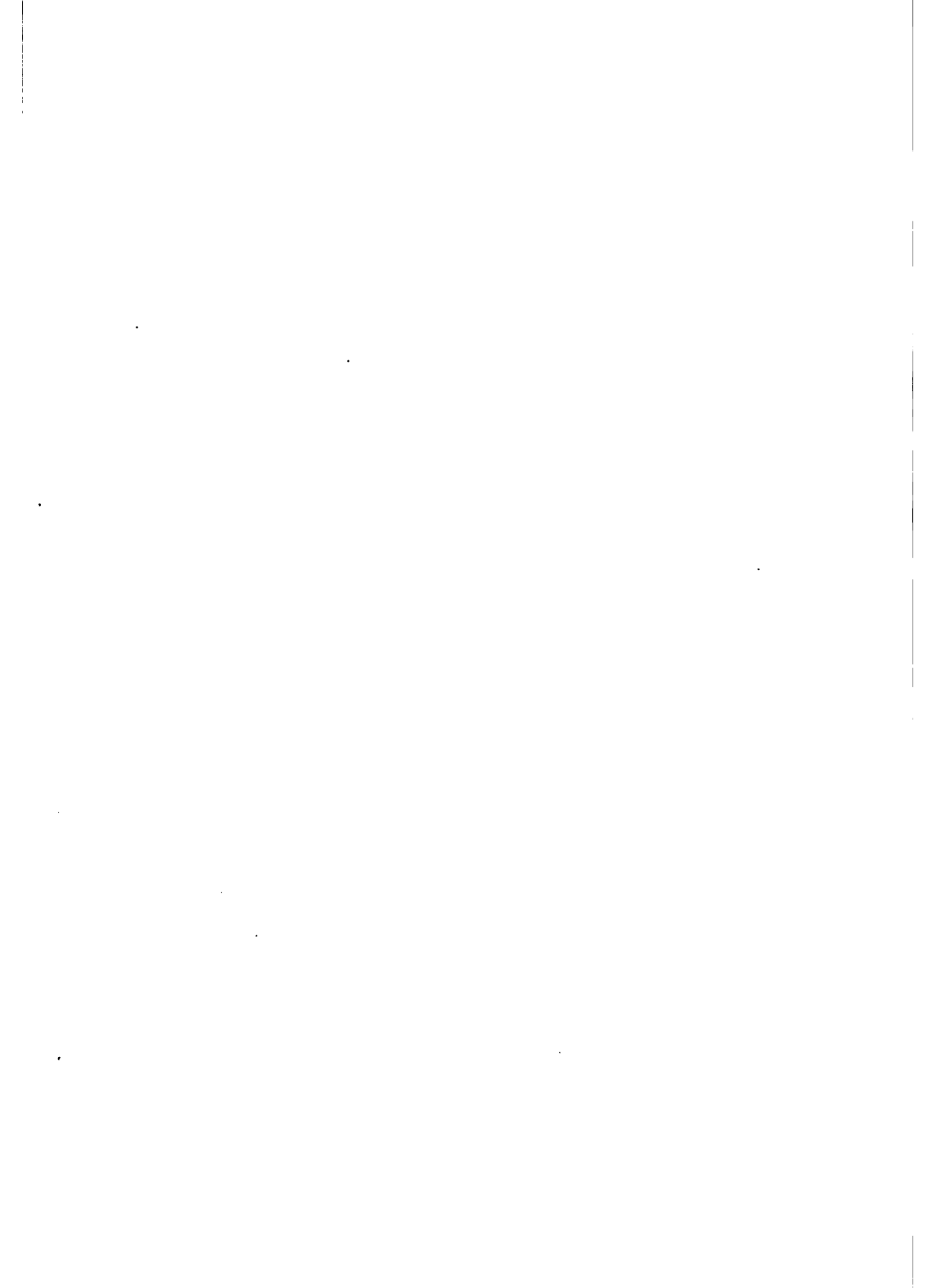
in writing. We therefore enjoin all persons, of what estate soever they be, that they and every of them, as much as in them is, shall uphold and maintain these Articles granted by our Sovereign Lord the King fully⁷ in all points. And all those that in any point do resist or break, or in any manner⁸ hereafter procure, counsel, or anywise assist to resist or break those Ordinances, or go about it, by word or deed, openly or privily, by any manner of pretence or colour: We the aforesaid Archbishop,⁹ by our authority in this writing expressed, do excommunicate and accurse,¹⁰ and from the Body of our Lord Jesus Christ, and from all the Company of Heaven, and from all the Sacraments of Holy Church, do sequester and¹¹ exclude.¹²

N. B. It may be observed that this Curse is left out of our late printed Statute-Books,

Sentence of the Clergy

though inserted at large in that printed in Volume 3 in Queen Elizabeth's days, *anno* 1557. There is likewise another like dreadful, but more full and express Curse, solemnly pronounced before in the time of King Henry III. which also being omitted in our modern Statute-Book, I shall here add.







The Sentence or Curse given by the Bishops against the Breakers of the Great Charter



N¹ the Year of our Lord 1253,² the
3d day of May,³ in the Great Hall
of the King⁴ at Westminster, in the
presence and by the assent of the Lord Henry,
by the Grace of God⁵ King of England,
and the Lords Richard Earl of Cornwall his
Brother, Roger Bigot⁶ Earl of Norfolk and
Suffolk, Marshal of England, Humfrey Earl of
Hereford, Henry Earl of Oxford,⁷ John Earl
Warren, and other Estates of the Realm of
England :

Sentence of the Bishops

We Boniface, by the Mercy of God,⁸ Archbishop of Canterbury, Primate of all England, F. Bishop of London, H. of Ely,⁹ S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of Saint Davids: Bishops apparelled in Pontificals, with tapers burning, against the Breakers of the Church's Liberties, and of the Liberties or other Customs of the Realm of England; and namely of¹⁰ those which are contained in the Charter of the Common Liberties of England, and Charter of the Forest, have¹¹ denounced the sentence of excommunication in this form.

By the Authority of Almighty God, the Father, the Son and the Holy Ghost, and of the Glorious Mother of God, and perpetual Virgin,¹² Mary, of the blessed Apostles Peter and Paul, and of all Apostles,¹³ and of all

Sentence of the Bishops

Martyrs, and of blessed Edward, King of England, and of all¹⁴ the Saints of Heaven,¹⁵ we excommunicate, accurse, and from the benefits of our Holy Mother the Church, we sequester all those that hereafter willingly and maliciously deprive or spoil the Church of her Right.

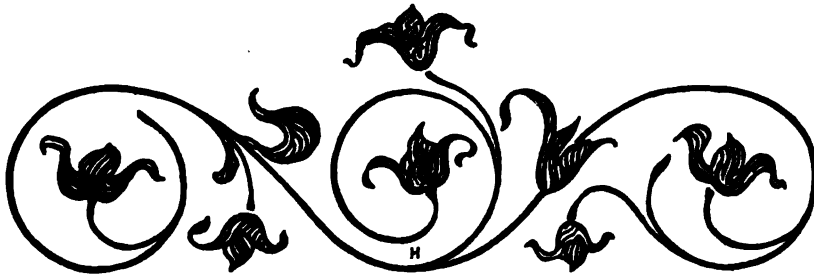
And¹⁶ all those that by any craft or wiliness do violate, break, diminish or change the Church's Liberties, and free¹⁷ Customs contained in the Charters of the Common Liberties, and of the Forest, granted by our Lord the King, to Archbishops, Bishops, and other Prelates of England, and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm.

And all¹⁸ that secretly or openly, by deed, word or counsel, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties or any of them,¹⁹ and all

Sentence of the Bishops

those that shall presume to judge against them, all and every which persons before-mentioned that wittingly shall commit anything of the Premises, let them well know, that they incur the foresaid Sentence, ipso facto.²⁰

So zealous were our ancestors to preserve their Liberties from encroachments, that they employed all the strength of human policy and religious obligations to secure them entire and inviolate: and I²¹ declare ingenuously, I would not for the world incur this Curse, as every man deservedly doth, that offers violence to the fundamental freedoms thereby repeated and confirmed.



**A Statute made Anno rxxiv.
Edward I. commonly called de
Tallagio non Concedendo**

CAP. I.

THE KING¹ OR HIS HEIRS SHALL HAVE NO TALLAGE
OR AID WITHOUT CONSENT OF PARLIAMENT.²

NO Tallage³ or Aid shall be taken or
levied by Us or our Heirs in our
Realm, without the good will and assent of
Archbishops, Bishops, Earls, Barons, Knights,
Burgesses, and other Freemen of the Land.

CAP. II.

NOTHING SHALL BE PURVEYED TO THE KING'S USE
WITHOUT THE OWNER'S CONSENT.

NO Officer of ours or of our Heirs, shall
take Corn, Leather, Cattle, or any

Statute de Callagio

other Goods of any manner of person, without the good will and assent of the party to whom the Goods belonged.

CAP. III.

NOTHING SHALL BE TAKEN OF SACKS OF WOOL BY COLOUR OF MALETOLT.

NOTHING from henceforth shall be taken of sacks of wool, by colour or occasion of maletent.⁴

CAP. IV.

ALL LAWS, LIBERTIES, AND CUSTOMS CONFIRMED.

WE will and grant for Us and our Heirs, that all Clerks and Lay-men of our Land, shall have their laws, liberties, and free customs as largely and wholly as they have used to have the same at any time when they had them best. (2) And if any Statutes have been made by Us or our Ancestors, or any customs brought in contrary to them, or any

Statute de Tallagio

manner of article contained in this present Charter, We will and grant, that such manner of Statutes and Customs shall be void and frustrate for evermore.

CAP. V.

PARDON GRANTED TO CERTAIN OFFENDERS.

MOREOVER, We have pardoned⁵ Humfrey Bohun, Earl of Hereford and Essex, Constable of England,⁶ Roger Earl of Norfolk and Suffolk, Marshal of England,⁷ and other Earls, Barons, Knights, Esquires, and namely John de Ferrariis,⁸ with all other being of their fellowship, confederacy and bond, and also to all other that hold twenty pounds land in our Realm, whether they hold of Us in chief, or of other, that were appointed at a day certain to pass over with us into Flanders, the rancour and evil will born against Us, and all other Offences, if any they have com-

Statute de Callagio

mitted⁹ against Us, unto the making of this present Charter.

CAP. VI.

THE CURSE OF THE CHURCH SHALL BE PRONOUNCED
AGAINST THE BREAKERS OF THIS CHARTER.

AND for the more assurance of this thing, We will and grant, that all Archbishops and Bishops forever shall read this present Charter in their Cathedral Churches twice in the year, and upon the reading thereof in every of their Parish Churches shall openly denounce accursed all those that willingly do procure to be done anything contrary to the tenor, force, and effect of this present Charter in any point.¹⁰ (2) In witness of which thing, We have set our Seal to this present Charter, together with the Seals of the Archbishops, Bishops, &c., which voluntarily have sworn¹¹ that, as much as in them is, they shall observe the tenor of this present Charter.¹²



The Comment

THE word Tallage is derived from the French word *Tailler*, to share or cut out a part, and is metaphorically used for any charge, when the King or any other does cut out or take away any part or share out of a man's estate; and being a general word, it includes all subsidies, taxes, tenths, aids, impositions, or other charges whatsoever.

The word Maletot signifies an evil (*i. e.* unjust) toll, custom, imposition, or sum of money.

The occasion of making this Statute, was this, King Edward being injured by the French King, resolves to make war against him, and in order thereunto requires of Humfrey le Bohun

The Comment

Earl of Hereford and Essex, and Constable of England, and of Roger Bigot, Earl of Norfolk and Suffolk, and Marshal of England, and of all the Earls, Barons, Knights, Esquires, and Freeholders of twenty pounds land, whether they held of him *in Capite*, to contribute towards such his expedition, that is, to go in person, or find sufficient men in their places, in his army; which the Constable and Marshal, and many of the Knights and Esquires, and especially this John Ferrers taking part with them and all the Free men,² stoutly denied, unless it were so ordained and determined by common consent in Parliament, according to law.³ And it seems the contest grew so hot, that Baker's Chronicle, *fol.* 99,⁴ relates a strange dialogue that passed between them, *viz.*, that when the Earl Marshal told the King, that if his Majesty pleased to go in person he would then go with him, and march before him in

The Comment

the vanguard, as by right of inheritance he ought to, but otherwise he would not stir. The King told him plainly, he should go with any other, though he went not himself in person. I am not so bound (saith the Earl) neither will I take that journey without you. The King swore, By God, Sir Earl, you shall either go or hang. And I swear by the same Oath (said the Earl) I will neither go nor hang. And so the King was forced to dispatch his expedition without them. And yet (saith my Lord Cook⁵) although the King had conceived a deep displeasure against the Constable, Marshal, and others of the nobility, gentry, and Commons of the Realm, for denying that which he so much desired, yet for that they stood in defence of their laws, liberties, and free customs, the said King Edward the First, who (as Sir William Herle,⁶ Chief Justice of the Common Pleas, who lived

The Comment

in his time, and served him, said in the time of King Edward the Third) was the wisest King that ever was, did after his return from beyond the seas, not only consent to this Statute,⁷ whereby all such tallages and impositions are forbidden for the future, but also passes a pardon to the said Nobles, &c., of all rancour, ill will and transgressions, if any they have committed, which last words were added, lest by acceptance of a pardon of transgressions, they should implicitly confess that they had transgressed: so careful were the Lords and Commons in former times to preserve the ancient laws, liberties and free customs of their Country.



An Abstract of the Patent granted by the King to William Penn and his Heirs and Assigns



WE do give and grant (upon divers considerations) to William Penn his heirs and assigns forever all that tract of land in America with all Islands thereunto belonging That is to say from the beginning of the fortieth degree of north latitude unto the forty-third of north latitude whose eastern bounds from twelve English miles above New-Castle (alias Delaware Town) runs all along upon the side of Delaware River.

2. Free and undisturbed use and passage into and out of all harbours, bays, waters,

The Patent to Penn

rivers, isles and inlets belonging to or leading to the same, together with the soil fields woods underwoods mountains hills fens isles lakes rivers waters rivulets bays and inlets situate in or belonging unto the limits and bounds aforesaid, together with all sorts of fish, mines, mettles,² &c. To have and to hold to the only behoof of the said William Penn his heirs and assigns forever. To³ be holden of Us as of our Castle of Windsor in free and common socage paying only two Beaver skins yearly.⁴

3. And of our further grace We have thought fit to erect and We do hereby erect the aforesaid country and islands into a Province and Seigniorie and do call it Pennsylvania and so from henceforth We will have it called.

4. That reposing special confidence in the wisdom and justice of the said William Penn We do grant to him and his heirs and their

The Patent to Penn

deputies for the good and happy government thereof to ordain and enact and under his and their seals to publish any laws whatever for the publick uses of the said Province by and with the advice and approbation of the Freeholders of the said country or their delegates so⁵ as they be not repugnant to the law of this Realm and to the faith and allegiance due unto Us by the Legal Government thereof.

5. Full power to the said William Penn, &c., to appoint judges lieutenants⁶ justices magistrates and officers for what causes soever and with what power and in such form as to him seems convenient also to be able to pardon and abolish crimes and offences⁷ and to do all and every other thing that to the complete establishment of justice unto courts and tribunals, forms of judicature, and manner of proceedings do belong. And our pleasure is and so We enjoin and require that such laws and

The Patent to Penn

proceedings shall be most absolute and available in law; and that all the liege people of Us our Heirs and Successors inviolably keep the same in those parts saving to Us final appeals.⁸

6. That the laws for regulating property as well for the descent of lands as enjoyment of goods and chattels and likewise as to felonies shall be the same there as here in England until they shall be altered by the said William Penn his heirs or assigns and by the Free men of the said Province or their delegates or deputies or the greater part of them.

7. Furthermore⁹ that this new Colony may the more happily increase by the multitude of people resorting thither; therefore, We, for Us, our Heirs and Successors, do hereby grant Licence to all the liege People, present and future, of Us, &c. (excepting such as shall be specially forbidden) to transport themselves

The Patent to Penn

and families into the said Country there to inhabit and plant for the publick and private good.

8. Liberty¹⁰ to transport what goods or commodities are not forbidden, paying here the legal customs due to Us, &c.

9. Power¹¹ to divide the Country into Counties Hundreds and Towns, to incorporate towns into Boroughs, and Boroughs into Cities, to make fairs and markets, with convenient privileges according to the merits¹² of the inhabitants, or the fitness of the place. And to do all other thing or things touching the premises which to the said William Penn his heirs or assigns shall seem meet and requisite; albeit they be such, as of their own nature might otherwise require a more special commandment and warrant than in these presents is expressed.

10. Liberty¹³ to import the growth or

The Patent to Penn

manufactures of that Province into England paying here the legal duty.

11. Power¹⁴ to erect Harbours Creeks Havens Keyes¹⁵ and other places of merchandizes with such jurisdiction and privileges as to the said William Penn, &c., shall seem expedient.

12. Not¹⁶ to break the Acts of Navigation, neither Governour nor Inhabitants, upon the penalties contained in the said Acts.

13. Not¹⁷ to be in league with any Prince or Country that is in war against Us our Heirs and Successors.

14. Power¹⁸ of safety and defence in such way and manner as to the said William Penn, &c., seems meet.

15. Full¹⁹ power to assign alien grant demise or enfeoff of the premises so many and such parts and parcels to those that are willing to purchase the same as the said William Penn thinks fit to have and to hold to them the said

The Patent to Penn

persons their heirs or successors²⁰ in fee simple, or fee tail, or for term of life, or lives, or years, to be held of the said William Penn, &c., as of the said Seigniory of Windsor by such services customs and rents as shall seem fit to the said William Penn his heirs and assigns and not immediately of Us our Heirs or Successors and that²¹ the said persons may take the premises or any parcel thereof of the said William Penn, &c., and the same hold to themselves their heirs and assigns the Statute *Quia Emptores Terrarum*²² in any wise notwithstanding.

16. We²³ give and grant licence to any of those persons to whom the said William Penn, &c., has granted any estate of inheritance²⁴ as aforesaid with the consent of the said William Penn to erect any parcel of lands within the said Province into manors to hold Courts Baron and View of Frank-pledge, &c., by themselves or stewards.

The Patent to Penn

17. Power²⁵ to those persons to grant to others the same tenures in fee simple or otherwise to be held of the said Manors respectively and upon all further alienations the land to be held of the Manor that it held of before the alienation.

18. We²⁶ do covenant and grant to and with the said William Penn his heirs and assigns that We will not set or make any custom or other taxation upon the inhabitants of the said Province upon lands houses goods chattels or merchandizes except²⁷ with the consent of the Inhabitants and Governour.

19. A²⁸ charge that no Officers nor Ministers of Us our Heirs and Successors do presume at any time to attempt any thing to the contrary of the premises, or in any sort withstand the same; but that they be, at all times, aiding to the said William Penn and his heirs and to the inhabitants and merchants their factors and

The Patent to Penn

assigns in the full use and benefit of this our Charter.

20. And²⁹ if any doubts or questions shall hereafter arise about the true sense or meaning of any word clause or sentence contained in this our Charter We will, ordain, and command, that at all times and in all things such interpretation be made thereof and allowed in any of our Courts whatsoever as shall be adjudged most advantageous and favourable to the said William Penn his heirs and assigns: so as it be not against the Faith and Allegiance due to Us our Heirs and Successors. In Witness whereof We have caused our Letters to be made Patents. Witness ourself at Westminster the fourth day of March,³⁰ *Anno Domini* 1681.





The Frame of the Government of the Province of Pennsylvania and Territories thereunto annexed in America

To all persons¹ to whom these Presents may come;



HEREAS King Charles the Second by his Letters Patents under the Great Seal of England, bearing date the fourth day of March, in the thirty third year of the King, for divers considerations therein mentioned, hath been graciously pleased to give and grant unto me William Penn, by the name of William Penn, Esquire, son and heir of Sir William Penn deceased, and to my heirs and assigns for ever, all that tract of land or Province called Penn-

The Frame of Government

sylvania, in America, with divers great powers, pre-eminences, royalties, jurisdictions, and authorities, necessary for the well-being and good² government thereof: and whereas the King's dearest brother James Duke of York and Albany, &c. by his deeds of feoffment under his hand and seal, duly perfected, bearing date the four and twentieth day of August, one thousand six hundred and eighty two he hath granted³ unto me the said William Penn my heirs and assigns all that tract of land, lying and being from twelve miles northward of Newcastle upon Delaware river, in America, to Cape Henlopen upon the said river and bay of Delaware, southward, together with all royalties, franchises, duties, jurisdictions, liberties and privileges thereunto belonging.

Now, know ye, That for the well-being and good⁴ government of the said Province and territories thereunto annexed; and for the en-

The Frame of Government

couragement of all the free men and planters that may be therein concerned, in pursuance of the rights and powers afore-mentioned, I the said William Penn have declared, granted and confirmed, and by these presents for me, my heirs and assigns, do declare, grant and confirm unto all the free men, planters, and adventurers of, in, and to, the said Province and territories thereof, these liberties, franchises and properties, so far as in me lieth, to be held, enjoyed and kept by the free men, planters and adventurers of and in the said Province of Pennsylvania and territories thereunto annexed, for ever.

I.

NUMBER OF COUNCIL AND ASSEMBLY.⁵

THAT the government of this Province and territories thereof, shall, from time to time, (according to the powers of the Pat-

The Frame of Government

ent, and deeds of feoffment aforesaid,) consist of the Proprietary and Governour, and the free men of the said Province and territories thereof in the form of a Provincial Council and Assembly; which Provincial Council shall consist of eighteen persons, being three out of each County; and which Assembly shall consist of thirty six⁶ persons, being six out of each County, men of most note, for virtue, wisdom, and ability, by whom all laws shall be made, officers chosen and publick affairs transacted, as is hereafter limited and declared.

II.

ELECTIONS REGULATED.⁷

THERE being three persons already chosen for every respective County of this Province, and territories thereof, to serve in the Provincial Council, one of them for three

The Frame of Government

years, one for two years, and one for one year, and one of them being to go off yearly in every County: that on the tenth day of the first month, yearly, for ever after, the free men of the said Province and territories thereof, shall meet together in the most convenient place in every County of this Province and the territories thereof, and then and there chuse one person, qualified as aforesaid, in every County, being one third of the number to serve in Provincial Council, for three years; it being intended, that one third of the whole Provincial Council consisting and to consist of eighteen persons, falling off yearly, it shall be yearly supplied by⁸ such new yearly elections, as aforesaid, and that one person shall not continue in longer than three years; and in case any member shall decease before the last election, during his time, that then, at the next election ensuing his decease, another shall be

The Frame of Government

chosen to supply his place for the remaining time he was to have served, and no longer.

III.

ROTATION.

THAT, after the first seven years, every one of the said third parts, that goeth yearly off, shall be incapable of being chosen again for one whole year following, that so all that are capable and qualified, as aforesaid, may be fitted for government, and have a share of the care and burthen of it.

IV.

QUORUM SETTLED.

THAT the Provincial Council in all cases and matters of moment, as their arguing upon bills to be past into laws, or proceedings about erecting of courts of justice, sitting in judgment upon criminals impeached, and

The Frame of Government

choice of officers in such manner as is herein after expressed, not less than two thirds of the whole, shall make a quorum, and that the consent and approbation of two thirds of that quorum shall be had in all such cases or matters of moment; and that in all cases and matters of lesser moment, one third of the whole shall make a quorum, the majority of which shall and may always determine in such cases and causes of lesser moment.

V.

BILLS TO BE PREPARED, &C.

THAT the Governour and Provincial Council shall have the power of preparing and proposing to the Assembly hereafter mentioned, all bills which they shall see needful, and that shall, at any time, be past into laws, within the said Province and territories thereof; which bills shall be published, and af-

The Frame of Government

fixed to the most noted place in every County of this Province and the territories thereof, twenty days before the meeting of the Assembly, in order to passing them into laws.

VI.

EXECUTIVE POWER IN GOVERNOUR AND COUNCIL.

THAT the Governour and Provincial Council shall take care that all laws, statutes and ordinances which shall at any time be made within the said Province and territories, be duly and diligently executed.

VII.

WHO ARE TO HAVE CARE OF THE PUBLICK SAFETY, &c.

THAT the Governour and Provincial Council shall, at all times, have the care of the peace and safety of this Province, and territories thereof, and that nothing be, by any person, attempted to the subversion of this Frame of Government.

The Frame of Government

VIII.

AND TO ORDER THE SITUATION OF TOWNS, ROADS, &C.

THAT the Governour and Provincial Council shall, at all times, settle and order the situation of all cities and market-towns in every County, modelling therein all publick buildings, streets, and market-places, and shall appoint all necessary roads and high-ways in this Province and territories thereof.

IX.

AND TO INSPECT THE TREASURY.

THAT the Governour and Provincial Council shall, at all times, have power to inspect the management of the publick Treasury, and punish those who shall convert any part thereof to any other use, than what hath been agreed upon by the Governour, Provincial Council and Assembly.

The Frame of Government.

X.

AND TO ERECT SCHOOLS.

THAT the Governour and Provincial Council shall erect and order all publick schools, and encourage and reward the authors of useful sciences, and laudable inventions in the said Province and territories thereof.

XI.

ONE THIRD OF THE COUNCIL WITH THE GOVERNOUR, THEIR POWERS.

THAT one third of the Provincial⁹ Council residing with the Governour, shall, with the Governour, from time to time, have the care of the management of all publick affairs, relating to the peace, justice, treasury, trade and¹⁰ improvement of the Province and territories, and to the good education of youth,

The Frame of Government

and sobriety of the manners of the inhabitants therein, as aforesaid.

XII.

GOVERNOUR'S POWER LIMITED.

THAT the Governour or his Deputy shall always preside in the Provincial Council, and that he shall, at no time, therein perform any publick act of state whatsoever, that shall or may relate unto the justice, trade, treasury or safety of the Province, and territories as aforesaid, but by and with the advice and consent of the Provincial Council thereof.

XIII.

ELECTIONS REGULATED. PLACE OF MEETING. ORDER OF PASSING BILLS.

AND to the end that all bills prepared and agreed by the Governour and Provincial Council, as aforesaid, may yet have

The Frame of Government

the more full concurrence of the free men of the Province and territories thereof, it is declared, granted and confirmed, that at the time and place in every County, for the choice of one person to serve in Provincial Council, as aforesaid, the respective members thereof at their said meeting, shall yearly chuse out of themselves six persons of note, for their¹¹ virtue, wisdom and ability, to serve in Assembly, as their representatives, who shall yearly meet on the tenth day of the third month, in the capital town or city of the said Province, unless the Governour and Provincial Council shall think fit to appoint another place to meet in, where, during eight days, the several members may freely confer with one another, and if any of them see meet, with a committee of the Provincial Council, which shall be, at that time, purposely appointed, to receive from any of them proposals for the alteration, or amend-

The Frame of Government

ment, of any of the said proposed and promulgated bills ; and on the ninth day from their so meeting, the said Assembly, after the reading over of the proposed bills by the Clerk of the Provincial Council, and the occasions and motives for them being opened by the Governour, or his Deputy, shall, upon the Question by him put, give their affirmative or negative, which to them seemeth best, in such manner as is hereafter expressed : but not less than two thirds shall make a quorum in the passing of all bills into laws, and choice of such officers as are by them to be chosen.

XIV.

STILE OF THE ASSEMBLY.

THAT the laws so prepared and proposed, as aforesaid, that are assented to by the Assembly, shall be enrolled as laws of this Province and territories thereof, with this Stile,

The Frame of Government

By the Governour, with the assent and approbation of the free men in Provincial Council and Assembly met, and from henceforth the meeting, sessions, acts and proceedings of the Governour, Provincial Council, and Assembly shall be stiled and called, The meeting, sessions, acts¹² and proceedings of the General Assembly of the Province of Pennsylvania, and the territories thereunto belonging.

XV.

NUMBER OF REPRESENTATIVES TO BE INCREASED, &C.

AND that the Representatives of the People, in Provincial Council and Assembly, may, in after ages, bear some proportion with the increase and multiplying of the people, the numbers of such Representatives of the people may be, from time to time, increased and enlarged, so as at no time the number exceed seventy two for the Provincial

The Frame of Government

Council, and two hundred for the Assembly ; the appointment and proportion of which number, as also the laying and methodizing of the choice of such Representatives in future time, most equally to the division of the Country, or number of the inhabitants, is left to the Governour and Provincial Council to propose, and the Assembly to resolve ; so that the order of rotation¹³ be strictly observed, both in the choice of the Council, and the respective committees thereof, viz. one third to go off, and come in yearly.

XVI.

COURTS OF JUSTICE TO BE ERECTED, AND PUBLICK OFFICERS CHOSEN.

THAT from and after the death of this present Governour, the Provincial Council shall together with the succeeding Governour, erect, from time to time, standing

The Frame of Government

Courts of Justice, in such places and number as they shall judge convenient for the good government of the said Province and territories thereof: and that the Provincial Council shall on the thirteenth day of the second month, then next ensuing, elect and present to the Governour, or his Deputy, a double number of persons, to serve for Judges, Treasurers, and Masters of the Rolls, within the said Province and territories, to continue so long as they shall well behave themselves, in those capacities respectively; and the free men of the said Province, in Assembly met, shall on the thirteenth day of the third month, yearly, elect, and then present to the Governour, or his Deputy, a double number of persons to serve for Sheriffs, Justices of the Peace, and Coroners for the year next ensuing, out of which respective elections and presentments the Governour, or his Deputy, shall nominate

The Frame of Government

and commissionate the proper number for each office, the third day after the said respective presentments, or else the first named in such presentment, for each office, as aforesaid, shall stand and serve in that office, the time before respectively limited, and in case of death or default, such vacancy shall be supplied by the Governour and Provincial Council in manner aforesaid.

XVII.

CONTINUANCE OF THE ASSEMBLY.

THAT the Assembly shall continue so long as may be needful to impeach criminals, fit to be there impeached; to pass such bills into laws as are proposed to them, which they shall think fit to pass into laws; and till such time as the Governour and Provincial Council shall declare that they have nothing further to propose unto them, for their

The Frame of Government

assent and approbation; and that declaration shall be a dismiss to the Assembly, for that time, which Assembly shall be, notwithstanding, capable of assembling together, upon the summons of the Governour and Provincial Council, at any time, during that year, if the Governour and Provincial Council shall see occasion for their so assembling.

XVIII.

BALLOT AND VOTE.

THAT all the elections of Members or Representatives of the People, to serve in Provincial Council and Assembly, and all questions to be determined by both, or either of them, that relate to the choice of officers, and all, or any other personal matters, shall be resolved and¹⁴ determined by the ballot; and all things relating to the preparing and passing

The Frame of Government

of bills into laws, shall be openly declared and resolved by the vote.

XIX.

PROVINCIAL COUNCIL TO APPOINT GUARDIANS, &C.

THAT, at all times, when the Proprietary and Governour shall happen to be an infant, and under the age of one and twenty years, and no guardian or commissioners are appointed in writing by the father of the said infant, or that such guardian shall be deceased, that during such minority, the Provincial Council shall, from time to time, as they shall see meet, constitute and appoint guardians and commissioners, not exceeding three, one of which shall preside as deputy and chief guardian, during such minority, and shall have and execute, with the consent of one of the other two, all the power of a Governour in all publick affairs and concerns of the said Province

The Frame of Government

and territories thereof, according to Charter; which said guardian so appointed shall also have the care and over-sight of the estate of the said minor, and be yearly accountable and responsible for the same to the Provincial Council, and the Provincial Council to the minor, when of age, or to the next heir, in case of the said¹⁵ minor's death, for the trust before expressed.

XX.

PUBLICK BUSINESS NOT TO BE DONE ON THE LORD'S DAY.¹⁶

THAT as often as any days of the month mentioned in any article of this Charter shall fall upon the First day of the week, commonly called the Lord's Day, the business appointed for that day, shall be deferred till the next day, unless in cases of emergency.

The Frame of Government

XXI.

ALIEN'S ESTATE TO DESCEND TO HIS HEIRS, &C.

AND for the satisfaction and encouragement of all aliens, I do give and grant, that if any alien, who is, or shall be a purchaser, or who doth, or shall, inhabit in this Province or territories thereof, shall de- cease at any time before he can well be nat- uralized, his right and interest therein shall notwithstanding descend to his wife and chil- dren, or other his relations, be he testate or intestate, according to the laws of this Prov- ince and territories thereof, in such cases pro- vided, in as free and ample manner, to all intents and purposes, as if the said alien had been naturalized.

The Frame of Government

XXII.

PRIVILEGE OF HUNTING, &C.

AND that the inhabitants of this Province and territories thereof, may be accommodated with such food and sustenance as God, in His Providence, hath freely afforded, I do also further grant to the inhabitants of this Province and territories thereof, liberty to fowl and hunt upon the lands they hold, or¹⁷ all other lands therein, not inclosed, and to fish, in all waters in the said lands, and in all rivers and rivulets in, and belonging to, this Province and territories thereof, with liberty to draw his or their fish to shore on any man's lands, so as it be not to the detriment or annoyance of the owner thereof, except such lands as do lie upon inland rivulets that are not boatable, or which are, or may be hereafter erected into Manors.

The Frame of Government

XXIII.

POSSESSIONS QUIETED.

AND that all the inhabitants of this Province and territories thereof, whether purchasers or others, may have the last worldly pledge of my good and kind intentions to them and theirs, I do give, grant and confirm to all and every one of them full and quiet enjoyment¹⁸ of their respective lands to which they have any lawful or equitable claim, saving only such rents and services for the same, as are, or customarily ought to be reserved to me, my heirs and¹⁹ assigns.

XXIV.

CHARTER NOT TO BE ALTERED, UNLESS, &C.

THAT no act, law or ordinance whatsoever shall, at any time hereafter, be made or done by the Proprietary and Govern-

The Frame of Government

our of this Province and territories thereunto belonging, his heirs, and²⁰ assigns, or by the free men in Provincial Council or Assembly, to alter, change or diminish the form or effect of this Charter, or any part or clause thereof, contrary to the true intent and meaning thereof, without the consent of the Proprietary and Governour, his heirs or assigns, and six parts of seven of the said free men in Provincial Council and Assembly met.

XXV.

CONFIRMATION.

AND lastly, I the said William Penn, Proprietary and Governour of the Province of Pennsylvania and territories thereunto belonging, for my self,²¹ my heirs and assigns, have solemnly declared, granted and confirmed, and do hereby solemnly declare, grant and confirm, that neither I, my heirs

The Frame of Government

or assigns shall procure, or do, any thing or things, whereby the liberties, in this Charter contained and expressed, shall be infringed or broken; and if any thing be procured, by any person or persons, contrary to these premises, it shall be held of no force or effect. In Witness whereof, I, the said William Penn, at Philadelphia in Pennsylvania, have unto this present Charter of Liberties set my hand and broad seal this second day of the second month, in the year of Our Lord one thousand six hundred and eighty three, being the five and thirtieth year of the King, and the third year of my Government.

William Penn.

The Frame of Government

INDORSED.

THIS within Charter which we have distinctly heard read, and thankfully received, shall be by us inviolably kept; at Philadelphia, the second day of the second month, one thousand six hundred and eighty three.

The Members of the Provincial Council present ;²²

William Markham, Will. Clayton, James Harrison, John Moll, Francis Whitwell,²³ John Hillyard,²⁴ Christop. Taylor, Will. Clark, Phil. Lehmane, *Sec.*,²⁵ Will. Haige, Thomas Holme, John Richardson, John Simcock, William Biles, Richard Ingelo, *Cl. Concilij.*

The Members of the Assembly present ;

Casparus Harman, William Futchter, Robert Lucas, John Darby, John Kipshaven, James

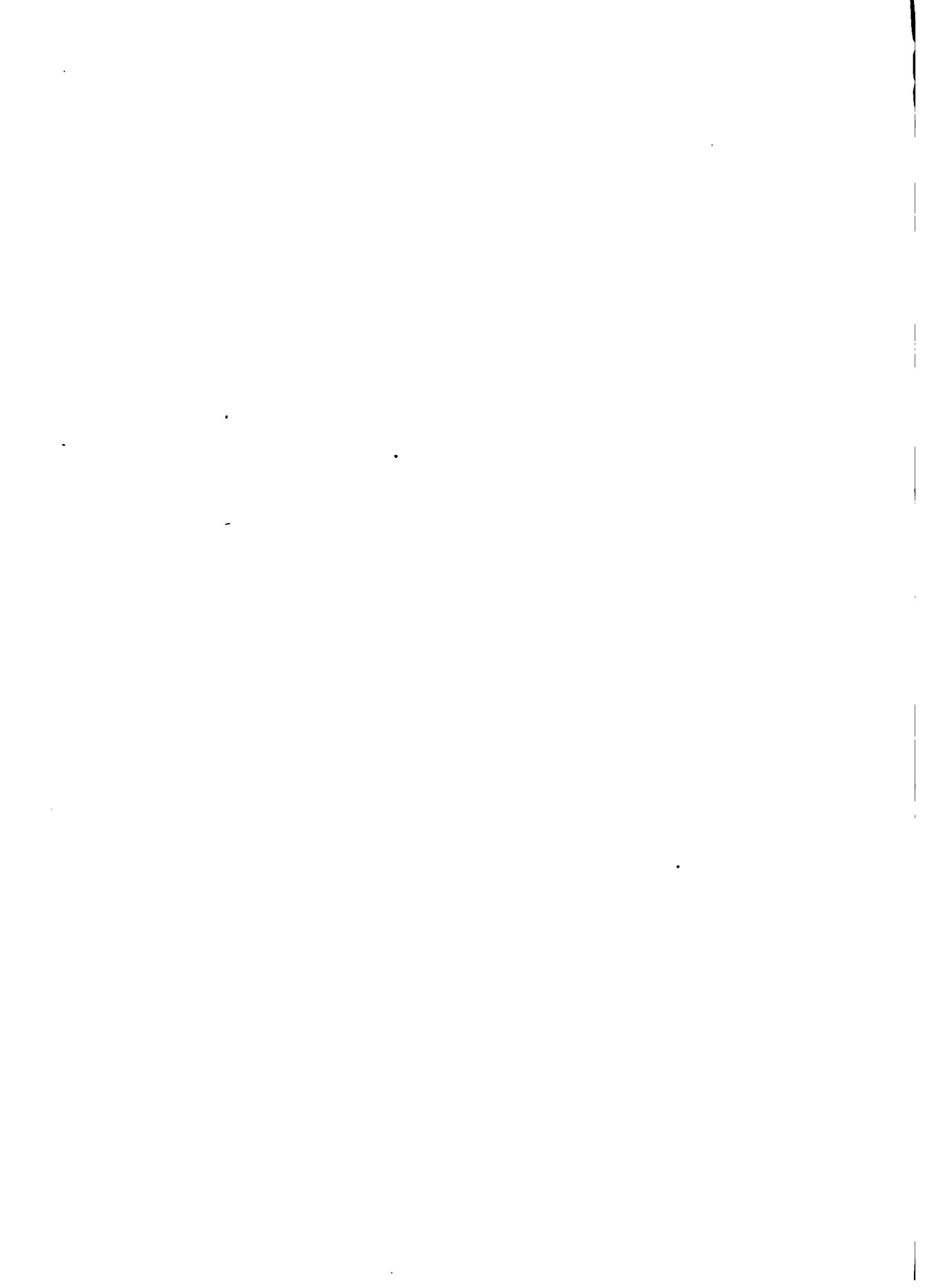
The Frame of Government

Williams, Benjamin Williams, Alexander Molestone,²⁶ John Blunstone,²⁷ William Guest, Robert Bracy,²⁸ John Songhurst, Valentine Hollinsworth,²⁹ Tho. Bracy, John Hill, James Boyden, Will. Yardly, Nicholas Walln,³⁰ Benony Biship,³¹ John Hastings, Tho. Fitzwater, John Bezor,³² Robert Wade, John Clows,³³ John Harding, Fr. Hassold,³⁴ Luke Watson, Andrew Brinkstone,³⁵ John Hart, Joseph Phips,³⁶ Simon Irons, Robert Hall, Dennis Rotchford, Jo. Wood, Robert Bedwell, John Brinklair, John Curtis, William Simsmore, Henry Boman,³⁷ Daniel Brown, Sam, Dark,³⁸ Cornelius Verhoof.³⁹

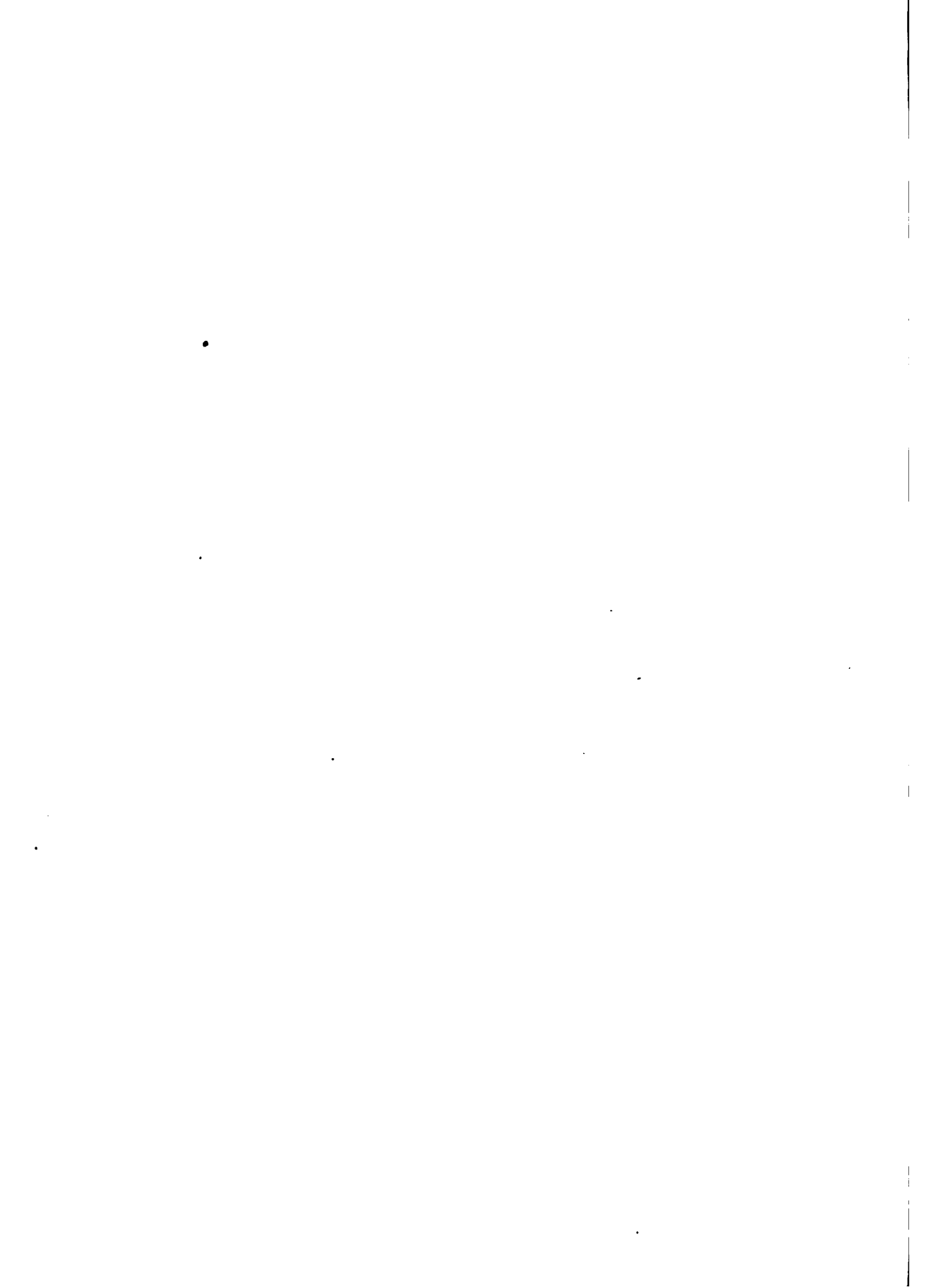
John Southworth, *Cl. Synod.*

Some of the Inhabitants of Philadelphia then⁴⁰ present.

William Howell, Edward Warner,⁴¹ Henry Lewis, Samuel Miles.



NOTES



Notes

INTRODUCTION

1. The fame of Sir John Fortescue (1394?–1476?) rests mainly on this dialogue *De Laudibus*, which Coke thought worthy of being written in letters of gold. It was written for the instruction of Edward Prince of Wales, who was killed after the battle of Tewkesbury in 1471, with which event ended the Wars of the Roses. The volume was written about 1470, and first printed in 1537. Fuller, in his “Worthies,” says Coke’s learned “Commentaries on the Law” make him famous to all posterity.

2. Henry de Bracton (as his name is generally spelled) died A.D. 1268. His principal work, entitled *De Consuetudinibus et Legibus Angliæ*, is a full treatise on legislation and jurisprudence.

MAGNA CHARTA

1. In the heading of this Charter Bradford gives the date of this important Statute as being confirmed by Edward I. in the twenty-eighth year of his reign, instead of the five-and-twentieth year,—namely, November 5, A.D. 1297. The Great Charter, as altered from the original form in King John’s reign, was passed in the ninth year of Henry III., A.D. 1225.

Notes to Magna Charta

The text of the Great Charter, as given in the reprint, follows the version in the Queen's Printers' copy of the "Statutes at Large from Magna Charta, to the end of the last Parliament, 1761," edited by Owen Ruffhead, a miscellaneous English author who lived 1723-1769. This edition was published in London in eight volumes, A.D. 1763, and has the original Latin or French with a translation in parallel columns. It has been observed by learned commentators that the old translation "has obtained a kind of prescriptive authority."

2. This is written *Aquitaine* in the Latin version. *Guienne* or *Guyenne* is the name frequently given to *Aquitaine* in its later history, especially as the name of the government *Guienne*, or *Gascony*. According to the Latin, we should read after *Guyan* "To all to whom these presents shall come, Greeting."

3. Bradford omits "Bishops" after the word "Archbishops."

4. *Aquitaine* in the Latin version.

5. Both in this Preamble and in divers parts of the body of the Charter, the king speaks in the plural number, using "We have granted," and similar expressions. The first king who wrote in the plural number in his Grants was King John, father of Henry III. Other kings before him wrote in the singular number, using *Ego*, whereas King John and all the kings after him employed the word *Nos*.

6. These words "Kings of England" are not in the Latin.

7. The Latin commences, *Imprimis*.

8. Cap. II. is altogether obsolete, Knights' service having been abolished by 12 Charles II., Cap. XXIV., by which Act not only luxuriances that had grown out of military tenures

Notes to Magna Charta

were pruned as was done by Magna Charta, but the whole system was extirpated and demolished root and branch.

9. Wardship, etc., by reason of tenure, was abolished by 12 Car. II., Cap. XXIV., and consequently this chapter is obsolete.

10. The words "and recompense therefore" are not in the Latin.

11. "Warrens, ponds, mills, and other things" should be translated "fish-ponds, pools, mill-houses, and other things."

12. The first direct mention of the right to sell the Ward in marriage, or else to receive the price or value of the transaction, is to be found in the Statute of Merton, passed A.D. 1235. See 20 Henry III., Cap. VI. This right was, of course, originally intended to apply to female heirs only, but the loose wording "heirs" in King John's, and afterwards in Henry III.'s Charters, enabled the king and great lords to extend the claim to heirs male as well.

13. According to the Latin, after "herself" should be added "while she chooses to live single."

14. According to the Latin, "satisfied of that which" should read "satisfied of the debt which."

15. According to the Latin, the word "principal" should be inserted before "debtor."

16. The Latin requires "their old" instead of "the old."

17. The words "which it hath been used to have" are not in the Latin.

18. The assize of novel or recent disseisin was an ancient common law remedy for the recovery of the possession of lands. It is no longer in use, as actions for recovery of land

Notes to Magna Charta

or rent must, under 3 and 4 William IV., Cap. XXVII., be brought within twenty years after the right accrues.

19. The writ of assize, *De assis. mortis antecessoris*, or *Martdancesters* (as Bradford gives it), was a writ of assize by which a demandant sued to recover possession of an inheritance coming from his father or mother, brother or sister, uncle or aunt, nephew or niece, of which a wrong doer had deprived him. It was abolished by 3 and 4 William IV., Cap. XXVII.

20. The Latin reads "We, or if We be out of this Realm."

21. Bradford almost invariably reads "Justices" for the almost obsolete spelling "Justicers," which was used in Hakluyt's "Voyages" and similar works.

22. This writ was used in suits for the determination of the right of presentation to a benefice, but has been superseded by the writ of *Quare impedit*.

23. Contenement is that which is connected or held with a tenement, and necessary to its reputable enjoyment.

24. The forms villein and villain are not really distinguishable, and may be regarded as historically one.

25. Wainage is described in Richard Thomson's "Magna Charta," pages 201 and 202. It comprises the team and implements necessary for the cultivation of land, which were left free when a villein was amerced so as not to hinder the proper cultivation of land. Richard Thomson was more than thirty years Librarian of the London Institution. Sir Walter Scott, in one of his Notes to Waverley, highly praises his Essay on Magna Charta, to which work the compiler of these Notes is much indebted.

Notes to Magna Charta

26. It is disputed whether this should read "Bridges nor Banks" or "Bridges at rivers." In some versions of the Charter the Latin reads *pontes ad riparias*, in others *pontes aut riparias*. The word *riparie*, moreover, although most commonly translated banks, seems to signify a river or water running between banks.

27. As the word for "Banks" is *riparias* in the Latin, it is very questionable whether "Banks" should not read "rivers." Ruffhead refers the reader to page 30 of Lord Coke's Exposition of this chapter.

28. For "fee" according to the Latin read "lay-fee." The words "and testimony" in the following line are interpolated in the translation and do not occur in the Latin.

29. The Latin word *caretta* is interchangeably translated "cart" and "carriage" in this chapter.

30. The Latin is singular, sea-coast, *per costeram maris*.

31. The Writ mentioned in the Latin was to provide a great and final remedy for injury to any one by privation of a freehold, but when one of the King's Tenants in Chief was dispossessed the precept was called a Writ of *Præcipe in capite*. The Latin employs the word *Præcipe* only.

32. These are two kinds of cloth. One, russets, a monastic dress made of an inferior kind of cloth spun by rustics and dyed by them of a dull reddish hue with bark, the name being probably taken from the Latin *russus*, or *russeus*, a kind of red: the other, halberjects or haberjects, a kind of cloth made in very early times in England, coarse and thick, of various colors, is said to have been worn chiefly by monks. In "English Gilds," page 364, the following is quoted: "and one breadth

Notes to Magna Charta

of dyed cloth, russets and haberjects, that is to say two yards within the lists.”

33. This chapter was to prevent long imprisonment of untried persons, and is a sort of prototype of the great Writ of *Habeas corpus*, the object of each being to bring accused persons to trial without extended confinement.

34. Petit Serjeanty, sometimes written Petty Serjeantry, was a tenure not requiring personal service to the king, but the rendering of something appropriate to war, as a bow or an arrow or rent.

35. “Ferm” is an Old English form of “farm.” Bradford uses the term “free farm” three times in the chapter. A fee-farm was land held of a lord or feoffor without homage or any extraordinary services other than that mentioned in the feoffment, usually the full rent.

36. Soccage is derived from the Old French word *Soc*, a ploughshare, and signifies a portion of lands held by tenure of certain inferior offices in husbandry or any conventional services that were not military.

37. Burgage tenure is defined to be where the King or any other person is lord of an ancient borough in which the tenements are held by a rent certain.

38. After “of any land” should be inserted (according to the Latin) “which he holdeth of another by Knights service.”

39. The expression “put to his open Law” is equivalent to putting a person upon his oath, which is the medium furnished him by the law of proving himself innocent of any charge. (See Richard Thomson, page 221.)

The Saxons used three principal trials: Wager by Law, by

Notes to Magna Charta

Ordeal, by Jury. Wager by Law received its name from the similarity it bore to that proof which is called Wager by Battle; for, as in the latter instance the defendant gave a pledge or gage to try the cause by combat, so in the former he entered sureties or *vadios* that at a certain day he would take the benefit which the law had provided for him. To put a man to his *Lex manifesta* or Open Law, was to force him to the making of the Wager of Law to prove himself innocent. Before the Wager of Law could be demanded of the defendant, the accuser was obliged beyond his own declaration to produce his witnesses, whose testimony was to be consistent, and by whom a probable case was to be made out, and the defendant later had to produce his witnesses. The actual production of these witnesses became antiquated in the time of Edward III., and the names of John Doe and Richard Roe, the common pledges of prosecution, are all that remain of the "faithful witnesses" required by this chapter.

40. The words translated "Nor will we not pass upon him, nor condemn him" (says Ruffhead), do by no means express the sense of the original *nec super eum ibimus nec super eum mittemus*. The two verbs *ibimus* and *mittemus*, which evidently stand in contradistinction, are "much easier expounded than translated." Lord Coke expounds them thus: No man shall be condemned at the King's Suit, either before the King in his Bench, where the Pleas are *coram Rege* (and so are the words *nec super eum ibimus* to be understood), nor before any other Commissioner or Judge whatever (and so are the words *nec super eum mittemus* to be understood).

41. Bradford uses the word "sea" instead of "water." The

Notes to Magna Charta

Latin is *per aquam*, and covers the right of strangers to use the rivers of the country.

42. A toll in Old English Law meant a Writ whereby a cause depending in a Court Baron was removed into a County Court. By this chapter (as Montesquieu in his "Spirit of Laws" remarks), the English made the protection of foreign merchants an article of their national liberty. In the reigns of Alfred and Ethelred, foreign merchants could only come to certain fairs and remain a limited number of days. The word toll or tolt is derived from the Saxon *tolnetum* or *theolonium*, namely, a payment in markets, towns, and fairs for goods sold and bought, and the word in this chapter is used in its widest sense, comprising any manner of custom, subsidy, or sum of money taken for the importing or exporting of any wares.

43. According to the Latin the word "such" should be inserted between the words "and be."

44. According to the Latin this should read "honour of Wallingford, Boloin, Nottingham, Lancaster or."

45. The Latin reads *alibi*, and Proud and others translate it "elsewhere" instead of "otherwise."

46. Rendered obsolete by 12 Charles II., Cap. XXIV., which takes away Tenures *In capite*.

47. This chapter, of course, is obsolete by 31 Henry VIII., Cap. XIII, (A.D. 1539), which provided for the dissolution of monasteries and abbeys.

48. The object of the Appeal or Call (*appellum*) lay in cases of murder, properly so named, and manslaughter. The appeal had to be brought before the woman married again, and its

Notes to Magna Charta

intent was to compel the defendant to make a pecuniary recompense. Such an appeal, moreover, was required to be made within a year and a day after the murder.

49. After "(4)" should be inserted (as in the Latin) "But."

50. The Laws of Mortmain have been frequently and essentially altered by later Acts of Parliament.

51. In Coke's Institutes this Chapter XXXVII. is printed as two chapters. Chapter XXXVII. comprises from "Escuage from henceforth" down to "Grandfather:" and Chapter XXXVIII. commences at "Reserving to all Archbishops." Bradford prints the two in one, as is done also in the Statutes at Large.

52. According to the Latin for "Us and Our Heirs (3) and" we should read "with respect to Ours."

53. According to the Latin "against all persons" should be translated "with respect to theirs."

54. The word "others" is accidentally misprinted "other" in Ruffhead. The error has been corrected.

55. After "And" Bradford has omitted the words "We have granted unto them on the other part that:" Moreover, according to the Latin, it should read "And We have granted unto them for Us and Our Heirs that."

56. It is interesting to notice that the sixty-three witnesses comprised thirty-one Lords Spiritual, namely, twelve Bishops and nineteen Abbots, with thirty-two of the nobility, namely, the Chief Justice of England, nine Earls, and twenty-two Barons.

57. "Lord B" is in the Latin *Domino S*, namely Stephen Langton, Archbishop of Canterbury.

Notes to Magna Charta

58. The Abbot of the celebrated Battle Abbey.
59. Abbotsbury.
60. Lord Coke states this was "Randall," Earl of Chester and Lincoln.
61. For "Hereford" the Latin gives "Hertford," and Coke adopts "Hertford."
62. Coke says this was "Robert Gresly."
63. According to Coke this was "Reignald de Brehus."
64. Coke renders this "John de Movenne."
65. Coke says Peter de Mololacu.
66. After "others," according to the Latin, should be added "Given at Westminster the eleventh day of February in the ninth year of our Reign."
67. For "and if any article . . . firmly they be observed" the Latin gives "although some articles in the same Charter contained have not hitherto perhaps been observed."
68. T. is an abbreviation for "As Witness." As mentioned below, the Prince Edward signed this Act in his father's absence in Belgium, he undertaking to obtain his father's signature later.
69. The date is wrong. According to the Latin it reads "the twelfth day of October in the twenty-fifth year of Our Reign," but in the parallel translation is printed twenty-eighth.

THE COMMENT

1. Sir Edward Coke, judge and law writer, commonly called Lord Coke (or Cook, or Cooke, as the name was pronounced and frequently written in his own day) lived 1553-1634. He obtained the popular designation "Lord" as a mark of his pre-

Notes to Comment

eminence in Westminster Hall. He was not entitled to such a rank. His work, designated the second part of the "Institutes of the Laws of England," is devoted to an explanation of the ancient Statutes, and commenced with an excellent and extensive commentary on the Magna Charta of the ninth year of King Henry III. (A.D. 1225), whence all subsequent explanations have been derived.

Almost at the end of his long life, in resisting a royal claim to sovereign power outside of Parliament, he argued, "Take we heed what we yield unto; Magna Charta is such a fellow that he will have no sovereign." (Parl. Hist. II. 357.)

This celebrated second volume of the Institutes was finished in 1628. On May 12, 1641, it was ordered by the House of Commons that Coke's heir should publish in print the Commentary on Magna Charta.

2. The writer of the Comment has largely followed Coke's Proem, and, as will be seen lower, has copied him in many places word for word.

3. *Liberos* is inaccurately printed *Liberus* in the Comment.

4. See Note 51 above.

5. From the estimation in which Coke's Reports were held, they are very frequently quoted as "The Reports." While they were being published, it has been noted, no other reports appeared, "as it became all the rest of the lawyers to be silent whilst their oracle was speaking" (5 Mod. Reports VIII., quoted in Stephen's Dict. of Nat. Biog. *s. v.* Coke). They are in thirteen parts, the last two of which were published posthumously. Great as was their fame, they were, in 1742, "done into verse," the point of each case being given in a couplet!

Notes to Comment

6. This is printed in the Comment "Running Mead between Saints and Windsor." The large tract of meadow land where King John and his Peers met, was named Running Mead or Runnymede, from a stream which flowed through it. It was also called Council Meadow, from having been in former times devoted to such purposes. The title Council Meadow or Council Mead was probably adopted from the Saxon rune, council. It is situate on the southwest bank of the Thames, in the county of Surrey.

7. The best edition of the *Chronica Majora* of Matthew Paris, is the copy edited by H. R. Luard in the "Rolls Series," published 1872-1882. A popular cheap one is Roger of Wendover's *Chronicles or Flowers of History*, Bohn's edition, 1849. The Charter of John is given fully in Luard's edition, Vol. II. pages 589-606, and in Roger of Wendover, Vol. II. pages 309-324.

At page 456 of the last named work is an entry of Henry III.'s Charters of Liberties and of the Forest, dated in 1225, of which the Chronicler states, "the contents of these Charters have been before written in the history of King John's reign, and the Charters of the two Kings do not differ in any point." There were, as a slight comparison shows, very material differences; and notably, in no confirmation of the Charters after John's reign was included the positively illegal and probably treasonable clause giving the Barons a right, during default of the king to observe any part of the Charter, to harass him by all means in their power and take his castles, saving only the persons of himself, his queen, and his children.

8. For this Statute, The Charter of the Forest, see Vol. I.

Notes to Comment

of the Statutes at Large. It immediately follows Magna Charta. See also *De Libertatibus Forestæ* in Luard's edition of the *Chronica Majora*, Vol. II. pages 598-602.

9. He succeeded to the throne on the death of John in 1216, when only nine years of age. Stubbs, in his Constitutional History, remarks that King John issued no Charter of the Forest as is commonly stated, but that the Charter quoted by Matthew Paris in his name is Henry III.'s Charter of 1225.

10. This is erroneously printed "nineteenth" in Bradford's edition of the Comment.

11. Hubert de Burgh, third Earl of Kent, was employed in the service of Richard I. He served King John throughout his whole reign, and was one of that King's Commissioners at the assembly of Runnymede. He was made Chief Justiciary of England the same day on which John's Magna Charta was concluded, namely, June 15, 1215. His services to Henry III. were less highly appreciated. His increasing power in the State antagonized too many interests, and his enemies finally prevailed against him. In 1239 he resigned into the King's hands the greater part of his once immense possessions and temporarily regained his royal master's approval, but he appeared no more in the public service as a politician and soldier. He died in 1243 and was buried in London at the Church of the Friar Predicants, where Whitehall subsequently stood. No trace of his burial-place remains.

12. This paragraph is taken from Coke's Proem, with only some slight verbal alterations.

13. Henry III. came to the throne in 1216, when only nine years of age. The cancellation of the Charters, here named,

Notes to Comment

took place in February, 1227, at a Council held at Oxford. "On this," says the Chronicler, "a great murmur arose amongst the Council and all decided that the justiciary [Hubert de Burgh] was the author of this trouble; for he afterwards became so intimate with the King that all the other councilors of the Kingdom were thought nothing of."

14. This is not accurately stated, though the writer of the Comment has the authority of Coke in his Proem for the words used.

Hubert de Burgh, then "Seneschal of Poictou," was seventh temporal lord to witness King John's Charter, on June 15, A.D. 1215, in the seventeenth year of his reign. He was fourth temporal lord to witness the Great Charter of Henry III. granted November 12, A.D. 1216, in the first year of his reign. He was first of the temporal lords to witness the third Great Charter of Henry III. granted 1225, in the ninth year of his reign.

15. Hubert de Burgh's power over the Barons must have been remarkable, for he was invested with the title of Earl of Kent in 1227 by the advice of the Barons, although only two years previously the Earl of Chester and the Barons had signified the King "that unless he did forbear to require their castles, and to hearken to the counsels of this Hubert (who then carried himself higher than any nobleman of England) they would rise up against him, as one man."

16. The writer of the Comment (following Coke's language) overstates the facts. Recollecting how intemperate Lord Coke was in his invectives, as, for instance, in his prosecution of Sir W. Raleigh, this is perhaps not remarkable. Although

Notes to Comment

Hubert de Burgh was deprived of his offices in 1233, his outlawry was annulled in the following year as unjust and unlawful, his honours and Earldom were restored, and he was again made one of the King's counsellors.

17. This reference should be Cap. I. of the Statutes passed in the year A.D. 1340. By this Statute it was enacted that the Great Charter and the Charter of the Forest should be holden in all points.

18. Part II. of the Institutes was first published (in a separate edition) in 1642. The writer of the Comment now takes up Coke's Notes to Cap. XXIX. of the Charter. (See Second Institutes, page 45, *et seq.*)

19. The word *perdet* is inaccurately printed *predis* in the Comment.

20. Printed *ex* instead of *et* in the Comment.

21. Printed *mittimus* instead of *mittemus* in the Comment.

22. This line, as given in the Comment, takes the place of two paragraphs in Coke's Commentary explaining that he will proceed to unfold how the same have been declared and interpreted: 1. by authority of Parliament; 2. by our Books; 3. by Precedent. (Second Institutes, page 46.)

23. The words "and construed" are not in Coke, but have been interpolated by the writer of the Comment.

24. The "divers Acts of Parliament" are enumerated in the margin of Coke's Institutes.

25. The word "of" is misprinted "at" in the Comment.

26. This paragraph is enigmatical, if not almost unintelligible, as printed in the Comment. The printer has made omissions as well as run together without stops paragraphs three and

Notes to Comment

four of Coke's Commentary. For convenience, Coke's text has been followed.

27. The words "as aforesaid" are not in Coke.

28. In the Comment *etc.*, is inserted in place of *et*.

29. Coke writes "his letters patents" instead of "the letters patents."

30. In the Comment this word is misprinted "Subject."

31. A paragraph in Coke explanatory of "Customs of the Realm" follows here, but is omitted in the Comment.

32. The words "that is banished . . . without his consent or" are an interpolation by the writer of the Comment.

33. This is "Record" in Coke.

34. The explanatory words "in the reign of Richard the Second" are added by the writer of the Comment. Sir Robert de Belknap, or Bealknap, died about 1400. In a contest in 1387 between the King and the Parliament as to certain prerogatives, Belknap and certain judges signed a report in favour of the rights of the King, but were subsequently deprived of their offices and sent to the Tower by the Parliament on a charge of treason. They pleaded that they had acted under compulsion and menace of death. They were sentenced to death, but the sentence was commuted to one of banishment. Drogheda was selected as the place of Belknap's exile, and he was ordered to confine himself within a circuit of three miles round it. An annuity of £40 was granted for his subsistence. He was recalled to England in 1397. (See Dict. of Nat. Biog., *s. v.* Bealknap.)

35. As Coke was writing in England, he naturally uses "this" for "the Realm," as in the Comment.

Notes to Comment

36. The word "as" is incorrectly printed "or" in the Comment.

37. Coke uses "part" here instead of "parts."

38. The word "which" is incorrectly printed "whom" in the Comment.

39. After the word "Act" Coke inserts various instances and authorities in support of his argument. These are omitted in the Comment.

40. The words *etc.* are omitted in the Comment. From this point the writer of the Comment gives an outline only of Coke's Commentary, many examples adduced by the original author in proof of his argument and other observations being omitted. (Second Institutes, page 48.)

41. Bradford prints "limbs" for "limb," and omits "disherited," which in Coke precedes the words "or put to torture."

42. It is "lawful judgment," as printed in the Comment, according to the Latin, but Coke omits in his Commentary both *legale* before *judicium* and "lawful" before "judgment."

43. The original note occupies one hundred and twenty-five long lines, averaging from thirteen to fourteen words apiece. (Second Institutes, pages 48†-50.) The section as given in the Comment is practically section 8 of Coke's annotation on Chapter XIV. of Magna Charta.

44. The writer of the Comment here omits from Coke's enumeration "burgesses of several degrees" who are also Commoners.

45. This is section (8) in Coke's Commentary (page 50). From this point the divergence is greater than before between

Notes to Comment

Coke and his epitomizer, the latter often using his own phrases in place of Lord Coke's.

46. Lord Coke's chief deduction is that "therefore for the King's benefit, and that the prisoner may be more safely kept, the *mittimus* ought to contain the cause." The Scripture quoted should be Acts XXV. verse 27, when Festus declares to Agrippa that it "seemeth to him unreasonable to send a prisoner" to Cæsar for trial "and not, withal, to signify the crimes laid against him."

47. Coke uses the expression "made an ordinance," and not, as here printed, "made a by-law."

48. Coke urges the rights of persons to trial by the process of law by noticing how "the philosophical poet" Virgil doth notably describe the "damnable and damned proceedings of the judge of hell.

*Gnosius hic Rhadamanthus habet durissima regna
Castigatque, auditque dolos, subigitque fateri.*

For Cretan Rhadamanthus possesses these most ruthless realms: examines and punishes frauds: and forces everyone to confess what crimes committed in the upper world he had left unatoned till the late hour of death, hugging himself in secret crime of no avail: and in another place . . . *leges fixit precio atque refixit*: arranges and rearranges the laws according to a tariff. First he punisheth and then he heareth: and lastly, compelleth to confess and make and mar laws at his pleasure; like as the centurion in Holy history did to St. Paul: for the text saith, *Centurio apprehendi Paulum jussit, et se catenis ligari et tunc interrogabat, quis fuisset, et quid fecisset.* But good judges and justices abhor these courses."

Notes to Comment

The reference in Coke is to Acts XXII. vv. 24, 27. It should be to Acts XXI. v. 33. "Then the Chief Captain came near and took him and commanded him to be bound with two chains, and demanded who he was, and what he had done."

49. This is section (9) in Coke's Commentary (page 55).

50. First, the word "his" between "all" and "Courts" is omitted in the Comment. Secondly, after "in all his Courts of Justice is present," Coke continues, "and repeating these words *nulli vendemus*, We will sell to no man, *etc.*"

51. The words "or be granted piecemeal" are not in the Latin quoted in Coke's Commentary (page 55), although given in English in the Comment.

52. This is section (10) in Coke's Commentary (page 55).

53. The passage from "all our judges" to "unjust," four lines lower, does not appear in Coke's Commentary.

54. For "directly to the Sheriff" Coke reads "directed to the Sheriffs."

55. This is section (11) in Coke's Commentary (page 56).

56. For "justice" Coke uses the Latin word *jus*.

57. The preceding Notes will show that the writer of the Comment had very lax ideas of the meaning of the phrase "the very words of that oracle of our law the sage and learned Cook."

A CONFIRMATION

1. For this Confirmation see Volume I. of the Statutes at Large, pages 131-133. It is Chapter I. of the Statutes made at London the tenth day of October, Anno 25 Edward I.,

Notes to Confirmation

A.D. 1297. The year of the King is given in the heading as thirty-fifth. It ought to be twenty-fifth.

Coke includes this important Confirmation in his Second Institutes, and says that the title of these Statutes is *Confirmationes Chartarum de libertatibus Angliæ et forestæ*, and adds, "true it is that hereby the charters are expressly confirmed: but they are also excellently interpreted (which is a confirmation in law) for here is nothing enacted, but it is included within Magna Charta." In the Statutes at Large this Statute is entitled shortly "A Confirmation of the Great Charter, and the Charter of the Forest." The text here given follows the Statutes at Large. The original is in Norman French, and herein is found the important provision that these two Charters should be pleaded, to wit, "the Great Charter as the Common Law, and the Charter of the Forest for the Wealth of Our Realm."

2. It is *Aquitaine* in the original Norman French, in which the Statute is written. See *ante*, Magna Charta, Note 2.

3. Bradford uses "consent" instead of "assent." This is, says Coke, by the common assent of the Realm by the authority of Parliament. It signifieth an Act of Parliament.

4. Before printing, and until the reign of Henry VII., Statutes were engrossed on parchment, and by the King's Writ proclaimed by the Sheriff in every county. By the ancient law of England, the King's commandments issued and were published in the form of Writs, as was the case in this particular.

5. Coke remarks that the sense hereof is, that the Great Charter, and the Charter of the Forest are to be holden for the Common Law, that is, the law common to all; and that both

Notes to Confirmation

the Charters are in amendment of the Realm, that is, to amend great mischiefs and inconveniences which oppressed the whole Realm before the making of them.

6. This and the subsequent short titles of the several Chapters of the Statute are given in the Queen's Printers' copies as here inserted.

7. Richard Thomson, in his *Historical Essay on Magna Charta*, in illustration of this Chapter (see page 385 of his work) gives an interesting account of the method introduced by the Anglo-Saxons of registering records by sending attested copies to cathedrals and religious houses. Later, legal decrees were drawn up in the form of a summary, of which a certificate was given to the successful party, at the close of which were added the names of the witnesses and the principal persons present at the trial. In time, these were copied into some *Missal* or other monastic volume, whence possibly arose the custom (not yet quite obsolete) of entering births, marriages, and deaths on a blank leaf of a Bible.

8. In the Norman French the word "Bishops" is inserted after "Prelates."

9. "Archbishops" is correct, for Canterbury and York are independent Sees.

10. The famous ceremony at which this Sentence was first openly declared is fully described by Matthew Paris (see Bohn's edition, Vol. III. pages 22-27: and Luard and Madden's edition, Vol. V. pages 373-378), in his description of the great Parliament held in the Easter fortnight, A.D. 1253. The passage of words between Henry III. and his Bishops is fully told, and a description of the sentence of excommunication follows:

Notes to Confirmation

“and the sentence tingled in the ears and awed the hearts of those who heard it, in no slight degree.”

11. According to the Norman French “in our Name” should be inserted after “our Ministers.”

12. The Parliament at which this Confirmation was passed was summoned partly to prevent an illegal aid from being established as a precedent.

13. Bradford uses “Maletot,” not “Maletent.” The grievance was that the King had lately, without common assent of Parliament, set a charge of forty shillings upon every sack of wool, here called by the name of maletot or maletent, that is, the ill toll or charge, for the word “imposition” (says Coke) was not yet heard of in any record.

14. The words “for Us and our Heirs” are not in the original Norman French.

15. This Confirmation Charter of the King was issued by his son, Prince Edward, on his father’s behalf, in a Parliament which assembled in London October 6, 1297. The Prince engaged to procure his father’s ratification of his proceedings. The instruments were sent over to Ghent as soon as the Parliament was dismissed, and after a few days’ deliberation, the King sealed the Confirmation Charter of November 5, 1297.

SENTENCE OF THE CLERGY

1. A copy of this Sentence is given in Norman French in the Statutes at Large, Vol. I. page 133, under date of A.D. 1297. It has not been thought necessary to correct the translation or notice very small variations.

Notes to Sentence of the Clergy

2. The words "and of Holy Church" are not in the Norman French.
3. The French here has *a tenir en son Reaume*.
4. The words "all his Province" do not occur in the French.
5. For "shortness" read "shortness of time."
6. "Realm of England" in the French.
7. In the French it is *entierement en touz lour points*.
8. In the French it reads "in any manner or time."
9. In the French it reads "aforesaid Robert Archbishop of Canterbury."
10. The words "and accurse" are not in the French.
11. The words "sequester and" are not in the French.
12. The Sentence ends, "So be it. So be it. *Amen*." namely, *Fiat, Fiat. Amen*.

SENTENCE OF THE BISHOPS

1. A copy of this Sentence by the Bishops is given in Latin in the Statutes at Large, under date of A.D. 1254. (See Statutes at Large, Vol. I. pages 20-21.)
2. This should be (as in the Latin) 1254, being the thirty-eighth year of the reign of Henry III.
3. This should be the "thirteenth" day. It is (in the Latin) the third of the Ides of May.
4. According to the Latin this reads only "in the Great Hall at Westminster."
5. Add "illustrious" before "King."

Notes to Sentence of the Bishops

6. Instead of "Roger Bigot" the Latin gives "E Earl of, etc."

7. Instead of "Henry Earl of Oxford" the Latin gives "R. Earl of Exeter."

8. Or "by divine mercy."

9. These in the Latin read "S. of Lincoln, W. of Worcester, R. of Norwich, P. of Hereford, W. of Salisbury, W. of Durham, F. of Exeter, S. of Carlisle, William of Bath, L. of Rochester."

10. This is too full a translation: read "of the Church's liberties or of the free customs of the Kingdom of England and principally of those."

11. Insert "solemnly" before "denounced."

12. "And perpetual Virgin" is not in the Latin.

13. Insert "of the Blessed Archbishop Thomas."

14. Insert "Confessors and Virgins and all."

15. For "Heaven" read "God."

16. The remainder of this and the following paragraph are freely rather than literally translated.

17. This should be the "ancient customs of the Kingdom."

18. Many of these words are taken from the preceding paragraph, to which they properly belong.

19. After "any of them" should be added "the writers, law makers, councillors, and the executors of them."

20. After the words *ipso facto* should be added "those who, ignorantly even, commit aught, except they promptly within fifteen days after the time of admonition reform themselves and make full satisfaction at the will of the Ordinary for that they have done, shall be from that time wrapped in the

Notes to Sentence of the Bishops

same Sentence. With the same Sentence we burden all those who shall presume to disturb the peace of the King and of the Kingdom. In witness of which thing and for the perpetual memorial of the same we have put our seal to these Presents.”

21. It would be gratifying if the writer who pens this could be identified.

STATUTE DE TALLAGIO

1. An excellent account of this Act is given by Stubbs in his *Constitutional History*, Vol. II. (3d Edition, Oxford, 1887) page 146 *et seq.* These articles, or the Statute *De Tallagio*, are extant in two forms “so different that they can scarcely be regarded as representing the same original.” “One,” adds Stubbs, “is in French containing seven articles attested by the Regent,” Prince Edward, “and sealed with the great seal. The other is in Latin . . . containing six articles and purporting to be sealed not only by the King but by the Barons and Bishops.” The last, which is given by Bradford, is generally known as the Statute *De Tallagio non concedendo*, and it is referred to as a statute in the Preamble to the Petition of Right, presented to Charles I., and further it is recognized as such by a decision of the Judges in 1637. Stubbs states that the French form is that in which the enactment became a permanent part of English law, by the exact terms of which Edward the First held himself bound, and beyond the letter of which he did not think himself in conscience obliged to act, in reference to either prise or tallage.

The text here printed is taken from the Statutes at Large

Notes to De Tallagio

(Vol. I. page 156), which gives the Latin and English in parallel columns. Lord Coke prints the Statute from the Latin, but runs Chapters V. and VI. into one. (See Coke's Second Institutes, pages 530-535.)

2. The short titles of the six clauses of the Statute are given in the Queen's Printers' copies, as here inserted.

3. As to the meaning of the word Tallage, see Lord Coke's explanation in the "Comment" on this Statute, page 532.

The history of the Statute and its "historical authenticity . . . otherwise than as a contemporary Latin abstract of two French Charters" is discussed by Richard Thomson, page 440 *et seq.* "As a question of Law, however," he adds, "it was very learnedly debated in the famous ship-money case of Colonel Hampden in 1637, when the Judges determined it to be a separate Act of Parliament, though principally because it had been recited as such in the commencement of the Parliamentary Petition of Right presented to Charles I. March 17, 1627-28." The origin of this Statute is related in Lord Coke's words in the Comment on this Statute, page 530. The King of France had wrested many lands in Aquitaine from the hands of Guy Earl of Flanders, whom Edward I. determined to avenge. Tallage in this Statute, which was passed to pacify the quarrel above indicated, is restrained, says Lord Coke, to tallages set or levied by the King or his heirs, and has not the general meaning set forth in "The Comment."

In result this Act ended an eighty years' struggle, and was a substantial, permanent assertion of the powers of Parliament.

4. The word is indiscriminately written *maletot* from the French *maletoute*, *maletolt* from the Latin *malatolmeta*, and in

Notes to De Callagio

various other forms. A *malum tolnetum* is an evil toll whereby such a sum is demanded for the export or import of any goods that a merchant cannot have a convenient gain by trading therewith. (See Stubbs and Hallam.)

5. See Coke's remarks in the Comment on this Statute as to the grounds for and terms of the pardon hereby extended by Statute.

6. This Earl was Humfrey VII. de Bohun, third Earl of Hereford and second Earl of Essex. He died in 1298. In 1289 he had been peremptorily ordered to keep the peace in a contest with the Earl of Gloucester, and three years later, 1292, was fined and imprisoned. His contest with Edward I. was largely due to his fears of that King's reforms.

7. Roger Bigod, the fifth Earl of Norfolk, lived 1245 to 1306. When Edward I. showed a determination to curtail the power of the Barons by a strong government, Bigod and Bohun, in 1297, headed an opposition to the King. Immediately after the King had started for Flanders, leaving his son as Regent, the malcontents, supported by the citizens of London, enforced a Confirmation of the Charters, and the King ratified them in Ghent.

8. John de Ferrers was son of the turbulent Robert Ferrers, Earl of Derby or Ferrers. John was born in 1271 and died 1324. After the struggle for the Charters he was summoned to Parliament in 1299. He was the ancestor of the Lords Ferrers of Chartley. Neither John de Ferrers nor his descendants were ever able to win back the title Earl, which "was practically lost" through the violent conduct of his father.

9. Coke states that these words "if any they have com-

Notes to De Tallagio

mitted" were added. See last few lines of the Comment. They follow the Latin, but were given in the translation in the Statutes at Large as "that they have done."

10. After "point" add from the Latin "or article."

11. Coke points out from this curious phrase that it is noteworthy that this proves that either house of parliament, being a Court, may take voluntary oaths.

12. After the word "Charter" add, from the Latin, "in all causes and articles, and shall extend their faithful aid to the keeping thereof, *etc.*"

THE COMMENT

1. This Comment is taken very largely from the Notes in Coke's Second Institutes upon the Statute *De Tallagio non concedendo*, pages 530-536.

2. This would be better "Freeholders," as in Coke.

3. According to law, that is to say, "as had been before enacted in the Parliament of *Anno* 25 Edward the First by the Act of *Confirmationes Chartarum*."

4. Sir Richard Baker lived 1568-1645. His earliest published work, Cato's Distiches, was written in 1636, when he was in prison for debts, assumed for his wife's family, and sixty-eight years of age. His Chronicle was published in 1641.

5. See Coke's Second Institutes, page 535.

6. Sir William de Herle died 1347. He became Chief Justice of the Common Pleas on the accession of Edward III. by patent dated February 4, 1327.

Notes to Comment

7. The Charters were confirmed and the Articles of the *De Tallagio non concedendo* ratified by Edward I. November 5, 1297, and on his return to England the Earls demanded a reconfirmation of the acts done at Ghent. The promise was fulfilled in the Spring of 1299.

THE PATENT TO PENN

1. The Charter of Charles II., dated March 4, 1681, is set out in full in Robert Proud's History of Pennsylvania (published 1797), Vol. I. pages 171-187.

2. Mettles is a former vernacular spelling of metals in all uses, although now confined to figurative senses.

3. This provision forms part of Section III. of the Charter of Charles II.

4. The Charter also reserved to the King the fifth part of all gold and silver ore found within the limits of the lands granted.

5. From the word "so" to the end of the section is taken from a later part of the Charter.

6. The word "lieutenants" is not in Section V. of the Charter.

7. Treason and wilful and malicious murder are excepted by the Charter.

8. The Charter reads reserving the hearing and determining of the appeal or appeals of all or any person or persons: not final appeals only.

9. Section 7 of the Charter provides that a duplicate of all

Notes to Patent to Penn

laws shall be transmitted to the Privy Council in England. This Section 7 is Section VIII. in the Charter.

10. This is Section IX. of the Charter.

11. This is Section X. of the Charter.

12. The word "merits" is correct.

13. This is Section XI. of the Charter.

14. This is Section XII. of the Charter.

15. The word "keyes," or "keys" (as in Proud), was formerly also spelled kay, and now quay, after the French word *quai*.

16. Section XIII. of the Charter conferred power to assess customs on goods. This is Section XIV. of the Charter, which recites the circumstances under which William Penn was to forfeit the Province.

17. This is Section XV. of the Charter.

18. This is Section XVI. of the Charter. It conferred on William Penn the powers, charge, and office of a Captain General of an Army.

19. This is Section XVII. of the Charter.

20. "Or successors" should be "and assigns."

21. This is Section XVIII. of the Charter.

22. The celebrated Statute *Quia emptores* is also known as the Statute of Westminster, the Third, and was made in the eighteenth year of King Edward I., A.D. 1290. (See Statutes at Large, Vol. I. page 122.) This Statute was not improbably (says Stubbs, Vol. II. page 259) the last case in which the assent of the Commons was taken for granted in legislation. It is, he asserts, certain that the Statute was passed in 1290, in a Council at which no representatives of the Commons attended. It was directed against the formation of new Manors, whereby

Notes to Patent to Penn

feudal lords were deprived of their dues. Whatever influence it gave to the Lords over their tenants, it gave influence in ten-fold force to the King over the Lords.

23. This is Section XIX. of the Charter.

24. This should be "estate or inheritance."

25. This is also part of Section XIX. of the Charter. The language is varied.

26. This is Section XX. of the Charter.

27. The language of the Charter is "unless the same be with the consent of the Proprietary, or Chief Governor, or Assembly, or by Act of Parliament of England."

28. This is Section XXI. of the Charter.

29. Section XXII. makes provision for a preacher, *etc.*, on application to the Bishop of London. This is Section XXIII. of the Charter.

30. This was in the "three and thirtieth year of Our Reign."

THE FRAME OF GOVERNMENT

1. This "Frame of Government" is the second Charter of Privileges granted by Penn in 1683. It continued in force till after the Revolution in England of 1688. This Charter, with another which followed in the year 1696, seemed, says Robert Proud, in his History of Philadelphia (Vol. I. page 240), to be only preparatory to the last Charter of Privileges granted in 1701.

The four Frames of Government, dated respectively 1682, 1683, 1696, and 1701, are set out in full in the "Votes and Proceedings of the House of Representatives of the Province

Notes to Frame of Government

of Pennsylvania," published at Philadelphia by B. Franklin and D. Hall, 1752. See Vol. I. (Part I.) page XXVII.: same Volume, Appendix pages IV. and VIII.: and also Vol. II. page I. Copies are given also in Proud's History of Pennsylvania, Vol. II., Appendix, Part I. The text is collated with the Votes of Assembly, Vol. I. Part I. Appendix page IV.

2. The word "good" is not in the Votes of Assembly.

3. The words "he hath granted" should read "did grant." In the Votes of Assembly the words "he hath granted (or did grant) unto me the said William Penn my heirs and assigns" are all accidentally omitted, and the word "of" wrongly inserted before "all that tract of land."

4. The word "good" is omitted in the copy in the Votes of Assembly.

5. The short titles of the Chapters are omitted throughout in the reprint of the Frame of Government, as found in "The Excellent Priviledge of Liberty and Property."

6. By the first Frame of Government, the Council was to consist of seventy-two members, but the free men found it too inconvenient to retain the full complement, and the number was reduced.

7. The Sections in the copy of the Votes of Assembly are simply numbered from II. to XIII., both inclusive.

8. In the Votes of Assembly the word "with" is printed in place of "by."

9. This line is given as it is in the Votes of Assembly, having been cut by the binder in the Bradford edition.

10. The words "trade and" are not inserted in the Votes of Assembly.

Notes to Frame of Government

11. The word "their" before "virtue" is omitted in the Votes of Assembly.

12. The word "acts" is omitted in the Votes of Assembly, manifestly in error, as the word is inserted two lines before.

13. This is erroneously printed "proportion" in the Votes of Assembly.

14. In Votes of Assembly the word "or" is substituted for "and."

15. The word "said" is wanting in Votes of Assembly.

16. This side note or short title is omitted in Votes of Assembly.

17. In Votes of Assembly "and" is inserted in lieu of "or."

18. In Votes of Assembly the word "possession" is used in place of "enjoyment."

19. This should be "or," as in Votes of Assembly, and not "and assigns."

20. This should be "or" here also. See last Note.

21. It is "me," not "myself," in Votes of Assembly.

22. The names of the witnesses are given in a different order, and the first names are all written out at full length, both in Votes of Assembly and in Proud's History of Pennsylvania.

23. Printed "Whittwel" in Proud, and "Whittwell" in Votes of Assembly.

24. John Hillyard's name is omitted by Proud.

25. Printed "Philip Thomas Lenmar, Sect. Gov.," in Proud, and "Philip Thomas Lenman, Governor's Secretary," in Votes of Assembly.

26. Printed "Molestine" in Proud and Votes of Assembly.

Notes to Frame of Government

27. Printed "Blunston" in Proud and Votes of Assembly.
28. Described as *Senior* in Proud and Votes of Assembly.
29. Printed "Hollingsworth" in Proud and Votes of Assembly.
30. Printed "Walne" in Votes of Assembly.
31. Printed "Bennony Bishop" in Proud and Votes of Assembly.
32. Printed "Beazor" in Proud and Votes of Assembly.
33. Printed "Clowes" in Votes of Assembly.
34. Printed "Thomas Hassald" in Proud, and "Thomas Hassold" in Votes of Assembly.
35. Printed "Andrews Bringston" in Proud and Votes of Assembly.
36. Printed "Phipps" in Proud and Votes of Assembly.
37. Printed "Bowman" in Proud and Votes of Assembly.
38. Printed "Darke" in Proud and Votes of Assembly.
39. Printed "Verhoofe" in Proud and Votes of Assembly.
40. The word "then" is wanting in Votes of Assembly.
41. Printed "Edmund Warner" in Proud and Votes of Assembly.

List of the Principal Dates mentioned in this work

A.D.

- 1199 King John began to reign May 27.
- 1215 John signed Magna Charta at Runnymede, June 15.
- 1216 John died October 19, and Henry III. succeeded him.
- 1216 Henry III. began to reign October 28.
- 1216 First Great Charter of Henry III. granted November 12.
- 1225 The Great Charter, as altered from the original form in
King John's reign, passed by King Henry III. in the
ninth year of his reign.
- 1225 The Charter of the Forest.
- 1227 Charters cancelled at Council at Oxford in February.
- 1235 Statute of Merton.
- 1272 Henry III. died November 16.
- 1272 Edward I. began to reign November 20. The early
Norman and Plantagenet kings reckoned their reigns
from the day of their coronation, the later Plan-
tagenets from the day after the death of their prede-
cessors. With Edward VI. began the custom of
beginning the reign on the day of the death of the
preceding sovereign.

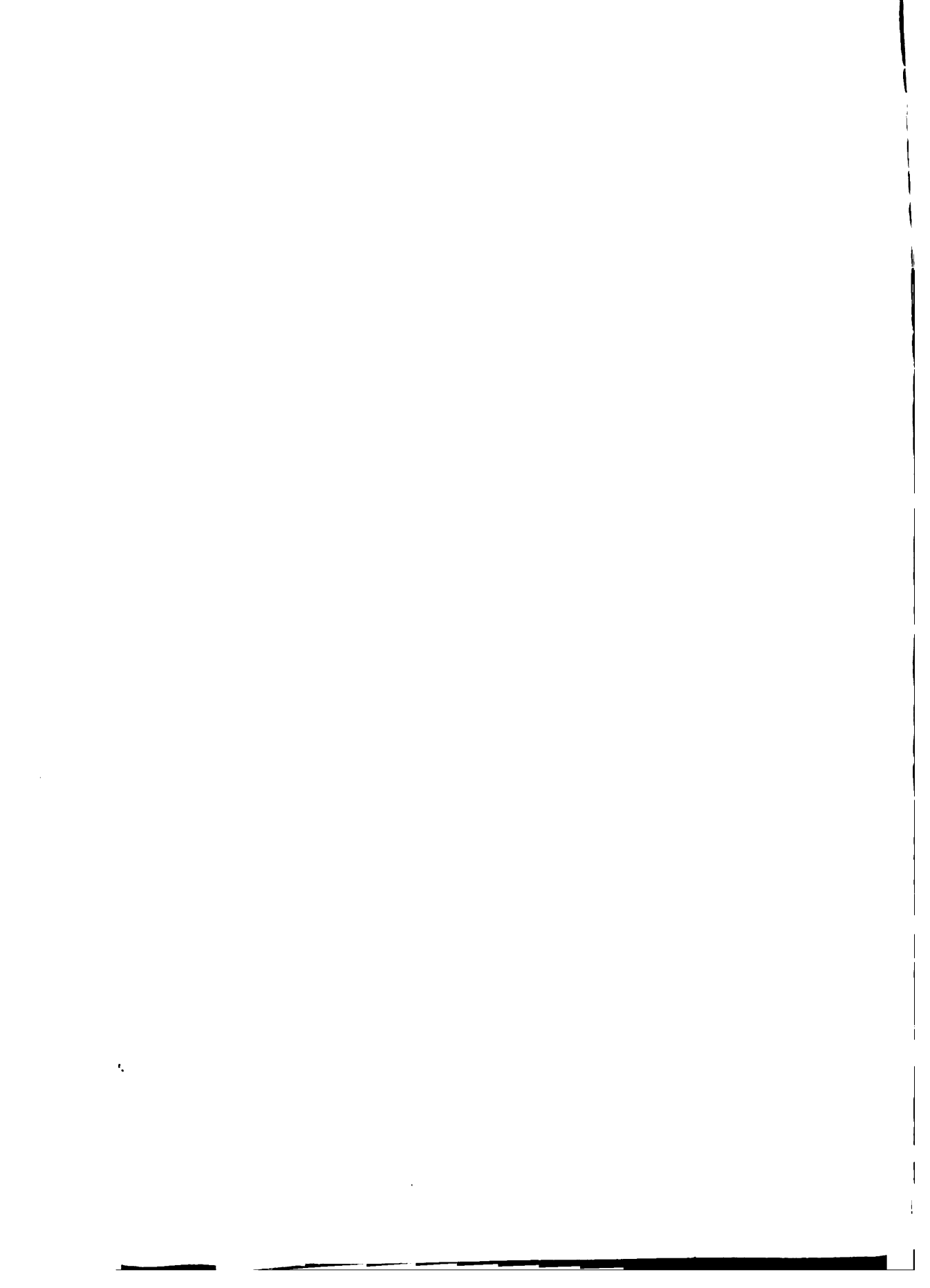
List of Principal Dates

- 1297 Confirmation of the Charters by Prince Edward, son of the King, in the twenty-fifth year of Edward I., on October 6.
- 1297 Confirmation sealed by Edward I. at Ghent November 5.
- 1299 The Confirmation executed at Ghent reaffirmed after the return of Edward I. to England.
- 1307 Statute *De Tallagio non concedendo*.
- 1307 Edward I. died July 7.
- 1307 Edward II. began to reign July 8.
- 1628 Petition of Right.
- 1681 Patent granted by Charles II. to William Penn March 4.
- 1682 First Frame of Government.
- 1683 Second Frame of Government.
- 1687 Magna Charta printed for the first time in America.
- 1696 Third Frame of Government.
- 1701 Fourth Frame of Government.

**THE EXCELLENT PRIVILEGE
OF LIBERTY AND PROPERTY**



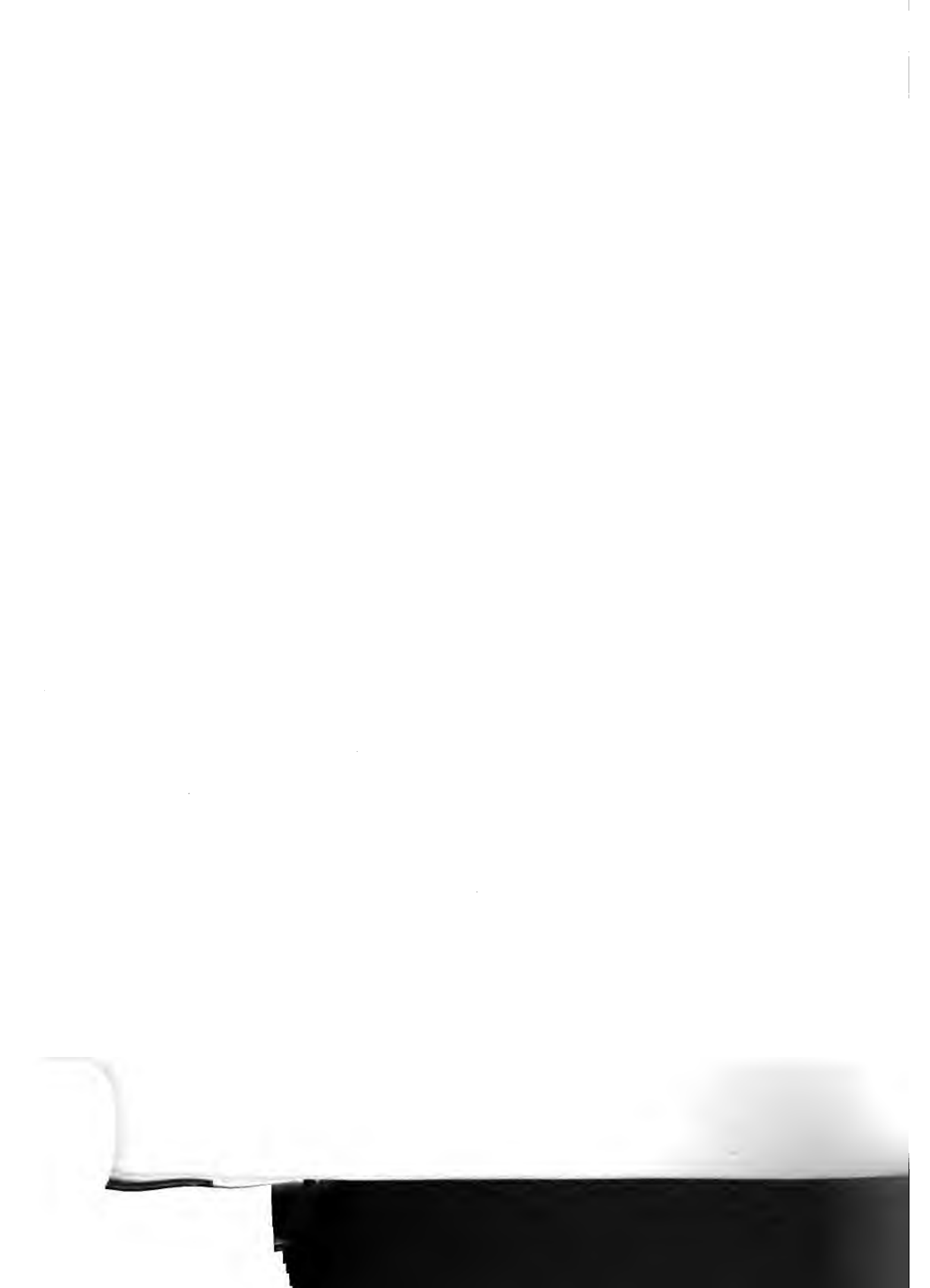
FAC-SIMILE



The Excellent Priviledge of
LIBERTY & PROPERTY
BEING THE
BIRTH - RIGHT
Of the Free-born Subjects of *England*.
CONTAINING

- I. *Magna Charta*, with a learned Comment upon it.
- II. The Confirmation of the Charters of the Liberties of *England* and of the Forrest, made in the 35th year of *Edward* the First
- III. A Statute made the 34 *Edw. 1.* commonly called *De Tallage non Concedendo*, wherein all Fundamental Laws, Liberties and Customs are confirmed. With a Comment upon it.
- IV. An abstract of the Patent granted by the King to *William Penn* and his Heirs and Assigns for the Province of *Pennsylvania*.
- V. And *Lastly*, The Charter of Liberties granted by the said *William Penn* to the Free-men and Inhabitants of the Province of *Pennsylvania* and Territories thereunto annexed, In *America*.

Major Hereditas venit unicuique; nostrum a Jure & Legibus, quam a Parentibus.



To the Reader.

IT may reasonably be suppos'd that we shall find in this part of the world, many men, both old and young, that are strangers, in a great measure, to the true understanding of that inestimable Inheritance that every Free-born Subject of England is Heir unto by Birth-right, I mean that unparalell'd Privilege of Liberty and Property, beyond all the Nations in the world beside; and it is to wish that all men did rightly understand their own happiness therein; in pursuance of which I do here present thee with that ancient Garland, the Fundamental Laws of England, bedeck'd with many precious Privileges of Liberty and Property, by which every man that is a Subject to the Crown of England, may understand what is his Right, and how to preserve it from unjust and unreasonable men: whereby appears the eminent Care, Wisdom and Industry of our Progenitors in providing for themselves and Posterity so good a Fortrefs that is able to repel the Lust, Pride and Power of the Noble, as well as Ignorance of the Ignoble; it being that excellent and discreet Ballance that gives every man his even proportion, which cannot be taken from him, nor be dispossest of his Life, Liberty or Estate; but by the tryal and judgment of Twelve of his Equals, or Law of the Land, upon the penalty of the bitter Curses of the whole People; so great was the zeal of our Predecessor: for the preservation of these
these

To the READER.

these Fundamental Liberties (contained in these Charters) from encroachment, that they employed all their Policy and Religious Obligations to secure them inviolable and unviolable, albeit the contrary hath often been endeavoured, yet providence hitherto hath preserved them as a Blessing to the English Subjects.

The chief end of the Publication hereof is for the information and understanding (what is their native Right and Inheritance) of such who may not have leisure from their Plantations to read large Volumms; And beside, I know this Country is not furnished with Law-Books, & this being the Root from whence all our wholesome English Laws spring, and indeed the Line by which they must be squared, I have ventured to make it publick, hoping it may be of use and service to many Free-men, Planters and Inhabitants in this Country, to whom it is sent and recommended, wishing it may raise up Noble Resolutions in all the Freeholders in these new Colonies, not to give away any thing of Liberty and Property that at present they do, (or of right as Loyal English Subjects, ought to) enjoy, but take up the good Example of our Ancestors, and understand, that it is easie to part with or give away great Priviledges, but hard to be gained, if once lost. And therefore all depends upon our prudent Care and Actings to preserve and lay sure Foundations for our selves and the Posterity of our Loyns.

Philopolites.

INTRODUCTION.

IN *France*, and other Nations, the meer Will of the Prince is Law, his Word takes off any mans Head, imposeth Taxes, or seizes any mans Estate, when, how and as often as he lists; and if one be accused, or but so much as suspected of any Crime, he may either presently Execute him, or Banish, or Imprison him at pleasure; or if he will be so gracious as to proceed by form of their Laws, if any two Villians will but swear against the poor Party, his Life is gone; nay, if there be no *witness*, yet he may be put on the *Rack*, the Tortures wherof make many an innocent Person confess himself guilty, and then with seeming Justice is executed. But,

In *England* the Law is both the *measure* and the *bound* of every Subjects Duty and Allegiance, each man having a fixed Fundamental-Right born with him, as to *Freedom of his Person and Property in his Estate*, which he cannot be depriv'd of, but either by his *Consent*, or some *Crime*, for which the Law has impos'd such a penalty or forfeiture. For all our Kings take a solemn Oath (1.) At their Coronation, *To observe & cause the Laws to be kept*: (2.) All our Judges take an Oath, wherein among other points they swear, *To do equal Law and Right to all the Kings Subjects, Rich and Poor, and not to delay any person of common Right for the Letters of the King, or of any other Person, or for any other cause*:

INTRODUCTION.

cause: Therefore saith *Forresew*, (who was first chief Justice, and afterwards L. Chancellor to K. *Henry 6.*) in his Book *de Laudibus Legum Angliae*, cap. 9. *Nam potest Rex Anglia, &c. The King of England cannot alter nor change the Laws of his Realm at his pleasure; For why, he governeth his people by Power not only Royal, but also Politick: If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subjects with Tallage and other Burthens, without their consent; but from this much differeth the Power of a King whose Government is Politick; for he can neither change Laws without the consent of his Subjects, nor yet charge them with Impositions against their wills.* With which accords *Bracton*, a learned Judge & Law-Author, in the Reign of K. *Henry the 3d*, saying, *Rex in Regno suo superiores habet Deum & Legem; i. e. The King in his Realm hath two superiors, God and the Law; for he is under the Directive, tho' not Co-ercive Power of the Law.*

'Tis true, the Law it self affirms, *The King can do no wrong*, which proceeds not only from a presumption, that so excellent a Person will do none, but also because he acts nothing but by *Ministers*, which (from the lowest to the highest) are answerable for their doings; so that if a K. in passion should command *A.* to kill *B.* without process of Law, *A.* may yet be prosecuted by Indictment or upon an *Appeal* (where no Royal Pardon is allowable) and must for the same be executed, such Command notwithstanding.

This

INTRODUCTION.

This original happy Frame of Government is truly and properly call'd an *English mans Liberty*, a *Priviledge* not exempt from the Law, but to be freed in Person & Estate from *Arbitrary Violence* and *Oppression*. A *greater Inheritance* (saith Judg Cook) is deriv'd to every one of us from our *Laws* than from our *Parents*; For without the former, what would the latter signifie? And this Birth-right of English-men shines most conspicuously in two things:

1. *PARLIAMENTS.*

2. *JURIES.*

By the *First* the Subject has a share by his chosen Representatives in the *Legislative* (or Law-making) Power; for no new Laws bind the People of *England*, but such as are by common consent agreed on in that great Council.

By the *Second*, he has a share in the *Executive* part of the Law, no Causes being tryed, nor any man adjudged to loose Life, Member or Estate, but upon the *Verdict* of his *Peers* or Equals his Neighbours, and of his own Condition: These two grand Pillars of English Liberty, are the *Fundamental* *vested Priviledges*, whereby we have been, and are preserv'd more free and happy than any other People in the World, and (we trust) shall ever continue so: For whoever shall design to impair, pervert or undermine either of these, do strike at the very Constitution of our Government, and ought to be prosecuted and punished with the utmost Zeal and Rigour. To cut down the Banks
and

INTRODUCTION.

let in the Sea, or to *poyson all the Springs and Rivers* in the Kingdom, could not be a greater Mischief; for this would only affect the present Age, but the other will Ruin and enslave all our *Posterity*.

But beside these *Paramount Privileges* which the English are estated in by the *Original Constitution* of their *Governments*, there are others more particularly declared and expressed in divers *Acts of Parliament* too large to be inserted in this place.

Magna Charta

O R

The *Great Charter* made in the
9th year of King *Henry* the
3d, and confirmed by King
Edward the 1st in the 28th
Year of his Reign.

*Edward, by the Grace of God, King of England,
Lord of Ireland, and Duke of Guyan, to all
Arch-Bishops, &c.*

W*He have seen the Great Charter of the
Lord Henry, sometime King of Eng-
land, our Father, of the Liberties of
England, in these Words :*

*Henry, by the Grace of God, King of England,
Lord of Ireland, and Duke of Normandy and
Guyan, and Earl of Anjoy ; To all Arch-Bishops,
Bishops, Abbots, Priors, Earls, Barons, Sheriffs,
Provosts, Officers, and to all Bayliffs; and other*
B *our*

[2]
our faithful Subjett, which shall see this present
Charter, greeting; Know ye, that we, unto the
Honour of Almighty God, and for the Salvation of
the Souls of our Progenitors and Successors, Kings
of England, to the Advancement of holy Church,
and Amendment of our Realm, of our meer and
Free-will, have Given and Granted to all Arch-
Bishops, Bishops, Abbots, Priors, Earls, Barrons,
and to all Free-men of this our Realm, these Liber-
ties following, to be kept in our Kingdom of England
forever.

CHAP. I.
A Confirmation of Liberties.

1st, **W**E have granted to God, and by
this our present Charter, have
Confirmed for us, and our Heirs forever, That
the Church of England shall be free, and shall
have all her whole Rights and Liberties invio-
lably. (2.) We have granted also, and Given
to all the Free-men of our Realm, for us, and
our Heirs forever, these Liberties under writ-
ten, to Have, and to Hold to them and their
Heirs forever.

CHAP. II.
The Relief of the King's Tenant of full Age.

IF any of our Earls or Barrons, or any other
which hold of us in chief, by Knights Service,
dye,

dye, and at the time of his Death, his Heir be of full age, and oweth his Relief, he shall have his Inheritance by the old Relief, that is to say, The Heir, or Heirs of an Earl, for a whole Earldom, one hundred Pounds; the Heir, or Heirs of a Barron, for a whole Barrony, by one hundred Marks; the Heir, or Heirs of a Knight, for one whole Knights Fee, one hundred Shillings at the most; and he that hath less, shall give less, according to the old Custom of the Fees.

CHAP. III.

The Wardship of an Heir within Age, the Heir a Knight.

BUT if the Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. (2.) And after that such an Heir hath been in Ward (when he is come to full Age) that is to say, to the Age of one and twenty years, he shall have his *Inheritance* without Relief, and without time, so that if such an Heir being within Age, be made Knight, yet nevertheless, his Land shall remain in the keeping of his Lord, unto the term aforesaid.

CHAP. IV.

No waste shall be made by a Guardian in Wards Lands.

THe keeper of the Land, of such an Heir being within Age, shall not take of the Lands of the Heir but Reasonable Issues, Reasonable Customs, and Reasonable Services, and that without destruction and waste of his Men and his Goods. (2.) And if we commit the Custody of any such Land to the Sheriff, or any other which is answerable to us for the Issues of the same Lands, and he make destruction or waste of those things that he hath in Custody, we will take of him Amends and Recompence therefore. (3) And the Lands shall be committed to two lawful and discreet men of that Fee, which shall answer unto us for the Issues of the same Land, or unto him whom we will Assign. (4.) And if we give or sell to any man the Custody of any such Land, and he there do make destruction or waste, he shall lose the same Custody, and it shall be assigned to two lawful and discreet men of that Fee; which also in like manner shall be answerable to us, as afore is said.

CHAP. V.

Guardians shall maintain the Inheritance of their Wards, and of Bishopricks.

THe Keeper, so long as he hath the Custody of the Land of such Heir, shall keep up the Houses,

Houfes, Parks, Warrens, Ponds, Mills, and other things pertaining to the fame Land, with the Issues of the faid Land : and he fhall deliver to the Heir, when he cometh to full Age, all his Land, ftoed with Ploughs, and all other things, at the leaft as he received it; all thefe things fhall be obferved in the Cufody of Arch-Bifhopricks, Bifhopricks, Abbies, Priors, Churches, and Dignities vacant, which appertain to us; except this, that fuch Cufody fhall not be fold.

CHAP. VI.

Heirs fhall be Married without Difparagement.

CHAP. VII.

A Widdow fhall have her Marriage Inheritance, and Quarentine: the King's Widdow.

A Widdow, after the death of her Husband, incontinent, and without any difficulty, fhall have her Marriage, and her Inheritance. (1.) And fhall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and ſhe held the day of the Death of her Husband. (3.) And ſhe fhall tarry in the Chief Houfe of her Husband by forty dayes after the Death of her Husband, within which dayes her Dower fhall be Assigned her (if it were not assigned her before) or that the Houfe be a Caſtle. (4.) And if ſhe depart from the Caſtle, then a Competent Houfe fhall be forth-with provided

for her, in the which she may honestly dwell, until her Dower be to her assigned, as it is afore said; and she shall have in the mean time her reasonable Estovers of the Common. (5.) And for her Dower, shall be assigned unto her the third part of all the Lands of her Husband, which were his during Coverture, except she were endowed of less at the Church-Door. (6.) No Widdow shall be distrained to marry her self; nevertheless she shall find surety that she shall not marry without our Lisence and assent (if she hold of us) nor without the assent of the Lord, if she hold of another.

CHAP. VIII

How Sureties shall be charged to the King.

WE or our Balliffs, shall not seize any Lands or Rents for any Debt, as long as present Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfy therefore. (2.) Neither shall the Pledges of the Debtor be distrained, as long as the Debt. (3.) And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to pay, or will not pay when he is able, the Pledges shall answer the Debt. (4.) And if they will, they shall have the Lands and Rent of the Debtor, until they be satisfied of that which they before paid for him, except that the Debtor can shew himself to be acquitted against the said Sureties.

CHAP. IX.

CHAP. IX.

The Liberties of London, and other Cities and Towns confirmed.

THe City of *London* shall have all the old Liberties & Customs which it hath been used to have: moreover, we Will and Grant, that all other Cities, and Burroughs, Towns, and the Barrons of the five Ports, and all other Ports, shall have all their Liberties and free Customs.

CHAP. X.

None shall distrain for more Service than is due.

NO man shall be distrained to do more Service then is due for a Knights Fee, nor for any Free-holder than therefore is due.

CHAP. XI.

Common-Pleas shall not follow the King's Court.

Common-Pleas shall not follow our Court, but shall be holden in some place certain.

CHAP. XII.

Where, and before whom Assizes shall be taken, Adornments for difficulty.

Assizes of *Novel Disseisin*, and of *Mortuances*, shall not be taken, but in the Shires, and after this manner, if we be out of this Realm, our Chief Justices shall send our Justices through every County once in the Year, which with the Knights of the Shire, shall take the said Assizes in those Counties (2.) And those things that at the

[8]

coming of our afore-said Justices, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in some other place in their Circuit. (3.) And those things which for difficulty of some Articles, cannot be determined by them, shall be referred to our Justices of the Bench, and there shall be ended.

CHAP. XIII.

Assizes of Darreign Presentments.

Assizes of Darreign Presentments, shall be always taken before our Justices of the Bench, and there shall be determined.

CHAP. XIV.

How men of all sorts shall be amerced, and by whom.

A Free-man shall not be amerced for a small Fault, but after the manner of the Fault; and for a great Fault, after the greatness thereof, saving to him his Contentments. (2.) And a Merchant likewise, saving to him his Merchandize, and any other Alien than ours shall be likewise amerced, saving his Wainage, if he fall into our mercy. (4.) And none of the said Amercements shall be assessed, but by the Oath of honest and lawful men of the Vicinage. (5.) Earls and Barrons shall not be Amerced, but by their Peers, and after the manner of their Offence. (6.) No man of the Church shall Be amerced

amerced after the quantity of his Spiritual Benefice, but after his Lay Tenements, and after the quantity of his Offence.

CHAP. XV

Making of Bridges and Banks

NO Town, nor Free-man shall be distrained to make Bridges nor Banks, but such as of old time, and of Right have been accustomed to make them in the time of King *Henry* our Grand-Father.

CHAP. XVI.

Defending of Banks

NO Banks shall be defended from henceforth, but such as were in Defence in the time of King *Henry* our Grand-Father, by the same Places, and the same Bounds as they were wont to be in his time.

CHAP. XVII.

Holding Pleas of the Crown.

NO Sheriff, Constable, Escheator, Corro-ner, nor any other our Bayliffs, shall hold Pleas of our Crown.

CHAP. XVIII.

The Kings Debtor dying, the King shall be first paid.
IF any that holdeth of us Lay-fee, do dye, and our Sheriff or Bailiff do shew our Letters Pat-
 tents of our Summons for Debt, which the dead
 man

man did owe to us; It shall be lawful to our Sheriff or Bayliff, to Attach and Inroll all the Goods and Chattels of the Dead, being found in the said Fee, to the value of the same Debt; by the sight and Testimony of Lawful men, so that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the residue shall remain to the Executors, to perform the Testament of the Dead. (3.) And if nothing be owing to us, all the Chattels shall go to the use of the Dead (saving to his Wife and Children the reasonable parts.)

CHAP. XIX.

Parveyance for a Castle.

NO Constable, nor his Bayliff, shall take Corn, or other Chartels, of any man, if the man be not of the Town where the Castle is, but he shall forth-with pay for the same, unless that the Will of the Seller was to respite the Payment. (2.) And if he be of the same Town, the Price shall be paid unto him within the forty dayes.

CHAP. XX.

Doing of Castle-Ward.

NO Constable shall distrain any Knight for to give Money for keeping his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient man, if he
may

CHAP. XXIII.

In what place Wears shall be put down.

ALl Wears from henceforth shall be utterly put down by *Thames* and *Midway*, and through all *England*, but only the *Sea-Coast*.

CHAP. XXIV.

In what Case a Precipe in Capite is not grantable.

THe Writ that is called *Precipe in Capite* is not grantable from henceforth to no Person of any Free-hold, whereby any Free-man may lose his Court.

CHAP. XXV.

There shall be but one Measure throughout the Realm

One Measure of Wine shall be through our Realm, and one Measure of Ale, and Measure of Corn, that is to say, the Quarter of *London*. (2.) And one Breadth of dyed Cloth, Ruffs, and Haberfells, that is to say, two Yards within the Lifts. (3.) And it shall be of Weights as it is of Measures.

CHAP. XXVI.

Inquisition of Life and Member.

Nothing henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life, or of Member, but it shall be granted freely, and not denied.

Chap. XXVII.

or any otherwise destroyed; nor we will not pass upon him, nor condemn him; but by lawful judgment of his Peers, or by Law of the Land. (2.) We will sell to no man, we will not deny or defer to any man either Justice or Right.

CHAP. XXX.

Merchants strangers, coming into this Realm, shall be well used.

ALL Merchants, (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of England, as to come into England, to tarry in and go through England, as well by Land as by Sea, to buy and sell without any manner of evil Tools, by the old and rightful Customs; except in time of War. (2.) And if they be of a Land making war against us, and be found in our Realm at the beginning of the Wars, they shall be attached; without harm of Body and Goods, until all be known unto us, or our chief Justice; how our Merchants be intreated there in the Land making war against us. (3.) And if our Merchants be well intreated there, theirs shall be likewise with us.

CHAP. XXXI.

Tenure of a Barony coming into the Kings hand by Escheat.

IF any man hold of any Escheats, as of the honour of Wallingford, Nottingham, Boloin, or of

of any other Escheats, which be in our hand and our Barronys, and dye, his Heir shall give none other Relief, nor do none other Service to Us, than he should have done to the Barron, if it had been in the Barrons hands. (2.) And we in the same wise should hold it as the Barron held it, neither shall we have the occasion of any Barron of or Escheat, any Escheat, or keeping of any of our men, unless he that held the Barrony or Escheat, otherwise held of us in Chief.

CHAP. XXXII.

Lands shall not be aliened to the Prejudice of the Lords Service.

NO Free-man from henceforth shall give or sell any more of his Land, but so, that the residue of the Lands the Lord of the Fee may have the service due to him, which belongeth to the Fee.

CHAP. XXXIII.

Patrons of Abbies shall have the Custody of them in time of Vocation.

ALL Patrons of Abbies which have the Kings Charter of *England*, of Advowson, or have old Tenure or Possession of the same, shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared.

CHAP.

CHAP. XXXIV.

In what only case a Woman shall have an Appeal of Death.

NO man shall be taken or imprisoned upon the appeal of a Woman, for the death of any other than her Husband.

CHAP. XXXV.

At what time shall be kept a County Court, Sheriffs Turn and Lect.

NO Country from henceforth shall be holden but from Moneth to Moneth; and where greater time hath been used, there shall be greater (2.) Nor any Sheriff or his Bayliff shall keep his Turn in the Hundred but twice in the year, and no where but in due place, and accustomed, that is to say, once after *Easter*, and again after the *Feast of St. Michael*, without occasion. So that every man hath his Liberties which he had, or used to have in the time of King *Henry*, our Grandfather, or which he purchased since. (4.) The view of Frank-pledge shall be so done, that so our Peace may be kept. (5.) And that the Tything be wholly kept, as it hath been accustomed. (6.) And that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have for his View-making in the time of King *Henry* our Grandfather.

CHAP. 36.

wife. (4.) And for this our Gift and Grant of these Liberties, and of others contained in our *Charter of Liberties of Our Forreſt*, the *Arch-Biſhops, Biſhops, Abbots, Priors, Earls, Barrons, Knights, Free-holders*, and other our Subjects, have given unto us the fifteenth part of all their Moveables. (5.) And neither We nor Our Heirs ſhall procure or do any thing whereby the *Liberties*, in this Charter contained, ſhall be infringed or broken. (6.) And if any thing be procured by any Perſon, contrary to the Premises, it ſhall be had of no force nor effect. thoſe being Witneſſes, Lord B. Arch-Biſhop of *Canterbury*, E. Biſhop of *London*, &c. We ratifying and approving theſe Gifts and Grants aforeſaid, Confirm and make ſtrong all the ſame for Us and Our Heirs perpetually. And by the tenure of theſe preſents do renew the ſame, willing and granting for us and our Heirs, that this *Charter*, and all and ſingular his Articles, forever ſhall be ſtedfaſtly, firmly and inviolably obſerved. *In Witneſs* whereof we have cauſed theſe our Letters Patents to be made, *T. Edward*, our Son at *Westminster* the twenty eighth day of *March*, in the twenty eighth year of our Reign.

The

The COMMENT on Magna
C H A R T A.

THIS excellent Law holds the first place in our Statute Books, for though there were, no doubt, many Acts of Parliament long before this, yet they are not now extant; 'tis called *Magna Charta*, or the great Charter, not in respect of its bulk, but in regard of the great importance and weight of the matters therein contained; it is also stiled, *Charta Libertatum Regni*, The Charter of the Liberties of the Kingdom; And upon great Reason (saith Cook in his Proem) is so called, from the effect, *quia Liberus facit*, because it makes and preserves the People free. Though it run in the stile of the King, as a Charter, yet (as my L. Cook well observes on the 38 chap.) it appears to have passed in Parliament; for there was then a fifteenth granted to the King by the *Bishops, Earls, Barrons, free Tenants and People*, which could not be, but in Parliament, nor was it unusual in those times to have Acts of Parliament in a form of a Charter, as you may read in the *Princes Case, Coe. Rep. l. 8.*

Likewise, though it be said here, *That the King hath given and granted these Liberties*, yet they

they must not be understood as meer Emanations of Royal favour, or new Bounties granted, which the People could not justly challenge, or had not a right unto before; for the Lord *Cook* in divers places asserts, and all Lawyers know, that this Charter is for the most part only Declaratory of the principal ground of the Fundamental Laws and Liberties of *England*; No new Freedom is hereby granted, but a Restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any Power whatsoever; and therefore you may see this *Charter* often mentions *sua jura*, their Rights and Liberties, which shews they had them before, and that the same now were confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors, the *Saxons*, had with a most equal poize and Temperament, very wisely contrived their Government, and made excellent Provisions for their Liberties, and to preserve the People from Oppression; and when *William*, the *Norman*, made himself Master of the Land, though he be commonly called the *Conqueror*, yet in truth he was not so, and I have known several Judges that would reprehend any Gentleman at the Bar that casually gave him that Title; for though he killed *Harrold* the Usurper, and routed his Army, yet he pretended a right to the Kingdom, and was admitted

ted by compact, and did take an Oath to observe the Laws and Customs.

But the truth is, he did not perform that Oath so as he ought to have done, & his Successor *William Rufus*, King *Stephen*, *Henry* the 1st, & *Richard* likewise made frequent encroachments upon the Liberties of their People; but especially King *John* made use of so many illegal devices to drain them of Money, that wearied with intollerable Oppressions, they resolved to oblige the King to grant them their Liberties, and promise the same should be observed, which King *John* did in *Running-Mead* between *Saints* and *Windsor*, by two Charters, one called, *Charta Libertatum*, The Charter of Liberties (the form of which you may read in *Matthew Paris*, fol. 246. and is in effect the same with this here recited) the other, *The Charter of the Forrest*, Copies of which he sent into every County, and commandeth the Sheriff, &c. to see them fulfilled.

But by ill Council he quickly after began to violate them as much as ever, whercupon Disturbances and great Miseries arose, both to himself and the Realm. The Son and successor of this King *John*, was *Henry* the third, who in the 19th Year of his Reign, renewed and confirmed the said Charters; but within two Years after cancelled them by the pernicious Advice of his Favourite, particularly *Hubert de Burgh*, whom he had made Lord chief Justice; one that in former times had been a great lover of his Country,

and a well-deserving Patriat, as well as learned in the Laws, but now to make thus a step to his Ambition (which ever Rideth without Reins) perswaded and humoured the King, that he might avoid the Charters of his Father King *John*, by *Durcis*, and his own Great Chatrer, and *Charia de Foresta* also, for that he was within Age, when he granted the same; whereupon the King in the eleventh Year of his Reign, being then of full Age, got one of the Great Charters, and of the Forreist into his Hands, and by the Counsel principally of this *Hubert* his Chief Justice, at a Council holden at *Oxford*, unjustly cancelled both the said Charters, (notwithstanding the said *Hubert de Burgh* was the Primary Witness of all Temporal Lords to both the said Charters) whereupon he became in high favour with the King, insomuch that he was soon after (*viz.* the 10th of *December*, in the 13th Year of that King) created (to the highest Dignity that in those times a Subject had) to be an Earl, *viz.* of *Kent*: But soon after (for Flatterers & Humorists have no sure foundation) he fell into the King's heavy Indignation, and after many fearful and miserable Troubles, he was justly, and according to Law, sentenced by his Peers in an open Parliament, and justly degraded of that Dignity, which he unjustly had obtained by his Counsel, for cancelling of *Magna Charta*, and *Charia de Foresta*.

In the 9th Chapter of this Great Charter, all the

the Ancient Liberties and Customs of *London* are confirmed and preserved, which is likewise done by divers other Statutes, as 14 *Edw.* 3. Chap. 2 &c.

The 29th Chapter, NO FREE-MAN SHALL BE TAKEN, &c. Deserves to be written in Letters of Gold; and I have often wondred the Words thereof are not Incribed in Capitals on all our Courts of Judicature, Town-Halls, and most publick Edifices; they are the *Elixir* of our *English Freedoms*, the Store-house of all our Liberties. And because my Lord Cook in the second part of his *Institutes*, hath many excellent Observations, his very Words I shall here Recite.

This Chapter containeth Nine several Branches.

First. *That No man be taken or imprisoned, but per legem terræ*; that is, by the Common-Law, Statute-Law, or Custom of *England*; for these words, *per legem terræ*, being towards the end of this Chapter, do refer to all the precedent matters in this Chapter; and this hath the first place, because the Liberty of a man's Person is more precious to him, than all the rest that follow, and therefore it is great Reason that he should by Law be relieved therein; if he be wronged, as hereafter shall be shewed.

2dly. *No man shall be disseised*; that is, put out of Seisin, or *dispossessed of his Free-hold*, that is, Lands or Livelihood, or of his Liberties, or free Customs, that is, of such Franchises and Free-

doms, and free Customs as belong to him, by his free Birth-right, unless it be by the the lawful Judgment, that is, Verdict of his Equals (that is, of men of his own Condition) or by the Law of the Land, that is (to speak it once for all) by the due Courfe and Procefs of Law

3dly. *No man shall be Out-lawed, made an Ex Iex, put out of the Law*, that is, deprived of the Benefit of the Law, unless he be Out-lawed according to the Law of the Land.

4thly. *No man shall be Exiled or Banished out of his Country*, that is, *nemo predit patriam*, no man shall lose his Country, unless he be Exiled according to the Law of the Land.

5thly. *No man shall in any sort be destroyed*, (*Destruere id est quod prius structum & factum fuit penitus Evertere Ex diruere*) unless it be by the Verdict of his Equals, or according to the Law of the Land.

6thly. *No man shall be condemned at the King's Suite*, either before the King in his Bench, where the Pleas are *Coram Rege* (and so are the Words, *sic super eum ibimus*, to be understood) nor before any other Commissioner or Judge whatsoever; and so are the words, *sic super eum iudicimus*, to be understood, but by the Judgment of his Peers, that is, equals, or according to the Law of the Land

7thly. *We shall sell to no man Justice or Right.*

8thly. *We shall deny to no man Justice or Right.*

9thly. *We shall defer to no man Justice or Right.*

Each

Each of these we shall briefly explain :

1st; *No man shall be taken*, (that is) restrained of Liberty by Petition, or suggestion to the King or his Council, unless it be by Indictment or Presentment of good and lawful men, where such Deeds be done. This Branch, and divers other parts of this Act, have been notably Explained and Construed by divers Acts of Parliament.

2dly; *No man shall be Disseised*, &c. Hereby is intended that *Lands, Tenements, Goods and Chattels*, shall not be seised into the King's hands contrary to this Great Charter, and the Law of the Land; nor any man shall be disseised of his Lands or Tenements, or dispossessed of his Goods or Chattels, contrary to the Law of the Land.

A Custom was alledged in the Town of C. that if the Tenant cease by two Years, that the Lord should enter into the Freehold of the Tenant, and hold the same until he were satisfied of the Arrearages. It was adjudged a Custom against the Law of the Land, to enter into a mans Freehold in that case, without Action or Answer.

King *Henry* the 6th, granted to the Corporation of Dyers within *London*, Power to search, &c. *And if they found any Cloth dyed with Log-Wood, that the Cloth should be forfeit.* And it was adjudged, that this Charter concerning the Forfeiture, was against the Law of the Land, and this Statute; for no Forfeiture can grow by Letters Patents. No

No man ought to be put from his Livelihood, without Answer.

3dly, [*No man Out-Lawed*] that is, barred to have the benefit of the Law. And note, to this word *Out-lawed*, these words, *unless by the Law of the Land*, do refer [*of his Liberties*:] This word hath three Significations.

1st, As it hath been said, it signifieth *the Laws of the Realm*, in which respect this Charter is called *Charta Libertatum*, as afore-said.

2^{dly}, it signifieth *The Freedom the Subjects of England have*: for example, the *company of Merchant-Taylors of England*, having power by their Charter to make Ordinances, made an Ordinance, *That every Brother of the same Society should put the one half of his Cloaths to be dressed by some Cloath-worker free of the same Company, upon pain to forfeit ten Shillings, &c.* And it was adjudged that this Ordinance was against Law, because it was against the *Liberty of the Subject*, for every Subject hath freedom to put his Cloaths to be dressed by whom he will, &c. *sic de similibus*. And so it is, if such, or the like Grant had been made by the Letters Patents.

3^{dly}, *Liberties* signifie the Franchizes & Priviledges, which the Subjects have of the Gift of the King, as the *Goods & Chattels of Fellons, Out-laws*, and the like, or which the Subject claims by Prescription, as *Wrack, Waif, Stray*, and the like.

So likewise, and for the same Reason, if a Grant be made to any man, to have the sole making of *Cards*, or the sole dealing with any other Trade,

Trade, that Grant is against the Liberty and Freedom of the Subject, that before did, or lawfully might have used that Trade, and consequently against this Great Charter.

Generally all *Monopolies* are against this great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4thly, [*No man Exiled*] that is, Banisht, or forced to depart, or stay out of *England*, without his consent, or by the Law of the Land: No man can be exiled, or banished out of his Native Country, but either by Authority of Parliament, or in case of Abjuration for Felony, by the Common-Law: And so when our Books, or any Records, speak of Exile or Banishment, other than in case of Abjuration, it is to be intended to be done by Authority of Parliament, as *Belknap* and other Judges, &c. banished into *Ireland* in the Reign of *Richard* the second.

This is a beneficial Law, and is construed benignely; And therefore the King cannot send any Subject of *England* against his Will to serve him out of the Realm, for that should be an Exile; and he should *perdere patriam*: No, he cannot be sent against his Will into *Ireland*, to serve the King or his Deputy there, because it is out of the Realm of *England*; for if the King might send him out of his Realm to any place, then under pretence of Service, as Ambassador, or the like, he might send him into the-furthest parts

parts of the World, whom being an Exile, is prohibited by this Act.

5thly, [*No man destroyed*] that is, Fore-judged of Life or Limbs, or put to torture or death, every Oppression against Law, by colour of any usurped Authority, is a kind of Destruction, and the words *aliquo modo*, any otherwise, are added to the verb *destroyed*, and to no other Verb in this Chapter; and therefore all things, by any manner of means, tending to Destruction, are prohibited: As if a man be accused or indicted of Treason or Felony, his Lands or Goods cannot be granted to any, no, not so much as by *promise*, nor any of his Lands or Goods seized into the Kings hand, before he is attainted; for when a Subject obtaineth a promise of the forfeiture, many times undue means, and more violent Prosecution is used for private Lucre, tending to destruction, than the quiet and just proceeding of the Law would permit; and the party ought to live of his own until Attainder.

6thly, [*By lawful judgment of his Peers*] that is, by his equals, men of his own Rank and Condition. The general division of Persons, by the Law of *England*, is, either one that is *Noble*, and in respect of his *Nobility*, of the *Lords House of Parliament*, or one of the *Commons*, and in respect thereof, of the *House of Commons in Parliament*. And as there be divers degrees of Nobility, as *Dukes, Marquesses, Earls, Viscounts* and *Barrons*, and yet all of them are comprehended

hended under this word *Peers*, and are *Peers of the Realm*; so of the *Commons*, they be *Knights, Esquires, Gentlemen, Citizens* and *Townmen*, and yet all of them of the *Commons of the Realm*. And as every of the *Nobles* one is a *Peer* to another, though he be of a several degree, so it is of the *Commons*; and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch as this Judgment by Peers is called *lawful*, it shews the Antiquity of this manner of Tryal: it was the ancient accustomed legal course long before this Charter.

7thly, [*Or by the Law of the Land*] that is, by due Process of Law, for so the Words are expressly expounded by the Statute of 37 *Edw.* 3. Chap. 8. and these Words are especially to be refered to those fore-going, to whom they relate; As, *none shall be Condemned without a lawful Tryal by his Peers, so none shall be Taken, or Imprisoned, or put out of his Freehold, without due Process of the Law*; that is, by the Indictment or Presentment of good and lawful men of the place, in due manner, or by Writ original of the Common-Law.

Now, seeing that no man can be Taken, Arrested, Attached, or Imprisoned, but by due Process of Law, and according to the Law of the Land; these Conclusions hereupon do follow:

I. That the Person or Persons which commit any, must have Lawful Authority.

2. It

2. It is necessary that the Warrant or Mittimus be Lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for *Treason, Felony, &c. suspicion of Treason or Felony*, or the like particular Crime: for if it do not thus specify the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the return; nor is it in such case any Offence at all, if the Prisoner make his escape; whereas if the *Mittimus* contain the Cause; the escape would respectively be *Treason or Felony*, though in truth he were not Guilty of the first Offence, and this mentioning the Cause, is agreeable to Scripture, *Acts 5.*

4. The *Warrant or Mittimus*, containing a lawful Cause, ought to have a lawful Conclusion, viz. *And him safely to keep until he be delivered by Law, &c.* and not until the party committing shall further order.

If a man by colour of any Authority, where he hath not any in that particular case, shall presume to Arrest or Imprison any man; or cause him to be arrested or imprisoned, this is against this Act, and it is most hateful, when it is done by Countenance of Justice. King *Edward the sixth* did Incorporate the Town of *St. Albans*, and granted to them to make *Ordinance*, &c they made a by-Law upon *pain of Imprisonment*, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an Ordinance

nance had been contained in the Patent it self.

[*We will sell to no man, deny to no man, &c.*] This is spoken in the Person of the King, who in Judgment of Law in all Courts of Justice is present; and therefore every Subject of this Realm, for Injury done to him *in Bonis, Terris, vel Persona*, in Person, Lands or Goods, by any other Subject, Ecclesiastical or Temporal what-ever he be, without exception, may take his Remedy by the Course of the Law, and have Justice and Right for the Injury done him, *freely* without Sale, *fully* without any denial, and *speedily* without delay; for Justice must have three Qualities, it must be *Libera*, free; for nothing is more odious then Justice set to sale; *plena*, full, for Justice ought not to limp, or be granted piece-meal and *Celeris*, speedily: *quia Dilatio est quadam negatio*, Delay is a kind of Denial: And when all these meet, it is both JUSTICE and RIGHT.

[*We will not deny or delay any man, &c.*] These Words have been excellently expounded by latter Acts of Parliament, that by no means Common-Right or Common-Law should be disturbed or delayed; no, though it be commanded under the *Great Seal*, or *Privy Seal*, *Order*, *Writ*, *Letters*, *Message*, or *Commandment* whatsoever, either from the King, or any other; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them; All our
Judges

Judges swear to this for 'tis part of their Oaths, so that if any shall be found wresting the Law to serve a Courts turn, they are *Perjured*, as well as *Unjust*; the common Laws of the Realm should by no means be delayed, for the Law is the surest Sanctuary that a man can take, and the strongest Fortreis to protect the weakest of all; *Lex est tutissima Cassis*, the Law is a most safe Head-piece: And *sub Chyreo legis nemo decipitur*, no man is deceived whilst the Law is his Buckler; but the King may stay his own Suit; as a *Capias pro fine*, for he may respite his Fine, and the like.

All Protections that are not Legal, which appear not in the Register, nor warranted by our Books, are expressly against this Branch, *nullo differemus*, we will not delay any man, as a protection under the Great Seal granted to any man directly to the Sheriff, &c. and commanding them, that they shall not Arrest him, during a certain time, at any other man's Suit; which hath Words in it, *Per prerogativam nostram quam volumus esse Arguendam*, by our Prerogative, which we will not have disputed; yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void; as *Mich. 11 H. 7. Rot. 124.* a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies, &c. resolved to be against Law, *Pas. 7 H. 8. Rot. 66.* such a Protection disallowed, and the Sheriff amerced for not Executing the Writ, *Mich. 13. and 14 Eliz.*

14 *Elia.* in *Hirecock* Case, and many other of latter time: And there is a notable Record of ancient time in 22 *E.* 1. *John de Marshall's* case; *Non pertinet ad vicecomitem de protectione Regis Judicare, imo ad Curiam.*

Justice or right] We shall not sell, deny or delay *Justice* and *Right*, neither the end, which is *Justice*; nor the *mean* whereby we may attain to the end, and that is the Law: *Right* is taken here for *Law*, in the same sence that *Justice* often is so called, 1. Because it is the right *Line*, whereby *Justice* distributive, is guided and directed; and therefore all the Commissioners of *Oyer* and *Terminer*, of *Goal-delivery*, of *the Peace*, &c. have this clause, *Faciuri quod Justitiam pertinet, secundum legem & consuetudinem Anglia*, i. e. to do *Justice* and *Right*, according to the Rule of the Law & Custom of *England*; & that which is called *common Right* in 2 *E.* 3. is called *common Law* in 14 *E.* 3. &c. and in this sence it is taken, where it is said, *Ita quod stat Rectus in Curia, id est Legi in Curia.*

2. - The Law is called *Rectum*, because it discovereth that which is *rott*, *crooked* or *wrong*; for as *Right* signifieth *Law*, so *rott*, *crooked* or *wrong* signifieth *Injuries*, and *Injuria est contra Jus*, Injury is against *Right*. *Recta linea est index sui & obliqui*, a right line is both *declaratory* of *it self* and the *oblique*. Hereby the crooked Cord of that which is called *discretion* appeareth to be unlawful, unless you take it, as it ought to be, *discretio est discernere*

D

cernere

cernere per Legem, quid sit Justum, discretion is to discern by the Law what is just.

It is called *Right*, because it is the best *Birth-right* the Subject hath, for thereby his *Goods, Lands, Wife & Children, his Body, Life, Honour & Estimation* are protected from Injury & wrong. *Major Hereditas venit unicuique nostrum a Jure & Legibus, quam a Parentibus*; A greater Inheritance descends to us from the Laws, than from our Progenitors.

Thus far the very words of that Oracle of our Law, the sage and learned *Cook*; which so fully and excellently explains this incomparable Law, that it will be superfluous to add any thing further thereunto.

A Confirmation of the Charters of the Liberties of England, and of the Forrest, made in the 35th Year of Edward the first.

E*Dward*, by the Grace of God, K. of *England*, Lord of *Ireland*, and Duke of *Guyau*, to all those these present Letters shall bear or see, greeting. *Know ye*, that we to the honour of God, and of holy Church, and to the profit of our Realm, have granted for us and our Heirs, that the *Charter of Liberties*, and the *Charter of the Forrest*; which were by common consent of all the Realm, in the time of K. *Henry* our Father, shall be kept in every point without breach. And we will that the same Charter shall be sent under our Seal, as well

well to our *Justices of the Forreſt*, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in which it ſhall be contained, that they cauſe the aforeſaid Charters to be publiſhed, and to declare to the People, that we have confirm'd them in all points. And that our *Justicers*, *Sheriffs* and *Mayors*, and other Miniſters, which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Judgment in all their points, that is to ſay, the *great Charter* as the *common Law*, and the *Charter of the Forreſt* for the Wealth of our Realm.

Cap. 2. And we will, that if any Judgment be given from henceforth contrary to the points of the *Charters* aforeſaid, by the *Justicers*, or any other our Miniſters that hold plea before them, againſt the points of the *Charters*, it ſhall be undone and holden for naught:

Cap. 3. And we will, that the ſame Charters ſhall be ſent under our Seal, to *Cathedral Churches* throughout our Realm, there to remain, and ſhall be read before the People two times by the year.

Cap. 4. And that all *Arch-Biſhops* & *Biſhops* ſhall pronounce the ſentence of *Excommunication* againſt all thoſe that by word, deed or council, do contrary to the aforeſaid Charters, or that in any point break or undo them. And that the ſaid Curſes be twice a year denounced and publiſhed by the *Prelates* aforeſaid. And if the ſame *Pre-*

Jates, or any of them, be remiss in the denunciation of the said Sentences, the Arch-Bishop of *Canterbury* and *York* for the time being, shall compel and distrain them to the Execution of their Duties in form aforesaid.

Cap. 5. And for so much as divers People of our Realm are in fear, that the *Aids* and *Taxes* which they have given to us before time, towards our Wars, and other businesses, of their own grant, or good will (however they were made) might turn to a bondage to them and their Heirs, because they might be at another time found in the Rolls, and likewise for the prizes taken throughout the Realm by our Ministers, We have granted for us and our Heirs, that we shall draw no such *Aids*, *Taxes* nor *Prizes* into a Custom, for any that hath been done heretofore, be it by Roll or any other President that may be found.

Cap. 6. Moreover, we have granted for us and our Heirs, as well to *Archbishops*, *Bishops*, *Abbots*, *Priors*, and other folk of holy Church, as also to *Earls*, *Barons*, and to all the *Commonality of the Land*, that for no business hence-forth, we shall take such manner of *Aids*, *Taxes* or *Prizes*, but by the common assent of the Realm, and for the common profit thereof; saving the antient *Aids* and *Prizes* due and accustomed.

Cap. 7. And for so much as the more part of the *Commonality of the Realm* find themselves foregrieved with the *Maletot of Wool*, that is to wit, a Toll of 40 s. for every Sack of Wool, and have made

made Petition to us for to release the same: We at their Request have clearly released it, and have granted for us and our Heirs, that we shall not take such things, without their common consent and good will, saving to us and our heirs the Custom of *Wools, Skins and Leather*, granted before by the *Commonality* aforesaid. In *Witness* of which things we have caused our Letters to be Patent, Witness *Edward* our Son, at *London* the 10th of *October*; and the twenty fifth year of our Reign.

The Sentence of the Clergy against the breakers
of the Articles above written.

IN the Name of the Father, the Son and the holy Ghost, Amen. *Whereas* our sovereign Lord the King, to the honour of God and of holy Church, and for the common profit of the Realm, hath granted for him & his Heirs forever, these Articles above written; Robert, Archbishop of Canterbury, Primate of all England, admonisheth all his Province once, twice and thrice; Because that shortness will not suffer so much delay, as to give knowledge to all the People of England of these presents in writing. *We* therefore enjoyn all persons, of what Estate soever they be, that they and every of them, as much as in them is, shall uphold & maintain these Articles granted by our Sou. Ld. the K. in all points. And all those that in any point do resist or break, or in any manner hereafter procure, counsel, or any ways assent to resist or break those

those Ordinances, or go about it, by word or deed, openly or privily, by any manner of presence or colour : We the foresaid Arch-bishop, by our Authority in this writing expressed, do excommunicate & accurse, and from the Body of our Lord Jesus Christ, and from all the Company of Heaven, and from all the Sacraments of holy Church, do sequester and exclude.

N.B. It may be observed that this Curse is left out of our late printed Statute-Books, tho' inserted at large in that printed in 3 Vol. in Q. *Elix.* days, anno 1557. There is likewise another like dreadful, but more full and express Curse, solemnly pronounced before in the time of K. *Henry 3.* which also being omitted in our modern Statute-Book, I shall here add.

The Sentence or Curse given by the Bishops against the Breakers of the great Charter.

IN the Year of our Lord 1253. the 3d day of May, in the great Hall of the K. at Westminster, in the presence and by the assent of the Lord Henry, by the Grace of God K. of England, & the Ld Richard Earl of Cornwall his Brother, Roger Bigot Earl of Norfolk and Suffolk, Marshal of England, Humphery Earl of Hereford, Henry Earl of Oxford, John Earl Warren, and other Estates of the Realm of England : W. Boniface, by the mercy of God Arch-bishop of Canterbury, Primate of all England, F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury

Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of St. Davids: Bishops appareled in Pontificals, with Tapers burning, against the breakers of the Churches Liberties, and of the Liberties or other Customs of the Realm of England, and namely those which are contained in the Charter of the common Liberties of England, and Charter of the Forrest, have denounced the sentence of Excommunication in this form. By the Authority of Almighty God, the Father, the Son and the holy Ghost, and of the glorious Mother of God, and perpetual Virgin Mary, of the blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs, and of blessed Edward, K. of England, and of all the Sts of Heaven, we Excommunicate, accurse, & from the benefits of our holy Mother the Church, we sequester all those that hereafter willingly & maliciously deprive or spoil the Church of her Rights; and all those that by any craft or wiliness do violate, break, diminish or change the Churches Liberties, and free Customs contained in the Charters of the common Liberties, & of the Forrest, granted by our L. the King, to Arch-bps, Bps, and other Prelates of England, and likewise to the Earls, Barons, Knights; and other Free-holders of the Realm: And all that secretly or openly, by deed word or council, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties or any of them; and all those that shall presume to judge against them. All and every which persons before-mentioned that wittingly shall commit any of the Premises,

mises, let them know, that they incur the foresaid Sentence, ipso facto.

So zealous were our Ancestors to preserve their *Liberties* from encroachments, that they employed all the strength of human Policy and religious Obligations to secure them intire and inviolate. And I declare ingeniously, I would not for the world incur this Curse, as every man deservedly doth, that offers violence to the fundamental Freedoms thereby repeated and confirmed.

A Statute made Anno 34 Edw. 1. commonly called de Tallage non Concendendo.

Cap. 1. **N**O Tallage or Aid shall be taken or levied by us or our Heirs in our Realm, without the good will and assent of *Arch-Bishops, Bishops, Earls, Barons, Knights, Burgesses, & other Free men of the Land.*

Cap. 2. No Officer of ours, or of our Heirs, shall take Corn, Leather, Cattle, or any other Goods of any manner of Person, without the good will and assent of the party to whom the goods belonged.

Cap. 3. Nothing from henceforth shall be taken of Sacks of *Wool*, by colour or occasion of *maletot.*

Cap. 4. We will grant for us and our Heirs, That all Clerks and Lay-men of our Land, shall have their Laws, Liberties and free Customs as largely and wholly as they have used to have the same at any time when they had them best. (2.) And if any Statutes have been made by us & our Ancestors,

Ancestors, or any Customs brought in contrary to them, or any manner of Article contained in this present Charter : We will and grant that such manner of Statutes and Customs shall be void and frustrate for evermore.

Cap. 5. Moreover, we have pardon'd *Humphry Bobun*, Earl of *Hereford* and *Essex*, Constable of *England*, *Roger* Earl of *Norfolk* and *Suffolk*, Marshal of *England*, and other Earls, Barons, Knights, Esquires, and namely *John de Ferraris*, with other being of their fellowship, confederacy and bond, and also of other that hold 20 l. Land in our Realm, whether they hold of us in chief or of others, that were appointed at a day certain to pass over with us into *Flanders*, the rancour and evil will born against us, and all other Offences, [*if any they have committed*] against us, unto the making of this present Charter.

Cap. 6. And for the more assurance of this thing, we will and grant that all *Arch-Bps* and *Bps* forever, shall read this present Charter in Cathedral Churches twice in the year, and upon the reading thereof in every of their Parish Churches shall openly denounce *accursed all those that willingly do procure to be done any thing contrary to the tenor, force and effect of this present Charter in any point.* In witness of which thing, we have set our Seal to this present Charter, together with the Seals of the *Arch-Bps*, *Bps*, which voluntarily have sworn, that as much as in them is, they shall observe the tenor of this present Charter.

The

THe word *Tallage* is derived from the *French* word *Tailler*, to share or cut out a part, & is metaphorically used for any Charge, when the King or any other does cut out or take away any part or share out of a mans Estate; & being a general word, it includes *all Subsidies, Taxes, Tenths, Aids, Impositions, or other Charges* whatsoever.

The word *Malerot* signifies an *Evil* (i.e. unjust) *Toll, Custom, Imposition, or Sum of Money.*

The occasion of making this Statute, was this, *K. Edward* being injured by the *French King*, resolves to make War against him, and in order thereunto requires of *Humphery le Bohun* Earl of *Hereford* and *Essex*, and Constable of *England*, and of *Roger Bigot*, Earl of *Norfolk* and *Suffolk*, and Marshal of *England*, and of all the *Earls, Barons, Knights, Esquires, and Freeholders* of 20 l. Land, whether they held of him in *Capite*, to contribute towards such his expedition, that is, to go in person, or find sufficient men in their places, in his Army; which the Constable and Marshal, and many of the *Knights* and *Esquires*, and especially this *John Ferrers* taking part with them and all the *Free-men*, stoutly denyed, unless it were so ordained and determined by common consent in Parliament, according to Law. And it seems the Contest grew so hot, that *Bakers Chronicle, fol. 99.* relates a strange Dialogue that passed between them, *viz.* That when the *Earl Marshal* told the King, *That if his Majesty pleased to go in Person,*

h

he would then go with him, & march before him in the Van-Guard, as by right of Inheritance he ought to do, but otherwise he would not stir. The King told him plainly, He should go with any other, tho' he went not in Person. I am not so bound (saith the Earl) neither will I take that Journey without you. The King swore, By God, Sir Earl, you shall either go or Hang. And I swear by the same Oath (said the Earl) I will neither go nor hang. And so the King was forc'd to dispatch his Expedition without them. And yet (saith my L. Cook) altho' the K. had conceived a deep displeasure against the Constable, Marshal, and others of the Nobility, Gentry and Commons of the Realm, for denying that which he so much desired, yet, for that they stood in defence of their Laws, Liberties and free Customs, the said K. Edw. 1st. who (as Sir Will. Herle chief Justice of the Common Pleas, who liv'd in his time, & serv'd him, said in the time of K. Edw. 3.) was the wisest King that ever was; did after his return from beyond the Seas, not only consent to this Statute, whereby all such Tallages and Impositions are forbidden for the future, but also passes a Pardon to the said Nobles, &c. of all Rancour, Ill will & Transgressions, [if any they have committed] which last words were added, lest by acceptance of a Pardon of Transgression, they should implicitly confess that they had transgressed. So careful were the Lords and Commons in former times to preserve the *Antient Laws, Liberties and free Customs of their Country.*

*An abstract of the Patent granted by the King to
William Penn, and his Heirs and Assigns.*

WE do give and grant (upon divers considerations) to *William Penn* his Heirs & Assigns forever all that tract of Land in *America* with all Islands thereunto belonging That is to say from the beginning of the fortieth degree of *North Latitude* unto the forty third degree of *North Latitude* whose Eastern bounds from twelve English Miles above *New-Castle* (alias *Delaware Town*) runs all along upon the side of *Delaware-River*.

2. Free and undisturbed use and passage into & out of all Harbours Bays Waters Rivers Isles and Inlets belonging to or leading to the same Together with the Soyl Fields Woods Underwoods Mountains Hills Fenns Isles Lakes Rivers Waters Rivulets Bays and Inlets scituate in or belonging unto the limits and bounds aforesaid Together with all sorts of Fish Mines Mettles, &c. To have & to hold to the only behoof of the said *William Penn* his Heirs and Assigns forever To be holden of us as of our Castle of *Windsor* in free and common soccage paying only 2 Beaver skins yearly.

3. And of our further Grace we have thought fit to erect and we do hereby erect the aforesaid Country and Islands into a Province & *Seigniory* and do call it *Pennsylvania* and so from henceforth we will have it call'd.

4. That

4. That reposing special confidence in the wisdom and justice of the said *W. Penn* we do grant to him and his Heirs and their Deputies for the good and happy Government thereof to ordain and enact and under his and their Seals to publish any Laws whatever for the publick uses of the said Province by and with the advice and approbation of the Free holders of the said Country or their delegates so as they be not repugnant to the Law of this Realm & to the Faith & Allegiance due unto us by the *legal Government* thereof.

5. Full power to the said *W. Penn*, &c. to appoint Judges Leintenants Justices Magistrates and Officers for what causes soever & with what Power and in such Form as to him seems convenient also to be able to pardon & abolish Crimes and Offences and to do all and every other thing that to the compleat establishment of Justice unto Courts and Tribunals forms of Judicature and manner of Proceedings do belong And our pleasure is & so we enjoyn & require that such Laws and Proceedings shall be most absolute and available in Law and that all the leige People of us our Heirs and Successors inviolably keep the same in those parts saving to us final Appeals.

6. That the Laws for regulating Property as well for the descent of Lands as enjoyment of Goods and Chattels and likewise as to Felonies shall be the same there as here in *England* until they shall be altered by the said *W. Penn* his Heirs or Assigns and by the Free-men of the said province

Province or their delegates or deputies or the greater part of them.

7. Furthermore that this new Colony may the more happily encrease by the multitude of People resorting thither therefore we for us our Heirs and Successors do hereby grant Licence to all the leige People present & future of us, &c. (excepting such as shall be specially forbidden) to transport themselves and Families into the said Country there to inhabit & plant for the publick and private good,

8. Liberty to transport what goods or commodities are not forbidden paying here the legal Customs due to us, &c.

9. Power to divide the Country into Counties Hundreds and Towns to incorporate Towns into Burroughs and Burroughs into Cities to make Fairs and Markets with convenient Priviledges according to the merit of the Inhabitants or the fitness of the place And to do all other thing or things touching the Premises which to the said *W. Penn* his Heirs or Assigns shall seem meet and requisite albeit they be such as of their own nature might otherwise require a more special comandment & warrant than in these presents is exprest.

10. Liberty to import the growth or Manufactures of that Province into *England* paying here the legal Duty.

11. Power to erect Harbours Creeks Havens Keyes and other places of Merchandizes with such Jurisdiction and Priviledges as to the said *W. Penn, &c.* shall seem expedient. 12.

12. Not to break the Acts of Navigation neither Governour nor Inhabitants upon the penalties contained in the said Acts.

13. Not to be in League with any Prince or Country that is in War against us our Heirs and Successors.

14. Power of safety and defence in such way and manner as to the said *W. Penn, &c.* seems meet.

15. Full power to assign alien grant demise or enfeof of the Premises so many and such parts and parcels to those that are willing to purchase the same as the said *William Penn* thinks fit to have and to hold to them the said Persons their Heirs or Successors in fee Simple or fee Tail or for term of Life or Lives or years to be held of the said *Will. Penn, &c.* as of the said *Seignory of Windsor* by such Services Customs and Rents as shall seem fit to the said *W. P.* his Heirs & Assigns and not immediately of us our Heirs or Successors and that the said Persons may take the Premises or any parcel thereof of the said *W. Penn, &c.* and the same hold to themselves their Heirs and Assigns the Statute *Quia emptores Terrarum* in any wise notwithstanding.

16. We give & grant Licence to any of those Persons to whom the said *W. P. &c.* has granted any Estate of Inheritance as aforesaid with the consent of the said *W. P.* to erect any parcel of Lands within the said Province into Mannors to hold Courts Barron & view of Frank-pledge, &c. by themselves or Stewards.

17. Power to those Persons to grant to others the same Tenures in fee simple or otherwise to be held of the said Mannors respectively and upon all further Alienations the Land to be held of the Mannor that it held of before the Alienation.

18. We do covenant & grant to and with the said W. P. his Heirs and Assigns that we will not set or make any Custom or other Taxation upon the Inhabitants of the said Province upon Lands Houses Goods Chattels or Merchandizes except with the consent of the Inhabitants & Governor.

19. A charge that no Officers nor Ministers of us our Heirs & Successors do presume at any time attempt any thing to the contrary of the Premises or in any sort withstand the same but that they be at all times aiding to the said W. P. and his Heirs and to the Inhabitants and Merchants their Factors and Assigns in the full use and benefit of this our Charter.

20. And if any doubts or questions shall hereafter arise about the true sense or meaning of any word clause or sentence contained in this our Charter we will ordain and command that at all times and in all things such Interpretation be made thereof and allowed in any of our Courts whatsoever as shall be adjudged most advantageous and favourable to the said W. P. his Heirs and Assigns so as it be not against the Faith and Allegiance due to us our Heirs and Successors. *In Witness whereof we have caused our Letters to be made Patents. Witness our self at Westminster the fourth day of March, Anno Dom. 1681.*

*The Frame of the Government of the Province
of Pennsylvania and Territories thereunto
annexed, in America.*

To all Persons to whom these presents may come ;

WHereas King *Charles* the second by his Letters Pattents under the great Seal of *England*, bearing date the fourth day of *March*, in the thirty third year of the KING, for divers Considerations therein mentioned, hath been graciously pleased to give and grant unto me *William Penn*, by the name of *William Penn, Esquire*, Son and Heir of *Sir William Penn* deceased, and to my Heirs and Assigns forever, all that tract of Land or Province called *Pennsylvania* in *America*, with divers great Powers, Pre-eminences, Royalties, Jurisdictions and Authorities, necessary for the well-being and good Government thereof. And whereas the Kings dearest Brother *James Duke of York* and *Albany*, &c. by his Deeds of Feoffment under his hand and seal, duly perfected, bearing date the 24th of *August*, 1682. he hath granted unto me the said *William Penn* my Heirs and Assigns all that Tract of Land, lying and being from twelve miles northward of *New-Castle* upon *Delaware* River, in *America*, to *Cape Henlopen* upon
the

the said River and Bay of *Delaware*, southward together with all Royalties, Franchises, Duties, Jurisdictions, Liberties and Priviledges thereunto belonging.

Now *know ye*, That for the well-being and good Government of the said Province and Territories thereunto annexed, and for the Encouragement of all the Free-men and Planters that may be therein concerned, in pursuance of the Rights and Powers afore-mentioned, I the said *William Penn* have declared, granted and confirmed, and by these presents for me, my Heirs and Assigns, do declare, grant and confirm unto all the Free-men, Planters, and Adventurers of, in and to the said Province and Territories thereof, these *Liberties, Franchises and Properties*, so far as in me lyeth, to be held, enjoyed and kept by the Free-men, Planters and Adventurers of and in the said Province of *Pennsylvania* and Territories thereunto annexed, forever.

Imprimis, That the Government of this Province and Territories thereof, shall from time to time (according to the Powers of the Patent, and Deeds of Feoffment afore said) consist of the Proprietary and Governour, and the Free-men of the said Province and Territories thereof in the form of a Provincial Council and Assembly, which Provincial Council shall consist of eighteen Persons, being three out of each County, and which Assembly shall consist of thirty six Persons,

Persons, being six out of each County, men of most note, for Virtue, Wisdom, and Ability, by whom all Laws shall be made, Officers chosen and publick Affairs tranacted, as is hereafter limited and declared.

2^{dly}. There being three Persons already chosen for every respective County of this Province, and Territories thereof, to serve in Provincial Council, one of them for three Years, one for two Years, and one for one Year, and one of them being to go off Yearly in every County. That on the tenth Day of the first Moneth yearly forever after, the Free-men of the said Province and Territories thereof, shall meet together in the most convenient place in every County of this Province, and Territories thereof, then and there chuse one Person, qualified as aforesaid, in every County, being one third of the number to serve in Provincial Council for three Years, it being intended that one third of the whole Provincial Council consisting, and to consist of eighteen Persons falling off yearly, it shall be yearly supplied by such new yearly Elections, as aforesaid, and that one Person shall not continue longer than three Years; and in case any Member shall decease before the last Election, during his time, that then at the next Election ensuing his decease, another shall be chosen to supply his place for the remaining time he was to have served, and no longer.

3^{dly}.

3^{dly}. That after the first seven Years, every one of the said third parts that goeth yearly off, shall be incapable of being chosen again for one whole Year following, that so all that are capable and qualified, as aforesaid, may be fitted for Government, and have a share of the care and burthen of it.

4^{thly}. That the Provincial Council in all cases and matters of moment, as their arguing upon Bills to be past into Laws, or proceedings about erecting of Courts of Justice, sitting in Judgment upon Criminals impeached, and choice of Officers in such manner as is herein after expressed, not less than two thirds of the whole, shall make a *Quorum*, and that the consent and approbation of two thirds of that *Quorum* shall be had in all such Cases or Matters of Moment. And that in all cases and matters of lesser moment, one third of the whole shall make a *Quorum*, the Majority of which shall and may always determine in such Cases and Causes of lesser moment.

5^{thly}. That the Governour and Provincial Council shall have the Power of preparing and proposing to the Assembly hereafter mentioned, all Bills which they shall see needful, and that shall at any time be past into Laws within the said Province and Territories thereof, which Bills shall be published, and affixed to the most noted place in every County of this Province and Territories thereof twenty days before the meeting

meeting of the Assembly, in order to passing them into Laws.

6thly. That the Governour and Provincial Council shall take care that all Laws, Statutes and Ordinances which shall at any time be made within the said Province and Territories, be duly and diligently executed.

7thly. That the Governour and Provincial Council shall at all times have the care of the Peace and Safety of this Province, and Territories thereof; and that nothing be by any Person attempted to the Subversion of this frame of Government.

8thly. That the Governour and Provincial Council shall at all times settle and order the Scituation of all Cities and Market-Towns in every County, modelling therein all publick Buildings, Streets, and Market-places, and shall appoint all necessary Roads and High-ways in this Province and Territories thereof.

9thly. That the Governour and Provincial Council shall at all times have power to inspect the management of the publick Treasury, and punish those who shall convert any part thereof to any other use, than what hath been agreed upon by the Governour, Provincial Council, and Assembly.

10thly. That the Governour and Provincia Council shall erect and order all publick Schools, and encourage and reward the Authors of useful Sciences, and laudable Inventions in the said Province and Territories thereof.

11^{thly}. That One Third of the Provincial Council residing with the Governour, shall with the Governour from time to time have the care of the management of all publick Affairs, relating to the Peace, Justice, Treasury, Trade & Improvement of the Province and Territories, and to the good Education of Youth, and Sobriety of the Manners of the Inhabitants therein, as aforesaid.

12^{thly}. That the Governour or his Deputy shall always preside in the Provincial Council, and that he shall at no time therein perform any publick Act of State whatsoever, that shall or may relate unto the Justice, Trade, Treasury or Safety of the Province, and Territories as aforesaid, but by and with the Advice and Consent of the Provincial Council thereof.

13^{thly}. And to the end that all Bills prepared and agreed by the Governour and Provincial Council, as aforesaid, may yet have the more full concurrence of the Free-men of the Province and Territories thereof, It is declared, granted and confirm'd, that at the time and place in every County, for the choice of one Person to serve in Provincial Council, as aforesaid, the respective Members thereof at their said Meeting, shall yearly chuse out of themselves six Persons of note, for their Virtue, Wisdom and Ability, to serve in Assembly, as their Representatives, who shall yearly meet on the Tenth day of the third Moneth, in the Capital
Town

Town or City of the said Province, unless the Governour and Provincial Council shall think fit to appoint another place to meet in, where during eight days, the severall Members may freely confer with one another, and if any of them see meet with a Committee of the *Provincial Council*, which shall be at that time purposely appointed to receive from any of them, Proposals for the alteration or amendment of any of the said *proposed* and promulgated Bills, & On the ninth day from their so meeting, the said Assembly, after their reading over of the proposed Bills by the Clerk of the Provincial Council, and the occasions and motives for them being open'd by the Governour, or his Deputy, shall upon the Question by him put, give their Affirmative or Negative, which to them seemeth best, in such manner as is hereafter expressed, but not less than two thirds shall make a *Quorum* in the passing of all Bills into Laws, and choice of such Officers as are by them to be chosen.

14. That the Laws so prepared and proposed, as aforesaid, that are assented to by the Assembly, shall be enrolled as Laws of this Province and Territories thereof, with this Stile, *By the Governour, with the Assent and Approbation of the Free-men in Provincial Council and Assembly met.* And from henceforth the Meeting, Sessions, Acts and Proceedings of the Governour, Provincial Council and Assembly shall be stiled and called, *The Meeting, Sessions, Acts and Proceedings*
of

of the General Assembly of the Province of Pennsylvania, and the Territories thereunto belonging.

15. And that the Representatives of the People in Provincial Council and Assembly, may in after Ages bear some proportion with the increase and multiplying of the People, the Numbers of such Representatives of the People may be from time to time increased and enlarged, so as at no time the number exceed seventy two for the Provincial Council, and two hundred for the Assembly; the appointment and proportion of which Number, as also the laying and methodizing of the choice of such Representatives in future time, most equally to the division of the Country, or number of the Inhabitants, is left to the Governour and Provincial Council to propose, and the Assembly to resolve, so that the order of rotation be strictly observed, both in the choice of the Council, and the respective Committees thereof, *viz.* one third to go off, and come in yearly.

16. That from, and after the Death of this Present Governour, the Provincial Council shall together with the succeeding Governour, erect from time to time standing Courts of Justice, in such Places and Number as they shall judge convenient for the good Government of the said Province and Territories thereof; and that the Provincial Council shall on the thirteenth day of the second Moneth, then next ensuing, elect and present to the Governour, or his Deputy,

a double number of Persons, to serve for Judges, Treasurers, and Masters of the Rolls within the said Province and Territories, to continue so long as they shall well behave themselves in those Capacities respectively, and the Free-men of the said Province in Assembly met, shall on the thirteenth day of the third Moneth, yearly, elect, and then Present to the Governour or his Deputy a double number of Persons to serve for Sheriffs, Justices of the Peace, and Coroners for the Year next ensuing, out of which respective Elections and Presentments the Governour or his Deputy shall nominate and commissionate the proper number for each Office, the third day after the said respective Presentments, or else the first named in such Presentment for each Office, as aforesaid, shall stand and serve in that Office the time before respectively limited; and in case of Death or Default, such vacancy shall be supplied by the Governour and Provincial Council in manner aforesaid.

17. That the Assembly shall continue so long as may be needful to impeach Criminals fit to be there impeached, to pass such Bills into Laws as are proposed to them, which they shall think fit to pass into Laws, and till such time as the Governour and Provincial Council shall declare, *That they have nothing further to propose unto them for their Assent and Approbation*; and that declaration shall be a Dismiss to the Assembly for that ~~Sheriffe,~~

time, which Assembly shall be notwithstanding capable of assembling together upon the summons of the Governour and Provincial Council at any time during that year, if the Governor and Provincial Council shall see occasion for their so assembling.

18. That all the Elections of Members or Representatives of the People, to serve in Provincial Council and Assembly, and all Questions to be determined by both or either of them, that relate to the choice of *Officers*, & all or any other Personal matters, shall be resolved and determined by the *Ballot*, and all things relating to the preparing and passing of Bills into Laws, shall be openly declared and resolved by the *Vote*.

19. That at all times when the Proprietary and Governour shall happen to be an Infant, and under the Age of one and twenty Years, and no Guardian or Commissioners are appointed in writing by the Father of the said Infant, or that such Guardian shall be deceased, that during such Minority, the Provincial Council shall from time to time, as they shall see meet, constitute and appoint Guardians and Commissioners, not exceeding three, one of which shall preside as Deputy and chief Guardian, during such Minority, and shall have and execute, with the consent of one of the other two, all the Power of a Governor in all publick Affairs and Concerns of the said Province and Territories thereof, according to *Charter*; which said Guardian so appointed,

ed, shall also have the care and over-sight of the Estate of the said Minor, and be yearly accountable and responsible for the same to the Provincial Council, and the Provincial Council to the Minor when of Age, or to the next Heir in case of the said Minor's death, for the Trust before expressed.

20. That as often as any days of the Month mentioned in any Article of this Charter shall fall upon the First day of the Week, commonly called the *Lords day*, the business appointed for that day shall be deferred till the next day, unless in cases of Emergency.

21. And for the Satisfaction and Encouragement of all Aliens, I do give and grant, that if any Alien, who is or shall be a purchaser, or who doth or shall inhabit in this Province or Territories thereof, shall decease at any time before he can well be naturalized, his Right and Interest therein shall notwithstanding descend to his Wife and Children, or other his Relations, be he Testate or Intestate, according to the Laws of this Province and Territories thereof, in such cases provided, in as free and ample manner, to all intents and purposes, as if the said Alien had been naturaliz'd.

22. And that the Inhabitants of this Province and Territories thereof may be accommodated with such Food and Sustenance as God in his Providence hath freely afforded, I do also further grant to the Inhabitants of this Province and Territories

ritories thereof, liberty to fowl and hunt upon the Lands they hold, or all other Lands therein, not enclosed, and to fish in all Waters in the said Lands, and in all Rivers and Rivulets in and belonging to this Province and Territories thereof, with liberty to draw his or their Fish to shore on any mans Lands, so as it be not to the detriment or annoyance of the Owner thereof, except such Lands as do lie upon Inland Rivulets that are not boatable, or which are or may be hereafter erected into Mannors.

23. And that all the Inhabitants of this Province and Territories thereof, whether Purchasers or others, may have *the last worldly Pledge of my good and kind Intensions* to them and theirs, I do give, grant and confirm to all and every one of them *full and quiet Enjoyment* of their respective Lands to which they have any *lawful or equitable Claim*, saving only such Rents and Services for the same as are or customarily ought to be reserved to Me, my Heirs and Assigns.

24. That no *Act, Law or Ordinance* whatsoever shall at any time hereafter be made or done by the *Proprietary and Governour* of this Province and Territories thereunto belonging, his Heirs, and Assigns, or by the *Free-men in Provincial Council or Assembly*, to alter, change or diminish the form or effect of this *Charter*, or any part or clause thereof, contrary to the true intent and meaning thereof, without the consent of the *Proprietary and Governour*, his *Heirs or Assigns*, and

(61)

and Six parts of Seven of the said *Free-men* in *Provincial Council and Assembly* met.

25: And *Lastly*, I the said *William Penn*, *Proprietary and Governour* of the Province of *Pennsylvania* & Territories thereunto belonging, for my self, my Heirs and Assigns, have solemnly declared, granted and confirmed, and do hereby solemnly declare, grant and confirm, that neither I, my Heirs or Assigns shall procure or do any thing or things whereby the *Liberties* in this *Charter* contained and expressed shall be infringed, or broken: And if any thing be procured by any Person or Persons contrary to these Premises, it shall be held of no force or effect. In *Witness* whereof, I the said *William Penn* at *Philadelphia* in *Pennsylvania*; have unto this present *Charter of Liberties* set my Hand and broad Seal this second day of the second Moneth, in the Year of our Lord 1683. being the thirty fifth year of the King, and the third year of my Government.

William Penn.

INDORSE D.

THis within Charter which we have distinctly heard read, and thankfully received, shall be by us inviolably kept at *Philadelphia*, the 2d of the 2d Moneth, 1683.

The Members of the Provincial Council present,¹

*William Markham, Will. Clayton, James Harrison,
John Moll, Francis Whitwell, John Hillyard,
Christop. Taylor, Will. Clark, Phil. Lebmans, Sec.
Will. Haige, Thomas Holme, John Richardson,
John Simcock, William Biles, Richard Ingele,
Cl. Concilia.*

The Members of the Assembly present;

*Casparus Harman, William Fenecher, Robert Lucas,
John Darby, John Kipsbaven, James Williams,
Benjamin William, Alexander Molestone, John
Blanford, William Guest, Robert Brary, John,
Songhurst, Valentine Hollinsworth, Tho. Bracy,
John Hill, James Boyden, Will Tarddy, Nicholas
Walk, Benony Bishop, John Hestings, Tho. Fuz-
water, John Bezor, Robert Wade, John Clows
John Harding, Fr. Hassold, Luke Watson, An-
drew Brinkstone, John Hart, Joseph Phips, Simon
Irons, Robert Hall, Dennis Ketchford, Jo. Wood,
Robert*

(63)

*Robert Bedwell, John Brinklair, John Curtis,
William Simmore, Henry Boman, Daniel Brown
Sam. Dark, Cornelius Verboof.
John Southworth, Cl. Synod,*

**Some of the Inhabitants of Philadelphia then
present,**

*William Howell, } } Henry Lewis,
Edward Varner, } } Samuel Miles.*

FINIS.
